

HB

20

HOUSE COMMITTEE REPORT

2/13/95

(9)

Date Referred: February 3, 1995

FURTHER REFERRALS:

Finance

Date of Committee Action: 2/13/95

The RESOURCES Committee considered:

HB 20

HOUSE BILL NO. 20

RIGHTS IN TIDE/SUBMERGED LAND

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

recommends it be replaced with the following committee substitute _____ [] the same title [] a new title

[] additional referral to _____ Committee
 [X] attached amendment(s)

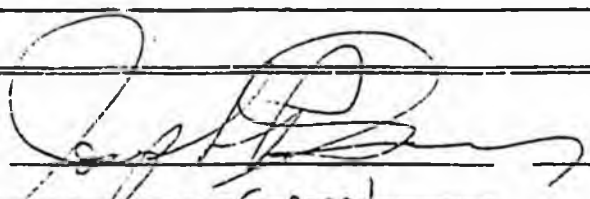
ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) _____ APPROVES PREVIOUS: (Dept/Date) _____
 [] fiscal note(s) _____ (2) [X] fiscal note(s) (2) DNR 2/3/95

[] zero fiscal note(s) _____ [X] zero fiscal note(s) _____
 CRA 2/3/95

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM

_____ Nicholia			X	
W.S. William Williams	✓			
John Logan	✓			
Barbara Barnes			X	
Alvin Austerman			X	
Joseph Green			✓	
	(2)		(4)	

CHAIR'S SIGNATURE 

Amendment: to HB20

In the House Resources Committee on 2/13/95

to the title:

After "...submerged land."

Add "to municipalities."

to read:

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

Delete the phrase "or sale" from page 2, line 20.

Tide, shore, and submerged lands are all managed under the Public Trust Doctrine. This is a living doctrine that has evolved and continues to evolve over time. Other states and the courts have long found that the sale of these lands, while not necessarily violating the public trust doctrine at the time of the sale, may by its use over time violate the doctrine at a later date.

In a recent survey conducted by the State of Washington, all 22 western states currently prohibit the sale or exchange of these lands. They have all found that short and long term leases (up to 55 years) provide the protection needed and allow the stipulations to be changed at period intervals.

It is somewhat ironic, except for in rare circumstances, that the department cannot convey tide, shore, or submerged lands to private individuals. This proposed legislation, however, would allow local municipalities that ability without any sideboards or restrictions.

HB 20 To testify:

Ron Swanson, DNR 762-2692 (Anchorage)
Nico Bus , DNR (answer questions)

Aleutians East Borough, Administrator
Bob Juettner 274-7555 (Anchorage)

City of Whittier:
Jim Barnette, atty 346-2755

Written Testimony/Interested Parties:

City of Bethel
Stuart Greydanus, Port Director
 543-4456

City of Whittier
Gary Williams 472-2337

City of Sand Point
Lee Sharp, atty 276-1969

City of St. Paul
Rich Wilson 272-8684

City of Sand Point 274-7555

Alaska State Legislature
Representative Carl E. Moses

CHAIRMAN
HOUSE RULES COMMITTEE

CHAIRMAN
HOUSE SPECIAL COMMITTEE FISHERIES

MEMBER FINANCE SUBCOMMITTEES ON:
DEPT. OF FISH AND GAME
DEPT. OF PUBLIC SAFETY

SESSION:
CAPITAL BUILDING, ROOM 204
JUNEAU, ALASKA 99801-1182
PHONE: (907) 465-4451
FAX: (907) 455-3445

INTERIM
716 W. 4TH AVE. #630
ANCHORAGE, AK 99501-2133
PHONE: (907) 258-8167
FAX: (907) 258-8468

To: Representative Joe Green, Co-Chair
Representative Bill Williams, Co-Chair
House Resources Committee

From: Representative Carl E. Moses *CEM*

Date: February 6, 1995

Re: Request for hearing on HB 20, relating to rights in certain
tide and submerged land

HB 20 passed out of the Community and Regional Affairs Committee
on February 2, 1995. I have enclosed:

1. A sponsor statement;
2. Two Fiscal notes from the Department of Natural Resources;
3. A fiscal note from the Department of Community and Regional Affairs;
4. Letters of Support from the Alaska Municipal League and the Association of Harbormasters and Port Administrators, Inc.;
5. AS 38.05.820, relating to tides and submerged lands;
6. Packet on HB 398 which died in Senate Rules last legislature.

I would appreciate your scheduling it for a hearing at your earliest convenience. Thank you.

Alaska State Legislature

Representative Carl E. Moses

CHAIRMAN
HOUSE RULES COMMITTEE

CHAIRMAN
HOUSE SPECIAL COMMITTEE FISHERIES

MEMBER FINANCE SUBCOMMITTEES ON
DEPT. OF FISH AND GAME
DEPT. OF PUBLIC SAFETY

SESSION
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SPONSOR STATEMENT

HB 20, relating to rights in certain tides and submerged land.

I have introduced HB 20, relating to conveyance of tide and submerged lands to assist communities at the local level in obtaining tide and submerged lands for waterfront development.

Background: Upon becoming a state, Alaska authorized all first class and home rule cities to receive all tidelands within their boundaries. These cities were required to reconvey lands to private persons based on prior use and development of the tideland. Tidelands can't be conveyed to first class and home rule cities formed after April 1, 1964, but the Alaska Department of Natural Resources (DNR) can issue leases.

Reason for the bill:

I have introduced HB 20 because leases vary in terms and duration, and because unified municipalities, second class cities, or boroughs of any class cannot qualify for conveyance of tide and submerged land. All coastal municipalities have similar needs for tidelands to give them the tools needed to encourage, control, and ensure responsible development of tidelands within their boundaries. Obtaining a tidelands lease can be a cumbersome, lengthy process that may require the posting of a performance bond that costs the municipality more in annual premiums than the fair market annual rent for the tidelands. Properly administering leases to remote areas is cumbersome for the department.

HB 20:

HB 20 requires DNR to convey to a municipality tide or submerged land that is occupied or suitable for occupation and development if four conditions are met. The four conditions required are: (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.

Public interest safeguards are provided for in the bill. Land conveyed under the bill is subject to the public trust doctrine which is expressly stated in the bill. Title to land conveyed would revert to the State if the municipality is dissolved. Conveyances of land under the bill would not enlarge or diminish the general land grant entitlement of a municipality provided under AS 29.65 nor does a conveyance count against the municipality's general grant land entitlement.

Prior legislative history:

HB 20 essentially contains section 2 of HB 398, relating to rights in certain tide and submerged land by Representative Olberg, which passed the House last year and died in Senate Rules Committee in the final day of session (bill history is in your packet).

I have provided you with some background materials, including a general history of tide and submerged lands, and position papers that help explain the need for and effect of this bill. The bill is supported by the Alaska Department of Natural Resources (no formal position paper until Commissioner Shively is on board) and the Department of Community and Regional Affairs. It is also supported by the Alaska Municipal League and the Alaska Association of Harbormasters & Port Administrators, Inc.

I would appreciate your support.

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY

STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

February 7, 1995

SUBJECT: Conveyance of tideland/public trust (HB 20)

TO: Representative Carl Moses

FROM: Tamara Brandt Cook (1)36
Director of Legal Services

HB 20 requires the state to convey tideland to municipalities in certain fairly narrowly defined circumstances. You have asked whether the bill poses problems under the public trust doctrine.

The public trust doctrine is a common law principle under which it is recognized that government owes its citizens duties of care with respect to the management of land and natural resources held by the state in trust for the public benefit. The public trust doctrine has been adopted in Alaska. (CWC Fisheries, 755 P.2d 1115 (Alaska 1988)) Additionally, the common use clause of Article VIII, sec. 3 of the state constitution incorporates the public trust doctrine as a constitutional requirement in this state. (Owsicheck v. State, 763 P.2d 488 (Alaska 1988); see also Art. VIII, sec. 14, and AS 38.05.502 enacted by initiative)

The public trust doctrine does not prohibit the conveyance of state land. In fact, conveyance by lease, sale, or grant is specifically permitted under Article VIII, secs. 8 and 9 of the state constitution. However, a conveyance of public trust land "will be viewed as a valid conveyance of title, subject to continuing public easements. . . ." (Haves v. A.J. Associates, Inc., 846 P.2d 131 (Alaska 1993) footnote 4 quoting from CWC Fisheries)

Public trust requirements are recognized in HB 20. (see Sec. 38.05.825(a)(1) and (d)) Those requirements may altogether preclude conveyance of state tideland in some cases and so limit the use that may be made of the land in others as to make conveyance undesirable. Obviously, the public trust doctrine and other constitutional requirements circumscribe the grant of authority to convey state land contained in HB 20.

