

ALASKA LEGISLATURE COMMITTEE FILES 1901-1902

1826 HRES MINERAL RIGHTS; STATEHOOD ACT - HB 31

pursuant to a mineral claim. */

One other distinction between leases and claims is whether annual labor is required. For state land, it is only mining claims, and not leases, which require annual labor for continued validity. Mineral leases, on the other hand, require only discovery, location, and filing to establish the prior right to the lease. AS 38.05.205. In fact, prior to a lease being issued, AS 38.05.205 would prevent extracting minerals.

AS 38.05.205(b), which provides that leasehold locations will accrue an annual rental of \$200, against which labor may be credited whether or not the location is actually under lease, does not indicate to the contrary. We believe that this section contemplates payment being due upon award of the lease, and that a claimant need not make payment or do any work until issuance of the lease. In part, the scheme set up by AS 38.05.205(a) compels this result. After a location has been recorded (thus perfecting

*/ Provisions of other statutes dealing with particular categories of non 6(a) and (b) lands must also be consulted. E.g., AS 38.05.030(a) concerning leasing of university lands.

the prior right to a lease), the potential lessee has only 90 days in which to file his lease application with the director after receiving the application from the department. Thus the only source of delay during which a yearly rental would be due would be the time taken by the department in identifying the location, determining the correctness of the filing, determining if the lands were open to leasing, and complying with applicable notice requirements. Until the department responded, the locator would have no justification for assuming he had any claim or lease upon which he could prudently make improvements. Therefore, an initially valid location is sufficient to vest a locator with a prior right to a mining lease without performance of annual labor.

In summary, under existing law the only means by which a mining lease may be acquired is by discovery, location, and filing under either state (AS 38) or federal (AS 27) procedures. A discovery and appropriation automatically leads to the issuance of a mining lease. This approach forecloses competitive leasing. This scheme is similar to the mandatory leasing systems of a number of Western States. E.g. Arizona, (ARS § 27-231 - 238); Colorado, (Colorado Revised Statutes Annotated, §36-1-140); and Oregon, (ORS § 273-551, 517.420). We are also of the opinion that non-competitive leasing is constitutionally preferred in Alaska.

Article VIII, section 11 of the Alaska Constitution provides that

Discovery and appropriation shall be the basis for establishing a right in . . . [locatable minerals]. Prior discovery, location, and filing as prescribed by law, shall establish a prior right to these minerals and also a prior right to . . . leases.

Although there may be some instances where competitive leasing may be allowable, such as when a mining lease is forfeited or returned to the state, the language Article VIII section 11 indicates that non-competitive leasing of valuable minerals is at least constitutionally preferred, if not required. Since there is no statutory authorization for competitive leasing of locatable minerals, however, we do not need to decide that question at this time.

C CLAIMS LOCATED AFTER STATE SELECTION BUT PRIOR TO TENTATIVE APPROVAL WILL BE VALID UNDER STATE LAW ONLY UPON THE STATE RECEIVING TENTATIVE APPROVAL AND SUBJECT TO PATENT OR CLASSIFICATION OF THE LANDS.

One problem that has arisen since statehood is based on the delay between state selection and tentative approval. Under 6(g), as previously mentioned, the state

does not have authority to grant or validate mining rights until the state receives tentative approval. Therefore, until the state receives tentative approval, mining operations on these lands are governed by federal law.

A claim located under federal law prior to state selection is unaffected by the state selection. The first proviso in both 6(a) and 6(b) states:

That nothing herein contained shall affect any valid existing claim, location, or entry under the laws of the United States, whether for homestead, mineral, right-of-way, or other purpose whatsoever, or shall affect the rights of any such owner, claimant, locator, or entryman to the full use and enjoyment of the lands so occupied.

On the other hand, federal law protects a valid location under federal mining law after state-selection by providing that state selection segregates the land from mineral entry.

The applicable federal regulation provides:

Lands desired by the State under the regulations of this part will be segregated from all appropriations based upon application or settlement and location, including locations under the mining laws, when the State files its application for selection in the proper office properly describing the lands.

43 CFR 2627.4(b) (emphasis added).

Therefore, locations made between state selection and tentative approval are in a legal no-man's land: they are ineffective under federal law and, until the state receives tentative approval, they are outside the reach of state law.

Recognizing this problem, the state legislature passed an act which provided for recognition of a location made between state selection and tentative approval at the time the state received tentative approval. Section 11 chapter 123, SLA 1961 provided:

Locations made on lands which have been selected from federal lands and which were made in accordance with this article will constitute valid mining claims, mining leasehold locations, or prospecting site locations at the time Alaska receives tentative approval of its selection. Such locations shall be subject to the provisions of said tentative approval and to land classification by the state after such tentative approval. Extraction of minerals prior to classification of the land and receipt of patent by the State shall be at the risk of the locator.

With subsequent amendments, discussed later, this section is now AS 38.05.275.

James A. Williams, Director of the Alaska State Division of Mines and Minerals, summarized the scheme in a presentation before the Northwest Mining Association Convention, Spokane, Washington, Dec. 1-2, 1961:

Locations made on lands selected by the State but prior to the time the State receives tentative approval of the selection

from BLM are made at the locator's risk. When the State receives tentative approval of its land selection, the locations will become valid and the State may issue conditional mining leases, subject to conditions of the tentative approval and land classification by the State. These rights will be lost, or partly lost, in the event the State does not eventually receive title or patent to all or part of the lands. A claim holder on Federal public domain cannot lose his mineral rights through State land selection, because the State cannot select land included within valid mining claims.

Similar statements, particularly emphasizing that locations made between selection and tentative approval are at the locator's risk, have consistently appeared in mining handbooks issued by the state.

Section 11, chapter 163, SLA 1961 was extensively amended in 1966. Section 3, ch. 96, SLA 1966 provided,

Mining locations made on state lands, including shorelands, tidelands or submerged lands, or state selected lands, under secs. 185 -280 of this chapter or in the manner described in AS 27.10.010 -27.10.240 acquire for the locator mining rights under secs. 185 - 280 of this chapter, subject to existing claims and to any denial of or restriction in the tentative approval of state selection or the patent of the lands to the state. If shorelands, tidelands or submerged lands are included in a mining location or within the projected boundaries of a mining location made in accordance with this section, the locator is required to file a certificate of location with the division of lands

within 90 days following the date of posting the notice of location, in addition to filing a certificate of location as required by Sec. 195 of this chapter. The certificate of location must identify the position of the mining location in the system of rectangular or protracted surveys.

The purpose of this provision was to extend state recognition of claims to claims located under either the federal or state procedures. In a letter to the chairman of the House Resources Committee, Charles F. Herbert, then Deputy Commissioner of the Department of Natural Resources, stated;

In Section 3, we ask the Legislature to meet the problem of acquiring State mining rights to State tidelands and submerged lands that form fractional parts of mining claims staked on adjoining Federal lands. Where a coast line is highly irregular and many indentations and tidal basins exist, it is often most difficult to trace out the boundaries between the Federal lands and the State lands. If this difficulty is not corrected there could be unending litigation over fractional claims and technically illegal staking.

Section 3 would also protect the prospector who is not aware if the land he stakes is owned by the Federal or State government and would also permit him to stake a Federal claim that might include navigable waters, which, of course, are state-owned.

This letter was printed in the House Journal at the request of the committee. 1966 House Journal at 691-692

(March 23, 1966). These provisions are the current AS 38.05.275. Therefore the state must recognize a claim if it is staked either in accordance with the procedure for either federal lands under AS 27 or for state lands under AS 38.05.185.

But the 1966 amendment, with its extensive rewording, raised another question. The previous legislation recognized the validity of a location at tentative approval, with the phrase "subject to the provisions of said tentative approval and to land classification by the state after such tentative appraisal." The 1966 amendment dropped the emphasized language.

Although an argument could be made to the contrary, this deletion does not prevent the state from closing any lands to mining upon receipt of tentative approval. First, the same amendment that deleted the above language added the provision that a location would only "acquire for the locator mining rights under secs. 185-280 of this chapter" Therefore, by that addition a locator's rights were subject to the provisions of AS 38.05.185 that:

The director, with the approval of the commissioner, shall determine . . . those lands which shall be closed to mining.

By adding the language subjecting the locator's rights to AS 38.05.185-280, the legislature retained the authority of the Department of Natural Resources to close lands to mining.

Second, we can find no indication of legislative intent to achieve a different result. The only expression of intent is contained in the Herbert letter quoted earlier. That letter gives no indication of any intention to take the larger step of eliminating the ability of the state to close lands to mining once it received tentative approval and land management authority.

Third, there was no effort to change the present 11 AAC 86.115, which states:

- (a) Locations made on lands selected by the state prior to the state's receipt of tentative approval for the selection are made at the locator's risk.
- (b) If such locations are made in accordance with this chapter, they constitute valid mining claims, leasehold locations, or prospecting sites upon receipt by the state of tentative approval for the selection from the federal government, subject, however, to the provisions of the tentative approval and to land classification by the State.

This regulation has been in effect since at least 1967. Consequently, contemporaneous administrative practice supports the interpretation allowing closing of lands to mining after receipt of tentative approval. See, generally, 2A Sutherland Statutory Construction, 4th ed., §49, at 228-267.

Therefore, it is our opinion the state may close lands to mining upon receipt of tentative approval, even if there are existing locations made after state selection but prior to tentative approval. */

- D. PUBLIC NOTICE UNDER AS 38.05.305 AND AS 38.05.345 IS REQUIRED PRIOR TO ISSUING A MINING LEASE.

A final question concerns the public notice required prior to granting a mineral lease to a locator, and the timing of that notice. Article VIII, section 10, provides that:

No disposals or leases of state lands, or interest therein, shall be made without prior public notice and other safeguards of the public interest as may be prescribed by law.

