

**S B**

**5 6**

02/20/95 15:06:47 LEGISLATIVE TELECONFERENCE NETWORK SYSTEM LTN1120  
MESSAGE FROM: LIOCJEN IN ANCHORAGE JNU

RE TCN: 50237 SCHEDULED FOR:02/20/95 13:30 TO 15:30  
SPONSOR: SENATE COMMUNITY & REGIONAL AFFAIRS PURPOSE: PUBLIC HEARING

MESSAGE TEXT: CLIFF EAMES ALSO WANTED TO TEST ON SB56

02/20/95 14:09:19 LEGISLATIVE TELECONFERENCE NETWORK SYSTEM LTN1120  
MESSAGE FROM: LIOCJEN IN ANCHORAGE JNU

RE TCN: 50237 SCHEDULED FOR:02/20/95 13:30 TO 15:30  
SPONSOR: SENATE COMMUNITY & REGIONAL AFFAIRS PURPOSE: PUBLIC HEARING

MESSAGE TEXT: BOB JUETTNER TO T ON SB 56

02/20/95 14:48:02 LEGISLATIVE TELECONFERENCE NETWORK SYSTEM LTN1120  
MESSAGE FROM: LIOCJEN IN ANCHORAGE JNU

RE TCN: 50237 SCHEDULED FOR:02/20/95 13:30 TO 15:30  
SPONSOR: SENATE COMMUNITY & REGIONAL AFFAIRS PURPOSE: PUBLIC HEARING

MESSAGE TEXT: JOHN BAKER IS IN CONFERENCE-SB 56

# SENATE COMMITTEE REPORT

## First Committee of Refer.

DATE: 1/27/95

FURTHER: Resources

Date of 5-Day Notice: 2/9/95  
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: 2-21-95

CRA Committee considered SB 56

Relating to rights in certain tide and submerged land.

*add further referral*

and recommends:

be replaced with \_\_\_\_\_ CS SB 56 ( CRA )

adopt previous \_\_\_\_\_ CS \_\_\_\_\_ ( \_\_\_\_\_ )

attached amendment(s)

adopt Letter of Intent by \_\_\_\_\_ Committee

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

Senate Bill:  
 same title  
 new title  
House Bill:  
 technical change  
 new: SCR# \_\_\_\_\_

SIGNING WITH RECOMMENDATIONS:	DP	DNP	NR	AM
<i>Tim Kell</i>	<input checked="" type="checkbox"/>			
<i>Roll E. Allen</i>			<input checked="" type="checkbox"/>	
<i>Bob G. ...</i>	<input checked="" type="checkbox"/>			
<i>...</i>	<input checked="" type="checkbox"/>			
<i>...</i>				
CHAIR: <i>John Ingram</i>	<input checked="" type="checkbox"/>			

**NEW FISCAL NOTE(S):**

Department	Date	Zero	Fiscal

**PREVIOUS FISCAL NOTE(S):\***

Department	Date	Zero	Fiscal
<i>NATURAL RESOURCES</i>	<i>2/6/95</i>		<i>6.0</i>
<i>Community &amp; Regional Affairs</i>	<i>2/2/95</i>	<input checked="" type="checkbox"/>	
<i>Natural Resources, LAND DIV.</i>	<i>2/5/95</i>		<i>(50.0)</i>

APPROPRIATION -- no fiscal note

\*include fiscal notes accompanying Governor's bill

2-21  
Proposed CS  
Copy to Sponsor &  
S. Sec 1016A

9-LS0516C

CS FOR SENATE BILL NO. 56(CRA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

Offered:

Referred:

Sponsor(s): SENATOR LEMAN

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to rights in certain tide and submerged land; and providing for an  
2 effective date."

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

4 \* Section 1. AS 38.05 is amended by adding a new section to read:

5 Sec. 38.05.825. CONVEYANCE OF TIDE AND SUBMERGED LAND TO  
6 MUNICIPALITIES. (a) Unless the commissioner finds that the public interest in  
7 retaining state ownership of the land clearly outweighs the municipality's interest in  
8 obtaining the land, the commissioner shall convey to a municipality tide or submerged  
9 land requested by the municipality that is occupied or suitable for occupation and  
10 development if the

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

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

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

5 (4) land

6 (A) is required for the accomplishment of a public or private  
7 development approved by the municipality;

8 (B) is the subject of a lease from the state to the municipality; or

9 (C) has been approved for lease to the municipality.

10 (b) The commissioner may not convey land under this section that has been  
11 designated by statute unless the commissioner determines that the proposed use is  
12 consistent or compatible with the purpose of the statutory designation. If land designated  
13 by statute is conveyed, uses of the land after conveyance are restricted to those uses  
14 determined by the commissioner to be consistent or compatible with the purpose of the  
15 designation.

