

HB

907

COMMITTEE REPORT

SENATE

5/19/78

FURTHER: None

Date: 6/9/78

Mr. President:

The Committee on RESOURCES has had HB 907
repealing Land Registration Law, AS 34.10

under consideration and (a majority of the committee) (the committee reports it back as follows)

- recommends it do pass recommends it do not pass
- recommends it do pass with attached amendment(s)
- recommends it be replaced with CS for _____

and _____ new title same title

- AND attaches a Letter of Intent New Fiscal Note
- reports it back without recommendation
- and recommends it be referred to the _____ Committee

MEMBERS SIGNING DO PASS:

[Signature]

[Signature]

[Signature]

C. A. Hillion

OTHER RECOMMENDATIONS:

[Signature]
Chairman

STATE
of ALASKA

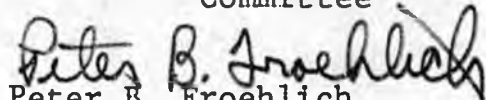
MEMORANDUM

TO:

DATE: June 8, 1978

The Honorable Kay Poland
Chairman, Senate Resources
Committee

FILE NO.



TELEPHONE NO.

FROM:

Peter B. Froehlich
Assistant Attorney General

SUBJECT:

HB 907 (Repeal of
the Land Registra-
tion Act) and Escheat
of Land

At the hearing on this bill before your committee on June 7, a concern was expressed by committee members that if AS 34.10 was repealed, there would be no means to get abandoned land outside municipalities back into private use. I am writing to address that concern and to explain the escheat laws which satisfy it far better than AS 34.10.

There was also some speculation at the hearing that this was the primary purpose of the Land Registration Act when it was first enacted in 1953. However, the Act is ill suited to satisfy this purpose because it has no effect on land once the required statement of real property ownership is filed. In other words, if a land owner filed a statement and then abandoned his land or died without leaving a will or heirs, the Land Registration Act would not result in foreclosure. Foreclosure occurs only when an otherwise known land owner or transferee fails to file a statement and likewise to pay the resulting penalty. Since the Land Registration Act has been in effect for over 25 years now, it is safe to assume that most, if not all, currently patented land for which no statement has ever been filed, has already been foreclosed. Therefore, the Land Registration Act, if retained, will only affect newly patented land and land which is transferred (after a statement was once filed).

Escheat, on the other hand, covers all private land, whether a statement of real property ownership has ever been filed or not, and whether it is ever transferred between private owners or not. AS 09.50.070-160 and AS 13.11.025 establish the procedures by which land escheats to the state. Essentially, if a land owner dies without a will or heirs, his land (along with other assets) passes immediately to the state. (AS 13.11.025). The state nearly always learns of such a situation, usually from the court appointed personal representative. Also, AS 13.06.035 creates a presumption of death if a person is absent without word or explanation for 5 years. (AS 13.06.035(3)). The state would not learn of this situation as easily, but nothing in the Land Registration Act provides any assistance

either. */ The attorney general then brings an action in superior court to verify and formalize the state's title. (AS 09.50.100). The commissioner of revenue may then tell the escheated real property at auction. (AS 09.50.120(b)). If a person appears within 7 years after the judgment verifying the state's title, the commissioner of revenue must convey either the escheated property or proceeds from its sale, less expense. (AS 09.50.110).

It should be apparent then, that the escheat statutes (first enacted in 1962, 9 years after the current Land Registration Act) adequately satisfy the concern for recycling abandoned land back into private use, and much more so than the Land Registration Act. I therefore urge the committee to pass out HB 907 to eliminate the needless burden of the Act on both landowners and the Division of Lands.

Incidentally, I have just received figures from the Division of Lands indicating that of the 46, 900 acres foreclosed under AS 34.10, 84% have been redeemed or repurchased, 13.5% have been sold at auction and only 2.5% remain in state ownership.

I will be available to explain this memo, the Land Registration Act, and the escheat laws further to the committee at its next hearing.