*/ In addition, the Department of Natural Resources, with the approval of this department, has previously taken this position in an administrative decision dated December 10, 1973 concerning "Clarence Hershberg, 723 W. 6th Avenue, Anchorage, Alaska Rainy day No. 1, Rainy day No. 2, Rainy day No. 3, Jackson No. 1, Allison No. 1, Placer mining claims." There the department specifically rejected the claim that the state could not close land to mining upon receipt of tentative approval if a location had been made after state selection but prior to tentative approval. In memoranda dated January 17, 1974, April 12, 1974, May 1, 1974, and May 28, 1974, this office concurred in that decision.

This provision by its terms applies to the leasing of a mineral interest in state land. The problem is in identifying the moment the state disposes of its mineral interest.

Even though a valid location in an area open to mining automatically leads to a mining lease, we do not believe that disposal of the mineral interest within the meaning of article VIII, section 10 occurs prior to the issuance of a mining lease. The primary reason for this conclusion is the existence of article VIII, section 11, and the attempt of the delegates to the convention to allow following federal mining law to the extent permitted by the terms of 6(i). See, e.g., 4 Alaska Constitutional Convention 1955-56 Minutes at 2452. Discovery and appropriation is complete upon filing of the notice with the state under both federal and state law. Prior to the filing, the act of location and discovery is unknowable to the state. Thus there could be no "prior public notice" under section 10 if discovery and appropriation gave the miner an immediate right to produce and sell the mineral. But under the federal system, discovery and appropriation, without more, did give the miner an immediate right to mine and sell minerals. The delegates clearly intended that this result could occur if the Statehood Act permitted.

As a result, the interest acquired by discovery and appropriation, even if it gives an automatic right to eventual ownership of a mineral, is not a disposal under article VIII, section 10. Rather, notice prior to the issuance of the mining lease is the constitutional notice required by article VIII, section 10.

Pursuant to this mandate, the legislature has enacted two applicable statutes: AS 38.05.305 and AS 38.05.345. AS 38.05.305 states in full:

(a) No land or interest in land within the boundaries or within six linear miles of the boundaries of a general law, home rule or unified municipality, as defined under AS 29, may be classified, reclassified, sold or leased, or otherwise disposed of, including the renewal of a lease entered into after September 22, 1976, unless the following procedures have been complied with:

(1) A notice of the proposed action shall be sent to the governing body of each municipality a boundary of which is within six linear miles of the land involved.

(2) The notice shall be sent at the earliest practicable time but no less than 30 days before the proposed action.

(3) The notice must contain a statement of the proposed action, identifying the land involved and the action proposed in sufficient detail to fairly inform the recipient of the nature of the proposed action. If the land is not surveyed, a legal description need not be used; but the land must be described in sufficient detail to allow the recipient to understand its approximate

size, number of tracts involved, and location. The notice must also contain a statement to the effect that the municipality is invited to comment on the proposed action and that, upon the request of the governing body, chief executive officer, or planning agency, the division will consult with the municipal officials on the proposed action. Any request by a municipality for consultation must include the name of the municipal official to be consulted and be sent no later than 15 days after receipt of the notice by the municipality, and the notice must contain a statement to this effect and name the official and address to which the municipality's request should be sent.

(4) In consulting with the municipal officials, the proposed action and the authority under which it is to be taken shall be explained and the reason for the proposed action shall be given. A public hearing need not be held, but the municipal officials may hold a public hearing or otherwise allow public participation and comment. A hearing held under this paragraph shall be attended by the commissioner of natural resources or his designee.

(5) A municipality having a right to notice or consultation under this section may appeal to the superior court and have set aside any action taken which does not conform to this section. A municipality incorporated or established less than 30 days before the action is taken has no right to notice or consultation under this section.

(b) No land or interest in land outside the boundaries of a general law, home rule, or unified municipality, as defined under AS 29, may be classified, reclassified, sold or leased, or otherwise disposed of,

including the renewal of a lease entered into after September 22, 1976, unless a notice of the proposed action as required by (a)(3) of this section is (1) given to the regional corporation organized under the Alaska Native Claims Settlement Act (85 Stat. 688, 43 U.S.C. secs. 1601-1626), within the boundaries of which the land is located; (2) given to the village corporation organized under the Alaska Native Claims Settlement Act which owns land or has selected federal land which is in the vicinity of the state land to be disposed of; and (3) posted in three public places in a community with 25 or more permanent residents located in the vicinity of the state land to be disposed of. The president of the affected regional corporation or his designee has the same rights of notice, consultation, hearing and appeal as those provided for in (a)(2)-(5) of this section.

(c) When notice is given under (b) of this section, the requirements of § 345 of this chapter relating to notice apply in addition to any other applicable notice requirements. If requested, the director shall hold a hearing within the affected area under (b) of this section. No action proposed by the director which is subject to the notice requirement specified in (b) of this section is final until at least 30 days after the date the notice was published.

(d) Before any sale, lease under AS 38.05.070-38.05.105, or other disposal of state land in the unorganized borough, the commissioner shall consider the effect of the disposal and the effect of the estimated population density that would result from the disposal upon existing traditional uses by residents in the vicinity of the land to be disposed of. The commissioner shall consider any potential conflicts with the traditional uses of the land which

could result from the sale, lease or disposal and, if he finds it necessary, he shall develop a plan to resolve or mitigate the conflicts in a manner consistent with the public interest and the provisions of this chapter.

By their terms, the requirements of 305(a), (b), (c), and (d) apply to mineral leases. See Moore v. State, 553 P.2d 8, 26-27 n. 37 Alaska 1976. A more difficult question is the applicability of AS 38.05.345, which provides:

Notices. (a) Public notice of a sale, lease or other disposal of land or interest in it shall be substantially as follows.

(b) Notice shall be published once a week for four consecutive weeks preceding the time of sale stated in the notice, in newspapers of general circulation in the state and by the electronic media covering the region of the state in which the land is located. If there is no newspaper of general circulation in the vicinity of the land offered for sale, notices shall be posted not later than four weeks before the public auction is to be held in three public places near the land to be sold or leased. The public auction shall be held not less than 45 days after publication of the first notice and not more than five weeks following the last appearance of the published notice.

(c) [deleted]

(d) Where the land involved is adjacent to a body of water or waterway which the department has not previously determined to be navigable or public, or not navigable or public, the notice shall state that such a determination is to be made.

(e) The director shall publish a public notice of each disposal of state land under the procedures specified in AS 38.05.057 and AS 38.08 in newspapers of general circulation in the state and by the electronic media covering the region of the state in which the land is located. The notice shall be published once each week for four consecutive weeks before the beginning date of an application period.

(f) If there is no newspaper of general circulation in the general vicinity of land offered for disposal, notices required by (e) of this section shall be posted not later than four weeks before the land is offered in three public places near the land.

(g) A notice under this section shall contain

(1) a description of the land sufficient for identification by the public;

(2) the date of the auction or the beginning of the application period;

(3) a statement that a purchaser of state land offered is responsible for the construction of access roads and capital improvements that may be required by an authority having platting authority; and

(4) the location and address of places where the public may obtain information concerning the land offered for disposal.

While subsection (a) states that the procedures apply to "all disposals," each of the remaining subsections is clearly intended to operate in situations where the land is offered for auction, (b) and (g), lottery, (e) and (g),

or other competitive public offerings initiated by the state (f). But the statutory leasing system under AS 38.05.205 is not initiated by the state; in fact, if the land is open to mineral discovery, the state has no discretion as to whom it may offer a lease.

Despite this difference, it is our opinion that the provisions of section 345(a) apply; namely, that a disposal under sections 185-280 must "substantially" comply with the procedures in section 345. Therefore, the publishing requirements of (b) must be followed to the extent they apply even though no auction is contemplated.

Although Section 345(b) appears to apply to mineral leases, sections (e) and (f) do not. Subsection (f) applies only if subsection (e) applies, and subsection (e) applies to lottery and homesite disposals under AS 38.05.057 and AS 38.08. Similarly, it also appears that subsection (d), which requires a statement in the notice of determinations for adjacent navigable or public waters, would apply to disposals of the surface estate, not to subsurface interests. Similarly, sections (g)(2) and (3) also do not appear to apply.

If the proposed lease is within the boundaries, or within six miles of the boundaries, of a general-law, home-rule, or unified municipality, the requirements of AS 38.05.305(a)(1)-(5) must be followed; for other land, the requirements of section 305(b) apply, which track the requirements of (a)(2)-(5). In addition, the commissioner must

consider the matters set forth in AS 38.05.305(d) when the leasehold is in an unorganized borough.

IV CONCLUSION

Therefore, for the reasons stated in this opinion, we conclude that

1. the state may not issue a patent to mineral interests in 6(a) or 6(b) lands;
2. the state may only dispose of mineral deposits in 6(a) and 6(b) lands by lease;
3. the constitutionally preferred method is non-competitive leasing based on discovery and location;
4. the annual labor requirements do not apply to locations leading to a lease;
5. a location is valid if it follows either the federal, AS 27, or state, AS 38.05.185 - 280, procedures;
6. a location made after selection but prior to tentative approval is outside state law and at the locator's risk;
7. a location made after state selection but before tentative approval will be recognized by the state upon receipt of tentative approval, subject to: (1) conditions of tentative approval, (2) eventual receipt of patent, and (3) possible closure of the lands to mining upon receipt of tentative approval; and
8. public notice under AS 38.05.305 and AS 38.05.345 must be given prior to issuing a mineral lease.