16 (c) Upon receipt of an application, the commissioner shall determine whether the  
17 requested conveyance meets the requirements of this section and issue a written decision  
18 regarding that determination. Upon a determination that the requirements have been met,  
19 the commissioner shall approve the conveyance of the land to the municipality. After  
20 conveyance to the municipality is approved, the municipality has management authority  
21 of the land and may convey the land by lease or sale. The cost of the survey and all  
22 subdivision or other platting required for conveyance shall be borne by the municipality.

23 (d) A conveyance under this section may contain only those restrictions required  
24 by law, including AS 38.05.127 and (b) of this section. Land conveyed is subject to the  
25 public trust doctrine that may be enforced by the state in a court of competent  
26 jurisdiction. The municipality shall be required to ensure that reasonable access to public  
27 waters is provided. Title to land conveyed under this section that is retained by the  
28 municipality reverts to the state upon the dissolution of the municipality.

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

1

\* Sec. 2. This Act takes effect immediately under AS 01.10.070(c).

F A X T R A N S M I S S I O N  
to follow

From: Senator John Torgerson, Alaska State Legislature  
Phone: (907) 465-2828 Fax: (907) 465-4779

To: Legis Services FAX#: 2029

Attn: \_\_\_\_\_

Date: 2-20-96 Pages, including this cover sheet: 2

Memoranda: RE SENATE BILL 56 9-151516 A

SENATE COMMUNITY & REGIONAL AFFAIRS COMMITTEE PASSED  
OUT SB 56 WITH ATTACHED AMENDMENT TO  
BE INCORPORATED INTO CS (CRA) WITH THE  
ADDITION OF AN IMMEDIATE EFFECTIVE DATE  
AND TITLE CHANGE.

CS CAN BE DELIVERED TO CAP ROOM 427 -  
ATTENTION: SANDY

Telephone Contact: 465-4987 SANDY X

# FISCAL NOTE

STATE OF ALASKA  
1995 LEGISLATIVE SESSION

BILL NO. SB56

Revision Date: Original Dept Affected: Natural Resources  
 Title: An Act relating to rights in certain BRU: Resource Development  
tides and submerged land Component: Information Resource Management  
 Sponsor: Senator Leman  
 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						
<b>TOTAL OPERATING</b>	<b>6.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
<b>CAPITAL EXPENDITURES</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
<b>CHANGE IN REVENUES (1005)</b>						

FUND SOURCE		(Thousands of Dollars)				
1002 Federal Receipts						
1003 GF Match						
1004 GF	6.0					
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	<b>6.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY95) cost: \$ None

POSITIONS		FY96	FY97	FY98	FY99	FY00	FY01
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: Nico Bus, Acting Director Phone: 465-2406  
 Division: Support Services Date: 6-Feb-95  
 Approved by Commissioner: Nico Bus, for M. Rutherford, Act. Comm. Date: 2/6/95  
 Agency: Natural Resources

# FISCAL NOTE

Revision Date: 2/1 January 31, 1995 Dept. Affected: Community & Regional Affairs  
 Title: An Act relating to rights in certain tide and submerged land. BRU: none  
 Component: none  
 Sponsor: Senator Leman  
 Requestor: Senator Leman 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						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
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REVENUE FUND SOURCE:						
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FUNDING: (Thousands of Dollars)

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

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: *2/21/95*

Approved by Commissioner: *Mila M. ...* Date: *2/21/95*

Agency: Community & Regional Affairs

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# FISCAL NOTE

STATE OF ALASKA

BILL NO. SB56

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: Senator Leman  
 Requestor: \_\_\_\_\_ Component Serial No. 431

Expenditures/Revenues		(Thousands of Dollars)					
OPERATING EXPENDITURES	FY96	FY97	FY98	FY99	1-Y00	FY01	
PERSONAL SERVICES							
TRAVEL							
CONTRACTUAL							
SUPPLIES							
EQUIPMENT							
LAND & STRUCTURES							
GRANTS, CLAIMS							
MISCELLANEOUS							
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	

<b>CAPITAL EXPENDITURES</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
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<b>CHANGE IN REVENUES (1005)</b>	<b>(50.0)</b>	<b>(50.0)</b>	<b>(50.0)</b>	<b>(50.0)</b>	<b>(50.0)</b>	<b>(50.0)</b>
----------------------------------	---------------	---------------	---------------	---------------	---------------	---------------

FUND SOURCE		(Thousands of Dollars)					
1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1006 GF/MHTIA							
Other							
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	

Estimate of any current year (FY95) cost: \$ None

POSITIONS		(Thousands of Dollars)					
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 1964 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.

