

**HB**

**398**

# 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.

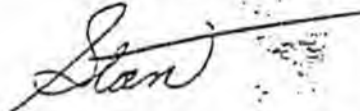
The details of the situation focus on a section of the community which was flooded by the Skagway River on a regular basis then protected by the construction of a dike approximately 50 years ago. The newly dried out land was subdivided as an extension of the existing street and lot grid and sold or used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

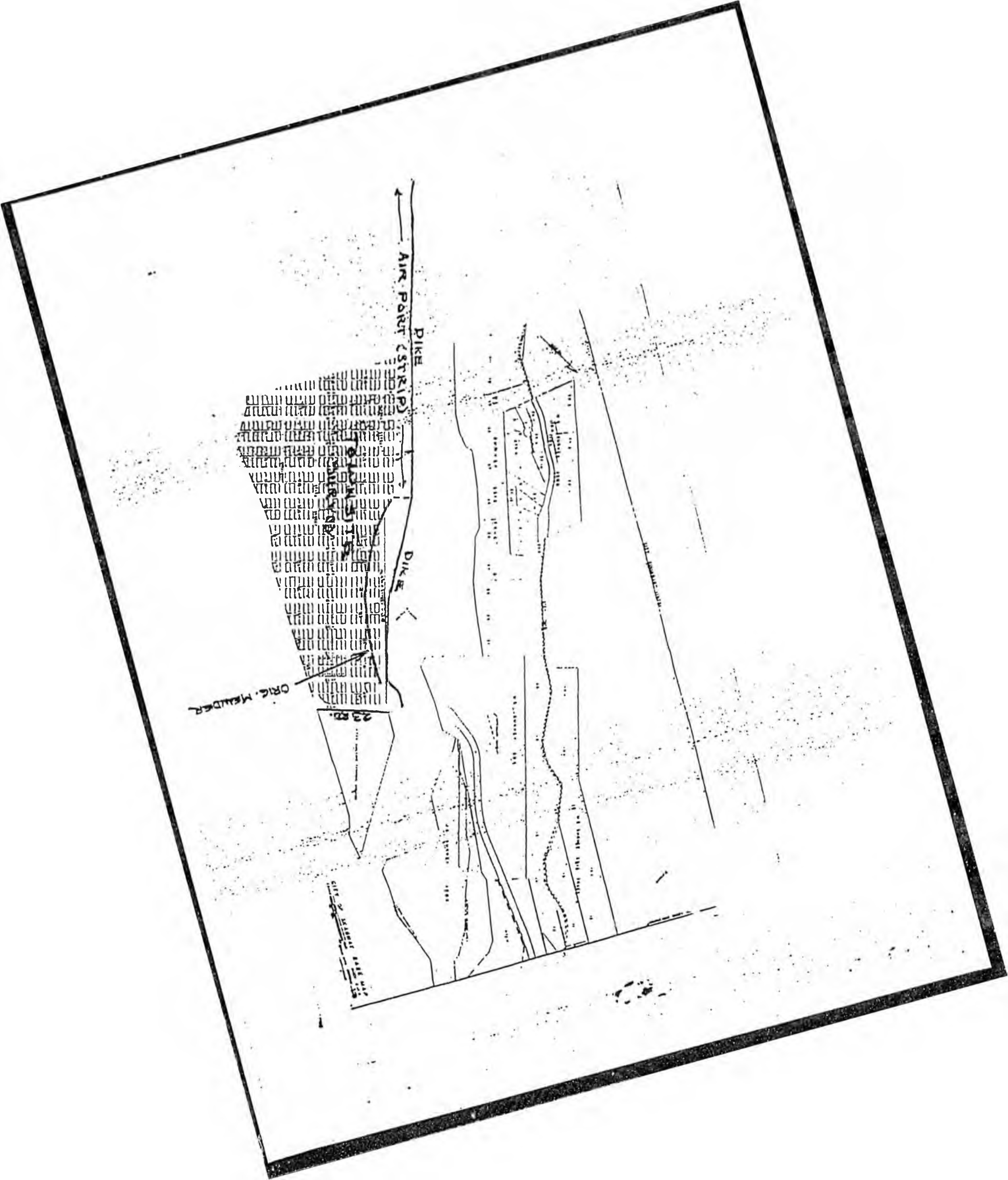
Your support will help bring resolution to a problem which cannot be solved in another way. Thank you for your help on this issue and I look forward to working with you on other matters of state or local concern.

