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In order to convict a person on the first degree crime, it is necessary to establish that one of the crimes used to prove racketeering is identical or substantially similar to an unclassified or class A felony under Alaska law.

Section 11.59.060. deals with technical issues that may arise in charging a defendant under this legislation.

Article 3. Civil Remedies:

Section 11.59.070. precludes a defendant who has been convicted of illegal control of an enterprise from denying the essential elements of the crime in subsequent litigation. Since the defendant's violation has already been established beyond a reasonable doubt in the earlier criminal prosecution, there is no reason to require a private plaintiff in a civil proceeding brought against the same defendant to relitigate the basis of the criminal conviction.

Section 11.59.080. creates a civil action for triple damages available to any person, including the state, who is injured as a result of a violation of AS 11.59.010.

Section 11.59.090. provides that property used and assets acquired in violation of proposed As 11.59.010 is subject to forfeiture.

Section 11.59.100. provides a mechanism to insure that equitable relief can be obtained to minimize the harm caused by racketeering as well as to preserve the assets of the defendant for future recovery in both civil and criminal proceedings.

Section 11.59.110. provides the state with the necessary mechanism to insure that investigations can be completed successfully. The provisions are largely self explanatory, and considering that no appellate cases have arisen under the similar federal statute in the fourteen years since enactment, the provisions of this section will apparently present no problems in administration.

Article 4. General Provisions.

Section 11.59.900. offers a definition of "racketeering". In order to establish racketeering, it must be shown that the defendant engaged in a pattern of illegal activity. Unlike federal law, this legislation specifically defines the term "pattern" in subsection (c). The definition is based on a definition of "pattern" appearing in several state statutes and court cases.

Section 3:

Article 7. Forfeiture.

This section of the bill has two related purposes. First, it specifies the procedures applicable to the forfeiture of property authorized in proposed AS 11.59.090. Secondly, it effectively consolidates many state forfeiture procedures in a single new article added to Title 9 (Civil Procedure). The consolidation of state forfeiture procedures accomplished by this legislation will minimize the possibility of unintended inconsistencies in coverage.

Sections 4, 5, and 6:

These sections make several conforming amendments to insure that gambling paraphernalia and records, controlled substances are subject to the forfeiture procedures specified in section 3 of the bill.

Section 7

This section insures that all unclassified felonies, including Illegal Control of an Enterprise in the First Degree are subject to the fines authorized for a defendant who is not an organization in this section.

Section 8

Adds "illegal control of an enterprise" to the lists of presumptive terms and is necessary to authorize imprisonment for a violation of AS 11.59.040.

Section 9, 10, and 11

This section repeals several statutes pertaining to procedures in Section 3applicable in drug forfeiture cases which are unnecessary with the enactment of the bill, of the new article in AS 09. Note that existing AS 17.30.126.which pertains to the summary forfeiture of certain controlled substances, in not repealed.

Section 12

This section specifies a January 1, 1987, effective date.

COMMENTARY AND SECTIONAL ANALYSIS TO THE 1985 ACT RELATING TO ILLEGALLY CONTROLLED ENTERPRISES

Introduction

In 1970, Congress passed the Racketeer Influenced and Corrupt Organizations title of the Organized Crime Control Act of 1970. The legislation was designed to provide adequate criminal penalties and civil remedies to combat large-scale and sometimes highly sophisticated criminal activity. The federal law was based on the premise that a pattern of crime that was engaged in by a single person, or an organized group of persons, posed a much greater danger to society than individual unrelated criminal acts. Concerned that repeated instances of criminal activity were being used to finance the infiltration and takeover of legitimate businesses, and that crime itself had effectively become a business, Congress enacted new statutes to help respond to these two serious problems.

The federal legislation only applies to conduct which affects interstate commerce. That showing might be possible in many cases. Nevertheless, individual states have recognized that the resources available to the federal government are generally inadequate to respond to criminal activity that primarily affects state interests. Additionally, the prosecution of criminal conduct that occurs

within a state and does not directly affect federal interests has traditionally been viewed primarily as a state, rather than a federal responsibility.

During the past 14 years, at least 19 states have adopted legislation which has authorized a state response to some of the concerns addressed by Congress in 1970. (A list of those states is included as Appendix "A".) Significantly, states such as Oregon and Arizona, which like Alaska had only recently revised their criminal codes, concluded that existing laws were inadequate to respond to the problems addressed by the federal legislation. While each of the 19 states has relied on the federal legislation as a model, none has simply enacted the federal law verbatim. Instead, each has selected the best features of the federal legislation.

A similar approach was followed by the Alaska legislature in 1978 when it revised the criminal code. While individual sections were based on provisions appearing in the Model Penal Code, the criminal code revision was tailored to respond to particular Alaskan problems and concerns. A similar approach has also been followed in this legislation. While this bill differs from federal law in a number of important respects, the basic goal remains the same: to assist public officials and individual citizens in their effort to combat the criminal infiltration of

legitimate businesses and to provide appropriate penalties against those who engage in the business of crime.

Section 1. Declaration of Legislative Purpose

This section states the purpose of this bill and requires that its provisions be interpreted liberally by the courts to effectuate that remedial purpose. The purpose of the bill has already been addressed in the introduction to this commentary. The direction that the Act be liberally construed by the courts extends to both the civil and criminal provisions included in this bill. See U.S. v. Forsythe, 560 F.2d 1127, 1135 (3rd Cir. 1975).

Section 2. Illegally Controlled Enterprises

ARTICLE 1. PROHIBITED ACTIVITIES

Sec. 11.59.010. UNLAWFUL ACTS

This section defines the three prohibited acts that form the basis for both the criminal penalties and civil remedies that are authorized in this bill. The section is based substantially on 18 U.S.C. sec. 1962, and it is expected that the numerous federal decisions interpreting the scope of that statute will be of assistance to Alaska courts in interpreting any ambiguities in the Alaska

statutory language. As a general matter, if a specific decision under the federal legislation is intended to be binding on the Alaska courts in interpreting this Act, it is expressly cited in this commentary.

Each of the three instances of prohibited conduct require that "racketeering" be involved. The term "racketeering" is defined in AS 11.59.020, and is discussed in the commentary accompanying that section. It should be noted that at least two instances of illegal activity will be required to establish racketeering. Additionally, the instances of illegal activity must be part of a pattern of illegal activity, and not simply two isolated unrelated crimes.

Each of the three unlawful acts also requires that an "enterprise" be involved. The term enterprise is defined in AS 11.59.900(1), as including any "individual, partnership, corporation, association, or other legal entity, and any union or group of persons associated in fact although not a legal entity." As noted by the United States Supreme Court "[t]here is no restriction upon the associations embraced by the definition: an enterprise includes any union or group of individuals associated in fact." United States v. Turkette, 452 U.S. 576, 580 (1981). The scope of this definition is discussed further in the commentary accompanying AS 11.59.900(1).

The three unlawful acts described in this section prohibit (1) acquiring or maintaining an interest in or control of an enterprise through racketeering (primarily, the use of a pattern of criminal activity to acquire an interest in a legitimate business); (2) conducting the affairs of an enterprise through racketeering (the use of a pattern of criminal activity to conduct some or all of the affairs of legitimate or completely illegitimate business); and (3) the use of the proceeds of racketeering to acquire or maintain an interest in an enterprise or to conduct the affairs of an enterprise (the use of the ill-gotten gains from a pattern of criminal activity in what would otherwise be a legal attempt to acquire an interest in or run an enterprise). The three prohibited acts can be committed by any person. The term "person" is defined in AS 11.81.900(b). Note that this section merely describes the type of conduct that can result in criminal or civil liability under this legislation. It does not specify the penalties for that conduct, which appear in other sections of this bill. See, e.g., AS 11.59.040.

AS 11.59.010(1) covers the conduct of acquiring or maintaining an interest in or control over an enterprise through racketeering. This prohibition is aimed primarily at the use of illegal activity to take over a legitimate business, although it is broad enough to cover an attempt

by one illegitimate enterprise to take over another illegitimate enterprise.

The conduct prohibited by paragraph (1) covers any attempt to take over an enterprise by the type of illegal activity defined as racketeering in AS 11.59.020. For example, a defendant may violate this paragraph by assaulting the owner of a business and setting fire to property belonging to the owner with the intent of "persuading" the owner to sell the business to the defendant or to take the defendant as a partner. Alternatively, several persons may violate this paragraph if together they engage in the prohibited conduct. For example, assume that two defendants join in an effort to acquire an interest in a legitimate business through racketeering. One defendant bribes a municipal inspector to deny a needed permit to the business while the other commits a felony assault on the owner with the intent of persuading the owner to sell an interest in the business. Together, both defendants have satisfied the definition of racketeering in AS 11.59.020 if the illegal activity of each defendant is chargeable to the other under the general principles of criminal liability specified in AS 11.16, and both have therefore engaged in conduct prohibited by paragraph (1).

As is the case with each of the three prohibited acts described by AS 11.59.010, there is no requirement that the

conduct of the defendants be part of "organized crime" or that the defendant is a member of "organized crime." See Bennett v. Berg, 685 F.2d 1053, 1063-64 (8th Cir. 1982) cert. denied, 104 S.Ct. 527 (1983), and cases cited therein. It is apparent, however, that some of the conduct prohibited by this legislation will indeed fall within a commonly accepted definition of "organized crime." See, e.g., United States v. Brooklier, 685 F.2d 1208, 1213 (9th Cir. 1982). Nevertheless, it is the intent of this legislation that no "organized crime" connection need be shown in any criminal prosecution or civil proceeding authorized by this chapter.

AS 11.59.010(2) is aimed at the person who participates in or conducts the affairs of an enterprise through racketeering. There is no requirement in the definition of enterprise that the enterprise constitute a legal entity. Consequently, this paragraph would apply to an enterprise that has been established solely to further illegal purposes. United States v. Turkette, 452 U.S. 576 (1980). See also commentary accompanying AS 11.59.900(1).

Paragraph (2) requires that the affairs of the enterprise be conducted "through" racketeering. There is no requirement that the racketeering benefit the enterprise or result in profits for the enterprise. It is sufficient that the defendant engaged in the racketeering activity as part

of the enterprise or that the illegal activity is related to the activities of the enterprise. See United States v. Webster, 669 F.2d 185 (4th Cir. 1982), cert. denied, 456 U.S. 935 (1982); United States v. Welch, 656 F.2d 1039, 1060-62 (5th Cir. 1981), cert. denied, 456 U.S. 915 (1982); United States v. Scotto, 641 F.2d 47 (2d Cir. 1980). There is no requirement that the illegal activity that is used to establish racketeering be part of the day-to-day business operation of the enterprise. Engl v. Berg, 511 F.Supp. 1146, 1156 (E.D. Pa. 1981) (quoting United States v. DePalma, 461 F.Supp. 778 (S.D.N.Y. 1978)). It is enough, for example, that the enterprise was used as a front for illegal activity. See United States v. Swiderski, 593 F.2d 1246 (D.C. Cir. 1978), cert. denied, 441 U.S. 993 (1979).

One example of the type of conduct covered by paragraph (2) is summarized in a recent opinion by the United States Supreme Court:

> Briefly, the evidence showed that a group of individuals associated for the purposes of committing arson with the intent to defraud insurance companies. This association in fact enterprise, composed of an insurance adjuster, homeowner, promoters, investors, and arsonists, operated to destroy properties in Tampa and Miami, Florida between July 1973 and April 1976. The panel summarized the ring's operations as follows: 'At first the arsonists only burned buildings already owned by those associated with the ring. Following a burning, the building owner filed an inflated proof of loss statement

> and collected the insurance proceeds from which his co-conspirators were paid. Later, ring members bought buildings suitable for burning, secured insurance in excess of value and, after a burning, made claims for the loss and divided the proceeds' (footnote omitted).

Russello v. United States, 104 S.Ct. 296, 298 (1983) (quoting United States v. Martino, 681 F.2d 952, 953 (5th Cir. 1982) (en banc)). Other examples of conduct that is intended to be covered by paragraph (2) are provided in United States v. Sutton, 642 F.2d 1001 (6th Cir. 1980), cert. denied, 453 U.S. 912 (1981); United States v. Whitehead, 618 F.2d 523 (4th Cir. 1980); United States v. Swiderski, 593 F.2d 1246 (D.C. Cir. 1978), cert. denied, 441 U.S. 993 (1979).

AS 11.59.010(3) primarily prohibits the use of property derived from racketeering, or the proceeds of that property, to obtain an interest in an enterprise. See United States v. McNary, 620 F.2d 621 (7th Cir. 1980). The term "property" (defined in AS 11.59.900(2)) has been used rather than the undefined term "income" which appears in the federal statute.