See attached proposed amendments.

Prepared by: Ron Swanson, Director Phone: 762-2692  
 Division: Land Date: 2-Feb-95  
 Approved by Commissioner: [Signature] Date: 2-5-95  
 Agency: Natural Resources

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FISCAL NOTE ATTACHMENT - PAGE 2 - SB56  
Amendments Proposed

While we support the bill in concept, the changes suggested below would better protect the public interest.

The first change is the addition of the following to Section 1(a):

Unless the commissioner finds that the public interest in retaining state ownership of the land clearly outweighs the municipality's interest in obtaining the land, the commissioner shall convey to a municipality tide or submerged land requested by the municipality that is occupied or suitable for occupation and development if the...

This addition (which is already contained in HB20) will give the commissioner discretion to reject municipal selections in areas outside of legislatively designated areas which section (b) of this bill allows. This will rarely be needed and only when the greater public interest is at stake.

As example, the City of Valdez selected the entire Anderson Bay proposed Trans-Alaska Gas Pipeline terminal facility. Three years ago, for a variety of reasons, the department rejected the selections as not being in the greater public interest. Under SB56, we would not have this discretion.

The second change would be the deletions of the phrase "or sale" from page 2, line 18. Tidelands, shorelands, 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 sale, may by its use 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 tide, shore, or submerged land. They have all found that short or long term leases (up to 55 years) provide the protection needed and allow the stipulations to be changed at periodic intervals.

As a side note, I find it somewhat ironic, except for 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 side boards or restrictions.



RECEIVED

FEB 01 1995

Ans'd.....

# Alaska State Legislature

Session:  
State Capitol  
Juneau AK 99801-1182

Interim:  
716 W 4th Avenue  
Anchorage AK 99501-2133

## MEMORANDUM

**To:** Senator John Torgerson, Chairman  
Senate Community and Regional Affairs

**From:** Senator Loren Leman, Sponsor

**Date:** January 30, 1994

**Re:** SB 56 - Hearing Request

A handwritten signature in cursive script that reads "Loren Leman".

---

I respectfully request that you schedule Senate Bill 56 for a hearing at your earliest convenience. SB 56 pertains to Title 38 of the Alaska Statutes which fails to recognize second class cities' and municipalities' eligibility 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. SB 56 allows all municipalities, Home Rule, First and Second class cities and boroughs to apply for tide and submerged land and to have them conveyed.

This bill would help correct long standing land ownership problems in various areas around the state. It also gives a greater measure of self-sufficiency to local governments and promotes economic development at the local level.

Thank You for your consideration.

## Sponsor Statement

### SB 56

Current state statutes are working against second class cities and municipalities incorporated after April 1, 1964. To promote self sufficiency and economic development at the local level I am proposing to change current state statute Title 38.

Title 38 of Alaska Statutes fails to recognize second class cities' and municipalities' eligibility 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 municipalities at a disadvantage as they pursue economic development along their waterfronts.

SB 56 allows 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 development.

Land conveyed under this bill is subject to the public trust doctrine. Title to land conveyed under this 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.

## Sectional Analysis of SB 56

The following is a sectional analysis of SB 56 "An act relating to rights in certain tide and submerged land."

**Section 1** amends AS 38.05 by adding a new section. Title 38 deals with "Public Lands", chapter 05 deals specifically with the "Alaska Land Act"

**Subsection (a)** sets out the four conditions that a municipality must meet before the commissioner shall convey tide or submerged land to the municipality. These are:

- (1) Lack of unreasonable interference with public access.
- (2) The municipality must have applied for land conveyance.
- (3) Land use must be compatible with the proposed use and land classification set by the municipality.
- (4) Need for the land development.

**Subsection (b)** states that land designated by the legislature may not be conveyed unless the conveyance 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 convey the land to the municipality. This subsection also states that after approval by the commissioner, a municipality has responsibility of management and the right to lease or sell the land.

**Subsection (d)** limits the restrictions that the state can put on the land conveyed under this section and requires reasonable public access to public water. Any land that has been conveyed under this section reverts back to the state upon the dissolution of the municipality.

**Subsection (e)** states that land transferred under this section does not count against a municipality's general land grant.

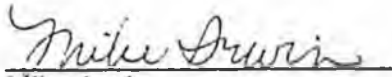
STATE OF ALASKA  
DEPARTMENT OF COMMUNITY  
& REGIONAL AFFAIRS


POSITION PAPER

Bill no.: SB 56  
Sponsor: Senator Leman  
DCRA FN: Zero (submitted)  
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 conveyence 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



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

February 3, 1995

TO: Senator Loren Leman

FROM: *Kevin C. Ritchie*  
Kevin C. Ritchie  
Executive Director

RE: SB 56 - Rights in certain tide and submerged land

The Alaska Municipal League supports SB 56, 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 SB 56.

