

389

SCRA

HB

87

-

HB

133

389

HB

87

usg to

5-15-78 Keith Arnold AUSA

BRUCE ARONSON	D C/RA	CON
ANNETTE SMITH	17 C/RA	—
TED PERNS	ANCH. MUN.	CON
BOB SPEED	H/JUD	—
JIM ROUSE	AKILL	✓

DAVE STANIS - 5-25-78
 LANE, DEVOE
 WILL PROVIDE OIL
 COMPANY ~~PROBLEMS~~ PROBLEMS.

PHIL WALL - DEPT OF REU
 TOM WILLIAMS - " " " , PETR. DIVISION 276-1363

FOR TESTIMONY

BRUCE ARONSON C/RA
 DAVE STANIS
 STOCK No. 753 1/3
 JIM ROUSE
 HUGH ALLEN
 DON BERRY

6-5-78

NOTE FOR CSHB 8/ am FILE

Jodine Reposa, Department of Revenue, Petroleum Division, (276-1363) gave me the following data on the state's revenue from the 20 mill oil and gas property tax:

In 1978, the gross, statewide 20 mill tax will come to \$221,544,476.30. However, many boroughs have not yet set their mill rates, so from that figure will have to be subtracted the municipal credits when they're determined. Of the \$221.5 million, \$141.3 lies within organized boroughs and \$79.8 million in the unorganized borough.

In 1977, the statewide gross 20 mill tax was \$169.8 million. \$107.8 was within boroughs and \$62.0 million lay in the unorganized borough. There were \$30.3 million in municipal credits which gives a \$139.5 million net tax.

bfh

F: CS HB 87 Am

Given to SCRA
6-2-78
LARRY DAUNA
EXXON

Comments on CS for House Bill 87

Currently, under AS 29.63.030(a) a home rule or general law borough may establish a service area to provide a special service (e.g., fire protection). Such services are services not provided on an areawide basis within the borough or within the borough area outside cities; but they may also be services that are at a higher or different level than the services provided on an areawide basis or in the borough outside cities. Under subsection (b), the borough assembly may levy taxes and assessments in service areas to finance the special services.

A home rule or general law borough presently may, under Sec. 29.53.010, levy:

- (1) An areawide property tax to provide for functions carried out areawide, which area may include cities as well as the area outside of cities, and
- (2) a property tax limited to the area outside cities to pay for functions which are limited to areas outside cities.

Section 29.48.210 provides that revenue collected by the borough on an areawide basis is to be spent on general administrative costs and on areawide functions. Any revenue

collected in the area outside cities can only be expended on general administrative costs and functions which render service to the area outside cities.

These taxing powers and what is to be done with the revenues might be restated as follows:

(1) A borough assembly can establish a special district and can cause property taxes to be paid on property in that special district, but the tax revenue must be spent on the special service provided for that special district. For example, if it is a fire district, then the revenue has to be spent for providing fire protection in that special district area.

(2) A borough assembly can levy a property tax boroughwide to pay for functions that are boroughwide (and it makes no difference whether property is in or outside of a city) so long as the function is boroughwide.

(3) A borough assembly can levy a property tax limited to the area outside cities, but the tax revenue has to be spent for functions limited to the area outside cities.

There is equity, logic and sense to these present taxing powers and limitations on spending: the party being taxed gets the benefit of the service because the tax money collected can only be spent on services which apply to and benefit the one paying the tax.

CS for HB 87 would seek to radically change this by providing the mechanism to upset the fundamental principle that the one who pays the tax ought to obtain the benefit. Section 2 of the bill adds new section AS 29.73.070 and would permit taxes imposed and collected on a boroughwide basis to be appropriated by the borough assembly as "grants" to special districts and to cities to pay for the functions that a special district or a city provide. The amendment to AS 29.63.090(b) (which is section 1 of the bill) blatantly goes so far as to provide that the borough assembly may even finance by "appropriations" all of the cost of special service in the special district with revenue from boroughwide revenue, thus making it possible to set up a special district to provide a special service but pay for that service with boroughwide revenue instead of tax money from property in that district.

To carry out this scheme, Section 29.53.010 (section 5 of the bill) is amended to permit a borough to impose an areawide (i.e., boroughwide) property tax for "appropriations" to special districts and for "grants" to cities and special districts

in addition to the present power which is limited to the im-
position of an areawide (i.e., boroughwide) property tax to
pay for areawide functions.

It is rather obvious that the Kenai Peninsula Borough is one which has the fact pattern which most closely could apply this radical and patently inequitable tax scheme. A very large part of the property tax value in the Borough belongs to oil companies in the form of industrial plants lying in the Borough but outside cities and some of the special districts. The platforms and much of the equipment are either in the Inlet itself or on the west side which is relatively inaccessible. Union Oil has just completed construction of a large new plant at the present site of its existing plant.

The values of oil industry properties have always been a very high percentage of the total Borough valuation and, indeed, this valuation has jumped significantly in 1978 as the result of Union's new plant and it will jump significantly in 1979 and 1980 as other oil company property comes onto the tax rolls. Just recently, there was an announcement by Pacific Alaska LNG of its plans to begin construction in July 1979 for a large gas liquefaction plant in the industrial area of the Kenai Borough.

With oil industry valuation in the Borough, but lying outside cities, being so great and to become even greater in the near future it takes little imagination to see how the tax scheme contained in this bill could cause the oil industry property to become a major financing vehicle for cities and special districts which could not be accomplished under present law.

For example, assume that the total value in the Borough is \$1 billion of which the oil industry's share is \$800 million which lies outside cities. Assume the boroughwide tax rate is 5 mills, which produces \$5,000,000 of revenue from all taxpayers to the Borough. Assume further that City X in the Borough has a city tax rate of 15 mills (in addition to the Borough rate of 5 mills) which provides City X directly with \$750,000 based on \$50 million of value in the city (\$50 million X 15 mills).

If the Borough rate is raised to 6 mills, an additional \$1,000,000 will be received, but \$800,000 of it will be mainly from the oil industry. Taxpayers in City X will have paid \$50,000 of the \$200,000 paid by non-oil company taxpayers. However, this bill would provide the means whereby City X could get a "grant" of money from the Borough. Suppose that "grant" was \$200,000. The result would be that taxpayers in City X would have paid an extra \$50,000 to the Borough when

the rate went from 5 mills to 6 mills, but it would receive \$200,000 for a net gain of \$150,000. The city tax rate could thus be reduced to 12 mills to provide for receipt of \$500,000 (\$50 million x 12 mills) and City X still would end up with a total of \$750,000. Under such a scheme, the oil industry and other Borough area taxpayers would have financed tax reduction for City X taxpayers but without receiving any benefit for it.

This same type of scheme could work for special districts too. Here, a borough assembly could set up a special district but not endow it with taxing powers which is the method under present law to pay for the service. Rather, the assembly could give the special district a "grant" which might come from the \$1,000,000 referred to above, or the assembly could even establish a special areawide tax rate to cover the "appropriation" to the special district, as provided for in this bill.

The tax scheme in this bill blatantly violates the fundamental tax principle that the taxpayer is entitled to benefit from the tax he pays. This scheme is simply designed to tax industry property and, through "grants" and "appropriations", finance city and special district functions which provide no benefit to the party supplying the tax funds.

To permit such a scheme in the law would be a tax inequity of the highest order and would be inconsistent with efforts by

the State of Alaska to attract industry to the state. This is a good example of a tax proposal which, in conjunction with a lot of others proposed in the past few years, has made investors wary of investment in Alaska. The bill would once again change the "rules of the game" from normal, equitable tax rules to specially contrived rules.

F: HB 83
HB 87

MEMORANDUM

State of Alaska

TO: Senator Joe Orsini, Chairman
Senate C&RA Committee

DEPT. _____
DIV. _____
SEC. _____

DATE : 5/29/78

FROM: Hugh Malone

SUBJECT:

I would appreciate any help you could give in scheduling HB 83 and 87 before your committee.

Thank you.



5-9-78

NOTE FOR HB 87 FILE

1. This bill would enable the Kenai Peninsula Borough to tax oil properties, or to receive revenue from oil taxes, ~~within~~ ^{For} the City of Kenai.

It is strongly supported by Malone and the Kenai Borough. The City of Kenai may oppose it.

The Municipality of Anchorage is concerned about it since Ted Berns believes that the language involving "special uses" in service areas could be construed to mean almost anything, which could result in the Municipality being forced into holding referendums on a number of issues, such as roads, parks & rec, or a civic center.

Bruce Aronson in D C/RA opposed to the bill.

bfn

also Judiciary referred
ck for date

5882. Paper or Speed

5-11-78

NOTE FOR CSHB 87 am FILE

BRUCE ARONSON, D C/RA, said yesterday that his department views the bill as the worst piece of municipal legislation this session.

It would do the following: it would allow the Kenai Peninsula Borough to institute an area wide property tax, the proceeds of which would be funneled to the City of Kenai to cover various city service expenses associated with its proximity to the oil and gas industries, but which lie outside the city's boundary.

Bruce called this a "dirty" procedure for taxation. He said the obvious way to resolve Kenai's problem, i.e. through the city annexing the area, had been rejected since the outlying residents were opposed. However, what the legislation would create would be a system whereby residents of a borough would be taxed to provide a specific service to a specific area or city and from which the taxed areawide residents would receive no benefits. For this reason, the bill has been dubbed "borough revenue sharing."

Malone is personally very interested in the bill and testified extensively at the H C/RA hearings on it.

Bruce said that D C/RA would strongly oppose the bill when it came before this committee for hearings.

(Question: would the enactment of this legislation cut the ground from the idea of service areas, since the bill would tax areawide to provide for local services? Thus, a populous urban area could outvote the rural area in a borough and thereby set up areawide wide taxes that would be allocated only to the urban area.)

bfh

F: HB 87

TELEGRAM

ALASKA COMMUNICATIONS, INC.
PHONE: 336-6440
JUNEAU, ALASKA 99801

FEB 20 PM 5 28

02017 NL TDA SOLDOTNA ALASKA 50 02-20 210P AST
PMS THE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE
JUNEAU 7-42

THE SOLDOTNA CITY COUNCIL STRONGLY URGES FAVORABLE
CONSIDERATION OF HB87

LORRAINE KNIGHT MAYOR

In short, this is a nice, neat way to impose a large borough tax on the remaining commercial and oil industry property with all functions of government (i.e., city, special district and borough) being paid for by the borough taxes. Such a plan also effectively gets around an annexation problem to reach the large industry properties in the borough.

One of the problems with this whole scheme, from a political standpoint, is that if the borough tax is raised significantly (for example, suppose it went from 5-mills to 12-mills), the amount of tax paid to Kenai borough becomes a credit against the 20-mill "hardware" tax imposed at the state level on oil and gas producing equipment and pipelines. Thus, as the Kenai borough takes more in taxes with respect to property taxable under the 20-mill hardware tax, the less revenue the state receives.

Politically, it is difficult to see how anyone outside the Kenai Borough would agree to such a scheme, because the people outside Kenai have everything to lose and nothing to gain by permitting the state, in effect, to subsidize homeowners at the expense of state revenue. This is probably one of the strongest arguments why such a scheme as this would not be acceptable.

The foregoing discussion perhaps cynically assumes that voters in Kenai would agree to take property taxes off their homes. This may or may not be what the author has in mind but it certainly would be a rather powerful force to reckon with if these changes ever became a law.

DC/RA

HB

94

SENATE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

Senator Joe Orsini
Chairman

House Bill No. 94 Miles
Resolution No. Prime Sponsor

This Bill is currently in the Senate Community and Regional Affairs Committee for consideration. Your response, as prime sponsor, to the following questions will serve to hasten Committee action on this Bill.

1. What is the need for your proposed legislation; what is the goal you are trying to accomplish?

Avoid future problems between ASHA & Regional Housing Authorities by giving decisional jurisdiction to local govt.

2. Are there any other viable ways of accomplishing this same goal?

Mandate the supremacy of one or the other agency ... but then this limits local input.

3. Persons or groups you know of who are supporting the legislation.

- ASHA
- Dept. Commerce & Econ. Dev.
- Roger Lange

4. Persons or groups you know of who are opposing the legislation.

None (passed House unanimously)

5. Can you foresee any new problems that might be caused as a result of enactment of your bill?

No ... save a possible resolution occasionally presented to a local govt, putting local decision makers on the spot.