E O 51



Rep. Don Clocksin, Chairman
465-3797

Alaska State Legislature

House of Representatives

Committee on Health, Education & Social Services

To Res
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Pouch V
State Capitol
Juneau, Alaska 99811

March 5, 1981

Rep. Jim Duncan
Speaker of the House
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Mr. Speaker:

The Health, Education and Social Services Committee has reviewed Executive Order 51 and recommends that no action be taken to disapprove it.

However, two points should be made regarding the Executive Order. First, it appears that reorganization of various functions has already occurred by administrative fiat and that most of the necessary adjustments in the budgets of the affected agencies were made last year. Thus, if we were to disapprove the Executive Order, it would cause major upheaval in the agencies. When a reorganization of state government requires changes in statutes - as this one does - and is implemented before an Executive Order is proposed to the Legislature, then the intent of Article III, Sec. 21 of the Alaska Constitution is being frustrated. We recommend the Governor review the process by which reorganizations are implemented.

Second, Article III, Sec. 21 allows reorganization for "efficient administration." Examples arose during hearings which raise questions as to how efficient the reorganization really is:

1. While the Department of Environmental Conservation is given responsibility over false or misleading food advertising (AS 17.20.040), the Department of Health and Social Services also has responsibility over false advertising of foods and drugs (AS 17.20.160; AS 17.20.330).
2. While the Department of Natural Resources has the responsibility for eggs (AS 03.05.010(a)), the Department of Environmental Conservation has responsibility for chickens (AS 03.05.010(c)).

Rep. Jim Duncan
March 5, 1981
Page Two

3. While the Department of Health and Social Services is responsible for "commercially compressed oxygen sold for human respiration" (AS 18.05.040(a)(18)), the Department of Environmental Conservation is responsible for "commercially compressed air sold for human respiration" (AS 14.46.020).

However, considering that the reorganization is a fait accompli and that the Legislature could later pass a bill to change the statutes altered by an Executive Order if problems arise, the committee has chosen not to disapprove the Executive Order.

Sincerely,



Rep. Don Clocksin

DC:am

cc: Governor Jay S. Hammond
Rep. Terry Gardiner
Rep. Fred Zharoff

H

B

2

COMMITTEE REPORT

HOUSE

FURTHER: FINANCE

2/2/81
(11)

Date: March 10, 1982

Mr. Speaker:

The Committee on RESOURCES has had HB 2

"An Act relating to the use and disposal of state land."

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

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for HB 2 (Resources) same title
 new title
- and recommends _____
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

Eric Scholiffe

Rick Halford

Paul ...

...

CHAIRMAN

March 10, 1982

HB-2

Amendment

Add the following to the first page HB-2.
as per Ted Smith.

Add line 17

(b) A homestead entry pursuant to section(a) may not exceed 160 acres unless the land is classified as agricultural in which case the entry may not exceed 320 acres, and title shall be restricted pursuant to As38.05.321.

or as per Committee add the following to line 17

and title shall be restricted if required by AS 38.05.321 (a).

DRAFT

REP -
FANNING
CHANGES
FROM YESTERDAY -

Original sponsors: Beirne, Bettisworth
and Randolph

1 IN THE HOUSE

BY THE RESOURCES COMMITTEE

2 CS FOR HOUSE BILL NO. 2 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to homesteads; and providing for an
7 effective date."

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

9 * Section 1. AS 38 is amended by adding a new chapter to read:

10 CHAPTER 09. HOMESTEAD ENTRY.

11 Sec. 38.09.010. HOMESTEAD ENTRY. (a) The director may designate
12 and make available for homestead entry under this chapter state land
13 available

14 (1) under AS 38.05.057; or

15 (2) under AS 38.05.077 unless the director determines that
16 the land is more suitable for recreational or residential use.

17 (b) A homestead entry made under AS 38.05.057 may not exceed 320
18 acres.

19 (c) A homestead entry made under AS 38.05.077 may not exceed 160
20 acres.

21 Sec. 38.09.020. QUALIFICATIONS FOR HOMESTEAD ENTRY. A person is
22 qualified to apply for a homestead entry under this chapter if the
23 person is

24 (1) qualified under AS 38.05.057 to participate in the dis-
25 posal of land by lottery; or

26 (2) qualified under AS 38.05.077 to make an entry under the
27 remote parcel disposal procedures.

28 Sec. 38.09.030. APPLICATION FOR HOMESTEAD ENTRY. (a) A person
29 who has staked the exterior boundaries of a homestead entry under

1 AS 38.05.077 and a person who has been selected to purchase land desig-
2 nated for homestead entry by lottery shall apply for the homestead entry
3 on a form prepared by the department.

4 (b) The department may charge a fee for filing the application.

5 Sec. 38.09.040. PATENT FOR HOMESTEAD ENTRY. (a) A person who has
6 made a homestead entry under this chapter and filed an application under
7 AS 38.09.030(a) is entitled to a patent if, within seven years from the
8 date of the application, the applicant

9 (1) occupies the land for a total of 35 months;

10 (2) erects a habitable dwelling;

11 (3) clears and prepares for cultivation not less than

12 (A) one-fourth of the land entered if the land is limited
13 to agricultural use; or

14 (B) one-eighth of the land entered if the land is not
15 limited to agricultural use;

16 *ADDED*
3-9-82 (4) brushes the boundaries of the homestead entry and main-
17 tains the brushed boundaries so that they are easily visible from the
18 ground, unless the homestead entry is surveyed;

19 (5) causes a survey of the homestead entry to be made that is
20 acceptable to the director, unless the homestead entry is surveyed.

21 (b) The director shall require the applicant for homestead entry
22 to submit proof necessary to establish compliance with the requirements
23 of (a) of this section.

24 (c) As used in this section, "habitable dwelling"

25 (1) means a permanent dwelling of not less than 200 square
26 feet and its fixtures and facilities;

27 (2) does not include a mobile home unless it is permanently
28 attached to a permanent foundation.

29 Sec. 38.09.050. HOMESTEAD APPLICATION VOID. An application for

1 homestead entry and the interest of the applicant under the homestead
2 entry is void if the applicant fails to comply with a requirement of
3 AS 38.09.040(a). On the request of the director, the attorney general
4 shall bring an action to declare the homestead entry void and, if neces-
5 sary, to eject the homestead applicant.

6 * Sec. 2. AS 38.04.020(g)(3) is amended to read:

7 (3) Land designated agricultural, commercial, industrial, or
8 suitable for other disposal may [SHALL] be sold under AS 38.05.055 or
9 38.05.057. Land designated agricultural or suitable for disposal other
10 than as commercial or industrial may be sold under AS 38.05.077.

11 * Sec. 3. AS 38.05.057(a) is amended to read:

12 (a) The commissioner may dispose of land, including land limited
13 to use for agricultural purposes, by lottery. The purchase price of
14 land sold by lottery shall be the fair market value of the land as
15 determined by the commissioner. The commissioner may sell land by
16 lottery for less than the fair market value of the land if he determines
17 that scarcity of land for private use in the area of the land to be sold
18 has resulted in unrealistic land values. Before the commissioner deter-
19 mines the purchase price for land which is located in a municipality and
20 which is to be sold under this section, he shall consult with the
21 assessor of the municipality. The lottery shall be conducted in public
22 by the commissioner or his representative. An applicant may not be
23 selected to purchase land unless he is present on the date and at the
24 place that the lottery is conducted unless medical reasons, attendance
25 at school, or military service [OUTSIDE THE STATE] prevent attendance.
26 [AN APPLICANT MAY BE REPRESENTED BY AN AGENT ON THE DAY OF THE LOTTERY
27 IF THE LAND OFFERED FOR SALE IS COMMERCIAL, INDUSTRIAL, OR AGRICULTURAL
28 LAND.] On the day of the lottery a purchaser selected by lot shall
29 deposit an amount equal to five percent of the purchase price, or if the

1 purchaser elects to use land discounts granted under AS 38.05.058, five
2 percent of the purchase price after deduction of the discount. If the
3 land is designated for homestead entry, the applicant selected by lottery
4 for homestead entry must file an application under AS 38.09.030(a).

5 * Sec. 4. AS 38.05.077(a) is amended to read:

6 (a) The commissioner shall designate remote parcel selection areas
7 and shall dispose of remote parcels in accordance with AS 38.04.020.
8 The commissioner may set the number of remote parcels that may be
9 selected in each remote parcel selection area. A remote parcel may be
10 purchased under AS 38.05.078 or an applicant may receive a patent to a
11 remote parcel under AS 38.09. A remote parcel purchased under AS 38.05.-
12 078 may not exceed 40 acres. A remote parcel acquired under AS 38.09
13 may not exceed 160 acres.

14 * Sec. 5. AS 38.05.077(b) is amended to read:

15 (b) The commissioner may designate remote parcel selection areas
16 where staking will be restricted to aliquot parts when parcels are 40
17 acres or larger and shall prescribe parcel selection procedures for each
18 remote parcel selection area designated under (a) of this section. The
19 parcel selection procedures shall include

20 (1) the maximum size of a remote parcel that may be selected
21 in the parcel selection area;

22 (2) (repealed)

23 (3) the minimum distance between remote parcels in the parcel
24 selection area;

25 (4) parcel dimensions, configuration, orientation and other
26 parcel design requirements;

27 (5) a description of land within the area that may not be
28 included in a parcel;

29 (6) a requirement that landmarks, monuments or other points

HB 2

REP
FANNING

March 10, 1982

HB-2

Amendment

Add the following to the first page HB-2.
as per Ted Smith.

Add line 17

(b) A homestead entry pursuant to section (a) may not exceed 160 acres unless the land is classified as agricultural in which case the entry may not exceed 320 acres, and title shall be restricted pursuant to AS 38.05.321.

or as per Committee add the following to line 17

and title shall be restricted if required by AS 38.05.321 (a).