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

**Support:**

## **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, creates 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

# ALEUTIANS EAST BOROUGH

SERVING THE COMMUNITIES OF

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

February 7, 1995

Senator Loren Leman  
Room 113  
State Capitol  
Juneau, AK 99801-1182

RE: Senate Bill 56

Dear Senator Leman:

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 15% 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 tideland's 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:amn

Enclosures as Indicated

cc: Annette Kreitzer

CLERK/PLANNER  
P.O. BOX 349  
SAND POINT, ALASKA 99681  
(907) 383-2800  
(907) 383-3488 FAX

BOROUGH ADMINISTRATOR  
1600 A STREET, SUITE 103  
ANCHORAGE, ALASKA 99501-5145  
(607) 274-7555  
(907) 274-7580 FAX

FINANCE DIRECTOR  
P.O. BOX 49  
KING COVE, ALASKA 99612  
(907) 497-2588  
(907) 497-2388 FAX

Support:

## 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 224645, 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

02/01/95Page 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:



## Alaska Environmental Lobby, Inc.

P.O. Box 22151 Juneau, Alaska 99802

Phone: 907-463-3366

Fax: 907-463-3312

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### SB 56 Tide and Submerged Land

The Alaska Environmental Lobby supports efforts to allow local governments to be responsible for the development and protection of their lands.

However, SB 56 contains a grievous error. This bill neglects to supply recourse to the state; in this case represented by the Commissioner of DNR, for decisions which must be made in the best interest of the state and the public.

Certainly there are many concerns where the interests of the municipality are parallel to those of the state. But, the state needs to be assured that plans, for tide and submerged lands, are and will continued to be made with the best interests of **all** concerned. If there are conflicting use plans for state land that a municipality requests, there **must** be statutory certainty that the state will be able to review the public interest and retain state ownership of the land, if the best interest of the state clearly outweighs the municipalities interest in obtaining the land.

Without this provision the potential for conflicts and abuse, in obtaining and developing valuable tide and submerged lands, is great.

CS (CRA) for Senate Bill 56

To Page 1, line 5:

Begin first sentence in subsection (a) with the following new language:

"Unless the commissioner finds that the public interest in retaining state ownership of the land clearly outweighs the municipality's interest in obtaining the land, the commissioner shall convey....."

To Page 2:

Add new Section 2. - immediate effective date clause

Change title accordingly

sgn for Senator Torgerson  
2-20-95

COMPARISON TYPE BILL HB 20 BY MOSES  
SIMILAR LANGUAGE  
2-2-5 HEARING CRA IN HOUSE

9-LS0516A

**SENATE BILL NO. 56**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**NINETEENTH LEGISLATURE - FIRST SESSION**

**BY SENATOR LEMAN**

Introduced: 1/27/95  
Referred: CRA, RES

**A BILL**

**FOR AN ACT ENTITLED**

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

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

3 \* Section 1. AS 38.05 is amended by adding a new section to read:

4 Sec. 38.05.825. CONVEYANCE OF TIDE AND SUBMERGED LAND TO  
5 MUNICIPALITIES. (a) The commissioner shall convey to a municipality tide or  
6 submerged land requested by the municipality that is occupied or suitable for occupation  
7 and development if the

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

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

12 (3) land is classified for waterfront development or for another use that  
13 is consistent or compatible with the use proposed by the municipality, or the proposed use  
14 of the land is consistent or compatible with a land use plan adopted by the municipality,

1 the department, or the Alaska Coastal Policy Council; and

2 (4) land

3 (A) is required for the accomplishment of a public or private  
4 development approved by the municipality;

5 (B) is the subject of a lease from the state to the municipality; or

6 (C) has been approved for lease to the municipality.

7 (b) The commissioner may not convey land under this section that has been  
8 designated by statute unless the commissioner determines that the proposed use is  
9 consistent or compatible with the purpose of the statutory designation. If land designated  
10 by statute is conveyed, uses of the land after conveyance are restricted to those uses  
11 determined by the commissioner to be consistent or compatible with the purpose of the  
12 designation.

13 (c) Upon receipt of an application, the commissioner shall determine whether the  
14 requested conveyance meets the requirements of this section and issue a written decision  
15 regarding that determination. Upon a determination that the requirements have been met,  
16 the commissioner shall approve the conveyance of the land to the municipality. After  
17 conveyance to the municipality is approved, the municipality has management authority  
18 of the land and may convey the land by lease or sale. The cost of the survey and all  
19 subdivision or other platting required for conveyance shall be borne by the municipality.