At first glance the prohibition described in paragraph (3) appears similar to that contained in paragraph (1). However, unlike paragraph (1), which requires that otherwise illegal means be used to acquire an interest in an enterprise, this paragraph makes unlawful specified conduct

relating to an enterprise when the property used to finance that conduct has been derived from racketeering. Unlike federal law, there is no exception for investments that take the form of securities purchased in the open market amounting to less than one percent of the total securities available in the enterprise. Only four of the state statutes that are based on the federal provision contain a similar provision, and there seems to be little justification for exempting this particular class of investment from the coverage of this legislation.

Considered in conjunction with AS 11.59.100, the prohibition in paragraph (3) will be of significant importance in civil proceedings where a legitimate enterprise attempts to require that the defendant divest himself of any interest in the enterprise that was obtained through the use of property derived from racketeering. This prohibition may also be of assistance in cases where the state seeks forfeiture of the defendant's illegally obtained profits from racketeering since it effectively prevents the racketeer from "sheltering" those gains by investing in a legal enterprise. See AS 11.59.090. Note that there is no requirement that the investment in the enterprise be otherwise illegal. Rather, the investment becomes illegal since it was made possible by using the fruits of racketeering.

Paragraph (3) also prohibits using the "proceeds" of property derived from racketeering. This language is intended to permit tracing of assets derived from racketeering in order to prove that such assets were, in effect, used to take over a legitimate business. Thus illegal profits do not later become legal merely because they have been laundered, or augmented, by an intervening legal investment.

Another point should be noted regarding the applicability of paragraph (3) to cases where the defendant claims that it is impossible to establish that the particular investment in the enterprise was derived from racketeering. The "sufficient nexus" test adopted by the court in United States v. McNary, 620 F.2d 621 (7th Cir. 1980), is intended to apply to such cases. In McNary, the court emphasized that the federal prohibition similar to paragraph (3) is violated if the gains from racketeering "allowed or facilitated" a subsequent investment even though the money derived from racketeering was not directly invested. Id. at 628-29.

Also note that there is no requirement that the defendant himself participate in the racketeering under paragraph (3) -- it is enough that the circumstance exists that the property was derived from racketeering. There may be cases under paragraph (3) where the defendant claims that he or she had no knowledge that the property was derived

from racketeering. In such cases, it is intended that the burden of proof be placed on the state to establish that the defendant acted at least recklessly as to the circumstance that the property was derived from racketeering.

Sec. 11.59.020. DEFINITION OF "RACKETEERING"

In defining the prohibited acts that can form the basis of a criminal prosecution or civil action authorized by this chapter, each of the three paragraphs in AS 11.59.010 uses the term "racketeering." AS 11.59.020 defines that term.

In order to establish racketeering, it must be shown that the defendant engaged in "a pattern of illegal activity that involves two or more instances of illegal activity." Proof of two instances of illegal activity that are held to meet the pattern requirement are sufficient to constitute racketeering. There is no requirement that the two or more instances of illegal activity involve different crimes. See United States v. Davis, 576 F.2d 1065 (3d Cir. 1978), cert. denied, 439 U.S. 836 (1978).

Unlike federal law, this legislation specifically defines the term "pattern" in AS 11.59.020(c). The definition is based on a definition of "pattern" appearing in several state statutes. That definition in turn was derived from United States v. Stofsky, 409 F.Supp. 609, 613-14

(S.D.N.Y. 1973), aff'd, 527 F.2d 237 (2nd Cir. 1975), cert. denied, 429 U.S. 819 (1976), where the court held that the "pattern" requirement could not be satisfied by mere accidental or unrelated acts.

The fact that there was but one objective underlying separate acts of racketeering does not place the conduct outside the definition. United States v. Starnes, 644 F.2d 673, 678 (7th Cir. 1981), cert. denied, 454 U.S. 826 (1981). The issue is rather whether the illegal acts, undertaken to further a single objective or multiple objectives, constitute a pattern of illegal activity.

To establish a pattern of illegal activity, it must be shown that two or more instances of illegal activity were involved. The acts that are sufficient to constitute illegal activity for purposes of the definition are described in subsection (b).

One common characteristic of each crime listed in AS 11.-59.020(b)(1) -- (6) is that they are all classified as felonies. In this regard this legislation differs from federal law which allows prosecution based on underlying crimes that are misdemeanors. In view of the substantial penalties that will arise from a violation of this legislation, it seems appropriate to require that the underlying illegal activity be serious enough to be classified

by the legislature as a felony. The felonies that are listed have been chosen either on the basis that they pose a danger to personal physical security, are crimes that may be used in the effort to obtain control over an enterprise, or are crimes that may be committed by an enterprise that is in the business of crime.

AS 11.59.020(b)(6) refers to felony conduct that has been defined as "racketeering activity" under federal law. It should be noted that this paragraph does not have the effect of granting the state jurisdiction over conduct that exclusively involves federal interests. AS 11.59.-030(a)(1) specifically requires that at least one instance of illegal activity that is used to establish a pattern of racketeering must violate Alaska law. A person, for example, is not covered by this legislation for acquiring an interest in an Alaskan business through a pattern of illegal activity that involved the out-of-state bribery of a federal official and the interstate transportation of stolen property between Washington and Oregon. However, if one of the instances of illegal activity involved conduct falling within AS 11.59.020(b)(1) -- (5), a federal crime listed in 18 U.S.C. sec. 1961(1) will be sufficient to sustain an action under this chapter.

Note finally that there is no requirement that the defendant was previously convicted of the illegal activity that

is used to establish racketeering. See USACO Coal v. Carbornin Energy, Inc., 689 F.2d 94, 95 n.1 (6th Cir. 1982) and cases cited therein. To the extent that a recent opinion by the Second Circuit Court of Appeals is inconsistent with this approach, it is expressly rejected as not reflecting the intent of this legislation. See Sedima, S.P.R.L. v. Imrex Co., 53 U.S.L.W. 2062 (2d Cir. July 15, 1984).

Sec. 11.59.030. PROOF OF RACKETEERING

While AS 11.59.020 defines racketeering, AS 11.59.030 addresses several issues pertaining to the type of evidence that can be used to establish the requirements of that definition.

Subsection (a) places three restrictions on the type of illegal activity that can be used to satisfy AS 11.59.-020(b)(1) -- (6). AS 11.59.030(a)(1) requires that one of the instances of illegal activity used to establish racketeering must be in violation of Alaskan law. As discussed in the commentary accompanying AS 11.59.020, this limitation prevents the institution of a proceeding authorized by this Act based on conduct that exclusively involves federal interests.

AS 11.59.030(a)(2) requires that at least one instance of

illegal activity that is used to establish racketeering must occur after the effective date of this Act, thus eliminating any ex post facto concerns in criminal prosecutions. See United States v. Campanale, 518 F.2d 352 (9th Cir. 1975), cert. denied, 423 U.S. 1050 (1976).

AS 11.59.030(a)(3) requires that at least one instance of illegal activity used to establish racketeering must occur within a three-year period either before or after the defendant becomes involved with an enterprise under the circumstances prohibited by AS 11.59.010. This restriction effectively creates an automatic bar to a finding of racketeering if both instances of illegal activity occur outside the three-year period. While a similar provision does not apply in federal law, the restriction appears appropriate to add to this legislation.

AS 11.59.030(b) clarifies a point that is probably already implicit in the language of subsection (a): the same instance of illegal activity may be used to satisfy each of the requirements specified in (a)(1) -- (3). For example, if one of the instances of illegal activity used to obtain control over an enterprise on December 15, 1985, was an assault committed in Alaska on November 15, 1985, each of the three paragraphs of subsection (a) will be satisfied, assuming that this legislation took effect on January 1, 1985.

AS 11.59.030(c) places a limitation on how far back a prosecutor or civil litigant can go in using illegal activity to establish racketeering. If more than five years has elapsed between the most recent instance of illegal activity and the immediately preceding incident of illegal activity, the past instances of illegal activity cannot be considered. For example, assume that this Act takes effect January 1, 1986. On January 1, 1987, the defendant commits one instance of illegal activity. If the prior instance of illegal activity used to establish racketeering occurred on or after January 1, 1982, it and other past acts may be considered in establishing racketeering under AS 11.59.030. However, if the prior instance of illegal activity took place before January 1, 1982, it may not be considered.

Note that AS 11.59.030(e) qualifies the five-year period specified in subsection (c) by providing that the five-year period does not begin to run until the defendant has satisfied all conditions of a sentence, or conditions of an alternative to a prosecution, for the prior instance of illegal activity. Similarly, subsection (e) also qualifies the three-year period specified in paragraph (a)(3).

An example of the relationship between subsection (e) and (c) is provided by considering the case of a defendant who is 1986 is convicted of felony assault and is sentenced to

two years' imprisonment followed by a two-year probationary period. Assume further that the probationary period is successfully completed in 1990 and that the defendant commits another felony assault in 1993. If the other requirements necessary to establish a violation of this legislation can be established, it may be alleged that the 1986 and 1993 assaults were part of a pattern of illegal activity. In this case, subsection (e) provides that the prior conviction may be considered under subsection (c) since the five-year period did not begin until 1990, the year the defendant completed the probationary period on the earlier assault. A provision similar to subsection (e) appears in AS 12.55.145(a)(1). It is intended that the decision in Griffith v. State, 653 P.2d 1057 (Alaska Ct. App. 1982), interpreting the scope of AS 12.55.-145(a)(1) also apply in interpreting the application of subsection (e).

AS 11.59.030(d) specifies how illegal activity that is used to prove racketeering is established in a proceeding brought under this legislation. In any proceeding a certified judgment of conviction for the illegal activity will always be sufficient to establish that the illegal activity occurred. If a conviction has not been obtained, the illegal activity may be established by proof beyond a reasonable doubt in a criminal prosecution and by a preponderance of the evidence in all other proceedings.

ARTICLE 2. CRIMES INVOLVING ILLEGALLY CONTROLLED ENTERPRISES

Secs. 11.59.040 and 11.59.050. ILLEGAL CONTROL OF AN ENTERPRISE IN THE FIRST AND SECOND DEGREE

AS 11.59.040 and 11.59.050 define the only two crimes created by this legislation. The first degree crime is an unclassified felony punishable by presumptive sentencing and a maximum sentence of 30 years. Additionally, the defendant will be subject to a maximum $75,000 fine under AS 12.55.035(b)(1) if the defendant is a natural person. If an organization is charged under this section, a higher fine may be imposed under AS 12.55.035(c).

Key to both crimes is the requirement that the defendant commit an act prohibited by AS 11.59.010 or attempt or solicit such an act. The coverage of AS 11.59.010 has been discussed in the commentary accompanying that section. If the state can only prove a violation of AS 11.59.010, the crime will be Illegal Control of an Enterprise in the Second Degree, a class A felony.

The second degree crime can be aggravated to the more serious first degree offense depending on the seriousness of the illegal activity used to establish racketeering. If one of the instances of illegal activity was an

unclassified or class A felony in Alaska, AS 11.59.-040(a)(1) provides that the first degree crime has been established. Additionally, the crime will be first degree under AS 11.59.040(a)(2) if one of the instances of illegal activity used to establish racketeering is a crime in Alaska or in another jurisdiction having elements similar to a class A or unclassified felony. This provision will cover crimes repealed when the revised criminal code became effective in 1980, current crimes in Alaska defined outside the criminal code, and crimes committed in other jurisdictions. For example, if in 1979 the defendant committed conduct that would have constituted Murder in the First Degree under the Alaska statute repealed in 1980, the defendant can be convicted of Illegal Control of an Enterprise in the First Degree provided that the other elements of that crime can be established. Similarly, if the defendant committed conduct in Oregon that would be the equivalent of a class A or unclassified felony in Alaska, the first degree crime may also be established.

Under AS 11.59.040(a)(2), the elements of the offense need only be <u>similar</u> to a current unclassified or class A felony offense in Alaska. An identical standard is followed in calculating prior convictions for purposes of presumptive sentencing. AS 12.55.145(a)(2).

Note finally that no culpable mental state requirement is

specified in either of the two crimes. Consequently, the criminal code's general rules on culpability will be applicable and it will be necessary to establish that conduct was engaged in knowingly and that the defendant acted recklessly as to circumstance and result elements. AS 11.81.610(b).

Sec. 11.59.060. CHARGING UNDERLYING CRIME

This section clarifies an issue that may arise in charging a defendant under this legislation. If the prosecutor decides to proceed against the defendant for both a violation of AS 11.59.040 or 11.59.050, and the underlying illegal activity, he or she may do so in the same charging instrument. In the event that consecutive or concurrent sentences are not otherwise prohibited, they may be appropriate in cases where the underlying criminal activity is charged in addition to a violation of AS 11.59.040 or 11.59.050. See United States v. Boylan, 620 F.2d 359, 361 (2nd Cir. 1980) cert. denied, 449 U.S. 833 (1980).

