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STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 22, 1983

SUBJECT: Legislative power of appropriation
(SB 181)

TO: Senator Bettye Fahrenkamp
Chairman, Senate Resources Committee

FROM: Tamara Brandt Cook
Legislative Counsel

TBC

You have asked whether AS 29.18.208(e) effectively limits the amount the legislature may appropriate for land deficiency entitlements. That subsection provides

(e) For purposes of fulfilling entitlements under this section, the legislature is authorized to appropriate

(1) not more than \$4,000,000 per fiscal year, and not more than \$12,000,000 in total, for the purpose of paying entitlements under (b) of this section;

(2) not more than \$1,000,000 per fiscal year, and not more than 8,000,000 in total, for the purpose of paying entitlements under (c) of this section.

It is my understanding that the question of the applicability of this subsection has come up with regard to SB 181. Section 1 of that bill appropriates \$4,000,000 for an entitlement "under AS 29.08.208" and section 2 appropriates \$1,000,000 for an entitlement "under AS 29.18.208." Note that SB 181 may not conflict with the provision authorizing a level of funding. If the appropriation under section 1 is for an entitlement under AS 29.18.208(b) and the appropriation under section 2 is for an entitlement under AS 29.18.208(c), SB 181 conforms to the authorized level of funding contained in subsection (e), assuming that the legislature makes no other appropriations during fiscal year 1983 for land deficiency entitlements.

Regardless of whether SB 181 exceeds the level of funding for land deficiency entitlements authorized under AS 29.18.208(e), the appropriation under that bill is valid. The legislature has the constitutional power to exceed the level of funding authorized by statute. Article II, section 1 of the state constitution provides in part

The legislative power of the state is vested in a legislature . . .

Article IX, section 13 provides in part

No money shall be withdrawn from the treasury except in accordance with appropriations made by law.

The power to appropriate money is so basic a legislative power that the legislature cannot delegate it. Opinion of the Justices, 177 A.2d (Delaware 1962); In re Opinion of the Justices, 13 S.2d 674 (Alabama 1943). The legislature is the sole and exclusive authority for the appropriation of state funds. Jackson v. State, 413 P.2d 488 (Alaska 1966); Galpin v. Chicago, 159 Ill. App. 135, affirmed 94 NE 961 (Illinois 1911).

The state constitution is the supreme law subject only to restraints under the federal constitution. Constitutional provision may not be abrogated by statute. Bonjour v. Bonjour, 592 P.2d 1233 (Alaska 1979). Likewise, the legislature's ability to exercise legislative power is subject only to limitations imposed by the state constitution, the federal constitution, and treaties and certain acts of Congress. The power of the legislature may not be limited or restricted by common law or by statute. Corpus Juris Secundum, Constitution Law, Sec. 70.

The funding authorization set out by statute under AS 29.18.208(e) cannot operate as a limit on the power of the legislature to exceed the amount indicated. The legislative power of the purse is, however, limited by certain state constitutional provisions. (See, for example, Article II, sections 13 and 15; Article IX, sections 6 and 16.)

Alaska State Legislature

BETTYE FAHRENKAMP, Chairman
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Senate

Committee on Resources

MINUTES

April 22, 1983
3:10 p.m.

Beltz Room
Room 211, Capitol

MEMBERS PRESENT

Senator Fahrenkamp, Chair	Senator V. Fischer
Senator Ziegler, Vice Chair	Senator Mulcahy
Senator Eliason	Senator Sturgulewski
Senator P. Fischer	

CALENDAR

- HJR 38 Relating to marketing and transporting Alaska's natural gas
- SJR 12 Opposing the extension of the provisions of the Export Administration Act of 1979 that effectively bans the export of Alaska North Slope Oil.
- HB 151 An Act making a special appropriation to the Department of Natural Resources, division of parks, for acquisition and development of the House of Wickersham in Juneau; and providing for an effective date.
- SB 222 An Act relating to the organization of the Department of Natural Resources, substituting references in the Alaska Statutes to the department and the commissioner for references to the division of lands and the director of the division of lands.
- SB 181 An Act making supplemental appropriation to the Department of Natural Resources for land deficiency entitlements; and providing for an effective date.
- SB 233 An Act enacting the Northwest Interstate Compact on Low-level Radioactive Waste Management; and providing for an effective date.

