

HB

398

HOUSE COMMITTEE REPORT

(9)

Date Referred: February 15, 1994

FURTHER REFERRALS:

Date of Committee Action: 2/23/94

The RESOURCES Committee considered:

HB 398

HOUSE BILL NO. 398

LAND CONVEYED TO & FROM MUNICIPALITIES

"An Act relating to rights in certain tide and submerged land."

RECOMMENDATIONS:

be replaced with _____

CS HB 398 (RES)

the same title
 a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): _____ (Dept)

APPROVES PREVIOUS: _____ (Dept/Date)

fiscal impact _____

fiscal note(s) _____

zero fiscal note DNR 2/23/94

zero fiscal note(s) _____

SIGNING <u>DO</u> PASS	DP	<u>OTHER</u> RECOMMENDATIONS	DNP	NR	AM
<i>Bill Hudson</i> Hudson	<input checked="" type="checkbox"/>				
<i>John Carney</i> Carney	<input checked="" type="checkbox"/>				
<i>Joseph Green</i> Green	<input checked="" type="checkbox"/>				
<i>James James</i> James	<input checked="" type="checkbox"/>				
<i>David Finkelstein</i> Finkelstein	<input checked="" type="checkbox"/>				
<i>Ge. M. Davies</i> Davies	<input checked="" type="checkbox"/>				
<i>Alton Mulder</i> Mulder	<input checked="" type="checkbox"/>				
<i>Carl Bunde</i> Bunde	<input checked="" type="checkbox"/>				
<i>W.F. Williams</i> Williams	<input checked="" type="checkbox"/>				

W.F. Williams
 CHAIRMAN'S SIGNATURE

8-LS15820
Cook
2/22/94

CS FOR HOUSE BILL NO. 398()
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVE OLBERG

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to conveyance of certain land to municipalities."

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

3 * Section 1. AS 38.05.035(b) is amended to read:

4 (b) The director may

5 (1) delegate the administrative duties, functions or powers imposed
6 upon the director to a responsible employee in the division;

7 (2) grant preference rights for the lease or purchase of state land
8 without competitive bid in order to correct errors or omissions of a state or federal
9 administrative agency when inequitable detriment would otherwise result to a diligent
10 claimant or applicant due to situations over which the claimant or applicant had no
11 control; the exercise of this discretionary power operates only to divest the state of its
12 title to or interests in land and may be exercised only

13 (A) with the express approval of the commissioner; and

14 (B) if the application for the preference right is filed with the

- 1 director within three years from
- 2 (i) the occurrence of the error or omission;
- 3 (ii) the date of acquisition by the state of the land; or
- 4 (iii) the date of a court decision or settlement nullifying
- 5 a disposal of state land;
- 6 (3) grant a preference right to a claimant who shows bona fide
- 7 improvement of state land or of federal land subsequently acquired by the state and
- 8 who has in good faith sought to obtain title to the land but who, through error or
- 9 omission of others occurring within the three years before (A) the application for the
- 10 preference right, (B) the date of acquisition by the state of the land, or (C) the date of
- 11 a court decision or settlement nullifying a disposal of state land, has been denied title
- 12 to it; upon a showing satisfactory to the commissioner, the claimant may lease or
- 13 purchase the land at the price set on the date of original entry on the land or, if a price
- 14 was not set at that time at a price determined by the director to fairly represent the
- 15 value of unimproved land at the time the claim was established, but in no event less
- 16 than the cost of administration including survey; the error or omission of a predecessor
- 17 in interest or an agent, administrator, or executor which has clearly prejudiced the
- 18 claimant may be the basis for granting a preference right;
- 19 (4) sell land by lottery for less than the appraised value when, in the
- 20 judgment of the director, past scarcity of land suitable for private ownership in any
- 21 particular area has resulted in unrealistic land values;
- 22 (5) when the director determines it is in the best interest of the state
- 23 and will avoid injustice to a person or the heirs or devisees of a person, dispose of
- 24 land, by direct negotiation to that person who presently uses and who used and made
- 25 improvements to that land before January 3, 1959, or to the heirs or devisees of the
- 26 person; the amount paid for the land shall be its fair market value on the date that the
- 27 person first entered the land, as determined by the director; a parcel of land disposed
- 28 of under this paragraph shall be of a size consistent with the person's prior use, but
- 29 may not exceed five acres;
- 30 (6) dispose of an interest in land limited to use for agricultural purposes
- 31 by lottery;

1 (7) convey to an adjoining landowner for its fair market value a
2 remnant of land that the director considers unmanageable or a parcel of land created
3 by a highway right-of-way alignment or realignment, or a parcel created by the
4 vacation of a state-owned right-of-way if

5 (A) the director determines that it is in the best interests of the
6 state;

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

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

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

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

19 (10) negotiate the sale or lease of state land at fair market value to a
20 person who acquired by contract, purchase, or lease rights to improvements on the land
21 from another state agency or who leased the land from another state agency;

22 (11) quitclaim land or an interest in land, including submerged or
23 shore land, to a municipality to correct errors or omissions of the municipality
24 when inequitable detriment would result to a person due to that person's reliance
25 on the errors or omissions of the municipality; the quitclaim shall be made on the
26 terms and conditions the director considers appropriate except that, if the
27 municipality has a remaining entitlement to land under AS 29.65, the land or
28 interest quitclaimed under this paragraph is counted against the municipality's
29 remaining entitlement.