You have also asked whether HB 20 authorizes conveyance of mineral rights from the state to municipalities and whether they could then convey those rights to private owners. AS 38.05.125 requires a reservation of mineral rights to the state in most contracts for sale, lease, or grant of state land. This provision does not apply to conveyances under HB 20, but it could easily be amended to do so. In the absence of such an amendment, mineral rights may

Representative Carl Moses

February 7, 1995

Page 2

be alienated by the state subject to reservations that may be required by Congress. (State v. Lewis, 559 P.2d 630 (Alaska), cert. denied, 432 U.S. 901(1977)) As a practical matter, sec. 6(i) of the Alaska Statehood Act requires the state to reserve mineral rights in most conveyances.

Lastly, you asked whether I could suggest a "tighter" title to the bill. Perhaps, "An Act relating to conveyance of certain tide and submerged land to municipalities."

TBC:klb:pl

95-043.klb

Enclosures

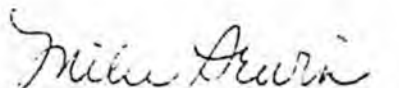
STATE OF ALASKA
DEPARTMENT OF COMMUNITY
& REGIONAL AFFAIRS

POSITION PAPER

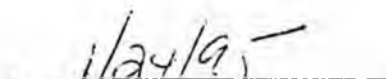
Bill no.: HB 20 DCRA FN: Zero (submitted)
Sponsor: Representative Moses Position: Support
Title: An Act relating to rights in certain tide and submerged land

This legislation amends AS 38.05 by adding a new section that would give the Department of Natural Resources (DNR) the authority to convey tidelands and submerged lands to municipalities. Presently, in accordance with AS 38.05.820, DNR may convey such lands only to municipalities incorporated on or before April 1, 1964. DNR may only lease these lands to municipalities incorporated after that date.

The department supports the principle of treating municipalities equally in the process of conveyance or lease of state lands. The current artificial distinction among municipalities based on date of municipal incorporation should be eliminated. Also, as an advocate for stronger local government and stronger local economies, the department supports the long-range development stability provided by municipal land ownership rather than leasing of state lands. Therefore, the department supports this legislation.



Mike Irwin
Commissioner



Date

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. HB20

Revision Date: Original Dept Affected: Natural Resources
 Title: An Act relating to rights in certain BRU: Resource Development
lands and submerged land Component: Information Resource Management
 Sponsor: Representatives Moses, Kubina
 Requestor: _____ Component Serial No. 427

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY96	FY97	FY98	FY99	FY00	FY01
PERSONAL SERVICES	6.0					
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	6.0	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 (1005)						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	6.0					
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	6.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY95) 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)

This bill will require the development of a new Land Administration System (LAS) casetype for these conveyances to municipalities. The actual notation of these conveyances to the status plats is considered regular work and will be absorbed by the component. The incremental work to develop a new casetype is estimated to be a one-time cost of \$6.0 in personal services.

Prepared by: Rich McMahon, Chief Phone: 762-2384
 Division: Land Records Information Section Date: 26-Jan-95
 Approved by Commissioner: Mrs. Egan for M. Rutherford, Pet. Comm. Date: 1/26/95
 Agency: Natural Resources

FISCAL NOTE

STATE OF ALASKA

BILL NO. HB20

1995 LEGISLATIVE SESSION

Revision Date: Original Dept Affected: Natural Resources
 Title: An Act relating to rights in certain BRU: Resource Development
tides and submerged land Component: Land Development
 Sponsor: Representatives Moses, Kubina
 Requestor: _____ Component Serial No. - - 431

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY96	FY97	FY98	FY99	FY00	FY01
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 (1005)	(50.0)	(50.0)	(50.0)	(50.0)	(50.0)	(50.0)
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FUND SOURCE

(Thousands of Dollars)

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

Estimate of any current year (FY95) 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)

In addition to the general grant land entitlement under AS 29.65, qualified municipalities which were incorporated prior to 1954 have been conveyed tide and submerged land. This legislation would authorize the department to convey improved tidelands or land required for the accomplishment of a public or private development to all home rule, first and second class municipalities. Currently, the department can only issue leases that create a financial burden to the municipality and a liability to the state. This legislation will reduce the amount of lease monitoring and compliance activities currently required of the department on these existing leases, however the department anticipates no reduction in expenses due to the continuing effort to process and monitor other current and additional leases.

The reduction of \$50.0 in general fund program receipts is a rough estimate of the amount of annual lease revenue that will be lost with the implementation of this legislation.

Amendment to this bill and HB79 could be combined as they are very similar, but address different tide and submerged land conveyance issues.

Prepared by: Ron Swanson, Director Phone: 762-2692
 Division: Land Date: 25-Jan-95
 Approved by Commissioner: [Signature] Date: 1/25/95
 Agency: Natural Resources

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

FISCAL NOTE

Revision Date: January 24, 1995 Dept. Affected: Community & Regional Affairs
 Title: An Act relating to rights in certain tide and submerged land. BRU: none
 Component: none
 Sponsor: Representative Moses
 Requestor: House C & RA Committee COMPONENT SERIAL NO. _____

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
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	0.0	0.0	0.0	0.0	0.0	0.0

REVENUE FUND SOURCE: _____

FUNDING: (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

POSITIONS:

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

Estimate of current (FY94) impact \$ none

ANALYSIS: (Attach a separate page if necessary)

This legislation would give the Department of Natural Resources (DNR) the authority to convey tidelands and submerged land to municipalities. Presently, DNR can only issue leases (unless the municipality was incorporated before 1964). There is no fiscal impact on DCRA from this bill.

Prepared by: Remond Henderson, Director *Remond Henderson* Phone: 465-4708
 Division: Division of Administrative Services Date: 1/24/95
 Approved by Commissioner: *Thelma Stewart* Date: (1/24/95)
 Agency: Community & Regional Affairs

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Tideland Conveyances (AS 38.05.320) - before 01/04/64

<u>Municipality</u>	<u>Acres</u>	<u>Authority</u>
Anchorage (city)	927	.320
Juneau	232	.320
Juneau/Douglas	113	.320
Ketchikan	163	.320
Kodiak	219	.320
Pelican	60	.320
Petersburg	449	.320
Port Chilkat	32	.320
Sitka	194	.320
Skagway	194	.320
Valdez	220	.320
Wrangell	149	.320
<hr/>		
<i>Total before 01/04/64</i>	<i>2,952 acres</i>	

Total AS 38.05.320 - 22,848 (through 1990)



217 Second Street, Suite 200 • Juneau, Alaska 99801 • Tel: 907/586-1325 Fax: 907/463-5480

January 27, 1995

TO: Representative Carl Moses
Members, House Community and Regional Affairs

FROM: *Kevin C. Ritchie*
Executive Director

RE: HB 20 - Rights in certain tide and submerged land

The Alaska Municipal League supports HB 20, 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 1994, AML members discussed this issue and passed Resolution 95-11 (copy enclosed) supporting the concept included in HB 20.

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.

