

COMMITTEE REPORT
HOUSE

(11)

FURTHER:

2/9/84
(Finance added 2/9/84)

Date: 2-21-84

The Committee on FINANCE has had HB 455

"An Act relating to defects in the title of the state to land; and providing for an effective date."

under consideration and recommends:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for HB 455 (Res) same title
 new title
- and recommends DO PASS
- AND attaches a "Letter of Intent" New Fiscal Note 2/8/84
- reports it back without recommendation Zero Fiscal Note Attached
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

Robert B. Edwards

W. B. Whitworth

[Signature]

[Signature]

[Signature]

MILO H. F. WITZ

MEMBERS HAVING
OTHER RECOMMENDATIONS:

Will Finney

[Signature]

Robert B. Edwards
CHAIRMAN

Offered: 2/9/84
Referred: Finance

Original sponsors: Goll, Grussendorf
and Herrmann

1 IN THE HOUSE BY THE RESOURCES COMMITTEE
2 CS FOR HOUSE BILL NO. 455 (Resources)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 THIRTEENTH LEGISLATURE - SECOND SESSION
5 A BILL
6 For an Act entitled: "An Act relating to defects in the title of the state
7 to land; and providing for an effective date."
8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:
9 * Section 1. LEGISLATIVE PURPOSE AND FINDINGS. (a) The purpose of
10 this Act is to provide a mechanism to correct defects in the title of the
11 state to land and in doing so, to settle certain claims, including Native
12 allotment claims, against the state.
13 (b) The legislature finds that the correction of title defects is a
14 matter of statewide significance, is in the public interest, and will
15 foreclose possible protracted and divisive litigation.
16 * Sec. 2. AS 38.05.035(b) is amended to read:
17 (b) The director may
18 (1) delegate the administrative duties, functions or powers
19 imposed upon the director [HIM] to a responsible employee in the
20 division;
21 (2) grant preference rights for the lease or purchase of
22 state land without competitive bid in order to correct the past or
23 future errors or omissions of a state or federal administrative agency
24 when inequitable detriment would otherwise result to a diligent claim-
25 ant or applicant due to situations over which the claimant or appli-
26 cant had no control; the exercise of this discretionary power operates
27 only to divest the state of its title to or interests in land and may
28 be exercised only with the express approval of the commissioner;
29 (3) grant a preference right to a claimant who shows bona

1 fide improvement of state land, or federal land subsequently acquired
2 by the state, and who has in good faith sought to obtain title to the
3 land but who, through error or omission of others, has been denied
4 title to it; upon a showing satisfactory to the commissioner, the
5 claimant may lease or purchase the land at the price set on the date
6 of original entry on the land or, if a price was not set at that time
7 at a price determined by the division to fairly represent the value of
8 unimproved land at the time the claim was established, but in no event
9 less than the cost of administration including survey; the error or
10 omission of a predecessor in interest or an agent, administrator, or
11 executor which has clearly prejudiced the claimant may be the basis
12 for granting a preference right;

13 (4) sell land [LANDS] by lottery for less than its [THEIR]
14 appraised value when, in the director's [HIS] judgment, past scarcity
15 of land suitable for private ownership in any particular area has
16 resulted in unrealistic land values;

17 (5) when the director [HE] determines it is in the best
18 interest of the state and will avoid injustice to a person or the
19 [HIS] heirs or devisees of the person, dispose of land, by direct
20 negotiation to that person who presently uses and who used and made
21 improvements to that land before January 3, 1959 or the [HIS] heirs or
22 devisees of that person; the amount paid for the land shall be its
23 fair market value on the date that the person first entered the land,
24 as determined by the director; a parcel of land disposed of under this
25 paragraph shall be of a size consistent with the person's prior use,
26 but may not exceed five acres;

27 (6) dispose of an interest in land limited to use for
28 agricultural purposes by lottery;

29 (7) convey to an adjoining landowner a parcel of land

1 created by a highway right-of-way alignment or realignment, or a
2 parcel created by the vacation of a state-owned right-of-way if

3 (A) the director [HE] determines that it is in the
4 best interests of the state;

5 (B) the parcel does not exceed the minimum lot size
6 under an applicable zoning code; and

7 (C) the director and the platting authority having
8 land use planning jurisdiction agree that conveyance of the
9 parcel to the adjoining landowner will result in boundaries that
10 are convenient for the use of the land by the landowner and
11 compatible with municipal land use plans;

12 (8) for good cause extend for up to 90 days the time for
13 rental or installment payments by a lessee or purchaser of state land
14 under AS 38.05 if reasonable penalties and interest set by the direc-
15 tor are paid;

16 (9) quitclaim land or an interest in land to the federal
17 government on a determination that the land or the interest in land
18 was wrongfully or erroneously conveyed by the federal government to
19 the state.