30 * Sec. 2. AS 38.05 is amended by adding a new section to read:

31 Sec. 38.05.825. CONVEYANCE OF TIDE AND SUBMERGED LAND TO

1 MUNICIPALITIES. (a) The commissioner shall convey to a municipality tide or
2 submerged land requested by the municipality that is occupied or suitable for
3 occupation and development if

4 (1) the use of the land would not unreasonably interfere with navigation
5 or public access;

6 (2) the municipality has applied to the commissioner for conveyance
7 of the land under this section;

8 (3) the land is classified for waterfront development or for another use
9 that is consistent or compatible with the use proposed by the municipality, or the
10 proposed use of the land by the municipality is consistent or compatible with a land
11 use plan adopted by the municipality, the department, or the Alaska Coastal Policy
12 Council; and

13 (4) the land is required for the accomplishment of a public or private
14 development approved by the municipality, is the subject of a lease from the state to
15 the municipality, or has been approved for lease to the municipality.

16 (b) The commissioner may not convey land under this section that has been
17 designated by the legislature unless the commissioner determines that the proposed use
18 is consistent or compatible with the purpose of the legislative designation. If land
19 designated by the legislature is conveyed, uses of the land after conveyance shall be
20 restricted to those uses determined by the commissioner to be consistent or compatible
21 with the purpose of the designation.

22 (c) Upon receipt of an application, the commissioner shall determine whether
23 the requested conveyance meets the requirements of this section and issue a written
24 decision regarding that determination. Upon a determination that the requirements
25 have been met, the commissioner shall approve the conveyance of the land to the
26 municipality. After conveyance to the municipality is approved, the municipality has
27 management authority of the land and may execute leases of the land. The cost of the
28 survey and all subdivision or other platting required for conveyance shall be borne by
29 the municipality.

30 (d) A conveyance under this section may contain only those restrictions
31 required by law, including AS 38.05.127. Land conveyed is subject to the public trust

1 doctrine that may be enforced by the state in a court of competent jurisdiction. The
2 municipality shall be required to ensure that reasonable access to public waters is
3 provided. Title to land conveyed under this section that is retained by the municipality
4 reverts to the state upon the dissolution of the municipality.

5 (e) This section does not enlarge or diminish the general grant land entitlement
6 of a municipality under AS 29.65, nor is a conveyance under this section counted
7 against the municipality's general grant land entitlement.

8 * Sec. 3. AS 38.05.035(b)(11) is repealed January 1, 1998.

SPONSOR SUMMARY

HB398

An Act relating to rights in certain tide and submerged land

Need for the Legislation

At a time when the State of Alaska is imposing a greater measure of self-sufficiency on local governments and promoting economic development at the local level, current state statutes work against communities of a certain class or which were or will be incorporated after April 1, 1964.

In particular, Title 38 of Alaska Statutes fails to recognize second class cities as eligible to obtain tide and submerged lands despite the fact that home rule and first class cities incorporated prior to April 1, 1964, have this right. The effect of this oversight places coastal second class cities at a disadvantage as they pursue economic development along their waterfront.

Those second class cities who are proactively involved in waterfront development must negotiate with the State of Alaska, Division of Lands for permits or leases which often take as much as a year to process, are subject to bureaucratic requirements which lack the flexibility required in diverse local government, and which impose financial and legal obligations on local governments which are often untenable.

Research into the legislative history of this issue reveal no reason why second class cities were left out of the conveyance authorization nor the reason for the incorporation deadline date of April 1, 1964.

Primary Changes in the Law

Changes simply include second class cities as eligible for conveyance of tidelands and makes appropriate grammatical changes in the process.

It allows the director of the division of lands the discretion to quitclaim land to a municipality to correct past errors and omissions.

Alaska State Legislature

REPRESENTATIVE
JERRY MACKIE



ALASKA STATE CAPITOL
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PO. BOX 795
CRAIG, ALASKA 99921
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House of Representatives

CO-SPONSOR STATEMENT

ON

SSHB 398

I am cosponsoring SSHB 398 to correct a long standing land ownership problem in Skagway. Fifty years ago a dike was constructed along the Skagway River to protect the town from flooding. Over the years, the area between the original river bank and the dike has been reclaimed and subdivided by the city with lots sold and built upon (see attached map). Even the high school is located in the area.

The problem is that the city did not have clear title to this land from the start. Hence, the title for subsequent private property owners is also clouded. Not only are the owners' investments and improvements at risk, but bank financing for further improvements or sales is foreclosed.

In the past several years, the city and the Department of Natural Resources have unsuccessfully sought an administrative remedy for the problem. While current statute allows DNR administrative discretion in resolving land ownership errors and omissions for individual citizens [AS 38.05.035 (b)(2) and (b)(3)], there is no similar provision for errors and omissions of a municipality.

SSHB 398 would add such a provision. The new proposed subsection, AS 35.05.035 (b)(11), allows the director of the division of lands the discretion to quitclaim land to a municipality to correct past errors and omissions. The director may also set any terms or conditions that is deemed appropriate for the transaction. Furthermore, land title transferred to a municipality in this manner is counted against the municipality's general land grant entitlement from the state.