ARTICLE 3. CIVIL REMEDIES

Sec. 11.59.070. EFFECT OF CONVICTION ON OTHER PROCEEDINGS

This section, which is based on 18 U.S.C. sec. 1964, precludes a defendant who has been convicted under AS 11.59.040 or 11.59.050 from denying the essential elements of the crime in subsequent litigation. Unlike the federal statute which only estops the defendant in subsequent litigation with the government, this section estops the defendant in all subsequent litigation with any party. Since the defendant's violation of AS 11.59.010 has already been established beyond a reasonable doubt in the earlier criminal prosecution, there is no reason to require the plaintiff in a civil proceeding brought against the same defendant to relitigate the basis of the criminal conviction. This is particularly the case since the burden of the civil litigant to establish a violation of AS 11.59.010 is by a preponderance of the evidence, while the government has already established a violation beyond a reasonable doubt.

Sec. 11.59.080. CIVIL ACTION FOR TREBLE DAMAGES

This section creates a civil action for treble damages available to any person, including the state, who is injured in business or property as a result of a violation

of AS 11.59.010. This section serves two purposes. First, it compensates those who have been injured as a result of racketeering. Second, it imposes severe financial disincentives on persons who violate AS 11.59.010 that are over and above any criminal penalty that may be imposed and any forfeiture that is ordered. The civil remedies authorized by this section provide another powerful deterrent against persons who may engage in conduct prohibited by AS 11.59.010. The plaintiff is only required to establish an injury "to business or property". "An allegation of commercial or competitive injury is not required...." Bennett v. Berg, 685 F.2d 1053 (8th Cir. 1982), cert. denied, 104 S.Ct. 527 (1983).

Assuming that a violation of AS 11.59.010 can be established, there is no requirement that the plaintiff additionally show that the injury to his business or property was caused by the defendant's racketeering, as opposed to the illegal activity that was used to establish racketeering under AS 11.59.020. This nebulous and artificial distinction has been recognized in a few recent cases interpreting the federal law, but it is specifically rejected here as being contrary to the intent of this legislation. See Bankers Trust Co. v. Rhoades, 53 U.S.L.W. 2063 (2d. Cir. July 26, 1984); Moss v. Morgan Stanley Inc., 553 F.Supp. 1347 (S.D. N.Y. 1983), cert. denied, 104 S.Ct. 1280 (1984).

Unlike a criminal prosecution under this legislation where the proof required to establish a violation must be beyond a reasonable doubt, the elements of a civil action brought under this section need only be established by a preponderance of the evidence. See United States v. Capetto, 502 F.2d 1351, 1357 (7th Cir. 1974), cert. denied, 420 U.S. 925 (1975); Herman & MacLean v. Huddlestom, 51 U.S.L.W. 4099 (Jan. 24, 1983). As previously discussed, there is no requirement that the defendant be shown to be a part of "organized crime."

AS 11.59.080 does not require that a criminal prosecution against the defendant be instituted or successfully completed as a prerequisite for a person to bring a private cause of action. Consequently, it is the intent of this legislation to specifically reject a recent contrary interpretation of the similar federal law. See Sedima, S.P.R.L. v. Imrey Co., 53 U.S.L.W. 2063 (2d Cir. Aug. 7, 1984). However, if a criminal prosecution is first successfully brought, AS 11.59.070 prevents the defendant from denying the essential allegations of the crime in a subsequent civil action.

In addition to allowing a civil cause of action for treble damages, this legislation authorizes a court to grant a wide variety of equitable relief in connection with an action brought under this section. The person may obtain

a restraining order to prevent future violations of AS 11.59.010, as well as restrictions on the conduct of the enterprise, including its dissolution or reorganization. See AS 11.59.100.

Sec. 11.59.090. PROPERTY SUBJECT TO FORFEITURE

One of the principal goals of the federal law upon which this legislation is based was to remove the profit from criminal activity "by separating the racketeer from the dishonest gain." Russello v. United States, 104 S.Ct. 296, 303 (1983). The mechanism used to accomplish that goal was the adoption of an effective forfeiture law. A similar approach is taken in this legislation, with this section providing that property used in violation of AS 11.59.010 is subject to forfeiture. The procedures specifying how the property is forfeited appear in section 3 of this legislation discussed infra. The term "property" is defined in AS 11.59.900(2) to mean "any thing of value, including real or personal property, claims against or interests in business or property, contractual rights, securities, income, profits, or any other business or financial interest." The key to the definition is that the item, claim, interest or right must be a thing of value.

Also covered by this forfeiture provision are the proceeds of property, including profits acquired from a violation

of AS 11.59.010. In Russello v. United States, 104 S.Ct. 296, 301 (1983), the Supreme Court stressed the importance of covering profits derived from racketeering under a forfeiture statutes.

> Forfeiture of an interest in an illegitimate association-in-fact ordinarily would be of little use because an association of that kind rarely has identifiable assets; instead, proceeds or profits usually are distributed immediately. Thus construing [the federal forfeiture statute] to reach only interests in an enterprise would blunt the effectiveness of the provision in combatting illegitimate enterprises, and would mean that "[w]hole areas of organized criminal activity would be placed beyond" the reach of the statute. United States v. Turkette, 452 U.S. at 589.

Under AS 11.59.090(1), property is subject to forfeiture if it was acquired or maintained in violation of, or in the course of violating, AS 11.59.010. Thus the defendant's interest in the enterprise itself is subject to forfeiture if it was acquired in violation of AS 11.59.010. For example, if the defendant acquired a business through racketeering, that business will be forfeited to the state. Moreover, property such as firearms and automobiles is subject to forfeiture if acquired in the course of violating AS 11.59.010. Even if such property is never actually used as part of the illegal activity, it is subject to forfeiture if it was intended to be used to conduct or facilitate illegal activity, or to further the goals of the enterprise.

AS 11.59.090(2) subjects to forfeiture any property used or invested in violation of, or in the course of violating, AS 11.59.010. This paragraph in part permits the forfeiture of property obtained through racketeering to obtain an interest in an enterprise or to run an enterprise. This paragraph also covers property that may not have been originally derived from racketeering, but is nonetheless actually used in the course of violating AS 11.59.010. Property such as firearms, automobiles, cash receipts obtained while running the enterprise, or other business equipment or supplies are thus subject to forfeiture.

Finally, AS 11.59.090(3) covers property, or its proceeds, that is derived from racketeering (i.e., from a pattern of illegal activity) without the requirement that some enterprise actually be taken over. Thus if the scheme is stopped before it can infiltrate a legitimate business, the illegitimate gains from the racketeering are nonetheless subject to forfeiture, even though the defendants are not subject to the severe criminal penalties provided under AS 11.59.040 and 11.59.050. Because it is important to take away the profit motive existing in repeated criminal activity, AS 11.59.090 has been included in this bill.

Sec. 11.59.100. INJUNCTIVE RELIEF

This section provides a mechanism to insure that equitable relief can be obtained to minimize the harm caused by racketeering as well as to preserve the assets of the defendant for future recovery in the context of civil recovery, a criminal fine, or a forfeiture. The type of equitable relief authorized by this section depends on the stage of the litigation in which it is sought and who is requesting the relief. Subsection (a) applies to relief that is sought before an action under this legislation is actually filed and may only be sought by the attorney general. Subsection (b) applies to relief that may be granted once an action is filed. This relief may be sought by either the attorney general or a civil plaintiff. Subsection (c) applies to equitable relief that may be granted once an action is successfully concluded. The relief may be sought in connection with either a civil or criminal proceeding authorized by this legislation.

In reference to equitable relief that may be sought in conjunction with a civil proceeding, this section is subject to due process requirements governing equitable relief. United States v. Cappetto, 502 F.2d 1351, 1358 (7th Cir. 1974), cert. denied, 420 U.S. 925 (1975). The person seeking the injunction must show some potential injury, but need not show "irreparable injury other than the

injury to the public which [is] inherent in the conduct made unlawful...." Cappetto, 502 F.2d at 1358-59. The breadth of the equitable relief authorized by this action evidences the concern of this legislation that the plaintiff's right to recovery could be seriously impaired by the concealment, disposal, or removal from the jurisdiction of the property at issue.

In reference to equitable relief sought in conjunction with a criminal prosecution, no preseizure hearing is required if the injunction is necessary to achieve important governmental purposes. Preseizure notice might defeat the purposes of this section. Moreover, the injunction is initiated by government officials rather than private parties. United States v. Spilotro, 680 F.2d 612, 617 (9th Cir. 1982). Due process requirements are satisfied by a prompt postseizure hearing once the injunction has been entered. Spilotro 680 F.2d at 617. It is within the discretion of the superior court to continue the injunction if it is satisfied that there is probable cause to believe that the defendant is guilty of violating AS 11.59.040 or 11.59.050 and that the property at issue in the injunction is subject to forfeiture under AS 11.-59.090. United States v. Spilotro, 680 F.2d 612, 618 (9th Cir. 1982); United States v. Long, 654 F.2d 911, 915 (3rd Cir. 1981). "It is not necessary that the hearing duplicate the criminal trial." The prosecution is required

only to establish the probability that the defendant will be convicted and properties will be subject to forfeiture. Spilotro, 680 F.2d at 618. The likelihood of conviction may be established by such evidence as testimony of law enforcement officials concerning the sources of defendant's income and the legality of that income. See Long, 654 F.2d at 915.

Sec. 11.59.110. CIVIL INVESTIGATIVE DEMAND

This section, which is based on 18 U.S.C. sec. 1968 provides the state with the necessary mechanism to insure that investigations into suspected criminal or civil violations of this legislation can be completed successfully. The provisions are largely self explanatory, and considering that no appellate cases have arisen under the similar federal statue in the 14 years since enactment, the provisions of this section will apparently present no problems in administration.

Sec. 11.59.120. ATTEMPT OR SOLICITATION TO VIOLATE AS 11.59.010

This section is included solely for drafting convenience to insure that the quoted phrase does not have to be repeated in the numerous references in AS 11.59.070 -- 11.59.120 that depend on establishing a violation of

AS 11.59.010.

ARTICLE 4. GENERAL PROVISIONS

Sec. 11.59.900. DEFINITIONS

This section defines two key terms that are used throughout this chapter, "enterprise" and "property."

(1) Enterprise: To commit any of the three prohibited acts described in AS 11.59.010 an "enterprise" must be involved. This section defines that term. The definition is not limited to those examples specifically listed, but is merely illustrative. See United States v. Huber, 603 F.2d 387, 394 (2d Cir. 1979), cert. denied, 444 U.S. 1085 (1980). "There is no restriction upon the associations embraced by the definition: an enterprise includes any union or group of individuals associated in fact". United States v. Turkette, 452 U.S. 576, 580 (1980).

The definition specifically includes legal as well as illegal entities. See United States v. Turkette, 452 U.S. 576 (1980); see also United States v. Griffin, 660 F.2d 996 (4th Cir. 1981), cert. denied 102 S.Ct. 1029 (1982). There is no requirement that the membership of the enterprise remain static throughout its existence. See United States v. Clemones, 577 F.2d 1247, 1253, modified, 582

F.2d 1373 (5th Cir. 1978), cert. denied, 445 U.S. 927 (1980). Further, the definition of enterprise is broad enough to include a single-person enterprise. See United States v. Hartley, 678 F.2d 961, 989 (11th Cir. 1982), cert. denied, 103 S.Ct. 834 (1983); United States v. Benny, 559 F.Supp. 264, 266-71 (N.D. Cal. 1983).

The federal definition of enterprise has been interpreted on numerous occasions to apply to commercial entities, benevolent organizations, and governmental entities. This legislation intends to adopt the federal approach of broadly interpreting the definition of enterprise as illustrated by such cases as United States v. Weisman, 624 F.2d 1118, 1120 (2d Cir.) cert. denied, 449 U.S. 871 (1980); United States v. Provenzano, 688 F.2d 194, 199-200 (3rd Cir.), cert. denied, 459 U.S. 1071 (1982); United States v. Thompson, 685 F.2d 993, 994-95 (6th Cir.), cert. denied, 459 U.S. 1072 (1982); United States v. Long, 651 F.2d 239, 241 (4th Cir.), cert. denied, 454 U.S. 896 (1981); United States v. Stratton, 649 F.2d 1066, 1074-75 (5th Cir. 1980) and cases cited approvingly therein; United States v. Grzywacz, 603 F.2d 682, 685-87 (7th Cir. 1979), cert. denied, 446 U.S. 935 (1980); United States v. Dozier, 672 F.2d 531, 543 and n. 8 (5th Cir.) cert. denied, 459 U.S. 943 (1982); United States v. Bagaric, 706 F.2d 42 (2d Cir.), cert. denied, 104 S.Ct. 283 (1983).

