

ALASKA LEGISLATURE COMMITTEE BILL FILES - 1987 - 1988 8879

SB 132 cont., SB 133 *Lea Finance* 53

Position Title State Trooper		No. of Positions	Range/Step 76/A	Barg. Unit PSEA
Time Status PFT	Staff Months 12.0	Location Prudhoe Bay		Election District 22
Justification				
Type of Expenditure			Amount	
1	2	3		
Salary	48,516			
Benefits	12,454			
Premium Pay	4,478			
Other	6,097			
Total Personal Services		71.5		
Travel		2.0		
Contractual		42.1		
Commodities		3.3		
Equipment		22.3		
Other				
Total Cost		141.2		
Funding Source for Total Cost				
Federal Receipts 1002				
G. F. Match 1003				
General Fund 1004		141.2		
I-A Receipts 1006				
CIF Receipts 1061				
Other				

A fully trained and experienced law enforcement officer is needed to provide accident response, patrol, investigation and Search and Rescue along the Dalton Highway. This trooper position must have a 4 X 4 vehicle (152P) in order to be able to travel the rough road during winter conditions. All other costs are average Trooper costs and are based upon experience.

Contractual costs include housing and office space at a cost of \$2,800 per month, which is based upon previous AST experience in Prudhoe Bay as assumes space availability.

Request For
New Position

Agency Department of Public Safety
 BRU Alaska State Troopers
 Component Detachments & CIB

FY 88

Page 3 of 4
 Revised Date

Position Title State Trooper			No. of Positions	Range/Step 76/A	Barg. Unit PSEA
Time Status PFT	Staff Months 12.0		Location Prudhoe Bay		Election District 22
Type of Expenditure			Justification		
		Amount	<p>A fully trained and experienced law enforcement officer is needed to provide accident response, patrol, investigation and Search and Rescue along the Dalton Highway. This trooper position must have a 4 X 4 vehicle (152P) in order to be able to travel the rough road during winter conditions. All other costs are average Trooper costs and are based upon experience.</p> <p>Contractual costs include a leased housing space, of approximately \$24,000 per year, assuming that it is available.</p>		
1	2	3			
Salary	48,516				
Benefits	12,454				
Premium Pay	4,478				
Other	6,097				
Total Personal Services		71.5			
Travel		2.0			
Contractual		32.0			
Commodities		3.3			
Equipment		22.3			
Other					
Total Cost		131.6			
Funding Source for Total Cost					
Federal Receipts	1002				
G. F. Match	1003				
General Fund	1004	131.6			
I-A Receipts	1006				
CIP Receipts	1061				
Other					

Request For
New Position

Agency Department of Public Safety
 BRU Alaska State Troopers
 Component Detachments & CIB

Page 4 of 4
 Revised Date

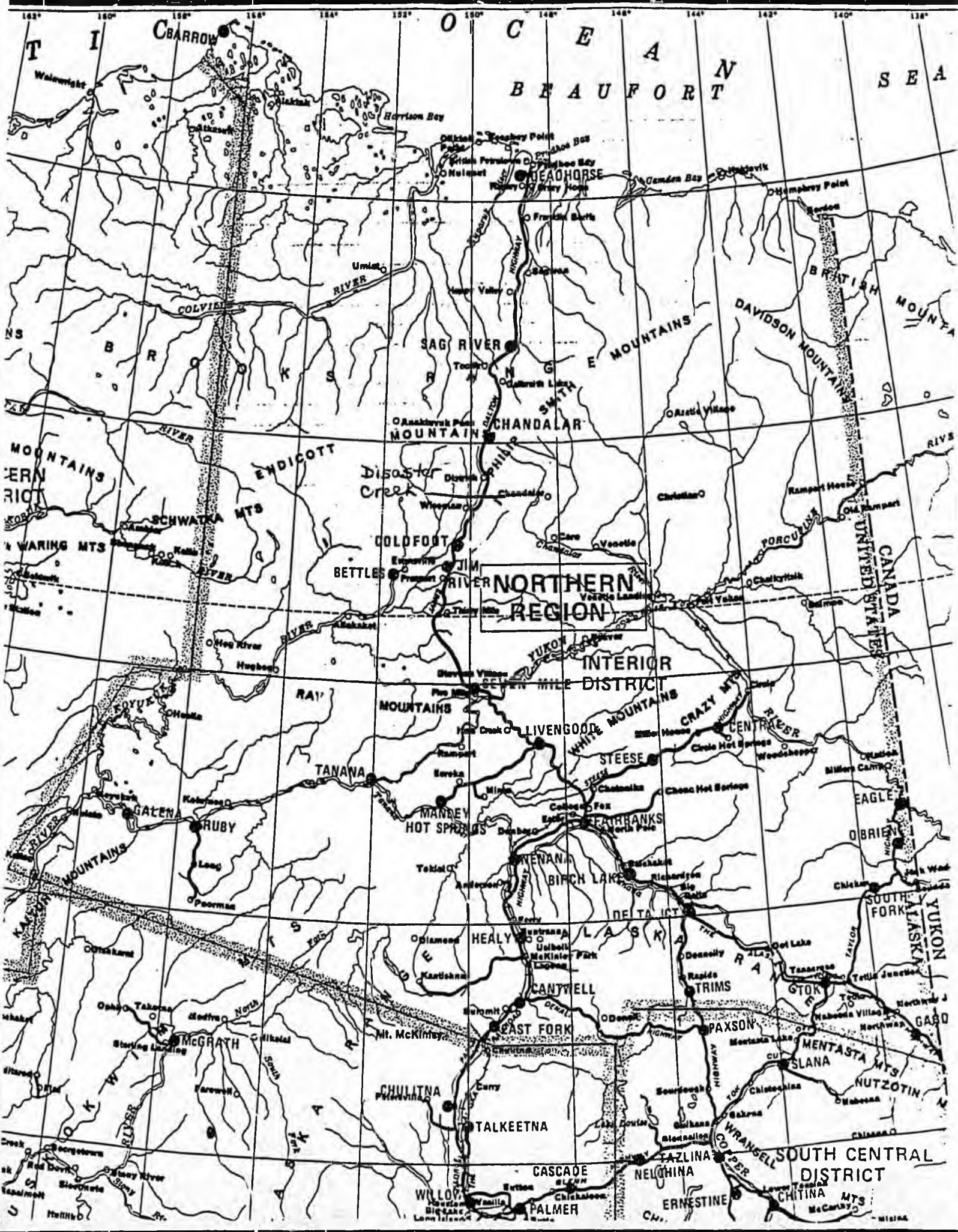
FY 88

Open only to industrial or commercial traffic
Open to all public traffic

MILES

Scale 50, 100

Villages which practice subsistence hunting



Senator John B. (Jack) Coghill
Alaska State Legislature

Box V
Juneau, Alaska 99811
(907) 465-4797

Box 55028
North Pole, Alaska 99705
(907) 466-0862



TO: SENATE TRANSPORTATION COMMITTEE
FROM: SENATOR JACK COGHILL
DATE: MARCH 3, 1987
RE: SB 132 "PUBLIC USE OF THE DALTON HIGHWAY"

Since 1978 the Dalton Highway has been maintained with public dollars, yet the public has not been able to utilize it completely.

By way of background, in 1980 AS 19.40.110 was amended to allow the public to use the highway as far north as Dietrich Camp between the months June 1 and September 1. Prior to this the public was allowed to travel only as far as the Yukon River.

In 1983 year round public use of the highway to Dietrich Camp was allowed.

SB 132 simply requires that the Dalton Highway be open to the public all the way to the Arctic Ocean twelve months out of the year, without a toll, and maintained by the state.

There are several very good reasons for opening the Dalton Highway to the public on a full-time basis:

- 1) the Dalton Highway is maintained with state dollars and is a public road.
- 2) facilities are available at present year round; more will be added by the private sector as demand warrants.
- 3) the tourism potential of this road is enormous, including the majestic Yukon River, the thrill of driving north of the Arctic Circle, the allure of the Brooks Range and the general public interest in the Prudhoe Bay area.

The state should encourage the private sector whenever and wherever possible, and we should encourage tourism. I urge you to vote in favor of SB 132.

- Senator's Memorandum

(19) "lift axle" means any axle with mounted tires and rims, which may be elevated from a roadway surface with the result that a portion of the vehicle weight is transferred. (Eff. 6/25/69, Reg. 30; am 9/3/72, Reg. 43; am 6/19/81, Reg. 78; am 11/16/83, Reg. 88; am 9/1/84, Reg. 91; am 1/18/86, Reg. 97)

Authority: AS 19.05.020 AS 19.10.060
AS 19.05.040 AS 44.42.030

Editor's Note: As of Register 77, the references to the Department of Commerce and the Department of Highways have been corrected to refer to the Department of Commerce and Economic Development, and the Department of Transportation and Public Facilities.

