

**HB**

**210**

# SENATE COMMITTEE REPORT

DATE: 4/13/09

FURTHER:

Rules

DATE TURNED

IN TO OFFICE: April 9, 2010

**Resources Committee** considered CS FOR HOUSE BILL NO. 210(RES)

## HB 210 IZEMBEK STATE GAME REFUGE LAND EXCHANGE

"An Act designating Kinzarof Lagoon as part of the Izembek State Game Refuge; authorizing a land exchange with the federal government in which state land adjacent to the Izembek National Wildlife Refuge and within the Alaska Peninsula National Wildlife Refuge is exchanged for federal land to serve as a road corridor through the Izembek National Wildlife Refuge and federal land located on Sitkinak Island; and providing for an effective date."

and recommends:

- be replaced with  SCS or  CS HB 210 (RES)
- adopt previous  SCS or  CS SCS/CS- Forthcoming
- attached amendment(s)
- adopt \_\_\_\_\_ Letter of Intent
- further referral to \_\_\_\_\_ Committee

**SENATE BILL:**  
 Same Title  
 New Title

---

**HOUSE BILL:**  
 Same Title  
 Technical Title Change  
 New Title w/ SCR # \_\_\_\_\_

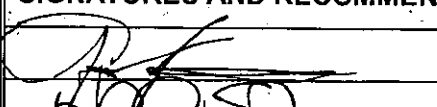
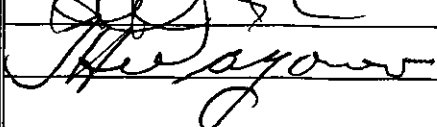
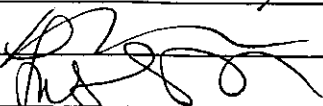

**NEW FISCAL NOTE(S):**

Department	Date	Fiscal	Indet.	Zero	FN#
DNR	4/6			✓	2

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	PRINTED LAST NAME	DO PASS	DO NOT PASS	NO REC	AMEND
	STEVE FRENCH	✓			
	WAGONER	✓			
CO-CHAIR: 	wielechowski	✓			
CO-CHAIR: 	McClure	✓			

# FISCAL NOTE

**STATE OF ALASKA**  
**2010 LEGISLATIVE SESSION**

Fiscal Note Number: 2  
 Bill Version: SCS CSHB 210(RES)  
 (S) Publish Date: 4/10/10

Identifier (file name): CSHB210(RES)-DNR-MLW-04-06-10 Dept. Affected: Natural Resources  
 Title IZEMBEK STATE GAME REFUGE LAND EXCHANGE RDU Resource Development  
 Component Title Acquisition and Defense  
 Sponsor Rep. Edgmon  
 Requester S RES Component Number 2459

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

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information						
		FY 2011	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
<b>OPERATING EXPENDITURES</b>								
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>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>								
-----------------------------	--	--	--	--	--	--	--	--

<b>CHANGE IN REVENUES ( )</b>								
-------------------------------	--	--	--	--	--	--	--	--

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts								
1003 GF Match								
1004 GF								
1005 GF/Program Receipts								
1037 GF/Mental Health								
Other Interagency Receipts								
<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>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2010) cost: 0.0

**POSITIONS**

Full-time								
Part-time								
Temporary								

**ANALYSIS:** (Attach a separate page if necessary)  
 To satisfy the land exchange proposed under this legislation, DNR anticipates that it will need to complete the following work: 1) coordinate with the U.S. Fish and Wildlife Service in the preparation of the required Environmental Impact Statement (EIS), 2) review state land title documents and prepare deeds for state land to be conveyed to the federal government, and 3) review proposed deeds of federal land to be conveyed by the federal government. DNR is seeking alternative sources of funding to coordinate the state's effort on the EIS. Title document preparation will not be required until after the EIS is completed, which may take 2-3 years.

Prepared by: Dick Mylius  
 Division: Director, Mining Land and Water  
 Approved by: Tom Irwin, Commissioner  
Natural Resources

Phone 907-269-8625  
 Date/Time April 6, 2010  
 Date April 6, 2010

# FISCAL NOTE

**STATE OF ALASKA**  
**2009 LEGISLATIVE SESSION**

Fiscal Note Number: 1  
 Bill Version: CSHB 210(RES)  
 (H) Publish Date: 4/10/09

Identifier (file name): HB210-DNR-MLW-04-06-09 Dept. Affected: Natural Resources  
 Title: IZEMBEK STATE GAME REFUGE LAND EXCHANGE RDU: Resource Development  
 Component: Title Acquisition and Defense  
 Sponsor: Rep. Edgmon  
 Requester: H RES Component Number: 2459

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

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
		FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
<b>OPERATING EXPENDITURES</b>							
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>0.0</b>

<b>CAPITAL EXPENDITURES</b>							
-----------------------------	--	--	--	--	--	--	--

<b>CHANGE IN REVENUES ( )</b>							
-------------------------------	--	--	--	--	--	--	--

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
<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>	<b>0.0</b>

Estimate of any current year (FY2009) cost: 0.0

**POSITIONS**

Full-time							
Part-time							
Temporary							

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

To satisfy the land exchange proposed under this legislation, DNR anticipates that it will need to complete the following work: 1) coordinate with the U.S. Fish and Wildlife Service in the preparation of the required Environmental Impact Statement (EIS), 2) review state land title documents and prepare deeds for state land to be conveyed to the federal government, and 3) review proposed deeds of federal land to be conveyed by the federal government. DNR believes that it can complete the work on the EIS using existing staff and resources, and does not anticipate the need for additional funds to complete the proposed land exchange. Title documentation work will not be required until after the EIS is completed, which may take 2-3 years.

