# SB 286

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# SENATOR JERRY MACKIE

## ALASKA STATE LEGISLATURE

SPONSOR STATEMENT

SB 286, Adverse Possession of Real Property

I introduced SB 286 to bring attention to the state's current laws governing the adverse possession of a private property and its suitability to land ownership in the state and to modern advances in the location, description, and recording of private lands. The legislation addresses two conditions of adverse possession. The first is the "squatter" situation where a person knowingly and with intent occupies another persons property. After ten years of use, the occupant can claim ownership by adverse possession under current law. In addition there is no compensation to the real owner for his or her loss.

In the second instance, the person's occupancy of the property is under a good faith belief that they have clear title or other documentation establishing their ownership. This instance also includes the adjacent property owner who mistakenly locates on neighboring land. In each situation, the property can be claimed after seven years of adverse possession.

Much of the private land in the state is now located in remote, wilderness areas of the state because of the ANCSA settlements and other properties associated with historical mining activities. Because of their remoteness these properties are more subject to inattention by their owners and therefore susceptible to adverse possession. SB 286 proposes to eliminate any adverse possession claim by a person who knowingly and intentionally occupies land they do not own. When the occupancy is inadvertent, the legislation increases the standards for adverse possession. In this later case, the original owner must be compensated.

# FISCAL NOTE

**STATE OF ALASKA**
**1998 LEGISLATIVE SESSION**

**BILL NO.** SB 286

Revision Date (Note if correction) _____ Dept. Affected Law

Title An Act relating to actions to quiet title to, eject a person from, or recover real property or the possession of it ... BRU Civil Division

Component Natural Resources

Sponsor Senator Mackie

Requester Senate Resources Committee Component Serial No. 2212

**Expenditures/Revenues** (Thousands of Dollars)

| OPERATING EXPENDITURES | FY 99 | FY 00 | FY 01 | FY 02 | FY 03 | FY 04 |
|---|---|---|---|---|---|---|
| Personal Services | | | | | | |
| Travel | | | | | | |
| Contractual | | | | | | |
| Supplies | | | | | | |
| Equipment | | | | | | |
| Land & Structures | | | | | | |
| Grants & Claims | | | | | | |
| Miscellaneous | | | | | | |
| TOTAL OPERATING | ********** | ********** | ********** | ********** | ********** | ********** |
| CAPITAL EXPENDITURES | | | | | | |
| CHANGE IN REVENUES ( ) | | | | | | |

**FUND SOURCE** (Thousands of Dollars)

| | | | | | | |
|---|---|---|---|---|---|---|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | | | | | | |
| 1005 GF/Program Receipts | | | | | | |
| 1037 GF/Mental Health | | | | | | |
| Other (Specify Type) | | | | | | |
| TOTAL | ********** | ********** | ********** | ********** | ********** | ********** |

**Estimate of any current year (FY98) cost:** _____

**POSITIONS**

| | | | | | | |
|---|---|---|---|---|---|---|
| Full-time | | | | | | |
| Part-time | | | | | | |
| Temporary | | | | | | |

**ANALYSIS:** *(Attach a separate page if necessary)*

SB 286 would repeal the statute of limitations for quiet title actions claiming title through a recorded doument, and extend the statute limitations for adverse possession (no color of title) from 7 to 20 years. Adverse possession claims against the state would still be prohibited, so the latter change will have no fiscal impact on the Department of Law. However, the potential for quiet title claims, with no statute of limitations on how soon they must be filed, increases. This will result in more litigation, as many claims now subject to the statute of limitations, would remain alive. The department cannot quantify how much new litigation would result, and must submit an indeterminate fiscal note.