CHAPTER 30.
JAMES DALTON HIGHWAY OPERATION

Section

- 10. Permits required
- 20. Permit applications
- 30. Issuance of permits
- 40. Types of permits
- 50. Conditions and enforcement
- 60. Emergency services
- 70. Definitions

17 AAC 30.010. PERMITS REQUIRED. No vehicle, except an emergency vehicle, may use or travel upon the Dalton Highway, as defined in 17 AAC 30.070(4), without a permit issued to the owner or operator of the vehicle by the commissioner or his designated representative. (Eff. 10/15/78, Reg. 68; am 3/30/84, Reg. 89)

Authority: AS 19.05.010 AS 19.10.100
AS 19.05.020 AS 19.40.110
AS 19.05.030 AS 44.80.070
AS 19.05.040

17 AAC 30.020. PERMIT APPLICATIONS. Permit applications may be obtained from the department at its Fairbanks or Anchorage offices, or at other locations designated by the commissioner. (Eff. 10/15/78, Reg. 68; am 3/30/84, Reg. 89)

Authority: AS 19.05.010 AS 19.05.040
AS 19.05.020 AS 19.10.100
AS 19.05.030(1) AS 44.80.070

17 AAC 30.030. ISSUANCE OF PERMITS. Permits will be issued only for official, industrial, or commercial travel on the Dalton Highway, and only for vehicles which meet the following criteria to the satisfaction of the commissioner or his designated representative:

- (1) conform with applicable state and federal statutes and regulations governing vehicles or highways;
- (2) carry sufficient safe fuel to travel the Dalton Highway or written assurance of the availability of fuel to the vehicle along the road;
- (3) carry adequate equipment reasonably necessary to make minor repairs, prevent accidents, and minimize injury to persons and property including, but not limited to, the following:

20) 1772-2-7

Dalton Highway
Regulations

(A) two mounted spare tires for each size, wheel on the vehicle;

(B) tire changing tools and jacks;

(C) six red 15-minute flares except when otherwise prohibited by law;

(D) six emergency reflectors;

(E) one spare headlight;

(F) tire chains for each driving wheel from October 1 to May 1;

(G) arctic gear and clothing for each person in the vehicle from October 1 to May 1;

(H) a reasonable supply of emergency food, water, and medical supplies for each person in the vehicle. (Eff. 10/15/78, Reg. 68; am 3/30/84, Reg. 89)

Authority: AS 19.05.010 AS 19.05.040
AS 19.05.020 AS 19.10.100
AS 19.05.030(1) AS 19.40.100

17 AAC 30.040. TYPES OF PERMITS. When the commissioner or his designated representative determines that it is in the best interest of the state and that the public health, safety, and welfare, including the safety of traffic on the Dalton Highway, will be adequately protected, one of the following two types of permits will be issued for vehicles which meet the criteria of 17 AAC 30.030:

(1) a single-trip permit to allow the vehicle to use and travel upon the Dalton Highway on, dates specified in the permit, either for a round-trip or a one-way trip;

(2) an annual permit to allow the vehicle to use and travel upon the Dalton Highway for one year from the date of issuance of the permit. (Eff. 10/15/78, Reg. 68; am 3/30/84, Reg. 89)

Authority: AS 19.05.010 AS 19.05.040
AS 19.05.020 AS 19.10.100
AS 19.05.030(1)

17 AAC 30.050. CONDITIONS AND ENFORCEMENT. (a) Permits issued under this chapter will include conditions and provisions which the commissioner or his designated

representative determine to be necessary to protect the health, safety, and welfare of the public and travelers on the road. Permittees must agree to comply with these conditions and provisions as well as all applicable state and federal laws by signing the permit.

(b) The permittee shall indemnify and hold harmless the state and its representatives, agents, and employees from all suits, actions, or claims of any character brought because of any injuries or damages sustained by any person or property in consequence of any act or omission, in any way related, directly or indirectly, to the issuance or use of the permit, of the permittee, its representatives, agents or employees, or of the State of Alaska, its representatives, agents, or employees, or of any other person. Each permit will include this provision in its terms, and the provision must be accepted by the permittee by execution of the permit.

(c) Enforcement of this chapter and the conditions specified in a permit, including inspection of vehicles to ascertain compliance with those conditions and with the requirements of 17 AAC 30.030, will be performed by any officer of the Alaska State Troopers or other designated representative of the commissioner.

(d) Any violation of permit provisions or any falsification of statements on a permit application may result in the immediate revocation of the permit and may result in denial of future permit applications for the vehicle, operator, or owner, as appropriate.

(e) The owner or driver, or both, of a vehicle which uses or travels upon the Dalton Highway without a permit, is in violation of 17 AAC 30.010 and is guilty of a misdemeanor under AS 19.45.002. (Eff. 10/15/78, Reg. 68; am 3/30/84, Reg. 89)

Authority: AS 19.05.010 AS 19.05.040
AS 19.05.020 AS 19.05.140
AS 19.05.030(1) AS 19.10.100

17 AAC 30.060. EMERGENCY SERVICES.

(a) A permittee must agree to pay all costs for emergency services furnished by the state. The state will provide emergency services only if no other means of assistance is available. The issuance of a permit does not obligate the state to provide emergency services.

(b) A permittee must provide for removal of his stalled vehicle from the Dalton Highway within a reasonable time or the department will provide for its removal at the permittee's expense. (Eff. 10/15/78, Reg. 68; am 3/30/84, Reg. 89)

Authority: AS 19.05.010 AS 19.05.040
AS 19.05.020 AS 19.10.100
AS 19.05.030(1)

17 AAC 30.070. DEFINITIONS. As used in this chapter

(1) "commissioner" means the commissioner of transportation and public facilities;

(2) "emergency vehicles" means wreckers, tow cars, ambulances or other vehicles called by the Alaska State Troopers or another authorized representative of the commissioner to assist in particular emergency situations;

(3) "industrial, or commercial travel" means travel

(A) necessary and related to oil and gas exploration and development or support of those activities; or

(B) necessary and related to mineral exploration and development or support of those activities, providing the applicant has obtained all necessary prospecting and/or mining permits; or

(C) necessary and related to agricultural development and support of that activity; or

(D) necessary and related to access by local residents to their property; or

(E) by a vehicle engaged in mass transportation and certified by the Alaska Transportation Commission as a common carrier or which is a private or contract carrier in compliance with AS 42.10 and 3 AAC 62 - 3 AAC 76;

(4) "Dalton Highway" means that part of the James Dalton Highway north of Dietrich Camp;

(5) "official travel" means travel by vehicles engaged in official government business or university affiliated research.



Greater Fairbanks

Chamber

of Commerce

First National Center

P.O. Box 74446

100 Cushman Street

(907) 452-1105

Fairbanks, Alaska 99707

RESOLUTION 3-0287

A RESOLUTION TO OPEN THE DALTON HIGHWAY TO THE GENERAL PUBLIC

WHEREAS, there is no justifiable reason that the general public should not have access to a public highway, and

WHEREAS, public funds are used to maintain this road, and

WHEREAS, the denial of the public to use the Dalton Highway as any other highway in Alaska, as stated in A.S. 19.40.120, is discriminatory, and

WHEREAS, there are existing state and federal regulations which provide for management of public use of land and resources adjoining public highways, and

WHEREAS, the opening of the Dalton Highway has been part of the program of work as stated in the Interior Transportation Needs Study developed by the Greater Fairbanks Chamber of Commerce;

NOW, THEREFORE, be it resolved, that the Greater Fairbanks Chamber of Commerce recommends that the Legislature pass HB 115 without further restrictions.

Be it further resolved that this resolution be sent to the following:

Governor Cowper
The Interior Delegation
The Congressional Delegation
The Commissioner of Transportation

DATED THIS

23rd

DAY OF

February

, 1987

BY

James Dodson, Chairman of the Board

BY

Althea St. Martin, Acting President

Fairbanks Co + Commerce

- Resolution



Greater Fairbanks

Chamber

of Commerce

First National Center

P.O. Box 74446

100 Cushman Street

(907) 452-1105

Fairbanks, Alaska 99707

RESOLUTION 1-0287

**A RESOLUTION RECOMMENDING THAT A TOLL SHOULD
NOT BE CONSIDERED ON THE DALTON HIGHWAY**

WHEREAS, Fairbanks is facing an economic down trend, and

WHEREAS, more effort needs to be placed on trying to assist Fairbanks to recover and continue to offer competitive services in deploying freight through Fairbanks to users along and at the end of the Dalton Highway, and

WHEREAS, a toll could work an economic hardship on any business planning to use the road, and

WHEREAS, the Greater Fairbanks Chamber of Commerce feels that the road should not be used as a single purpose road, and

WHEREAS, this proposed toll would represent a double tax on the oil industry,

NOW, THEREFORE, be it resolved that options other than a toll being placed on a road in Alaska (specifically the Dalton Highway), be considered as a method to generate more state revenue.

BE IT FURTHER RESOLVED that this resolution be sent to the following:

Governor Cowper
The Interior Delegation
The Congressional Delegation
Commissioner of Transportation

DATED THIS

Feb. 23 87

DAY OF

2-23-

1987

BY

James Dodson
James Dodson, Chairman of the Board

BY

Althea St. Martin
Althea St. Martin, Acting President

Sec. 19.40.100. Use of the highway by industrial or commercial traffic. (a) The department shall maintain the highway and keep it open to industrial or commercial traffic throughout the year.

(b) "Industrial or commercial travel" means

(1) travel necessary and related to resource exploration and development or to support of those activities, if the individual engaged in those activities has all necessary permits; or

(2) travel necessary and related to access by local residents to their property; or

(3) motor carriers engaged in commerce which are common carriers or contract carriers regulated by the Alaska Transportation Commission under AS 42.10. (§ 3 ch 177 SLA 1980)

Sec. 19.40.110. Public use of a portion of the highway. The department shall maintain the section of the highway between the Yukon River and Dietrich Camp and shall keep that section of the highway open to use by the public between June 1 and September 1 each year. (§ 4 ch 177 SLA 1980; AS 19.40.120)

Revisor's notes. — This section was renumbered by the revisor of statutes pursuant to AS 01.05.031.