Prepared by: Dick Mylius  
 Division: Director, Mining Land and Water  
 Approved by: Tom Irwin, Commissioner  
Natural Resources

Phone 907-269-8625  
 Date/Time April 6, 2009  
 Date April 6, 2009



## **Sponsor Statement**

**Representative Bryce Edgmon**

### **CSHB 210 (RES): Izembek State Game Refuge Land Exchange**

On March 30<sup>th</sup> last year President Obama signed the Omnibus Public Lands Management Act of 2009. This act includes Congressional approval for a land exchange between the State of Alaska and the federal government to allow a single-lane, unpaved road through the Izembek National Wildlife Refuge, connecting the village of King Cove to the Cold Bay airport.

CSHB 210 (RES) will grant state authorization for that exchange.

However, it is important to note that at the federal level there are still two major processes that need to be completed before this transaction is final. These are the completion of an environmental impact statement and a finding by the Secretary of the Interior determining that the land exchange is in the public interest.

CSHB 210 (RES) therefore does more than execute at state level the transaction endorsed by Congress; it also provides compelling evidence to the Secretary of the Interior that the State of Alaska approves of this agreement to establish dependable access for King Cove residents to the Cold Bay airport primarily for health and safety purposes.

In the agreement, the State will transfer approximately 43,000 acres of land in the Alaska Peninsula National Wildlife Refuge to the federal government in exchange for approximately 206 acres for the road corridor. The legislation also agrees to the receipt of 1600 acres of federal land located on Sitkinak Island to the State and provides for the designation of Kinzarof Lagoon as part of the Izembek State Game Refuge.

The residents of King Cove and Aleutians East Borough have strived toward this goal for more than a decade. The King Cove Corporation has agreed to provide approximately 19,000 acres of its ANCSA land to the federal government, at no cost, as part of this exchange. The Alaska Department of Natural Resources supports the transaction. Senator Murkowski, Congressman Young, and former Senator Stevens have championed this endeavor at the federal level over many years. Senator Begich also backs the plan.

It is now the State of Alaska's role to take this next important step. I respectfully ask for your support in concluding this agreement while also sending an important message to the Secretary of the Interior that Alaska endorses this exchange and all that it entails for the improved safety and quality of life for citizens in Southwestern Alaska.

Prepared by the Office of Rep. Edgmon

Regarding Version 26-LS0788\R



## Sectional Analysis

### CSHB210(RES): Izembek State Game Refuge Land Exchange

**Section 1.** States that the purpose of the Act is to add state land and water near Kinzarof Lagoon to the Izembek State Game Refuge.

**Section 2.** Amends AS 16.20.030(a)(14) by adding the description of land and water to be added to the Izembek State Game Refuge.

**Section 3.** Provides for the removal of the land added to the Izembek State Game Refuge in sec. 2 of the Act if the conditions in sec. 7(b) of the Act are satisfied.

**Section 4.** Requires the Department of Natural Resources to transfer land adjacent to the Izembek National Wildlife Refuge in exchange for federal land. Describes the land to be transferred by the department and the federal land expected to be received in exchange.

**Section 5.** States that the land exchange in sec. 4 of the Act is not subject to the provisions in AS 38.50 that would normally apply to an exchange of state land.

**Section 6.** Provides for the land added to the Izembek State Game Refuge in sec. 2 of the Act and the land conveyed under sec. 4 of the bill to be returned to its original status if the land exchange authorized by sec. 6402(a) of the Omnibus Public Land Management Act of 2009 becomes null and void under sec. 6405 of the federal Act.

**Section 7.** Subsection (a) makes secs. 1, 2, 4, and 5 of the Act take effect only if the United States Secretary of the Interior determines that the land exchange described in sec. 4 is in the public interest. Subsection (b) makes sec. 3 and 6 of the Act take effect if the land exchanged is voided under sec. 6405 of the Omnibus Public Land Management Act of 2009. Requires the commissioner of natural resources to notify the lieutenant governor and the revisor of statutes if and when the conditions in sec. 7 are satisfied.