Attachment

JK/Leg95/hb20.126

Resolution of the Alaska Municipal League

Resolution 95-11

A RESOLUTION OF THE ALASKA MUNICIPAL LEAGUE URGING THE PASSAGE OF LEGISLATION REQUIRING THE CONVEYANCE TO CITIES AND BOROUGHES OF STATE TIDELANDS THAT ARE LEASED TO MUNICIPALITIES OR ARE NEEDED OR APPROPRIATE FOR DEVELOPMENT

WHEREAS, upon becoming a state, Alaska authorized all first class and home rule cities to receive all tidelands within their boundaries and these cities were required to reconvey to private persons only those tidelands to which such persons had a claim through their prior use and development of the tidelands; and

WHEREAS, the right to receive such tidelands was never extended to unified municipalities, second class cities, or to boroughs of any class, nor to any cities that reclassified as first class or home rule after April 1, 1964; and

WHEREAS, all coastal municipalities have similar needs for tidelands to give them the tools needed to encourage, control, and ensure responsible development of tidelands within their boundaries and to ensure that such development is consistent and coordinated with other developments and needs of the municipality; and

WHEREAS, the State of Alaska currently will convey an interest in tidelands to municipalities only through a lease; and

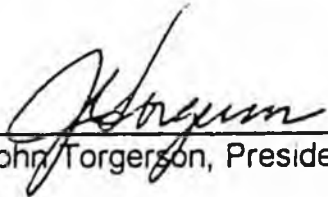
WHEREAS, obtaining a tidelands lease from the State of Alaska is a cumbersome, lengthy process and the leases often require the posting of a performance bond that costs the municipality more in annual premiums than the fair market annual rent for the tidelands, create an unnecessary ongoing relationship with the State with respect to the tidelands parcel, and impose other unreasonably burdensome requirements; and

WHEREAS, municipalities, as well as the State of Alaska, have a duty to ensure that the use of their lands, including tidelands, is in the public interest; and

WHEREAS, it would be equitable and in the public interest for the State of Alaska to convey to boroughs and to cities that have not received their tidelands under AS 38.05.820 (formerly AS 38.05.320) tidelands that are needed or have been identified as appropriate for public or private development; and

WHEREAS, HB 398, as it passed the Alaska House of Representatives during the Second Session of the Eighteenth Alaska Legislature, would have met these needs of municipalities:

NOW, THEREFORE, be it resolved that the Alaska Municipal League urges the Legislature and the Governor to pass either legislation substantially in the form of HB 398 as passed by the Alaska House of Representatives during the Second Session of the Eighteenth Legislature or other legislation requiring the expedited conveyance to municipalities of tidelands leased to municipalities and tidelands that are appropriate or needed for development.



John Torgerson, President

ATTEST:



Kevin C. Ritchie, Executive Director

Alaska Association of Harbormasters & Port Administrators, Inc.

RESOLUTION 95-1

A RESOLUTION OF THE ALASKA ASSOCIATION OF HARBORMASTERS AND PORT ADMINISTRATORS SUPPORTING THE CONCEPT OF THE EXPEDITED CONVEYANCE OF TIDELANDS TO MUNICIPALITIES AS OUTLINED WITHIN H.B. 398.

WHEREAS, upon becoming a State, Alaska authorized all first class and home rule cities to receive all tidelands within their boundaries, and

WHEREAS, the right to receive such tidelands was never extended to unified municipalities, second class cities, or to boroughs of any class, nor to any cities that reclassified as first class or home rule after April 1, 1964, and,

WHEREAS, all coastal municipalities have similar needs for tidelands to give them the tools needed to encourage, control and ensure responsible development of tidelands within their boundaries and to ensure that such development is consistent and coordinated with other developments and needs of the municipality, and

WHEREAS, the State of Alaska currently will convey an interest in tidelands only through a lease, and

WHEREAS, obtaining a tidelands lease from the State of Alaska is a cumbersome, lengthy process and the leases often require the posting of a performance bond that costs the municipality more in annual premiums than the fair market annual rent for the tidelands, create an unnecessary ongoing relationship with the State with respect to the tidelands parcel, and impose other unreasonably burdensome requirements, and

WHEREAS, municipalities, as well as the State of Alaska, have a duty to ensure that the use of their lands, including tidelands, are in the public interest, and

WHEREAS, it would be equitable and in the public interest for the State of Alaska to convey to boroughs and cities that have not received their tidelands under AS 38.05.820 (formerly AS 38.05.320) tidelands that are needed or have been identified as appropriate for public or private development, and

WHEREAS, H.B. 398, as it passed the Alaska House of Representatives during the Second Session of the Eighteenth Alaska Legislature would have met the needs of municipalities;

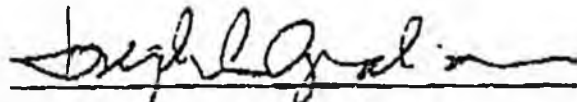
Alaska Association of Harbormasters & Port Administrators, Inc.

NOW THEREFORE, be it resolved by the Alaska Association of Harbormasters and Port Administrators: :

That the Association supports the concept of H.B. 398 as passed by the Alaska House of Representative during the Second Session of the Eighteenth Legislature requiring the expedited conveyance to municipalities of tide-lands leased to municipalities and those that are appropriate or needed for development.

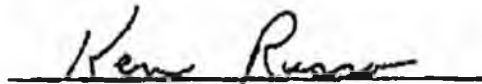
Copies of this Resolution shall be sent to the Governor of the State of Alaska, to each legislator elected to represent the state of Alaska, to the House Community and Regional Affairs and Resources Committees, the Commissioner of Natural Resources, the Director of Division of Lands, and the Alaska Municipal League.

ADOPTED this 9th day of November 1994



Association President

Attest:



Association Secretary/Treasurer

TOTAL P.03

TOTAL P.03

part of it has not been used by the lessee for the purpose specified in the lease for a period of two years. No lease may be assigned or subleased except with the consent of the director, and in any case may only be transferred to an applicant eligible under (b) — (d) of this section. A lessee may not change the use specified in the lease to another or additional use except with the consent of the director. If, at any time after the land is leased, the lessee attempts to assign the lease or transfer control over the land to another, or if the land is devoted to a use other than that for which the land was leased without the consent of the director, the lease automatically terminates.

(e) The lease, sale, or other disposal of state land at appraised fair market value may be negotiated with a licensed public utility or a licensed common carrier by the director with the approval of the commissioner if the utility or carrier reasonably requires the land for the conduct of its business under its license.

(f) The commissioner shall lease state land for telephone or electric transmission and distribution lines for less than the appraised value of the land if the lessee is a nonprofit cooperative association organized under AS 10.25. The commissioner may lease state land that is not located within the boundary of a municipality for the disposal of garbage, refuse, trash, or other waste material for less than the appraised value of the land if the lessee is a licensed public utility authorized to collect and dispose of garbage, refuse, trash, or other waste material outside the boundaries of a municipality. Before determining the annual rental, the commissioner shall consider the nature of the public service rendered by the nonprofit cooperative association or licensed public utility and the terms of the grant under which the land was acquired by the state. A nonprofit cooperative association may not construct improvements other than transmission or distribution lines and substations on land leased under this subsection. A licensed public utility may not construct permanent improvements on land leased under this subsection that are not related to the purpose of the lease.

(g) The commissioner shall retain a reversionary interest on each sale or other disposal granted under (a) or (e) of this section. The commissioner may waive the reversionary interest on a written determination that the waiver is in the public interest. (§ 4 art III ch 169 SLA 1959; am § 1 ch 155 SLA 1960; am § 1 ch 137 SLA 1962; am § 1 ch 36 SLA 1976; am § 12 ch 257 SLA 1976; am § 1 ch 76 SLA 1980; am §§ 34, 35 ch 113 SLA 1981; am § 1 ch 86 SLA 1984; am § 42 ch 152 SLA 1984; am § 4 ch 55 SLA 1986; am § 11 ch 75 SLA 1987)

Revisor's notes. Formerly AS 38.05.315. Re-numbered in 1984.
Cross references. For reservation to which contracts for sale, lease or grant of state land and deeds to state land, properties or interest to state land are subject, see AS 38.05.125.

Effect of amendments. — The 1986 amendment at the beginning of subsection (f) substituted "Except as otherwise provided in AS 38.05.183(b), the" for "The".
The 1987 amendment added subsection (g).

Opinions of attorney general. — It is unclear whether quietclaims to the federal government by the division of natural resources to correct initial erroneous conveyances by the federal government to the state for purposes of the Mental Health Enabling Act fall within the scope of this section. August 4, 1983, Op. Att'y Gen.

Providing state land for a long-term, exclusive lease, at no cost, to a "youth encampment" (exempt from rental fees pursuant to subsection (d)), where the express purpose is to lead youthful campers to Christ, would result in the undeniable effect of placing the power, prestige and property of the state behind the advancement of one particular religious belief in violation of the Establishment Clauses of the state and federal constitutions. September 2, 1983, Op. Att'y Gen.

The state could not directly sell a parcel of property to a historical society for use as a cemetery without public auction or indirectly to the society through a third party pursuant to AS 38.05.035(b)(6). However, the parcel could be leased to the society for a term not to exceed 55 years, renewable indefinitely at 55 year intervals at the discretion of the director of the

division of lands. August 6, 1985, Op. Att'y Gen.

There would be no constitutional problem with a transfer of state land to a Methodist camp which is a nonprofit corporation organized for charitable purposes with nothing in its articles of incorporation indicating that its objective is to further the religious beliefs or dogmas of the Methodist Church, and where the lease or sale of the land to the camp would provide for the continued operation of a camp which, in the past, had served a broad cross-section of the public, and thus would accomplish a valid public purpose. February 21, 1986, Op. Att'y Gen.