PBF:bvd

cc: Senate Resources Committee
Pat Conheady, DNR
Alice Iliff, DOL

*/ If a statement was filed, the Act has no effect. If no statement was ever filed, the land has probably either already been foreclosed or its existence is not known because no deed was ever recorded.

DEPARTMENT OF NATURAL RESOURCES

TO: House Resources Committee

DATE: 4/27/78

FILE NO.

TELEPHONE NO.

FROM: Alice L. Iliff
Research Analyst

SUBJECT: HB 907: Repeal of AS 34.10
(Land Registration Act)

This vestige of territorial law requires that for any land situated outside a borough or city where local land ownership records are kept, its owner must file a "statement of real property ownership". The statute may have had a legitimate purpose as a temporary transitional device accompanying the installation of a recording system in territorial days, as it encouraged the introduction of land ownership information into the public record. Today, its reason for being is much more speculative.

To induce compliance with the filing requirement of the statute, it provides for modest financial penalties in the event of a failure to file. Once assessed, a penalty becomes a lien against the property. The lien is subject to foreclosure under the statute, but if (as is usually the case) the landowner fails to respond to the lien foreclosure action by answering the petition, the land owner may "redeem" the property during the first year following its "foreclosure". After the expiration of this one-year redemption period, the procedure departs from the usual foreclosure model. Instead of selling the property to satisfy the lien and turning the overage in proceeds back to the owner, the State simply keeps the property. The land may be "repurchased" by its owner, but that right of repurchase is extinguished if the land is disposed of into private ownership by the State or is held by the State for and devoted to a "public purpose" and improvements are constructed upon it. Since the existence of these rights of repurchase makes management of the land as public domain difficult and expensive (administrative costs exceeding \$30,000 per year for approximately 140 parcels with negligible return), the State can only derive a benefit from this forfeited land by disposing of it into private ownership by sale. The parcels usually have changed hands since foreclosure, resulting in time consuming administrative problems for both the State and the innocent victims.

There is no longer any public purpose served by this statute. From the beginning, the only legitimate purpose of the law was to compel landowners to identify their land holdings and place them on the record. But where recordable transactions (conveyances, mortgages, and the like) take place, the advantages of recording alone induce the new owner or mortgagee to record. Another purpose commonly attributed to the law, that of providing a record of land ownership in the unorganized borough to satisfy various public and private information needs, is illusory. The recording system itself satisfies this purpose - incompletely, albeit, but just as effectively as the superfluous statement file requirement does.

Assume that there were some legitimate public policy served by a law requiring land owners to file statements of real property ownership. It is clear that the penalty and lien foreclosure devices in the statute have not been effective in securing compliance with that filing requirement

Filing a statement (or, more to the underlying objective, getting private land holdings on the record) can be encouraged by a "carrot", by a "stick", or by a combination of the two. The "carrot" in this case is the recording law itself - the landowner whose interest is recorded enjoys an important priority over he who does not record. This legal protection is a "carrot" sufficient to induce all who are aware of the recording law to use it, irrespective of the existence of any penalties for nonuse of the system.

The "stick" to induce filing is a penalty fee backed up by the lien foreclosure mechanism. This has apparently not been effective. People file because they want the benefits of the recording system; people fail to file because they are unaware of the existence of the system and the benefits which would inure to them from using it. A penalty mechanism will only encourage compliance by those who are already aware of the system but would not otherwise use it - a negligible class of persons.

A principal problem with the foreclosure action as a compliance mechanism is that it is only inflicted upon those landowners whose land holdings have been discovered due to the recordation of a conveyance. The recording of the conveyance itself, with or without an accompanying ownership statement, fulfills the legislative goal of getting land onto the public records. In these cases, the need for a statement is superfluous and the idea of penalizing the person for failing to file one borders on the absurd. In other words, when scrutinized against the actual operation of the statute, the reasoning underlying the foreclosure mechanism is seen to be circular: (1) the objective of the law is to get land holdings on the record; (2) the foreclosure process exists to encourage compliance with the law in order to satisfy that objective; (3) the only lands which are subjected to foreclosure are those whose existence comes to the attention of the Division of Lands when they are recorded; (4) at that point, the lands have entered into the recording system and the legislative objective has been met.