20 * Sec. 3. AS 38.05.125 is amended by adding a new subsection to read:

21 (b) The provisions of (a) of this section do not apply to a
22 quitclaim of land or an interest in land made under AS 38.05.035-
23 (b)(9).

24 * Sec. 4. AS 38.05.321(c) is amended to read:

25 (c) The provisions of this section do not apply to

26 (1) state land classified as agricultural land which has
27 been selected by a municipality under the provisions of AS 29.18.190 -
28 29.18.200 if the selection is an approved selection before April 1,
29 1978 and is otherwise valid under AS 29.18.205(b); or

1 (2) a quitclaim of the interest of the state to the federal
2 government under AS 38.05.035(b)(9).

3 * Sec. 5. This Act takes effect immediately in accordance with AS 01.-
4 10.070(c).

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: 2/8/84

REQUEST

Bill/Resolution No.: CSHB 455 (Res)
Title: defects in the title of
State Land
Sponsor: Goll & Grussendorf
Requestor:
Date of Request:

FISCAL DETAIL

Agency Affected: Natural Resources
Program Category Affected: Information &
Record Management - Title Defense
BRU, Program or Subprogram(s) Affected:

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES		46.2				
200 TRAVEL		1.2				
300 CONTRACTUAL		4.0				
400 SUPPLIES		2.0				
500 EQUIPMENT		1.5				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0	52.5	57.7	61.1	64.7	68.5
CAPITAL	0	0	0	0	0	0
REVENUE	0	0				

FUNDING: (Thousands of Dollars)

GENERAL FUND		54.5	57.7	61.1	64.7	68.5
FEDERAL FUNDS						
OTHER						
TOTAL		54.5	57.7	61.1	64.7	68.5

POSITIONS:

FULL-TIME		1	1	1	1	1
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

General Fund

ANALYSIS: Attach a separate page for analysis

Prepared By: Carol Shobe/Joe Burch

Phone: 276-2653

Division: Technical Services

Date: 2/8/84

Approved by Commissioner: William D. Amundson, Deputy
Agency: Department of Natural Resources

Date: 2/8/84

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

Amended Analysis of Fiscal Impact of Proposed Legislation

House Bill No. 455

The proposed House Bill No. 455 "An Act relating to defects in the title of the state of land,..." is a clear statutory authority to provide a mechanism to correct defects in title. This statutory authority itself will not have a fiscal impact however, the necessity of responding to actions that this authority permits will have a fiscal impact.

There are numerous clouds on the State's land title. Many of these are Native Allotment claims filed with the federal government, Bureau of Land Management, which were not of record, adjudicated or properly located at the time the State received its land. Many of these are indeed valid existing rights of Alaskan residents.

There are several ways to remove the clouds on the States title and to accomodate valid claims of Alaskans.

- 1) Native Allotment claims located on state land, must first be adjudicated, approved, located and surveyed by BLM. Once this is completed the file must be transmitted to the Regional Solicitors Office with a recommendation that a quiet title action be initiated against the State to acquire title on behalf of the Allottee. The attorneys must review the case, and request information that would strengthen the case, (i.e. affidavits, field reports, etc.) Then the Regional Solicitor must request the U.S. Attorney's office to initiate a quiet title action in the federal court. When the workload of the U.S. Attornys permits, a litigation action will eventually be filed. The court calendar is extremely full but eventually the case will be scheduled. At this point the State will be involved by requiring the Attorney General's office to respond to the litigation and DNR staff to examine the records to determine if a third party right has been created, if state improvements or state monies have been allocated for the lands, and if there is a road or trail requiring an easement. Actions required by the State will most likely be unplanned but response is necessary or the State will be in contempt. If the Native Allotment is clearly a valid existing right and the State has no overriding interests in the lands the State will take no further action and most likely will negotiate. The court most likely will issue an order for DNR to convey the lands to BLM. DNR-Division of Technical Services will prepare the conveyance document and research and prepare the certificat of non-alienation.