There is no legal authority for the department to convey fee title to tidelands to a unified home rule municipality under subsection (a), but as long as the use to which the municipality intends to put the tidelands is a permissible use, it would be consistent with the public trust for the department to lease the tidelands to a unified home rule municipality for less than fair market value under this section. April 15, 1988, Op. Att'y Gen.; December 2, 1988, Op. Att'y Gen.

NOTES TO DECISIONS

Cited in Moore v. State, 653 P.2d 8 (Alaska 1976); State v. Bering Strait Regional Educ. Attendance Area School Dist., 658 P.2d 784 (Alaska 1983)

Sec. 38.05.820. Occupied tide and submerged land. (a) It is the policy of the state to allow preference rights for the acquisition of tide and submerged land occupied or developed for municipal business, residential or other beneficial purposes on or before the date of admission of Alaska into the Union. Nothing in this section vests the right in a person to acquire the land until a conveyance from the state is delivered to the grantee.

(b) Home rule cities and cities of the first class incorporated on or before April 1, 1964, may apply, in the manner prescribed by the director, and in accordance with such regulations as the director may adopt, for a conveyance to them of all land seaward of the home rule cities and cities of the first class which is between the mean high tide line in, or forming the boundary of, the home rule cities and cities of the first class, and a line to be shown on a plat made a part of the application which shall be the pierhead line established under the Act of September 7, 1957, or the harbor line established under the Act of March 3, 1899, or if no pierhead line or harbor line is established then a line subject to approval by the director, with the concurrence of the commissioner, which shall be seaward of all tide and submerged land

AS. 38.05.820 Tide + submerged land

occupied or suitable for occupation and development without unreasonable interference with navigation. The director shall convey that tide and submerged land to home rule cities and cities of the first class. Applications by preference right claimants filed with the director before June 30, 1964, shall continue to be processed to a final determination and conveyance, if any, by the director, if such preference right claimants are entitled to a conveyance from the director under the laws existing previous to July 22, 1964.

(1) Each home rule city and city of the first class granted a conveyance shall prepare an official subdivision plat of the area conveyed showing all structures and improvements and the boundaries of each tract occupied or developed, together with the name of the owner or claimant. The subdivisional plat shall include within the boundaries of each tract occupied or developed such surrounding tide and submerged land as is reasonably necessary in the opinion of the governing body of the home rule cities and cities of the first class for the use and enjoyment of the structures and improvements by the owner or claimant, but shall not include tide or submerged land which if granted to the occupant would unjustly deprive an occupant of adjoining land from reasonable use and enjoyment of it.

(2) An occupant of land included in the conveyance to home rule cities and cities of the first class, who occupied or developed the land on and before September 7, 1957, has a class I preference right to the land from the home rule cities and cities of the first class upon the execution of a waiver to the state and the home rule cities and cities of the first class of all rights the occupant may have acquired under Public Law 85-303 (71 Stat. 623).

(3) An occupant of land included in the conveyance to home rule cities and cities of the first class, who has a class II preference right by reason of the conveyance to home rule cities and cities of the first class, and is unwilling to waive the right has a preference right to the land which it is mandatory for the home rule cities and cities of the first class to expeditiously honor upon application from the occupant after the Secretary of the Army has submitted to the Secretary of the Interior and the governor of the state maps showing the pierhead line established by the corps of engineers with respect to the tract so granted.

(4) An occupant of land included in the conveyance to home rule cities and cities of the first class, who occupied or developed the land after September 7, 1957, and before January 3, 1959, and who continued to occupy it on January 3, 1959, has a class III preference right to the land from the home rule cities and cities of the first class.

(5) In making a conveyance to an occupant, the home rule cities and cities of the first class shall include as a part of the tract conveyed and in addition to the occupied or developed land, such additional tide and submerged land as is reasonably necessary in the opinion of the gov-

erning body of the home rule cities and cities of the first class for the occupant's use and enjoyment of the occupied or developed land, but the conveyance shall not include any area which would unjustly deprive an occupant of adjoining land from reasonable use and enjoyment of it or which, if developed, will interfere with navigation.

(6) Each home rule city and city of the first class receiving conveyances shall by ordinance provide for reasonable regulations governing the filing and processing of applications, publication of notices, and the adjudication of disputes between claimants by the governing body of the home rule cities and cities of the first class. A party aggrieved by its determination may appeal to the superior court.

(7) When no preference right has been granted to purchase or lease tideland, the home rule cities and cities of the first class may sell or lease the tideland conveyed to them, and may impose terms or conditions for the sale or lease. Such terms and conditions shall include such reservation of rights-of-way as are necessary to provide reasonable access to public waters.

(c) An occupant of tide or submerged land which is not seaward of a municipal corporation, who occupied or developed it on and prior to September 7, 1957, has a class I preference right to the land from the state. However, if the land is seaward of a surveyed townsite, the occupant shall execute a waiver to the state of all rights which the occupant may have acquired under Public Law 85-303 (71 Stat. 623), before the preference right may be exercised.

(1) A person who has a class II preference right in the disposition of land by the state not provided for under paragraph (b)(3), and who is unwilling to waive that right, has a preference right to the land which it is mandatory for the director to expeditiously honor upon application from the occupant after the Secretary of the Army has submitted to the Secretary of the Interior and the governor of the state maps showing the pierhead line established by the corps of engineers with respect to the tract so granted.

(2) An occupant of tide or submerged land which is not seaward of a municipal corporation, who occupied or developed it after September 7, 1957, and before January 3, 1959, and who continued to occupy it on January 3, 1959, has a class III preference right to the land from the state.

(3) The preference right granted an occupant in (c) of this section is lost unless the occupant of tide or submerged land not seaward of a home rule or first class city makes application to the director to exercise the preference right by July 1, 1967.

(4) Each occupant shall furnish at the cost of the occupant a plat showing the exterior boundaries of the tide and submerged land covered by the application, in form and with proof of accuracy as set out in regulations of the director, and shall show the location and nature of all fill material, buildings, structures and improvements, which

form the basis of the application and which are situated upon the tract applied for. The applicant may include within the boundaries of the tract applied for such surrounding tide and submerged land as is reasonably necessary in the opinion of the applicant for the use and enjoyment of the structures and improvements by the occupant, but may not include any tide or submerged land which if granted to the occupant would unjustly deprive an occupant of adjoining land from reasonable use and enjoyment of it.

(5) In making a conveyance to an occupant, the director shall include as a part of the tract conveyed, and in addition to the occupied or developed land, such additional tide and submerged land as is reasonably necessary in the opinion of the director for the occupant's use and enjoyment of the occupied or developed land, but the conveyance shall not include any area which would unjustly deprive an occupant of adjoining land from reasonable use and enjoyment of it or which, if developed, will interfere with navigation.

(6) The director shall by regulation provide for reasonable procedures governing the filing and processing of applications, the publication of notices and the adjudication of disputes between claimants. A party aggrieved by an adjudication may appeal to the superior court.

(7) The holder of a valid corps of engineers permit issued before November 15, 1959, may be given a preference to a lease or permit by the state if justified in accordance with the policy of this chapter and if in the best interests of the state. This preference is subordinate to all other preferences recognized under this chapter.