**Section 8.** If secs. 1, 4, and 5 of the Act take effect, identifies the date on which those sections take effect.

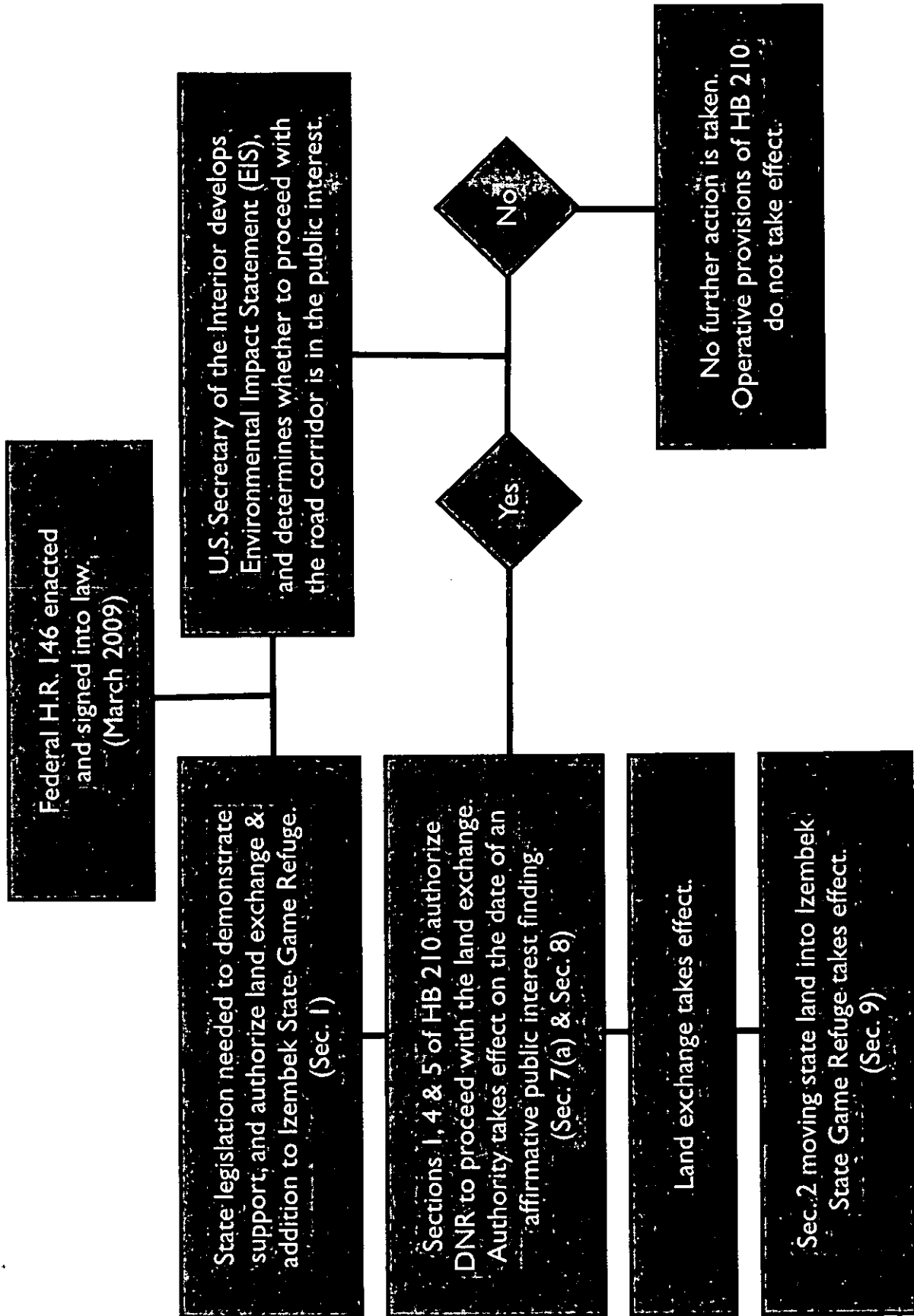
**Section 9.** If sec. 2 takes effect, identifies the date on which sec. 2 takes effect.

**Section 10.** If secs. 3 and 6 take effect, identifies the date on which those sections take effect.

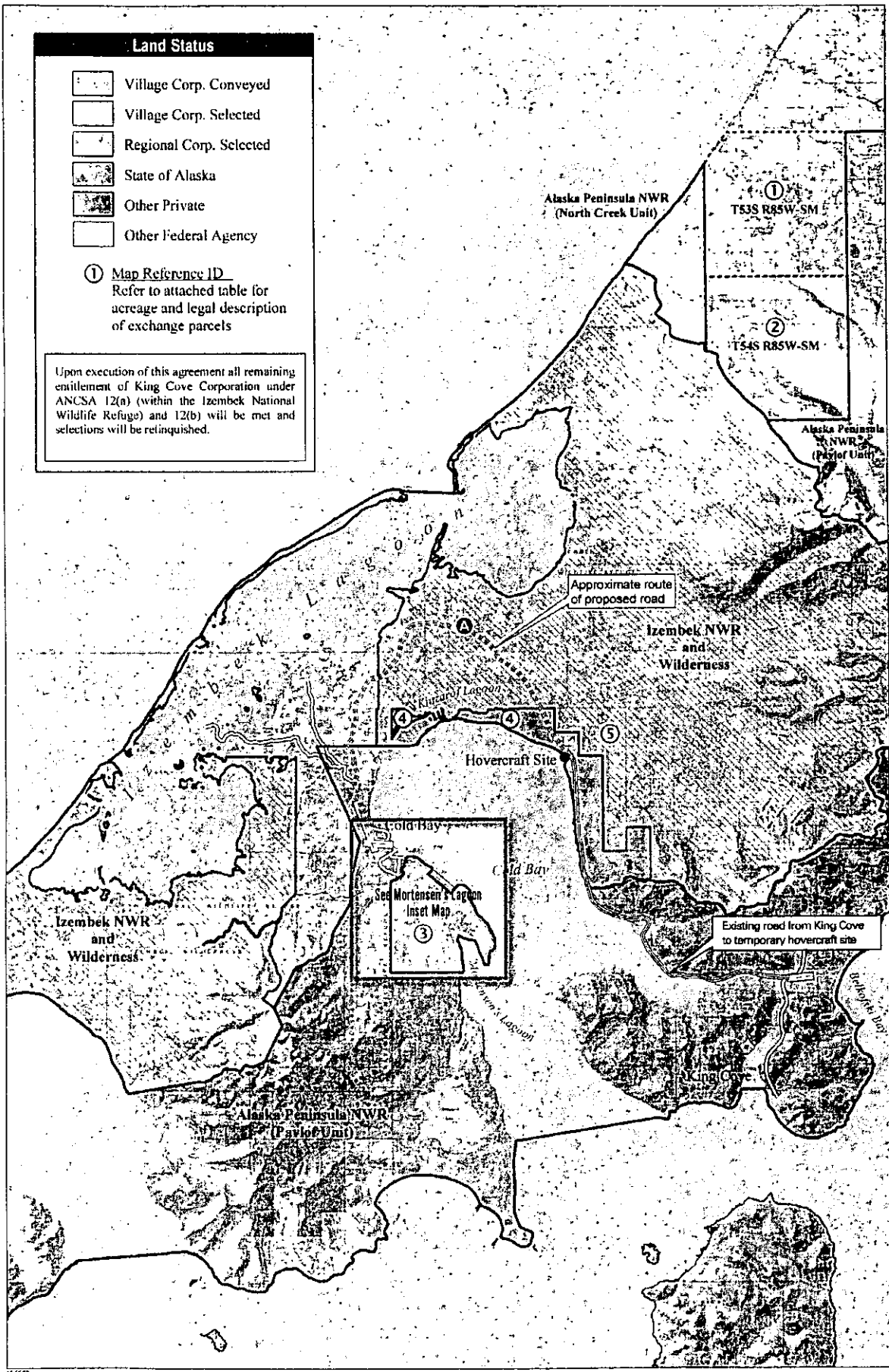
**Section 11.** Except as provided in secs. 8 – 10 of the Act, makes the Act take effect immediately.