Sec. 19.40.120. Closure of the highway to traffic. The provisions of AS 19.10.100 apply to the closure of the highway by the department. (§ 3 ch 177, SLA 1980; AS 19.40.110)

Revisor's notes. — This section was renumbered by the revisor of statutes pursuant to AS 01.05.031.

Sec. 19.40.200. Prohibition on disposal of land within five miles of the highway. The state may not dispose of state land under AS 38 which is within five miles of the right-of-way of the highway. (§ 5 ch 177 SLA 1980)

Legislative history reports. — For 178i. For attorney general's opinion governor's letter returning SCS HB am S advising the governor that the house and senate did not pass the same bill, see Op. Atty. Gen. July 1, 1980.

Sec. 19.40.210. Prohibition of off-road vehicles. Off-road vehicles are prohibited on land within five miles of the right-of-way of the highway. However, this prohibition does not apply to a person who holds a mining claim in the vicinity of the highway and who must use land within five miles of the right-of-way of the highway to gain access to his mining claim. (§ 5 ch 177 SLA 1980; AS 19.40.200(b))

Revisor's notes. — This section was renumbered by the revisor of statutes pursuant to AS 01.05.031.

NORTH SLOPE BOROUGH

OFFICE OF THE MAYOR

P.O. Box 69
Barrow, Alaska 99723

Phone: 907-852-2611

George N. Ahmaogak, Sr., Mayor



March 16, 1987

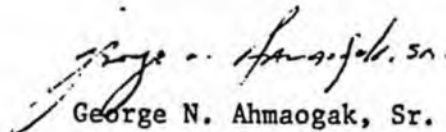
Senator Willie Hensley
Alaska State Legislature
P.O. Box V (Mail Stop 3100)
Juneau, Alaska 99811

Dear Senator Hensley:

The North Slope Borough will present its position on Senate Bill 132 relating to public use of the Dalton Highway, through the direct testimony of Ben Nageak, Director of the North Slope Borough Office of Wildlife Management. He will appear before the Senate Finance Committee on Tuesday, March 17, in its scheduled hearing on this bill.

The North Slope Borough has taken a strong position in opposition to Senate Bill 132, and that position is clearly elucidated in the statement to be presented by Director Nageak. We are providing you with a copy of that statement for your use previous to the hearing. My office will remain in contact with you on this critical legislation, and we are prepared to assist you in every way.

Sincerely,


George N. Ahmaogak, Sr.
Mayor

cc: Rep. Al Adams
Sen. John Binkley, Co-Chairman
Senate Finance Committee

My name is Berny Nageak and I am Director of the North Slope Borough Office of Wildlife Management. I would like to present comments on behalf of the North Slope Borough regarding SB 132.

By way of background, the North Slope Borough has been actively involved with the State on Haul Road issues for a number of years. Our concerns have focused primarily on two issues - the present weakly enforced haul road permitting system and the resultant increased pressure on the lands and biological resources within the Borough.

First, administration of the haul road permitting system by DOT/PF has, in our opinion, resulted in the de facto opening of the haul road over the past few years. The actual operation of the checkpoint, as administered by DOT/PF, has been relatively ineffective because those manning the checkpoint have no authority to stop traffic and because DOT/PF has demonstrated a disinclination towards applying a more restrictive interpretation of the applicable Alaska Statutes and Alaska Administrative Code to permit applicants and actual users of the road.

In June, 1986, in an effort to better control traffic on the haul road, the Borough agreed to provide DOT/PF with necessary funding to have the check point operational two months longer than normal. The checkpoint closed on November 30 1986 rather than September 30, 1986. The Borough also agreed, on a one-year trial basis, to allow the checkpoint to be moved north from Disaster Creek to Chandalar. Chandalar is just inside the North Slope Borough boundary. This was allowed by the Borough in order to help cut DOT/PF's operational costs in return for a better managed checkpoint and reduced traffic load beyond the checkpoint. While two months of additional checkpoint operation were achieved, a significant amount of questionable traffic continued to pass beyond the checkpoint.

Second, the administration of the haul road permitting system has resulted in a very large increase in the number of vehicles carrying hunters travelling north beyond the checkpoint resulting in increased large takes of near-road caribou. We do not feel that, given the administration of traffic beyond the checkpoint, these increased takes of caribou can continue without drastic effects upon the Central Arctic Caribou herd. The Borough is very concerned about the impacts from non-subsistence hunters on the ability of the subsistence

*Department of Transportation
& public facilities*

hunters to maintain an adequate take. Incidentally, hunting is not presently a legitimate reason to travel beyond the checkpoint.

Third, and perhaps the most disturbing long term concern to the North Slope Borough is that it will be the Borough that will suffer the impacts of opening the road most, as it already has. Unless the State of Alaska provides substantially increased enforcement, penalties, and the necessary public facilities required, the Borough will be faced with assuming these responsibilities that are presently those of the State of Alaska. If the State elects not to continue these responsibilities, or not provide them at adequate levels, the State should provide the Borough with adequate funds to cover the costs of mitigating increased impacts incurred by the Borough as a result of the State's action to open the haul road to the public or the State's management of it in such a way that its' management results in a de facto opening of the road.

Fourth, the opening of the road subjects the pipeline to unreasonable threat of sabotage. The State is not adequately regulating activities on the haul road now and it would not be able to adequately protect the TAPS if the road were opened to the public.

The Borough does not support opening the road to the general public. However, if the State does open the road to the public we strongly recommend that a toll be charged and the fees collected be used to provide for trash pickup, sewage handling (eg., disposal sites for chemical toilets from campers, etc.) and campgrounds.

In short, our concern is that management and operation of the haul road checkpoint, which in our opinion has already resulted in a de facto opening of the road to the public, could be exacerbated by the implementation of a road open to the general public. Of course, the haul road was not intended to be open to the general public when constructed, but the state appears to have, in the past, habitually taken the broadest interpretation of Section 1112 of ANILCA in an attempt to achieve a political solution to a haul road access issue that favors Anchorage and Fairbanks, but not the concerns of the North Slope Borough,

Page 3

the very entity that is affected most by the policy and by the implementation of a poorly managed haul road permitting system.

Your attention to this matter is appreciated. Thank you for this opportunity to comment.

cc: John Binkley, Senate Finance Committee Co-Chairman
Senator Willie Hensley
Representative Albert Adams

BILL NO: SB 132

DATE: February 27, 1987

TITLE: "An Act relating to public use of the Dalton Highway."

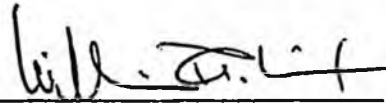
CONTACT: Maj. Walter J. Gilmour
Acting Director
Alaska State Troopers

DEPARTMENT OF PUBLIC SAFETY
PERMISSIONS

SB 132 will open the Dalton Highway to the public year-around.

The Division of Alaska State Troopers will need to provide a full range of law enforcement services to include accident response and investigation, search and rescue and patrol in order to protect the users of the highway. Winter use of the highway will result in a need to provide these services under difficult conditions and equipment costs reflect this fact.

The Division of Alaska State Troopers is opposed to this legislation.



WILLIAM R. NIX
Acting Commissioner

Senator John B. (Jack) Coghill
Alaska State Legislature

Box V
Juneau, Alaska 99811
(907) 465-4797

Box 55028
North Pole, Alaska 99705
(907) 488-0862



TO: SENATE FINANCE COMMITTEE
FROM: SENATOR JACK COGHILL
DATE: MARCH 17, 1987
RE: SB 132 "PUBLIC USE OF THE DALTON HIGHWAY"

Since 1978 the Dalton Highway has been maintained with public dollars, yet the public has not been able to utilize it completely.

By way of background, in 1980 AS 19.40.110 was amended to allow the public to use the highway as far north as Dietrich Camp between the months June 1 and September 1. Prior to this the public was allowed to travel only as far as the Yukon River.

In 1983 year round public use of the highway to Dietrich Camp was allowed.

SB 132 simply requires that the Dalton Highway be open to the public all the way to the Arctic Ocean twelve months out of the year, without a toll, and maintained by the state.

There are several very good reasons for opening the Dalton Highway to the public on a full-time basis:

- 1) the Dalton Highway is maintained with state dollars and is a public road.
- 2) facilities are available at present year round; more will be added by the private sector as demand warrants.
- 3) the tourism potential of this road is enormous, including the majestic Yukon River, the thrill of driving north of the Arctic Circle, the allure of the Brooks Range and the general public interest in the Prudhoe Bay area.

The state should encourage the private sector whenever and wherever possible, and we should encourage tourism. I urge you to vote in favor of SB 132.

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

Date of Feb 26, 1987 5-DAY NOTICE
IN ACCORDANCE WITH UNIFORM RULE 23

FURTHER: FINANCE

**FISCAL NOTE(S) ATTACHED ✓ **
IN ACCORDANCE WITH AS 24.08.035
(see below)

DATE TURNED INTO OFFICE March 3, 1987

Mr. President:

TRANSPORTATION Committee considered SB 132

public use of the Dalton Highway.

and recommended:

[] replace with CS _____ [] same title
[] new title

[] attached amendment(s) and

majority
 do pass

[] do not pass

[] no recommendation

individual recommendations

[] further referral to _____

[] letter of intent adopted and attached

** Committee attached or [] adopted fiscal note(s)
[] zero fiscal impact

MEMBERS SIGNING DO PASS

Fahnestock
J. C. ...