Prepared by Joan M Kasson Phone 465-5370

Division Attorney General's Office Date 2/13/98

Approved by Commissioner Bruce M Botelho, Attorney General Date 2/13/98

Agency Department of Law

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SB 286

# *Legislation to Limit the Circumstances Under Which A Person May Divest a Landowner of Title to Its Land Under the Doctrine of Adverse Possession:*

## *A Rationale and Section-by-Section Analysis*

### *I. Rationale*

#### *A. Overview of the Legislation*

"Adverse possession" is the doctrine under which a person--even a squatter acting in bad faith--can take another person's property without compensation by simply possessing it, in an open and hostile way, for a certain period of years. It is a doctrine born in the Middle Ages under circumstances that have little applicability to 20th Century Alaska, and it offends Alaska's abiding respect for private property ownership.

The enclosed legislation would limit the availability of this doctrine to two narrow circumstances where the rule may have some arguable policy justification: (1) where a person has, in good faith, occupied property under color of title for 20 years; and (2) where a property owner occupies property adjacent to his own land under a reasonable, good-faith error over the actual boundaries of his property.

In both instances, the adverse possessor would be required to pay the property's legal owner both full market value for the property taken, as well as any consequential damages.

Beyond these two limited circumstances, "adverse possession" is a doctrine inimical to the concept of private property ownership. And it imposes a particularly harsh burden on private landowners in Alaska who, because of the doctrine, are often

charged with the impossible task of policing large remote landholdings to assure themselves that no squatter has taken residence.

That burden is an economic waste, and serves no valid public policy. As a result, beyond the limited circumstances mentioned, the concept of taking another's land by "adverse possession" ought to be abolished in Alaska.

### *B. The Origins and Purpose of the "Adverse Possession" Doctrine*

#### *1. The Doctrine's Original Rationale--Possession was Equated with Ownership*

"Adverse possession" is a doctrine that rewards possession of land at the expense of the landowner. Not surprisingly, then, the doctrine has its roots in the feudal concept of "seizin." In the early Middle Ages, "ownership" of land was proven not by title or deed, but rather by actual possession. If a person was forcefully expelled from his property, the trespasser became the land's new "owner," and the dispossessed person could regain "ownership" only by himself resorting to force. [1]/

Gradually, the dispossessed "owner" was given a legal remedy to regain possession--a remedy which, by virtue of a statute issued under Henry VIII, must be exercised within 60 years of dispossession. Thus was borne the thought that a person could recover his land from an "adverse possessor," but only if he acted within a specific period of time. [2]/

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[1] / 5 George W. Thompson, *Commentaries on the Modern Law of Real Property* (1979) ("*Commentaries*") at 573-76.

[2] / *Commentaries, supra* at 574-76. Actually, "adverse possession" rules can be traced further back, to the Code of Hammurabi, which provided, in part, that:

> *If a captain or a soldier has neglected his field, his garden and his house, instead of working them; and another takes his field, his garden and his house, and works them for three years;*

Remember, though, that in those days possession--or "seizin"--*was* title. Therefore, by giving the "adverse possessor"--or "disseizor"--the opportunity to bar the person he dispossessed from reclaiming his property after 60 years, feudal courts were, in their minds, doing no injustice to the prior occupant, since that occupant had lost the basis for his claim of "ownership" when he was forceably dispossessed.

### *2. A New Rationale--Possession was the Best Proof of Ownership*

Gradually, English common law came to recognize the concept of conveying and holding land by deed. "Title" became something different from, and superior to, mere "possession." And so the doctrine of "adverse possession" needed a new rationale.

The virtue of "seizin," of course, was that it was obvious who is "seized" of a particular piece of property--the person living on it. "Title," conversely, was the source of considerable dispute, since there then existed no reliable, centralized recording system to resolve conflicting claims of "title." As a result:

> *In an era of comparatively scarce land, decentralized records and crude surveying techniques, lengthy possession may have been the best possible proof of ownership.*

[3]/ Thus, while possession no longer equated with ownership, possession remained the best evidence of "title," and so the doctrine of adverse possession continued to serve some worthwhile purpose. "Ultimately, the 1623 Statute of Limitations required that

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> *if he returns and desires to till his field, his garden, and his house, they shall not be given to him. He that has taken and worked them shall continue to use them.*

*The Hammurabi Code and the Sinaitic Legislation* at 32-33 (Chilperic Edwards ed., 1904).