Regarding bill version 26-LS0788\R. Prepared by the office of Representative Edgmon, based on the sectional prepared for the original bill by Legislative Legal Services.

# HB 210 - King Cove Land Exchange Process



Izembek and Alaska Peninsula National Wildlife Refuges  
Alaska



## Summary of Changes Between HB210 to CSHB210(RES)

During its hearing in the House Finance Committee on April 8<sup>th</sup>, 2009, section 4(b)(1) of the original bill was amended to make language in the state legislation conform more closely to the federal act it relates to.

On page 5, lines 8 and 9, “constructing a single-lane road” was deleted and “a corridor for the construction and operation of a road” was inserted. This more inclusive language helps ensure that all the road features set down in the federal agreement are acknowledged in the state legislation.

Also on page 5, line 9, “in accordance with the Omnibus Public Land Management Act of 2009, H.R. 146, 111<sup>th</sup> Cong. (2009) (enacted),” was inserted after “Cold Bay, Alaska,”. Citing the federal legislation in this way was also in order to emphasize the state legislation’s consistency with the federal act.

When this amendment was incorporated in the CS by the legislature’s Legal Services counsel, it and all other references to the Omnibus Public Land Management Act of 2009 were edited to reflect that since HB210 was introduced the act has been designated Public Law 111-11. The changes are nonsubstantive.

An editorial change was also made in sec. 11 to correctly reference effective date sections in the bill that provide for effective dates that are not immediate. “secs. 7 – 10 of this Act” was changed to “secs. 8 – 10 of this Act”.



# STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES  
OFFICE OF THE COMMISSIONER

SARAH PALIN, GOVERNOR

- P.O. BOX 111000  
JUNEAU, ALASKA 99811-1000  
PHONE: (907) 485-2400  
FAX: (907) 485-3888
- 550 WEST 7<sup>TH</sup> AVENUE, SUITE 1400  
ANCHORAGE, ALASKA 99501-3630  
PHONE: (907) 269-8437  
FAX: (907) 269-8918

April 14, 2008

The Honorable Jeff Bingaman  
Chairman  
U.S. Senate Committee on Energy and Natural Resources  
302 Dirksen Senate Building  
Washington, D.C. 20510

The Honorable Pete Domenici  
Ranking Member  
U.S. Senate Committee on Energy and Natural Resources  
302 Dirksen Senate Building  
Washington, D.C. 20510

Re: S 1680 - the Izembek and Alaska Peninsula Refuge and Wilderness Enhancement Act and King Cove Safe Access Act

Dear Chairman Bingaman and Ranking Member Domenici:

The State of Alaska supports S 1680, legislation that would authorize a land exchange between the State of Alaska, the U.S. Fish and Wildlife Service and King Cove Corporation to secure road access between the Alaskan communities of King Cove and Cold Bay. These communities are located on the Alaska Peninsula and are accessible only by air or water.

A priority for the Agdaagux Tribe of King Cove, the City of King Cove and the Aleutians East Borough is to construct a 27-mile road to Cold Bay, through the Izembek National Wildlife Refuge, to access the larger and safer airport at Cold Bay.

This overland link is necessary because both air and water access to King Cove is treacherous in the frequent stormy weather so common on the lower Alaska Peninsula. Cold Bay has a much larger, safer airport and the residents of King Cove need reliable access to the Cold Bay airport facility for health and safety, including emergency medical evacuations. A combination road and hovercraft system, established under the King Cove Health and Safety Act passed by Congress several years ago, has not safely nor efficiently resolved access problems.

*"Develop, Conserve, and Enhance Natural Resources for Present and Future Alaskans."*

The Honorable Jeff Bingaman  
The Honorable Pat Domenici  
April 14, 2008  
Page 2 of 3

The need for this road link has been identified in land and transportation plans for at least twenty-five years, including the Alaska Department of Transportation's Southwest Alaska Transportation Plan, adopted in 2004.