Expel line

Do Treaty Indians
to serve Migratory fowl

C-48

1 be used as points of reference for the measurement of distances within
2 an area; and

3 (7) specification for the type of stakes to use to mark the
4 corners of a parcel.

5 * Sec. 6. AS 38.05.077(d) is amended to read:

6 (d) Not later than 15 days after staking the exterior boundaries
7 of a remote parcel, the person who staked the parcel shall file a sketch
8 plat with the department which shows the location of the remote parcel.
9 At the time of filing the sketch plat, the person who staked the parcel
10 shall apply to lease the land or apply for homestead entry under AS 38.-
11 09. An application [TO LEASE THE LAND] shall be on a standard form
12 prepared by the department. The annual rental payment for the first
13 year of the lease shall be submitted to the department with the applica-
14 tion. After the application to lease a remote parcel is approved, the
15 commissioner shall offer to lease the land to the person who staked the
16 remote parcel. A lease granted under this section shall contain the
17 following terms:

18 (1) a remote parcel may be leased for five years;

19 (2) a remote parcel lease may be renewed at the option of the
20 lessee for a second five-year period under the same terms as provided
21 for the first five-year period of the remote parcel lease;

22 (3) a rental payment shall be paid annually and shall be \$10
23 for each acre;

24 (4) unless the land is surveyed, the lessee shall, within one
25 year of approval of the lease application and continuously for the lease
26 period, physically delineate the boundaries of the parcel by brushing a
27 line so that they are readily visible from the ground.

28 * Sec. 7. AS 38.05.077(1)(3) is amended to read:

29 (3) certify that he has not previously leased a remote parcel

1 from the state nor made application for a homestead entry on state land
2 within eight years immediately preceding the date of staking a remote
3 parcel.

4 * Sec. 8. This Act takes effect July 1, 1982.
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*Moved by Halford -
Adopted as Committee Substitute*

Bradley ✓

Original sponsors: Beirne, Bettisworth
and Randolph

1 IN THE HOUSE

BY THE RESOURCES COMMITTEE

2 CS FOR HOUSE BILL NO. 2 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to homesteads; and providing for an
7 effective date."

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

9 * Section 1. AS 38 is amended by adding a new chapter to read:

10 CHAPTER 09. HOMESTEAD ENTRY.

11 Sec. 38.09.010. HOMESTEAD ENTRY. (a) The director may designate
12 and make available for homestead entry under this chapter state land
13 available

REDUNDANT

14 (1) under AS 38.05.057 if the director has classified the
15 land for agricultural purposes under AS 38.05.062; or
and the title will be agriculture rights only

16 *ford* - (2) under AS 38.05.077 unless the director determines that
17 the land is more suitable for recreational or residential use.

18 (b) A homestead entry made under AS 38.05.057 may not exceed 320
19 *Halford* acres, and title shall be restricted ^{if} ~~as~~ required by AS 35.05.321.

20 (c) A homestead entry made under AS 38.05.077 may not exceed 160
21 acres.

22 Sec. 38.09.020. QUALIFICATIONS FOR HOMESTEAD ENTRY. A person is
23 qualified to apply for a homestead entry under this chapter if the
24 person is

25 (1) qualified under AS 38.05.057 to participate in the dis-
26 posal of land by lottery; or

27 (2) qualified under AS 38.05.077 to make an entry under the
28 remote parcel disposal procedures.

29 Sec. 38.09.030. APPLICATION FOR HOMESTEAD ENTRY. (a) A person

(5) causes a survey acceptable to the director to be made if the land is unsurveyed

11aac53

1 who has staked the exterior boundaries of a homestead entry under
2 AS 38.05.077 and a person who has been selected to purchase land desig-
3 nated for homestead entry by lottery shall apply for the homestead entry
4 on a form prepared by the department.

5 (c) The department may charge a fee for filing the application.

6 Sec. 38.09.040. PATENT FOR HOMESTEAD ENTRY. (a) A person who has
7 made a homestead entry under this chapter and filed an application under
8 AS 38.09.030(a) is entitled to a patent if, within seven years from the
9 date of the application, the applicant

10 (1) occupies the land for a total of 35 months;

11 (2) erects a habitable dwelling;

12 (3) clears and prepares for cultivation not less than

13 (A) one-fourth of the land entered if the land is limited
14 to agricultural use; or

15 (B) one-eighth of the land entered if the land is not
16 limited to agricultural use.

Handwritten note: "Handwritten"

17 (4) [BRUSHING] (5) [SURVEY]
18 (b) The director shall require the applicant for homestead entry
19 to submit proof necessary to establish compliance with the requirements
20 of (a) of this section.

21 (c) As used in this section, "habitable dwelling"

22 (1) means a permanent dwelling of not less than 200 square
23 feet and its fixtures and facilities;

24 (2) does not include a mobile home unless it is permanently
25 attached to a permanent foundation.

26 Sec. 38.09.050. HOMESTEAD APPLICATION VOID. An application for
27 homestead entry and the interest of the applicant under the homestead
28 entry is void if the applicant fails to comply with a requirement of
29 AS 38.09.040(a). On the request of the director, the attorney general
shall bring an action to declare the homestead entry void and, if neces-

sary, to eject the homestead applicant.

* Sec. 2. AS 38.04.020(g)(3) is amended to read:

(3) Land designated agricultural, commercial, industrial, or suitable for other disposal may [SHALL] be sold under AS 38.05.055 or 38.05.057. Land designated agricultural or suitable for disposal other than as commercial or industrial may be sold under AS 38.05.077.

* Sec. 3. AS 38.05.057(a) is amended to read:

(a) The commissioner may dispose of land, including land limited use for agricultural purposes, by lottery. The purchase price of land sold by lottery shall be the fair market value of the land as determined by the commissioner. The commissioner may sell land by lottery for less than the fair market value of the land if he determines that scarcity of land for private use in the area of the land to be sold has resulted in unrealistic land values. Before the commissioner determines the purchase price for land which is located in a municipality and which is to be sold under this section, he shall consult with the assessor of the municipality. The lottery shall be conducted in public by the commissioner or his representative. An applicant may not be selected to purchase land unless he is present on the date and at the place that the lottery is conducted unless medical reasons, attendance at school, or military service [OUTSIDE THE STATE] prevent attendance. [AN APPLICANT MAY BE REPRESENTED BY AN AGENT ON THE DAY OF THE LOTTERY IF THE LAND OFFERED FOR SALE IS COMMERCIAL, INDUSTRIAL, OR AGRICULTURAL LAND.] On the day of the lottery a purchaser selected by lot shall deposit an amount equal to five percent of the purchase price, or if the purchaser elects to use land discounts granted under AS 38.05.058, five percent of the purchase price after deduction of the discount. ~~Notwithstanding any other provision of this section~~ The commissioner may offer land classified under AS 38.05.³⁰⁰362 for agricultural purposes under this section for homestead entry under AS 38.09. If the land is designated

1 for homestead entry, the applicant selected by lottery for homestead
2 entry must file an application under AS 38.09.030(a).

3 * Sec. 4. AS 38.05.077(a) is amended to read:

4 (a) The commissioner shall designate remote parcel selection areas
5 and shall dispose of remote parcels in accordance with AS 38.04.020.
6 The commissioner may set the number of remote parcels that may be
7 selected in each remote parcel selection area. A remote parcel may be
8 purchased under AS 38.05.078 or an applicant may receive a patent to a
9 remote parcel under AS 38.09. A remote parcel purchased under AS 38.05.
10 078 may not exceed 40 acres. A remote parcel acquired under AS 38.09
11 may not exceed 160 acres.

12 * Sec. 5. AS 38.05.077(b) is amended to read:

13 (b) The commissioner may designate remote parcel selection areas
14 where staking will be restricted to aliquot parts when parcels are 40
15 acres or larger and shall prescribe parcel selection procedures for each
16 remote parcel selection area designated under (a) of this section. The
17 parcel selection procedures shall include

18 (1) the maximum size of a remote parcel that may be selected
19 in the parcel selection area;

20 (2) (repealed)

21 (3) the minimum distance between remote parcels in the parcel
22 selection area;

23 (4) parcel dimensions, configuration, orientation and other
24 parcel design requirements;

25 (5) a description of land within the area that may not be
26 included in a parcel;

27 (6) a requirement that landmarks, monuments or other points
28 be used as points of reference for the measurement of distances within
29 an area; and

1 (7) specification for the type of stakes to use to mark the
2 corners of a parcel.

3 * Sec. 6. AS 38.05.077(d) is amended to read:

4 (d) Not later than 15 days after staking the exterior boundaries
5 of a remote parcel, the person who staked the parcel shall file a sketch
6 plat with the department which shows the location of the remote parcel.
7 At the time of filing the sketch plat, the person who staked the parcel
8 shall apply to lease the land or apply for homestead entry under AS 38
9 09. An application [TO LEASE THE LAND] shall be on a standard form
10 prepared by the department. The annual rental payment for the first
11 year of the lease shall be submitted to the department with the applica-
12 tion. After the application to lease a remote parcel is approved, the
13 commissioner shall offer to lease the land to the person who staked the
14 remote parcel. A lease granted under this section shall contain the
15 following terms:

16 (1) a remote parcel may be leased for five years;

17 (2) a remote parcel lease may be renewed at the option of the
18 lessee for a second five-year period under the same terms as provided
19 for the first five-year period of the remote parcel lease;

20 (3) a rental payment shall be paid annually and shall be \$1
21 for each acre;

22 (4) unless the land is surveyed, the lessee shall, within one
23 year of approval of the lease application and continuously for the lease
24 period, physically delineate the boundaries of the parcel by brushing
25 line so that they are readily visible from the ground.