20 (d) A conveyance under this section may contain only those restrictions required  
21 by law, including AS 38.05.127 and (b) of this section. Land conveyed is subject to the  
22 public trust doctrine that may be enforced by the state in a court of competent  
23 jurisdiction. The municipality shall be required to ensure that reasonable access to public  
24 waters is provided. Title to land conveyed under this section that is retained by the  
25 municipality reverts to the state upon the dissolution of the municipality.

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

**HOUSE BILL NO. 20**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**NINETEENTH LEGISLATURE - FIRST SESSION**

**BY REPRESENTATIVE MOSES**

**Introduced: 1/16/95**

**Referred: Community and Regional Affairs, Resources, Finance**

**A BILL**

**FOR AN ACT ENTITLED**

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

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

3 **\* Section 1. AS 38.05 is amended by adding a new section to read:**

4           **Sec. 38.05.825. CONVEYANCE OF TIDE AND SUBMERGED LAND TO**  
5 **MUNICIPALITIES. (a) Unless the commissioner finds that the public interest in**  
6 **retaining state ownership of the land clearly outweighs the municipality's interest in**  
7 **obtaining the land, the commissioner shall convey to a municipality tide or submerged**  
8 **land requested by the municipality that is occupied or suitable for occupation and**  
9 **development if the**

10                   **(1) use of the land would not unreasonably interfere with navigation**  
11 **or public access;**

12                   **(2) municipality has applied to the commissioner for conveyance of the**  
13 **land under this section;**

14                   **(3) land is classified for waterfront development or for another use that**  
15 **is consistent or compatible with the use proposed by the municipality, or the proposed**

1 use of the land is consistent or compatible with a land use plan adopted by the  
2 municipality, the department, or the Alaska Coastal Policy Council; and

3 (4) land

4 (A) is required for the accomplishment of a public or private  
5 development approved by the municipality;

6 (B) is the subject of a lease from the state to the municipality;  
7 or

8 (C) has been approved for lease to the municipality.

9 (b) The commissioner may not convey land under this section that has been  
10 designated by statute unless the commissioner determines that the proposed use is  
11 consistent or compatible with the purpose of the statutory designation. If land  
12 designated by statute is conveyed, uses of the land after conveyance are restricted to  
13 those uses determined by the commissioner to be consistent or compatible with the  
14 purpose of the designation.

15 (c) Upon receipt of an application, the commissioner shall determine whether  
16 the requested conveyance meets the requirements of this section and issue a written  
17 decision regarding that determination. Upon a determination that the requirements  
18 have been met, the commissioner shall approve the conveyance of the land to the  
19 municipality. After conveyance to the municipality is approved, the municipality has  
20 management authority of the land and may convey the land by lease or sale. The cost  
21 of the survey and all subdivision or other platting required for conveyance shall be  
22 borne by the municipality.

23 (d) A conveyance under this section may contain only those restrictions  
24 required by law, including AS 38.05.127 and (b) of this section. Land conveyed is  
25 subject to the public trust doctrine that may be enforced by the state in a court of  
26 competent jurisdiction. The municipality shall be required to ensure that reasonable  
27 access to public waters is provided. Title to land conveyed under this section that is  
28 retained by the municipality reverts to the state upon the dissolution of the  
29 municipality.

30 (e) This section does not enlarge or diminish the general grant land entitlement  
31 of a municipality under AS 29.65, nor is a conveyance under this section counted

1

against the municipality's general grant land entitlement.

# FISCAL NOTE

No. 1  
 Bill Version: HB 20  
 (H) Publish Date: 2/3/95

**STATE OF ALASKA**  
**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: Information Resource Management  
 Sponsor: Representatives Moses, Kubina  
 Requestor: \_\_\_\_\_ Component Serial No. 427

Expenditures/Revenues	(Thousands of Dollars)					
	FY96	FY97	FY98	FY99	FY00	FY01
<b>OPERATING EXPENDITURES</b>						
PERSONAL SERVICES	6.0					
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	6.0	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 (1005)</b>						

FUND SOURCE	(Thousands of Dollars)					
	FY96	FY97	FY98	FY99	FY00	FY01
1002 Federal Receipts						
1003 GF Match						
1004 GF	6.0					
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	6.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY95) cost: \$ None

POSITIONS	FY96	FY97	FY98	FY99	FY00	FY01
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: [Signature] Date: 1/26/95  
 Agency: Natural Resources