Section 3 provides a January 1, 1998 repeal of (b)(11). Thus the opportunity to correct municipal land ownership errors is limited to a three and one-half year period.

CITY OF SKAGWAY

GATEWAY TO THE GOLD RUSH OF "98"
P. O. BOX 415 SKAGWAY, ALASKA 99840
(PHONE) 907-983-2297
(FAX) 907-983-2151

January 13, 1994

Representative Jerry Mackie
Room 602, Court
State Capitol
Juneau 99801-1182

Dear Jerry,

I would like to take this opportunity to request your assistance in supporting legislation which would correct a land use problem in Skagway.

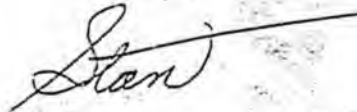
The details of the situation focus on a section of the community which was flooded by the Skagway River on a regular basis then protected by the construction of a dike approximately 50 years ago. The newly dried out land was subdivided as an extension of the existing street and lot grid and sold or used for community purposes.

The problem that has resulted today from these earlier efforts involves reluctance on the part of a title insurance company to provide coverage on a lot in the reclaimed zone.

Dave Gray has been working diligently with the city in arriving at a solution to this problem that will serve all parties well.

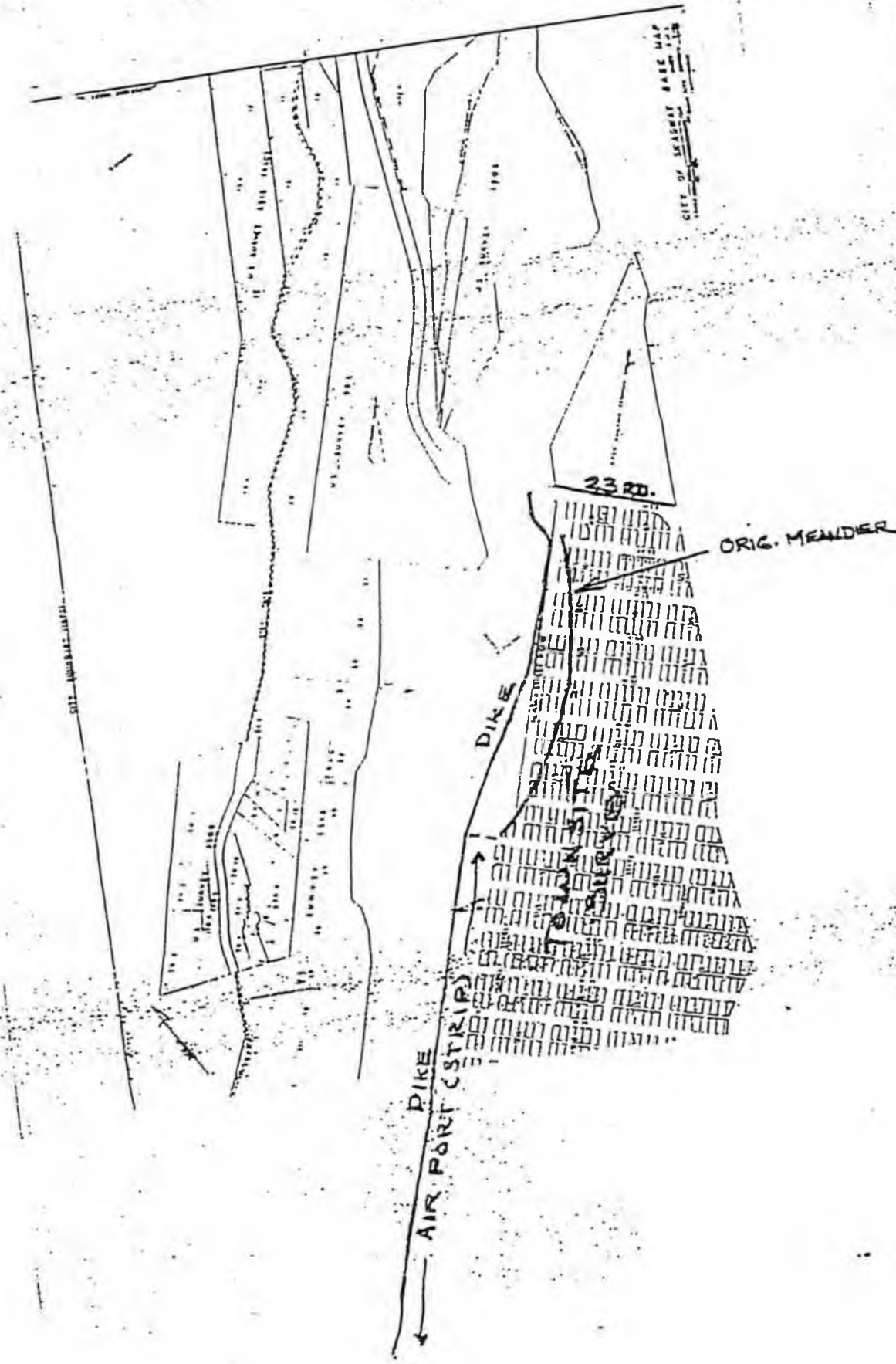
Your support will help bring resolution to a problem which cannot be solved in another way. Thank you for your help on this issue and I look forward to working with you on other matters of state or local concern.