OTHER RECOMMENDATIONS

*Not advised to not pass
not advised info available
in the interest of safety and
accommodations for the public*

William J. Ross
Chairman signature and recommendation

Committee Backup Attached

1 IN THE SENATE

BY COGHILL AND BENNETT

2

SENATE BILL NO. 132

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTFENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to public use of the Dalton High-
7 way."

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

9 * Section 1. AS 19.40.110 is repealed and reenacted to read:

10 Sec. 19.40.110. PUBLIC USE OF THE HIGHWAY. The department shall
11 maintain the highway between the Yukon River and the Arctic Ocean and
12 shall keep the highway open to the public throughout the year without
13 a toll for use of the highway or a portion of the highway.

14 * Sec. 2. AS 19.40.100 is repealed.

S B

1 3 3

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

*Rec'd 4/17/87
After bill r/d
SB133 is currently
in R(adv). 7/10
towards to HFL*

REQUEST: _____

Bill Version: .CSSB 133
Publish Date: _____

Revision Date: 4/9/87
Title: General grant entitlement
(municipal selection)
Sponsor: Hensley, et al
Requestor: Senate Finance

Agency Affected: Natural Resources
BRU: Land and Water Management
Components: Land Conveyance

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES		61.5	168.9	168.9	168.9	168.9
TRAVEL		5.0	5.0	4.0	3.0	3.0
CONTRACTUAL		4.0	6.0	6.0	4.0	4.0
SUPPLIES		2.0	2.0	2.0	1.5	1.5
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		72.5	181.9	181.9	181.9	181.9

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

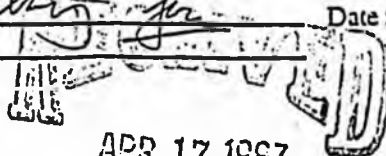
FULL-TIME		1.0	3.0	3.0	3.0	3.0
PART-TIME		2.0	1.0	1.0	1.0	1.0
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)
(See attached)

Prepared by: Gary Gustafson Phone: 465-2400
Division: Land and Water Management Date: 3/5/87

Approved by Commissioner: [Signature] Date: 4/16/87
Agency: Natural Resources

- Distribution (by preparer):
- Legislative Finance
 - Legislative Sponsor
 - Requestor
 - Office of Management and Budget
 - Impacted Agency(ies)
 - Senate Secretary



LEGISLATIVE FINANCE

CSSB 133
Fiscal Note Analysis

With the passage of CSSB 133, the department will be required to determine and certify the entitlement of an estimated 146 first and second class cities within the state within six months. Because the bill changes the definition of vacant, unappropriated and unreserved (vuu) land, and expands the date of eligibility, while retaining the language which states that cities are entitled to 10% of "the maximum total acreage of" vuu land within their boundaries which existed "at any time" between their initial eligibility (presumably the enactment of the referenced statutes in 1972) and the new date (January 1, 1988), the research involved will be quite extensive.

Many of the 146 cities will be unaffected by the legislation. However, to facilitate the Certification by the Director, numerous state records must be searched to assure the correct acreage for each municipality and make that determination. These records include those of the Department of Community and Regional Affairs (city incorporations and boundaries), the Department of Natural Resources (land title records, status plats, classification and planning documents) and the federal government (land title records, status plats, and other Bureau of Land Management (BLM) records).

Presently, city boundaries are not depicted in the department's Land Administration (computer) System (LAS) nor on state status plats. This will necessitate a time consuming manual adjudication process which must be accomplished within the six month limitation. In order to accomplish this expedited certification process the department will require the following for a maximum of twelve months:

CERTIFICATION

1. A Project Manager (Natural Resource Manager I, range 18, 12 months). The Manager will supervise a staff consisting of a Natural Resource Technician II (range 12), and a Clerk Typist III (range 8). The manager must have sufficient background to understand and work with the various processes involved, including the land transfer process from the federal government to the state, and from the state to municipalities (Title 29, etc.). The manager must act as liaison and problem solver for involved agencies and cities. This position will also be responsible for public notice and conducting hearings associated with the process of certification. The Manager will also review records and make determinations concerning those records as necessary for creating background for certification. The Manager must also work with the department's title personnel to recheck these results with the federal title documents and plats to assure everything is in order; and with the Technician to ensure correct mapping from department documents.

2. The necessary record and resource gathering, mapping and general support for the manager will be provided by the Natural Resource Technician (range 12, first 6 months or less). The Technician, with the direct supervision of the Officer will review and delineate on a single pictorial document the following: correct municipal boundaries (from information obtained from the Department of Community and Regional Affairs by the Technician); many classifications from old land planning reports, classification orders (original and renumbered), regional, area and management plans. This document will be used to provide a focal point from which a rational review of all the data may be accomplished.

3. The Clerk Typist III (range 8, 10-12 months) would supply data entry, clerical, typing and general office support for the Certification staff. The Clerk will be responsible for typing documents, decisions, etc.; monitoring files; and inputting computer data.

ADMINISTRATION

After the initial certification and adjudication and administrative phase will take place primarily in the Northern Region in Fairbanks, as the North Slope Borough would be able to select its entitlement of 89,950 acres while the new Northwest Borough would be able to select approximately 240,000 acres. This requires use of all of the state records and its various systems; coordinating with the borough in the actual selection; formulating the decision which would transfer management authority to the borough; reviewing the survey data, writing survey instructions, negotiating survey contracts for the vast areas many of which are totally unsurveyed, reviewing the survey accomplished by the private surveyors; and finally, conveying title.

To date the division has conveyed 372,000 acres of the total municipally selected amount of 785,000 acres. The number of people involved has run to a high of 15 people in past years, while the division presently has only 1 3/4 people working on municipal entitlements. The present reduction is attributable to a wind down phase as most action is awaiting survey of the land. To expeditiously handle the selections and get the land conveyed a level 18 manager, one grade 16 officer, and 1 technician at a level 12 with a Clerk Typist, level 8 would be required. These people would be permanent and located in Fairbanks. The duties of this staff focus on the process following certification: Land selection and conveyance. The administration staff should be assembled and begin work during the last month of FY 88 in order to coordinate with the certification team.

In order to assist the municipalities in selecting the lands to which they are entitled and to transfer these lands to the municipalities with maximum efficiency, the Manager will work directly with the municipal land officer in each municipality for land identification. In that process the Manager must review general growth demographics and in conjunction with many plans, data, and

studies in the resource libraries throughout Alaska that are particularly applicable to the area in question. The Manager will consult with other agencies; act as primary liaison between various state agencies, the individual city or municipality; provide information to the municipalities; and resolve problems.

The Officer II will be responsible for handling the logistics involved in the conveyance of title to several hundred thousand acres of land including the many legal notices and public hearings. A major problem in the past has been the lack of capability for handling the attendant paperwork which has slowed the process of transferring title. A definitive filing system with computerization of the selection status of each application will be developed by this individual. The Officer, together with the Technician, would handle mapping and title work for the conveyance process. Working from the maps assembled for the certification, the Officer would add information concerning the selection and adjudication processes, and verify the information. That process might include a search of the old general land office records, Bureau of Land Management survey data and possible later state cadastral data to accurately determine survey status. The Technician would assist the Officers and the Manager with basic research and resource gathering, and mapping. The Clerk would supply support for the staff including typing, filing, and data entry.

Line Item Explanation

Y E A R 1

100 - Personal Services

Certification

P.P.T. - Anc

18	23.3 (12 months)
12	12.2 (9 months)
8	<u>12.0 (10 months)</u>
	47.5

Administration

P.F.T. - Fbx

18	4.6 (1 month)
16	4.0 (1 month)
12	3.2 (1 month)
8	<u>2.3 (1 month)</u>
	14.1

200 - (5.0) Travel to Pt. Barrow, Kotzebue, and various cities.

300 - (4.0) Extensive legal advertising, hearings, printing, charter, telephones, certified mailings.

400 - (2.0) Supplies and commodities for staff.

Annual total year 1: \$72.6

Y E A R 2

Administration

P.F.T. - Fbx

18	54.8
16	48.2
12	38.4
8	<u>27.5</u>
	168.9

200 - (5.0) Travel to Pt. Barrow, Kotzebue, and various cities.

300 - (6.0) Extensive legal advertising, hearings, printing, charter, telephone, certified mailings.

400 - (2.0) Supplies and commodities for staff.