# FISCAL NOTE

No. 2  
 Bill Version: HB 20  
 (H) Publish Date: 2/3/95

**STATE OF ALASKA**  
**1995 LEGISLATIVE SESSION**

Division 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						
<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 (1005)</b>	(50.0)	(50.0)	(50.0)	(50.0)	(50.0)	(50.0)

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 (FY95) cost: \$ None

POSITIONS	FY96	FY97	FY98	FY99	FY00	FY01
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 boulderlands 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

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# 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  
 Sponsor: Representative Moses Component: none  
 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						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
<b>CAPITAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

REVENUE FUND SOURCE:

--	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

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

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: 485-4708  
 Division: Division of Administrative Services Date: 1/24/95  
 Approved by Commissioner: *Shirley Brown* Date: (1/24/95)  
 Agency: Community & Regional Affairs

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9-LS0118C

HOUSE BILL NO. 20

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE MOSES

Introduced: 1/16/95

Referred: Community and Regional Affairs, Resources, Finance

A BILL

FOR AN ACT ENTITLED

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

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

3 \* Section 1. AS 38.05 is amended by adding a new section to read:

4 Sec. 38.05.825. CONVEYANCE OF TIDE AND SUBMERGED LAND TO  
5 MUNICIPALITIES. (a) Unless the commissioner finds that the public interest in  
6 retaining state ownership of the land clearly outweighs the municipality's interest in  
7 obtaining the land, the commissioner shall convey to a municipality tide or submerged  
8 land requested by the municipality that is occupied or suitable for occupation and  
9 development if the

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

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

14 (3) land is classified for waterfront development or for another use that  
15 is consistent or compatible with the use proposed by the municipality, or the proposed

1 use of the land is consistent or compatible with a land use plan adopted by the  
2 municipality, the department, or the Alaska Coastal Policy Council; and

3 (4) land

4 (A) is required for the accomplishment of a public or private  
5 development approved by the municipality;

6 (B) is the subject of a lease from the state to the municipality;  
7 or

8 (C) has been approved for lease to the municipality.

9 (b) The commissioner may not convey land under this section that has been  
10 designated by statute unless the commissioner determines<sup>\*</sup>that the proposed use is  
11 consistent or compatible with the purpose of the statutory designation. If land  
12 designated by statute is conveyed, uses of the land after conveyance are restricted to  
13 those uses determined by the commissioner to be consistent or compatible with the  
14 purpose of the designation.

15 (c) Upon receipt of an application, the commissioner shall determine whether  
16 the requested conveyance meets the requirements of this section and issue a written  
17 decision regarding that determination. Upon a determination that the requirements  
18 have been met, the commissioner shall approve the conveyance of the land to the  
19 municipality. After conveyance to the municipality is approved, the municipality has  
20 management authority of the land and may convey the land by lease or sale. The cost  
21 of the survey and all subdivision or other plating required for conveyance shall be  
22 borne by the municipality.

23 (d) A conveyance under this section may contain only those restrictions  
24 required by law, including AS 38.05.127 and (b) of this section. Land conveyed is  
25 subject to the public trust doctrine that may be enforced by the state in a court of  
26 competent jurisdiction. The municipality shall be required to ensure that reasonable  
27 access to public waters is provided. Title to land conveyed under this section that is  
28 retained by the municipality reverts to the state upon the dissolution of the  
29 municipality.

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

# 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 99901-1132  
PHONE (907) 465-4451  
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PHONE (907) 258-8167  
FAX (907) 258-8468

## 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.

H C + RA

2/2/75

**Aleutians East Borough legal counsel:** Bill will greatly streamline transfer of DNR lands to municipalities.

**Ron Swanson, DNR:** Suggested deleting clause "or sale" from page 2 line 20, because he felt that land leased, rather than sold, by municipalities would be easier for the state to reclaim under public trust provisions. Swanson also reasserted that a municipality must specify a purpose for wanting the tideland in their application.

**City Manager from Sitka** (didn't catch name) called in with his support for the bill.

**William Hunter, the Bethel City Manager,** called in with his support for the bill.

**The Sand Point City Administrator** called in with his support for the bill.

**Jim Burnett, the City of Whittier's legal counsel,** explained the city's desire to ensure its access to the waterfront. He suggested adding ". . . relating to rights OF MUNICIPALITIES in certain. . ." to the title to make it more specific. He then pointed out, in response to Swanson's concerns, that on page 2, lines 24-26, it specifically affirms that lands conveyed under this act would still be fully subject to the state's Public Trust doctrine.

**Richard Wilson, the City Manager from St. George,** testified that this bill would make it much easier for his city to diversify its economy, by removing red tape and streamlining the conveyance process. He suggested that local governments are as capable of administering these lands responsibly as is the State.