[3] / Sprankling, *An Environmental Critique of Adverse Possession*, 79 Cornell Law Rev. 816, 822 ("*Critique*") (1994).

suits to recover possession of land be brought within twenty years. The Statute recited that this limit was necessary for 'quieting men's estates, and avoiding of suits...'" [4]/

### *3. The New American Purpose--Social Engineering*

In James I's England, if a person owned land, he probably lived on it. [5]/ Even by the 16th century, there was precious little wild land in England that a person might own, but not make productive use of. [6]/

This was not true in North America, where vast tracts of wilderness might lie in private ownership. Here, the assumption that ownership was reliably proven by physical possession did not hold true:

> *Transplanted to the abundant, sparsely populated wild lands of North America, however, the assumptions of the [doctrine of adverse possession] ...failed. The terrain was too hostile, the forests too impenetrable and the distances too vast for most owners to reside upon or even to inspect their properties regularly. More importantly, possession of land in the English sense, characterized by residence, cultivation or improvement, was often impractical. The minor acts, greatly separated in time, that characterized land use in wilderness areas were unlikely to afford constructive notice to the owner who did inspect occasionally.*

*Critique, supra* at 823. "Adverse possession," then, needed a new purpose, and found one in our 19th century urge to settle the West. The modern doctrine "developed when much of the continental United States was unsurveyed wilderness," and our courts and legislatures resultantly "adopted a public policy that as much land should be put to use as

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[4] / *Critique, supra* at 823.

[5] / James I promulgated the 1623 statute just quoted.

[6] / By 1696, only 16% of England's land were uncultivated forest lands. *Critique, supra* at 822, n. 25.

possible." [7] Under the new theory of adverse possession, the squatter was to be rewarded for making use of wild land, even at the expense of the person who owned it:

> *Beginning in the nineteenth century, American courts serving the ideology of economic expansion reformulated adverse possession in the pursuit of national productivity. These courts transformed the doctrine from a mechanism designed to protect the title of the true owner against false claims into a tool designed to transfer title to wild lands from the idle true owner to the industrious adverse posessor.*

*Critique, supra* at 821 (emphasis original).

The American justification for the doctrine also took on something of a Marxist tint. Vast expanses of public lands were conveyed to large, absentee landlords--principally, the railroads. As pioneers struck west and inadvertently homesteaded then-or-future railroad land, Western state legislators, and courts, concluded that disputed land should belong to the worker rather than the absentee capitalist:

> *By 1803 more than ninety percent of the nation consisted of sparsely populated, publicly owned wild lands. The broad federal policy toward these wild lands was to transfer them into private ownership, initially through sale. Because the government had never been able to enforce its theoretical ban against squatting on these lands, sales often resulted in conflicts between new absentee owners holding legal title and actual settlers who had already placed the land in productive use.*

*Critique, supra* at 843. For this reason, the periods necessary to establish title by "adverse possession" tended to shrink as one proceeds westward--from the old 20-year English rule still prevalent in the original colonies, to as little as five years in many western states. *See Attachment A.*

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[7] / *Seddon v. Harpster*, 403 So. 2nd 409, 413 (Florida 1981).

### *C. Adverse Possession in 20th Century Alaska--A Doctrine Without a Reason*

To this day, some courts, including the Alaska Supreme Court, maintain that the doctrine of adverse possession serves a useful public purpose because "society will benefit from someone's making use of land the owner leaves idle." [8]/

One might argue that there is considerable "idle" land in Alaska's ***public*** domain. However, in Alaska as elsewhere, neither the state nor federal government can be divested of title through adverse possession. AS 09.45.052(a). And Alaska has precious little "idle" private land.