Establishing a pattern of racketeering is not automatically sufficient by itself to establish the existence of an enterprise. "While the proof used to establish those separate elements may in a particular case coalesce, proof of one does not necessarily establish the other. The 'enterprise' is not the 'pattern of racketeering activity'; it is an entity separate and apart from the pattern of activity in which it engages." United States v. Turkette, 452 U.S. at 583-85. See generally United States v. Mazzei, 700 F.2d 85, 87-90 (2d Cir.), cert. denied, 103 S.Ct. 2124 (1983); United States v. Cagnina, 697 F.2d 915, 921 (11th Cir.), cert. denied, 104 S.Ct. 175 (1983).

(2) Property: This definition will be of primary importance in applying the forfeiture provisions in sec. 3 of the bill. Those forfeiture provisions apply to property and proceeds of property acquired, maintained, used, invested, or derived from violation of AS 11.59.010. Consistent with the recent decision of the Supreme Court in Russello v. United States, 104 S.Ct. 296, the definition of property specifically includes profits.

Section 3. Forfeitures

This section of the bill has two related purposes. First, it specifies the procedures applicable to the forfeiture of property authorized by this legislation in

AS 11.59.090. Secondly, it effectively consolidates many state forfeiture procedures in a single new article added to AS 9. This consolidation of state forfeiture procedures will minimize the possibilities of unintended inconsistencies in coverage and reduce the volume of laws that are required whenever forfeiture is authorized. Additionally, since many instances of racketeering may involve conduct that violates crimes defined outside this legislation, it is appropriate to include the general procedures pertaining to forfeiture in this legislation.

ARTICLE 7. FORFEITURE

Sec. 09.50.400. PROCEDURES APPLICABLE IN FORFEITURE PROCEEDINGS

This section accomplishes the consolidation of forfeiture procedures referred to above. For forfeiture procedures to be initiated, forfeiture must be authorized by state law. AS 11.59.090 specifically authorizes the forfeiture of property used in violation of AS 11.59.010, while other state statutes also authorize forfeiture in specified circumstances. See e.g., AS 11.66.270 and AS 17.30.110 as amended in secs. 5 and 9 of this bill.

If forfeiture is authorized by state law, the sections in this article will govern the procedures applicable to the

forfeiture procedure. There is, however, one important exception to the general rule that all forfeiture proceedings are governed by AS 09.50. In cases where the legislature wishes to make property subject to forfeiture procedures that are different from those included in this article, it can specifically do so. However, if different forfeiture procedures are not "otherwise specifically provided in the state law authorizing forfeiture," the property is subject to forfeiture under the procedure specified in this article.

Sec. 09.50.410. SEIZURE AND CUSTODY OF PROPERTY

Property subject to forfeiture may be seized with or without a court order under the provisions of AS 09.50.410(a). When property is seized without a court order under paragraph (a)(3), it may not be held for more than 48 hours unless an extension is obtained from the court.

Once property has been seized, the commissioner of public safety or a local law enforcement agency is responsible for assuming custody of the property under AS 09.50.-410(b). Only the court with jurisdiction over the property can require a subsequent movement of the property.

AS 09.50.410(c) provides that the property must be inventoried within 10 days after it is seized, and that the

value of any items, other than controlled substances, must be estimated. The results of this estimate will be of importance in determining the required notices that must be sent under AS 09.50.420.

Sec. 09.50.420. NOTICE OF SEIZURE AND FORFEITURE ACTION; ANSWERS

Once property has been seized under AS 09.50.420, the commissioner of public safety is required to comply with the notice provision outlined in this section.

AS 09.50.420(a) pertains to the notice required after seizure of the property but before the state institutes formal forfeiture proceedings. Notice must be sent to any person who has an interest in the property as described in this subsection. However, if a forfeiture proceeding has been instituted within 30 days after seizure of the property, the notice required by subsection (a) need not be given. This is because the notice required in AS 09.50.-420(b) will provide sufficient notice to persons with interests in the property.

AS 09.50.420(b) describes a separate and additional notice that must be sent within 30 days after the state actually institutes the forfeiture proceeding. Since a defendant in a criminal case has already received notice of the

proceeding under AS 09.50.430(a), no additional notice need be sent to the defendant.

AS 09.50.420(c) provides a mechanism whereby parties with an interest in the property sought to be forfeited can file an answer in order to argue against forfeiture or for a remission of the property. Since controlled substances and imitation controlled substances are summarily forfeited to the state under AS 17.30.126, AS 09.50.420(d) provides that the notice requirements specified in this section do not apply to the forfeiture of controlled substances.

Sec. 09.50.430. PROCEEDINGS RESULTING IN FORFEITURE; BURDEN OF PROOF

This section lists the underlying proceedings in which forfeiture may be initiated, and specifies the burden of proof requirement in all forfeiture proceedings.

Under AS 09.50.430(a), a forfeiture proceeding may be initiated in one of three proceedings. In the event that the state has instituted a criminal prosecution or civil action relating to the conduct making the property subject to forfeiture, the filing of a motion to forfeit in that proceeding will initiate the forfeiture action. For example, if the defendant is charged under AS 11.59.040 or

11.59.050 for conduct involving the takeover of an enterprise through racketeering, the state may also file a motion seeking forfeiture of the enterprise and all profits obtained by the defendant as a result of the illegal conduct. See AS 11.59.090. Similarly, if the state has filed a civil action for an injunction or for treble damages, it may also include a motion to forfeit property.

Alternatively, the state may institute a forfeiture proceeding simply by filing a complaint seeking forfeiture in an in rem proceeding involving the property subject to forfeiture. In this instance, there is no requirement that any additional civil or criminal action be instituted that relates to the property which is the subject of the forfeiture.

AS 11.50.430(b) provides that forfeiture proceedings are tried before a judge sitting without a jury. At the hearing, the state must establish by a preponderance of the evidence that the property is subject to forfeiture. The same burden of proof applies regardless of whether the forfeiture is sought by motion in a criminal or civil proceeding relating to the property or in an in rem proceeding.

Sec. 09.50.440. DEFENSES EXEMPTED

This section emphasizes that a forfeiture proceeding is distinct from any criminal proceeding involving the property sought to be forfeited. It is therefore irrelevant in the forfeiture proceeding that an earlier criminal prosecution involving the same property that the state seeks to forfeit resulted in an acquittal or a conviction of a lesser included offense. This is because the burden of proof applicable in the civil proceeding is less than required for a criminal conviction. See United States v. One (1) 1969 Buick Riviera, 493 F.2d 553 (5th Cir. 1974); One-Lot Emerald Cut Stones and One Ring v. United States, 409 U.S. 232 (1972); United States v. Kismetoglu, 476 F.2d 269 (9th Cir.) cert. dismissed, 410 U.S. 976 (1973).

In the civil proceeding the state must only prove by a preponderance of the evidence that the property is subject to forfeiture. AS 09.50.430(b). In a criminal prosecution, the violation of the underlying crime must be established beyond a reasonable doubt. Therefore, a jury determination in a criminal case that the defendant is not guilty of the charged offense does not mean that it has also determined that the state has failed to establish the violation of state law under the preponderance of the evidence standard applicable in civil forfeiture proceedings.

Secs. 09.50.450, 09.50.460. PETITION FOR RELEASE AND DISPOSITION OF SEIZED PROPERTY

Under certain circumstances, property may be released or disposed of under AS 09.50.450 and 09.50.460 before the court's decision on forfeiture. AS 09.50.450(b) provides that property that is not likely to be used in a court proceeding can be released if release is found to be in the best interests of the state and the claimant posts adequate security for the property. Additionally, the claimant or state can request disposition of the property before the decision on forfeiture. This may occur, for example, when the property is perishable or when its value may otherwise decrease during the proceedings. The proceeds of the sale are then treated as the property which is subject to forfeiture.

Sec. 09.50.470. FORFEITURE AND REMISSION

Subject only to the right of an innocent party to protect his interest in the property, this section makes forfeiture mandatory once it is established that the property is subject to forfeiture, regardless of the proceeding in which forfeiture is sought. The court does not retain discretion on the issue of forfeiture once it is shown that the property is subject to forfeiture.

The introductory clause of AS 09.50.470(a) refers to "the law authorizing forfeiture." To resolve any possible ambiguity on this point, the law authorizing the forfeiture

of property obtained in violation of AS 11.59.010 is AS 11.59.090. Other laws, besides AS 11.59.090, authorize the forfeiture of property, and once it is shown that the property was subject to forfeiture under those laws, that property must also be forfeited to the state under AS 09.50. For example, AS 17.30.110, as repealed and re-enacted by sec. 9 of this bill, authorizes the forfeiture of property used in violation of the laws involving controlled substances. Once it is shown that the property met the requirements of forfeiture specified in AS 17.30.110, that property must be forfeited to the state in accordance with the procedures specified in this chapter.

The right of an innocent person to obtain the return of his interest in property is sometimes referred to a "remission." Remission is a form of "pardon" of the forfeited property. The Laura, 114 U.S. 411 (1885). Under AS 09.50.470(a)(1) -- (3), a totally innocent person with an interest in property subject to forfeiture may protect his or her interest in the property. In allowing an innocent person to protect his or her interest, this section recognizes that the failure to provide such an opportunity would violate the Alaska Constitution. State v. Rice, 626 P.2d 104, 111-15 (Alaska 1981). Assuming that the claimant can satisfy the requirements of paragraphs (a)(1) -- (3), the court is provided with several options in

AS 09.50.470(b) for protecting the claimant's interest depending on the extent of that interest.

Federal statutory and case law has established that only parties who are ignorant of the illegal use or intended use of property sought to be forfeited, and who are non-negligent in lending or leasing their property, can qualify as claimants entitled to "remission" or "remittance." See, e.g., 18 U.S.C. sec. 3617(b), which codifies case law from the prohibition era. The burden is placed upon the claimant to prove by a preponderance of the evidence that he or she deserves relief under the remission standards. See, e.g., Wilson Motor Co. v. United States, 96 F.2d 29, 30 (9th Cir. 1938); United States v. C.I.T. Corp., 93 F.2d 469, 470 (2d Cir. 1937); United States v. One 1933 Ford V-8 Coach, 14 F.Supp. 243 (E.D. Ill. 1936).

The claimant must establish under AS 09.50.470(a)(1) that he or she had a good faith property interest in the item at the time of the illegal use. Florida Dealers and Growers Bank v. United States, 279 F.2d 673 (5th Cir. 1960); United States v. One 1936 Model Ford Coach, 58 F.Supp. 802 (M.D. Ga. 1944). Additionally, AS 09.50.470(a)(2) and (3) require the claimant to establish that he was ignorant of the illegal use or intended use and was not negligent in lending or leasing the property. This provision is based on 18 U.S.C. sec. 3617(b)(2). See One 1941 Ford 1/2 Ton

Pickup Truck v. United States, 140 F.2d 255 (6th Cir. 1944); Federal Credit Co. v. United States, 109 F.2d 121 (5th Cir. 1940). Compare Calero-Toledo v. Pearson Yacht Leasing Co., 416 U.S. 663 (1974).

Sec. 09.50.480. STATE DISPOSAL OF FORFEITED PROPERTY

Once the property is forfeited, the commissioner of administration is responsible for determining the eventual disposition of the property. Various options are listed in this section.

Sections 4-12. MISCELLANEOUS SECTIONS

The remaining sections of the bill make several miscellaneous complementary amendments to existing laws.

Section 4. This section amends the existing extortion statute to specifically provide that extortion is committed when the defendant makes one of the threats described in AS 11.41.520(a)(1) -- (7) to assist in the collection of a debt. This provision will insure coverage of conduct commonly associated with loan sharking under this legislation.

Sections 5, 6, 9, and 10. These sections make several conforming amendments to insure that gambling, controlled

substances, and imitation controlled substances are subject to the forfeiture proceedings specified in AS 09.50.

Section 7. This amendment insures that all unclassified felonies, including Illegal Control of an Enterprise in the First Degree, are subject to the fine authorized by this section.

Section 8. This amendment is necessary to authorize a term of imprisonment for a violation of AS 11.59.040.

Section 11. REPEALS. This section repeals several statutes pertaining to procedures applicable in drug forfeiture cases which are unnecessary with the enactment, in sec. 3 of the bill, of the new article in AS 09. Note that existing AS 17.30.126, which pertains to the summary forfeiture of certain controlled substances, is not repealed.