6. What is the earliest time you would like the Senate Community and Regional Affairs Committee to consider your bill?

As soon as possible.

131-103

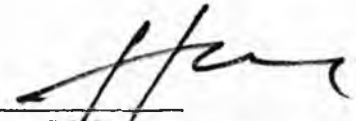
HB

110

SENATE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

Senator Joe Orsini
Chairman

House Bill No. 110
Resolution No. _____

Hugh Malone
Prime Sponsor 
ph 3720

This Bill is currently in the Senate Community and Regional Affairs Committee for consideration. Your response, as prime sponsor, to the following questions will serve to hasten Committee action on this Bill.

1. What is the need for your proposed legislation; what is the goal you are trying to accomplish?

Allow all local city councils to act as boards of adjustment (see bill)
— EQUAL TREATMENT BY LAW —

2. Are there any other viable ways of accomplishing this same goal?

No

3. Persons or groups you know of who are supporting the legislation.

BESIDES MYSELF, THE
KENAI PENINSULA CITIES OF SOLUDOTNA

4. Persons or groups you know of who are opposing the ~~the~~ KENAI legislation.

I KNOW OF NONE

5. Can you foresee any new problems that might be caused as a result of enactment of your bill?

THERE ARE NONE

6. What is the earliest time you would like the Senate Community and Regional Affairs Committee to consider your bill?

3:00 PM THURS FEB 3



JUNEAU ALASKA

Alaska State Legislature House

March 17, 1977

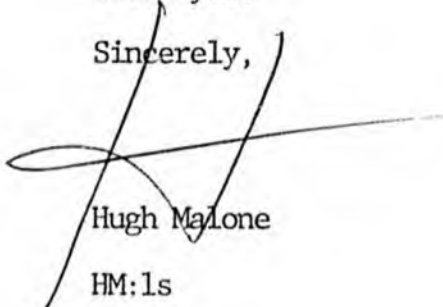
Sen. Joe Orsini
Chairman
Senate Community and Regional
Affairs Committee

Dear Sen. Orsini:

HB 110 - Municipal Planning and Zoning Powers is in your committee. Due to time constraints, I realize you may not be able to hold a hearing on the bill. Should the legislation come up, please call.

Thank you.

Sincerely,


Hugh Malone

HM:ls

HB

116

Basically SUPPLEMENTED
By SB 562



Oxford Penderflex

STOCK No. 753 1/3

• • •

MADE IN U.S.A.

SENATE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

Senator Joe Orsini
Chairman

House Bill No. 116 am

Rudd
Prime Sponsor

Resolution No. _____

This Bill is currently in the Senate Community and Regional Affairs Committee for consideration. Your response, as prime sponsor, to the following questions will serve to hasten Committee action on this Bill.

1. What is the need for your proposed legislation; what is the goal you are trying to accomplish?

The goal of HB 116 am is to insure that the classification of state lands for recreational trails conforms with municipal planning.

2. Are there any other viable ways of accomplishing this same goal?

Not that I can think of.

3. Persons or groups you know of who are supporting the legislation.

Municipality of Anchorage and Alaska Conservation Society

4. Persons or groups you know of who are opposing the legislation.

Department of Natural Resources represented by Pat Conheady do not oppose the bill but neither do they feel it is necessary.

5. Can you foresee any new problems that might be caused as a result of enactment of your bill?

No, it will only help to clarify the law mandating coordination between the state and the municipality regarding classification of state land for recreational trails..

6. What is the earliest time you would like the Senate Community and Regional Affairs Committee to consider your bill?

as soon as possible.

5/6/77

Joe

Talked to Ted Smith regarding HB1160M
+ asked him if he had any problems with this bill.
He said the only reason he objected to this bill
was because it was totally unnecessary. He
commented that it provided nothing new because
the state already checks with municipalities before
they classify recreational trail land.

He said if we wanted to move on it
fine — no real harm done.

Paul

HB

133

SEE ALSO CSSB 241
FOR SWARTH UNIVERSITY
OF LAND RAIL



Clifton Penetration

STOCK No. 753 1/3

• • •

MADE IN U.S.A.

Municipal Name	Approximate Area in Acres	STATE OWNED LAND WITHIN Municipal Boundary (Tentatively Approved & Patented)			State Selected Land within Municipal Boundary (Only Selected or Proposed)			Maximum Vacant Unappropriated Unreserved by Date	10% of Maximum Vacant Unappropriated Unreserved	Existing Vacant Unappropriated Unreserved as of 12/31/77	10% of Existing Vacant Unappropriated Unreserved	Lands Lost To ANCSA	
		General 6(b)	Trust School, Univ. Mental Health	Community Grant 6(c)	General Selections 6(b)	Trust School, Univ. Mental Health	Community Grant 6(c)					Minimum	Maximum
Bristol Bay Borough	729,922	19,386 ^①			205,500			19,380 4/30/65	1,940	2,922 ^⑤	290	79,500	92,830
City & Borough of Juneau	1,664,631	4,160	11,829	3,145	9000	200	23,661 ^②	4,359 6/30/71	440	1,655	165		
City & Borough of Sitka	1,884,786	249	3,182	1,522	0	0	5,695 6,960 ^②	1,491 12/31/77	149	1,491	150		
Fairbanks North-Star Borough	5,177,436	1,443,888 ^②			1,493,677			934,035 12/31/69	93,405	628,934	62,890		
Haines Borough	628,467	15,847 ^②			12,7249		2,631 ^②	20,804 6/30/74	1,080	1,474	150		
Kenai Peninsula Borough	10,168,341	1,943,968 ^②			661,555			1,557,781 6/30/65	155,780	409,764 ^⑤	40,980		
Ketchikan Gateway Borough	842,409	4	12,430	4204	0	6,257	24,450 ^③	4,146 6/30/68	415	4,113	410		
Kodiak Island Borough	3,142,029	623,997 ^③			198,600			505,970 6/30/67	50,600	159,582 ^⑤	15,960	300,000	350,000
Matanuska-Susitna Borough	15,445,936	4,076,592 ^①			6,076,224			3,552,088 6/30/68	355,210	821,433 ^⑤	82,145		
Municipality of Anchorage	1,376,476	229,476	1806 MH 2294 S 6,200 Un. 0,300 MH	73	240,000 ^⑤	7,765 MH 550 S 8315 MH	0	208,615 6/30/67	20,865	6,720	670		
North Slope Borough	59,297,495	4,155,739 ^③			2,198,485			6,447 6/30/74	645	6,447	645		



Acreage in this category was not computed

① This column includes only those lands that the state can reasonably expect to receive title to from its General Selections, D-2 Proposals, etc.

② This includes lands granted under 6(c), Community Grant

③ This figure does not include those lands granted under P.L. 94-204 under Recreation & Public Purposes.

Campbell Tract 3,892 + 1000 to be added later
Pt. Campbell 1,282
Pt. Woronoff 325
Goose Lk. 199
Total 5,518.9ac.

⑤ This figure shows impact from native village selections based upon a maximum impact figure as it affects State General Grant land.

⑥ This figure represents acreage that the State has nominated for possible selection, subject to Forest Service Approval.

④ "VUU" means "vacant, unappropriated, unreserved lands." VUU land is General Grant land (tentatively approved or patented to the State by the United States under Section 6(a) or 6(b) of the Alaska Statehood Act) which:

- (A) has not been set aside by statute for one or more particular uses or purposes; or
- (B) has not been approved for patent to a municipality under AS 29.10.190-200; or
- (C) is unclassified or, if classified under AS 38.05.30 is classified for agricultural, grazing, commercial, industrial, private recreation, residential, utility, or open-to-entry purposes.

Alaska Division of Lands & Sites

Alaska Advocate

F: CS4B 133

Washington:

In a decision that could dramatically affect Native land ownership on Kodiak and nearby islands, the U.S. Circuit Court of Appeals in Washington, D.C., has overturned a lower court ruling that 11 challenged villages are eligible for land benefits, under the Native Claims Settlement Act.

Initially the U.S. Bureau of Indian Affairs found the villages eligible, but that decision was overturned by the secretary of the interior after a hearing before an appeals board.

The Natives sued in district court in Washington and Judge Gerhard Gessen found that congressional hearings critical of the implementation of the act had an unfair influence on the secretary's decision. Granting a summary judgment, he ruled all the challenged villages eligible.

Officials at the U.S. Department of Interior and the state attorney general's office were reluctant to discuss the details of the circuit court's recent decision overturning Gessen's ruling, since a copy of the decision had not arrived yet in Alaska.

However, they said they understood that essentially the circuit court sent the case back to the district court for consideration of each village's claim for eligibility.

Seven of the 11 challenged villages are in the Koniag region. Two are in Cook Inlet, and one in the Bering Straits and Aleut regions. Together, the villages would be eligible for more than 750,000 acres of land.

Anchorage Daily News, Wednesday, April 26, 1978-17

Land grant legislation in 5th version

JUNEAU (AP) — The fifth version of a so-called "compromise" bill to grant Alaska municipalities nearly one million acres of state land has won Senate Resource Committee approval.

But the legislation still has two committees to go through before reaching the floor, and if the bill's history is any indication, it is likely to undergo further changes there.

Four different versions of the legislation were drafted during consideration by House lawmakers. And before passing the bill out of committee Monday, the Senate Resources panel approved substantial changes in the House bill. The changes almost assure that the bill will end up in a free conference committee.

The biggest change was to delete a formula drafted by Rep. Russ Meekins, D-Anchorage, which gave several municipalities, including Anchorage, considerably more land.

The Resources panel rejected the formula and the resulting acreage allotments in the House bill. Instead, the committee decided to return to an earlier version which at one time reportedly had the approval of all municipalities except the North Slope Borough.

However, the Resources panel voted to stick with the House allotment for the North Slope Borough — 89,850 acres — and at the urging of Resources Chairwoman Kay Poland, D-Kodiak, agreed to hike Kodiak's acreage from 45,200 in the House bill to 56,000 acres.

Under the Resources bill several of the municipalities would get less land than under the House bill.

Anchorage Times Friday, May 12, 1978

Senate Panel Identifies Acreage For Anchorage

By DON HUNTER
Times Staff Writer

A state Senate committee has identified some 10,000 to 16,000 acres of state land available for selection by Anchorage under a years-old promise, says an Anchorage legislator.

Sen. Joe Orsini, R-Anchorage, Thursday said the Senate Community and Regional Affairs Committee arrived at the figure during a hearing earlier this week.

A bill to accomplish the land transfers is now in Orsini's committee.

Under legislation approved several years ago, boroughs and cities across the state are entitled to select 10 percent of the vacant, unrestricted and unappropriated state land within their boundaries.

Under the 10 percent formula, Anchorage is entitled to some 20,865 acres.

The regional affairs committee is working to resolve disputes between some local governments, including Anchorage, and the state administration over the amount of suitable state land available for selection within their boundaries. Anchorage earlier had contended that only about 8,400 acres of appropriate state lands are available here.

State officials, said Orsini, had contradicted that claim, contending that up to a quarter-million acres of land was available for selection to meet Anchorage's 20,000-acre entitlement.

Municipal and state officials faced off on the issue before the committee Tuesday, Orsini said.

The committee had the two sides "go over it item by item and concept by concept," he said.

The 10,000 to 16,000 acres of available land identified by the committee Tuesday includes some 5,000 to 8,000 acres of trust land, but not the 5,000-acre Campbell tract, Orsini said.

The Campbell tract is federal land scheduled for joint management by the federal, state and local governments under restrictions that limit its use to a specific park plan. Earlier, the tract was included in Anchorage's entitlement by the Senate natural resources committee, an action strongly protested by the municipality.

Orsini said the regional affairs committee determined that the tract "has fairly severe restrictions" and that it "wouldn't be suitable to include it with the generally more suitable land."

Another question integral to resolution of the lands issue is whether municipalities that are unable to select their entitlements should receive cash in lieu of lands.

So far, the committee has conducted hearings on land in Anchorage and Kodiak, Orsini said. Next week, the body will take up questions over land selections in Southeast.

After the measure leaves the regional affairs committee, it will be considered by the senate finance committee before reaching the Senate floor. There, a floor fight may develop over differing versions of the measure.