The largest private landowners in Alaska are the Native corporations established under the Alaska Native Claims Settlement Act. Those lands were conveyed both in settlement of Alaska Natives' aboriginal claims, and to meet the "real economic and social needs of Natives." ANCSA, §1. ANCSA lands, then, and every acre of them, serve an important legal, social and economic purpose. They are not, any of them, "idle" in that sense.

Congress, in fact, has recognized that fact, and has accordingly extended ANCSA lands some protection from adverse possession claims as long as they remain undeveloped. 43 U.S.C. §1636(d). But ANCSA corporations often acquire other remote lands for future resource development purposes, as will other private landowners as time goes by. To the extent that these lands are not developed, it is because development now would be an economic waste, and there is no sound public policy that should prevent a private landowner from investing those lands for future generations.

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[8] / *Tenala, Ltd. v. Fowler*, ___ P.2nd ___, Slip Op. 4376 at 16 (August 2, 1996).

The last remaining modern justification for adverse possession is that it "keep[s] stale causes out of court." *Tenala, Ltd. v. Fowler, supra* at 16. But, in fact, it does just the opposite. Adverse possession cases involve untrustworthy testimony about who possessed what 10 or 20 years ago; conversely, and "considering current methods of record storage on microfiche, computer disks and data tapes," claims based on record ownership will never grow stale. [9]

Similarly, allowing adverse possession claims promotes litigation, while limiting them discourages it. This because:

> *Bright line standards generally deter litigation...The record title standard draws an exceedingly bright line: the holder of record title always prevails. In contrast, adverse possession as applied to wild lands is an indeterminate, murky standard under which results can rarely be predicted with certainty.*

*Critique, supra* at 878. The fact of the matter, as Florida's Supreme Court observed, is that "[w]ith modern technology and computerized transactions our society is now more capable of accurately establishing legal interest to property through paper title than through possession." *Seddon v. Harpster,* 493 So.2nd at 414.

Adverse possession serves no useful public purpose in Alaska today, and it disserves others. Apart from its impact on private property ownership generally, and implementation of ANCSA in particular, "[a]dverse possession...erode[s] the effectiveness and utility of both recording and marketable title statutes by creating uncertainty." *Outlaws, supra* at 97.

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[9] / *"Outlaws of the Past: A Western Perspective on Prescription and Adverse Possession,"* 31 Land and Water Law Review 79, 104 (1996) (*"Outlaws"*).

The doctrine ought to be limited to those few situations where some equity might lie in the adverse possessor's favor, and the enclosed legislation attempts to do just that.

*II. Section-by-Section Analysis*

***Section 1.*** There are two adverse possession statutes in Alaska. The first is AS 09.10.030. This is the squatters' statute. The adverse possessor need not occupy the property under "color of title"--that is, a deed or other conveyance. And the squatter need not even occupy the property in good faith. [10]/ As one commentator puts it, this statute "gives title not only to one who because of good faith error occupies the land of another but also to a person who knowingly sought to appropriate another's land." [11]/

Under this statute, the squatter must adversely possess the property for 10 years. After that, the statute, which is framed as a statute of limitations, bars the property's owner from bringing any action against the squatter to recover his property.

Section 1 would amend this statute to provide that a landowner could recover his or her land--by a quiet title or ejectment action--at any time. [12]/ Because of computerized land records, the land owner's claim will never, as a practical matter, grow stale.

***Sections 2-3.*** There are several elements to Sections 2-3:

*1. Retaining adverse possession claims arising under "color of title."* AS 09.45.052 is Alaska's second adverse possession statute, and it deals with adverse possession that is based on "color of title." In other words, the adverse possessor has some deed or other document purporting (but for some reason failing) to convey title to

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[10] / *Hubbard v. Curtiss*, 684 P.2nd 842, 848 (Alaska 1984).
[11] / 7 Richard R. Powell, *Powell on Real Property*, ¶1012(3) (1993).
[12] / To the extent that this statute governs other types of real property claims, the 10-year statute of limitations would be retained.

the property being possessed. Unlike the statute amended by Section 1, this statute requires good faith on the part of the possessor--in other words, an honest and reasonable belief that the possessor really owns the land. *Ault v. State*, 688 P.2nd 951, 956 (Alaska 1984).