26 * Sec. 7. AS 38.05.077(i) is amended by adding a new paragraph to read:

27 (4) certify that he has not made application for a homestead
28 entry on state land within the eight years immediately preceding the
29 date of staking a remote parcel.

1 * Sec. 8. This Act takes effect July 1, 1982.

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Land disposal is an unequal give away.

① free simple title to any state lands not ag land.

② designation of land

class I

class II

class III

class IV

③ sweat equity

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remote parcel
clearing but not

eligibility to receive ag loan

Patent: U

pat in "line brushing"

CS HB 2 introduced by Berine

Section by Section Analysis

March 9, 1982

Section 1

The bill amends existing law and sets up a new chapter in Title 38, Chapter 9 entitled Homestead Entry Program.

Sec 38.09.010 Homestead Entry

It establishes a homestead entry program and designates the director to make available state land for homesteading. It also allows the director to exclude land from homesteading if it is more suitable for recreational or residential use. It states that homestead entry land under the remote parcel program (38.05.077) may not exceed 160 acres, and land distributed for homestead entry under the existing lottery program (38.05.057) will not exceed 320 acres.

Sec 38.09.020 Establishes Qualifications for Homestead Entry

A person may qualify for homestead entry if they have qualified under the current remote parcel staking program, or lottery program.

Sec 38.09.030 Application for Homesteading

A simple form is required in addition to qualification by staking or by lottery selection to apply for the homestead entry program. This section authorizes the department to charge a fee for filing.

Sec 38.09.040 Patent for Homestead Entry

Provides that an applicant who applies for homestead entry program is entitled to a patent if, within seven years from the date of application, the following requirements are met:

1. The applicant occupies land for a total of 35 months,
2. erects a habitable dwelling, and
3. clears and prepares for cultivation not less than 1/4 of land entered if it's agricultural, and 1/8 if land is not classified as agricultural.

Sec 38.09.050 Homestead Application Void

Essentially says the applicant must fulfill all requirements as stated in 38.09.040. This Section also provides that the director shall require proof of compliance with those requirements. Defines "habitable dwelling" as a permanent dwelling of not less than 200 sq. ft. in size, and excludes mobile homes not permanently attached to a permanent foundation.

It also provides a mechanism whereby the director, when he has found that the homesteader is not in compliance and has not met the requirements of the program, may declare the application void, and may enlist the aid of the attorney general to eject the homestead applicant.

Section 2

Makes a technical amendment to AS 38.04.020(g) (3) to allow DNR to dispose of state lands under the homestead program. Currently state land available for disposal can only be disposed of under AS 38.05.055 (auction) or AS 38.05.057 (lottery). This change will allow disposal by staking of agricultural or lands other than commercial or industrial. Technically, this change should have been made at the time AS 38.05.077 was adopted.

Section 3

Makes technical amendments to AS 38.05.057(a) to allow homestead disposal of state land by lottery. Additionally, the original language is cleaned up to delete the qualifier "outside the state" on several allowable reasons for not being able to attend a lottery sale. Also, the provision that an agent may represent an applicant at a commercial, industrial, or agricultural land lottery is deleted.

Section 4

Makes technical changes to AS 38.05.077(a) to allow homestead disposal by remote parcel staking. It also distinguishes between a purchased remote parcel of up to 40 acres (under AS 38.05.078) and a homesteaded remote parcel of up to 160 acres (under AS 38.09).

Section 5

Amends AS 38.05.077(b) to enable the director to designate remote parcel areas where staking will be by aliquot parts and will be restricted to parcels larger than 40 acres in size.

Section 6

Makes technical amendments to AS 38.05.077(d) to provide for an applicant to apply for homestead entry at the time he or she files a sketch plat of the remote parcel.

Section 7

Disqualifies a person who has participated in the homestead entry program from applying again in the remote parcel program for a period of 8 years.

Section 8

Establishes an effective date of July 1, 1982 for the bill.

HB

8

COMMITTEE REPORT

HOUSE

2/17/81

FURTHER: JUDICIARY

(11)

Date: March 16, 1982

Mr. Speaker:

The Committee on RESOURCES has had HB 8

"An Act providing for the management and control of certain land in the state; and providing for an effective date."

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

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for _____ same title
 new title
- and recommends _____
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendations
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

[Signature]
[Signature]
[Signature]

MEMBERS HAVING
OTHER RECOMMENDATIONS:

[Signature] NO REC
[Signature] NO REC

[Signature]
 CHAIRMAN

Teleconference Message from Nevada Senator Dean Rhoads

Speaking on the Sagebrush Rebellion (Tundra Rebellion) - March 11, 1982

Sen. Rhoads is responding to question from Rep. Fanning: "Appreciate very much your comments relative to how you feel about whether or not Alaska should proceed, - specifically, how the legislature should proceed with passage of this legislation."

Thank you very much Mr. Chairman and members of the Committee. I appreciate the opportunity to testify on such an important topic as the Tundra Rebellion. It has been a long time since Nevada passed that bill, (April 1979.) Shortly after that, I had the opportunity to come to Alaska in July to tour the state. I really fell in love with it.

I would like to go back a little bit and bring you up to date as to why we feel, not only myself or the legislators in Nevada, but all of the other legislators I have talked to; quite frankly, in the west, feel that passage of the Tundra Rebellion is so important. Much has happened since 1979. The rate of success have been unbelievable. Every western state has either passed it or considered it at one time or another.

I am sure that you are all aware, Nevada, Utah, Wyoming, New Mexico, and Arizona successfully passed very strong legislation on the Rebellion. The big campaign issue in many of the western states, and even in the presidential election in 1981, (President Reagan called me during the campaign, personally on the phone, and discussed it with me later.) Later, he called me back to Washington D.C., where I briefed him for about an hour on problems on both land and water throughout the west, and Alaska. I was very encouraged, and he was very supportive of our efforts.

Earlier in the campaign when John Connolly was running for president, Texas also called me down to Las Vegas.....(transmission break-up)..... so we got a President and a Secretary of Interior and many others to declare themselves Sagebrush Rebels. I think that was quite a success up to that point.

Really, whether you supported the goals of the Sagebrush Rebellion or not, I think much was accomplished. We certainly had a change in attitude, even before the election actually happened, (particularly in our western states), with federal land management people.

After the election, we have less rules and regulations, and a lot of executive orders were suspended. Some federal lands were transferred over for community expansion. There has been much discussion now on

land that the states have had coming from the federal agencies since they became states.

In 1980 of course, Congressman Santini introduced a bill in the house, and Senator Hatch introduced a bill in the Senate. Most important of all, I think, is that almost every household in America was exposed to the question, "why should the federal government own one-third of America, (one out of every three acres in the United States?")

Yet, as we went down the road, we were disappointed. The administration, and Secretary Watt did not pursue the cause, (particularly the goal of the Sagebrush Rebellion). They sought to de-fuse the issue. Secretary Watt told me on several occasions - that he wanted us to continue the cause - because he needed us badly so he could respond by implementing in a new direction.

The Santini/Hatch bills of course, which were introduced, enhanced our bill, and complemented our Sagebrush Rebellion legislation. It's states would comply with many of the same federal policies that exist today. Actually, that federal legislation was not really that good, which we practically had to "grandfather"; in the time and inadvisable so to speak, that we would continue managing the land in this manner. I have been back there in the last six months six times. The bills are breathing slightly; they have real problems.

The Santini legislation - (BLM land only). We must realize that we must go through two really tough committees. One chaired by Mo Udall, Utah, and John Seiberling of Ohio, both of whom are extreme environmentalists. Neither are particularly fond of the Sagebrush Rebellion. We have little chance for a hearing in that committee.

Senator Hatch's bill (including Forest Service and BLM both), had several sponsors on it when the bill was introduced. Some Senators have gone so far as to remove their names from the bill later on. I think this is the main reason this situation has worsened.

There is practically no chance of a hearing on that particular measure. There is particularly one bad feature of this Hatch bill; that the two most important people on there, Senator McClaren the chairman of the committee and Senator Malcom Walt of Wyoming, were not sponsors of that legislation. That makes it tough to get a bill through the committee and the committee chairmanship.

The legislation to transfer lands to state in massive amounts is going to be difficult at this time. Our legal case is pending in the ninth circuit court in San Francisco, and will take several months before we get an answer. At that time, we will know what facts we have. I think we need to ask ourselves, why, and what happened? There wasn't that much thwart to give one third of America to the states for nothing.

The reason, I am sure, was because Americans are a trillion dollars in debt, (the administration is looking at 90 billion dollar budget deficit per year.) Some concern has also been started about

transferring management from one bureaucracy to another. So I guess we must ask ourselves, where do we go from here? We still have a story to tell, and I think we told it well, up to this point. It is not right that 64 % of west is owned/controlled by Washington D.C. Our founding fathers, I am sure, completely misread the west.

The 160 homesteads worked well in Ohio, and other midwestern states; but they did not work well for Nevada and some of our other more arid states. In particular, they didn't fare in a state like Alaska. They certainly did not want to see one third of the United States end up being owned by the federal government. This is precisely what the architects of our constitution tried to avoid. Thomas Jefferson in 1785 wrote, "The federal government should sell all of it's vast domain to private owners, and it should never after, in any case, revert to the United States."

What has happened in the Unites States, is what Thomas Jefferson wanted to avoid. Government operation of the means of production. What we need to do, I feel, and many colleagues of ours also feel this way - is that, we need to develop a Western Public Lands program which will assist the national economy, budgets of the state and local governments, as well as benefit'ng the American consumer. We must explore new ideas, and new frontiers in transferring of authority/ownership of federal agencies, that will not only benefit all Americans; but, will also make the Sagebrush Rebellion success implicitly painful (inadvisible). We must also make the Sagebrush Rebellion, with the Tundra concept, sensible to non-western states.