The land exchange would add valuable and significant acreage to the Izembek and Alaska Peninsula National Wildlife Refuges. Much of the land that would be added to the refuges is currently owned by the State of Alaska. Specifically, the State of Alaska is offering to exchange 43,093 acres, or all of the state-owned land contained in two townships located northeast of Izembek Refuge, in exchange for a 206 acre easement dedicated to the State of Alaska, through the Izembek National Wildlife Refuge and Wilderness. The undeveloped state land being offered to the Refuge is surrounded on three sides by refuge lands and is habitat for brown bears and caribou. This state land includes the lower portion of the Cathedral River, which drains the western flanks of Pavlof Volcano. It is de facto wilderness land. This state land was included in a recent state oil and gas lease sale, although no bids were received on these tracts.

The 7,900 acres being offered to the Izembek Refuge by King Cove Corporation includes valuable waterfowl habitat that straddles Kinzarof Lagoon at the head of Cold Bay. This land is an inholding within the existing Izembek Wilderness area. The Corporation is also offering to sell an additional 10,800 acres of private lands to the U.S. Fish and Wildlife Service for the Refuge.

The road easement that the state would acquire will run approximately 13 miles through the Izembek National Wildlife Refuge. More than half of this road already exists as primitive roads that were originally built during World War II. The total length of new road through the Wilderness area is 6.3 miles. The exact location of the easement will be determined in consultation with the U.S. Fish and Wildlife Service.

The combined offers from the State of Alaska and the King Cove Corporation would add 51,000 acres to the Izembek and Alaska Peninsula National Wildlife Refuges. All of the state land that is being offered in this exchange would be designated Wilderness by this legislation.

The state would acquire approximately 206 acres that encompass the road. The state would also acquire a 1,600-acre federal inholding on Sitkinak Island, a predominantly state-owned island located south of Kodiak Island.

The State of Alaska recognizes the unique value of the Izembek National Wildlife Refuge. In 1972, the Alaska Legislature set aside the state-owned tidelands within Izembek Lagoon and adjacent offshore state lands as a State Game Refuge. These state lands contain eel grass beds that are the very heart of Izembek Refuge.

As part of this proposal, the state would add more than 4,000 acres of state-owned tidelands in Kinzarof Lagoon, at the head of Cold Bay, to the State Game Refuge. The exchange will require approval by our state legislature as the state lands are quite likely of unequal, but greater, fair market value than the federal lands being exchanged.

The Honorable Jeff Bingaman  
The Honorable Pete Domenici  
April 14, 2008  
Page 3 of 3

The state is well aware of concerns expressed by various groups who are opposed to this legislation. Some are concerned about the precedent set by building a road through a Wilderness Area. Yet, when the Alaska National Interest Lands Conservation Act was passed in 1980, Congress specifically recognized that transportation facilities may be needed across the 58 million acres of federal Wilderness lands in Alaska. The Alaska Lands Act requires Congressional approval for such transportation corridors through Wilderness.

There are also concerns about increased public access to the refuge wilderness. The refuge and wilderness area are already accessible from Cold Bay by existing local roads. Through planning and enforcement of existing refuge regulations, the impacts of the limited number of new users from King Cove can be mitigated.

The State of Alaska supports this legislation and stands ready to commit over 43,000 acres of state land to the National Wildlife Refuge and Wilderness system. We urge the Committee to approve this bill.

Thank you for the opportunity to comment on this legislation.

Sincerely,



Tom Irwin, Commissioner  
Alaska Department of Natural Resources

cc: The Honorable Ted Stevens, United States Senate  
The Honorable Lisa Murkowski, United States Senate  
The Honorable Don Young, United States House of Representatives  
The Honorable Sarah Palin, Governor, State of Alaska  
Commissioner Denby Lloyd, Alaska Department of Fish and Game  
Commissioner Leo von Scheben, Alaska Department of Transportation  
and Public Facilities  
Mr. John Katz, Office of the Governor, State of Alaska, Washington, D.C.  
Mr. Dale Hall, Director, U.S. Fish and Wildlife Service  
Mr. Tom Melius, Regional Director, U.S. Fish and Wildlife Service

**Omnibus Public Land Management Act of 2009  
(P.L. 111-11)**

**Subtitle E--Izembek National Wildlife Refuge Land  
Exchange**

**SEC. 6401. DEFINITIONS.**

*In this subtitle:*

- (1) *CORPORATION-* The term 'Corporation' means the King Cove Corporation.
- (2) *FEDERAL LAND-* The term 'Federal land' means--
  - (A) the approximately 206 acres of Federal land located within the Refuge, as generally depicted on the map; and
  - (B) the approximately 1,600 acres of Federal land located on Sitkinak Island, as generally depicted on the map.
- (3) *MAP-* The term 'map' means each of--
  - (A) the map entitled 'Izembek and Alaska Peninsula National Wildlife Refuges' and dated September 2, 2008; and
  - (B) the map entitled 'Sitkinak Island-Alaska Maritime National Wildlife Refuge' and dated September 2, 2008.
- (4) *NON-FEDERAL LAND-* The term 'non-Federal land' means--
  - (A) the approximately 43,093 acres of land owned by the State, as generally depicted on the map; and
  - (B) the approximately 13,300 acres of land owned by the Corporation (including approximately 5,430 acres of land for which the Corporation shall relinquish the selection rights of the Corporation under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) as part of the land exchange under section 6402(a)), as generally depicted on the map.
- (5) *REFUGE-* The term 'Refuge' means the Izembek National Wildlife Refuge.
- (6) *SECRETARY-* The term 'Secretary' means the Secretary of the Interior.
- (7) *STATE-* The term 'State' means the State of Alaska.
- (8) *TRIBE-* The term 'Tribe' means the Agdaagux Tribe of King Cove, Alaska.