Under subsection (a)(1), Section 2 retains "color of title" as a basis for claiming property by adverse possession, but returns the required period of possession to the common law's original 20 years.

*2. Allowing adverse possession claims to be brought for good faith boundary disputes.* A second specie of adverse possession claims that may retain some public policy justification arises when a property owner, in good faith, occupies property beyond the boundaries of property owned by that person. After 20 years' notorious and adverse possession of that property, the property owner may quiet title to the adjacent property he or she has occupied.

*3. Explicitly requiring a showing of good faith.* Section 2 makes the existing court-imposed requirement of "good faith" explicit in the statute, as Oregon did in 1989. [13]/

*4. Requiring the possessor to prove entitlement to the property by "clear and convincing evidence."* Again, this requirement is already imposed by the courts. [14]/ Section 2 would make that requirement explicit.

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[13] / ORS 105.620. As our Supreme Court has noted, "in almost all of these jurisdictions, the requirement of good faith was explicitly written into the statutes." *Lott v. Muldoon Road Baptist Church, Inc.*, 466 P.2nd 815, 818, n. 9 (Alaska 1970). The "good faith" requirement will exist whether or not this legislation is enacted; however, it is better practice for the material elements of any claim to be expressed in the statute itself.

[14] / *Curran v. Mount*, 657 P.2nd 389, 391 (Alaska 1982).

*5. Requiring just compensation to the property owner.* It is one thing to allow a person to take the private property of another. It is quite another to allow the adverse possessor to do so without paying the owner, and none of the modern justifications for the doctrine of adverse possession explain the squatter's current ability to deprive property owners of land ***without compensation***.

Section 3 requires the successful adverse possessor, as a condition of receiving title to the property, to: (1) pay for an appraisal of the property; (2) pay the record owner the appraised value of the property taken; and (3) pay any other damages that the owner may have suffered as a result of the adverse possession and loss of the property (including the rental value of the property during the period of adverse possession), as a condition of quieting title in the possessor's favor. If the adverse possessor fails to promptly do so, title will be quieted in the owner's favor.

***Section 4***. This section makes the new legislation applicable to any adverse possession claim that has not "vested" by the effective date of the legislation. Adverse possession claims "vest" when the adverse possessor has met the statutory requirements for the requisite number of years--under current Alaska law, 10 years (or seven years for claims under color of title). [15]/ Serious constitutional questions would arise if the legislation purported to extinquish already-vested adverse possession claims; conversely, there would appear to be no constitutional difficulty in affecting unvested claims, since

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[15] / *Markovich v. Chambers*, 857 P.2nd 906, 908 (Or. App. 1993).

an adverse possessor has no protected right in the mere expectation that, eventually, he or she may possess the land for a sufficient period of time. [16]/

***Section 5.*** Section 5 gives an immediate effective date to the legislation.

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[16] / *See Lovell v. Magnet Cove School District No. 8*, 782 S.W.2nd 41, 42 (Ark. 1990) (change in Arkansas adverse possession statutes applicable to unvested adverse possession claims).

***Issue: Limiting the Grounds for Taking Property Under the Doctrine of Adverse Possession***

***Description of the Issue:*** Under current Alaska law, a squatter, acting in bad faith, can take another person's property, without paying compensation, by possessing that property in an open and hostile manner for 10 years. This is the doctrine of "adverse possession," which was born in the Middle Ages and serves no modern social purpose. The issue here is whether Alaska should limit the doctrine to only those cases were: (i) a person can make a good faith claim of title under some written instrument; or (ii) there is a good faith error regarding property boundaries.

***Discussion of the Issue:*** If a person, in bad faith (indeed, with an intent to steal another person's land), enters onto remote private property and builds a squatter's cabin, or some other rudimentary improvement, the thief can claim ownership of the land he has invaded after living there for 10 years. The squatter will owe no compensation to the private landowner whose property he took.