What we need to do, is to shift gears quietly. We need to continue to pressure legislation such as the Tundra Rebellion; continue our legal actions, to state, congress, and the administration. But, we need to explore new ground. We need to make massive land exchanges, and we definitely should encourage disposal of surplus lands to be sold to the private sector. We must explore a new era of land ownership, some people are calling it privatization. In the west, and I am sure it would work in some places in Alaska, we could sell surface rights only. Sell it at realistic prices. Present user would have first option on that; over a thirty to forty year reasonable pay period. Lands around the cities and towns, needed for community expansion, should be sold to private enterprise and put on the tax role. All recreation and access rights on all lands, should be transferred over to state and local control. We already own the wildlife, there is no reason why we shouldn't manage the habitat.

We should let the state and local government resolve conflicts and recreations - hunters and fishermen, should not be touched. Gas and oil rights should be retained by the federal government. State and local governments should receive a bigger share of the pie for managing costs. All of the above revenues, should be ear-marked to reduce the national debt; and not be used to create new programs.

We seem to have lots of support building up for some of these policies I mentioned above. The President's budget, (many of you are familiar with it), in his budget message he noted, he has budgeted for

1983 one billion dollars for selling federal property and the designation of federal property, buildings and equipment, and also federal land. (transmission break-up)..... In 1984, four billion dollars has been budgeted and in 1985, four billion dollars for a total of nine billion in the next three years.

In my travels back there, state senator Laxalt for the first time discussing the public land issue, is very excited about this new proposal; and many other congressmen and senators I talked to were too. The administration is setting up a special White House task force to look into the legal hurdles that will have to be taken care of. As many of you are aware, I think the Federal Land Management Policy Act of 1976 requires that any land over 2,500 acres that is sold has to have the approval by Congress. I am sure that most of you, and we certainly are in the west, that that act, called the "organic act", was probably the most harmful and far reaching act ever passed (involving public lands), in the west. This is probably what fired up the Sagebrush Rebellion.

For the first time, it stated the government would no longer dispose of land in an orderly fashion; but would retain ownership in perpetuity. It must be amended severely. I think the administration is taking a good tough look at it. For this reason alone, the passage of the Tundra Rebellion would help greatly in that effort.

The administration is setting up a "Property Review Board". They will recommend probably in priority the properties, which would include, federal land, which is to be sold. In my opinion, these actions complemented the President's federal advisory committee. It will do much to change future management policies on federally owned lands. The President's Federalism Advisory Committee, of which I am a member, there are some 40 of us; senators, congressmen and (transmission break-up) etc. Mr. Donald Smith, (Anchorage), is on the committee representing Alaska I believe. Senator is the chairman of that commission; while I am the chairman on the sub-committee on lands and water. Many of the ideas I have mentioned, will be discussed on the 22nd of this month back in Washington D.C.; at our federalism sub-committee meeting. That same day, we have a meeting with the President. We will be talking to him about some of these issues.

As I see it, I am sure as we discuss these issues, it is possible in round-two, of the President's federalism program, (this is my name for programs of his that may come down the road), that the transfer of control of federal land will be prime candidates for state/local control. I think that that is the name of the game of the federalist program. I am sure that the passage of the Tundra Rebellion will greatly add support to this direction, particularly to the President's federalist role.

With that, I would like to conclude, and urge you all on the committee to pass the Tundra Rebellion. I think it would serve as a signal back to Washington that we want some changes made. Thank you very much.

and I do not blame you for being concerned. I think we are sincere, I guess we just haven't been able to get the job done.

Rep. Fanning: As I understand your comment, passage of the Sagebrush Rebellion preclude, and in fact, you would be in agreement with the State mandating the assurance of access to other State lands and across private lands for traditional purposes; such as hunting, (be it subsistence, or sport, and fishing), could and should, be mandated.

Let me ask you another question, that many legislators up here have, or that has been seen as a stumbling block. In the Alaska Legislature, this House bill has been introduced for several years; but, there are some folks in our legislature who feel that before we deal with this,

we should pass an amendment to the constitution of the State, relating to the land disclaimed by the State under the act admitting Alaska into the union. I know that several other western states have that same provision in their constitution, (Article 12 in our constitution - the disclaimer agreement.) I wonder if you could shed some light. Have other states dealt with these issues? In what order? What would your suggestions be?

Sen. Rhoads: I think our attorney general gave us the best opinion as to what to do with that. We, and other states, considered putting that on the ballot. They told us it wouldn't do us any good, because, congress would also have to reject it. Our attorneys told us, that it is a moot question. It was illegal because prior court cases, (mainly a case in Alabama - Palmer vs. Akin.) They did not have the right to make western states put that into their constitution, but they let the eastern and mid western states leave it out. They actually discriminated against us, and Alaska.

They felt that when the legal action goes through the court, such as we now have in the ninth circuit court. The disclaimer clause will be ruled illegal. That is what our attorneys are telling us. We have not gone to the effort of taking it out of our constitution, for these two reasons: 1) Our attorneys say that when it goes through the court cycle, hopefully, it will be ruled illegal. The point is - if we or you take it out of the constitution, congress of the United States has to also pass it back there. As you know, it will be mighty tough to get it through those two committees.

HB 8

LARRY HAYDEN
3604 East 18th Avenue
ANCHORAGE, ALASKA 99504

TESTIMONY PRESENTED
TO THE
HOUSE RESOURCE COMMITTEE
March 11, 1982

THE TUNDRA REBELLION

Good afternoon, gentlemen. This is Larry Hayden in Anchorage. Our good friend Senator Rhodes has made some excellent arguments in favor of the Tundra Sagebrush Rebellion.

Let me add that by this teleconference process today we are performing a great service in alerting the rest of the country that federal ownership and management of the public lands are causing great unhappiness.

As Representative Randolph has just stated, President Reagan has publicly stated on numerous occasions that he favors turning major tracts of federal land over to the states; and Secretary of the Interior James Watt was deeply involved in the Sagebrush Rebellion just prior to his appointment. We have a more favorable environment in Washington D.C. now than has existed in 100 years. Alaska's challenge now is to take advantage of it.

It is absolutely imperative that the citizens of Alaska control the land upon which they must live.

We need to realize that property rights are the basis of individual rights and those are best managed and maintained at the closest proximity to the individual.

If nothing else, we want to have greater partnership in the management of federal lands within our borders. We cannot emphasize too much that western resource states are our natural allies in fending off any efforts by Congress to limit, tax or confiscate state resource revenues.

We need to have the entire Alaska legislative body pass favorably this Tundra Rebellion bill which would let the U. S. Congress and the various states know that Alaska wants less federal lands within its boundaries.

Does anyone have a question for me?

Judiciary

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. HB 3
Title Providing for Management & Control of State Land
Requested by House Resources Date 3-25-82

II. FISCAL DETAIL

Agency Affected Department of Natural Resources
Program Category Affected NRMEC
BRU, Program, Or Subprogram(s) Affected See below
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		22,000	ESTIMATE			

FUNDING (Thousands of Dollars)

GENERAL FUND		22,000				
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

FULL TIME		250	ESTIMATE			
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

If the constitutional amendment described in Section 3 of the bill passes, the Department would have management authority over approximately 200 million acres of existing federal lands. The Department currently manages approximately 50 million acres of patented and tentatively apposed state lands; the state's land entitlement is 102 million acres. The estimate described above is based on the fact the state would assume responsibility for mining claims, fire protection, water adjudication, oil and gas leasing, timber sales and general land use (disposals, leases, etc.) on the newly acquired lands. The figure given is a rough estimate - the exact figure would depend on the timing of the transfer and legislative and executive policy on management of the lands. (For comparative purposes, the U.S. Forest Service Spends over \$90 million a year and employs 1200 people to manage the 23 million acres in Alaska for which that agency is responsible.)

IV. DATE 3-25-82 PREPARED BY Mark Wittow *Mark Wittow*
AGENCY DMR
Original: Legislative Finance PHONE 465-2400
cc: Budget and Management
Prime Sponsor (First Legislator Named)
33-001 (Rev. 12/81)

TUNDRA REBELLION FACT SHEET

By REPRESENTATIVE DICK RANDOLPH

1. What is the Sagebrush Rebellion? Originally under the Constitution, states were sovereign entities which gave the federal government limited powers to act as their agents in such matters as mutual defense and as trustee for lands to be transferred to new states upon admission to the union. This arrangement worked out fairly well for eastern states which have little or no federal land within their boundaries. However, as western states were admitted to the Union, the federal government began to require disclaimers from new states as to their rights to the federal land within their borders as a condition of statehood. These disclaimers did not bother many states because at the time they were made it was federal policy to dispose of these lands anyway. In 1976, however, Congress passed the Federal Land Policy Management Act (Organic Act) which declared that the federal government would from now on hold these lands in perpetuity. This act (FLPMA) touched off the 'sagebrush rebellion' which uses two theories to support it.

(1) FLPMA was a clear breach of trust by the federal government of its Constitutional duty to transfer this land to the states, and

(2) The Constitutional Equal Footing Doctrine requires that western states receive title to this public land on an equal basis with eastern states.

The 'Tundra Rebellion' enacts legislation which declares state ownership of public lands so that through judicial and political efforts, this land can be transferred to local and private interests.