## **SEC. 6402. LAND EXCHANGE.**

*(a) In General- Upon receipt of notification by the State and the Corporation of the intention of the State and the Corporation to exchange the non-Federal land for the Federal land, subject to the conditions and requirements described in this subtitle, the Secretary may convey to the State all right, title, and interest of the United States in and to the Federal land. The Federal land within the Refuge shall be transferred for the purpose of constructing a single-lane gravel road between the communities of King Cove and Cold Bay, Alaska.*

*(b) Compliance With National Environmental Policy Act of 1969 and Other Applicable Laws-*

*(1) IN GENERAL- In determining whether to carry out the land exchange under subsection (a), the Secretary shall--*

*(A) comply with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and*

*(B) except as provided in subsection (c), comply with any other applicable law (including regulations).*

*(2) ENVIRONMENTAL IMPACT STATEMENT-*

*(A) IN GENERAL- Not later than 60 days after the date on which the Secretary receives notification under subsection (a), the Secretary shall initiate the preparation of an environmental impact statement required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).*

*(B) REQUIREMENTS- The environmental impact statement prepared under subparagraph (A) shall contain--*

*(i) an analysis of--*

*(I) the proposed land exchange; and*

*(II) the potential construction and operation of a road between the communities of King Cove and Cold Bay, Alaska; and*

*(ii) an evaluation of a specific road corridor through the Refuge that is identified in consultation with the State, the City of King Cove, Alaska, and the Tribe.*

*(3) COOPERATING AGENCIES-*

*(A) IN GENERAL- During the preparation of the environmental impact statement under paragraph (2), each entity described in subparagraph (B) may participate as a cooperating agency.*

*(B) AUTHORIZED ENTITIES- An authorized entity may include--*

- (i) any Federal agency that has permitting jurisdiction over the road described in paragraph (2)(B)(i)(II);
- (ii) the State;
- (iii) the Aleutians East Borough of the State;
- (iv) the City of King Cove, Alaska;
- (v) the Tribe; and
- (vi) the Alaska Migratory Bird Co-Management Council.

(c) Valuation- The conveyance of the Federal land and non-Federal land under this section shall not be subject to any requirement under any Federal law (including regulations) relating to the valuation, appraisal, or equalization of land.

(d) Public Interest Determination-

(1) CONDITIONS FOR LAND EXCHANGE- Subject to paragraph (2), to carry out the land exchange under subsection (a), the Secretary shall determine that the land exchange (including the construction of a road between the City of King Cove, Alaska, and the Cold Bay Airport) is in the public interest.

(2) LIMITATION OF AUTHORITY OF SECRETARY- The Secretary may not, as a condition for a finding that the land exchange is in the public interest--

(A) require the State or the Corporation to convey additional land to the United States; or

(B) impose any restriction on the subsistence uses (as defined in section 803 of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3113)) of waterfowl by rural residents of the State.

(e) Kinzaroff Lagoon- The land exchange under subsection (a) shall not be carried out before the date on which the parcel of land owned by the State that is located in the Kinzaroff Lagoon has been designated by the State as a State refuge, in accordance with the applicable laws (including regulations) of the State.

(f) Designation of Road Corridor- In designating the road corridor described in subsection (b)(2)(B)(ii), the Secretary shall--

(1) minimize the adverse impact of the road corridor on the Refuge;

(2) transfer the minimum acreage of Federal land that is required for the construction of the road corridor; and

(3) to the maximum extent practicable, incorporate into the road corridor roads that are in existence as of the date of enactment of this Act.

(g) Additional Terms and Conditions- The land exchange under subsection (a) shall be subject to any other term or condition that the Secretary determines to be necessary.

## **SEC. 6403. KING COVE ROAD.**

(a) Requirements Relating to Use, Barrier Cables, and Dimensions-

(1) LIMITATIONS ON USE-

(A) IN GENERAL- Except as provided in subparagraph (B), any portion of the road constructed on the Federal land conveyed pursuant to this subtitle shall be used primarily for health and safety purposes (including access to and from the Cold Bay Airport) and only for noncommercial purposes.

(B) EXCEPTIONS- Notwithstanding subparagraph (A), the use of taxis, commercial vans for public transportation, and shared rides (other than organized transportation of employees to a business or other commercial facility) shall be allowed on the road described in subparagraph (A).

(C) REQUIREMENT OF AGREEMENT- The limitations of the use of the road described in this paragraph shall be enforced in accordance with an agreement entered into between the Secretary and the State.

(2) REQUIREMENT OF BARRIER CABLE- The road described in paragraph (1)(A) shall be constructed to include a cable barrier on each side of the road, as described in the record of decision entitled 'Mitigation Measure MM-11, King Cove Access Project Final Environmental Impact Statement Record of Decision' and dated January 22, 2004, unless a different type barrier is required as a mitigation measure in the Record of Decision for Final Environmental Impact Statement required in section 6402(b)(2).