Annual total year 2: \$181.9

SENATE COMMITTEE REPORT

FURTHER:

DATE TURNED INTO OFFICE 4/9/87

Mr. President:

FINANCE

Committee considered SB 133

general grant land entitlements; efd.

and recommended:

replace with _____ CS FOR SB 133 (FIN)) same title
 or adopt _____ CS FOR _____) new title

attached amendment(s) and

do pass

do not pass

no recommendation

individual recommendations

further referral to _____

letter of intent adopted _____

Committee attached or adopted fiscal note(s)

new updated or previous
 zero fiscal impact 725

MEMBERS SIGNING DO PASS

[Signature]
[Signature]
[Signature]
[Signature]
[Signature]
[Signature]

OTHER RECOMMENDATIONS

Paul Fish N. Re

[Signature] DO PASS
Chairman signature and recommendation

Committee Backup Attached

**STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE**

REQUEST: _____
 Revision Date: 3/5/87
 Title: general grant entitlement
 (municipal selection)
 Sponsor: Henslev, et al
 Requestor: _____

Bill Version: SB 133
 Publish Date: 4-1-87

Agency Affected: Natural Resources
 BRU: Land and Water Management

Components: Land Conveyance

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES		61.5	168.9	168.9	168.9	168.9
TRAVEL		5.0	5.0	4.0	3.0	3.0
CONTRACTUAL		4.0	6.0	6.0	4.0	4.0
SUPPLIES		2.0	2.0	2.0	1.5	1.5
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		72.5	181.9	181.9	181.9	181.9

CAPITAL						
---------	--	--	--	--	--	--

* REVENUE		(3,500.0)	(3,500.0)	(3,500.0)	(3,500.0)	(3,500.0)
-----------	--	-----------	-----------	-----------	-----------	-----------

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME		1.0	3.0	3.0	3.0	3.0
PART-TIME		2.0	1.0	1.0	1.0	1.0
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

* If the North Slope Borough is allowed to selected state lands valuable for materials, these figures represent the current incoming revenue that will be lost.

(SEE ATTACHED)

Prepared by: Gary Gustafson GG Phone: 465-2400
 Division: Land and Water Management Date: 3/5/87

Approved by Commissioner: Lennie Boston Gorsuch Date: 3/5/87
 Agency: Natural Resources

- Distribution (by preparer):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)
 Senate Secretary

RECEIVED
 MAR 06 1987

LEGISLATIVE FINANCE

SB 133
Fiscal Note Analysis

With the passage of S.B. 133 the department will be required to determine and certify the entitlement of an estimated 146 first and second class cities within the state within six months. Because the bill changes the definition of vacant, unappropriated and unreserved (vuu) land, and expands the date of eligibility, while retaining the language which states that cities are entitled to 10% of "the maximum total acreage of" vuu land within their boundaries which existed "at any time" between their initial eligibility (presumably the enactment of the referenced statutes in 1972) and the new date (January 1, 1988), the research involved will be quite extensive.

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Presently, city boundaries are not depicted on the department's Land Administration (computer) System (L.A.S.) nor on state status plats. This will necessitate a time consuming manual adjudication process which must be accomplished within the six month limitation. In order to accomplish this expedited certification process the department will require the following new permanent part time positions for a maximum of twelve months:

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1. A Project Manager (Natural Resource Manager I, range 18, 12 months). The Manager will supervise a staff consisting of a Natural Resource Technician II (range 12), and a Clerk Typist 3 (range 8). The manager must have sufficient background to understand and work with the various processes involved, including the land transfer process from the federal government to the state, and from the state to municipalities (Title 29, etc.). The manager must act as liason and problem solver for involved agencies and cities. This position will also be responsible for public notice and conducting hearings associated with the process of certification. The Manager will also review records and make determinations concerning those records as necessary for creating background for certification. The Manager must also work with the department's title personnel to recheck these results with the federal title documents and plats to assure everything is in order; and with the Technician to ensure correct mapping from department documents.

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Line Item Explanation

Y E A R 1

100 - Personal Services				
<u>Certification</u>	-	P.P.T.	-	Anc
18	-	23.3	(12 months)	
12	-	12.2	(9 months)	
8	-	12.0	(10 months)	
		<u>47.5</u>		
<u>Administration</u>		P.F.T.	-	Fbx
18		4.6	(1 month)	
16		4.0	(1 month)	
12		3.2	(1 month)	
8		2.3	(1 month)	
		<u>14.1</u>		

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400 - (2.0) Supplies and commodities for staff.

Annual total year 1: 72.6

Y E A R 2

<u>Administration</u>		P.F.T.	-	Fbx
18		54.8		
16		48.2		
12		38.4		
8		27.5		
		<u>168.9</u>		

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300 - (6.0) Extensive legal advertising, hearings, printing, charter, telephone, certified mailings.

400 - (2.0) Supplies and commodities for staff.

Annual total year 2: \$181.9

Original sponsors: Hensley, Halford
and Faiks

Finance
BY THE COMMUNITY AND
REGIONAL AFFAIRS COMMITTEE

1 IN THE SENATE

2

CS FOR SENATE BILL NO. 133 (~~G&RA~~) (*Finance*)

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to general grant land entitlements;

7

and providing for an effective date."

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

9

* Section 1. AS 29.65.020(a) is amended to read:

10

(a) The general grant land entitlement of a city formerly eligi-

11

ble to receive general grant land under the provisions of former

12

AS 29.18.190 and 29.18.200 is 10 percent of the maximum total acreage

13

of vacant, unappropriated, unreserved land in the boundaries of each

14

city at any time between the initial date of eligibility under former

15

AS 29.18.190 and 29.18.200 and January 1, 1988 [JULY 1, 1978]. Within

16

six months after January 1, 1988 [JULY 1, 1978], the director shall

17

determine the entitlement for each city eligible to receive general

18

grant land under this section [FORMER AS 29.18.202] and certify that

19

entitlement to the city.

20

* Sec. 2. AS 29.65.030(a) is amended to read:

21

(a) The general grant land entitlement of a municipality incor-

22

porated after July 1, 1978, that does not qualify for an entitlement

23

under AS 29.65.010 or 29.65.020 is 10 percent of the maximum total

24

acreage of vacant, unappropriated, unreserved land within the bound-

25

aries of the municipality between [ON] the date of its incorporation

26

and two years after that date. However, a municipality may not re-

27

ceive an entitlement under this subsection that exceeds 21.4 acres per

28

person residing in the municipality on the date of its incorporation.

29

* Sec. 3. AS 29.65.030(b) is amended to read:

1 (b) Within two years and six months after the date of incorpo-
2 ration of the [A] municipality [THAT IS INCORPORATED AFTER JULY 1,
3 1978], the director shall determine the entitlement of each municipal-
4 ity eligible to receive general grant land under (a) of this section
5 and certify the entitlement to the municipality.

6 * Sec. 4. AS 29.65.040(a) is amended to read:

7 (a) After July 1, 1978, general grant land entitlements provided
8 in former AS 29.18.201 and [FORMER AS] 29.18.202 are vested property
9 rights that must be fulfilled as provided in AS 29.65.050 or 29.65.-
10 080. After January 1, 1988, general grant land entitlements provided
11 in AS 29.65.010 are vested property rights that must be fulfilled as
12 provided in AS 29.65.050 or 29.65.080.

13 * Sec. 5. AS 29.65.040(c) is amended to read:

14 (c) Land may be selected or nominated for selection by a munic-
15 ipality to satisfy a general grant land entitlement under former
16 AS 29.18.201 and 29.18.202 at any time before October 1, 1980. Land
17 may be selected or nominated for selection by a municipality to satis-
18 fy a general grant land entitlement under AS 29.65.010 at any time
19 before October 1, 1990. However, if a municipal selection or nomina-
20 tion or a part of a municipal selection or nomination is rejected by
21 the director, the municipality may, not later than 90 days after
22 receipt of the rejection, select additional state land as necessary to
23 satisfy its entitlement.

24 * Sec. 6. AS 29.65.050(b) is amended to read:

25 (b) All approved selections under former AS 29.18.190 and 29.-
26 18.200 for which patent has not been issued to a municipality on July
27 1, 1978, shall be reviewed by the director within nine months after
28 July 1, 1978. Any approved selection of land that was vacant, unap-
29 propriated, or unreserved on the date of selection is valid as of the

1 date of the approval under former AS 29.18.190, [AND] 29.18.200,
2 29.18.201, 29.18.202, and 29.18.203 and a patent shall be issued to
3 the municipality within three months after approval by the director of
4 a plat of survey. The acreage shall be credited toward fulfillment of
5 the municipality's entitlement. A municipality is not entitled to
6 receive patent under this chapter to more than its entitlement de-
7 termined under AS 29.65.010 - 29.65.030. Any prior approval by the
8 director of municipal selections for land that was not vacant, unap-
9 propriated, or unreserved on the date of selection shall be rescinded,
10 and patent may not be issued except when disposal to a third party by
11 sale or lease has occurred. Transfers of land to municipalities under
12 this chapter are subject to AS 38.05.321. Classification actions as
13 reflected on the land status records of the Department of Natural
14 Resources are determinative of land classification status for purposes
15 of this chapter.

16 * Sec. 7. AS 29.65 is amended by adding a new section to read:

17 Sec. 29.65.122. PROHIBITION. A municipality may not acquire
18 subsurface rights to land of the federal government by trading land
19 received as a general grant land entitlement.

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

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

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

26 (B) has not been approved for patent to a municipal-
27 ity under this chapter or former AS 29.18.190 and 29.18.200; [OR]

28 (C) is unclassified or, if classified under AS 38.-
29 05.300, is classified for agricultural, grazing, material, public

1 recreation, or settlement [COMMERCIAL, INDUSTRIAL, PRIVATE
2 RECREATIONAL, RESIDENTIAL, UTILITY, OR OPEN-TO-ENTRY] purposes,
3 or is classified in accordance with an agreement between a munic-
4 ipality and the state providing for state management of land of
5 the municipality; or

6 (D) was classified no earlier than September 1, 1983,
7 for resource management purposes and is still classified for
8 resource management purposes under AS 38.05.300.

9 * Sec. 9. Before January 1, 1988, the Department of Natural Resources
10 shall consult with each municipality affected by this Act regarding classi-
11 fications of state land within its boundaries and may assist the munic-
12 ipality in identifying land suitable for selection in fulfillment of its
13 general grant land entitlement.