Section 12. EFFECTIVE DATE. This section specifies a January 1, 1986, effective date.

APPENDIX A

States that have adopted legislation similar to the federal Racketeering Influenced and Corrupt Organizations title:

1. Ariz. Rev. Stat. Ann. § 13-2312 (1978).
2. Cal. Penal Code § 186 (West Supp. 1983).
3. Colo. Rev. Stat. § 18-17-101 (1981).
4. 1982 Conn. Pub. Acts. 343.
5. Fla. Stat. Ann. § 895.01 (West Supp. 1982).
6. Ga. Code Ann. § 16-14-1 (Sup. 1982).
7. Hawaii Rev. Stat. § 842-1 (1976).
8. Idaho Code § 18-7801 (Supp. 1982).
9. The Illinois Narcotics Profit Forfeiture Act, H.R. 2450 (1982).
10. Ind. Code Ann., § 34-45-6-1 (Burns Sup. 1982).
11. Nevada Rev. Stat., chapter 207 (1983).
12. N.J. Stat. Ann. § 2C:41 (West 1982).
13. N.M. Stat. Ann. § 30-42-1 (Supp. 1978).
14. N.D. Cent. Code § 12.1-106.1 (C.Cupp. 1983).
15. Or. Rev. Stat. § 166-715 (1981).
16. 18 Pa. Cons. Stat. § 911 (1978).
17. R.I. Gen. Laws § 7-15-1 (Supp. 1982).
18. Utah Code Ann. § 76.10-1601 (Supp. 1981).
19. Wis. Stat. Ann. § 946.80 (Supp. 1982).

COMMITTEE REPORT

SENATE

FURTHER:

4/28/86

Date _____

Mr. President

The Committee on FINANCE considered 2d SSSB 414

relating to general grant land entitlements; efd.

and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass

[ ] do pass with attached amendment(s)

[ ] replace with/or adopt CS for _____
[ ] new title
[ ] same title and recommends _____

[ ] and attached a "LETTER OF INTENT" [ ] NEW FISCAL NOTE

[ ] reports it back without recommendation

[ ] recommends referral to _____ Committee

MEMBERS SIGNING
DO PASS

_____

_____

_____

_____

_____

_____

_____

_____

MEMBERS HAVING
OTHER RECOMMENDATIONS

_____

_____

_____

_____

_____

_____

_____

Chairman

Chairman recommendation

COMMITTEE REPORT

SENATE

~~3/24/86~~
~~3/11/86~~
~~2/14/86~~

FURTHER: FINANCE

Date 3/25/86

Mr. President

The Committee on C&RA considered 2d SSB 414
relating to municipal land entitlements; efd.

and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass

[ ] do pass with attached amendment(s)

[X] replace with/or adopt CS for 2d SS SB 414 (C&RA)
[ ] new title
[ ] same title and recommends

[ ] and attached a "LETTER OF INTENT"

[X] ~~NEW~~ FISCAL NOTE
NO - Not to these sections

[ ] reports it back without recommendation

[ ] recommends referral to _____ Committee

MEMBERS SIGNING
DO PASS

Ferguson

MEMBERS HAVING
OTHER RECOMMENDATIONS

Ellis Stanglewicz No. Rec.

Chairman

Chairman recommendation

COMMITTEE REPORT

SENATE

FURTHER: FINANCE

3/28/86

Date 4/25/86

Mr. President

The Committee on RESOURCES considered 2d SSSB 414

~~relating to municipal land entitlements; efd.~~ Incorrect Title per NANCY 3/28/86 MEL relating to general grant land entitlements; eff

and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass

[ ] do pass with attached amendment(s)

[X] replace with/or adopt CS for 2nd SSSB 414 (RESOURCES)
[ ] new title
[X] same title and recommends

[ ] and attached a "LETTER OF INTENT" [ ] NEW FISCAL NOTE

[ ] reports it back without recommendation

[ ] recommends referral to Committee

MEMBERS SIGNING
DO PASS

Rinker Halland
[illegible]
[illegible]
[illegible]

MEMBERS HAVING
OTHER RECOMMENDATIONS

Fred F. Zharoff (No Rec)

Curtis Stuntzner
Chairman

DO Pass
Chairman recommendation

Offered: 4/28/86
Referred: Finance

Original sponsor: Ferguson

IN THE SENATE BY THE RESOURCES COMMITTEE

CS FOR 2d SPONSOR SUBSTITUTE FOR SENATE BILL NO. 414 (Resources)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to general grant land entitlements; and providing for an effective date."

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

* Section 1. AS 29.65 is amended by adding a new section to read:

Sec. 29.65.015. DETERMINATION OF ENTITLEMENTS FOR MUNICIPALITIES. The general grant land entitlement of a municipality is 10 percent of the maximum total acreage of vacant, unappropriated, unreserved land within its boundaries at any time between the date of its incorporation and two years after the expiration of the state's right to make selections under sec. 6(a) or (b) of the Alaska Statehood Act. By December 31 of each year the director shall determine or update the unfulfilled entitlement for each municipality under this section and certify that entitlement to that municipality.

* Sec. 2. AS 29.65 is amended by adding a new section to read:

Sec. 29.65.025. LIMITATIONS ON ENTITLEMENTS. (a) A municipality is eligible for only one general grant land entitlement. A municipality that qualifies for an entitlement under AS 29.65.010 and 29.65.015 shall receive the larger of the two entitlements. However, land may not be conveyed to a municipality under AS 29.65.015 that exceeds the amount of acreage listed under AS 29.65.010 until at least 90 percent of the amount of the entitlement under AS 29.65.010 has been fulfilled, through approval of selections or otherwise, for each listed municipality. This limitation does not apply to conveyance of a small parcel for a specific public purpose if the commissioner of

S

Original sponsor: Ferguson

IN THE SENATE BY THE RESOURCES COMMITTEE

CS FOR 2d SPONSOR SUBSTITUTE FOR SENATE BILL NO. 414 (Resources)

IN THE LEGISLATURE OF THE STATE OF ALASKA

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natural resources finds that the conveyance will serve a public interest.

(b) A municipality may not receive a general grant land entitlement under AS 29.65.010 or 29.65.015 that exceeds 400,000 acres.

(c) The following shall be credited toward fulfillment of the general grant land entitlement of a municipality:

(1) conveyances of legal title to land by the state to the municipality before January 1, 1987, under a former law;

(2) payments for land before January 1, 1987, under former AS 29.18.208;

(3) conveyances of legal title to land before January 1, 1987, and thereafter under AS 29.65.010;

(4) payments for land before January 1, 1987, and thereafter under AS 29.65.080;

(5) disposals of land to the municipality before January 1, 1987, and thereafter under AS 38.05.810 for which the state received less than market value.

(d) In each conveyance of land in fulfillment of a general grant land entitlement, the state shall reserve the right to explore, enter, develop, and occupy the surface as reasonably necessary for access to the mineral estate in accordance with AS 38.05.125.

(e) Conveyances of land under this chapter are subject to AS 38.05.035(e).

* Sec. 3. AS 29.65.040 is repealed and reenacted to read:

Sec. 29.65.040. STATUS OF ENTITLEMENTS. (a) A general grant land entitlement under AS 29.65.010 is a vested property right that must be fulfilled in accordance with AS 29.65.025, 29.65.060, and 29.65.080.

(b) A general grant land entitlement under AS 29.65.015 is a

property right that vests on the date of incorporation of the municipality. The entitlement must be fulfilled in accordance with AS 29.-65.025.

* Sec. 4. AS 29.65.060(a) is amended to read:

(a) If an entitlement determined under AS 29.65.010 or 29.65.015 [29.65.020] results in a per capita entitlement for the municipality of less than one and one-half acre, the municipality may select vacant school land or mental health land in the municipality in partial fulfillment of its land entitlement under this chapter. School land or mental health land may be selected notwithstanding the fact that this land is not unappropriated and unreserved within the meaning of this chapter and under former AS 29.18.190 and 29.18.200, but each selection of school land or mental health land by a municipality must be vacant, unappropriated, or unreserved land as defined in this chapter, except that it need not be general grant land.

* Sec. 5. AS 29.65.060(b) is amended to read:

(b) The acreage of school land, university land or mental health land, if any, in a municipality may not be included in the determination of entitlement under AS 29.65.010 or 29.65.015 [29.65.020].

* Sec. 6. AS 29.65.060 is amended by adding new subsections to read:

(g) Notwithstanding (a) of this section, a municipality may not select school land or mental health land after October 4, 1985.

(h) Nothing in this section affects the legal rights of any person with regard to selections of school land, university land, or mental health land made by a municipality on or before October 4, 1985.

* Sec. 7. AS 29.65.060 is amended by adding a new subsection to read:

(i) A municipality that may enter into an agreement under sec. 15 of this Act is entitled to just compensation in the form of

land or other payment for a selection made by it under this section or former AS 29.18.206 (ch. 180, SLA 1978) that was pending or on timely appeal on April 1, 1986, and that cannot be conveyed to the municipality as a result of final judicial action or law, except that compensation is not required for a selection of land by a municipality within a special use area under AS 16 or AS 41 or for a selection of land not qualified to be selected under this section or former AS 29.18.206. Compensation under this subsection shall be credited against the municipality's remaining land entitlement under this chapter.

* Sec. 6. AS 29.65.080(g) is amended to read:

(g) Payments authorized by this section may only [NOT] be made to a municipality [ELIGIBLE] for an entitlement under AS 29.65.010 [AS 29.65.020 OR 29.65.030].

* Sec. 9. AS 29.65.080 is amended by adding a new subsection to read:

(i) Payment under this section shall be made into a municipal land bank or trust account created by ordinance with the purpose of applying the payments toward the acquisition of land necessary for public purposes that may be otherwise unavailable to the municipality.

* Sec. 10. AS 29.65.130(3) is amended to read:

(3) "general grant land"

(A) means land patented or tentatively approved to the state from the United States under sec. 6(a) or (b) of the Alaska Statehood Act;

(B) does not include mental health land, school land, or university land;

* Sec. 11. AS 29.65.130(10) is amended to read:

(10) "vacant, unappropriated, unreserved land" means general grant land as defined in (3) of this section, excluding

minerals as required by sec. 6(i) of the Alaska Statehood Act, that

(A) has not been set aside by statute for one or more particular uses or purposes;

(B) has not been approved for patent to a municipality under this chapter or former AS 29.18.190 and 29.18.200; or

(C) is unclassified or, if classified under AS 38.05.300, is classified for agricultural, grazing, public recreation, resource management, settlement, forestry, or wildlife habitat [COMMERCIAL, INDUSTRIAL, PRIVATE RECREATIONAL, RESIDENTIAL, UTILITY, OR OPEN-TO-ENTRY PURPOSES,] or is classified in accordance with an agreement between a municipality and the state providing for state management of land of the municipality.

* Sec. 12. AS 38.05.321(b) is amended to read:

(b) State land classified as agricultural land that has been selected by a municipality under former AS 29.18.190 - 29.18.200 or former AS 29.18.205(e) may be approved by the director for patent under AS 29.65 [AS 29.65.050(c)]; however, only rights in the land for agricultural purposes may be transferred and all other interests in the land will remain with the state. Agricultural land approved for patent to a municipality shall be credited, acre for acre, toward fulfillment of that municipality's entitlement under AS 29.65 [AS 29.65.010 - 29.65.030] or former AS 29.18.201 - 29.18.203. If the director later determines it to be in the best interests of the state to transfer some or all of the additional rights in that approved or patented agricultural land, those rights shall pass without consideration to the municipality in which the land is located. The notice and review provisions of AS 38.05.945 are applicable to conveyance of rights under this section.

* Sec. 13. AS 38.05.321(c) is amended to read:

(c) The provisions of this section do not apply to

(1) state land classified as agricultural land that has been selected by a municipality under the provisions of former AS 29.18.190 - 29.18.200 if the selection is an approved selection before April 1, 1978 and is otherwise valid under former AS 29.65.050(b) or former AS 29.18.205(b); or

(2) a quitclaim of the interest of the state to the federal government under AS 38.05.035(b)(9).

* Sec. 14. Before January 1, 1987, the Department of Natural Resources shall consult with each municipality affected by this Act regarding classifications of state land within its boundaries and may assist the municipality in identifying land suitable for selection in fulfillment of its general grant land entitlement.