2. Why is the 'Sagebrush Rebellion' important? In Alaska, we refer to this movement as the Tundra Rebellion. Land is the most basic resource in production. Unless land is allowed to be used for human purposes, both recreational and productive, our economy will be stifled and consumers will suffer. Federal policy has been to deter productive use of public lands with the result that our nation is dependent on foreign sources of oil and other minerals. This dependence is unnecessary and has us in a near war situation in the Middle East. Most important is the issue of responsive government and individual freedom. Transfer of these lands to state, local, and ultimately private control insures that those who live on or near this land can decide its best use. That isn't possible when unelected bureaucrats living thousands of miles away control the land. Who has more concern for the land? Those who live on it or unelected bureaucrats in Washington? And who should decide its use, Alaskans or

someone else? Although some question the ability of Alaskans to manage their own land, the 'Tundra Rebellion' asserts that we are worthy and deserving of this trust. With eventual transfer of this land to private hands based on use principles, individuals will have the freedom to decide their destiny and better their lives through use of the land. Thirteen western states (sometimes called the new colonies) contain about 90% of all federal lands. This rebellion has become the new American revolution, fighting a distant federal government which imposes hardships on the western colonies.

3. What are the chances of ultimate success? Clearly, the 'Tundra Rebellion' is Alaska's best chance available to rectify the unjust treatment that it is receiving from the federal government, and to develop the economy of our state. For that reason alone it is worth doing.

So far, six states have passed 'rebellion' legislation. They are Nevada, Utah, Arizona, Washington, Wyoming, and New Mexico. All thirteen western states will hopefully pass this type of legislation by 1981. It is incredible that Alaska, with about 95% of its land in federal ownership, has not taken the lead in this effort.

The 'Rebellion' effort has gone beyond the hopes of judicial satisfaction. Political pressure is mounting. Legislation has been introduced in Congress to rectify the situation, and with western states uniting and increasing the pressure, relief may be coming from that avenue. Although Secretary Andrus disclaims the 'Rebellion's' credibility, he has so far been afraid to challenge Nevada in court, and some Interior Department solicitors have admitted the chances of success for Nevada. There is considerable legal precedence on the side of the rebellion. Three presidential candidates have endorsed the 'rebellion' concept. Votes in state legislatures which have passed this legislation have run 5 to 1 in favor of the 'rebellion.' It is clear that we have everything to gain and nothing to lose by this course of action. The initiative effort will encourage elected officials to act responsibly on this issue.

THE TUNDRA REBELLION
March 5, 1980

This is meant to be an easy to understand explanation of issues involved in a 'Sagebrush Rebellion' type of statute for Alaska and the court proceedings which would follow.

Firstly, one might ask why Alaska should pursue this course at all. The reasoning behind this effort is one of more local control with individual control over one's own life as an ultimate objective. The theory is that federal control offers the least amount of Alaskan and individual choice. If title is transferred into state hands, Alaskans will have more control, and the likelihood of eventual transfer of land into private ownership is greatly enhanced.

Since an understanding of the history of federal land control is essential to seeing the whole picture, and since the courts will likely lean heavily on historical factors, a brief historical sketch is appropriate.

Before the French and Indian Wars, France claimed lands west of the 13 colonies all the way to the Mississippi River. When they lost the French and Indian Wars, France gave this land to England. Upon this grant, the King of England proclaimed these lands to be 'Temporary Indian Land' and unavailable for extension of existing colonies. When the Declaration of Independence occurred, each colony became an independent sovereign state and started making claims to expand westward. Next came the Articles of Confederation.

The Articles of Confederation gave Congress no power to own land within a state. Ordinances and resolutions enacted under the Articles of Confederation confirmed the trust of the public lands and acknowledged the duty of the feds to

dispose of the land. Included in these was the Northwest Ordinance regarding land north of the Ohio River. It provided for the admission of new states on an equal footing and for a duty on Congress to dispose of this land. Congress was to dispose of this land until the area became a state, in which case it would be transferred to the state along with sovereignty.

Under the Articles of Confederation, each state maintained its sovereignty but the federal government was charged with resolving boundary disputes. The Confederacy did not own one foot of land in the original 13 colonies.

Also under the Articles of Confederation, original states were to give back to the federal government claims to westward land which they had made following the Declaration of Independence. This was so the feds could hold this land in trust, both to sell and pay off revolutionary war debts, and to transfer to new states upon admission.

It is the contention of Nevada, based on legal arguments discussed elsewhere, that the new Congress under the Constitution succeeded the old Congress as the trust administrator for the land to be transferred to new states.

The Constitution itself manifests an intention that Congress continue to hold the unappropriated lands in trust. This is evidenced in: (1) property clause of Article IV, Section 3; (2) the framers' intentions to create a federal system of government; (3) from express grant of power to Congress to admit states and implied power to acquire territory; (4) the limitation on the federal government's powers to acquire land for its own use in the "needful buildings" clause of Article I, Section 8; and (5) from the Equal Footing Doctrine. These will be briefly discussed elsewhere.

The first two new states admitted were Vermont and Kentucky in 1791 and 1792. No terms or conditions were placed on their admission to the union and the federal government kept no land within those states. Tennessee was

the third new state admitted in 1796 with specific language in their statehood act which guaranteed them admission on an equal footing with the original states in all respects whatsoever.

As new states were admitted to the Union, very little land was retained by the federal government until the Rocky Mountains were reached. From that point westward, most states had imposed on them, as a condition to becoming a state, that they forever disclaim all rights and title to any lands or other property not granted to the state under the authority of the Act. Because of this term of these statehood acts, many states, including Alaska, wrote into their state constitutions this disclaimer on land. It is interesting to note, however, that Section 3 of the Alaska Statehood Act, also requires that the Constitution of the State of Alaska not be repugnant to the Constitution of the United States. It is clear that any land disclaimers in statehood acts are ineffective to derogate from the grant under the Equal Footing Doctrine.

The Equal Footing Doctrine is a well settled truism of Constitutional law which has been developed by judicial interpretation. The actual term "equal footing" does not appear in either the Constitution or in the Articles of Confederation. The Supreme Court has repeatedly referred to the condition of equality between the states as if it is an inherent attribute of the federal union. In short, the Equal Footing Doctrine prohibits Congress from imposing by consent or otherwise, conditions on admission to statehood which infringe upon the equality of the new state in relation to the other states. Cases, so far, leave the question open as to the application of the Equal Footing Doctrine to unappropriated lands within a state. At least this establishes no precedent against Alaska. Alaska would have to argue that the subject of unappropriated lands is a necessary incident of internal sovereignty affecting the dominion

or eventual dominion of the state over its unappropriated lands. The leading case on 'Equal Footing' (The Pollard case) clearly establishes that since the original thirteen states were specifically granted ownership of all navigable waters and the land thereunder, then the other states are also entitled to such ownership. This brings up an interesting question regarding federal rights to offshore natural resource rights and wild and scenic rivers designations.

One argument given by opponents of the 'sagebrush rebellion' is that the Equal Footing Doctrine only applies to political rights. This is countered, however, by the Pollard case and the fact that without federal relinquishment of land, states would be denied political "rights" such as large property tax bases.

Another Constitutional area involved in this issue is the "Property Clause" of Article 4 Section 3. This clause gives Congress power to dispose of and make all needful rules and regulations respecting territory or property of the United States. As can be readily seen, this clause is somewhat ambiguous in its application to the trust theory and Equal Footing Doctrine. State's advocates claim that this clause supports their case because it implies that Congress will dispose of its property, rather than keep it forever, and that the 'needful rules and regulations' only refers to those temporary ones which are applicable prior to disposal, or which specify the disposal itself. Opponents, on the other hand, argue that this clause only allows Congress to dispose of United States property if it so chooses, and that if it doesn't, then Congress may establish rules and regulations and keep the land forever. There are many complicated arguments in this regard, with the weight seemingly on the states' side. At any rate, it is likely that if a confrontation were to occur between the Equal Footing Doctrine and the federal government's interpretation of the property clause, the latter would yield. This is because of the relative importance of the two theories. The heavy

importance of the 'federal system of government' inherent in the Equal Footing Doctrine is a cornerstone of the Constitution. As such, it is more persuasive than an ambiguous interpretation of the property clause.

Another important concept in the 'sagebrush rebellion' issue is the "trust theory" which says that the federal government only holds land in trust for states until it can be transferred to them incident to statehood. The Articles of Confederation and ordinances thereunder recognized this trust theory, and, as mentioned in my historical discussion, the argument goes that this trust theory continued to be applied to Congress under the Constitution.

The Supreme Court has intimated on numerous occasions that it would deny the federal government the right to hold public lands permanently without the consent of the state. The Pollard case, mentioned previously, cites that whenever the United States shall have fully executed these trusts, the sovereignty of the new states will be complete throughout their respective borders, and they and the original states will be on an equal footing, in all respects whatever. Other cases indirectly support this trust theory, such as the Dred Scott case, which established that Congress cannot maintain what is in essence a territory or colony within any state in perpetuity.

In addition, a very strong argument can be made that the "necessary buildings, etc" clause of Article I, Section 8 of the Constitution clearly shows an intention for federal public land only to be held in trust. This clause specifically limits the federal government as to what land it can own within a state. This limitation includes forts, magazines and arsenals, dock yards, and other needful buildings upon consent of the state involved.

A brief examination of the constitutional powers of the states and the federal government is applicable to this issue as well. Under our Constitution the federal government was to have limited powers. Powers to remain with the

states were to be numerous and indefinite. Thus the power of the federal government was not to be exercised over internal or local objects such as land within states.

Some see Article 12, Section 12 of the Alaska Constitution as an impediment to a successful 'sagebrush rebellion' for Alaska. It is true that an Alaska 'sagebrush rebellion' initiative might be legally challenged as unconstitutional under Article 12, Section 12. However, this may not be true if the courts hold that federal retention of this land is unconstitutional in terms of the United States Constitution. Obviously, the Alaska Constitution would have to yield. In addition, HJR 51 calls for a constitutional amendment to be placed on the ballot which would take out that hindrance in our State Constitution.