Sincerely,



Stan Seimer
Mayor

cc: City-Manager



STATE OF ALASKA
DEPARTMENT OF COMMUNITY
& REGIONAL AFFAIRS

POSITION PAPER

Bill No.: CS HB 398(CRA) DCRA FN: Zero
Sponsor: Representative Olberg Position: Support

Title: An Act relating to rights in certain tide and submerged land.

Effects of the Bill

Section 1 permits the Director of the Division of Lands of the Department of Natural Resources (DNR) to quitclaim land "to a Municipality to correct errors or omissions of the municipality when inequitable detriment would result to a person due to that person's reliance on the errors or omission of the municipality... " Such conveyances are counted against any entitlement of the municipality under AS 29.65. Section 3 of the bill repeals this provision effective January 1, 1998.

Section 2 requires DNR to convey to a municipality tide or submerged land requested by a municipality that is "occupied or suitable for occupation and development" if four conditions are met. The four conditions relate to (1) lack of unreasonable interference or public access resulting for the proposed use of the land; (2) application for conveyance by the municipality; (3) compatibility of the proposed use and the land classification or land use plan for the area; and (4) need for the land for development. Land conveyed under the bill is subject to the public trust doctrine. Title to land conveyed under the bill would revert to the State if the municipality is dissolved. Conveyances of land under the bill would not affect the general land grant entitlement of a municipality provided by AS 29.65.

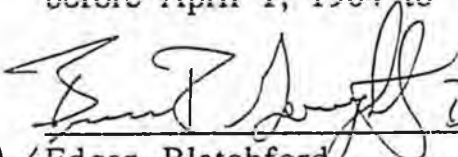
Comments

Except as noted, the Department of Community and Regional Affairs (DCRA) supports CS HB 398 (CRA) with the understanding that DNR has determined that the bill contains appropriate safeguards to preclude unwarranted, wholesale conveyance of tidelands and submerged lands. However, DCRA notes that the bill places no restriction on the relationship between the land to be conveyed and the municipality. Therefore, DCRA recommends that the bill be amended to require that the land to be conveyed be within or adjoining the boundaries of

DCRA Position Paper
CS HB 398(CRA)
Page 2
February 15, 1994

the municipality. Further, DCRA recommends that provisions be included to address competing requests for conveyance of land from a borough and a city within the borough.

Generally however, DCRA believes that the bill will promote economic development. In particular, it will benefit second class cities, unincorporated communities within organized boroughs, organized boroughs, and home rule and first class cities incorporated after April 1, 1964. The bill leaves in place AS 38.05.820(b) which entitles home rule and first class cities incorporated on or before April 1, 1964 to "all land seaward" of those cities.


DEPUTY Commissioner Feb 15, 1994
for Edgar Blatchford Date
Commissioner

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CSHB398(CRA)

Revision Date: 11-Feb-94 Dept Affected: Natural Resources
 Title: "An Act relating to conveyance of land to BRU: Resource Development
certain municipalities . . ." Component: Land Development
 Sponsor: Rep. Olberg
 Requestor: House Resources Component Serial No. 431

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY94) cost: \$ _____

POSITIONS

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

See Attached

Prepared by: Ron Swanson Phone: 762-2692
 Division: Land Date: 11-Feb-94
 Approved by Commissioner: Harry A. Noah Date: 11-Feb-94
 Agency: Natural Resources

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

With the committee (House Community and Regional Affairs) substitute bill being adopted the fiscal impact to DNR is reduced. The bill now states that conveyances to municipalities will only occur where there is an existing lease, the land is classified for waterfront development and a project is planned. Thus, the amount of acreage that will be conveyed has been greatly reduced from the original bill that would have conveyed all tidelands and submerged land to certain municipalities within their boundaries.

Existing staff, that is presently issuing or maintaining leases on tidelands and shore lands, will be used instead for issuing these conveyances.

FISCAL NOTE

STATE OF ALASKA

BILL NO. CSHB398(RES)

1994 LEGISLATIVE SESSION

Revision Date: 23-Feb-94 Dept Affected: Natural Resources
 Title: "An Act relating to conveyance of certain land
to municipalities." BRU: Resource Development
 Sponsor: Representative Olberg Component: Land Development
 Requestor: House Resources Component Serial No. 431

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY94) cost: \$ None

POSITIONS

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

There is no change in the fiscal analysis of the Resource Committee substitute for this bill.

Prepared by: Ron Swanson, Director Phone: 762-2692
 Division: Land Date: 23-Feb-94
 Approved by Commissioner: Harry A. Noah Date: 23-Feb-94
 Agency: Natural Resources

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

Analysis of Bill/Program Effects:

In addition to the general grant land entitlements under AS 29.65, qualified cities within Alaska have been conveyed tide and submerged land. To understand the purpose of these conveyances of public trust land it is necessary to review federal mandates for management of tide and submerged land prior to Alaska's admission into the Union.