This is the doctrine of "adverse possession," and it is the product of the Dark Ages, when a person only "owned" land if he possessed it, and when ownership could be achieved by force.

Obviously, civilized society views the original premise on which this doctrine was founded as abhorrent. And so a new justification has been woven. This one argues that at least a squatter makes productive of use of land. And, the argument continues, it is better that the land be given to a productive squatter, rather than left with the person who paid for it.

That is poor environmental policy. It is also classic Marxist theory--that is, the busy laborer having the right to take the idle capitalist's land. And it has little currency here in Alaska. Here, ANCSA corporations and other private landowners hold large tracts of remote wilderness that are difficult to patrol, and which neither can nor should be developed all at once. To nonetheless penalize these landowners for failing to undertake the massive and wasteful expense of constantly policing their long-term investment serves no valid policy function.

Legislation may be introduced in the 1998 session to deny squatters the ability to take other peoples' property. Instead, the doctrine of "adverse possession" would be limited to two circumstances where the person claiming under the doctrine might have some equity on his side;

- *1st*, when a person has a competing deed or other written instrument of conveyance, and that person, in good faith reliance on that competing document, occupies the property for at least 20 years; and

- *2nd*, where a neighboring landowner makes a good faith mistake about the actual boundary of his property, and mistakenly occupies some adjoining property--again for at least 20 years.

In either case, the person claiming under "adverse possession" would owe compensation to the property's actual owner, both for the value of the land taken and a fair rental for the period of adverse possession.

The legislation would apply to all claims of adverse possession except those that became "vested" before the law was changed--*i.e.*, where a squatter had already openly occupied property for the 10 now-required years.

***Recommendation:*** The doctrine of adverse possession undermines the system of recording titles on which modern commerce depends. The doctrine also spawns litigation. The strict limitations on the doctrine described above would signal Alaska's commitment to protect private property rights, as well as discourage litigation and promote certainty in our legal title system. The recommendation here is to support legislation that would limit the doctrine in the manner described in this paper.

**Sec. 14.40.291. Land of the University of Alaska not public domain land.**

Notwithstanding any other provision of law, university-grant land, state replacement land that becomes university-grant land on conveyance to the university, and any other land owned by the University of Alaska is not and may not be treated as state public domain land. Title or interest to land described in this section may not be acquired by adverse possession, prescription, or in any other manner except by conveyance from the university. The land is subject to condemnation for public purpose in accordance with law.

(§ 6 ch 22 SLA 1983)

**Sec. 09.45.052. Adverse possession.**

(a) The uninterrupted adverse notorious possession of real property under color and claim of title for seven years or more is conclusively presumed to give title to the property except as against the state or the United States. For the purpose of this section, land that is in the trust established by the Alaska Mental Health Enabling Act of 1956, P.L. 84-830, 70 Stat. 709, is land owned by the state.

(b) Except for an easement created by Public Land Order 1613, adverse possession will lie against property that is held by a person who holds equitable title from the United States under paragraphs 7 and 8 of Public Land Order 1613 of the Secretary of the Interior (April 7, 1958).

(§ 3.15 ch 101 SLA 1962; am § 1 ch 141 SLA 1986; am § 58 ch 66 SLA 1991)

**TESTIMONY OF RICHARD P. HARRIS**

**Senate Resources Committee**
**February 20, 1998**

**SENATE BILL 286 - ADVERSE POSSESSION**

I am Richard Harris, Senior Vice President of Sealaska Corporation, a Native Regional Corporation, organized under the Alaska Native Claims Settlement Act ("ANCSA") and under the laws of the State of Alaska. Sealaska Corporation has over 16,000 shareholders, with over half being residents of the State of Alaska. Under the Settlement Act, Sealaska has received over 330,000 acres of fee estate and an additional 300,000 acres of subsurface estate underlying ANCSA Village and Urban Corporations' lands. Sealaska is the largest private land owner in Southeast Alaska, with its land base primarily located on Prince of Wales Island, Chicagof Island, Kupreanof Island, and Dall Island.