"We're trying to get a bill out of this committee that will be acceptable to everybody," Orsini said.

F: CSHB 133

5-22-28

~~THE CITY AND BOROUGH OF JUNEAU~~
 THE CITY AND BOROUGH OF SITKA
 KETCHIKAN GATEWAY BOROUGH
 NORTH SLOPE BOROUGH LOBBYIST
 KENAI PENINSULA BOROUGH
 HAINES BOROUGH
 BRISTOL BAY BOROUGH

~~LEE SHARP~~
 CITY MANAGER'S OFFICE ✓
 CITY MANAGER'S OFFICE ✓
 KIM HUTCHINSON
 MAYOR'S OFFICE ✓
 MAYOR'S OFFICE ✓
 MAYOR'S OFFICE ✓

586-1776 ✓

The Senate Community and Regional Affairs Committee will be taking up a committee substitute for SCS CSHB 133 'MUNICIPAL LAND SELECTION'.

The meeting is scheduled for Thursday May 25, 3:00 PM. 100 ASSM B. BLDG.

3520
 APOC 4864

Ben,
 All of the above
 have been notified.
 TKR

2-5/24

HER 135-

Original sponsors: Parr, Brown
and Cowper

BY THE COMMUNITY AND
REGIONAL AFFAIRS COMMITTEE

1 IN THE HOUSE

2 SENATE CS FOR CS FOR HOUSE BILL NO. 133 (C&RA)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TENTH LEGISLATURE SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to selection and transfer of state
7 land to municipalities; and providing for an effective
8 date."

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

10 * Section 1. STATEMENT OF PURPOSE. The purposes of this Act are to re-
11 move uncertainties in the existing municipal land selection law of the state;
12 to provide for an immediate, final determination and settlement of municipal
13 land entitlement; to provide for the completion of rational ownership
14 patterns for sound land management; to provide for expeditious patent of land
15 to municipalities to fulfill their respective entitlements; and to provide
16 payment for land within certain municipalities which are unable to receive
17 full entitlement rights in appropriate vacant, unappropriated, unreserved
18 land.

19 * Sec. 2. AS 29.18 is amended by adding new sections to read:

20 ARTICLE 3A. GENERAL GRANT LAND.

21 Sec. 29.18.201. DETERMINATION OF ENTITLEMENT OF BOROUGH AND
22 UNIFIED MUNICIPALITIES. The general grant land entitlement of each of
23 the municipalities in this section is the amount set out opposite each:

- 24 (1) Municipality of Anchorage -- 44,893 acres;
- 25 (2) City and Borough of Juneau -- 13,600 acres;
- 26 (3) City and Borough of Sitka -- 9,200 acres;
- 27 (4) Bristol Bay Borough -- 1,940 acres;
- 28 (5) Fairbanks-North Star Borough -- 112,000 acres;
- 29 (6) Haines Borough -- 1,080 acres;

- 1 (7) Kenai Peninsula Borough -- 155,780 acres;
2 (8) Ketchikan Gateway Borough -- 9,200 acres;
3 (9) Kodiak Island Borough -- 50,600 acres;
4 (10) Matanuska-Susitna Borough -- 355,210 acres;
5 (11) North Slope Borough -- 89,850 acres.

6 Sec. 29.18.202. DETERMINATION OF ENTITLEMENT FOR CITIES. (a) The
7 general grant land entitlement of a city eligible to receive general
8 grant land under the former provisions of secs. 190 - 200 of this chap-
9 ter repealed by this Act is 10 per cent of the maximum total acreage of
10 vacant, unappropriated, unreserved land within the boundaries of each
11 city at any time between the initial date of eligibility under former
12 secs. 190 - 200 of this chapter and the effective date of this Act.

13 (b) Within six months of the effective date of this Act, the
14 director shall determine the entitlement for each city eligible to
15 receive general grant land under (a) of this section and certify that
16 entitlement to the city.

17 Sec. 29.18.203. STATUS OF ENTITLEMENTS. (a) General grant land
18 entitlements provided in secs. 201 and 202 of this chapter constitute
19 vested property rights which shall be fulfilled as provided in sec. 204
20 or sec. 207 of this chapter, but no municipal selection vests any inter-
21 est in or right to receive a particular tract of land except as provided
22 by sec. 204 of this chapter.

23 (b) General grant land entitlements vested under secs. 201 and 202
24 of this chapter may be exercised at any time before the date which is
25 two years after the expiration of the state's right to make selections
26 under secs. 6(a) or (b) of the Alaska Statehood Act (P.L. 85-508);
27 however, the time limitation imposed by this subsection does not apply

28 (1) to payments in lieu of land under sec. 207 of this chap-
29 ter; or

1 (2) to the portion of an entitlement which cannot be satis-
2 fied by that date because of a shortage of appropriate available land.

3 Sec. 29.18.204. FULFILLMENT OF LAND ENTITLEMENTS. (a) The acre-
4 age of each municipality's land selections under former secs. 190 - 200
5 of this chapter for which patent has been issued before the effective
6 date of this Act shall be credited toward fulfillment of the entitlement
7 of that municipality.

8 (b) All approved selections under former secs. 190 - 200 of this
9 chapter for which patent has not been issued to a municipality on the
10 effective date of this Act shall be reviewed by the director within nine
11 months of the effective date of this Act. Any approved selection of
12 land which was vacant, unappropriated or unreserved on the date of
13 selection is valid as of the date of the approval under the former secs.
14 190 - 200 of this chapter, and a patent shall be issued to the munici-
15 pality within three months after approval by the director of a plat of
16 survey. The acreage shall be credited toward fulfillment of the munici-
17 pality's entitlement. No municipality is entitled to receive patent
18 under this chapter to more than its entitlement determined under sec.
19 201 or 202 of this chapter. Any prior approval by the director of
20 municipal selections for land which was not vacant, unappropriated or
21 unreserved on the date of selection shall be rescinded, and patent may
22 not be issued except when disposal to a third party by sale or lease has
23 occurred. Transfers of land to municipalities under this chapter are
24 subject to AS 38.05.321. Classification actions as reflected upon the
25 land status records of the Department of Natural Resources are deter-
26 minative of land classification status for purposes of this chapter.

27 (c) All municipal land selections under former secs. 190 - 200 of
28 this chapter not approved as of the effective date of this Act shall be
29 recognized by the director as representing the priority interests of the

1 municipalities, and the selections shall be given first consideration
2 under (e) of this section unless the municipality indicates different
3 priorities.

4 (d) On the effective date of this Act and for five years there-
5 after, no classification of a parcel of general grant land in excess of
6 3,200 acres under AS 38.05.300 shall be effective, unless otherwise
7 required by law, if the municipality in which the parcel is located,
8 within 30 days after receipt of notice of the proposed classification,
9 advises the director in writing that it does not consent to the classi-
10 fication and indicates the reasons for its nonconsent.

11 (e) Each eligible municipality and the director shall jointly
12 consider which vacant, unappropriated, unreserved land, including feder-
13 al land of interest to a municipality which may be selected by the state
14 as general grant land, located within the boundaries of the munic-
15 ipality, is appropriate for municipal selection and approval by the
16 director to fulfill any remaining municipal general grant land entitle-
17 ment. The joint consideration made by the parties shall include a
18 cooperative land planning process which will, in addition to the normal
19 objectives of such a process, seek to identify both local and state
20 interests in tracts of vacant, unappropriated and unreserved land re-
21 maining within the municipality. Adjacent tracts shall be considered
22 simultaneously except when such simultaneous consideration would cause
23 significant delay or expense. Once a tract has been jointly considered,
24 it may be selected by a municipality.

25 (f) Each selection shall be approved or disapproved for patent by
26 the director under (g) of this section within nine months of its selec-
27 tion by a municipality, and a patent shall be issued to the municipality
28 within three months after approval by the director of a plat of survey.

29 (g) In reviewing a municipal selection, the director shall consi-
30

1 der the state's responsibilities for developing and protecting values
2 which are of greater than local concern, including development which
3 will have statewide impact, and critical environmental concerns. Land
4 considered appropriate for municipal selection is land that is suitable
5 and appropriate for an identifiable present or future municipal use or
6 for disposal to private use by the municipality by sale or other means.
7 A selection by a municipality of land which is primarily of local con-
8 cern shall be approved. When the interests of the state may be pro-
9 tected through the conveyance of title that is less than a fee title,
10 the municipality, at its option, may accept the title in acre-for-acre
11 fulfillment of its entitlement. Specific state responsibilities to be
12 considered, if those responsibilities have not been authorized or dele-
13 gated by the state to a municipality, include air quality; water,
14 minerals and energy; timber; agriculture; fish and wildlife and their
15 habitat which is of greater than local concern; public recreation,
16 natural, historical, and archaeological areas of greater than local
17 concern; transportation facilities of greater than local concern; com-
18 munications; and public safety. Specific municipal interests to be
19 considered include

20 (1) [land suitable for] residential, commercial and industrial
21 needs; and

22 (2) other responsibilities of the local government, including
23 but not limited to, support of municipal services; education; local
24 transportation; private recreation; public recreation, natural, histor-
25 ical and archaeological areas of local concern; and other responsibili-
26 ties authorized or delegated by the state to the municipality.

27 (h) Every decision of approval or disapproval of a municipal
28 selection by the director under (f) of this section shall include a
29 written explanation of the decision based upon the criteria of (g) of

1 this section. Before issuing any decision to disapprove a selection,
2 the director shall notify the affected municipality in writing, by
3 certified mail, of his reasons for the proposed decision. The munici-
4 pality shall have 30 days from receipt of the proposed decision to
5 respond to the director in writing enumerating the reasons for which the
6 municipality believes the proposed decision to be in error. After
7 receipt of the municipality's statement of reasons, or after expiration
8 of the period in which the municipality may respond to the proposed
9 decision, the director shall, within 30 days, affirm, modify or reverse
10 his proposed decision in writing and give written notice of his decision
11 to the municipality. The decision of the director constitutes final
12 administrative action in the matter.

13 (i) A municipality may appeal an adverse decision by the director
14 to the superior court in accordance with AS 44.62.560 - 44.62.570.

15 Sec. 29.18.205. SCHOOL, UNIVERSITY AND MENTAL HEALTH LAND. (a)
16 If the entitlement determined in sec. 201 of this chapter [or certified
17 by the director under sec. 202(b) of this chapter] results in a per
18 capita entitlement for the municipality of less than one-half acre, the
19 municipality may select vacant school, university or mental health land
20 within the municipality in partial fulfillment of its land entitlement
21 under this chapter. School, university or mental health land may be
22 selected notwithstanding the fact that these lands are not unappro-
23 priated and unreserved within the meaning of this chapter and secs. 190
24 and 200 of this chapter, repealed by this Act, but each selection of
25 school, university or mental health land by a municipality must be
26 vacant, unappropriated, or unreserved land as defined in this chapter,
27 except that it need not be general grant land.

28 (b) The acreage of school, university or mental health land, if
29 any, within a municipality may not be included in the determination of

1 entitlement under sec. 201 or 202 of this chapter.

2 (c) Land conveyed under this section will be credited against a
3 municipality's remaining land entitlement under this chapter.

4 (d) Within six months after a request by a municipality for selec-
5 tion of school, university, or mental health land, the director shall
6 identify state general grant land of approximately equal value to the
7 land requested by the municipality, and shall propose the replacement
8 land for the concurrence of the appropriate board. If a proposal by the
9 director is rejected by the board, the director shall meet with the
10 board as often as necessary to determine the type and amount of equal
11 value replacement land that would be required to obtain the board's
12 concurrence, and shall propose the replacement land for consideration by
13 the board. The replacement land shall thereafter be managed for the
14 purposes for which the land selected by the municipality was acquired by
15 the Territory and State of Alaska.

16 (e) The notice and review provisions of AS 38.05.305 and 38.05.345
17 are applicable to the designation of other state land as school, univer-
18 sity or mental health land in replacement of land selected under this
19 section. The provisions of AS 38.50 and AS 38.05.032 do not apply to
20 such designations under this section. The provisions of AS 38.05.-
21 030(a), 38.05.030(e), and 38.05.035(a)(13) which require the approval of
22 the respective trust board before disposal of lands by the director do
23 not apply to selections of school, university or mental health land by a
24 municipality under this section.