In 1898 Congress passed an act extending the homestead laws to the District of Alaska. The act declared that "all such rights to [tide lands and beds of any navigable waters] shall continue to be held by the United States in trust for the people of any state or states which may hereafter be erected out of said District [Alaska]."

Thus territorial tidelands constituted a federal trust early in Alaska's history and as such could not be disposed of through lease or sale. Additionally, permanent improvements were not authorized to be constructed upon tide and submerged land.

The importance of improved tidelands to the vitality of the territory's economy and the health of its people is readily apparent. It was a territory whose economy, mobility and recreation were intimately tied to the sea. Log transfer facilities, seafood processors, municipal docks, private boat ways and even residences were partially or wholly constructed on tidelands with no method for individuals or businesses to acquire proper authorization for use. The need for these activities was readily recognized by the federal managers. However, the mechanism for authorizing such use was non-existent.

In full recognition of these shortcomings, Congress enacted a law on September 7, 1957 (P.L. 85-303), that conveyed tidelands adjacent surveyed townsites to the territory. The conveyance was for tidelands and all improvements and natural resources between the line of mean high tide and the pierhead line. The pierhead line was defined as a "line parallel to the existing line of mean low tide at such distance offshore from the line of mean low tide that encompasses to the landward all stationary, manmade structures in existence as of February 1, 1957". Under this law acceptance by the Secretary of Interior of new townsite surveys effected conveyances of attendant tidelands to the territory.

The act authorized the territory to manage and dispose of any tract of tidelands acquired under the act for municipal, business, residential or other beneficial purposes. A tidelands occupant or the occupant's successor in interest had a preference right to acquire an improved tract if a disposal occurred. These improved tracts could be conveyed to the incorporated town or school district. However, if this occurred, the town or school district must accord any occupant a preference right in any disposals contemplated in the future.

The Army Corps of Engineers was given the authority to establish pierhead lines for all surveyed townsites to enable conveyances to the territory. This process was initiated soon after passage of the act. Alaska's statehood interrupted this process with the conveyance of all tide and submerged land under section 6(m) of the statehood act to the new state.

The Alaska Legislature incorporated specific language in the Alaska Land Act to recognize and implement the provisions of the September 7, 1957, federal law. AS 38.05.320(b) provided:

- 1) The corporation must have been incorporated on or before January 3, 1959;
- 2) Tidelands subject to conveyance lay between the mean high tide line and the pierhead line, the harbor line or in their absence, a line subject to the approval of the director;
- 3) The corporation had to prepare a plat of the area conveyed showing all structures and improvements thereon and each tract that was occupied or developed with the owner or claimant noted; and,
- 4) The corporation had to recognize preference rights for occupied and developed tracts.

The tidelands conveyances to municipal corporations were mandatory and gave the department few discretionary powers over the process.

In 1964 (ch 81, SLA 1964) "municipal corporation" was changed to "(h)ome rule cities and cities of the first class"

Incorporated on or before April 1, 1964.

Following is a current list of Alaska's home rule, first class and second class cities that would qualify under this bill.

Home Rule

*Cordova
*Kenai
*Ketchikan
*Kodiak
*Petersburg
*Seward
*Valdez
*Wrangell

First Class

*Barrow
*Craig
Dillingham
*Haines
*Homer
*Hoonah
*Hydaburg
*Kake
*King Cove
*Klawock
*Nome
*Palican
Sand Point
*Seldovia
*Skagway
Soldotna
Unalaska

Second Class

Akhlok
Akutan
Angoon
Atka
Bethel
Brevig Mission
Chignik
Clark's Point
Collman Cove
Cold Bay
Deering
Diomedes
Ellm
False Pass
Gambell
Golovin
Goodnews Bay
Hooper Bay
Kachemak
Kaktovik
Kasaan
Kivalina
*Kotzebue
Kupreanof
Larsen Bay
Mokoryuk
Nightmute
Old Harbor
Ouzinkie
Pilot Point
Platinum
Point Hope
Port Alexander
Port Heiden
Port Lyons
Quinhagak
Saint George
Saint Michael
Saint Paul
Savoonga
*Saxman
Scammon Bay
Shaktotik
Sheldon Point
Shishmaref
Stebbins
Teller
*Tenakee Springs
Thorne Bay
Togiak
Tooksook Bay
Unalakleet
Walnwright
Wales
Whittier

*home rule and first class cities as April 1, 1964 that received tidelands previously

It should be pointed out that a mechanism already exists that allows cities to develop state-owned tidelands for local purposes. AS 38.05.810 allows cities to lease tidelands. If the city's use of the tidelands is for public purposes, lease rental is at less than fair market value; if for a private purpose, rental is at fair market value. Ownership is not necessary to fulfill local needs for use of tidelands. We have met all municipal needs to date using this statutory authority.

Amendments Proposed:

The public trust doctrine holds that there are inextinguishable real property interests held by the public in tidelands. The state, as principle trustee for tidelands, must ensure that these public rights continue when a tideland property interest is created. Property interests could be limited, a private tideland lease, or could be broad, a conveyance to a city. Because of the public trust doctrine the state is prohibited from conveying tidelands to private parties, except under very limited historic circumstances where use and occupancy preceded statehood. There is, however, no such limitation on cities for tracts of tidelands that they have been conveyed under AS 38.05.820. The public's rights under the public trust doctrine must be protected in conveyances to a city.