SB 168 An Act relating to the Alaska Power Authority; and providing for an effective date.

HJR 38

Representative Cowdery, sponsor of the measure, felt the measure was needed to back the Reagan administration's efforts to establish a free market.

Harold Moles, Vice President for Alaskan Operations, Northwest Alaskan Pipeline Company, felt the resolution should not be passed at the risk of delaying or harming the gas pipeline project.

Jerry McCutcheon supported passing the resolution, but felt it was not in Alaska's best interest.

Senator V. Fischer asked if the Administration had a position on the resolution. Senator Fahrenkamp said they had been invited to speak, but had expressed no interest.

Senator Fahrenkamp felt that the Budget & Audit Committee hearings scheduled to be held over the weekend might provide useful information for the committee, and so held the bill over.

SJR 12

Jim Palmer, Joint Oil & Gas Committee Aide, explained that the resolution calls for our Congressional delegation to do everything possible to remove the ban on export of Alaskan oil when the Export Administration Act is considered later this year.

Senator Sturqulewski moved to report out SJR 12 with individual recommendations. Motion passed without objection.

CSHB 151

Representative Mike Miller of Juneau, co-sponsor of the legislation, explained the necessity to acquire the Wickersham collection before it is dispersed. There was discussion of exactly how the appropriation could be used.

Senator V. Fischer moved to adopt the committee substitute, including the letter of intent, and to report the bill out with individual recommendations. Motion passed without objection.

SB 222

Sharon Barton, special assistant to the Commissioner of the Department of Natural Resources, explained that the bill is a "housekeeping" measure and endorsed its passage.

Senator Sturgulewski moved that the bill be brought before the committee, and moved Barton's first recommended amendment. Motion passed without objection.

Barton continued to offer suggested amendments. Senator Fahrenkamp asked that the amendments be prepared in writing for the committee's consideration, and held the bill over until those could be received and until the statute revisor's opinion could be asked.

SB 181

Rav Manr, Property Management Officer for the Municipality of Anchorage, gave a history of the Municipality's efforts to obtain its land entitlement.

There was discussion of whether the Municipality would take a \$5 million settlement as provided in statutes, or if it would continue to approach the legislature for additional funds or land.

Jane Anqvik, Municipality of Anchorage Assembly Member, felt it was not in Anchorage's best interest to accept a full cash settlement at this time if that would preclude any efforts to seek amendments to the entitlement provisions.

Bill was held over.

SB 233

Stan Hungerford, Air & Solid Waste Management Section, Department of Environmental Conservation, and T.R. Strong, Head of the Radiation Control Section for the State of Washington, spoke in support of SB 233 and explained how it would be beneficial to Alaska to become a member of the Northwest Interstate Compact.

Senator Mulcahy moved to report out the bill with individual recommendations. The motion passed without objection.

SB 168

Sterling Gallagher, Vice President of John Naveen & Co., supported SB 168, and the first three proposed amendments.

Commissioner Dick Lyon, Department of Commerce & Economic Development, supported the bill and the amendments and urged early passage of the measure.

There was discussion of the fourth amendment offered by Senator V. Fischer, who said he preferred not to move his amendment.

Dave Hutchens, Alaska Rural Electrical Cooperative Association, supported the bill and the three amendments.

Senator Mulcahy moved the amendments. Senator V. Fischer asked that the question be divided. On the question, each amendment passed without objection.

Senator Mulcahy moved that the Resources committee substitute for SB 168, including the three amendments, be reported out with individual recommendations. The motion passed without objection.