The adverse factors in the scenario above are 1) the length of time to remove a cloud on the State's title and for lands to be conveyed to a valid allottee; 2) unplanned workload particularly if there are a number of these actions; 3) unfunded workload if the required actions exceed the capabilities of staff funded for Native Allotment work and Title Administration; and 4) the State is not in control of actions or workload but must respond in a reactionary mode.

The approximate cost per case is \$3,550 to * \$5,000.

1,500 - AG time
500 - Clerical
750 - NA Staff
800 - Conveyance Staff

\$3,550

*This figure is an average cost over 8 years at 6% inflation

- 2) Native Allotment claims located on state land must first be adjudicated, approved, located and surveyed by BLM. With the passage at this legislation the State, based on mutually agreed upon priorities can process the reconveyance of valid existing claims under the procedures of the Aguilar settlement. It is estimated that approximately 50 parcels per year can be conveyed. Most of the activities accomplished by DNR staff identified in (1) above will be required including review of State interests, publications, a findings determination, as well as title reports, certification of non-alienation and the preparation and issuance of conveyances.

After additional contact with the project leader, funding associated with the Native Allotment and Disposal projects should be sufficient to manage the workload for DNR-Native Allotment staff and the Attorney Generals staff. Thus the only remaining costs lie within the Title Defense project for the technical conveyance correction tasks for not only Native Allotments, but other claims and resolution of title defects.

Amended Cost Summary

Native Allotments

Units - 200 - 400 parcels at 50 parcels per year

1 parcel = 1 w/w = \$1,000

\$50,000

Other Title defects

Units = 17 @ 2-1/2 w/w = \$2,500

Projection

FY 85

100	\$45.2	1 HRM I R18
200	1.0	Travel
300	4.0	(telephone, long distance, copier, space, printing, etc.)
400	2.0	(General office supplies, Imtec. etc.)
500	<u>1.5</u>	(Equipment for position)

\$54.5

STATE OF ALASKA

THE LEGISLATURE

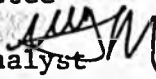
BUDGET AND AUDIT COMMITTEE

FINANCE DIVISION
POUCH WF-STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3795

MEMORANDUM

DATE: February 21, 1984

TO: Louann Cutler, Administrative Assistant
House Finance Committee

FROM: Tom Maher, Fiscal Analyst 
Legislative Finance Division

SUBJ: Fiscal Note for CSHB 455

The analysis provided with this fiscal note fails to provide the information necessary to fully evaluate the fiscal impact of this legislation upon DNR's operating programs. From further discussions with the Department, I wish to provide the following information:

- * The request of one new position, a Natural Resources Manager I, range 18, appears justified. The Department readily admits that the Native Allotment and Land Disposal Programs can absorb any additional workload. However, the Title Defense project is already understaffed and will likely remain so during FY 85. This fact is illustrated by page 215 of the detail budget where at the Governor's recommended level, the Title Defense project allows for a review of only 25% of current litigation and contested title. This project is responsible for these and other related activities for some 73.0 million acres of land. The impact of any additional workload will seriously effect this program's ability to provide even the minimal level of effort to ongoing litigation and contested titles.
- * The staff attorney already funded to work on Native Allotments has responded that any additional legal workload created by this legislation can be readily absorbed by this one position. Therefore, additional monies for legal work will not be necessary.
- * Finally, discussions with the program managers indicate some 250 known native claims defects are awaiting resolution made possible by this legislation. This workload will require immediate attention upon enactment of this legislation.

TM: ro

DEPARTMENT OF NATURAL RESOURCES
SECTIONAL ANALYSIS OF CSHB 455
FOR THE HOUSE COMMITTEE ON FINANCE
February 20, 1984

Sec. 1 - Wording clarifies the purpose of the Act, which is to allow the Department to reconvey lands to the federal government that the federal government should not have conveyed to the State.