* Sec. 15. The commissioner of natural resources shall negotiate with and may enter into an agreement to convey state land to a borough or unified municipality whose entitlement under AS 29.65.010 in the commissioner's determination cannot be fulfilled by January 1, 1987, if the borough or unified municipality elects in writing before January 1, 1987, to pursue a settlement of that existing entitlement. The commissioner has authority under this section to convey state land without regard as to whether the land is vacant, unappropriated, unreserved land as defined under AS 29.65.130(10) if the commissioner determines, after public notice, that the land lies outside the smallest practicable tract of land actually used in connection with the administration of a state function on July 1, 1985. However, the commissioner may not convey land owned by another state agency without its consent or land within the boundaries of a municipality to another municipality before consulting with the municipality in which the land is located. Land conveyed to a borough or a unified municipality under an agreement entered into under this section may constitute complete

fulfillment of the municipality's general grant land entitlement as specified in the agreement and agreed to by both parties. Conveyances under an agreement entered into under this section may not contain reservations or conditions that are not required to be imposed by law, except restrictions or conditions agreed upon by the parties.

* Sec. 16. AS 29.65.010(b), 29.65.020, 29.65.030, 29.65.050, 29.65.080(h) and 29.65.110 are repealed.

* Sec. 17. Section 6 of this Act is retroactive to October 4, 1985.

* Sec. 18. Sections 6, 14, 15, and 17 of this Act take effect immediately in accordance with AS 01.10.070(c).

* Sec. 19. Sections 1 - 5, 7 - 13, and 16 of this Act take effect January 1, 1987.

Offered: 3/28/86
Referred: Resources

Original sponsor: Ferguson

IN THE SENATE

BY THE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

CS FOR 2d SPONSOR SUBSTITUTE FOR SENATE BILL NO. 414 (C&RA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to general grant land entitlements; and providing for an effective date."

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

* Section 1. AS 29.65 is amended by adding a new section to read:

Sec. 29.65.015. DETERMINATION OF ENTITLEMENTS FOR MUNICIPALITIES. The general grant land entitlement of a municipality is 10 percent of the maximum total acreage of vacant, unappropriated, unreserved land within its boundaries at any time between the date of its incorporation and two years after the expiration of the state's right to make selections under sec. 6(a) or (b) of the Alaska Statehood Act. By January 1 of each year the director shall determine or update the unfulfilled entitlement for each municipality under this section and certify that entitlement to that municipality.

* Sec. 2. AS 29.65 is amended by adding a new section to read:

Sec. 29.65.025. LIMITATIONS ON ENTITLEMENTS. (a) A municipality is eligible for only one general grant land entitlement. A municipality that qualifies for an entitlement under AS 29.65.010 and 29.65.015 shall receive the larger of the two entitlements.

(b) A municipality may not receive a general grant land entitlement under AS 29.65.010 or 29.65.015 that exceeds 400,000 acres.

(c) All conveyances of legal title to land by the state to a municipality under AS 29.65.010 or a former law shall be credited toward fulfillment of the entitlement for that municipality. All payments for land under AS 29.65.080 or former AS 29.18.208 shall be

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credited toward fulfillment of the entitlement for that municipality.

(d) Land classified under AS 38.05.300 for wildlife habitat may not be selected or conveyed in fulfillment of a general grant land entitlement.

* Sec. 3. AS 29.65.040 is repealed and reenacted to read:

Sec. 29.65.040. STATUS OF ENTITLEMENTS. (a) After January 1, 1987, a general grant land entitlement under AS 29.65.010 is a vested property right that must be fulfilled in accordance with AS 29.65.025 and 29.65.080.

(b) A general grant land entitlement under AS 29.65.015 is a property right that vests on the date of incorporation of the municipality. The entitlement must be fulfilled in accordance with AS 29.-65.025.

* Sec. 4. AS 29.65.060 is repealed and reenacted to read:

Sec. 29.65.060. SCHOOL AND MENTAL HEALTH LAND. (a) School land and mental health land within the boundaries of a municipality may not be included for purposes of determining the general grant land entitlement of that municipality.

(b) A municipality may not receive school land or mental health land in fulfillment of its general grant land entitlement.

* Sec. 5. AS 29.65.080(b) is amended to read:

(b) A municipality shall receive payment for its land deficiency from the municipal land account. A municipality is eligible to receive payment for land deficiency if, after July 1, 1980, the amount of land selected by a municipality that is physically suitable for residential, commercial, or industrial purposes amounts to less than one-third acre per capita. Any entitlement under AS 29.65.010 that is less than one-third acre per capita will, for the purposes of this subsection, be considered a land deficiency. An unselected remaining

entitlement will, for the purpose of deficiency payment under this subsection, be considered as land physically suitable for residential, commercial, or industrial purposes. A municipality eligible under this subsection is entitled to receive a payment for land deficiency equal to $1,000 per acre for a number of acres equal to the difference between one-third of the population of the municipality less the number of acres physically suitable for residential, commercial or industrial purposes that has been selected by the municipality. For the purpose of this subsection, the population of the municipality shall be the population determined by the commissioner under former AS 43.18.010 for the program year beginning July 1, 1978, for a municipality whose entitlement was determined under former AS 29.18.201 [IN ACCORDANCE WITH AS 29.65.060(f)]. No payment may be made to a municipality under this subsection in excess of $9,000,000.

* Sec. 6. AS 29.65.080(g) is amended to read:

(g) Payments authorized by this section may only [NOT] be made to a municipality [ELIGIBLE] for an entitlement under AS 29.65.010 [AS 29.65.020 OR 29.65.030].

* Sec. 7. AS 29.65.130(10) is amended to read:

(10) "vacant, unappropriated, unreserved land" means general grant land as defined in (3) of this section, excluding minerals as required by sec. 6(i) of the Alaska Statehood Act, that

(A) has not been set aside by statute for one or more particular uses or purposes;

(B) has not been approved for patent to a municipality under this chapter or former AS 29.18.190 and 29.18.200; or

(C) is unclassified or, if classified under AS 38.-05.300, is classified for agricultural, grazing, material, public recreation, resource management, settlement, transportation

corridor, forestry, or wildlife habitat [COMMERCIAL, INDUSTRIAL, PRIVATE RECREATIONAL, RESIDENTIAL, UTILITY, OR OPEN-TO-ENTRY PURPOSES,] or is classified in accordance with an agreement between a municipality and the state providing for state management of land of the municipality.

* Sec. 8. AS 38.05.321(b) is amended to read:

(b) State land classified as agricultural land that has been selected by a municipality under former AS 29.18.190 - 29.18.200 or former AS 29.18.205(e) may be approved by the director for patent under AS 29.65 [AS 29.65.050(c)]; however, only rights in the land for agricultural purposes may be transferred and all other interests in the land will remain with the state. Agricultural land approved for patent to a municipality shall be credited, acre for acre, toward fulfillment of that municipality's entitlement under AS 29.65 [AS 29.65.010 - 29.65.030] or former AS 29.18.201 - 29.18.203. If the director later determines it to be in the best interests of the state to transfer some or all of the additional rights in that approved or patented agricultural land, those rights shall pass without consideration to the municipality in which the land is located. The notice and review provisions of AS 38.05.945 are applicable to conveyance of rights under this section.

* Sec. 9. AS 38.05.321(c) is amended to read:

(c) The provisions of this section do not apply to

(1) state land classified as agricultural land that has been selected by a municipality under the provisions of former AS 29.18.190 - 29.18.200 if the selection is an approved selection before April 1, 1978 and is otherwise valid under former AS 29.65.050(b) or former AS 29.18.205(b); or

(2) a quitclaim of the interest of the state to the federal

government under AS 38.05.035(b)(9).

* Sec. 10. Before January 1, 1987, the Department of Natural Resources shall consult with each municipality affected by this Act regarding classifications of state land within its boundaries and shall assist the municipality in identifying land suitable for selection in fulfillment of its general grant land entitlement.

* Sec. 11. Before January 1, 1987, the commissioner of natural resources may negotiate and enter into an agreement with a borough or unified municipality to convey state land within the municipality's boundaries without regard to whether the land is vacant, unappropriated, unreserved land as defined under AS 29.65.130(10) if the commissioner determines the land is not necessary for retention by the state. Land conveyed to a borough or unified municipality under an agreement entered into under this section constitutes complete fulfillment of the municipality's general grant land entitlement and the municipality is not entitled to additional land under this Act.

* Sec. 12. AS 29.65.010(b), 29.65.020, 29.65.030, 29.65.050, 29.65.090 and 29.65.110 are repealed.

* Sec. 13. Sections 4, 10, and 11 of this Act take effect immediately in accordance with AS 01.10.070(c).

* Sec. 14. Sections 1 - 3, 5 - 9, and 12 of this Act take effect January 1, 1987.

Introduced: 3/25/86
Referred: Community & Regional Affairs,
Resources and Finance

IN THE SENATE BY FERGUSON

2d SPONSOR SUBSTITUTE FOR SENATE BILL NO. 414

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to general grant land entitlements; and providing for an effective date."

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

* Section 1. AS 29.65 is amended by adding a new section to read:

Sec. 29.65.015. DETERMINATION OF ENTITLEMENTS FOR MUNICIPALITIES. The general grant land entitlement of a municipality is 10 percent of the maximum total acreage of vacant, unappropriated, unreserved land within its boundaries at any time between the date of its incorporation and two years after the expiration of the state's right to make selections under sec. 6(a) or (b) of the Alaska Statehood Act. By January 1 of each year the director shall determine or update the unfulfilled entitlement for each municipality under this section and certify that entitlement to that municipality.

* Sec. 2. AS 29.65 is amended by adding a new section to read:

Sec. 29.65.025. LIMITATIONS ON ENTITLEMENTS. (a) A municipality is eligible for only one general grant land entitlement. A municipality that qualifies for an entitlement under AS 29.65.010 and 29.65.015 shall receive the larger of the two entitlements.

(b) A municipality may not receive a general grant land entitlement under AS 29.65.010 or 29.65.015 that exceeds 400,000 acres.

(c) All conveyances of legal title to land by the state to a municipality under AS 29.65.010 or a former law shall be credited toward fulfillment of the entitlement for that municipality. All payments for land under AS 29.65.080 or former AS 29.18.208 shall be

credited toward fulfillment of the entitlement for that municipality.

(d) Land classified under AS 38.05.300 for wildlife habitat may not be selected and conveyed in fulfillment of a general grant land entitlement.

* Sec. 3. AS 29.65.040 is repealed and reenacted to read:

Sec. 29.65.040. STATUS OF ENTITLEMENTS. (a) After January 1, 1987, a general grant land entitlement under AS 29.65.010 is a vested property right that must be fulfilled in accordance with AS 29.65.025 and 29.65.080.

(b) A general grant land entitlement under AS 29.65.015 is a property right that vests on the date of incorporation of the municipality. The entitlement must be fulfilled in accordance with AS 29.-65.025.

* Sec. 4. AS 29.65.050 is amended by adding a new subsection to read:

(d) The commissioner of natural resources is authorized to negotiate and enter into an agreement with the Municipality of Anchorage prior to January 1, 1987, whereby the Municipality's entitlement under this chapter may be fully satisfied by the conveyance of state land within the municipal boundaries which the commissioner determines is not necessary for retention in state ownership, whether or not the land is vacant, unappropriated and unreserved. The agreement may provide for the conveyance of no more than 5,000 acres of state land which the commissioner determines is worth no less than $5,000,000.

* Sec. 5. AS 29.65.060 is repealed and reenacted to read:

Sec. 29.65.060. SCHOOL AND MENTAL HEALTH LAND. (a) School land and mental health land within the boundaries of a municipality may not be included for purposes of determining the general grant land entitlement of that municipality.

(b) A municipality may not receive school land or mental health land in fulfillment of its general grant land entitlement.

* Sec. 6. AS 29.65.080(b) is amended to read:

(b) A municipality shall receive payment for its land deficiency from the municipal land account. A municipality is eligible to receive payment for land deficiency if, after July 1, 1980, the amount of land selected by a municipality that is physically suitable for residential, commercial, or industrial purposes amounts to less than one-third acre per capita. Any entitlement under AS 29.65.010 that is less than one-third acre per capita will, for the purposes of this subsection, be considered a land deficiency. An unselected remaining entitlement will, for the purpose of deficiency payment under this subsection, be considered as land physically suitable for residential, commercial, or industrial purposes. A municipality eligible under this subsection is entitled to receive a payment for land deficiency equal to $1,000 per acre for a number of acres equal to the difference between one-third of the population of the municipality less the number of acres physically suitable for residential, commercial or industrial purposes that has been selected by the municipality. For the purpose of this subsection, the population of the municipality shall be the population determined by the commissioner under former AS 43.18.010 for the program year beginning July 1, 1978, for a municipality whose entitlement was determined under former AS 29.18.201 [IN ACCORDANCE WITH AS 29.65.060(f)]. No payment may be made to a municipality under this subsection in excess of $9,000,000.