In summary,

1. There is no valid public purpose served by the land registration statute. To the extent that there is any need to have a public record of land holdings in the unorganized borough, that need is fully met by the existing recording system, supplemented by the land status records of State and Federal governments.
2. The filing requirement of the land registration law imposes an undesirable paperwork burden and expense upon private landowners. This burden should not exist without some countervailing public policy.
3. Administration of the law costs the State \$30,000 to \$50,000 every year in employee time that could be better utilized for other effort. Trying to administer AS 34.10 in light of Native lands conveyances, homesites, and any other upcoming programs of land disposal will be impossible due to lack of staff and monies, as well as inequities of this law that have been perpetrated for years to the disadvantage of the public. There is consensus among all agencies involved that the statute is unnecessary.

4. Because of the existence in perpetuity of rights of repurchase on foreclosed lands, the State cannot effectively manage these properties as public land. It can only derive benefit from them by disposing of them back into private ownership at the expense of innocent holders of repurchase rights.

5. Taking a person's land away for failure to file a superfluous piece of paper is bad-public policy. It is even worse when the person failed to file simply because the person was ignorant of the filing requirement.

For all of these reasons, the statute should be repealed.

2HB 907

March 24, 1978

The Honorable Hugh Malone
Speaker of the House
Alaska State Legislature
Juneau, Alaska 99811

Dear Mr. Speaker:

Under the authority of art. III, sec. 18 of the Alaska Constitution, and in accordance with AS 23.30.060(b) and the Uniform Rules of the Alaska State Legislature, I am transmitting a bill repealing the Land Registration Law, AS 34.10.

The Land Registration Law is a vestige of territorial days which requires that private owners of land outside cities and boroughs file statements of real property ownership. Modest penalties are imposed for failure to file. These penalties become liens against property which may be foreclosed, resulting in forfeiture of the land to the state. After foreclosure, the land may be redeemed for a period of one year, but it is also subject to a continuous "right of repurchase" by the former owner and his assigns. This right to repurchase is extinguished only by disposal of the land or construction of a public building upon it. These repurchase rights inhibit effective management of land gained by foreclosure and have been the subject of abuse by industrious opportunists who, although they have never had any relationship with either the foreclosed land or its owners, obtain some colorable interest in the land and attempt to reap a windfall by repurchasing it.

The requirement of filing statements of real property ownership is somewhat obscure and often ignored by landowners. It does not enhance the existing recording system and government records which, according to the Division of Lands, fully meet any need for public record of land holding outside of municipalities. Penalizing an individual for failure to file a superfluous document is, in my view, bad public policy, especially when the individual probably does not know of the requirement to file.

Administration of the Land Registration Law costs the state \$30,000 - \$50,000 per year with negligible return. Costs could easily triple with the huge amounts of land soon to be placed in private ownership, including native selections and state and municipal land disposals. It seems senseless to continue the burden of this law on taxpayers, land owners, and state agencies.

State agencies and staff involved concur in the desirability of repealing this law and incurring the substantial time and money savings which would result.

This bill would repeal the entire Land Registration Law (AS 34.10), except for one provision (AS 34.10.170) which states that land obtained by foreclosure under the chapter may be administered and disposed of in the same manner as other state land. The bill also includes a provision which continues, for three years after enactment, current rights to repurchase land lost by foreclosure; then, after published notice, those rights of formerly indefinite duration are terminated, thus clearing the state's title to that land.

The Land Registration Law is outdated, nearly universally unpopular, costly and burdensome to administer, often unfair, and yields little, if any, benefit to the state. Therefore, I urge its repeal by passage of this bill.

Sincerely,



Jay S. Hammond
Governor