(3) REQUIRED DIMENSIONS AND DESIGN FEATURES- The road described in paragraph (1)(A) shall--

(A) have a width of not greater than a single lane, in accordance with the applicable road standards of the State;

(B) be constructed with gravel;

(C) be constructed to comply with any specific design features identified in the Record of Decision for Final Environmental Impact Statement required in section 6402(b)(2) as Mitigation Measures relative to the passage and migration of wildlife, and also the exchange of tidal flows, where applicable, in accordance with applicable Federal and State design standards; and

(D) if determined to be necessary, be constructed to include appropriate safety pullouts.

(b) Support Facilities- Support facilities for the road described in subsection (a)(1)(A) shall not be located within the Refuge.

(c) Federal Permits- It is the intent of Congress that any Federal permit required for construction of the road be issued or denied not later than 1 year after the date of application for the permit.

(d) *Applicable Law-* Nothing in this section amends, or modifies the application of, section 1110 of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3170).

(e) *Mitigation Plan-*

(1) *IN GENERAL-* Based on the evaluation of impacts determined through the completion of the environmental impact statement under section 6402(b)(2), the Secretary, in consultation with the entities described in section 6402(b)(3)(B), shall develop an enforceable mitigation plan.

(2) *CORRECTIVE MODIFICATIONS-* The Secretary may make corrective modifications to the mitigation plan developed under paragraph (1) if--

(A) the mitigation standards required under the mitigation plan are maintained; and

(B) the Secretary provides an opportunity for public comment with respect to any proposed corrective modification.

(3) *AVOIDANCE OF WILDLIFE IMPACTS-* Road construction shall adhere to any specific mitigation measures included in the Record of Decision for Final Environmental Impact Statement required in section 6402(b)(2) that--

(A) identify critical periods during the calendar year when the refuge is utilized by wildlife, especially migratory birds; and

(B) include specific mandatory strategies to alter, limit or halt construction activities during identified high risk periods in order to minimize impacts to wildlife, and

(C) allow for the timely construction of the road.

(4) *MITIGATION OF WETLAND LOSS-* The plan developed under this subsection shall comply with section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344) with regard to minimizing, to the greatest extent practicable, the filling, fragmentation or loss of wetlands, especially intertidal wetlands, and shall evaluate mitigating effect of those wetlands transferred in Federal ownership under the provisions of this subtitle.

## **SEC. 6404. ADMINISTRATION OF CONVEYED LANDS.**

(1) *FEDERAL LAND-* Upon completion of the land exchange under section 6402(a)--

(A) the boundary of the land designated as wilderness within the Refuge shall be modified to exclude the Federal land conveyed to the State under the land exchange; and

(B) the Federal land located on Sitkinak Island that is withdrawn for use by the Coast Guard shall, at the request of the State, be transferred by the Secretary to

*the State upon the relinquishment or termination of the withdrawal.*

*(2) NON-FEDERAL LAND- Upon completion of the land exchange under section 6402(a), the non-Federal land conveyed to the United States under this subtitle shall be--*

*(A) added to the Refuge or the Alaska Peninsula National Wildlife Refuge, as appropriate, as generally depicted on the map; and*

*(B) administered in accordance with the laws generally applicable to units of the National Wildlife Refuge System.*

*(3) WILDERNESS ADDITIONS-*

*(A) IN GENERAL- Upon completion of the land exchange under section 6402(a), approximately 43,093 acres of land as generally depicted on the map shall be added to--*

*(i) the Izembek National Wildlife Refuge Wilderness; or*

*(ii) the Alaska Peninsula National Wildlife Refuge Wilderness.*

*(B) ADMINISTRATION- The land added as wilderness under subparagraph (A) shall be administered by the Secretary in accordance with the Wilderness Act (16 U.S.C. 1131 et seq.) and other applicable laws (including regulations).*

## **SEC. 6405. FAILURE TO BEGIN ROAD CONSTRUCTION.**

*(a) Notification To Void Land Exchange- If the Secretary, the State, and the Corporation enter into the land exchange authorized under section 6402(a), the State or the Corporation may notify the Secretary in writing of the intention of the State or Corporation to void the exchange if construction of the road through the Refuge has not begun.*

*(b) Disposition of Land Exchange- Upon the latter of the date on which the Secretary receives a request under subsection (a), and the date on which the Secretary determines that the Federal land conveyed under the land exchange under section 6402(a) has not been adversely impacted (other than any nominal impact associated with the preparation of an environmental impact statement under section 6402(b)(2)), the land exchange shall be null and void.*

*(c) Return of Prior Ownership Status of Federal and Non-Federal Land- If the land exchange is voided under subsection (b)--*

*(1) the Federal land and non-Federal land shall be returned to the respective ownership status of each land prior to the land exchange;*

*(2) the parcel of the Federal land that is located in the Refuge shall be managed as part of the Izembek National Wildlife Refuge Wilderness; and*

(3) each selection of the Corporation under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) that was relinquished under this subtitle shall be reinstated.

## **SEC. 6406. EXPIRATION OF LEGISLATIVE AUTHORITY.**

(a) *In General*- Any legislative authority for construction of a road shall expire at the end of the 7-year period beginning on the date of the enactment of this subtitle unless a construction permit has been issued during that period.

(b) *Extension of Authority*- If a construction permit is issued within the allotted period, the 7-year authority shall be extended for a period of 5 additional years beginning on the date of issuance of the construction permit.