Sincerely,



Stan Selmer  
Mayor

cc: City Manager



AIR PORT (STRIP)

DIKE

ORIG. MEMBER

23 RD.

CITY OF WASHINGTON



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

# ALEUTIANS EAST BOROUGH

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SERVING THE COMMUNITIES OF

■ KING COVE ■ SAND POINT ■ AKUTAN ■ COLD BAY ■ FALSE PASS ■ NELSON LAGOON

April 14, 1994

Senator Mike Miller, Chairman  
Senate Resources Committee

By fax: 465-3883

RE: CS HB 398

Dear Senator Miller:

The Aleutians East Borough supports the passage of CS HB 398. As a coastal municipality which consists of approximately 50% tidelands and ocean, the Aleutians East Borough has focused on providing marine related infrastructure since 1988. Docks were built or enlarged in Akutan, False Pass, Cold Bay and King Cove and one is nearing construction in Nelson Lagoon. In each case, the Aleutians East Borough needed to get site control. In some cases - False Pass and Cold Bay - the Borough needed an ownership right from DNR so that it could issue G.O. Bonds for construction. However, the best DNR could do was to issue 55 year leases. While a 55 year lease satisfied the purchasers of the bonds, they (the leases) represent future potential problems for the Aleutians East Borough and DNR. For example, what will be the understanding or the interpretation of the lease terms in 2020? How will DNR oversee the leases with diminishing staff?

CS HB 398 is not a land grab. Rather it is an attempt by DNR to address a number of issues. It will clarify DNR's ability to dispose of tidelands in an equitable way. It will streamline its administrative process and make it consistent with DNR's staff level. It will provide equity among applicants for tidelands. CS HB 398 will not cancel nor diminish the public trust doctrine. Ideally, the Aleutians East Borough would prefer that public trust doctrine be explicitly defined at the time tidelands are transferred to a municipality. However, the Borough recognizes that like navigational servitude, the public trust doctrine evolves through the courts and is willing to abide with that evolution.

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CLERK/PLANNER  
P.O. BOX 349  
SAND POINT, ALASKA 99661  
(907) 383-2699  
(807) 383-3498 FAX

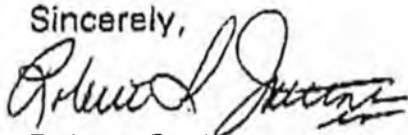
BOROUGH ADMINISTRATOR  
1000 A STREET, SUITE 103  
ANCHORAGE, ALASKA 99501-5148  
(907) 274-7555  
(907) 270-7588 FAX

FINANCE DIRECTOR  
P.O. BOX 49  
KING COVE, ALASKA 99812  
(907) 487-2500  
(907) 487-2388 FAX

Senator Mike Miller  
Page Two

CS HB 398 is supported by DNR and a number of coastal municipalities. The Aleutians East Borough recommends passage of this bill without further amendment.

Sincerely,



Robert S. Juettner  
Administrator

RSJ:emn

cc: Senator George Jacko

# ALASKA STATE LEGISLATURE

Delta Junction Office  
P.O. Box 1189  
Delta Junction, AK 99737-1189  
907-895-4236



White in Juneau:  
State Capitol, Room 110  
Juneau, AK 99801  
907-465-4859

Representative Harley Olberg

## Sectional Analysis of CSHB 398 (RES)

The following is a sectional analysis of CSHB 398(RES); "An Act relating to conveyance of certain land to municipalities."

Section 1 amends AS 38.05.035(b). Title 38 deals with "Public Lands," chapter 05 deals specifically with the "Alaska Land Act" and section 035 is entitled "Powers and duties of the director."

Section 1 allows the director of the division of lands of the Department of Natural Resources to quitclaim to a municipality land or an interest in land including submerged or shore land. The director would be authorized to make such a transfer in cases where a person has detrimentally relied upon an error made by the municipality.

If a municipality has any remaining entitlement land the land or interest in land transferred under this section would count against that remaining entitlement.

Section 2 amends AS 38.05 by adding a new section entitled "conveyance of tide and submerged land to municipalities."

Subsection (a) establishes the guidelines to be followed when a municipality requests the commissioner to transfer to the municipality tide or submerged land appropriate for development.

Subsection (b) states that land designated by the legislature may not be transferred unless the transfer is consistent with the legislative purpose behind the designation

Subsection (c) States that if the commissioner has determined that an application for conveyance meets the appropriate standards the commissioner shall transfer the land to the municipality. This subsection also states that after the commissioner has approved the application the municipality shall have control over the land.

Subsection (d) limits the restrictions that the state can put on the land conveyed under this section but there must be reasonable public access to the public waters. Any land that has been transferred under this section reverts back to the state upon the dissolution of the municipality.