If conveyance does occur, public rights must be protected through a reversionary interest retained by the state if the public trust is breached.

Municipal dissolutions are a trend that is apparently increasing. If a municipal government chooses to dissolve, the state must have the authority to recover title in order to protect the public trust.

Any conveyances should be limited to existing or proposed public or development projects.

Another amendment is needed stating that tide and submerged lands cannot be used to increase and municipalities land entitlement under AS 29.65. Any conveyances, however, should be charged against a municipalities AS 29.65 land entitlement.



217 Second Street, Suite 200 ■ Juneau, Alaska 99801 ■ Tel (907) 586-1325. Fax (907) 463-5480

January 31, 1994

TO: Representative Harley Olberg, Chair
and Members
House Committee on Community & Regional Affairs

FROM: Kent E. Swisher, Executive Director

RE: **HB 398 - Rights in certain tide and submerged land**

The Alaska Municipal League supports HB 398, which would allow all Alaskan cities the right to select and receive title to state-owned tide and submerged lands within their municipal boundaries. In November 1993, AML's members discussed this issue and passed Resolution 94-10 (copy enclosed) supporting the concept included in HB 398.

Present statutes limit the ability of municipalities to obtain ownership to tide and submerged lands within their boundaries, yet often these lands are among the most valuable for economic development purposes. AML and its members support making such lands available to all municipalities, as part of their municipal entitlement to state-owned land.

Enclosure

LEG94.hb398.131

Resolution of the Alaska Municipal League

Resolution No. 94-10

**A RESOLUTION AUTHORIZING THE SELECTION AND
CONVEYANCE OF STATE TIDE AND SUBMERGED LANDS
TO CITIES AND BOROUGHES IN ALASKA**

WHEREAS, pursuant to the Alaska Statehood Act, the State of Alaska received title to most of the tidelands offshore of the state land boundary, from the mean high tide to the three-mile limit; and

WHEREAS, current provisions of Alaska Statutes have authorized the conveyance of state-owned tide and submerged lands to a limited number of Alaska's communities, i.e., Home Rule and First Class Cities incorporated on or before April 1, 1964; and

WHEREAS, it is the policy of the Department of Natural Resources (DNR) to lease tidelands to municipalities only at full value if the municipality will be making what DNR believes is a commercial use of the tidelands; and

WHEREAS, boroughs never qualified for tidelands under the Tide and Submerged Lands Act; and

WHEREAS, DNR will not allow for municipal selection of tidelands under a municipality's land entitlement; and

WHEREAS, limitations on the ability of municipalities to obtain ownership to tide and submerged lands within their boundaries are arbitrary, unnecessary, and unreasonable and should be eliminated in order to enhance the economic future of all of Alaska's communities:

NOW, THEREFORE, BE IT RESOLVED by the Alaska Municipal League that the Alaska Legislature is respectfully encouraged to repeal the provisions of AS 38.05.820(b) as they limit the ability of Second Class Cities and Home Rule and First Class Cities incorporated after April 1, 1964, to obtain title from the state to tide and submerged lands within their municipal boundaries, notwithstanding a prior fulfillment of the municipality's land entitlement.

BE IT FURTHER RESOLVED the State of Alaska is urged to convey to each municipality all tidelands currently leased to the municipality and to convey tidelands to a municipality for which it has a lease application pending.

BE IT FURTHER RESOLVED the State of Alaska is urged to permit each borough to take up to 20 percent of its land entitlement in tidelands.


BE IT FURTHER RESOLVED that the Alaska Legislature is urged to take such action as may be necessary to implement the foregoing.

BE IT FURTHER RESOLVED that tidelands made available to municipalities shall include tidelands currently leased or permitted to third parties, subject to such leases or permits.

Adopted this 12th day of November 1993 in Soldotna, Alaska.


Rosalee T. Walker
Rosalee T. Walker, President

ATTEST:


Kent E. Swisher, Executive Director



217 Second Street, Suite 200 ■ Juneau, Alaska 99801 ■ Tel (907) 586-1325, Fax (907) 463-5480

February 23, 1994

TO: Representative Bill Williams, Chair
and Members
House Resources Committee

FROM: Kent E. Swisher, Executive Director

RE: **CS HB 398 (CRA) - Conveyance of certain lands to municipalities**

The Alaska Municipal League supports CS HB 398 (CRA), which would allow the Department of Lands to transfer title to state-owned tide and submerged lands within municipal boundaries to municipalities for certain purposes. In November 1993, AML's members discussed this issue and passed Resolution 94-10 (copy enclosed) supporting the concept included in HB 398.

Present statutes limit the ability of municipalities to obtain ownership to tide and submerged lands within their boundaries, yet often these lands are among the most valuable for economic development purposes. AML and its members support making such lands available to all municipalities, as part of their municipal entitlement to state-owned land.

CS HB 398 (CRA) is the result of a cooperative effort by the Division of Lands, the Department of Community and Regional Affairs, and affected municipalities to develop a compromise position that will best serve the public interest. It appears to be a "win-win" situation for all. The CS would allow municipalities to receive title to the tidelands or submerged lands required for improvements or developments approved by the municipality, thus facilitating much-needed economic development projects in coastal communities; protect the public trust by ensuring that the proposed use of the lands is compatible with land use plans adopted by the municipality, the Department of Natural Resources, or the Coastal Policy Council and that lands will be returned to the state in case of the dissolution of a municipality; and, by removing DNR's burden of administering leases for the affected lands, save money for the state.