25 (f) For purposes of determining the per capita entitlement under
26 (a) of this section, the resident population of the municipality shall
27 be determined as of the effective date of this Act by the commissioner
28 of the Department of Community and Regional Affairs and reported to the
29 director.

1 Sec. 29.18.206. SELECTION AND CONVEYANCE PROCEDURE. (a) All
2 municipal selections shall, whenever possible, be made in reasonably
3 compact tracts, taking into account the use capabilities of a tract and
4 its relationship to surrounding land uses. A selection filed by a
5 municipality which has not been approved by the director may be relin-
6 quished at any time. An approved selection may be relinquished by a
7 municipality if the relinquishment is approved by the director. An
8 approved selection relinquished by a municipality increases the remain-
9 ing entitlement of the municipality on an acre-for-acre basis.

10 (b) By August 1 of each year the director shall certify to each
11 municipality having an entitlement under secs. 201 and 202 of this
12 chapter the acreage of patented selections, approved selections not yet
13 patented, pending municipal land selections neither approved nor dis-
14 approved by the director, and the remaining entitlement of the munici-
15 pality.

16 (c) If land selected by a municipality is unsurveyed at the time
17 of approval, the director shall survey, or may approve the municipal-
18 ity's survey of, the exterior boundaries of an approved selection with-
19 out interior subdivision, and shall issue patent in terms of the ex-
20 terior boundary survey. The cost of the survey shall be borne by the
21 municipality. If land selected by a municipality has been surveyed at
22 the time of its selection, the boundaries shall conform to the public
23 land subdivisions established by the approved survey.

24 (d) The director may approve municipal selections of land which
25 has been tentatively approved or patented to the state by the federal
26 government, but he may not issue patent to a municipality until the land
27 has first been patented to the state. After approval of a selection by
28 the director, but before patent to a municipality, the municipality may
29 execute conditional leases and make conditional sales only with the

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Sec. 29.18.207. PAYMENT ^{FOR} ~~IN LIEU OF~~ ^{land} DEFICIENCY [LAND]. (a) There is established within the general fund the Alaska municipal land account

following
for the purposes:

* non
eligible
under
of this ch.
(1) providing payment to municipalities for ^a deficiency ^{of} land
[which it has selected and which is not] physically suitable for the
purposes described in sec. 204(g)(1) of this chapter; or

(2) providing payment to municipalities for certain lands
selected by the state and conveyed to a Native corporation under
the provisions of the Alaska Native Claims Settlement Act.

(b) A municipality shall receive payment for its deficiency
land from the account established in (a) of this section. A
municipality is eligible to receive payment for ^{land} deficiency [land] if,
on January 1, 1981, the amount of land which it has selected and
for which approval has been given by the director constitutes
approval of an entitlement that amounts to less than one-third acre
per capita of appropriate vacant, unappropriated, unreserved land
~~in accordance with~~ ^{for the purpose of}
→ [which meets the standard of] sec. 204(g)(1) of this chapter. A
municipality entitled to payment under this subsection may receive
an amount not to exceed \$ 1000 per acre for a number of acres
equal to one-third acre per capita for the number of residents
of the municipality on July 1, 1978, less any appropriate vacant,
unappropriate, unreserved land selected by the municipality
before January 1, 1981, which is physically suitable for the purposes
described in sec. 204(g)(1) of this chapter. No payment may be made to
a municipality under this subsection in excess of \$9,000,000 or of
three-quarters of all sums appropriated by the legislature to meet the
requirements of this subsection, whichever is lower.

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(c) If a municipality selected vacant, unappropriated, unreserved
land on or before December 18, 1971, to which the state had received
tentative approval or patent, and such land was also selected by a
Native corporation organized under the Alaska Native Claims Settlement
Act (P.L. 92-203), and title to that land is ultimately vested in that
Native corporation, the municipality may, at its option, request payment
[in lieu of] ^{for} land from the account established in (a) of this section.
The acceptance of payment under this subsection by a municipality con

14 stitutes a relinquishment of any other right, title or claim to the land
15 by that municipality. The total payment to a municipality under this
16 section may not exceed \$1,000 per ^{acre} [capita] for each person resident in the
17 municipality on July 1, 1978, as ~~determined by the Department of~~
18 ~~Community and Regional Affairs and reported to the director. An annual~~
19 ~~payment to a municipality under this subsection may not exceed payment~~
20 ~~in satisfaction of an entitlement of 1,000 acres per year.~~

21 (d) The governor shall annually submit to the legislature a re-
22 quest for an appropriation to the account for the municipalities which
23 are eligible to receive payments under (b) of this section or which have
24 elected to receive payments under (a) of this section. The request for
25 appropriation shall distinguish between amounts necessary to make pay-
26 ments for deficiency land under (b) of this section and those required
27 to make payments in lieu of land under (c) of this section.

28 (e) For purposes of fulfilling entitlements under this section,
29 the legislature is authorized to appropriate

1 (1) not more than \$4,000,000 per fiscal year, and not more
2 than \$12,000,000 in total, for the purpose of paying entitlements under
3 (b) of this section;

4 (2) not more than \$1,000,000 per fiscal year, and not more
5 than \$8,000,000 in total, for the purpose of paying entitlements under
6 (a) of this section.

7 (f) If an annual appropriation is not sufficient to meet the
8 amount due to all municipalities which have elected to accept payment in
9 lieu of land under (b) or (c) of this section, the governor shall ap-
10 portion the appropriation among the municipalities in proportion to the
11 payment calculated for each municipality for that year. When a distri-
12 bution of payments is made under (c) of this section, the remaining
13 entitlement of a municipality to which payment is made shall be reduced
14 in an amount equal to the number of acres for which payment was re-
15 ceived. An appropriation made under this section is in addition to
16 other grants and entitlements authorized to municipalities.

$$(.33 \times \text{POP} - 9(1)) \times 1000$$

$$(9(1) - .33 \times \text{POP}) \times 1000$$

1 consent of the director. Conditional sales and conditional leases made
 2 before the effective date of this Act do not require the consent of the
 3 director.

4 (e) Nothing in this chapter affects a valid existing claim, loca-
 5 tion or entry under the laws of the state or the United States whether
 6 for homestead, mineral, right-of-way or other purposes. Nothing in this
 7 chapter affects the rights of an owner, claimant, locater or entryman to
 8 the full use and enjoyment of the land so occupied.

9 Sec. 29.18.207. PAYMENT IN LIEU OF DEFICIENCY LAND. (a) There is
 10 established within the general fund the Alaska municipal land account
 11 for the purpose of allowing eligible municipalities to receive payment
 12 in lieu of ^{for a} deficiency land ^{meeting the criteria under Sec 204(g)(1)} for entitlements provided in secs. 201 ^{under the} and
 13 202 of this chapter.

14 (b) A municipality may obtain payment in lieu of deficiency land
 15 only in accordance with (c) or (d) of this section.

16 (c) If on January 1, 1981 the amount of land selected by a muni-
 17 cipality for which approval has been given by the director constitutes
 18 an approval of an entitlement which is less than one-third acre per
 19 capita of appropriate vacant, unappropriated, unreserved land which is
 20 physically suitable for residential, commercial or industrial develop-
 21 ment in accordance with sec. 204(g)(1) of this chapter, the municipality
 22 shall receive payment in lieu of the deficiency land from the account
 23 established in (a) of this section. A municipality receiving payment
 24 under this subsection is entitled to an amount not to exceed a payment
 25 of \$1,000 per acre for ^{the} a number of acres equal to one-third acre per
 26 capita of land multiplied by the number of residents of the municipality
 27 on July 1, 1978 as determined by the Department of Community and
 28 Regional Affairs and reported to the director, less any appropriate
 29 vacant, unappropriated, unreserved land selected by the municipality

1 before January 1, 1981, which is physically suitable for the purposes
2 described in sec. 204(g)(1) of this chapter. No payment may be made to
3 a municipality under this subsection in excess of \$9,000,000 or of
4 three-quarters of all sums appropriated by the legislature to meet the
5 requirements of this subsection, whichever is lower.

6 (d) If a municipality selected vacant, unappropriated, unreserved
7 land on or before December 18, 1971, to which the state had received
8 tentative approval or patent, and such land was also selected by a
9 Native corporation organized under the Alaska Native Claims Settlement
10 Act (P.L. 92-203), and title to that land is ultimately vested in that
11 Native corporation, the municipality may, at its option, request payment
12 in lieu of land from the account established in (a) of this section.
13 The acceptance of payment under this subsection by a municipality con-
14 stitutes a relinquishment of any other right, title or claim to the land
15 by that municipality. The total payment to a municipality under this
16 section may not exceed \$1,000 per capita for each person resident in the
17 municipality on July 1, 1978, as determined by the Department of
18 Community and Regional Affairs and reported to the director. [An annual
19 payment to a municipality under this subsection may not exceed payment
20 in satisfaction of an entitlement of 1,000 acres per year.]

21 (e) The governor shall annually submit to the legislature a re-
22 quest for an appropriation to the account for the municipalities which
23 are eligible to receive payments under (c) of this section or which have
24 elected to receive payments under (d) of this section. The request for
25 appropriation shall distinguish between amounts necessary to make pay-
26 ments for deficiency land under (c) of this section and those required
27 to make payments in lieu of land under (d) of this section.

28 (f) For purposes of fulfilling entitlements under this section,
29 the legislature is authorized to appropriate

1 (1) not more than \$4,000,000 per fiscal year, and not more
2 than \$12,000,000 in total, for the purpose of paying entitlements under
3 (c) of this section;

4 (2) not more than \$1,000,000 per fiscal year, and not more
5 than \$8,000,000 in total, for the purpose of paying entitlements under
6 (d) of this section.

7 (g) If an annual appropriation is not sufficient to meet the
8 amount due to all municipalities which have elected to accept payment in
9 lieu of land under (c) or (d) of this section, the governor shall ap-
10 portion the appropriation among the municipalities in proportion to the
11 payment calculated for each municipality for that year. When a distri-
12 bution of payments is made under (d) of this section, the remaining
13 entitlement of a municipality to which payment is made shall be reduced
14 in an amount equal to the number of acres for which payment was re-
15 ceived. An appropriation made under this section is in addition to
16 other grants and entitlements authorized to municipalities.

17 Sec. 29.18 208. AUTHORIZATION FOR LAND EXCHANGES. The director,
18 with the concurrence of the commissioner, and any municipality are
19 authorized to exchange land or interests in land when it is in the
20 public interest. Land or interests in land exchanged under this section
21 must be of approximately equal value, including the non-monetary value
22 of public benefits. Exchange procedures shall comply with applicable
23 law and municipal ordinances. The notice and review provisions of AS
24 38.05.305 and 38.05.345 are applicable to exchanges of land under this
25 section. The provisions of AS 38.50 do not apply to exchanges of land
26 under this section.

27 Sec. 29.18.209. PUBLIC PURPOSE AND EXPANSION NEEDS. (a) Consis-
28 tent with the best interests of the state, if a municipality does not
29 contain and cannot reasonably acquire sufficient nonfederal land within

1 its boundaries to meet its legitimate needs for public or private
2 settlement or development, it shall be the policy of the state to select
3 federal land reasonably necessary to meet the needs of the municipality
4 and to make the land selected available to the municipality under AS
5 38.05.315 or (b) of this section.

6 (b) Where state land is the most logical location for demonstrated
7 municipal expansion for nonpublic settlement and development purposes,
8 and when an exchange of land under sec. 208 of this chapter is not
9 possible or is not in the public interest, it is the policy of the state
10 to sell or lease the land at public auction. The state may contract
11 with a municipality to act as its agent in an auction of state land
12 under applicable statutes. When a municipality acts as the agent of the
13 state in an auction, the municipality may retain from the proceeds of
14 the auction the expenses which the director determines to be necessary
15 and reasonable.

16 (c) Nothing in this chapter limits or impairs the authority of the
17 director to transfer land to municipalities, without limit or considera-
18 tion, for public purposes in accordance with AS 38.05.315. If there is
19 a remaining entitlement of the municipality, land transferred under AS
20 38.05.315 shall be credited toward fulfillment of the entitlement.