Unlike the provisions established under section 1 of the Act (transfers to correct municipal errors) subsection (e) states that land transferred under this section does not count against a municipality's general land grant.

Section 3 repeals section 1 of this Act on January 1, 1998.

STATE OF ALASKA  
DEPARTMENT OF COMMUNITY  
& REGIONAL AFFAIRS

POSITION PAPER

Bill No.: CS HB 398(CRA)  
Sponsor: Representative Olberg

DCRA FN: Zero  
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.

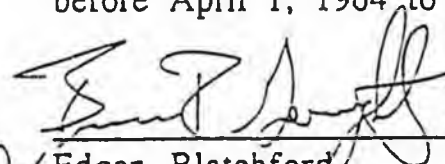
Comments

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.

  
for Edgar Blatchford  
Commissioner

DEPUTY Commissioner

Feb 15, 1994  
Date

**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.

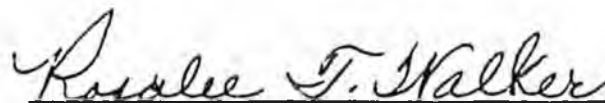
BE IT FURTHER RESOLVED the State of Alaska is urged to convey to each municipality all tidelands currently leased to the municipality and to convey tidelands to a municipality for which it has a lease application pending.

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  
Kent E. Swisher, Executive Director

HB 398

TB ✓

KB —

(file)

Mr. Chairman, members of the committee, I want to thank you for allowing me the opportunity to comment on CS HB 398. My name is Bob Juettner and for the past 2 1/2 I have served as the Administrator of the Aleutians East Borough. Before that, I served as the Administrator of the City of Sand Point for 3 1/2 years.

During the past six years, I have had numerous dealings with DNR on tidelands. I administered the Sand Point boat harbor which is located on a tidelands leases eventhough the City of Sand Point assumed ownership of the facilities from DOTPF. I have also negotiated tideland leases for docks built by the AEB in Cold Bay and False Pass and for the Sand Point airport project. As part of the King Cove dock project, I worked with the City of King Cove and DNR to have the Director's Line moved so that the City could transfer the tidelands to the AEB. The AEB also has an active file in the Div. of Land for a tidelands lease in Nelson Lagoon.

The AEB finds that tidelands are some of the most important lands within its boundary and urges the passage of CS HB 398 for two reasons. One, the AEB is actively involved in developing the transportation infrastructure, especially marine infrastructure within its boundaries. Because the AEB uses GO Bonding in most of its capital construction projects, it must have a fee simple interest or demonstrate a property right as close to fee simple ownership as possible. This is a result of the Hixson case in which the court ruled that the proceeds of GO Bonds can not be used on land not owned by the government which issues the bonds. To fulfill this requirement,

the AEB must have the ownership of tidelands or seek and receive long term 55 year leases.

The second reason the AEB supports CS HB 398 is the lack of conformity in tideland lease stipulations and follow up by DNR. Every tideland lease the AEB received in the last 2 1/2 years is different. The False Pass lease was as close to a fee simple transfer while the Cold Bay tidelands lease is the most onerous and complicated lease. Under the lease, DNR reserves the right to approve all agreement made by the AEB on the tract which contains the dock but does not stipulate when they will complete their review; DNR reserves the right to increase the annual rental fee based upon any changes in the development plan; finally, DNR required a \$100,000 performance bond for the 55 years! If this bond could be purchased, it would cost between 2 and 3% of the face value of the bond per year or 4 to 6 times the annual lease payment of \$500. However, the performance bond is insignificant given \$4.5M dock on the tidelands.

Passage of the CS HB 398 will accomplish several goals:

1. It will substantially reduce the time demand on DNR in the leasing of tidelands to municipalities and the monitoring of those leases. But more importantly, it will institute a practice consistent with the level of staff in DNR.
2. It will facilitate the development of needed infrastructure in Alaska.

3. It will guarantee the integrity of the Public Trust Doctrine on the tidelands.

# ALASKA STATE LEGISLATURE

Delta Junction Office:  
P.O. Box 1189  
Delta Junction, AK 99737-1189  
907-895-4236



While in session:  
State Capitol, Room 110  
Juneau, AK 99801  
907-465-4859

Representative Harley Olberg

## SPONSOR STATEMENT

### CS HB 398 (RES)

At a time when the State of Alaska is mandating a greater measure of self-sufficiency on local governments and promoting economic development at the local level, current state statutes work against second class cities and municipality's incorporated after April 1, 1964.