AML supports **CS HB 398 (CRA)** and urges the committee's support.

Enclosure

LEG94.cshb398.223

Resolution of the Alaska Municipal League

Resolution No. 94-10

**A RESOLUTION AUTHORIZING THE SELECTION AND
CONVEYANCE OF STATE TIDE AND SUBMERGED LANDS
TO CITIES AND BOROUGHES IN ALASKA**

WHEREAS, pursuant to the Alaska Statehood Act, the State of Alaska received title to most of the tidelands offshore of the state land boundary, from the mean high tide to the three-mile limit; and

WHEREAS, current provisions of Alaska Statutes have authorized the conveyance of state-owned tide and submerged lands to a limited number of Alaska's communities, i.e., Home Rule and First Class Cities incorporated on or before April 1, 1964; and

WHEREAS, it is the policy of the Department of Natural Resources (DNR) to lease tidelands to municipalities only at full value if the municipality will be making what DNR believes is a commercial use of the tidelands; and

WHEREAS, boroughs never qualified for tidelands under the Tide and Submerged Lands Act; and

WHEREAS, DNR will not allow for municipal selection of tidelands under a municipality's land entitlement; and

WHEREAS, limitations on the ability of municipalities to obtain ownership to tide and submerged lands within their boundaries are arbitrary, unnecessary, and unreasonable and should be eliminated in order to enhance the economic future of all of Alaska's communities:

NOW, THEREFORE, BE IT RESOLVED by the Alaska Municipal League that the Alaska Legislature is respectfully encouraged to repeal the provisions of AS 38.05.820(b) as they limit the ability of Second Class Cities and Home Rule and First Class Cities incorporated after April 1, 1964, to obtain title from the state to tide and submerged lands within their municipal boundaries, notwithstanding a prior fulfillment of the municipality's land entitlement.

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BE IT FURTHER RESOLVED the State of Alaska is urged to permit each borough to take up to 20 percent of its land entitlement in tidelands.


BE IT FURTHER RESOLVED that the Alaska Legislature is urged to take such action as may be necessary to implement the foregoing.

BE IT FURTHER RESOLVED that tidelands made available to municipalities shall include tidelands currently leased or permitted to third parties, subject to such leases or permits.

Adopted this 12th day of November 1993 in Soldotna, Alaska.


Rosalee T. Walker
Rosalee T. Walker, President

ATTEST:


Kent E. Swisher, Executive Director



HOUSE RESOURCES COMMITTEE

DATE: 2/23/94

PLACE: Capitol, Room 124

SUBJECT OF MEETING:
 HB 398 - Rights to certain tide + submerged land
 HJR 55 - Economic Importance of S.E. Timber Harvests
 HJR 56 - Exempt Alaska From "PROFISH" Regs.
 HB 199 - Oil + Gas Exploration Leases

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?	WHAT SUBJECT/ WHICH BILL?
Chip Thomas ✓	self	Juneau 2 Murray Way 99801				(Y) N	HJR 55 + 56
Rollo Pool ✓	AK Pulp Corp.	Sitka 4600 Saw Mill Chalk Rd. 99835			747-2293	(Y) N	HJR 55 + 56
John Sisk ✓	self	Juneau		586-2544		(Y) N	HJR 55 + 56
Crystal Smith	AML	217 2nd St, Suite 200			67325	(Y) (N)	if possible HB 348
Chuck Ashby ✓	Juneau Chamber of Commerce	124 W Fifth St Juneau			66420	(Y) N	HJR 55 - 56
Dave Katz ✓	SEACC	419 Sixth St. #328 Juneau	99801		586-6942	(Y) N	HJR 55 - 56
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	

TCN: 40363 DATE & TIME: 02/23/94 08:15 TO 10:00 STATUS:6 ADJOURNED

**** ORDER SUMMARY ****

SPONSOR: HRES HOUSE RESOURCES CHAIRS: WILLIAMS
PURPOSE: PUB PUBLIC HEARING LEGISLATIVE
CONTACT: MARY MCDOWELL TEL#: (907)465-3715
CHAIRING SITE: JUNEAU CAPITOL CAP124

SPONSOR REMARKS(PUB): TESTIMONY:Y ALLOWED 99 MINUTE LIMIT
OTHER SITES MAY ADD IF THERE IS INTEREST
TCN REQUESTED ON 02/23/94 AND HAS 4 UPDATES

**** AGENDA ****

- 1 HB 199 OIL & GAS EXPLORATION LICENSES/LEASES
- 2 HB 398 LAND CONVEYED TO & FROM MUNICIPALITIES
- 3 HJR 55 TONGASS NATIONAL FORST TIMBER HARVESTS
- 4 HJR 56 EXEMPT ALASKA FROM "PACFISH" REGS