(d) For the purposes of this section, unless the context otherwise requires,

(1) "class I preference right" means the right of an occupant to acquire tide and submerged land for a consideration not exceeding the costs of surveying, transferring and conveying the title to it;

(2) "class II preference right" means the right to acquire tide or submerged land as defined in Public Law 85-303 (71 Stat. 623) for a consideration not exceeding the costs of surveying, transferring and conveying the title to it;

(3) "class III preference right" means the right of an occupant to acquire tide and submerged land for a consideration not exceeding the cost of appraisal, administration and transfer plus the appraised fair market value, exclusive of value accruing from improvements or development, such as fill material, buildings or structures, by the occupant or predecessor in interest of the occupant or reflecting equities of the occupant;

(4) "home rule cities and cities of the first class" do not include a borough;

(5) "occupant" means a person or the successor in interest of a person, who actually occupied for business, residential or other beneficial purpose, tideland, or tide and submerged land contiguous to tideland,

in the state, on and before January 3, 1959, with substantial permanent improvements. The holder of a permit or clearance in respect to interference of navigation, or of a special use permit from a government agency does not qualify as an "occupant" unless entry on the land had, through exercise of reasonable diligence, resulted in occupancy and substantial permanent improvements; no person is an occupant by reason of having (A) placed a fish trap in position for operation or upon the tide or submerged land for storage, (B) placed a set net or piling for a set net, or any other device or facility for taking fish, (C) placed pilings or dolphins for log storage or other moorage, (D) placed floats or vessels upon the tide or submerged land, (E) placed telephone, power or other transmission facilities, roads, trails or other improvements not requiring exclusive use or possession of tide or submerged land, or (F) claimed the land by virtue of some form of constructive occupancy; where land is occupied by a person other than the owner of the improvements on it, the owner of the improvements is, for the purposes of this section, the occupant of the land;

(6) "occupied or developed" means the use, occupancy and control of tide or submerged land by the establishment on it of substantial permanent improvements other than those uses, facilities and improvements not qualifying a person to be an occupant;

(7) "person" means a person, firm, corporation, cooperative association, partnership or other entity legally capable of owning land or an interest in land;

(8) "preference right," subject to the classification of preference right established in this section, means the right of an occupant to acquire, by lease, purchase, or otherwise, at the election of the occupant, except as otherwise limited or prescribed in this chapter, a tract of tideland, or tide and submerged land contiguous to tideland, occupied or developed by the occupant on and before January 3, 1959. (§ 5 art III ch 169 SLA 1959; am § 6 ch 61 SLA 1960; am § 1 ch 18 SLA 1962; am §§ 1, 2 ch 81 SLA 1964; am § 1 ch 4 SLA 1966)

Revisor's notes. — Formerly AS 38.05.320. Renumbered in 1984. Subsection (d) was reorganized in 1984 to alphabetize the defined terms.

Cross references. — For reservation to which contracts for sale, lease or grant of state land and deeds to state land, property or interest to state land are subject, see AS 38.05.125.

Opinions of attorney general. — The occupants of tidelands lying offshore of cities have present vested property rights under the 1957 federal Tidelands Act, which the state must recognize in acquiring rights-of-way for state roads. 1961 Op. Atty Gen., No. 18.

Before the state uses tidelands lying off

shore of cities, the tideland occupants must be paid for the full value of the property they occupy. 1961 Op. Atty Gen., No. 18.

The division of land and water management may convey to a city tidelands and submerged lands located seaward of the city's municipal boundaries, but this conveyance is subject to prior existing rights. The transfer should take the form of a quitclaim conveyance, which conveyance transfers only whatever right, title, and interest the grantor has in the property conveyed. November 26, 1984, Op. Atty Gen.

The state may not make a conveyance of tidelands under this section to a non-Ind

home rule city, since a unified home rule city is a single political entity consisting of a borough and all cities within it, and paragraph (d)(4) provides that home rule cities and cities of the first class, the types

of cities which may apply for such conveyances, do not include a borough. April 15, 1988, Op. Atty Gen.; December 2, 1988, Op. Atty Gen.

NOTES TO DECISIONS

Purpose of section. — One purpose of the Alaska Land Act was to establish equitable methods of disposing of certain tidelands. Toward this end, and within the federal parameters requiring the recognition of "preference rights," this section was included in the Act. *City of Homer v. State*, 566 P.2d 1314 (Alaska 1977).

Due process required. — Private parties are entitled to due process of law before property rights may be removed; therefore, the minimal protection provided by adjudicatory procedures of the Department of Natural Resources must meet that standard. *City of Homer v. State*, 566 P.2d 1314 (Alaska 1977).

Municipalities are entitled to due process in the adjudication of claims to tide and submerged lands. *City of Homer v. State*, 566 P.2d 1314 (Alaska 1977).

With respect to the disposition of tidelands, municipal corporations are to be afforded the same rights of due process as are private parties. *City of Homer v. State*, 566 P.2d 1314 (Alaska 1977).

The language of subsection (h) is clear and unambiguous. *State Dept. of Nat'l Resources v. City of Haines*, 627 P.2d 1047 (Alaska 1981).

Scope of subsection (b) grant. — The grant in subsection (b) of this section encompasses tideland adjacent to subsequently expanded municipal boundaries. *State, Dept. of Nat'l Resources v. City of Haines*, 627 P.2d 1047 (Alaska 1981).

In order for easement under paragraph (b)(6) of this section to be established, it must appear that it is reasonably necessary for the enjoyment of the property, the term "necessary" meaning that there could be no other reasonable mode of enjoying the dominant tenement without the easement. An easement by implication does not arise merely because its use is convenient to the beneficial enjoyment of the dominant portion of the property. *Talbot's, Inc. v. Cessanun Enters., Inc.*, 518 P.2d 1064 (Alaska 1974).

While strict or absolute necessity is not required, something more than mere convenience must be shown before an occupant of tidelands is entitled to an easement

under paragraph (b)(6) of this section. *Talbot's, Inc. v. Cessanun Enters., Inc.*, 566 P.2d 1320 (Alaska 1977).

Liberal construction. — A liberal construction of this section in favor of an applicant's asserted beneficial use of tidelands fill is appropriate. *City of Juneau v. Cropley*, 429 P.2d 21 (Alaska 1967).

In light of the provisions of paragraphs (1) and (5) of subsection (b) of this section of the Alaska Land Act, which reflect the State of Alaska's policy of permitting inclusion within the boundaries of occupied or developed tracts of such additional surrounding tide or submerged lands as are reasonably necessary for the occupant's use and enjoyment, the superior court was correct in according a liberal construction to the term "occupant" and to the requirement that "beneficial use" be made of fill material before such material qualifies as a "permanent improvement." *City of Juneau v. Cropley*, 429 P.2d 21 (Alaska 1967).

Discussion of preference rights given under Federal Tidelands Act. — See *Talbot's, Inc. v. Cessanun Enters., Inc.*, 518 P.2d 1064 (Alaska 1974).

Public easement to use private tidelands. — Tidelands conveyed to private parties pursuant to Class I preference rights under this section were conveyed subject to the public's right to utilize those tidelands for purposes of navigation, commerce and fishery. While patent holders are free to make such use of their property as will not unreasonably interfere with these continuing public easements, they are prohibited from any general attempt to exclude the public from the property by virtue of their title. *CWC Fisheries, Inc. v. Bunker*, 755 P.2d 1115 (Alaska 1988).

A city is given title to displace of strictly according to the terms of this section. *Talbot's, Inc. v. Cessanun Enters., Inc.*, 518 P.2d 1064 (Alaska 1974).

And it cannot depart from its terms or the terms of its own ordinance, adopted pursuant to this section, which ordinance adopted a tidelands subdivision plat. *Talbot's, Inc. v. Cessanun Enters., Inc.*, 518 P.2d 1064 (Alaska 1974).

Power to include or remove tide,

etc., lands from occupied boundaries.

— The governing body of a city is delegated the power to include or remove tide and submerged lands from the various occupied boundaries. *Talbot's, Inc. v. Cessanun Enters., Inc.*, 518 P.2d 1064 (Alaska 1974).

When power is invoked. — The power to include or remove tide and submerged lands from the various occupied boundaries is invoked when it is deemed necessary for an adjoining owner to have reasonable use and enjoyment of his occupied tidelands. *Talbot's, Inc. v. Cessanun Enters., Inc.*, 518 P.2d 1064 (Alaska 1974).

Thus, there is latitude to settle competing claims of use. *Talbot's, Inc. v. Cessanun Enters., Inc.*, 518 P.2d 1064 (Alaska 1974).

City may include land as is reasonably necessary to occupant's use. — A city is authorized to include in an occupant's conveyance such other parts of the whole available land as are reasonably necessary to the occupant's use. *Talbot's, Inc. v. Cessanun Enters., Inc.*, 518 P.2d 1064 (Alaska 1974).

The only limit upon this power is the requirement that an occupant of adjoining land not be unjustly deprived of reasonable use and enjoyment. *Talbot's, Inc. v. Cessanun Enters., Inc.*, 518 P.2d 1064 (Alaska 1974).

Interest adjoining occupant may justly be deprived of. — By inference, the adjoining occupant may be deprived, justly, of such interest as does not interfere adversely with his use and enjoyment. *Talbot's, Inc. v. Cessanun Enters., Inc.*, 518 P.2d 1064 (Alaska 1974).

Incorporeal hereditament may be imposed on adjoining property. — If additional land may be carved out of an adjoining occupant's property, certainly an incorporeal hereditament may be imposed, being a lesser burden. *Talbot's, Inc. v. Cessanun Enters., Inc.*, 518 P.2d 1064 (Alaska 1974).