(c) *Extension of Authority as Result of Legal Challenges*-

(1) *IN GENERAL*- Prior to the issuance of a construction permit, if a lawsuit or administrative appeal is filed challenging the land exchange or construction of the road (including a challenge to the NEPA process, decisions, or any required permit process required to complete construction of the road), the 7-year deadline or the five-year extension period, as appropriate, shall be extended for a time period equivalent to the time consumed by the full adjudication of the legal challenge or related administrative process.

(2) *INJUNCTION*- After a construction permit has been issued, if a court issues an injunction against construction of the road, the 7-year deadline or 5-year extension, as appropriate, shall be extended for a time period equivalent to time period that the injunction is in effect.

(d) *Applicability of Section 6405*- Upon the expiration of the legislative authority under this section, if a road has not been constructed, the land exchange shall be null and void and the land ownership shall revert to the respective ownership status prior to the land exchange as provided in section 6405.

## **HB 210 – Izembek Land Exchange**

Testimony – Mayor Stanley Mack

April 8, 2009

My name is Stanley Mack. I am the Mayor of the Aleutians East Borough. The Borough consists of six communities located between 500 to 800 miles southwest of Anchorage. One of my primary responsibilities as Mayor is to help improve the quality of life for the 2700 residents of the borough. Safe and dependable transportation access is one of the most important of these qualities.

I am very pleased today to speak in support of HB 210. I also want to thank the State of Alaska for its steadfast involvement and support of this issue. Without the state's assistance we would not have this opportunity today.

HB 210 will authorize a land exchange between the federal government, State of Alaska, and the King Cove Corporation so that a single-lane road can eventually connect the village of King Cove with the Cold Bay Airport. I was born and raised in King Cove, so I know first-hand about the never-ending challenges in reaching the Cold Bay Airport due to

weather and the precarious location of the King Cove airstrip.

Thirty years ago King Cove's hopes for access to the Cold bay Airport were dashed when a portion of the Izembek Refuge between the two communities was declared wilderness. The fact that no one bothered to consult the indigenous residents of King Cove made this decision to cut us off especially wounding.

Now, after two decades of educating and advocating and, with the help of the State of Alaska and the King Cove Corporation in putting together a major land exchange, we are optimistic this road link can occur. We have worked long and hard for this opportunity.

I will sincerely appreciate your support of HB 210.

Thank You.

## **HB 210 – Izembek Land Exchange**

Testimony – Mayor Ernest Weiss

April 8, 2009

My name is Ernest Weiss. I am the Mayor of the City of King Cove. We have a major transportation access issue between our community and the Cold Bay Airport. The Cold Bay Airport is the third longest runway in the state and is served daily from Anchorage.

Our problem living in King Cove is getting access to the Cold Bay Airport on a safe and predictable basis.

I am pleased today to speak in support of HB 210. This legislation will authorize the provisions of the Omnibus Public Lands Management Act of 2009, signed last week by President Obama, in helping to solve our access problem to the Cold Bay Airport. HB 210 will authorize a land exchange between the federal government, State of Alaska, and the King Cove Corporation so that a single-lane road can connect King Cove with the Cold Bay Airport.

I have lived in King Cove for the last 25 years and have personally witnessed fear and frustration which results from not having a safe, dependable, and

predictable means to get to the Cold Bay Airport. My experience has been that about 30-40% of the time that I travel to the Cold Bay Airport, I either do not get there, or at "best," do not arrive there in a timely or routine manner.

I realize that many other bush communities have transportation access issues. However, our transportation issue is one which can be solved. Now, after two decades of educating and advocating and, along with the help of the State of Alaska and the King Cove Corporation in putting together a major land exchange, we are optimistic this road link can finally occur.

On behalf of the 800 residents of King Cove, I want to thank the State of Alaska for its continuing involvement and support of our transportation access issue.

I will sincerely appreciate your support of HB 210.

Thank You.

## **HB 210 – Izembek Land Exchange**

Testimony – Della Trumble, King Cove Corporation  
April 8, 2009

My name is Della Trumble. I represent the King Cove Corporation (Corporation), our village ANCSA Corporation.

I have been personally involved in this issue for the last 25+ years. I have vowed to never quit until we have accomplished our objective of a simple and safe road link to the Cold Bay Airport.

I am pleased to speak today in support of HB 210, which will authorize the State's participation in a major land exchange between the federal government, State of Alaska, and the King Cove Corporation so this road can be built.

I was born in King Cove and have lived here all my life. I know first-hand about the never-ending challenges in reaching the Cold Bay Airport due to weather and the precarious location of the King Cove airstrip. This situation has brought countless times of misery and hardship to our residents.

Now, with the King Cove Corporation's willingness to give back about 20% of our aboriginal lands to the federal government, combined with the State lands being offered, our road becomes possible.

Please know we are very appreciative of the State's support helping us achieve this goal.

The Corporation's decision to give up our lands has been a difficult decision. But, we have come to understand this is the price we must pay for the opportunity to have a very modest road to the Cold Bay Airport through the Izembek Refuge.

We have reluctantly accepted the awareness that somewhere in the process, the federal government and others have ignored the fact that my Aleut ancestors have lived in this area for over 4,000 years. Long before Izembek Refuge even had a name, it has been a part of our environment and cultural survival.

However, it is now time to move forward to the future. Road access to the Cold Bay Airport will greatly enhance our personal safety and quality-of-life.

I respectfully request your support of this legislation.

Thank you.