The meeting was adjourned at 4:45 p.m.

SB 181 MAKING SUPPLEMENTAL APPROPRIATIONS TO DNR FOR LAND
DEFICIENCY ENTITLEMENTS.

SB 181 would appropriate a total of \$5 million to DNR to pay the land deficiency entitlement for the Municipality of Anchorage authorized under AS 29.18.208 (copy attached) for FY 82 (\$4 million) and FY 83 (\$1 million).

AS 29.18.208 of the 1978 municipal land entitlement settlement provides for cash payments to municipalities in which there is not enough suitable land to satisfy their land grant. The amount appropriated in SB 181 is the balance due the municipality of Anchorage in lieu of land not received under the municipal land settlement.

(d) The director may approve municipal selections of land which have been tentatively approved or patented to the state by the federal government, but he may not issue patent to a municipality until the land has first been patented to the state. After approval of a selection by the director, but before patent to a municipality, the municipality may execute conditional leases and make conditional sales only with the consent of the director. Conditional sales and conditional leases made before July 1, 1978 do not require the consent of the director.

(e) Nothing in this chapter affects a valid existing claim, location or entry under the laws of the state or the United States whether for homestead, mineral, right-of-way or other purposes. Nothing in AS 29.18.011 — 29.18.610 affects the rights of an owner, claimant, locater or entryman to the full use and enjoyment of the land so occupied. (§ 2 ch 180 SLA 1978; am § 45 SLA 1979)

Effect of amendments. — The 1979 amendment repealed subsections (a) and (b), providing for selections to be in reasonably compact tracts whenever possible and for relinquishment of selections, and

providing for certification of certain information to each municipality having an entitlement under AS 29.18.201 — 29.18.203, respectively.

Sec. 29.18.208. Payment for land deficiency. (a) There is established within the general fund the Alaska municipal land account for the following purposes:

(1) providing payment to the boroughs and unified municipalities designated in AS 29.18.201 for a deficiency of land physically suitable for residential, commercial or industrial purposes; or

(2) providing payment to the boroughs and unified municipalities designated in AS 29.18.201 for certain general grant lands selected by the state and conveyed to a Native corporation under the provisions of the Alaska Native Claims Settlement Act.

(b) A municipality shall receive payment for its land deficiency from the account established in (a) of this section. A municipality is eligible to receive payment for land deficiency if, after July 1, 1980, the amount of land selected by a municipality which is physically suitable for residential, commercial or industrial purposes amounts to less than one-third acre per capita. Any entitlement under AS 29.18.201 which is less than one-third acre per capita will, for the purposes of this subsection, be considered a land deficiency. An unselected remaining entitlement will, for the purpose of deficiency payment under this subsection, be considered as land physically suitable for residential, commercial or industrial purposes. A municipality eligible under this subsection is entitled to receive a payment for land deficiency equal to \$1,000 per acre for a number of acres equal to the difference between one-third of the population of the municipality less the number of acres physically suitable for residential, commercial or industrial purposes which has been selected by the municipality. For the purpose of this

subsection, the amount determined is made to a municipality.

(c) If a municipality has land on or been granted a tentative application for a Native corporation under the Alaska Native Claims Settlement Act in that Native corporation payment for land deficiency section. The municipality is entitled to the land but under this section of 8,000 acres.

(d) The government is required for an approval selected to receive for appropriate make payment required to receive.

(e) For purposes of the legislature is

(1) not more than \$12,000,000 of this section.

(2) not more than \$8,000,000 of this section.

(f) If an amount due to all municipalities for land deficiency under the appropriate payment calculation of payment entitlement reduced in amount was received to other grants.

(g) Payment to a municipality eligible under this section.

(h) Payment from the government is a portion to the municipality for a given amount shall furnish.

subsection, the population of the municipality shall be the population determined in accordance with AS 29.18.206(f). No payment may be made to a municipality under this subsection in excess of \$9,000,000.