* Sec. 7. AS 29.65.080(g) is amended to read:

(g) Payments authorized by this section may only [NOT] be made to a municipality [ELIGIBLE] for an entitlement under AS 29.65.010 [AS 29.65.020 or 29.65.030].

* Sec. 8. AS 29.65.130(10) is amended to read:

(10) "vacant, unappropriated, unreserved land" means general grant land as defined in (3) of this section, excluding minerals as required by sec. 6(i) of the Alaska Statehood Act, that

(A) has not been set aside by statute for one or more particular uses or purposes;

(B) has not been approved for patent to a municipality under this chapter or former AS 29.18.190 and 29.18.200; or

(C) is unclassified or, if classified under AS 38.-05.300, is classified for agricultural, grazing, material, public recreation, resource management, settlement, transportation corridor, forestry, or wildlife habitat [COMMERCIAL, INDUSTRIAL, PRIVATE RECREATIONAL, RESIDENTIAL, UTILITY, OR OPEN-TO-ENTRY PURPOSES,] or is classified in accordance with an agreement between a municipality and the state providing for state management of land of the municipality.

* Sec. 9. Before January 1, 1987, the Department of Natural Resources shall consult with each municipality affected by this Act regarding classifications of state land within its boundaries and may assist the municipality in identifying land suitable for selection in fulfillment of its general grant land entitlement.

* Sec. 10. AS 29.65.010(b), 29.65.020, 29.65.030, 29.65.050, 29.65.090 and 29.65.110 are repealed.

* Sec. 11. Sections 4 and 9 of this Act take effect immediately in accordance with AS 01.10.070(c).

* Sec. 12. Sections 1 - 3, 5 - 8, and 10 of this Act take effect January 1, 1987.

ALASKA STATE LEGISLATURE

14th Legislature 2nd Session

2d SPONSOR SUBSTITUTE
SENATE BILL NO. 414

By FERGUSON

"An Act relating to general grant land entitlements; and providing for an effective date."

Introduced in the Senate 3/25, 86

HISTORY IN THE SENATE

1986	
2/3	Read first time and referred to Committee on
3 25	C&RA, RESOURCES & FINANCE
3 28	Reported back with recommendation that C&RA w/CS-2 dupes, 1 none, fiscal note to Resources; replace w/CS, 5 dupes, 1 none, to Finance. Fills.
4/28	
	Read second time and
	Read third time and

PASS	Effective Date
Yeas	Yeas
Nays	Nays
Absent	Absent
Excused	Excused

Reconsideration

PASS	Effective Date
Yeas	Yeas
Nays	Nays
Absent	Absent
Excused	Excused

Reported correctly engrossed
Signed by President
Sent to House

SECRETARY OF THE SENATE

HISTORY IN THE HOUSE

19	
	Read first time and referred to Committee on
	Reported back with recommendation that
	Read second time and
	Read third time and

PASS	Effective Date
Yeas	Yeas
Nays	Nays
Absent	Absent
Excused	Excused

Reconsideration

PASS	Effective Date
Yeas	Yeas
Nays	Nays
Absent	Absent
Excused	Excused

Reported correctly engrossed
Signed by Speaker
Returned to Senate

CHIEF CLERK OF THE HOUSE

HISTORY IN THE SENATE

19	
	Received from House
	To enrolling
	Reported correctly enrolled
	Sent to Governor
	..... by Governor
	Filed with Lt. Governor
	Chapter No. .....

31-001

Introduced: 3/25/86
Referred: Community & Regional Affairs,
Resources and Finance

IN THE SENATE BY FERGUSON

2d SPONSOR SUBSTITUTE FOR SENATE BILL NO. 414

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to general grant land entitlements; and providing for an effective date."

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

* Section 1. AS 29.65 is amended by adding a new section to read:

Sec. 29.65.015. DETERMINATION OF ENTITLEMENTS FOR MUNICIPALITIES. The general grant land entitlement of a municipality is 10 percent of the maximum total acreage of vacant, unappropriated, unreserved land within its boundaries at any time between the date of its incorporation and two years after the expiration of the state's right to make selections under sec. 6(a) or (b) of the Alaska Statehood Act. By January 1 of each year the director shall determine or update the unfulfilled entitlement for each municipality under this section and certify that entitlement to that municipality.

* Sec. 2. AS 29.65 is amended by adding a new section to read:

Sec. 29.65.025. LIMITATIONS ON ENTITLEMENTS. (a) A municipality is eligible for only one general grant land entitlement. A municipality that qualifies for an entitlement under AS 29.65.010 and 29.65.015 shall receive the larger of the two entitlements.

(b) A municipality may not receive a general grant land entitlement under AS 29.65.010 or 29.65.015 that exceeds 400,000 acres.

(c) All conveyances of legal title to land by the state to a municipality under AS 29.65.010 or a former law shall be credited toward fulfillment of the entitlement for that municipality. All payments for land under AS 29.65.080 or former AS 29.18.208 shall be

credited toward fulfillment of the entitlement for that municipality.

(d) Land classified under AS 38.05.300 for wildlife habitat may not be selected and conveyed in fulfillment of a general grant land entitlement.

* Sec. 3. AS 29.65.040 is repealed and reenacted to read:

Sec. 29.65.040. STATUS OF ENTITLEMENTS. (a) After January 1, 1987, a general grant land entitlement under AS 29.65.010 is a vested property right that must be fulfilled in accordance with AS 29.65.025 and 29.65.080.

(b) A general grant land entitlement under AS 29.65.015 is a property right that vests on the date of incorporation of the municipality. The entitlement must be fulfilled in accordance with AS 29.-65.025.

* Sec. 4. AS 29.65.050 is amended by adding a new subsection to read:

(d) The commissioner of natural resources is authorized to negotiate and enter into an agreement with the Municipality of Anchorage prior to January 1, 1987, whereby the municipality's entitlement under this chapter may be fully satisfied by the conveyance of state land within the municipal boundaries which the commissioner determines is not necessary for retention in state ownership, whether or not the land is vacant, unappropriated, and unreserved. The agreement may provide for the conveyance of no more than 5,000 acres of state land which the commissioner determines is worth no less than $5,000,000.

* Sec. 5. AS 29.65.060 is repealed and reenacted to read:

Sec. 29.65.060. SCHOOL AND MENTAL HEALTH LAND. (a) School land and mental health land within the boundaries of a municipality may not be included for purposes of determining the general grant land entitlement of that municipality.

(b) A municipality may not receive school land or mental health land in fulfillment of its general grant land entitlement.

* Sec. 6. AS 29.65.080(b) is amended to read:

(b) A municipality shall receive payment for its land deficiency from the municipal land account. A municipality is eligible to receive payment for land deficiency if, after July 1, 1980, the amount of land selected by a municipality that is physically suitable for residential, commercial, or industrial purposes amounts to less than one-third acre per capita. Any entitlement under AS 29.65.010 that is less than one-third acre per capita will, for the purposes of this subsection, be considered a land deficiency. An unselected remaining entitlement will, for the purpose of deficiency payment under this subsection, be considered as land physically suitable for residential, commercial, or industrial purposes. A municipality eligible under this subsection is entitled to receive a payment for land deficiency equal to $1,000 per acre for a number of acres equal to the difference between one-third of the population of the municipality less the number of acres physically suitable for residential, commercial or industrial purposes that has been selected by the municipality. For the purpose of this subsection, the population of the municipality shall be the population determined <u>by the commissioner under former AS 43.18.010 for the program year beginning July 1, 1978, for a municipality whose entitlement was determined under former AS 29.18.201</u> [IN ACCORDANCE WITH AS 29.65.060(f)]. No payment may be made to a municipality under this subsection in excess of $9,000,000.

* Sec. 7. AS 29.65.080(g) is amended to read:

(g) Payments authorized by this section may <u>only</u> [NOT] be made to a municipality [ELIGIBLE] for an entitlement under <u>AS 29.65.010</u> [AS 29.65.020 OR 29.65.030].

* Sec. 8. AS 29.65.130(10) is amended to read:

(10) "vacant, unappropriated, unreserved land" means general grant land as defined in (3) of this section, excluding minerals as required by sec. 6(i) of the Alaska Statehood Act, that

(A) has not been set aside by statute for one or more particular uses or purposes;

(B) has not been approved for patent to a municipality under this chapter or former AS 29.18.190 and 29.18.200; or

(C) is unclassified or, if classified under AS 38.05.300, is classified for agricultural, grazing, material, public recreation, resource management, settlement, transportation corridor, forestry, or wildlife habitat [COMMERCIAL, INDUSTRIAL, PRIVATE RECREATIONAL, RESIDENTIAL, UTILITY, OR OPEN-TO-ENTRY PURPOSES,] or is classified in accordance with an agreement between a municipality and the state providing for state management of land of the municipality.

* Sec. 9. Before January 1, 1987, the Department of Natural Resources shall consult with each municipality affected by this Act regarding classifications of state land within its boundaries and may assist the municipality in identifying land suitable for selection in fulfillment of its general grant land entitlement.

* Sec. 10. AS 29.65.010(b), 29.65.020, 29.65.030, 29.65.050, 29.65.090 and 29.65.110 are repealed.

* Sec. 11. Sections 4 and 9 of this Act take effect immediately in accordance with AS 01.10.070(c).

* Sec. 12. Sections 1 - 3, 5 - 8, and 10 of this Act take effect January 1, 1987.

Offered: 3/28/86
Referred: Resources

Original sponsor: Ferguson

BY THE COMMUNITY AND
REGIONAL AFFAIRS COMMITTEE

IN THE SENATE

CS FOR 2d SPONSOR SUBSTITUTE FOR SENATE BILL NO. 414 (C&RA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

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Sec. 29.65.015. DETERMINATION OF ENTITLEMENTS FOR MUNICIPALITIES. The general grant land entitlement of a municipality is 10 percent of the maximum total acreage of vacant, unappropriated, unreserved land within its boundaries at any time between the date of its incorporation and two years after the expiration of the state's right to make selections under sec. 6(a) or (b) of the Alaska Statehood Act. By January 1 of each year the director shall determine or update the unfulfilled entitlement for each municipality under this section and certify that entitlement to that municipality.

* Sec. 2. AS 29.65 is amended by adding a new section to read:

Sec. 29.65.025. LIMITATIONS ON ENTITLEMENTS. (a) A municipality is eligible for only one general grant land entitlement. A municipality that qualifies for an entitlement under AS 29.65.010 and 29.65.015 shall receive the larger of the two entitlements.

(b) A municipality may not receive a general grant land entitlement under AS 29.65.010 or 29.65.015 that exceeds 400,000 acres.

(c) All conveyances of legal title to land by the state to a municipality under AS 29.65.010 or a former law shall be credited toward fulfillment of the entitlement for that municipality. All payments for land under AS 29.65.080 or former AS 29.18.208 shall be

credited toward fulfillment of the entitlement for that municipality.

(d) Land classified under AS 38.05.300 for wildlife habitat may not be selected or conveyed in fulfillment of a general grant land entitlement.

* Sec. 3. AS 29.65.040 is repealed and reenacted to read:

Sec. 29.65.040. STATUS OF ENTITLEMENTS. (a) After January 1, 1987, a general grant land entitlement under AS 29.65.010 is a vested property right that must be fulfilled in accordance with AS 29.65.025 and 29.65.080.

(b) A general grant land entitlement under AS 29.65.015 is a property right that vests on the date of incorporation of the municipality. The entitlement must be fulfilled in accordance with AS 29.65.025.

* Sec. 4. AS 29.65.060 is repealed and reenacted to read:

Sec. 29.65.060. SCHOOL AND MENTAL HEALTH LAND. (a) School land and mental health land within the boundaries of a municipality may not be included for purposes of determining the general grant land entitlement of that municipality.

(b) A municipality may not receive school land or mental health land in fulfillment of its general grant land entitlement.

* Sec. 5. AS 29.65.080(b) is amended to read:

(b) A municipality shall receive payment for its land deficiency from the municipal land account. A municipality is eligible to receive payment for land deficiency if, after July 1, 1980, the amount of land selected by a municipality that is physically suitable for residential, commercial, or industrial purposes amounts to less than one-third acre per capita. Any entitlement under AS 29.65.010 that is less than one-third acre per capita will, for the purposes of this subsection, be considered a land deficiency. An unselected remaining

entitlement will, for the purpose of deficiency payment under this subsection, be considered as land physically suitable for residential, commercial, or industrial purposes. A municipality eligible under this subsection is entitled to receive a payment for land deficiency equal to $1,000 per acre for a number of acres equal to the difference between one-third of the population of the municipality less the number of acres physically suitable for residential, commercial or industrial purposes that has been selected by the municipality. For the purpose of this subsection, the population of the municipality shall be the population determined by the commissioner under former AS 43.18.010 for the program year beginning July 1, 1978, for a municipality whose entitlement was determined under former AS 29.18.201 [IN ACCORDANCE WITH AS 29.65.060(f)]. No payment may be made to a municipality under this subsection in excess of $9,000,000.