Sec. 2 - The amendments to this section are mostly technical. However, subsection (b)(9) authorizes the Commissioner to return land to the federal government if it was erroneously conveyed to the State. (Most of the tracts that would be returned are claimed as allotments by Alaska Natives, but were rejected by the Bureau of Land Management (BLM) because the lands had already been transferred to the State; subsequently a court held that such claims, if valid, would have to be honored by BLM. Without the authority conferred by this legislation, the State would face litigation on each of more than 220 claims.)

Sec. 3 - Allows the Commissioner to reconvey the subsurface, otherwise prohibited under State law. Native allotments can be conveyed by the federal government only on nonmineral lands anyway.

Sec. 4 - Allows the Commissioner to reconvey lands classified for agriculture. Otherwise the Commissioner is prohibited from conveying non-agricultural interests on agricultural lands.

Explains need for bill and describes all of bill except Sec. 4 which was added in House Resources.

STATEMENT OF ROBERT D. ARNOLD,
DEPUTY COMMISSIONER, DEPARTMENT OF NATURAL RESOURCES
ON HOUSE BILL 455
BEFORE THE HOUSE RESOURCES COMMITTEE
JANUARY 30, 1984

Mr. Chairman, members of the Committee, I am pleased to appear in support of House Bill 455, introduced by Representatives Peter Goll and Ben Grussendorf.

This bill would authorize the Department of Natural Resources to correct defects in the State's title to lands received from the federal government. It is designed primarily to allow for the administrative settlement of Native allotment claims on State land.

The bill would authorize our department to reconvey lands that were mistakenly conveyed to the State by the federal government. To insure that the State receives credit for the reconveyed lands in its overall entitlements under the Statehood Act, the bill would also waive the provisions of AS 38.05.125 requiring reservation of the mineral estate.

The primary need for this legislation arises from the fact of more than 200 Native allotment claims on State land. In 1979, a federal district court ruled that land used and occupied by Native allotment applicants should not have been conveyed to the State, even though the allotment applications were not filed until after the State received title. Aguilar v. United States, 474 F. Supp. 840 (D. Alaska 1979). The court also ruled that the federal government has a trust responsibility to recover any such lands it wrongfully conveyed to the State. Id.

The expedited settlement procedures established by the allotment applicants and the federal government provide that the State may reconvey the lands to the federal government and that the reconveyed acreage will be credited to the State's entitlements under the Alaska Statehood Act. The State desires to expedite settlement of the valid allotment claims where possible, but lacks express statutory authority to reconvey.

The State has also received defective title to lands from the federal government in a variety of other contexts. For example, through administrative error the federal government recently conveyed to the State six sections of land underlying the TAPS pipeline. This bill would authorize the department to correct those defects without the need for burdensome quiet title litigation which is now the only available means to do so. The federal government already has this type of authority.

Virtually all of Section 2 of the bill before you makes technical changes to subsection (b) of A.S. 38.05.035. The department has no objection to these changes (through line 15 of page 3). However, the Committee may want to take into account that Senator Bettye Fahrenkamp has introduced a bill that would make a large number of changes to Title 38, including a substantive change in subsection (b).

The substantive changes in the bill before you begin on line 16, page 3.

Subparagraph 9 of the bill would require a determination that the land was "wrongfully or erroneously conveyed to the State." In the case of a Native allotment claim, this would mean determining that Native use and occupancy predated State selection and that the allotment is otherwise valid. In the case of other title defects, this would mean determining that the federal government did not have the authority to transfer a tract of land to the State, owing, for instance to its title being held by others.

The following section of the bill would waive the requirement of AS 38.05.125 to reserve mineral estates. This provision is necessary because the State would not receive credit for the reconveyance if the mineral estate is reserved. Both our attorney general and the Bureau of Land Management regional solicitor are of the opinion that section 6(i) of the Statehood Act (the federal statute requiring reservation of the mineral estate) would not prohibit reconveyances made to the federal government under the bill. This section also waives the provisions of AS 38.05.321 which restricts disposal of State land classified as agricultural land.

The need for this bill has been discussed extensively with representatives from Native groups and various agencies of both the State and federal governments. It has the support of all of them. I hope the Committee will be able to promptly act on this measure.

Introduced: 1/9/84
Referred: Resources

1 IN THE HOUSE

BY GOLL AND GRUSSENDORF

2

HOUSE BILL NO. 455

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

THIRTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act relating to defects in the title of the state
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