21 Sec. 29.18.210. ELECTION OF BENEFITS. (a) A municipality which
22 on the effective date of this Act is engaged in litigation, or which
23 becomes engaged in litigation, regarding a claim to state land under
24 former secs. 190 - 200 of this chapter shall elect either to obtain the
25 benefits provided in secs. 201 - 212 of this chapter or to pursue the
26 litigation and thereby waive any claim to entitlement under secs. 201 -
27 212 of this chapter. An election shall be made by filing a motion for
28 dismissal with prejudice in the court in which the litigation is pend-
29 ing. If the claim involves a municipality identified in sec. 201 of

1 this chapter, the municipality shall file its motion for dismissal
2 within 60 days of the effective date of this Act. If the claim involves
3 a municipality not listed in sec. 201 of this chapter, the municipality
4 shall file its motion for dismissal within 60 days after receiving the
5 certificate of entitlement provided by the director under sec. 202(b) of
6 this chapter. Failure of the municipality to file a motion for dismissal
7 during the time period provided in this subsection shall be considered
8 a waiver of entitlement under secs. 201 - 212 of this chapter.

9 (b) A municipality which was eligible to file land selections
10 under the former secs. 190 - 200 of this chapter and which does not
11 enter into litigation over a claim to rights under those sections before
12 the expiration of the time period within which it could make an election
13 under (a) of this section shall be considered to have elected to receive
14 benefits under secs. 201 - 212 of this chapter and to have waived any
15 claim which might have been raised under former secs. 190 - 200 of this
16 chapter.

17 (c) The provisions of secs. 201 - 212 of this chapter do not
18 affect the rights, if any, of any party to litigation regarding the
19 former AS 29.18.190 - 29.18.200 or 29.18.420, which litigation is maintained
20 by a municipality that has elected not to obtain the benefits
21 provided by secs. 201 - 212 of this chapter.

22 Sec. 29.18.211. ADMINISTRATION. The commissioner may adopt regulations
23 in accordance with the Administrative Procedure Act (AS 44.62)
24 necessary to carry out the purposes of secs. 201 - 212 of this chapter.

25 Sec. 29.18.212. DEFINITIONS. In secs. 201 - 212 of this chapter,
26 unless the context otherwise requires,

27 (1) "appropriate vacant, unappropriated, unreserved land"
28 means vacant, unappropriated, unreserved land which meets the criteria
29 for municipal selection under sec. 204(g) of this chapter;

1 (2) "approved selection" means a municipal land selection
2 which has been approved in writing by the director for transfer
3 patent to a municipality;

4 (3) "director" means the director of the division of lands,
5 Department of Natural Resources, or his designee;

6 (4) "general grant land" means land patented or tentatively
7 approved to the state from the United States under secs. 6(a) or (b) of
8 the Alaska Statehood Act;

9 (5) "mental health land" means land granted under Title II,
10 sec. 202 of P.L. 84-830, as amended before or after the effective date
11 of this Act;

12 (6) "municipal land selection" means a request by a munici-
13 pality, filed in writing with the director under authority of secs.
14 190 - 200 of this chapter repealed by this Act or under secs. 201 - 212
15 of this chapter for vacant, unappropriated, unreserved general grant
16 land within its municipal boundaries in partial fulfillment of its
17 municipal entitlement;

18 (7) "municipality" means a home rule or general law city or
19 organized borough of any class, and includes unified municipalities
20 established under AS 29.68.240 - 29.68.440;

21 (8) "patent" means a document, issued by the director to a
22 municipality for a previously approved selection, which conveys and
23 quitclaims all the right, title and interest of the state without reser-
24 vation or condition except as may be required by law;

25 (9) "remaining entitlement" means the general grant land
26 entitlement determined in accordance with sec. 201 or 202 of this chap-
27 ter, reduced by the total acreage of approved selections, including both
28 patented and unpatented parcels;

29 (10) "school land" means those rectangular sections 16 and 36

1 within each township surveyed on or before January 3, 1959, and con-
2 firmed and transferred to the State of Alaska upon its admission under
3 sec. 6(k), Alaska Statehood Act, 72 Stat. 339, and any other land desig-
4 nated solely for school revenues;

5 (11) "university land" means all sections 33 reserved to the
6 university under 38 Stat. 1214, as amended (48 U.S.C. 353) and all land
7 granted to or reserved for the benefit of the university;

8 (12) "vacant, unappropriated, unreserved land" means general
9 grant land as defined in (4) of this section, excluding minerals as
10 required by sec. 6(i) of the Alaska Statehood Act, which

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

13 (B) has not been approved for patent to a municipality
14 under secs. 201 - 212 of this chapter or former secs. 190 - 200 of
15 this chapter repealed by this Act; or

16 (C) is unclassified or, if classified under AS 38.05.-
17 300, is classified for agricultural, grazing, commercial, indus-
18 trial, private recreational, residential, utility or open-to-entry
19 purposes, or where classified in accordance with an agreement
20 between a municipality and the state providing for state management
21 of land of the municipality.

22 * Sec. 3. AS 38.05.321 is repealed and reenacted to read:

23 Sec. 38.05.321. RESTRICTION ON SALE, LEASE OR OTHER DISPOSAL OF
24 AGRICULTURAL LAND. (a) The sale, lease or other disposal of state land
25 classified as agricultural land transfers only rights for agricultural
26 purposes, and all other interests in the land remain with the state
27 unless otherwise required by law.

28 (b) State land classified as agricultural land which has been
29 selected by a municipality under AS 29.18.190 - 29.18.200 or 29.18.204-

1 (e) may be approved by the director for patent under AS 29.18.204(f);
2 however, only rights in the land for agricultural purposes may be trans-
3 ferred and all other interests in the land will remain with the state.
4 Agricultural land approved for patent to a municipality under AS 29.18.-
5 204(f) shall be credited, acre for acre, toward fulfillment of that
6 municipality's entitlement under AS 29.18.201 or 29.18.202. If the
7 director later determines it to be in the best interests of the state to
8 transfer some or all of the additional rights in that approved or
9 patented agricultural land, those rights shall pass without considera-
10 tion to the municipality in which the land is located. The provisions
11 of sec. 69(c) of this chapter apply to transfer of rights, other than
12 agricultural rights, transferred by the director under this section.

13 (c) The provisions of this section do not apply to state land
14 classified as agricultural land which has been selected by a municipa-
15 lity under the provisions of AS 29.18.190 - 29.18.200 if the selection
16 is an approved selection before April 1, 1978 and is otherwise valid
17 under AS 29.18.204(b).

18 * Sec. 4. (a) The general grant land entitlement of a municipality in-
19 corporated after the effective date of this Act is 10 per cent of the total
20 acreage of vacant, unappropriated, unreserved land within the boundaries of
21 the municipality on the date of incorporation of that municipality.

22 (b) Within six months of the date of incorporation of a municipality
23 which is incorporated after the effective date of this Act, the director
24 shall determine the entitlement of each municipality eligible to receive
25 general grant land under (a) of this section and certify the entitlement to
26 the municipality.

27 * Sec. 5. Consistent with the best interests of the state, in the selec-
28 tion of general grant land it is the policy of the state to make available
29 the maximum land area from which municipalities may fulfill land entitlements

1 under AS 29.18.201 - 29.18.212.

2 * Sec. 6. AS 29.18.190, 29.18.200, and 29.18.420 are repealed.

3 * Sec. 7. REPORT. Within 30 days after the convening of each regular
4 session of the Eleventh and Twelfth Legislatures and the first regular ses-
5 sion of the Thirteenth Legislature, the director of the division of lands
6 shall report to the legislature on the implementation of AS 29.18.201 -
7 29.18.212 in sec. 2 of this Act.

8 * Sec. 8. This Act takes effect July 1, 1978, except that AS 29.18.207,
9 added by sec. 2 of this Act, takes effect January 1, 1981.

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STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

323 E. 4TH AVENUE - ANCHORAGE 99501

May 19, 1978

The Honorable Joesph Orsini
Chairman
Senate Community and Regional Affairs Committee
Pouch V
Juneau, AK 99811

Dear Joe:

Following the completion of testimony before your committee on the Municipal Land Selection Bill (SCS CSHB 133), I felt it appropriate to forward some comments from the Administration based upon information brought out at the hearings, as well as discussions with the representatives of individual municipalities.

As I suggested at the hearings, and as has been echoed by several of the municipalities, we feel that it is important that the Senate Resources Committee Bill be used as the "mark-up vehicle." While your committee may wish to make several amendments to the legislation, the Resources Committee Substitute represents the most finely honed version to date and is certainly the most suitable version upon which to build at this time.

In reviewing the May 5, 1978 letter to you from Theodore D. Berns of the Anchorage Municipality, I believe several comments on the suggested amendments in Exhibit D of that letter are appropriate. With respect to suggested amendments nos. 3 and 5, Ted is addressing the need to clarify the difference between land that is merely "vacant, unappropriated, unreserved," and land which is vacant, unappropriated, unreserved which is actually appropriate for municipal ownership. In other words, there might be mountaintops, glaciers, and coastlines which are by definition vacant, unappropriated, unreserved, yet are clearly not appropriate for municipal ownership. The State supports a clarification of this issue, but we would do so in a slightly different manner than the language suggested in Exhibit D of Ted's letter.

We suggest that the definitions section (29.18.212) be amended by the addition of a new definition no. (1) which would read:

- (1) "Appropriate vacant, unappropriated, unreserved land" means vacant, unappropriated, unreserved land which meets the criteria for municipal selection under Section 204(g) of this chapter;

In referring to Section 204(g) the definition incorporates the specific municipal criteria found in that subsection and therefore clearly differentiates between all vacant, unappropriated, unreserved land and land in that category which is actually appropriate for municipal ownership. By using this new definition, the suggested amendments nos. 3 and 5 in Exhibit D of Ted's letter may be changed to merely refer to this definition. Specifically, with respect to suggested amendment no. 3 on page 2, line 28 (SCS CSHB 133) the language would read:

"or to that portion of an entitlement that cannot be satisfied by such date due to a lack of appropriate vacant, unappropriated, unreserved land."

The intent of suggested amendment no. 5 may then be manifested by adding on page 9, line 1, between the words "the" and "vacant," the word "appropriate."

Ted's suggested Amendment no. 4 on page five, at line 12, is acceptable to the State and we would not object to its inclusion in the bill. Likewise, with respect to suggested amendment no. 1 on page 1, at line 17-18, the State would not object to this deletion.

Suggested amendment no. 2 on page 1, at line 24, which would increase Anchorage's entitlement by 115 percent, causes us concern. While we again question, as has Senator Hackney, when the continual spiral of increases for municipal entitlements in this legislation will end, our specific concern here is that the 240,280 acres of selected land cited as being within the Anchorage Municipality is incorrect. That figure, as brought before your committee, includes substantial "double filed" acreage--land which has been filed on for selection by the State at different times or under different selection entitlements. While an exact determination of the degree of double filing would be a very time consuming effort, our best estimate of this double filing, giving Anchorage the benefit of any doubt, is approximately 72,000 acres. Reducing the 240,000 figure by 72,000 acres leaves approximately 168,000 acres of state

selected land. Ten percent of this total yields a figure of 16,800 acres. When added to Anchorage's existing entitlement of 20,865 acres, a more correct total of 37,665 acres is obtained.

Although not listed in Exhibit D of Ted's May 5 letter, Anchorage has requested that language found in Section 29.18.210(c) of the House bill (CSHB 133 (Finance) am) be reinserted in the Senate version (page 12, lines 8-11). This language, which refers to land conveyed to the State under Section 12(d) (2) of Public Law 94-204 is acceptable to the State provided that the ultimate entitlement for Anchorage is not in excess of the 37,665 acre figure addressed above.

With respect to Section 29.18.207, concerning payments in lieu of land, I have indicated several times that the Administration feels that the cumulative total of payments to all communities under this section should not total more than 20 million dollars. At present it appears that only the municipalities of Anchorage and perhaps Kodiak will qualify for payments under this section. I also understand that these municipalities are amenable to amendatory language, probably in Subsection (f), which would limit the total amount of in lieu revenue payments any one municipality could receive to a maximum of 10 million dollars. If language is included in that subsection which limits the total cumulative payments to all municipalities under this act to a total of 20 million dollars, and limits the total cumulative payments any one municipality can receive under this act to 10 million dollars, the Administration can support this section. Our suggested language is as follows:

Once the total of cumulative in lieu revenue payments to a municipality under this section has reached 10 million dollars, there exists no obligation on the part of the State to provide further in lieu revenue payments to that municipality for any of its remaining entitlement. Once the total accumulative in lieu revenue payments to all municipalities under this section has reached 20 million dollars, there exists no obligation on the part of the State to provide further in lieu revenue payments for any remaining entitlement of any municipality.