**Gary Williams, the Whittier City Manager,** talked about how vital managing waterfront lands is to the city, since it is expecting a new road and "a quarter of a million" tourists along with it.

**Rep. Carl Moses, sponsor,** testified in favor of keeping the "or sale" clause in p2 ln20.

**Rep. Austerman** moved to pass the bill out of C&RA and into Resources, w/fiscal note attached. Passed unanimously.

SENATE BILL 56  
(Leman)

Rights in Certain Tide and Submerged Lands  
In: 1/27/95 Out:  
Further referral: Resources  
Request for hearing: 1/30  
Hearing date: 2/20 (rescheduled from 2/15)

Remarks: Companion bill with similar language introduced in House this Session (House Bill 20 - Moses)  
Passed out of House CRA 1DP/3NR  
Further referrals to Resources and Finance  
Passed out of House Resources 2DP/4NR with title amendment after "submerged land" add "to municipalities"  
No House Finance hearing scheduled to date

Similar language contained in legislation during last session (House Bill 398 - Olberg)  
Introduced 1994  
Passed House 37-0  
SCS CRA out of committee with 1DP/2NR 0 fiscal note  
Senate Resources recommended CRA CS 4DP  
Died in Senate Rules

NOTES FOR HEARING:

FOLLOWING HAVE REQUESTED TO OFFER TESTIMONY FROM OUT OF TOWN:

BOB JUETTNER (Administrator, Aleutians East Borough) Off net - Anch  
JOHN BAKER (Attorney General's Office at request of Department of Natural Resources) Off net - Anchorage

\*AMENDMENT BEING PROPOSED BY DEPARTMENT OF NATURAL RESOURCES

SPONSOR OPPOSED TO AMENDMENT - SUGGEST DEPT. PROPOSE IN RESOURCES COMMITTEE

VOTING HISTORY ON HB 398 FROM LAST SESSION

Final passage in House:

\*Hoffman excused day of passage

Committee reports:

1DP/2NR on Senate Community & Regional Affairs CS

\*Phillips signed 'no rec'

4DP on Senate Resources CS

\*Present CRA committee members

**HB 9****HOUSE BILL NO. 9**

"An Act relating to recovery of damages from a minor's parent or legal guardian when property is destroyed by the minor."

and recommends it be replaced with:

**CS FOR HOUSE BILL NO. 9(FIN)**

"An Act relating to recovery of damages from a person having legal custody of a minor when property is destroyed by the minor, and to recovery from a minor's permanent fund dividend for injury or damage caused by the minor."

The report was signed by Representative Hanley, Co-chair, with the following individual recommendations:

Do pass (8): Hanley, Mulder, Parnell, Kohring, Grussendorf, Navarre, Kelly, Therriault

No recommendation (1): Brown

The following fiscal notes apply to CSHB 9(FIN):

Indeterminate fiscal note, Alaska Court System, 2/13/95

Zero fiscal note, Dept. of Administration, 2/13/95

Zero fiscal note, Dept. of Law, 1/30/95

Zero fiscal notes (2), Dept. of Administration, 1/30/95

Zero fiscal notes (2), Dept. of Health & Social Services, 1/30/95

HB 9 was referred to the Rules Committee for placement on the calendar.

**HB 20**

The Resources Committee has considered:

**HOUSE BILL NO. 20**

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

and recommends the following title amendment:

**HB 20**

Page 1, line 1, after "submerged land":

Add "to municipalities"

The report was signed by Representative Green, Co-chair, with the following individual recommendations:

Do pass (2): Williams, Ogan

No recommendation (4): Nicholia, Barnes, Austerman, Green

The following fiscal notes apply:

Fiscal notes (2), Dept. of Natural Resources, 2/3/95

Zero fiscal note, Dept. of Community & Regional Affairs, 2/3/95

HB 20 was referred to the Finance Committee.

**HB 32**

The State Affairs Committee has considered:

**HOUSE BILL NO. 32**

"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."

and recommends it be replaced with:

**CS FOR HOUSE BILL NO. 32(STA)**  
(same title)

The report was signed by Representative James, Chair, with the following individual recommendations:

Do pass (5): James, Porter, Green, Robinson, Ogan

No recommendation (2): Ivan, Willis

The following fiscal note applies to CSHB 32(STA):

Fiscal note, Dept. of Revenue, 2/13/95

Continued from Page A-1

# YOUNG: Congressman wants to give federal properties to the states

part of four Democrats as well. The 22-10 vote was a strong signal that Young will continue to have his way on future attempts to transfer land.

The National Taxpayers Union, a defender of federal taxpayer interests, doesn't see that as inspiring news.