* Sec. 6. AS 29.65.080(g) is amended to read:

(g) Payments authorized by this section may only [NOT] be made to a municipality [ELIGIBLE] for an entitlement under AS 29.65.010 [AS 29.65.020 OR 29.65.030].

* Sec. 7. AS 29.65.130(10) is amended to read:

(10) "vacant, unappropriated, unreserved land" means general grant land as defined in (3) of this section, excluding minerals as required by sec. 6(i) of the Alaska Statehood Act, that

(A) has not been set aside by statute for one or more particular uses or purposes;

(B) has not been approved for patent to a municipality under this chapter or former AS 29.18.190 and 29.18.200; or

(C) is unclassified or, if classified under AS 38.-05.300, is classified for agricultural, grazing, material, public recreation, resource management, settlement, transportation

corridor, forestry, or wildlife habitat [COMMERCIAL, INDUSTRIAL, PRIVATE RECREATIONAL, RESIDENTIAL, UTILITY, OR OPEN-TO-ENTRY PURPOSES,] or is classified in accordance with an agreement between a municipality and the state providing for state management of land of the municipality.

* Sec. 8. AS 38.05.321(b) is amended to read:

(b) State land classified as agricultural land that has been selected by a municipality under former AS 29.18.190 - 29.18.200 or former AS 29.18.205(e) may be approved by the director for patent under AS 29.65 [AS 29.65.050(c)]; however, only rights in the land for agricultural purposes may be transferred and all other interests in the land will remain with the state. Agricultural land approved for patent to a municipality shall be credited, acre for acre, toward fulfillment of that municipality's entitlement under AS 29.65 [AS 29.65.010 - 29.65.030] or former AS 29.18.201 - 29.18.203. If the director later determines it to be in the best interests of the state to transfer some or all of the additional rights in that approved or patented agricultural land, those rights shall pass without consideration to the municipality in which the land is located. The notice and review provisions of AS 38.05.945 are applicable to conveyance of rights under this section.

* Sec. 9. AS 38.05.321(c) is amended to read:

(c) The provisions of this section do not apply to

(1) state land classified as agricultural land that has been selected by a municipality under the provisions of former AS 29.18.190 - 29.18.200 if the selection is an approved selection before April 1, 1978 and is otherwise valid under former AS 29.65.050(b) or former AS 29.18.205(b); or

(2) a quitclaim of the interest of the state to the federal

government under AS 38.05.035(b)(9).

* Sec. 10. Before January 1, 1987, the Department of Natural Resources shall consult with each municipality affected by this Act regarding classifications of state land within its boundaries and shall assist the municipality in identifying land suitable for selection in fulfillment of its general grant land entitlement.

* Sec. 11. Before January 1, 1987, the commissioner of natural resources may negotiate and enter into an agreement with a borough or unified municipality to convey state land within the municipality's boundaries without regard to whether the land is vacant, unappropriated, unreserved land as defined under AS 29.65.130(10) if the commissioner determines the land is not necessary for retention by the state. Land conveyed to a borough or unified municipality under an agreement entered into under this section constitutes complete fulfillment of the municipality's general grant land entitlement and the municipality is not entitled to additional land under this Act.

* Sec. 12. AS 29.65.010(b), 29.65.020, 29.65.030, 29.65.050, 29.65.090 and 29.65.110 are repealed.

* Sec. 13. Sections 4, 10, and 11 of this Act take effect immediately in accordance with AS 01.10.070(c).

* Sec. 14. Sections 1 - 3, 5 - 9, and 12 of this Act take effect January 1, 1987.

Offered: 4/28/86
Referred: Finance

Original sponsor: Ferguson

IN THE SENATE BY THE RESOURCES COMMITTEE

CS FOR 2d SPONSOR SUBSTITUTE FOR SENATE BILL NO. 414 (Resources)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to general grant land entitlements; and providing for an effective date."

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

* Section 1. AS 29.65 is amended by adding a new section to read:

Sec. 29.65.015. DETERMINATION OF ENTITLEMENTS FOR MUNICIPALITIES. The general grant land entitlement of a municipality is 10 percent of the maximum total acreage of vacant, unappropriated, unreserved land within its boundaries at any time between the date of its incorporation and two years after the expiration of the state's right to make selections under sec. 6(a) or (b) of the Alaska Statehood Act. By December 31 of each year the director shall determine or update the unfulfilled entitlement for each municipality under this section and certify that entitlement to that municipality.

* Sec. 2. AS 29.65 is amended by adding a new section to read:

Sec. 29.65.025. LIMITATIONS ON ENTITLEMENTS. (a) A municipality is eligible for only one general grant land entitlement. A municipality that qualifies for an entitlement under AS 29.65.010 and 29.65.015 shall receive the larger of the two entitlements. However, land may not be conveyed to a municipality under AS 29.65.015 that exceeds the amount of acreage listed under AS 29.65.010 until at least 90 percent of the amount of the entitlement under AS 29.65.010 has been fulfilled, through approval of selections or otherwise, for each listed municipality. This limitation does not apply to conveyance of a small parcel for a specific public purpose if the commissioner of

natural resources finds that the conveyance will serve a public interest.

(b) A municipality may not receive a general grant land entitlement under AS 29.65.010 or 29.65.015 that exceeds 400,000 acres.

(c) The following shall be credited toward fulfillment of the general grant land entitlement of a municipality:

(1) conveyances of legal title to land by the state to the municipality before January 1, 1987, under a former law;

(2) payments for land before January 1, 1987, under former AS 29.18.208;

(3) conveyances of legal title to land before January 1, 1987, and thereafter under AS 29.65.010;

(4) payments for land before January 1, 1987, and thereafter under AS 29.65.080;

(5) disposals of land to the municipality before January 1, 1987, and thereafter under AS 38.05.810 for which the state received less than market value.

(d) In each conveyance of land in fulfillment of a general grant land entitlement, the state shall reserve the right to explore, enter, develop, and occupy the surface as reasonably necessary for access to the mineral estate in accordance with AS 38.05.125.

(e) Conveyances of land under this chapter are subject to AS 38.05.035(e).

* Sec. 3. AS 29.65.040 is repealed and reenacted to read:

Sec. 29.65.040. STATUS OF ENTITLEMENTS. (a) A general grant land entitlement under AS 29.65.010 is a vested property right that must be fulfilled in accordance with AS 29.65.025, 29.65.060, and 29.65.080.

(b) A general grant land entitlement under AS 29.65.015 is a

property right that vests on the date of incorporation of the municipality. The entitlement must be fulfilled in accordance with AS 29.-65.025.

* Sec. 4. AS 29.65.060(a) is amended to read:

(a) If an entitlement determined under AS 29.65.010 or 29.65.015 [29.65.020] results in a per capita entitlement for the municipality of less than one and one-half acre, the municipality may select vacant school land or mental health land in the municipality in partial fulfillment of its land entitlement under this chapter. School land or mental health land may be selected notwithstanding the fact that this land is not unappropriated and unreserved within the meaning of this chapter and under former AS 29.18.190 and 29.18.200, but each selection of school land or mental health land by a municipality must be vacant, unappropriated, or unreserved land as defined in this chapter, except that it need not be general grant land.

* Sec. 5. AS 29.65.060(b) is amended to read:

(b) The acreage of school land, university land or mental health land, if any, in a municipality may not be included in the determination of entitlement under AS 29.65.010 or 29.65.015 [29.65.020].

* Sec. 6. AS 29.65.060 is amended by adding new subsections to read:

(g) Notwithstanding (a) of this section, a municipality may not select school land or mental health land after October 4, 1985.

(h) Nothing in this section affects the legal rights of any person with regard to selections of school land, university land, or mental health land made by a municipality on or before October 4, 1985.

* Sec. 7. AS 29.65.060 is amended by adding a new subsection to read:

(i) A municipality that may enter into an agreement under sec. 15 of this Act is entitled to just compensation in the form of

land or other payment for a selection made by it under this section or former AS 29.18.206 (ch. 180, SLA 1978) that was pending or on timely appeal on April 1, 1986, and that cannot be conveyed to the municipality as a result of final judicial action or law, except that compensation is not required for a selection of land by a municipality within a special use area under AS 16 or AS 41 or for a selection of land not qualified to be selected under this section or former AS 29.18.206. Compensation under this subsection shall be credited against the municipality's remaining land entitlement under this chapter.

* Sec. 8. AS 29.65.080(g) is amended to read:

(g) Payments authorized by this section may only [NOT] be made to a municipality [ELIGIBLE] for an entitlement under AS 29.65.010 [AS 29.65.020 OR 29.65.030].

* Sec. 9. AS 29.65.080 is amended by adding a new subsection to read:

(i) Payment under this section shall be made into a municipal land bank or trust account created by ordinance with the purpose of applying the payments toward the acquisition of land necessary for public purposes that may be otherwise unavailable to the municipality.

* Sec. 10. AS 29.65.130(3) is amended to read:

(3) "general grant land"

(A) means land patented or tentatively approved to the state from the United States under sec. 6(a) or (b) of the Alaska Statehood Act;

(B) does not include mental health land, school land, or university land;

* Sec. 11. AS 29.65.130(10) is amended to read:

(10) "vacant, unappropriated, unreserved land" means general grant land as defined in (3) of this section, excluding

minerals as required by sec. 6(i) of the Alaska Statehood Act, that

(A) has not been set aside by statute for one or more particular uses or purposes;

(B) has not been approved for patent to a municipality under this chapter or former AS 29.18.190 and 29.18.200; or

(C) is unclassified or, if classified under AS 38.05.300, is classified for agricultural, grazing, public recreation, resource management, settlement, forestry, or wildlife habitat [COMMERCIAL, INDUSTRIAL, PRIVATE RECREATIONAL, RESIDENTIAL, UTILITY, OR OPEN-TO-ENTRY PURPOSES,] or is classified in accordance with an agreement between a municipality and the state providing for state management of land of the municipality.

* Sec. 12. AS 38.05.321(b) is amended to read:

(b) State land classified as agricultural land that has been selected by a municipality under former AS 29.18.190 - 29.18.200 or former AS 29.18.205(e) may be approved by the director for patent under AS 29.65 [AS 29.65.050(c)]; however, only rights in the land for agricultural purposes may be transferred and all other interests in the land will remain with the state. Agricultural land approved for patent to a municipality shall be credited, acre for acre, toward fulfillment of that municipality's entitlement under AS 29.65 [AS 29.65.010 - 29.65.030] or former AS 29.18.201 - 29.18.203. If the director later determines it to be in the best interests of the state to transfer some or all of the additional rights in that approved or patented agricultural land, those rights shall pass without consideration to the municipality in which the land is located. The notice and review provisions of AS 38.05.945 are applicable to conveyance of rights under this section.

* Sec. 13. AS 38.05.321(c) is amended to read:

(c) The provisions of this section do not apply to

(1) state land classified as agricultural land that has been selected by a municipality under the provisions of former AS 29.18.190 - 29.18.200 if the selection is an approved selection before April 1, 1978 and is otherwise valid under former AS 29.65.050(b) or former AS 29.18.205(b); or

(2) a quitclaim of the interest of the state to the federal government under AS 38.05.035(b)(9).

* Sec. 14. Before January 1, 1987, the Department of Natural Resources shall consult with each municipality affected by this Act regarding classifications of state land within its boundaries and may assist the municipality in identifying land suitable for selection in fulfillment of its general grant land entitlement.

* Sec. 15. The commissioner of natural resources shall negotiate with and may enter into an agreement to convey state land to a borough or unified municipality whose entitlement under AS 29.65.010 in the commissioner's determination cannot be fulfilled by January 1, 1987, if the borough or unified municipality elects in writing before January 1, 1987, to pursue a settlement of that existing entitlement. The commissioner has authority under this section to convey state land without regard as to whether the land is vacant, unappropriated, unreserved land as defined under AS 29.65.130(10) if the commissioner determines, after public notice, that the land lies outside the smallest practicable tract of land actually used in connection with the administration of a state function on July 1, 1986. However, the commissioner may not convey land owned by another state agency without its consent or land within the boundaries of a municipality to another municipality before consulting with the municipality in which the land is located. Land conveyed to a borough or a unified municipality under an agreement entered into under this section may constitute complete