(c) If a municipality selected vacant, unappropriated, unreserved land on or before December 18, 1971, to which the state had received tentative approval or patent, and such land was also selected by a Native corporation organized under the Alaska Native Claims Settlement Act (P.L. 92-203), and title to that land is ultimately vested in that Native corporation, the municipality may, at its option, request payment for land deficiency from the account established in (a) of this section. The acceptance of payment under this subsection by a municipality constitutes a relinquishment of any other right, title or claim to the land by that municipality. The total payment to a municipality under this subsection may not exceed \$1,000 per acre to a maximum of 8,000 acres.

(d) The governor shall annually submit to the legislature a request for an appropriation to the account for the municipalities which have elected to receive payments under (b) or (c) of this section. The request for appropriation shall distinguish between amounts necessary to make payments for land deficiency under (b) of this section and those required to make payments for land deficiency under (c) of this section.

(e) For purposes of fulfilling entitlements under this section, the legislature is authorized to appropriate

(1) not more than \$4,000,000 per fiscal year, and not more than \$12,000,000 in total, for the purpose of paying entitlements under (b) of this section;

(2) not more than \$1,000,000 per fiscal year, and not more than \$8,000,000 in total, for the purpose of paying entitlements under (c) of this section.

(f) If an annual appropriation is not sufficient to meet the amount due to all municipalities which have elected to accept payment for land deficiency under (b) or (c) of this section, the governor shall apportion the appropriation among the municipalities in proportion to the payment calculated for each municipality for that year. When a distribution of payments is made under (c) of this section, the remaining entitlement of a municipality to which payment is made shall be reduced in an amount equal to the number of acres for which payment was received. An appropriation made under this section is in addition to other grants and entitlements authorized to eligible municipalities.

(g) Payments authorized by this section may not be made to a municipality eligible for an entitlement under AS 29.13.202 or 29.18.203.

(h) Payments made under this section shall be used by those local governments which levy property taxes to reduce those levies in proportion to the amount of state payments received by a local government for a given fiscal year. The governing body of each local government shall furnish a notice with the tax statement describing the effect on

property tax levies of payments received under this section. (§ 2 ch 180 SLA 1978; am §§ 4, 5 ch 85 SLA 1979)

Effect of amendments. — The 1979 amendment substituted "residential, commercial or industrial purposes" for "the purposes described in AS 29.18.205(g)(1)" in paragraph (1) of subsection (a), and in subsection (b), substituted "selected by a municipality which is physically suitable for residential, commercial or industrial purposes" for "physically suitable for the purposes described in AS 29.18.205(g)(1) for which approval has been given by the director under AS 29.18.205(g) within one

year of selection" in the second sentence, "for residential, commercial or industrial purposes" for "the purposes described in AS 29.18.205(g)(1)" in the fourth sentence, and "residential, commercial or industrial purposes for which has been selected by the municipality" for "the purposes described in AS 29.18.205(g)(1) for which approval has been given by the director under AS 29.18.205(g)" in the fifth sentence.

Sec. 29.18.209. Authorization for land exchanges. The director, with the concurrence of the commissioner, and any municipality are authorized to exchange land or interests in land when it is in the public interest. Land or interests in land exchanged under this section must be of approximately equal value, including the non-monetary value of public benefits. Exchange procedures shall comply with applicable law and municipal ordinances. The notice and review provisions of AS 38.05.305 and 38.05.345 are applicable to exchanges of land under this section. The provisions of AS 38.50.010 — 38.50.170 do not apply to exchanges of land under this section. (§ 2 ch 180 SLA 1978)

Editor's notes. — AS 38.05.305, referred to in this section, was repealed by § 45, ch. 113, SLA 1981.