In particular, Title 38 of Alaska Statutes fails to recognize second class cities and municipality's eligibilty 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 and municipality's at a disadvantage as they pursue economic development along their waterfronts.

CS HB 398 (RES) allows for all municipalities, Home rule, First and Second class cities and boroughs to apply for tide and submerged land and to have them conveyed. There would be four conditions to meet in order for this to happen.

- (1) Lack of unreasonable interference with public access resulting from the proposed use of the land;
- (2) Application for conveyance by the municipality, with the municipality paying all cost;
- (3) Compatibility of the proposed use and the land classification or land use plan for the area;
- (4) Need for the land for development.

Land conveyed under this 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 entitlement of a municipality provided by AS 29.65.

Section 1 permits the director of the division of lands 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 omissions of the municipality. Section 3 of this bill repeals Section 1 effective January 1 1998.

# Alaska State Legislature

ALASKA STATE CAPITOL  
JUNEAU, ALASKA 99801-1182  
(907) 465-4925

REPRESENTATIVE  
JERRY MACKIE

PO BOX 795  
CRAIG, ALASKA 99921  
(907) 226-3008 OFFICE  
(907) 826-2930 HOME

## 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.

(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 PASS</u>	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>Joe Green</i> Green	<input checked="" type="checkbox"/>				
<i>Therette James</i> James	<input checked="" type="checkbox"/>				
<i>David Finkelstein</i> Finkelstein	<input checked="" type="checkbox"/>				
<i>Joe Davies</i> Davies	<input checked="" type="checkbox"/>				
<i>John Mulder</i> Mulder	<input checked="" type="checkbox"/>				
<i>Bob Bunde</i> Bunde	<input checked="" type="checkbox"/>				
<i>W.F. Williams</i> Williams	<input checked="" type="checkbox"/>				

*W.F. Williams*  
CHAIRMAN'S SIGNATURE

(7)

Date Referred: January 26, 1994

FURTHER REFERRALS:

Resources

Date of Committee Action: \_\_\_\_\_

The COMMUNITY AND REGIONAL AFFAIRS Committee considered:

HB 398

HOUSE BILL NO. 398

RIGHTS IN TIDE AND SUBMERGED LAND

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

RECOMMENDATIONS:

be replaced with C-S HB 398  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

zero fiscal note(s) \_\_\_\_\_

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Tom Sanders</i>	<input checked="" type="checkbox"/>	<i>Ed Willis</i>		<input checked="" type="checkbox"/>	
<i>Bob Bunde</i>	<input checked="" type="checkbox"/>	<i>W.F. Williams</i>		<input checked="" type="checkbox"/>	
<i>[Signature]</i>	<input checked="" type="checkbox"/>				
<i>Harley Olberg</i>	<input checked="" type="checkbox"/>				

*Harley Olberg*  
CHAIRMAN'S SIGNATURE

SF STATE COMMITTEE REPORT

DATE: 3/9/94

FURTHER: Resources

DATE TURNED INTO OFFICE: \_\_\_\_\_

CRA Committee considered CS FOR HOUSE BILL NO. 398(RES)

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

and recommends:

replace with SCS CS HB 398 (CRA)  
or  adopt previous \_\_\_\_\_ CS \_\_\_\_\_  
 attaches amendment(s)

same title  
 new title  
 technical title change (HB only)

adopts \_\_\_\_\_ Letter of Intent

further referral to the \_\_\_\_\_

do pass

do not pass

no recommendation

individual recommendations

NEW FISCAL NOTES

Department	Date	Zero	Fiscal
DNR	2/11/94	0	F495

PREVIOUS FISCAL NOTES

Department	Date	Zero	Fiscal

Appropriation No Fiscal Note

DO PASS

Robert A. Lemmon  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

OTHER RECOMMENDATIONS:

Adrian L. Taylor No Rec.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Robert E. [Signature] No Rec.

Chair: Signature and Recommendation

# FISCAL NOTE

No. 1  
 Bill Version: CSHB 398 (CRA)  
 (H) Publish Date: 2/15/94

STATE OF ALASKA  
 1994 LEGISLATIVE SESSION

**BILL**

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						
<b>TOTAL OPERATING</b>	0.0	0.0	0.0	0.0	0.0	0.0
<b>CAPITAL EXPENDITURES</b>	0.0	0.0	0.0	0.0	0.0	0.0
<b>CHANGE IN REVENUES ( )</b>	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	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

Changes in CSHB 398 (CRA) have no fiscal impact. This fiscal note is appropriate.  
*3/15/94* date *[Signature]* Comte Aide (initial)

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.