The purpose of this language is to ensure that the artificially inflated entitlements of communities, where appropriate state land for municipal selection may not exist, do not return to haunt the State for additional revenue payment in the future. The remaining entitlements would, however, remain effective should additional appropriate land be received by the State within a municipality.

May 19, 1978

A major problem which we have all wrestled with throughout consideration of this legislation has been that of the trust lands. Your suggestion that appropriate trust lands be made available for municipal selection without the need for concurrence of the respective trust board has considerable merit in that it would significantly speed up the conveyance process. There are, however, two corollary considerations which must be addressed. First, if the trust boards are not to be formally approached for their approval, trust land selected by a municipality should be treated no differently than general selection lands selected by a municipality. That is, they should be subject to the same processes found in subsections (e) through (i) of Section 204. Second, while there may be a requirement to identify other lands of equal value for exchange with the municipally-selected trust lands, no specific time limit for identification or culmination of an exchange should be given. If the trust boards do not have approval authority, the rapidity of the conveyance process would simply outstrip the capability of the Department of Natural Resources to formally execute exchanges. Specific identification and accounting of all trust lands conveyed to municipalities would of course be kept for the execution of exchanges at a later time.

I would like to take this opportunity to thank you for your diligent and detailed review of this legislation. If I can supply any further information please do not hesitate to let me know.

Sincerely,



MICHAEL C. T. SMITH
Assistant Commissioner

Municipality of Anchorage



POUCH 6-650
ANCHORAGE, ALASKA 99502
(907) 274-2525

GEORGE M. SULLIVAN,
MAYOR

OFFICE OF THE MUNICIPAL ATTORNEY

May 5, 1978

Senator Joseph Orsini, Chairman
Senate Community & Regional
Affairs Committee
Pouch V
Juneau, Alaska 99811

Dear Senator Orsini:

On May 2, 1978, the Anchorage Assembly adopted Resolution AR 78-61 (copy attached as Exhibit A) dealing with SCS CS HB 133, presently before your Committee. In this resolution, the Assembly, together with the Municipal Administration, point to the inequitable treatment received by Anchorage under the present version of HB 133. The following is a brief summary of the major points:

With respect to land entitlement figures, at least seven, and probably more, of the municipalities listed on pages 1-2 of the bill have had their entitlements substantially increased over a literal application of the 10% VUU formula contemplated by existing law. For example, one municipality has been increased from 25 acres to 9,200, another has gone from 440 acres to 13,600 acres, and another has been adjusted from 645 acres to 89,850 acres. Anchorage, on the other hand, has remained at its 10% figure of 20,865 acres even though this entitlement results in by far the lowest per capita entitlement of any local government in the state.

SCS CS HB 133 also deleted language that would have prevented the area known as the "Campbell Tract" (approximately 5,000 acres) from being deducted from the Anchorage entitlement if that land eventually is transferred to the Municipality. Use of the Campbell Tract is restricted, by federal act, to a specific park plan that contemplates management by the state and federal governments as well as the Municipality. Any change in use from that listed in the federally recognized plan, even for such things as necessary expansion of local roads, may well require approval by the Congress. To my knowledge, no other municipality has had

land that is so restricted and encumbered counted against its land selection entitlement. Anchorage should not be forced to decide whether to reject a transfer of the Campbell Tract in order to prevent using a major part of its remaining entitlement for land that is subject to severe use restrictions.

In the Senate Resources Committee, a great deal of rhetoric was addressed to the point that Anchorage should not be entitled to receive any payments in lieu of land under A.S. 29.18.207 in the proposed legislation. The Committee reviewed figures from the Alaska Division of Lands (ADL) attempting to create the impression that there is ample available land to meet the Anchorage entitlement of 20,865 acres. As discussed later in this letter, subsequent investigation has revealed that these figures are, at best, misleading, and in fact, have been acknowledged to be in error by ADL staff. The figures presented by the State speak in large part to land for which the State does not even have tentative approval or lands that are otherwise clearly not presently available for local selection. Of the small amount of land that might be available for selection by Anchorage, most is clearly inappropriate and therefore unavailable for municipal use under the criteria advanced by the State on pages 4-5 of SCS CS HB 133. (See Exhibit B)

The figures advanced by ADL to the Senate Resources Committee are an attempt to create the illusion of adequate, appropriate state land in Anchorage that would, I can assure you, disappear once the bill is enacted into law. The simple fact is, as anyone who is even remotely familiar with Anchorage land clearly knows, the Municipality cannot expect with any assurance to obtain any appreciable amount of its entitlement in the form of land in the foreseeable future. It is, however, the Municipality's position, as stated in the Assembly's Resolution, to accept any appropriate state land within the Municipality in partial satisfaction of its entitlement.

It is the position of the Municipality that Anchorage be entitled to payment in lieu of land for any portion of its entitlement that cannot be satisfied through a timely transfer of appropriate state land. Hollow promises concerning various types of land that "might" be available "sometime" for use by the Municipality are unacceptable. It is my belief that a majority, if not all, municipalities in the state support the in lieu payment schedule in SCS CS HB 133 as at least a small attempt to achieve equity for Anchorage taxpayers in a final settlement of the land selection program.

Based on the attached analysis (Exhibit B) of appropriate state land in Anchorage, it is anticipated that Anchorage might eventually request payment in lieu of land for up to 12,500 acres of entitlement. This would mean that Anchorage would receive approximately \$16,875,000 in payments over approximately four

years under the present entitlement figure of 20,865 acres. In the Resources Committee, great concern was expressed over any payment to Anchorage. However, that Committee added language to the bill that may result in payment to Kodiak Island Borough of up to \$26,000,000 based on a legal argument concerning the Native Claims Act (ANCSA) which is tenuous at best. The logic of such action is difficult to fathom.

The State Administration has indicated that it will not accept an in lieu payment system that would commit the State to payment of over approximately \$20,000,000. Apparently this figure is advanced as the Administration's "bottom line" regardless of the time period over which municipalities are willing to accept payment. Again, the logic of this position is difficult to understand when the value of state land to be transferred to other municipalities under the bill could be over one billion dollars (\$1,000,000,000.). (See attached analysis, Exhibit C). The Administration apparently either believes that Alaska land does not readily translate into money (a position so naive it cannot be accepted) or (more likely) that by attempts to frighten the Legislature with large dollar figures and veiled threats of veto, it can force Anchorage legislators to accept less than an equitable settlement for their municipality.

One other alternative that has received some discussion is to force Anchorage to select state land in other boroughs or in the unorganized borough in satisfaction of its entitlement. Although it is conceivable that such a plan could have merit, it would clearly force the Municipality into a speculative gamble on the availability of suitable land not already subject to selection by other boroughs or native claims. The potential administrative expense and land management problems that such a proposal would entail are substantial. The Municipality could not know beyond mere speculation what land it might receive or what the costs associated with such land might be. Although the Assembly's resolution did not specifically address this option, as the Municipal Attorney, I would be forced to advise against such an uncertain solution to an equitable settlement for Anchorage.

Attached to this letter as Exhibit D, are suggested specific amendments to SCS CS HB 133 together with brief explanations of the reasons for such amendments. It should be noted that Anchorage has not and does not begrudge other boroughs their relatively large entitlements under the proposed bill. Certainly no one would argue that all of the circumstances existing when the land selection program was started exist today. Consequently, it could be argued that it would be in the best interests of Anchorage to propose a simple repeal of the old program. The sale of state land could then be used to fund local government programs on some sort of equitable, per capita basis. The Municipality has not taken such a position and has instead agreed to work toward an equitable settlement of the old land selection program. With this

Senator Joseph Orsini
May 5, 1978
Page 4

in mind, I urge your committee and all Anchorage legislators to adopt the attached amendments to SCS CS HB 133.

If you have any questions concerning the above, please contact me at 264-4237. Thank you for the opportunity to comment on this legislation.

Sincerely yours,

DEPARTMENT OF LAW



Theodore D. Berns
Municipal Attorney

TDB:ah

Enclosures

cc: All Anchorage Legislators

Exhibit "A"

Submitted by: Chairman of the Assembly
at the request of the Mayor
Prepared by: Department of Law
For Reading:

ANCHORAGE, ALASKA
AR NO. 78-61

A RESOLUTION REQUESTING EQUITABLE TREATMENT OF ANCHORAGE IN
SETTLEMENT OF THE MUNICIPAL LAND SELECTION PROGRAM.

WHEREAS, the Alaska Legislature has had House Bill 133 entitled, "An Act relating to selection and transfer of state land to municipalities; and providing for an effective date" under consideration, and the Senate Resources Committee has recently reported out SCS CSHB 133 for further consideration by the Senate Community and Regional Affairs Committee; and

WHEREAS, the intent of the present version of HB 133 is to provide for an immediate, equitable settlement of municipal land entitlements under the municipal land selection program existing pursuant to AS 29.18.190 - .200; and

WHEREAS, land entitlements confirmed under HB 133 have been substantially adjusted upward for several municipalities other than Anchorage from the actual figure of ten percent (10%) of state vacant, unappropriated and unreserved land within local boundaries as contemplated by AS 29.18.190 - .200; and

WHEREAS, Anchorage has been denied any similar adjustment of its land entitlement notwithstanding the fact that the Municipality is already scheduled to receive by far the lowest per capita land entitlement of any local government in the state; and

WHEREAS, there exists no justification in law or fact for such inequitable and discriminatory treatment of Anchorage in the settlement of disputes over the municipal land selection program; and

"A"

WHEREAS, there is a serious shortage of appropriate and available state land for municipal selection in the Anchorage area as well as a shortage of funds available for land acquisition and other land related needs of municipal residents; and

WHEREAS, HB 133 provides for payment in lieu of land to municipalities such as Anchorage that are unable to obtain sufficient, appropriate state land to meet their entitlements; and

WHEREAS, such in-lieu payments are desperately needed to assist in meeting the land related needs of the Municipality but are threatened by the discriminatory and inequitable treatment of the land entitlement established for Anchorage in HB 133;

NOW, THEREFORE, the Anchorage Assembly in conjunction with the Municipal Administration hereby resolves:

Section 1. That the position of Anchorage with respect to HB 133 is to accept every available acre of appropriate state land within the Municipality in partial satisfaction of its land entitlement; and

Section 2. That Anchorage residents are entitled to equitable, nondiscriminatory treatment with respect to other municipalities in the upward adjustment of land entitlement figures under HB 133 over the entitlements authorized by a strict application of AS 29.18.190 -- .200; and

Section 3. That land, such as the area commonly known as the Campbell tract, that is subject to preexisting federal or state restrictions on use or management not be counted toward the Municipality's land entitlement, and that the Municipality

"A"

be required to count against its entitlement only land that is appropriate for municipal selection, and subject exclusively to municipal control.

Section 4. That Anchorage be entitled to payment in-lieu of land for any portion of its land entitlement that cannot be satisfied through a timely transfer of appropriate state land, and that such payment, as a minimum, follow the payment scale and other payment provisions expressed in SCS CSHB 133; and

Section 5. That the Governor and Legislature be reminded that both the total and per capita dollar value of state lands to be transferred to many other municipalities under HB 133 far exceeds the amount that could possibly be awarded to Anchorage as payment in-lieu of land, and that equity demands the Administration's support for funding any in-lieu payment system established by HB 133.

Section 6. That the Senate Community and Regional Affairs Committee address the inequities and discriminatory treatment of Anchorage under the present SCS CSHB 133 and that all Anchorage legislators make the expeditious passage of an acceptable version of HB 133 a matter of highest priority for the present legislative session.

Passed and approved by the Anchorage Assembly, this
_____ day of _____, 1978.

Chairman

ATTEST:

Municipal Clerk

"A"

EXHIBIT B

ANCHORAGE LAND STATUS

It should be noted that the following figures are the result of a cooperative effort between municipal staff and ADL personnel to determine the status of government owned land in Anchorage. Data and records at both the State and local level is at best imprecise. However, the figures below represent the best possible estimates to date.