By "justly" one would understand that the alteration of interests must be supported by reasonable necessity, concluded in a proceeding affording due process, and conformed to the requirement that undue hardship not be worked upon the adjoining owner. *Talbot's, Inc. v. Cessanun Enters., Inc.*, 518 P.2d 1064 (Alaska 1974).

In effect, this section gives the authorities of a city the power to adjudicate an easement by reasonable necessity on application for a conveyance. The adjoining occupant may contest the deter-

mination in an adversary adjudicatory proceeding from which appeal to the superior court is guaranteed by paragraph (b)(6). The initial inquiry thus is whether the pleadings and the trial herein established the competing property interests. *Talbot's, Inc. v. Cessanun Enters., Inc.*, 518 P.2d 1064 (Alaska 1974); *Talbot's, Inc. v. Cessanun Enters., Inc.*, 566 P.2d 1320 (Alaska 1977).

Sufficient interests established for determination if easement reasonably necessary. — Sufficient interests were established by both a landowner and an adjoining landowner to call for the city engineer to decide, under paragraph (b)(6), whether an easement across the former's land was reasonably necessary to the latter's use of its adjoining land. *Talbot's, Inc. v. Cessanun Enters., Inc.*, 518 P.2d 1064 (Alaska 1974).

The language following the semicolon in paragraph (d)(5)(F) creates an exception to the restriction of (F) immediately preceding it. *State v. A.J. Indus., Inc.*, 397 P.2d 280 (Alaska 1964).

Occupant must have improved land. — An occupant of the tide and submerged lands for which he is seeking a preference right must have improved the land. *State v. A.J. Indus., Inc.*, 397 P.2d 280 (Alaska 1964).

Beneficial uses made by lessee accrue to benefit of lessor by reason of paragraph (d)(5)(F). *State v. A.J. Indus., Inc.*, 397 P.2d 280 (Alaska 1964).

Fill as permanent improvement. — Fill which is placed solely for the purposes of disposing of waste or spoils cannot qualify as a permanent improvement. On the other hand, fill in place to a level above the line of mean high tide and actually utilized for beneficial purposes is intended to qualify as a permanent improvement. *City of Juneau v. Cropley*, 429 P.2d 21 (Alaska 1967).

Nonbeneficially used sloping fill, which only furnished lateral support, was not intended to be encompassed within the category of permanent improvement. *City of Juneau v. Cropley*, 429 P.2d 21 (Alaska 1967).

Rock fill was put to beneficial use to the extent that it was used for the sale of fill materials. *State v. A.J. Indus., Inc.*, 397 P.2d 280 (Alaska 1964).

And became a permanent improvement. — Rock fill, by reason of its suitability and utilization for a business use and the procurement of such a use by applicant, became a permanent improve-

ment owned by applicant to the extent that it could be owned within the meaning of this section. *State v. A.J. Indus., Inc.*, 397 P.2d 280 (Alaska 1964).

Mine tailings. — Where mine tailings which were deposited on tidal and submerged lands constituted real estate, title thereto passed to the state under the Statehood Act, and minerals contained in the tailings were reserved by the state in a 1967 deed from the state to a corporation. *Hayes v. Alaska Junco Forest Indus., Inc.*, 748 P.2d 332 (Alaska 1988).

Open storage of machinery and equipment did not establish existence of permanent improvement. *State v. A.J. Indus., Inc.*, 397 P.2d 280 (Alaska 1964).

But it did establish a beneficial use, directly related to the business activities of applicant and its lessees, and to this

extent accrued to the benefit of applicant in determining whether it was entitled to a preference right. *State v. A.J. Indus., Inc.*, 397 P.2d 280 (Alaska 1964).

A barge ramp installation, its use and its maintenance were all factors that accrued to defendant's benefit for the purpose of determining whether it was entitled to preference rights. *State v. A.J. Indus., Inc.*, 397 P.2d 280 (Alaska 1964).

A shed, abandoned by the Army when it terminated its activities, and taken over by applicant constituted a permanent improvement which, although not established or constructed by applicant, was under its control and being put to a beneficial use. *State v. A.J. Indus., Inc.*, 397 P.2d 280 (Alaska 1964).

Applied in *United States v. Alaska*, 201 F. Supp. 790 (D. Alaska 1962).

Collateral references. — 63A Am. Jur. 2d, Public Lands, § 51.

Sec. 38.05.821. Tideland seaward of public recreational sites. (a) Notwithstanding any other provision of law, a home rule or general law municipality which accepts by conveyance or other disposition from the state a public recreation area facility developed under the terms of P.L. 507 (70 Stat. 130), upon application, shall receive by conveyance from the director all land owned by the state seaward of the public recreation area facility which is between the mean high tide line and the mean low tide line. The director may adopt necessary regulations providing for the conveyance of land under this section.

(b) Interests obtained by lease for shore fisheries development, sale, permit or lease for mineral exploration, development, or extraction, or for any other purpose, before August 13, 1974, are affected by this section only on the date of their expiration or termination. (§ 1 ch 108 SLA 1974)

Revisor's notes. — Formerly AS 38.05.321. Renumbered in 1984.

Sec. 38.05.830. Land disposal in the unorganized borough. Before a sale, lease under AS 38.05.070 — 38.05.105, or other disposal of state land in the unorganized borough, the commissioner shall consider the effect that the sale, lease, or other disposal may be expected to have on the density of the population in the vicinity of the land, and potential for conflicts with the traditional uses of the land that could result from the sale, lease, or disposal. If necessary, the commissioner shall develop a plan to resolve or mitigate the conflicts in a manner

consistent with the public interest and the provisions of this chapter. (§ 33 ch 113 SLA 1981)

Revisor's notes. — Formerly AS 38.05.301. Renumbered in 1984.

Sec. 38.05.840. Appraisal. (a) Land may not be sold or leased, or a renewal lease issued, except in the case of an oil or gas or mineral lease, unless it has been appraised within one year before the date fixed for the sale or lease. When land is offered at public sale but is not sold and is available at private sale, a reappraisal is not required unless the director considers that a change in value of the land may have occurred. A grazing lease may be granted to a lessee of federal grazing land without prior appraisal, if the federal lease was cancelled to allow the state to select the land under lease. Land may not be sold or leased for less than the approved, appraised market value, except as provided in AS 38.05.055, 38.05.057, 38.05.075 — 38.05.085, 38.05.097, 38.05.810, and 38.05.820.

(b) Appraisals required by this section may be made by employees of the department who are qualified to determine the value of land under standards set by the commissioner. (§ 3 art III ch 169 SLA 1959; am § 5 ch 61 SLA 1960; am § 14 ch 182 SLA 1978; am §§ 37, 38 ch 85 SLA 1979; am § 41 ch 152 SLA 1984)

Revisor's notes. — Formerly AS 38.05.310. Renumbered in 1984.

NOTES TO DECISIONS

Inadequate appraisal. — Routine application of \$100 minimum without making any inquiry into the market value of parcels was not such an appraisal as would satisfy the requirements of this section. *State v. Weidner*, 684 P.2d 103 (Alaska 1984).

Applied in *Moore v. State*, 653 P.2d 8 (Alaska 1976).

Cited in *State v. Aleut Corp.*, 541 P.2d 730 (Alaska 1976); *Wenatche v. State, Dep't of Hwy.*, 662 P.2d 1042 (Alaska 1977).

Sec. 38.05.850. Permits. (a) The director, without the prior approval of the commissioner, may issue permits, rights-of-way or easements on state land for roads, trails, ditches, field gathering lines or transmission and distribution pipelines not subject to AS 38.35, telephone or electric transmission and distribution lines, log storage, oil well drilling sites and production facilities for the purposes of recovering minerals from adjacent land under valid lease, and other similar uses or improvements, or for the limited personal use of timber or materials. The commissioner, upon recommendation of the director, shall establish a reasonable rate or fee schedule to be charged for these uses, subject to the exception for nonprofit cooperative associations specified in (b) of this section. In the granting, suspension or

5/08/94 4539 (S) RECON TAKEN UP - IN THIRD READING
 5/08/94 4539 (S) HELD ON RECONSIDERATION TO 5/9 CALENDAR
 5/09/94 4589 (S) IN THIRD READING ON RECONSIDERATION
 5/09/94 4590 (S) CROSS SPONSOR(S): LINCOLN
 5/09/94 4590 (S) PASSED ON RECONSIDERATION Y14 H6
 5/09/94 4611 (S) TRANSMITTED TO (H) AS AMENDED
 5/10/94 4297 (H) HELD UNDER UNFINISHED BUSINESS
 5/10/94 4340 (H) CONCUR AM OF (S) Y34 NJ AJ
 7/15/94 4499 (H) 10:00 AM 6/7/94 TRANSMITTED TO GOVERNOR
 7/15/94 4521 (H) SIGNED INTO LAW 6/20 CHAPTER 123 SIA 94
 7/15/94 4521 (H) EFFECTIVE DATE OF LAW 9/26/94

HB 398
 CSHB 398(RES)
 "An Act relating to conveyance of certain land to municipalities."