**** PARTICIPATING LIOS ****

ANC ANCHORAGE	716 W 4TH. #200	LOCATION STAFF
FBX FAIRBANKS	119 N CUSHMAN ST	LOCATION STAFF
HOM HOMER LTC	126 W PIONEER #4	LOCATION STAFF
* JNU JUNEAU	CAPITOL CAP124	LOCATION STAFF
KOD KODIAK	112 MILL BAY RD.	LOCATION STAFF
KTN KETCHIKAN	352 FRONT STREET	LOCATION STAFF
SIT SITKA	210 LAKE STREET	LOCATION STAFF

**** VOLUNTEER & OFFNET SITES ****

ZZZ OF1 OFFNET 1 ANCHORAGE RON SWANSON (999)999-9999

PARTICIPANTS IN: ANCHORAGE

ANC

1	GARY WILLIAMS	WHITTIER	TSFY. HB 398
	PO BOX 608	WHITTIER	AK 99693 (907)472-2337
2	BOB JUETTNER	ALEUTIANS EAST	TSFY. HB 398
	1600 A ST. NO 103	ANCHORAGE	AK 99501 (907)274-7559
3	KEN ROYD	DNR O&G	UNABL HB 199
	3301 C ST	ANCHORAGE	AK 99501 (907)762-2548
4	LEE SHARP	ALEUTIAN E	TSFY. HB 199
	420 L STREET	ANCHORAGE	AK 99501 (907)276-1969
5	STEVE BORELL	AK MINERS	TSFY. HJR 56
	501 W NORTHERN LTS	ANCHORAGE	AK 99516 (907)276-0347
6	ARDIE GRAY		UNABL HB 199
	121 W FIREWEED STE 207	ANCHORAGE	AK 99503 (907)272-1481
7	JOHN STURGEON	KONCOR FOREST	TSFY. HJR 56
	3501 DENALI STE 202	ANCHORAGE	AK 99516 (907)562-3335
8	JIM BARNETT	ATTY WHITTIER	UNABL HB 398
	10050 PROSPECT DR	ANCHORAGE	AK 99516 (907)346-2755

PARTICIPANTS IN: FAIRBANKS

FBX

1 MR. GREGORY GARRELS		UNABL HB 199	
	1174 BROADVIEW DR.	FAIRBANKS	AK 99712 (907)457-3543
2 MR. CLIFF BURGLIN		UNABL HB 199	
	17 ADAK AVE.	FAIRBANKS	AK 99701 (907)452-5140

PARTICIPANTS IN: HOMER LTC

HOM

1 MS GAIL PARSONS UNABL HB 199

TCN: 40363 DATE & TIME: 02/23/94 08:15 TO 10:00 STATUS:6 ADJOURNED

PARTICIPANTS IN: HOMER LTC

HOM

2 MR. LARRY SMITH	HOMER	AK 99603 (907)235-3978	
	PO BOX 2397	TSFY. HJR 55	
3 MR. STEVE GIBSON	FRITZ CREEK	AK 99603 (907)235-3855	
	PO BOX 15337	OBSV. HJR 55	
	1622 HIGHLAND DR.	HOMER	AK 99603 (907)235-6487

PARTICIPANTS IN: JUNEAU

JNU

1 REP. BILL WILLIAMS		TSFY. HB 199
		AK (907)000-0000
2 REP. DON BUNDE		TSFY. HB 199
		AK (907)000-0000
3 REP. ELDON MULDER		TSFY. HB 199
		AK (907)000-0000
4 REP. JOHN DAVIES		TSFY. HB 199
		AK (907)000-0000
5 REP. DAVID FINKELSTIEN		TSFY. HB 199
		AK (907)000-0000
6 REP. JEANETTE JAMES		TSFY. HB 199
		AK (907)000-0000
7 REP. PAT CARNEY		TSFY. HB 199
		AK (907)000-0000
8 REP. JOE GREENE		TSFY. HB 199
		AK (907)000-0000
9 REP. BILL HUDSON		TSFY. HB 199
		AK (907)000-0000
10 REP. HARLEY OLBERG		TSFY. HB 199
		AK (907)000-0000
11 TO TESTIFY		TSFY. ALL ITEMS
12 TO TESTIFY		TSFY. ALL ITEMS
13 TO TESTIFY		TSFY. ALL ITEMS
14 TO TESTIFY		TSFY. ALL ITEMS

PARTICIPANTS IN: KODIAK

KOD

1 MR. BUD CASIDY	KOD. IS BOROUGH	OBSV. HB 398	
	710 MILL BAY RD.	KODIAK	AK 99615 (907)486-9302

PARTICIPANTS IN: KETCHIKAN

KTN

1 MR. TROY REINHART	AK FOREST ASSOC	TSFY. HJR 55	
	111 STEDMAN # 200	KETCHIKAN	AK 99901 (907)225-6114

PARTICIPANTS IN: SITKA

SIT

1 MR. JOEL KAWAHARA		TSFY. HJR 55	
	507 KATLIAN ST.	SITKA	AK 99835 (907)747-5811
2 MR. ERIC JORDAN		TSFY. HJR 56	
	103 GIBSON PL.	SITKA	AK 99835 (907)747-6743

PARTICIPANTS IN: OFFNET 1

ZZZ OF1

1 RON SWANSON	DNR	TSFY. HB 199
		AK (907)000-0000