Sec. 29.18.210. Public purpose and expansion needs. (a) Consistent with the best interests of the state, if a municipality does not contain and cannot reasonably acquire sufficient nonfederal land within its boundaries to meet its legitimate needs for public or private settlement or development, it shall be the policy of the state to select federal land reasonably necessary to meet the needs of the municipality and to make the land selected available to the municipality under AS 38.05.315 or (b) of this section.

(b) Where state land is the most logical location for demonstrated municipal expansion for nonpublic settlement and development purposes, and when an exchange of land under AS 29.18.209 is not possible or is not in the public interest, it is the policy of the state to sell or lease the land at public auction. The state may contract with a municipality to act as its agent in an auction of state land under applicable statutes. When a municipality acts as the agent of the state in an auction, the municipality may retain from the proceeds of the auction the expenses which the director determines to be necessary and reasonable.

(c) Nothin authority of limit or cor 38.05.315. If transferred the entitler

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MEMORANDUM

State of Alaska

TO: B.J. Lewis, Assist A.G.
Department of Law

DATE: January 28, 1983

THRU: Mary Halloran, Director *M. Halloran*
Division of Management

FILE NO: 8852

FROM: Virginia Stonkus *Virginia Stonkus*
Deputy Director
Division of Management
Dept. of Natural Resources

TELEPHONE NO: 465-2407

SUBJECT: Municipality of Anchorage -
Deficiency Payment

This is in response to your January 17, 1983 request for an analysis of the Municipality of Anchorage's land selection deficiency payment.

The acreage figures below are summary figures taken from the Division of Land and Water Management files and from Division of Technical Services compilations.

Land Entitlement (AS 29.18.201)

Municipality of Anchorage 44,893 Acres

Land Selections and Conveyances

Total Patented to Municipality 15,514 acres (DTS 1-3-83)

Total Patents in Progress 319 acres (DTS 1-3-83)

Selections Approved 5,599 acres (SCD 12-31-82)
21,442 acres

Selections Pending 3,858 acres (SCD)

The selection pending acreage (22 casefiles) is in various stages of processing (see attached summary). We anticipate less than 1000 acres will be approved. The balance has been rejected and is in various stages of appeal or will be rejected due to land status. Department of Natural Resources has submitted a request for an AG's opinion on several management issues (copy of request is attached).

Selection Potential

The Division of Land and Water Management has recently searched all townships within the Anchorage area for land which could provide DHSS with prison facility locations. That search leads us to believe there is no other significant selection potential for the Municipality unless major land status changes were to occur within the military complexes or Chugach State Park. A.S. 29.18.210 does provide that, consistent with the best interests of the

B. J. Lewis, Assist A.G.
January 28, 1983
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State, land could be selected outside the Municipality under AS 38.05.315. In summary the selection potential within the municipality is quite small, probably limited to 1000 acres or less.

Presently Unfulfilled Entitlement

Total Entitlement	44,893 acres
Approved Selections & Patents	<u>21,442 acres</u>
Remaining Entitlement	23,451 acres
(less some small acreage now under appeal or small selection yet to be made)	

The inescapable conclusion is that the State cannot convey a sufficient land entitlement, barring a major change in the land status of the military complex or Chugach State Park. Recent contact with the Division of Research and Development related that the recent Eklutna - Municipal - State Agreement will not affect the Municipal Entitlement under AS 38.18.201.

AS 29.18.208 Deficiency Provisions

This section of the law allows for a monetary payment of \$1000 per acre for the number of acres of deficiency due to municipality. The deficiency calculation is based on a land entitlement of 1/3 acre per capita as of the program year beginning July 1, 1978.

Anchorage population *(1978) 183,600

$183,600 \times 1/3 \text{ acre per capita} = 61,200 \text{ acres}$

This calculation obviously exceeds the stated entitlement in AS 28.18.201 of 44,983, therefore we again interpret the deficiency to be 23,451 acres as previously calculated above.