In tough budgetary times, the federal government ought to be getting its money's worth for selling off federal assets."

union spokesman Pete Sepp said, "We're all for selling off federal assets. But if a hatchery is valuable to someone, they should be willing to pay a fair price for it."

Hatchery manager Bruce Strunk said in a telephone interview that he is delighted by the committee action. Strunk works for the state of Iowa, which has been operating the hatchery since 1973 at no cost to the federal government.

According to Strunk, Iowa needs title to the hatchery and its surrounding 60 acres of federal land to arrange financing for improvements. He said the state has been trying for nearly a decade to get the property, but its efforts have been thwarted by "bureaucratic red tape."

While the federal government last valued the property at \$717,000 in 1983, Strunk said it could be worth a lot more if zoning for the site were

changed from agricultural to industrial.

Part of the property is on the main channel of the Mississippi, which Strunk said makes it an ideal site for a factory or barge terminal.

"It could be valuable," Strunk said of the hatchery, which produces about a million bass and blue gill fingerlings each year for Iowa sport fishermen.

"You don't just want the federal government giving away property," Strunk said. "But how much of a

difference would that make in comparison to the good this does for Iowa?"

Most members on Young's committee couldn't agree more.

Rep. Jim Saxton, R-NJ, said the hatchery giveaway advances the cause of federal "partnerships with the states."

Rep. Gerry Studds, D-Mass., noted that fish won't care who owns the property.

And freshman Rep. Linda Smith, R-Wash., said all the quibbling about federal

of state ownership is meaningless anyway because it still is "the people's own it."

After approving a bill authorizing the Fairport hatchery transfer, Young's committee authorized two more — the Corning National Fish Hatchery to the state of Arkansas and the New London National Fish Hatchery to the state of Minnesota.

The committee action clears these bills for consideration on the House floor.

## Young: Give it to states

### Alaskan wants feds to shed properties

By DAVID WHITNEY  
Daily News reporter

WASHINGTON — Rep. Don Young's House Resources Committee voted Wednesday to give away a federal fish hatchery on the banks of the Mississippi River to the state of Iowa.

Young said there will be a lot more of this while he is chairman of the committee that oversees hundreds of millions of acres of federal property, including national parks and wildlife refuges and about a dozen more fish hatcheries that states are angling to get for free.

"We're going to do a lot of transferring of federal responsibilities over to the states," Young said. "The states have a better handle on what's occurring."

But the panel's ranking Democrat, California Rep. George Miller, complained that it's an unbridled raid on the federal treasury during an era of unrelenting attacks on federal mandates and runaway budget deficits.

Instead of giving away federal property, Miller said federal taxpayers should be paid for their investments. Miller said the Fairport National Fish Hatchery near Davenport is worth more than \$700,000.

"This is a question of priorities," Miller said.

"It's not a major item but it's one on a long continuum that has led people to believe that perhaps the federal government doesn't have its priorities right," he said. "It's all these little acts that add up to the red ink that we're so roundly criticized for on a daily basis."

Miller's argument was unanimously rejected by committee Republicans, and he failed to win sup-

\$6916 net

# YOUNG: Congressman wants to give federal properties to the states

Continued from Page A-1

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SB 56  
by DNR

DEPT MAY OFFER  
AS AMENDMENT  
SPONSOR OPPOSED  
TO IT

Senate C&RA  
2/15/95

While we support the bill in concept, the changes suggested below would better protect the public interest.

→ The first change is the addition of the following to Section 1(a):

Am# 1  
Unless the commissioner finds that the public interest in retaining state ownership of the land clearly outweighs the municipality's interest in obtaining the land the commissioner shall convey to a municipality tide or submerged land requested by the municipality that is occupied or suitable for occupation and development if the...

This addition (which is already contained in HB20) will give the commissioner discretion to reject municipal selections in areas outside of legislatively designated areas which section (b) of this bill allows. This will rarely be needed and only when the greater public interest is at stake.

As example, the City of Valdez selected the entire Anderson Bay proposed Trans-Alaska Gas Pipeline terminal facility. Three years ago, for a variety of reasons, the department rejected the selections as not being in the greater public interest. Under Sb56, we would not have this discretion.

→ The second change would be the deletions of the phrase "or sale" from page 2, line 18. Tidelands, shorelands, 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 sale, may by its use 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 tide, or submerged land. They have all found that short or long term leases (up to 55 years) provide the protection needed and allow the stipulations to be changed at periodic intervals.

Like other western states the DNR is prohibited by law from conveying tide, shore, or submerged lands to private individuals. This proposed legislation, however, would allow local municipalities to sell tidelands without any side boards or restrictions.

PER: Nico Bus