SPONSOR(S): REPRESENTATIVE(S) OLBERG, Mackie, Green

CURRENT STATUS: (S) RIS STATUS DATE: 5/03/94

JRN-DATE	JRN-PG	ACTION
1/26/94	2153	(H) READ THE FIRST TIME - REFERRAL(S)
1/26/94	2154	(H) COMMUNITY & REGIONAL AFFAIRS, RESOURCES
2/15/94	2405	(H) CRA RPT CS(CRA) NEW TITLE 4DP 2HR
2/15/94	2405	(H) DP: SANDERS, BUNDE, TOOHEY, OLBERG
2/15/94	2405	(H) HR: WILLIS, WILLIAMS
2/15/94	2405	(H) -ZERO FISCAL NOTE (DNR) 2/15/94
2/28/94	2546	(H) RES RPT CS(RES) NEW TITLE 9DP
2/28/94	2546	(H) DP: HUDSON, CARNEY, GREEN, JAMES
2/28/94	2546	(H) DP: FINKELSTEIN, DAVIES, MULDER
2/28/94	2546	(H) DP: BUNDE, WILLIAMS
3/04/94	2610	(H) -PREVIOUS ZERO FISCAL NOTE (DNR) 2/15/94
3/04/94	2610	(H) RULES TO CALENDAR 3/4/94
3/04/94	2610	(H) READ THE SECOND TIME
3/04/94	2610	(H) RES CS ADOPTED UNAN CONSENT
3/04/94	2610	(H) ADVANCED TO THIRD READING UNAN CONSENT
3/04/94	2610	(H) READ THE THIRD TIME CSHB 398(RES)
3/04/94	2611	(H) PASSED Y37 H- E3
3/04/94	2611	(H) ULMER NOTICE OF RECONSIDERATION
3/04/94	2625	(H) COSPONSOR(S): MACKIE, GREEN
3/07/94	2664	(H) RECONSIDERATION NOT TAKEN UP
3/07/94	2664	(H) TRANSMITTED TO (S)
3/09/94	3104	(S) READ THE FIRST TIME - REFERRAL(S)
3/09/94	3104	(S) CRA, RES
3/16/94	3242	(S) CRA RPT SCS 1DP 2HR SAME TITLE
3/16/94	3242	(S) PREVIOUS H ZERO FN APPLIES (DNR)
5/03/94	4273	(S) RES RPT SCS 4DP SAME TITLE
5/03/94	4273	(S) PREVIOUS H ZERO FN APPLIES (DNR)
5/03/94	4273	(S) REFERRED TO RULES

HB 399

"An Act amending schedule IIA of the schedules of controlled substances applicable to offenses relating to controlled substances to add the drug methcathinone, commonly identified as 'cat.'"

SPONSOR(S): REPRESENTATIVE(S) BRICE, Sitton, Nordlund

CURRENT STATUS: (H) HES THEN JUD STATUS DATE: 1/26/94

JRN-DATE	JRN-PG	ACTION
1/26/94	2154	(H) READ THE FIRST TIME - REFERRAL(S)
1/26/94	2154	(H) HES, JUDICIARY
1/28/94	2192	(H) COSPONSOR(S): SITTON
5/06/94	4087	(H) COSPONSOR(S): NORDLUND

HB 400

"An Act relating to administrative proceedings involving a determination of eligibility for a permanent fund dividend or authority to claim a dividend on behalf of another."

SPONSOR(S): REPRESENTATIVE(S) GREEN

CURRENT STATUS: (S) RIS

STATUS DATE: 4/28/94

JRN-DATE	JRN-PG	ACTION
1/26/94	2154	(H) READ THE FIRST TIME - REFERRAL(S)
1/26/94	2154	(H) STATE AFFAIRS, FINANCE
3/07/94	2638	(H) STA RPT 2DP 3HR
3/07/94	2639	(H) DP: VEZEY, KOTT
3/07/94	2639	(H) NR: G. DAVIS, OLBERG, ULMER
3/07/94	2639	(H) -FISCAL NOTE (REV) 3/7/94
4/12/94	3370	(H) FIN RPT 1DP 7HR 1AM
4/12/94	3370	(H) DP: LARSON
4/12/94	3370	(H) NR: MACLEAN, HANLEY, MARTIN
4/12/94	3370	(H) NR: GRUSSENDORF, NAVARRE, BROWN, FOSTER
4/12/94	3370	(H) AM: PARNELL
4/12/94	3370	(H) -FISCAL NOTE (REV) 4/12/94
4/14/94	3522	(H) RULES TO CALENDAR 4/15/94
4/15/94	3522	(H) READ THE SECOND TIME
4/15/94	3522	(H) OBJECTION TO ADVANCEMENT MOTION
4/15/94	3522	(H) ADVANCED TO THIRD READING 4/18 CALENDAR
4/18/94	3562	(H) READ THE THIRD TIME HB 400
4/18/94	3562	(H) PASSED Y31 H7 E2
4/18/94	3574	(H) TRANSMITTED TO (S)
4/19/94	3774	(S) READ THE FIRST TIME - REFERRAL(S)
4/19/94	3774	(S) STATE AFFAIRS, FINANCE
4/25/94	3970	(S) STA RPT 1DP 2HR
4/25/94	3971	(S) PREVIOUS H FN (REV)
4/28/94	4070	(S) FIN RPT 5DP 1HR
4/28/94	4070	(S) PREVIOUS H FN (REV)
4/28/94	4070	(S) REFERRED TO RULES

HB 401

"An Act establishing a procedure for review of proposed projects under the Alaska coastal management program, and relating to petitions for compliance with and enforcement of district coastal management programs under that program and to the disposition of those petitions."

SPONSOR(S): SPECIAL COMMITTEE ON OIL AND GAS

CURRENT STATUS: (H) RES

STATUS DATE: 2/09/94

JRN-DATE	JRN-PG	ACTION
1/26/94	2154	(H) READ THE FIRST TIME - REFERRAL(S)
1/26/94	2154	(H) O&G, RESOURCES
2/09/94	2313	(H) O&G RPT 3DP 2HR
2/09/94	2313	(H) ATTACHED AMENDMENTS
2/09/94	2313	(H) DP: SITTON, KOTT, GREEN
2/09/94	2313	(H) NR: G. DAVIS, OLBERG
2/09/94	2314	(H) -FISCAL NOTE (GOV) 2/9/94
2/09/94	2314	(H) REFERRED TO RESOURCES

HB 398
 10/11 history
 1/8th Legislature

Analysis of Bill/Program Effects: DNS-

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
*Pelican
Sand Point
*Seldovia
*Skagway
Soldotna
Unalaska

Second Class

Akhlok
Akutan
Angoon
Atka
Bethel
Brevig Mission
Chignik
Clark's Point
Coffman Cove
Cold Bay
Deering
Diomedes
Ellm
False Pass
Gambell
Golovin
Goodnews Bay
Hooper Bay
Kachemak
Kaktovik
Kasaan
Kivalina
*Kotzebue
Kupreanof
Larsen Bay
Mekoryuk
Nightmute
Old Harbor
Ouzinkle
Pilot Point
Platinum
Point Hope
Port Alexander
Port Heiden
Port Lyons
Quinhagak
Saint George
Saint Michael
Saint Paul
Savoonga
*Saxman
Scammon Bay
Shaktouffk
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

ALASKA STATE LEGISLATURE

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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.

ALEUTIANS EAST BOROUGH

SERVING THE COMMUNITIES OF

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

February 7, 1995

Representative Carl Moses
Room 204
State Capitol
Juneau, AK 99801-1182

RE: House Bill 20

Dear Rep. Moses:

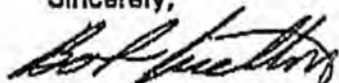
While we have not discussed the costs of tideland leasing to municipalities, I thought it would be interesting to analyze what a typical tidelands lease costs a local government.