*This population figure is from the State of Alaska demographer (Department of Labor, Juneau). The Department of Community and Regional Affairs, which is charged with delivering this figure (see AS 29.18.206(f)) could not do so upon request. The State demographer related they (DCRA) would have revenue sharing population figure which would be higher than those supplied by the State demographer. The Municipality of Anchorage was contacted and their demographer supplied the figure of 180,246 for 1978.

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January 28, 1983
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23,451 acres deficiency times \$1000 per acres would lead us to a figure of \$23,451,000 as proper for deficiency payment. However, AS 29.18.208(b) limits the deficiency payments resulting from a lack of available land to \$9,000,000 for any one municipality.

The Municipality also has a 1968 selection of 138.33 acres (40281) rejected due to conveyances to Eklutna, Inc. This would appear to qualify for a deficiency payment under AS 29.18.208(c), if the Municipality so requests. Care should have to be taken to avoid duplicate counting of this acreage in the deficiency counted under AS 29.18.208(b).

Limitations on the deficiency payments are found in AS 29.18.208(e)(1) of a maximum of \$4,000,000 in any one calendar year. AS 29.18.208(f) requires apportioning between municipalities if the requests for all municipalities exceeds \$4,000,000 in any one year.

Our determination is that the \$5,000,000 request does not exceed the total amount due them under 29.18.208(c). This is based on the following calculation:

Deficiency payment due (Statutory Limit)	\$9,000,000
Prior deficiency payment paid	<u>4,000,000</u>
Amount due	\$5,000,000

The \$5,000,000 request, however, does exceed the \$4,000,000 per year limit found in AS 29.18.208(e)(1).

APR 7 1983



Senator Vic Fischer

Alaska State Legislature
Pouch V • Juneau, Alaska 99811 • (907) 465-4954

MEMORANDUM

TO: Senator Bettye Fahrenkamp, Chair
Senate Resources Committee

FROM: Senator Vic Fischer *Vic*

DATE: April 4, 1983

RE: SB 181, Payment in lieu of land entitlement

I would appreciate your scheduling SB 181 at your earliest convenience. The bill would discharge the state's money obligation in lieu of land to which the municipality of Anchorage is entitled.

Thanks for your consideration.

cc: Senator Joe Josephson

SB 181

MAKING SUPPLEMENTAL APPROPRIATIONS TO DNR FOR LAND DEFICIENCY ENTITLEMENTS.

SPONSOR: FAIKS, V. FISCHER, HALFORD, JOSEPHSON, KELLY, PETTYJOHN, RODEY, STURGULEWSKI

Sec. 1 Appropriates \$4,000,000 from the general fund to DNR to pay the land deficiency entitlement to the municipality of Anchorage for FY 82.

Sec. 2 Appropriates \$1,000,000 from the general fund to DNR to pay the land deficiency entitlement to the municipality of Anchorage for FY 83.

Sec. 3 Funds lapse 7/1/83.

Sec. 4 Immediate effective date.

AS 29.18.208 established within the general fund the Alaska Municipal Land Account for providing payment to boroughs and unified municipalities for a deficiency of land physically suitable for residential, commercial or industrial purposes; or for certain general grant lands selected by the state and conveyed to a Native corporation under ANCSA.

A municipality is eligible to receive payment for land deficiency if, after July 1, 1980, the amount of land selected by a municipality which is physically suitable for residential, commercial or industrial purposes amounts to less than 1/3 acre per capita. Payment is limited to \$1,000/acre for the number of acres they are deficient (1/3 of the population minus the number of suitable acres). Total payment to a municipality is limited to \$9,000,000.

For lands conveyed under ANCSA, total payment is limited to \$1,000/acre to a maximum of 8,000 acres.

Total annual legislative appropriation is limited to \$4,000,000 per fiscal year and \$12,000,000 total for land deficiency; \$1,000,000 per fiscal year and \$8,000,000 total for ANCSA-conveyed lands.

Payments made under this section are to be used by local governments to reduce property taxes.