"Adverse possession" is the doctrine under which a person--even a squatter acting in bad faith--can take another person's property without compensation by simply possessing it, in an open and hostile way, for a certain period of years. It is a doctrine born in the Middle Ages under circumstances that have little applicability to 20th Century Alaska, and it offends Alaska's abiding respect for private property ownership.

There are two adverse possession statutes in Alaska. The first is AS 09.10.030. This is the squatters' statute. The adverse possessor need not occupy the property under "color of title"--that is, a deed or other conveyance. And the squatter need not even occupy the property in good faith. This statute gives title not only to one who because of good faith error occupies the land of another but also to a person who knowingly sought to appropriate another's land.

Under this statute, the squatter must adversely possess the property for 10 years. After that, the statute, which is framed as a statute of limitations, bars the property's owner from bringing any action against the squatter to recover his property.

AS 09.45.052 is Alaska's second adverse possession statute, and it deals with adverse possession that is based on "color of title." In other words, the adverse possessor has some deed or other document purporting (but for some reason failing) to convey title to the property being possessed. This statute requires good faith on the part of the possessor--in other words, an honest and reasonable belief that the possessor really owns the land.

**Adverse Possession in 20th Century Alaska--A Doctrine Without a Reason**

To this day, some courts, including the Alaska Supreme Court, maintain that the doctrine of adverse possession serves a useful public purpose because society will benefit from someone's making use of land the owner leaves idle.

One might argue that there is considerable "idle" land in Alaska's ***public*** domain. However, in Alaska as elsewhere, neither the state nor federal government can be divested of title through adverse possession. And Alaska has precious little "idle" private land.

The largest private landowners in Alaska are the Native corporations established under the Alaska Native Claims Settlement Act. Those lands were conveyed both in settlement of Alaska Natives' aboriginal claims, and to meet the "real economic and social needs of Natives." ANCSA lands, then, and every acre of them, serve an important legal, social and economic purpose. They are not, any of them, "idle" in that sense.

Congress, in fact, has recognized that fact, and has accordingly extended ANCSA lands some protection from adverse possession claims as long as they remain undeveloped. However, these lands become subject to the claims of adverse possession when they become developed. In Sealaska's case, under federal law, the mere fact that the our land is being harvested for timber makes the land, as any other private lands, subject to the claims of adverse possession. Thus, a squatter could set up on Sealaska's land while there is timber harvesting going on, and begin adversely possessing the land. Because much of Sealaska's lands are in remote areas, we may never know about the squatter until it is too late. Further, ANCSA corporations often acquire other remote

lands for future resource development purposes, as will other private landowners as time goes by. To the extent that these lands are not developed, it is because development now would be an economic waste, and there is no sound public policy that should prevent a private landowner from investing those lands for future generations.

The last remaining modern justification for adverse possession, expressed by the Alaska Supreme Court is that it "keep[s] stale causes out of court." But, in fact, it does just the opposite. Adverse possession cases involve untrustworthy testimony about who possessed what 10 or 20 years ago; conversely, and "considering current methods of record storage on microfiche, computer disks and data tapes," claims based on record ownership will never grow stale.

Similarly, allowing adverse possession claims promotes litigation, while limiting them discourages it. This because:

- Bright line standards generally deter litigation
- The record title standard draws an exceedingly bright line: the holder of record title always prevails.
- In contrast, adverse possession as applied to wild lands is an indeterminate, murky standard under which results can rarely be predicted with certainty.

The fact of the matter, as Florida's Supreme Court observed, is that "[w]ith modern technology and computerized transactions our society is now more capable of accurately establishing legal interest to property through paper title than through possession."

Adverse possession serves no useful public purpose in Alaska today, and it disserves others. Apart from its impact on private property ownership generally, and implementation of ANCSA in particular, "[a]dverse possession...erode[s] the effectiveness and utility of both recording and marketable title statutes by creating uncertainty.".