State Land

Trust Lands
(not presently available
for selection)

Mental Health	1,806 acres
School	2,294
University	6,200
TOTAL:	<u>10,300</u>

It should be noted that a great deal of these trust lands would probably not be suitable for land exchanges under the proposal contained in SCS CS HB 133.

Vacant, Unappropriated,
Unreserved Lands 6,720 acres

Of the 6,720 acres identified by the State as VUU on maps presented to the Municipality, analysis has shown that probably no more than 1,700 acres that would meet the criteria for local selection and use outlined on pages 4-5 of the proposed bill.

Selected from the Federal
Government (No Tentative Approval) 240,280 acres

Virtually all of these lands are located east of Chugach State Park. There is presently no way of knowing for certain whether all or part of this land would be available or appropriate for local selection under the proposed bill.

Municipal Land

Patented or Approved To Anchorage	4,253 patent <u>2,475 TA</u> 6,728 acres
--------------------------------------	--

Under AS 29.18.204(b) of the proposed bill, some or all of the 2,475 acres of TA land could be rejected as inappropriate for local selection. There is no way to know at this time precisely how many acres could be affected.

It should also be noted that state records show another 9,770 acres of municipal selections for which TA has not been received. This figure, however, includes over 5,000 acres of Campbell Tract and other lands that apparently do not meet VUU criteria. As noted above, from data supplied by the State and from working with ADL staff, it appears that only up to 1,700 acres of VUU land would be available to Anchorage in addition to land for which TA or Patent has been received.

Summary Of Lands
Available To Anchorage

Patent	4,253
TA	2,475
To be selected	<u>1,700</u>
	8,428 acres
Entitlement under SCS CS HB 133	20,865
	- 8,428
Remaining Entitlement	<u>12,437</u> acres

EXHIBIT C

ANALYSIS OF SCS CS HB 133

Assume: Average land values equal \$1,500 per acre

Population figures are from revenue sharing data

Value of Land Transferred to
Municipalities Under SCS CS HB 133

1. Kenai Peninsula Borough

Entitlement = 155,780 acres
Land value = \$233,670,000
Population = 24,611

Per capita value = \$9,495

2. Fairbanks North Star Borough

Entitlement = 112,000 acres
Land value = \$168,000,000
Population = 60,227

Per capita value = \$2,789

3. Mat-Su Borough

Entitlement = 355,210 acres
Land value = \$532,815,000
Population = 16,724

Per capita value = \$31,859

4. Ketchikan Gateway Borough

Entitlement = 9,200
Land value = \$13,800,000
Population = 11,490

Per capita value = \$1,201

5. Kodiak Borough

Entitlement = 56,500
Land value = \$84,750,000
Population = 7,901

Per capita value = \$10,726

6. Bristol Bay Borough

Entitlement = 1,940
Land value = \$2,910,000
Population = 1,311

Per capita value = \$2,219

7. City and Borough of Juneau

Entitlement = 13,600
Land value = \$20,400,000
Population = 20,465

Per capita value = \$997.

8. Haines Borough

Entitlement = 1,080
Land value = \$1,620,000
Population = 1,924

Per capita value = \$842.

EXHIBIT D

SUGGESTED AMENDMENTS TO SCS CS HB 133

1. Page 1, lines 17-18: Delete "to assist in meeting costs of acquisition of land to meet public needs."

Although this would no doubt be a legitimate use of in lieu payments, actual expenditures of funds should be left to the decision of local elected officials. Other boroughs have for years sold land received from the state and have used the proceeds for public purposes without restrictions. Anchorage should be allowed the same flexibility with respect to any in-lieu payments received under HB 133.

2. Page 1, line 24: Delete "20,865" and insert "44,893."

The state has selected 240,280 acres of land in Anchorage but has not yet received tentative approval. Consequently, the figure was not included in the 20,865 acres listed in SCS CS HB 133. Since the bill fixes and thereby cuts off entitlements, it is only fair for Anchorage to be credited with at least 10% of the above-described state selected land.

3. Page 2, line 28: Add "or to that portion of an entitlement that cannot be satisfied by such date due to a shortage of appropriate available state land."

This amendment would allow municipalities such as Anchorage more time to fill their entitlements with appropriate state land should it become available in the future. In Anchorage, for example, it is possible that land controlled by the Army or Air Force could become available in the future and be used to fill part of any remaining entitlement for which in lieu payment had not been reviewed.

4. Page 5, line 12: Add after the period-

"Land deemed appropriate for municipal selection shall be land that is suitable and appropriate for an identifiable present or future municipal use or for disposal to private use by the municipality by sale or other means."

This language would protect municipalities from possible abuse of the broad criteria expressed in subsections (g) and (h) on pages 4 and 5. The intent of the language is to minimize disputes with the state over the type of land that is appropriate for local selection and management.

5. Page 9, line 10: Add after the period-

"In certifying a municipality's remaining entitlement and available vacant, unappropriated, unreserved land under this subsection, only land meeting the criteria for local selection and use under 204(g) of this chapter shall be considered."

The purpose of this amendment is to eliminate ambiguity in applying the payment in lieu of land formula. Since only VUU land meeting the criteria of 204(g) can be approved for transfer to municipalities, it is only consistent to use these lands in applying the in lieu payment formula.

6. Page 10, Line 13: "Except as provided in (g) of this section,"
(Comment)

This language has the effect of possibly allowing Kodiak Island Borough to receive up to \$26,000,000 in in lieu payments. Kodiak's claim is based on a legal theory concerning lands selected under the Native Claims Act (ANCSA) over which there is no doubt considerable disagreement. It is by no means clear that Kodiak will not be able to obtain many of the disputed lands for which payment might be claimed under this section. If, as the State Administration indicates, the dollar impact of the bill must be limited to less than full compensation for all municipalities entitled to in lieu payment, any per capita limit should be applied evenly to all municipalities.

TELEGRAM

F. CHB-133

ALASKA ALASKA COMMUNICATIONS, INC.

PHONE: 506-8440

JUNEAU, ALASKA 99801

20002 NL KENAI ALASKA 50 05-24 0945A ADT

PMS SEN JOSEPH ORSINI

JUNEAU

WE WISH TO AFFIRM OUR SUPPORT OF SCS-CH-HB133, MUNICIPAL LAND
SELECTION AS PRESENTLY WRITTEN.

MAYOR VINCENT O REILLY, CITY OF KENAI

COLE, HARTIG, RHODES, NORMAN & MAHONEY

HOYT M. COLE
ROBERT L. HARTIG
JAMES D. RHODES
JOHN K. NORMAN
ROBERT J. MAHONEY
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G. RODNEY KLEEDERN
J. MICHAEL ROBBINS
ROGER H. BEATY
STEPHEN D. ROUTH
WEV W. SHEA

May 8, 1978

OF COUNSEL:
G. KENT EDWARDS

REPLY TO: Anchorage

The Honorable Joseph Orsini
State Senator
Chairman, Community & Regional
Affairs Committee
State Senate
Pouch V
Juneau, AK 99811

Re: Municipal Land Selection Bill
CSCSHB 133
Our File 101-28

Dear Senator Orsini:

The Kodiak Island Borough, in its consideration of the subject legislation, is of the opinion that the bill, properly presented, could offer a fair and equitable solution to the Borough's unique dilemma. It was with the assurances that the Kodiak Island Borough's problems would be resolved that support was forthcoming for the bill, both last term and again this term of the legislature.

The Borough has received some criticism from the Department of Natural Resources, Division of Lands, and individual legislative members claiming that the Borough had agreed to certain provisions; i.e., 1) on the amount of the land entitlement; and 2) the manner and method by which the Borough would be compensated for its land entitlements.

As you are aware, the Borough could only support the general concept envisioned in the legislation. At such time as it might be determined that the bill was not fair or equitable to the Kodiak Island Borough residents, the Borough would necessarily need to obtain amendments or even oppose the bill if it would be detrimental to the Borough's interests.

The Hon. Joseph Orsini
May 8, 1978
Page Two

With regard to the amount of land entitlement, the Borough accepted the entitlement as prepared by the Division of Lands, subject, however, to the opportunity to review the State's maps and figures. After review, the Borough claimed over 60,000 acres, whereas the State only authorized 45,200 acres. By the Division of Lands' own figures, the Borough was able to convince the State that the entitlement was at least 50,600 acres, and it has since been agreed in the Senate Resources Committee that 56,500 acres was a satisfactory compromise.

In addition, the Borough was led to believe that the State administration was supportive of in-lieu payments when it could be shown that satisfactory land was not available. More than anywhere else within the State, the State administration was aware of the land conflict problems present in Kodiak. They are also aware that it could be argued morally, if not legally, that the State was responsible in part for that problem.

All this is to say, as you and your fellow legislators know, that, as more facts are developed and the legislation advanced, every party must review its position to determine whether it can continue to support particular legislation. The Kodiak Island Borough has acted, and continues to act, in an atmosphere of openness and fairness, and is desirous of the passage of legislation this term which would not only protect its citizens, but provide fair compensation for those lands which, because of land selection conflicts, may not be available to the Borough. Short of these assurances, the Borough would recommend that the legislation not be passed.

COMMENTS

From the beginning, the Borough has stressed the unique problem of Kodiak with regard to the land selection conflicts brought about in part by the State's failure to adjudicate Borough selections at the time they were received and, secondly, because of the problems raised by the Alaska Native Claims Settlement Act. Prior to the passage of the Claims Act in December, 1971, the Borough had made some 27 land selections, encompassing 38,187.70 acres. Of this amount, 9,807.5 acres were tentatively approved to the Borough and 2,120.67 acres were patented to the Borough. It should be noted that all the land selected by the Borough had been previously tentatively approved to the State by the federal government.

The Hon. Joseph Orsini
May 8, 1978
Page Three

Of further note is the fact that some 25,966.45 acres of the remaining land selected by the Borough from the total 38,187.70 acres have been top-filed by individual native groups under the Alaska Native Claims Settlement Act. Some 7,459 acres of land were selected in the Bells Flats area, a portion of which has since been quit-claimed to individual residents of Kodiak and on which homes have been constructed. Also, some 6,440 acres of land were selected in the Monashka Bay area for the purposes of developing the water supply for the residents of Kodiak. Tens of thousands of dollars have been expended on that particular tract of land in planning and developing that watershed.

As you are aware, the individual native groups have been authorized, under the Alaska Native Claims Settlement Act, to select tentatively approved lands in their areas. As a result, and in order to satisfy their entitlements, the native groups have top-filed on those selections previously made by the Borough and from recent communications with the Bureau of Land Management, it appears that most, if not all, of those native selected lands will be transferred to the individual native groups. As a result, and in order to protect its third party interests, the Borough has determined that it is necessary to file administrative appeals in these conflict areas. To date, none of the appeals has extended beyond the administrative level; however, at such time as an adverse administrative decision is received, the Borough must then consider whether an appeal to the appropriate Court is required. If such a decision is made by the Borough to file an appeal, it is submitted that the question of legality of particular provisions of the Alaska Native Claims Settlement Act might arise, which could place a cloud on any land transferred to the native corporations by the Bureau of Land Management or an injunction to prevent such transfer.

The Borough has consistently stated that it would do everything in its power to avoid the necessity of litigating these problems. It fully respects the native groups' needs and rights and wishes to assist in the implementation of the Alaska Native Claims Settlement Act. The Assembly does, however, recognize its fiduciary obligation to all of its citizens, and when faced with the reality of what it feels are established third party interests in the tentatively approved lands, and the fact that these lands and interests may be thwarted, it must act to ensure that its interests are protected.

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AS 29.18.207(g)

For those lands selected by the Borough prior to the Native Claims Settlement Act and in which title is ultimately placed in the native groups, the Borough has recommended that § 29.18.207(g) be adopted. For the total 25,966.45 acres of land and utilizing the formula under § 29.18.207(c), the fiscal note would be approximately \$24 million. However, the Borough is attempting to resolve the issue of the Monashka Bay lands which would release some 4-6,000 acres from that figure. You will note that, under § 29.18.207(f) we have made an exception of our (g) paragraph in order that the \$250 per capita would not limit recovery under that particular paragraph.