14 * Sec. 10. AS 29.65.010(b), 29.65.020(b), 29.65.030(c), and 29.65.110
15 are repealed.

16 * Sec. 11. Section 9 of this Act takes effect immediately under AS 01.-
17 10.070(c).

18 * Sec. 12. Sections 1 - 8 and 10 of this Act take effect January 1,
19 1988.

4/9/87
Sen.
Hensley
Adopted

AMENDMENT

COMMITTEE SUBSTITUTE FOR SENATE BILL 133 (C&RA)

Page 1, Lines 26 - 28

Delete: "HOWEVER, A MUNICIPALITY MAY NOT RECEIVE AN ENTITLEMENT UNDER THIS SUBSECTION THAT EXCEEDS 21.4 ACRES PER PERSON RESIDING IN THE MUNICIPALITY ON THE DATE OF ITS INCORPORATION."

**STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE**

REQUEST: 0 Bill Version: SBI33
 Revision Date: _____ Publish Date: _____
 Title: An act relating to general grant Agency Affected: _____
land entitlements BRU: _____
 Sponsor: Hensley, et. al Components: _____
 Requestor: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0				
FEDERAL FUNDS						
OTHER						
TOTAL	0	0				

POSITIONS:

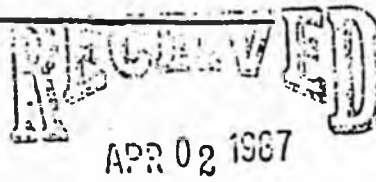
FULL-TIME	0	0				
PART-TIME	0	0				
TEMPORARY	0	0				

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Al Carson Phone: 267-2285
 Division: Habitat Division Date: 3/5/87

Approved by Commissioner: *Norman D. ...* Date: 3/26/87
 Agency: Department of Fish and Game

Distribution (by preparer) :
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)
 Senate Secretary



LEGISLATIVE FINANCE

Alaska State Senate

P.O. Box V
Juneau, AK 99811
Phone: (907) 465-2444
465-3862/465-4923



Senate Finance Committee
State Affairs Committee
Vice-Chair, Rules Committee
Chair, Administrative Regulation Review

William L. Hensley

April 9, 1987

The Honorable Steve Cowper
Governor, State of Alaska
P.O. Box A
Juneau, AK 99811

Dear Steve:

Attached is a description of the legal events which led to the North Slope Borough not receiving its municipal land entitlement. This description does not absolve the borough of its actions, but certainly it puts the issue in a different light.

The borough's current desire for its land entitlement should not be characterized as legislative redress of a sore loser who fought in court to the bitter end. Rather, the borough's efforts to terminate the litigation was seemingly miscalculated. I would appreciate if Bob Evans would meet with Avrum Gross on the particulars of the issue. I feel this would be beneficial to an understanding of the municipal land bill, Senate Bill 133.

Sincerely,


William L. Hensley
Alaska State Senate

WLH/mjs

cc: Bob Evans
Office of the Governor

North Slope Borough

Avrum Gross

MEMORANDUM

State of Alaska

TO: Theodore G. Smith, Director
Division of Forest, Land and
Water Management
Alaska Dept. of Natural Resources

DATE: November 3, 1980

FILE NO: A66-059-81

TELEPHONE NO:

FROM: WILSON L. CONDON
ATTORNEY GENERAL

SUBJECT: Eligibility of North
Slope Borough for
Municipal Land Grant
under AS 29.18.201
et seq.

By: Thomas E. Meacham
Assistant Attorney General
AGO-Anchorage

Your office has raised the question whether the North Slope Borough properly qualified itself, pursuant to statute, to select and receive title to state lands under the Municipal Land Grant Act, AS 29.18.201 et seq. This memorandum is intended as a follow-up to my memorandum of February 19, 1980 on the same subject.

I.

SEQUENCE OF EVENTS

The North Slope Borough on August 10, 1973 filed applications with the Alaska Division of Lands to acquire the surface of certain lands within the Borough, and generally located within the Prudhoe Bay oilfield area, pursuant to the provisions of AS 29.18.190-.200, the original Municipal Land Grant Act. That act generally provided that municipalities could acquire up to 10% of the vacant, unappropriated, unreserved state lands within their respective boundaries, subject to the best interests of the State. The North Slope Borough's land selection applications were denied by the Director of the Division of Lands in a decision dated January 3, 1974 on the basis that it was not in the best interest of the State to convey to the Borough the surface of these lands. This decision was subsequently affirmed on appeal by the Commissioner of Natural Resources, and that decision was in turn appealed by the Borough to the Superior Court, Third Judicial District. A decision by Judge Lewis on that appeal was rendered on January 3, 1977 finding in favor of the State on the issue of the "State's best interests" as a proper basis for rejecting the Borough's land selections. That decision was in turn appealed by the Borough to the Alaska Supreme Court in early 1977, oral argument was held on November 14, 1977, and a decision was pending in that Court in 1978 when the Alaska Legislature substantially revised the municipal land entitlement program and concurrently repealed AS 29.18.190-.200, the original Municipal Land Grant Act. North Slope Borough v. LeResche, 581 P.2d 1112 (1978).

Memo to Theodore G. Smith
November 3, 1980
Page 2
A66-059-81

The new legislation adopted by the Alaska Legislature in Chapter 180, SLA 1978 granted the North Slope Borough a fixed land entitlement of 89,850 acres. AS 29.18.201(11). However, each municipality which was engaged in litigation against the State on July 1, 1978 regarding land selections under the repealed AS 29.18.190-.200 was required by AS 29.18.211(a) of the new statute to make an election to pursue its legal rights and remedies under the old statute, or to dismiss any pending litigation and accept the land entitlement specified by the new statute. AS 29.18.211 states in part as follows:

Election of Benefits. (a) A municipality which on July 1, 1978 is engaged in litigation, or which becomes engaged in litigation, regarding a claim to state land under former sections 190 and 200 of this chapter shall elect either to obtain the benefits provided in sections 201-213 of this chapter or to pursue the litigation and thereby waive any claim to entitlement under sections 201-213 of this chapter. An election shall be made by filing a motion for dismissal with prejudice in the court in which the litigation is pending. If the claim involves a municipality identified in section 201 of this chapter, the municipality shall file its motion for dismissal within 60 days of July 1, 1978. . . . Failure of the municipality to file a motion for dismissal during the time period provided in this subsection shall be considered a waiver of entitlement under section 201-213 of this chapter.

II.
ISSUES AND CONCLUSIONS

Three questions are raised in this matter:

- (1) Was the North Slope Borough engaged in litigation on July 1, 1978?
- (2) Did the North Slope Borough, if engaged in litigation on July 1, 1978, properly elect to obtain the benefits provided by AS 29.18.201-.213?

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- (3) If the North Slope Borough was engaged in litigation on July 1, 1978, and if it did not properly elect, pursuant to AS 29.18.211(a), to receive the benefits under AS 29.18.201-.213, may the Department nevertheless accept the Borough's land selection applications and convey lands to it pursuant to the land entitlement specified by AS 29.18.201(11)?

Based upon our analysis of all relevant information, it appears that the North Slope Borough was engaged in litigation on July 1, 1978; that it failed to properly elect to receive the benefits of AS 29.18.201-213 by filing a motion to dismiss its lawsuit with prejudice within the time allowed, and therefore that the Department may not lawfully approve the Borough's land selection applications for conveyance of the acreage of state lands specified in AS 29.18.201. As a result of the Borough's failure to initiate and complete the necessary steps within the time permitted, it appears that a legislative solution should be sought regarding the land entitlement, if any, of the North Slope Borough.

III. DISCUSSION

Because the Borough was a municipality identified in Section 201 of the Municipal Land Grant Act (it is listed, together with a specified acreage, in section 201 (11)), and since it was on July 1, 1978 "engaged in litigation" in the Alaska Supreme Court regarding its land entitlement under the old act, it was required by section 211 of the new Act to file a motion for dismissal with prejudice of that litigation in the Supreme Court within sixty days after July 1, 1978.^{1/} The Supreme Court's decision in North Slope Borough v. LeResche

^{1/} Presumably, a municipality could have been engaged in litigation regarding its land entitlement under the repealed act on July 1, 1978, yet not be required to file a motion for dismissal with prejudice as required by AS 29.18.211(a), only if a final judgment, order or mandate were entered by the court in which the case was pending, and the time for an appeal, rehearing, or reconsideration had expired with finality, all within the 60-day period set by Section 211(a). The hypothetical municipality in such a case would have ceased being "engaged in litigation" prior to the deadline for its election of benefits.

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was issued on August 4, 1978, well into the 60-day time period, and its mandate, finally ending the case, would have normally issued on August 15, 1978 pursuant to Rule 29 of the Alaska Rules of Appellate Procedure, had not the Borough taken steps to keep the litigation alive. After August 4, 1978 the Borough took steps on two occasions to obtain additional time in which to file possible motions for rehearing. Their request was granted, the time for seeking rehearing expired some six days after the close of the 60-day period, and the mandate of the Supreme Court, ending the litigation with finality, was entered on September 11, 1978, twelve days after the close of the 60-day period. Thus, counting the days of July and August subsequent to July 1, 1978, the date of August 30, 1978 appears to be the last day on which the North Slope Borough could have filed the required motion for dismissal with prejudice.