Sealaska Corporation endorses Senate Bill 286 and urges the committee to give it favorable passage. Senate Bill 286 would allow adverse possession claims to be brought for good faith boundary disputes. There is probably some public policy justification for the situation when a property owner, in good faith, occupies property beyond the boundaries of property owned by that person. After 20 years' notorious and adverse possession of that property, the property owner may quiet title to the adjacent property he or she has occupied. Provided that there is: 1) an explicitly showing of good faith; 2) a requiremet that the possessor prove entitlement to the property by clear and convincing evidence; and 3) that the possessor pay the landowner the fair market value of the interest possessed. For it is one thing to allow a person to take the private property of another. It is quite another to allow the adverse possessor to do so without paying the owner, and none of the modern justifications for the doctrine of adverse possession explain the squatter's current ability to deprive property owners of land ***without compensation.***

**CONCLUSION**: The doctrine of adverse possession ought to be limited to those few situations where some equity might lie in the adverse possessor's favor, and SB 286 attempts to do just that. This legislation would limit the availability of this doctrine to two narrow circumstances where the rule may have some arguable policy justification: (1) where a person has, in good faith, occupied property under color of title for 20 years; and (2) where a property owner occupies property adjacent to his own land under a reasonable, good-faith error over the actual boundaries of his property.

In both instances, the adverse possessor would be required to pay the property's legal owner both full market value for the property taken, as well as any consequential damages.

Beyond these two limited circumstances, "adverse possession" is a doctrine inimical to the concept of private property ownership. And it imposes a particularly harsh burden on private landowners in Alaska who, because of the doctrine, are often charged with the impossible task of policing large remote landholdings to assure themselves that no squatter has taken residence.

That burden is an economic waste, and serves no valid public policy. As a result, beyond the limited circumstances mentioned, the concept of taking another's land by "adverse possession" ought to be abolished in Alaska.

Thank you for the opportunity to address this issue and speak in support of Senate Bill 286. I would be pleased to answer any questions that the committee members may have.

**SUMARY SENATE BILL 286**

**ADVERSE POSSESSION**

***Section 1.*** Section 1 would amend this statute to provide that a landowner could recover his or her land--by a quiet title or ejectment action--at any time. Because of computerized land records, the land owner's claim will never, as a practical matter, grow stale.

***Sections 2-3.*** There are several elements to Sections 2-3:

*1. Retaining adverse possession claims arising under "color of title."* Under subsection (a)(1), Section 2 retains "color of title" as a basis for claiming property by adverse possession, but returns the required period of possession to the common law's original 20 years.

*2. Allowing adverse possession claims to be brought for good faith boundary disputes.*

*3. Explicitly requiring a showing of good faith.*

*4. Requiring the possessor to prove entitlement to the property by "clear and convincing evidence."*

*5. Requiring just compensation to the property owner.*

Section 3 requires the successful adverse possessor, as a condition of receiving title to the property, to: (1) pay for an appraisal of the property; (2) pay the record owner the appraised value of the property taken; and (3) pay any other damages that the owner may have suffered as a result of the adverse possession and loss of the property (including the rental value of the property during the period of adverse possession), as a condition of quieting title in the possessor's favor. If the adverse possessor fails to promptly do so, title will be quieted in the owner's favor.

***Section 4***. This section makes the new legislation applicable to any adverse possession claim that has not "vested" by the effective date of the legislation. Adverse possession claims "vest" when the adverse possessor has met the statutory requirements for the requisite number of years--under current Alaska law, 10 years (or seven years for

claims under color of title). Serious constitutional questions would arise if the legislation purported to extinguish already-vested adverse possession claims; conversely, there would appear to be no constitutional difficulty in affecting unvested claims, since an adverse possessor has no protected right in the mere expectation that, eventually, he or she may possess the land for a sufficient period of time.

***Section 5.*** Section 5 gives an immediate effective date to the legislation.