AS 29.18.210

In our testimony before the Senate Resources Committee, we requested that § 29.18.211 be amended to reflect that the lands under .208(g) would not apply. I note that .211 in the Senate Resources Bill is now .210 in the final version, and that that particular language is not present. In the event that Kodiak does not receive a fair and equitable amount for the lands which it loses under .208(g), the Borough would require that those particular lands be exempted under the election of benefits clause. There is some question whether, in the event the Borough would be required to litigate the individual land conflicts against the native corporations, former AS 29.18.190-29.18.200 would be an issue.

State Compensation

Some questions have been raised by individual legislators and the administration as to why the State should compensate the Borough for those lands which the Borough had selected and to which, ultimately, title is received by the native corporations. It should be noted that these lands were selected prior to the Alaska Native Claims Settlement Act and were obvious lands which were needed by the Borough and which were given great priority. Because of the State's failure to adjudicate the Borough selections, and because

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the State's offer to Congress permitting the native groups to select tentatively approved lands, the whole problem of land selection conflicts arose. Again, the Borough does not fault the administration in its actions to resolve the Alaska Native Claims Settlement Bill which was then stalemated in Congress. Certainly, the action by the administration helped to resolve a serious problem, resulting in a break in the logjam and the final passage of the bill. However, it should be further noted that the Borough and the State had entered into a management agreement, whereby the STATE was acting as a trustee for those lands selected by the Borough. In fact, the State classified lands, at the request of the Borough, and also held timber and land sales at its request. It could be argued that the State owed a moral, if not a legal, duty to protect the Borough's interests with regard to those lands.

As the Borough argued in the Resources Committee, in the event satisfactory legislation is not passed by the legislature this term, the Borough must consider filing a lawsuit against the State under a contract theory for compensation for those lands which were lost by virtue of the native selections. That suit would bring in issue the Borough-State agreement, rights under AS 29.18.190-29.18.200, and the Alaska Native Claims Settlement Act. Assuming that the Borough does have a legal argument and would be successful in that litigation, the measure of damages would probably be in the form of money, based upon the value of the lands lost. Therefore, it would seem that, if the legislature agrees that the State does have a moral or legal obligation to the Borough, and recognizing the need to resolve the land conflict problems, and in order not to cause hardship to the native corporations, who obviously must receive their lands, compensation to the Borough in money for those particular lands would seem to be an equitable solution.

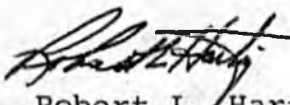
It is noted that the bill, as passed by the Senate Resources Committee, contains, in Section 7 on page 16, that AS 29.18.207 enacted in Section 2 of the Act would not take place until July 1, 1982. The Borough would express its concern regarding this section. If the Borough is to agree to withhold its rights of litigation, it can be argued that it should be compensated immediately or within a reasonable time for this forbearance.

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Mr. Tubbs, land consultant for the Kodiak Island Borough,
and I will be present at the Community and Regional Affairs
Committee meeting on May 11th and will be happy to provide
facts regarding the Borough's position and to answer any
questions which you may have regarding the Borough's position
on the bill.

Yours truly,

COLE, HARTIG, RHODES,
NORMAN & MAHONEY
Counsel for Kodiak Island Borough

By: 
Robert L. Hartig

RLH:kh

cc: Client

MANAGEMENT AGREEMENT

This agreement made and entered into this 17 day of June, 1965 between the State of Alaska, Department of Natural Resources, Division of Lands, hereinafter referred to as the State and the Kodiak Island Borough, organized and existing pursuant to the laws of the State of Alaska, hereinafter referred to as the Borough.

WITNESSETH:

WHEREAS, Title 7 - Article 2 - Sec. 07.10.150, Alaska Statutes vests the Borough with the authority to select certain of those state-owned lands which lie within the Borough boundaries, and,

WHEREAS, the aforementioned statute further provides that the Borough is vested with the authority to manage, lease or sell the lands so selected, and,

WHEREAS, the Borough does not at this time have the financial ability nor the manpower to initiate and maintain an efficient land management program, and,

WHEREAS, the State, through the Division of Lands, does maintain the staff capability and is willing to enter into an agreement for the management of Borough selected lands, NOW THEREFORE,

The Borough does by these presents delegate to the State the authority to manage Borough selected lands and the State, through the Division of Lands, agrees to accept management authority over said lands upon the following terms and conditions to wit:

1. All lands disposed of by the State, pursuant to this agreement, shall first be subjected to a land use plan and such plan shall, prior to becoming final, be reviewed jointly and agreed upon by the Borough and the State.
2. Prior to disposal by the State of any lands selected pursuant to Section 6(b) Public Law 85-503, General Grant lands, the Borough shall first be afforded the opportunity to select the same for its use or disposal in accordance with the terms of this agreement.

3. Upon selection of eligible lands by the Borough, the State shall, without delay, note the same on the records to be maintained by the Division of Lands, and the State shall periodically thereafter make an accounting to the Borough revealing acreage entitlement, acreage selected, acreage disposed of and such other information as shall be deemed necessary for the purpose of keeping the Borough properly informed.

4. All leases, sales or other disposals which are made by the State on behalf of the Borough pursuant to this agreement shall be made only with consent of the Borough and shall be conducted in accordance with the Alaska Land Act (Title 38, A.S.) and the regulations promulgated by the State pursuant thereto. All lands which have been selected by the Borough, as herein provided, and which the Borough may wish to sell, lease or otherwise dispose of shall be sold, leased or disposed of in accordance with the provisions of this agreement for so long as the agreement shall remain in full force and effect.

5. All monies received by the State from the sale, lease or other disposal of Borough lands shall be deposited with the Department of Revenue, State of Alaska. Upon request of Borough Assembly and certification by the Director that payment is in order, the monies so deposited shall be transferred to the Borough. The State shall, during the month of January of each year that this agreement is in effect, render an accounting of all monies received from disposals conducted during the course of the year. Concurrent with the final accounting the State shall withhold survey, appraisal and other appropriate direct management costs, exclusive of overhead costs, from the total receipts.

6. To preserve the principle and integrity of sustained yield forest management and protection, those forest and grazing lands selected by the Borough shall remain under the direct management of the Division of Lands with all revenues from such forest and grazing lands or forest products being transferred to the Borough at the same time and in the same manner as stipulated in Item 55 of this agreement.

Nothing in this agreement shall prevent, through mutual agreement, the reclassification of any lands subject to this contract as provided in the Classification regulations of the Division of Lands, State of Alaska.

This agreement shall remain in full force and effect until such time as it may be cancelled or modified by mutual agreement between the parties. This agreement may also be cancelled by one party provided it gives the other party one (1) year notice of such cancellation.

KODIAK ISLAND BOROUGH

By *Russell M. ...*
President of the Assembly

By *Charles ...*
Borough Chairman

ATTEST:

Leo L. ...
Borough Assembly Clerk

STATE OF ALASKA

By *[Signature]*
Director, Division of Lands

CONCURRED:

Ph. R. ...
Commissioner, Department of Natural Resources

APPROVED AS TO FORM:

for *Theodore E. Fleischer*
Attorney General, State of Alaska

LANDS SELECTED PRIOR TO DECEMBER 18, 1971

<u>Selection Number</u>	<u>Acres Selected</u>	<u>Acres Tentatively Approved to Borough</u>	<u>Acres Patented to Borough</u>	<u>Acres of Borough Selections on State Tentatively Approved Land Involved in Native Selections</u>	<u>Remarks</u>
1	16.51	16.51	16.51	0	
2	46.26	46.26	46.26	0	
3	15 +	-	-	0	Within 2 miles of Kodiak
4	175.12	175.12	175.12	0	
5	3.59	3.59	3.59	0	
6	159.75	159.75	159.75	0	
7	15.85	15.85	15.85	0	
8	210.06	177.57	170.36	0	
9	39.29	39.29	19.85	19.44	Port Lions area
10	69.61	69.61	0	0	
11	17.84	17.84	17.84	0	
12	7,199.	7,459.	788.4	7,459.	Bells Flat area
13	387.88	387.88	387.88	0	Within 2 mile limit
14	58.01	0	0	58.01	Port Lions
15	14,331.	0	0	8,900.	Shuyak
16	0.17	0.17	0.17	0	Within 2 mile limit
17	4.85	4.85	4.85	0	Within 2 mile limit
18	202.51	202.51	202.51	0	Within 2 mile limit
19	110.78	110.78	110.78	0	Within 2 mile limit
20	0	0	0	0	Not applicable to AS 29.18.190
21	0.92	0.92	0.92	0	Within 2 mile limit
22	250.	120.	0	250.	Chiniak
23	11,451.52	0	0	6,440.	Monashka Bay
24	310.	0	0	0	Within 2 mile limit
25	2,000.	0	0	2,000.	Chiniak
26	840.	800.	0	840.	Chiniak
27	0.184	-	-	0	Not applicable
<hr/>					
	38,187.70	9,807.5	2,120.67	25,966.45	

LANDS SELECTED AFTER DECEMBER 18, 1971

28	2,611.	0	0	965.	
29	2,330.	0	0	2,330.	
30	5,750.	0	0	5,750.	
31	2,590.	0	0	1,630.	
32	2,940.	0	0	2,090.	
33	1,735.	0	0	820.	
34	2,500.	0	0	1,220.	
35	2,020.	0	0	2,020.	
36	540.	0	0	540.	
37	2,490.	0	0	1,940.	
38	1,925.	0	0	0	
39	1,655.	0	0	0	
40	1,920.	0	0	1,920.	
41	22,545.	0	0	0	
<hr/>					
Total:	53,551.	0	0	21,275.	
<hr/>					
Total From Above:	38,187.70	9,807.5	2,120.67	25,966.45	
<hr/>					
Grand Total:	91,738.70	9,807.5	2,120.67	47,241.45	

Note: Total tentatively approved lands to State on Kodiak Island are in the amount of 523,927.12 acres.

F: CSHB
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UNITED STATES DEPARTMENT OF AGRICULTURE
FOREST SERVICE
P.O. Box 1628, Juneau, Alaska 99802

5450
May 9, 1978



Members of the
Alaska State Legislature

Reference is made to the Chugach Natives, Inc. proposal of March 13, 1978 (enclosed) to select-exchange 150-200 thousand acres of the Chugach and Tongass National Forests.

Because of the pending State and local community land selections totaling 247,596 acres and the remaining 100,000 acres of land which could be selected for community development, expansion, and recreation purposes, the Forest Service Environmental Analysis Report concluded that all selection and exchange proposals that can significantly affect these selections of National Forest areas must be discussed with the State and local community leaders affected. Similarly, I believe it is essential that recreation, aquaculture, timber, mining, and other user or interest groups which could be affected by this proposal should also have the opportunity to review and comment on the proposed selections and exchanges.

The Forest Service response to the Chugach Natives, Inc. proposal and our suggestions for achieving the necessary public involvement in accord with the requirements of the National Forest Management Act, National Environmental Policy Act, and other laws, are embodied in the enclosed May 3 letter to Mr. G.R. Andersen, Jr. and May 5 letter to the Federal-State Land Use Planning Commissions for Alaska (LUPC).

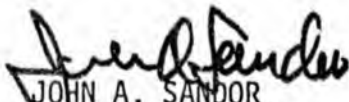
In our May 5 meeting in Anchorage, convened by the LUPC and including representatives of the Chugach Natives, Inc., State of Alaska, Forest Service, and other parties, we agreed to proceed with the Environmental Impact Statement processes described in the May 3 and May 5 letters. Additionally, the LUPC, Chugach Natives, Inc., and State of Alaska will explore other alternatives for selection-exchange outside the

Chugach and Tongass National Forests. The Forest Service has also agreed to provide at any time the best available information on the impacts of the proposed selections-exchanges for State, LUPC, Congressional or other hearings which may be convened in advance of the issuance of the June and July Environmental Impact Statements.

As the Environmental Impact Statement processes move forward, the Forest Service will keep State/community leaders and other interested parties informed and involved. If you have any questions or suggestions regarding our planned actions relating to the Chugach Natives, Inc. proposals, Forest Supervisor Clay Beal, Chugach National Forest, Pouch 6606, Anchorage, Alaska 99502, or I would appreciate receiving them. I am sure the LUPC, State, and Chugach Natives, Inc. also would welcome your suggestions.

Your interest in this matter is appreciated.

Sincerely,


JOHN A. SANDOR
Regional Forester

4 Enclosures