Mr. Charles Cranston, attorney for the Borough, argues in his letter of August 11, 1980 that because July 1, 1978 was a Saturday, and thus was not a "business day", the 60-day period did not begin to run until Monday, July 3, 1978, with a resulting closing day of August 31, 1980. While this distinction is not critical, since the Borough failed to make its election in accordance with AS 29.18.211 prior to either of these dates, this question deserves brief comment. AS 01.10.080, clarifying the correct computation of a time period specified by law, states as follows:

The time in which an act provided by law is required to be done is computed by excluding the first day and including the last, unless the last day is a holiday, and then it is also excluded.

1/ (Continued) To thereafter require it to file a notice of dismissal in a case which had already been resolved with finality and prejudice by operation of law would be to require a meaningless gesture, though the gesture would technically be required by AS 29.18.211(a) if the municipality was in fact involved in litigation on July 1, 1978, regardless of the subsequent final disposition of the case within the 60-day time period. Isakson v. Rickey, 550 P.2d 359 (Ak. 1976); Sherman v. Holiday Const. Co., 435 P.2d 16 (Ak. 1967).

In the present case, the facts discussed in this memorandum differ markedly from the hypothetical illustration.

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This statute, though it excludes the last day if it is a holiday, makes no exclusion for the first day of the time period if it is a holiday. Logic supports the plain language of the statute -- that AS 01.10.080 may not be interpreted to exclude the commencing day of a time period if that day is a holiday: the inability of a person to take the required action at the commencing day of the time period is not detrimental to the protection of his rights, since he may take the required action on any subsequent day of the time period. However, if the closing day of a time period is a holiday, the person would lose the use of that last day unless the next subsequent business day was included within the time period by operation of law. This AS 01.10.080 clearly does.

While the word "holiday" is not defined in AS 01.10.080, Mr. Cranston interprets it to mean a day which is other than a "business day" (i.e., Monday through Friday). Rule 6, Alaska Rules of Civil Procedure, requires the computation of a time period in a manner identical to that specified in AS 01.10.080, and further excludes the last day of the period if it is ". . . a Saturday, a Sunday, or a legal holiday . . .". Even under Mr. Cranston's analysis (which appears incorrect because July 1, 1978 is not excluded by AS 01.10.080 even though it is a Saturday and thereby extends the 60-day period by one day), the period specified by AS 29.18.211(a) would have ended on August 31, 1978.

The mayor of the North Slope Borough, the late Eben Hopson, was advised in detail by the Assistant Commissioner of the Alaska Department of Natural Resources by letter dated July 10, 1978 that the Borough was required to make a timely election of benefits pursuant to the terms of section 211. By a letter to the Assistant Commissioner dated August 31, 1978 Mr. Cranston, as attorney for the North Slope Borough, stated the following:

This is to notify you that the North Slope Borough will proceed under the recently enacted Land Selections Act for its Land Selection. This letter shall constitute the election required of the North Slope Borough under the Act.

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The letter was stamped as "received" by the Division of Lands, Department of Natural Resources on September 12, 1978. This letter is ineffective to fulfill the requirements of AS 29.18.211, since it does not constitute the ". . . filing of a motion for dismissal with prejudice in the court in which the litigation is pending . . .". Mr. Cranston does not claim that any motion for dismissal with prejudice, as required by the statute, was ever filed before the Alaska Supreme Court during the pendency of the action and prior to the closing of the time period specified in Section 211. Instead, he has argued that the case became "dismissed" as a matter of law by the failure of the Borough to file its motion for rehearing prior to September 5, 1978, the last day permitted for such filing, notwithstanding the closure of the 60-day statutory time period some six days before. He has not argued that the Borough's case became "final" or "dismissed" within the specified 60-day period.

The opinion of the Alaska Supreme Court in the case of North Slope Borough v. LeResche was issued on August 4, 1978, and the Court found in favor of the State and against the Borough. That decision would not have become a final mandate, pursuant to Rule 28 of the Alaska Rules of Appellate Procedure, until the time for the filing of any petition for rehearing had expired. That time is established by Rule 27 as ten days from the date of decision (unless extended by an order of the Court), or in this case until August 15, 1978. On August 9, 1978 counsel for the North Slope Borough filed his request for an extension of time for the submission of a possible petition for rehearing. That request did not specify a date to which he sought an extension. On August 11, 1978, again with the 10-day period set by Rule 27, counsel again sought an extension, and requested that the extension run until September 4, 1978. These actions by counsel for the Borough after issuance of the decision, and pursuant to Rule 27 of the Rules of Appellate Procedure, clearly extended the "pendency of litigation" within the meaning of Section 211 of the Municipal Land Grant Act.

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prior discussion that the Borough's lawsuit was pending after the 60-day time period expired. Therefore there is no need to examine the status of possible federal constitutional issues which could have been pursued beyond Alaska's highest court.

Based upon the foregoing, it is our legal conclusion that the North Slope Borough was a municipality engaged in litigation within the meaning of AS 29.18.211(a) during the period July 1 - August 30, 1978; that the Borough failed within that time period to make an effective election of remedies as specified in section 211; that the result of such a failure must, pursuant to statute, be considered a waiver of land entitlement under section 201-213 of the Act; and therefore that the Department has no statutory authority to process or approve pending North Slope Borough applications for selection and conveyance of lands pursuant to the Act. Obviously, resolution of this matter within the limits of authority of the Department of Natural Resources will require further legislative action, since its present resolution is beyond the authority of the Department, under the circumstances in which the North Slope Borough has placed itself after August 30, 1978.

If I may be of further assistance regarding this matter, please contact me at your convenience.

TEM/sls

cc: Robert E. LeResche, Commissioner
Department of Natural Resources

Geof Haynes, Deputy Commissioner
Department of Natural Resources

Wilson L. Condon
Attorney General

Rodger Pegues
Assistant Attorney General

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The Alaska Supreme Court, by an order dated August 29, 1978 considered the Borough's amended motion of August 14, 1978 (apparently dated August 11, 1978) and granted the Borough an extension of time until September 5, 1978 within which to file any petition for rehearing. Thus, by action of the Court and pursuant to the request of counsel, the pendency of North Slope Borough v. LeResche was continued until at least September 5, 1978, if the Borough chose not to file a petition for rehearing and filed nothing with the Court to earlier terminate the litigation.

No petition for rehearing was in fact filed. Nor did the Borough take any steps during this time to dismiss the suit with prejudice. Counsel for the Borough argues that its office may not have received a copy of the Court's order dated August 29, 1978, and thus it may have believed that the time in which to file a petition for rehearing had automatically expired, presumably on August 15, the tenth day following August 4, 1978. This argument is clearly contrary to the appellate rules, since Rule 37 specifies that the first motion for an extension of time routinely granted, and may be granted by a single Justice. Further, this matter is of such routine that the Clerk of the Court may grant an unopposed extension pursuant to Appellate Rule 37(e), which occurred in the present case. Thus it appears clear that counsel for the Borough was not justified in believing that its lawsuit had died simply because it had apparently not received written notification of the grant of its requested first extension of time. Counsel's argument that it was the Supreme Court, and not the Borough, which "breathed further life" into the litigation so as to extend it beyond either August 30 or August 31 is not well taken.

IV.

THE LEGAL AFFECT OF THE FAILURE TO FILE A NOTICE OF DISMISSAL

AS 29.18.211 specifies, in explicit terms, the manner in which a municipality then engaged in litigation was to make its election to receive benefits under the new legislation, if it chose to do so rather than pursue the litigation. Those municipalities then engaged in litigation were to ". . . file a notice of dismissal with prejudice in the court in which the litigation was pending. . . ." The requirement of filing a notice of dismissal in court precludes the assignment of

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any legal effect to the letter from the Borough's attorney, Charles Cranston, to the Associate Commissioner of the Department of Natural Resources on August 31, 1978. Further, section 211 requires that an effective notice of dismissal be filed "with prejudice", which in legal terms signifies that the moving party, after acceptance of the motion by the court, is precluded from ever again raising the claims dismissed; in other words, the dismissal is final and irrevocable as to that party and acts as a judgment on the merits. Maib v. Maryland Casualty Co., 135 P.2d 71 (Wash. 1943); Zimmerman v. Texaco, Inc., 409 S.W.2d 607 (Tex. Civ. App. 1966). The letter of August 31, 1978, even if it were otherwise determined to be an effective election of benefits, does not carry the connotation of a dismissal "with prejudice" before a court authorized and empowered to accept such a dismissal and to give it legal effect.

Mr. Cranston's letter of August 11, 1980 admits that the Borough's litigation in the Supreme Court terminated with finality after expiration of the 60-day period provided by AS 29.18.211. Mr. Cranston argues that the litigation terminated ". . . at the most two and perhaps one business day" after termination of the period. Assuming that the 60-day period for filing closed on August 30, 1978, which we believe is the correct interpretation of AS 01.10.080, the lawsuit remained alive, by order of the Supreme Court, until September 5, 1978. Thus it is clear that the North Slope Borough's litigation was alive and "pending" within the meaning of AS 29.18.211 for five days following the closing of the period for election specified by AS 29.18.211, without the Borough having properly elected to receive benefits under the new Act by filing a petition in the Supreme Court for dismissal with prejudice on or prior to August 30, 1978..