Attached is a table called "Tideland Lease Expense" which is based on the Aleutians East Borough's most recent tideland lease with DNR. It is a 20-year lease on 4.4 acres with a rate of \$1,100 annually - and may require reappraisal every 5 years. For simplicity's sake, I have taken the actual costs and extended them over the 20 years of the lease. I made no provision for inflation or any other increases. It is interesting to note that DNR receives only 19% of the total cost to the AEB if the lease is reappraised every five years and receives 22% of the annual cost if the lease is never reappraised.

I am also attaching a recent memo to the City of Akutan which outlines the steps needed to secure a tidelands lease. You can easily cross reference the fees to the steps outlined in the memo.

If this proves useful, please feel free to use it. If you have any questions, do not hesitate to call me.

Sincerely,



Robert S. Juettner
Administrator

RSJ:emn

Enclosures as indicated

cc: Nanoy Hemmingway

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Tideland Lease Expense

Category	Unit Cost	Recurring Cost	Prorated Cost 20 Years	
			With 5 Year Re-appraisal	Without Re-appraisal
Application Fee	\$5,000	No	\$250	\$250
Survey Instructions	\$50	No	\$3	\$3
Survey Review	\$200	No	\$10	\$10
Tideland Survey	\$6,297	No	\$315	\$315
Appraisal Fee	\$5,000	Every five years	\$1,000	\$250
Appraisal Travel	\$1,172	Every five years	\$234	\$59
Lease Fee	\$1,100	Annually	\$1,100	\$1,100
Performance Bond	\$3,000	Annually	\$3,000	\$3,000
Annual Cost to Lessee			\$5,912	\$4,986
% of Annual Lease to Annual Cost			19%	22%

INTEROFFICE MEMO

To: Akutan Project Personnel
From: Terry P. Irwin P.L.S.
Date: February 1, 1995
Subject: Status of Alaska Tidelands near the Akutan Seaplane Ramp

Tidelands

The tidelands immediately adjoining the proposed seaplane ramp projects is presently designated ATS No. 781, it contains approximately 16.1 acres of property. The tidelands survey has never been completed.

A conversation with Mary Walters of DNR suggests the following facts:

- 1) The city appears to have an application on file with DNR to lease the tidelands, It's designation is ADL 224646, initiated on Nov. 23, 1988, for 17.2 acres??
- 2) To proceed with finalization of the tidelands lease, the following must take place:
 - a/ Create and submit a current development plan that notes any changes or deviations from the original plan. This development plan should also indicate proposed schedule
 - b/ Contact Coastal Zone with the new development plan and discuss whether or not a modification to the original application is needed. Fill out a new "Environmental Risk Questionnaire", and submit to DNR and DGC.
 - c/ Request survey instructions for the actual survey and monumentation of the ATS
 - d/ Perform the field survey per the state instructions.
 - e/ Request appraisal instructions from the State of Alaska.
 - f/ Select a state approved appraiser and have an appraisal performed.
 - g/ Complete final lease negotiations and pay a \$5000 bond to finalize lease.
- 3) Presently, DNR is severely understaffed due to financial cutbacks. for this reason an application for tidelands lease can take as much as two years to complete within the present first come first served basis. The applicant can chose to pay a fee of approximately \$5000 to DNR so that a single employee can be assigned their case for expediting. In this scenario a lease and plat can probably be completed in six months.

Status of Alaska Tidelands near the Akutan Seaplane Ramp

02/01/95 Page 2

- 4) If materials are going to be utilized for this project, a new materials sale contract may have to be negotiated, as the previous contract appears to have been closed in 1989.
- 5) Some additional thoughts and considerations that come to mind relative to this project:
 - a/ A determination needs to be made as to who owns the uplands. If the applicant is the owner the permit/lease process will go a lot smoother than if the uplands is owned by a third party. The upland owner generally has first right to adjoining tidelands.
 - b/ If less area is needed the development plan and subsequent lease application might want to request less acreage, as the cost to lease tidelands as increased in the past few years. It can now typically run \$2000 plus or minus , per acre per year.
 - c/ The city might want to see if they can obtain the tidelands under municipal entitlement statutes, that way they would own the tidelands after the survey and wouldn't have to pay for appraisal, rent, bond, or the asbuilt survey after completion.

CC:



CITY OF BETHEL

P.O. Box 388 • Bethel, Alaska 99559
907-543-2087
FAX # 543-4171

Testimony on House Bill 20 by William J. Hunter, City Manager February 13, 1995

Co-chair Green, Co-chair Williams, and members of the House Resources Committee. I want to thank you for allowing me the opportunity to comment on HB 20. My name is William J. Hunter, I am the City Manager for the City of Bethel. The City of Bethel is a second class City with a first class attitude and we live in third world conditions. The issue before your committee is important for the City of Bethel as the largest second class city in the State.

The City of Bethel has had numerous meetings with Alaska Department of Natural Resources dating back to 1986, regarding obtaining a Tideland lease. As you know, there has been a number of changes in City Administration at the City of Bethel as well as a number of changes in personnel at DNR. This has resulted in 9 years of negotiations. The City of Bethel finds these tidelands extremely important and urges passage of HB 20 for the following reasons:

Many of the municipalities which are currently required to pay for a lease of their tidelands are second class cities. These Cities are the poorest in the State because of their limited taxation powers. The requirements set forth in acquiring a tidelands lease are often much more onerous than the lease fee. Insurance, bonding, and the liability clauses in a typical DNR lease are overwhelming for a second class City. Repetition of paperwork and bureaucracy is unnecessarily created.

The City of Bethel has its own Coastal Management Plan, Comprehensive Plan, Riverfront Land Use Study, and Port Development Plan. The State law governing lease of tidelands requires a separate plan for the area within the leasehold, despite being adequately addressed by the other plans. A City the size of Bethel's must contract out these expensive services.

The City of Bethel is working in conjunction with the Corps of Engineers and the State Department of Transportation and Public Facilities on a 19.7 million Bank and Seawall Stabilization Project. The City has to secure site control on all lands within the construction boundary of the construction project. This includes all the tidelands. After completion of this 19.7 million project, the City will have to maintain the Seawall.

"Deep Sea Port and Transportation Center of the Kuskokwim"

It is critical that we receive conveyance of these tidelands in order to ensure that we do not have any future access problems maintaining the Federal, State and local investment.

The City feels it is time to facilitate the development of needed infrastructure in Alaska. The City of Bethel is committed to maintaining public access for all the people to enjoy, and to guarantee the integrity of the Public Trust Doctrine.

WJH/sg



Alaska Environmental Lobby, Inc.

P.O. Box 22151 Juneau, Alaska 99802

Phone: 907-463-3366

Fax: 907-463-3312

The Alaska Environmental Lobby has some serious concerns about HB 20, rights in certain tide and submerged lands. These are outlined below.

HB 20 contains a fatal flaw: It prohibits DNR from imposing any conditions on the conveyance of tide and submerged land other than those required by law.

Deliberately or accidentally, HB 20 neglects to provide for reserving mineral rights to the State - - and prevents DNR from correcting the problem.

What this means is that municipalities can get fee simple title to potentially very valuable tide and submerged lands that the State could lease for oil and gas in the future. This might place the State's financial future in jeopardy via a loss of potential oil and gas revenues.

HB 20 requires DNR to convey any tide or submerged lands a municipality wants if four conditions are met. Under this method a municipality could write a land use plan or amend an existing one pursuant to this bill Sec 1 (a) (3) and DNR must convey.

In HB 20, Under Sec 1 conveyances, there is no return to the State (although state funds will be used to make the conveyances), nor any discretion on the State's part. There may not even be public notice, because without any dissection, it is not a discretionary decision, therefore no finding of whether the conveyance would be in the State's best interest could be made. Hence, there would be little point/need in notifying and consulting the general public.

There's more. Sec 1 (b) of HB 20 would allow DNR to convey tide and submerged land out of state lands that have "been designated by statute" if the DNR Commissioner finds that the municipalities proposed use is consistent or compatible with the purpose of the designation. Designated lands include state parks, state wildlife refuges and critical habitats, among others.

In Anchorage, for example, it is foreseeable that a state-municipal deal to transform Potter Marsh State Game Refuge tide and submerged lands (as well as the newly proposed Chickaloon Flats Critical Habitat) and give it to developers of one ilk or another, would devastate a valuable recreation hunting, fishing and waterfowl habitat region.