The attorney for the North Slope Borough asserts that the procedures specified in section 211 for the election of benefits are merely directory, and not mandatory, upon the Borough and the Department, and therefore any non-compliance may be excused by administrative discretion. This view is not supported by the Municipal Land Grant Act, nor by the legal interpretation placed upon grants of public land generally. Grants of public land to particular recipients have been construed strictly in favor of the government, and against the grantee, in numerous

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instances. Caldwell v. U.S., 250 U.S. 14 (1980); Wisconsin Central R.R. Co. v. U.S.; 164 U.S. 190 (1896); Great Northern Ry. Co. v. U. S., 315 U.S. 262 (1942); Andrus v. Charlestone Stone Products Co., 436 U.S. 604 (1978). This appears to be the general rule, and no significant line of cases is found which would construe a grant of public lands against the grantor, and in favor of the grantee.

With regard to this particular land grant, it is evident that the qualifying requirements of section 211 are mandatory, and not merely directory, for several reasons. First, the statute directs that "an election shall be made", which is a legislative statement clearly mandatory, not permissive. Second, the specific details of an acceptable election -- a motion for dismissal with prejudice filed in the court in which litigation is pending -- are clearly spelled out in section 211. Third, a fixed period for the filing of an effective motion for dismissal is specified. Fourth, and perhaps most importantly, the effect of the failure of a litigating municipality to file the required motion within the required time period is clearly stated: it ". . . shall be considered a waiver of entitlement under section 201-213 . . .". This statutory sanction is both definite and mandatory; unless it were contained in statute, any automatic waiver and forfeiture of land benefits would generally be a disfavored sanction, and outside the permissible administrative discretion of the Department. However, AS 29.18.201-213 makes it the sanction both authorized and required by law, supporting the interpretation that the provisions of AS 29.18.211 are mandatory and not directory.

V.
FEDERAL ISSUES

Though some federal constitutional issues were raised in the Borough's appeal, they are not considered here. Theoretically, their existence could raise the possibility that the Borough, even after entry of the mandate by the Alaska Supreme Court, could have sought a hearing before the U. S. Supreme Court by appeal or writ of certiorari on these issues, thus keeping the lawsuit "alive" or pending beyond the date of entry of the Alaska Supreme Court's mandate. However, it is clear from the

Original sponsors: Hensley, Halford
and Faiks

1 IN THE SENATE

BY THE FINANCE COMMITTEE

2 CS FOR SENATE BILL NO. 133 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

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

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

9 * Section 1. AS 29.65.020(a) is amended to read:

10 (a) The general grant land entitlement of a city formerly eligi-
11 ble to receive general grant land under the provisions of former
12 AS 29.18.190 and 29.18.200 is 10 percent of the maximum total acreage
13 of vacant, unappropriated, unreserved land in the boundaries of each
14 city at any time between the initial date of eligibility under former
15 AS 29.18.190 and 29.18.200 and January 1, 1988 [JULY 1, 1978]. Within
16 six months after January 1, 1988 [JULY 1, 1978], the director shall
17 determine the entitlement for each city eligible to receive general
18 grant land under this section [FORMER AS 29.18.202] and certify that
19 entitlement to the city.

20 * Sec. 2. AS 29.65.030(a) is amended to read:

21 (a) The general grant land entitlement of a municipality incor-
22 porated after July 1, 1978, that does not qualify for an entitlement
23 under AS 29.65.010 or 29.65.020 is 10 percent of the maximum total
24 acreage of vacant, unappropriated, unreserved land within the bound-
25 aries of the municipality between [ON] the date of its incorporation
26 and two years after that date.

27 * Sec. 3. AS 29.65.030(b) is amended to read:

28 (b) Within two years and six months after the date of incorpo-
29 ration of the [A] municipality [THAT IS INCORPORATED AFTER JULY 1,

1 1978], the director shall determine the entitlement of each municipal-
2 ity eligible to receive general grant land under (a) of this section
3 and certify the entitlement to the municipality.

4 * Sec. 4. AS 29.65.040(a) is amended to read:

5 (a) After July 1, 1978, general grant land entitlements provided
6 in former AS 29.18.201 and [FORMER AS] 29.18.202 are vested property
7 rights that must be fulfilled as provided in AS 29.65.050 or 29.65.-
8 080. After January 1, 1988, general grant land entitlements provided
9 in AS 29.65.010 are vested property rights that must be fulfilled as
10 provided in AS 29.65.050 or 29.65.080.

11 * Sec. 5. AS 29.65.040(c) is amended to read:

12 (c) Land may be selected or nominated for selection by a munic-
13 ipality to satisfy a general grant land entitlement under former
14 AS 29.18.201 and 29.18.202 at any time before October 1, 1980. Land
15 may be selected or nominated for selection by a municipality to satis-
16 fy a general grant land entitlement under AS 29.65.010 at any time
17 before October 1, 1990. However, if a municipal selection or nomina-
18 tion or a part of a municipal selection or nomination is rejected by
19 the director, the municipality may, not later than 90 days after
20 receipt of the rejection, select additional state land as necessary to
21 satisfy its entitlement.

22 * Sec. 6. AS 29.65.050(b) is amended to read:

23 (b) All approved selections under former AS 29.18.190 and 29.-
24 18.200 for which patent has not been issued to a municipality on July
25 1, 1978, shall be reviewed by the director within nine months after
26 July 1, 1978. Any approved selection of land that was vacant, unap-
27 propriated, or unreserved on the date of selection is valid as of the
28 date of the approval under former AS 29.18.190, [AND] 29.18.200,
29 29.18.201, 29.18.202, and 29.18.203 and a patent shall be issued to

1 the municipality within three months after approval by the director of
2 a plat of survey. The acreage shall be credited toward fulfillment of
3 the municipality's entitlement. A municipality is not entitled to
4 receive patent under this chapter to more than its entitlement de-
5 termined under AS 29.65.010 - 29.65.030. Any prior approval by the
6 director of municipal selections for land that was not vacant, unap-
7 propriated, or unreserved on the date of selection shall be rescinded,
8 and patent may not be issued except when disposal to a third party by
9 sale or lease has occurred. Transfers of land to municipalities under
10 this chapter are subject to AS 38.05.321. Classification actions as
11 reflected on the land status records of the Department of Natural
12 Resources are determinative of land classification status for purposes
13 of this chapter.

14 * Sec. 7. AS 29.65 is amended by adding a new section to read:

15 Sec. 29.65.122. PROHIBITION. A municipality may not acquire
16 subsurface rights to land of the federal government by trading land
17 received as a general grant land entitlement.

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

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

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

24 (B) has not been approved for patent to a municipal-
25 ity under this chapter or former AS 29.18.190 and 29.18.200; [OR]

26 (C) is unclassified or, if classified under AS 38.-
27 05.300, is classified for agricultural, grazing, material, public
28 recreation, or settlement [COMMERCIAL, INDUSTRIAL, PRIVATE
29 RECREATIONAL, RESIDENTIAL, UTILITY, OR OPEN-TO-ENTRY] purposes,

1 or is classified in accordance with an agreement between a munic-
2 ipality and the state providing for state management of land of
3 the municipality; or

4 (D) was classified no earlier than September 1, 1983,
5 for resource management purposes and is still classified for
6 resource management purposes under AS 38.05.300.

7 * Sec. 9. Before January 1, 1988, the Department of Natural Resources
8 shall consult with each municipality affected by this Act regarding classi-
9 fications of state land within its boundaries and may assist the munic-
10 ipality in identifying land suitable for selection in fulfillment of its
11 general grant land entitlement.

12 * Sec. 10. AS 29.65.010(b), 29.65.020(b), 29.65.030(c), and 29.65.110
13 are repealed.

14 * Sec. 11. Section 9 of this Act takes effect immediately under AS 01.-
15 10.070(c).

16 * Sec. 12. Sections 1 - 8 and 10 of this Act take effect January 1,
17 1988.

1 IN THE SENATE

BY HENSLEY, HALFORD AND FAIKS

2

SENATE BILL NO. 133

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

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

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

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2 municipality eligible to receive general grant land under (a) of this
3 section and certify the entitlement to the municipality.

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22 (C) is unclassified or, if classified under AS 38.-
23 05.300, is classified for agricultural, grazing, material, public
24 recreation, resource management, settlement, or transportation
25 corridor [COMMERCIAL, INDUSTRIAL, PRIVATE RECREATIONAL, RESI-
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5 * Sec. 9. AS 29.65.010(b), 29.65.020(b), 29.65.030(c), and 29.65.110
6 are repealed.

7 * Sec. 10. Section 8 of this Act takes effect immediately under AS 01.-
8 10.070(c).

9 * Sec. 11. Sections 1 - 7 and 9 of this Act take effect January 1,
10 1988.

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

Date of 3/12/87 5-DAY NOTICE
IN ACCORDANCE WITH UNIFORM RULE 23

FURTHER: FINANCE

**FISCAL NOTE(S) ATTACHED **
IN ACCORDANCE WITH AS 24.08.035
(see below)

DATE TURNED INTO OFFICE 4/1/87

Mr. President:

COMMUNITY & REGIONAL AFFAIRS Committee considered SB 133

general grant land entitlements; efd.

and recommended:

replace with CS for SB 133 (C+RA) same title
 attached amendment(s) and new title

do pass

do not pass

no recommendation

individual recommendations

further referral to _____

letter of intent adopted and attached

** Committee attached or adopted fiscal note(s)
 zero fiscal impact

MEMBERS SIGNING DO PASS

Rick Halford - unless amended

OTHER RECOMMENDATIONS

Tim Shauff No Rec.
Tim Kelly No Rec.
Mike Szymanski - No Rec.

Artis Stupulski Do Pass
Chairman signature and recommendation

Committee Backup Attached