Another potential problem with a successful legal challenge of federal control of Alaska land is the concept of sovereign immunity. This concept says that the federal government cannot be sued except in those cases where it has granted its permission. At first, Nevada was hoping the federal government would initiate suit against them over their statute. It became clear however, that the federal government chose to ignore the statute and put the burden on Nevada to find a way to initiate suit. Unfortunately, Nevada cannot bring the issue up very easily as a counterclaim to an ancillary suit by the feds, since counterclaims may not be for issues other than those which could have been brought as an original suit.

The way out of this dilemma appears to be a federal statute (28 USC 2409a) passed in 1972 which allows certain suits against the federal government in matters of settling title to land. One problem with this vehicle is that it contains a 12 year statute of limitations on suits. This means that any suit thereunder must be brought within 12 years of the date when the action arose or when the plaintiff would have known of the existence of the cause of action. The most likely argument is that since the statute was not in effect until 1972, an action couldn't have been

brought until that time and therefore Nevada, or Alaska, must bring suit by about 1984. Time is on the side of the federal government and they are probably delaying as much as possible and hoping to appropriate or reserve as much of the public land as possible prior to suit. It would behoove Alaska to start this process as soon as possible. Nevada's stance at this time is to wait in hopes of having other states pass similar legislation and join them in the suit. It is obvious that the Supreme Court is a political animal and that unified political pressure by western states will increase the possibility of success. One case relating to this issue pointed this out clearly by making the remark that the Supreme Court is a constitutional convention which is constantly in session.

It is to the state's advantage that there is no precedent on the issue of the Equal Footing Doctrine application to public lands. Alaska and Nevada could argue that not only are they unequal to the original 13 states, but that they are unequal to other public land states.

It is clear that any future suit by states to settle this issue will be based on the theory that the states should have received this land under the Equal Footing Doctrine shortly after statehood. Further, such suit would claim that since the land has not been transferred, it has been held in trust by the federal government for the states. Since there is no adequate remedy at law and since trusts are creations of an equitable nature, the remedy to be sought is an equitable one. The claim would be that the federal government has breached its trust responsibilities and that therefore a new trust administrator should be appointed. The only possibilities for a new trust administrator is the state itself or the courts. The courts do not have the administrative capacity to administer such a trust, and the trust would be virtually terminated if the state became the administrator. One other possibility is that as a remedy in equity, the court would order the feds

to begin the transfer of the land to the states with a timetable and certain conditions on interim management. The courts are reluctant to issue such orders to the federal government because they lack the capabilities to enforce such a decree short of a citation for contempt of court.

It is anyone's guess as to what would result from such a suit. Many guess that even though the legal weight of authority is on the states' side, the courts will find a way to resolve in favor of the feds because of the many years of established federal land management systems. They might be reluctant to disturb those systems. On the other hand, some theorize that the court will find some middle ground compromise position which will transfer at least a portion of the public lands to 'worthy' states on an equitable basis. In the end, since the courts rarely decide issues on the basis of principle, it is clear that political pressure will settle the issue. It is also clear that unless Alaska gains political leadership which will support this effort 100%, it may not be effective. This avenue for gaining state control of public lands appears to be about the only one available to us. If we pass it up, we may not get another chance short of Congressional action, mass civil disobedience, or secession from the United States.

NEVADA LEGISLATURE
SELECT COMMITTEE ON PUBLIC LANDS

LEGISLATIVE BUILDING
CAPITOL COMPLEX
CARSON CITY, NEVADA 89710



ASSEMBLYMAN KAREN W. HAYES, *Chairman*
SENATOR NORMAN D. GLASER, *Vice Chairman*
SENATOR DON W. ASHWORTH
SENATOR RICHARD E. BLAKEMORE
ASSEMBLYMAN ALAN GLOVER
ASSEMBLYMAN DEAN A. RHOADS

STAFF DIRECTOR: ROBERT E. ERICKSON (702) 885-5637

March 4, 1982

The Honorable Dick Randolph
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Representative Randolph:

Thank you for your efforts in Alaska along the lines of Nevada's "Sagebrush Rebellion." Although the movement in Alaska has apparently been called the "Tundra Rebellion" because of your lack of sagebrush, we understand that it is basically the same concept as that advocated by Nevada and several other western states.

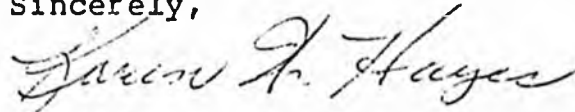
As you know, it is vital for as many western states as possible to unify in a common protest of the massive and unnecessary federal landholdings in the western United States. Although there is apparently no "appetite" in Congress at present for wholesale land transfers into state or local control, as originally advocated by the "Sagebrush Rebellion," there is growing support on Capitol Hill for disposal of excess federal lands into private ownership. If the legislature and people of Alaska make known their support for a general divestiture of the federal lands, this would be another indication to the politicians in Washington that we in the West are indeed serious regarding public lands issues.

It should also be mentioned that Nevada's attorney general is continuing the fight on the basic issue behind the "Sagebrush Rebellion," namely that Nevada and other western states were deprived of their basic Constitutional rights by not being placed on an "equal footing" with earlier states in respect to the percentage of lands under state and private control. This matter will be reviewed in the next few months in the Ninth U.S. Circuit Court of Appeals. We will keep you informed of our progress along this legal front.

Page 2

Again, thank you for your efforts in Alaska which have complemented our "Sagebrush Rebellion" movement. We strongly encourage you to keep your public lands movement active in Alaska. We need to put as much pressure as possible on the Federal Government in order to reverse the current federal land situation.

Sincerely,



Assemblyman Karen W. Hayes, Chairman
Clark Co. Assembly District No. 13 (D)

Senator Norman D. Glaser, Vice Chairman
Northern Nevada Senatorial District (D)

Senator Don W. Ashworth
Clark County District No. 3 (D)

Senator Richard E. Blakemore
Central Nevada Senatorial District (D)

Assemblyman Alan H. Glover
Assembly District No. 40 (D)

Assemblyman Dean A. Rhoads
Assembly District No. 33 (R)

JAN 12 1982

United States Senate

WASHINGTON, D.C. 20510

January 4, 1982

The Honorable Dick Randolph
Alaska State Legislature
House of Representatives
Pouch V
Juneau, Alaska 99811

Dear Dick:

Thank you for your recent letter.

I certainly appreciate and share your concern over the issue of responsible land management. The Sagebrush Rebellion is a major issue in Idaho just as the "Tundra Rebellion" is in Alaska.

The Sagebrush Rebellion has been misrepresented as a land grab, despite numerous safeguards to assure that the lands will remain in government hands. The Western States, which have an excellent record as government land managers, are sending a message to Washington, L.C. that they are capable, if the BLM is not, to manage those government lands responsively and efficiently. The beautiful system of state parks, and state management of wildlife and other natural resources are testament to the fact that the federal government does not have a monopoly on land management talent.

I am a strong supporter of the concept of the Sagebrush Rebellion. I feel it is high time to send a message to the federal land managers that if they are incapable of managing the government lands responsibly and efficiently, that they should turn them over to the states. Consequently, I was pleased when Senator Hatch introduced S. 1245, although there are several reasons why I have not cosponsored the bill.

First, by including the Forest Service in the definition of lands for transfer, the debate will be shifted from the subject of land management to the subject of transfer. That inclusion will defeat the bill, in my opinion, since the Forest Service enjoys a greater reputation for responsive land management than do other land management agencies such as the BLM.

Secondly, the bill allows the state to select the prime federal lands for transfer. Such an action would leave the federal Treasury paying for losses incurred on unprofitable (and unwanted) federal lands. I feel that the land transfers should be complete, that is, they should include all of the land of a federal agency that is not managing the lands to their fullest multiple-use. Again, the issue of the bill should be land management, not land transfer.

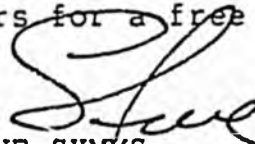
The Honorable Dick Randolph
January 4, 1982
Page 2

As this legislation moves through Congress, I will closely monitor its progress, and will be active in its consideration. In the meantime, I will continue to work with Secretary Watt in his efforts to improve the administrative government land management policies.

Thanks for making me aware of your views.

With best regards, I am

Yours for a free society,



STEVE SYMMS
United States Senator

SS/wfc



TED SCHWINDEN
GOVERNOR

State of Montana
Office of the Governor
Helena 59620

JAR

2

January 25, 1982


The Honorable Dick Randolph
House of Representatives
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Representative Randolph:

Thank you for your letter of December 18, 1981, explaining some of the issues being covered by your "Tundra Rebellion". In many ways your "Rebellion" parallels that of Montana's "Sagebrush Rebellion".

I hope that you will keep my office informed of your progress and any information pertaining to your "Rebellion".

Sincerely,


TED SCHWINDEN
Governor

United States Senate

WASHINGTON, D.C. 20510

FEB 0 1 1982

January 22, 1982

The Honorable Dick Randolph
Alaska House of Representatives
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Mr. Randolph:

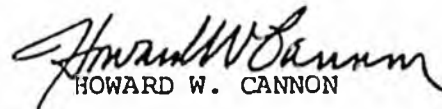
Thank you for your letter advising me of developments in the State of Alaska to secure greater control over present Federal land in that State, which you call the Tundra Rebellion. I appreciate knowing of your leadership in this effort in Alaska.

While the so-called Sagebrush or Tundra Rebellion efforts are mostly State initiatives, I want you to know I am a co-sponsor with Senator Hatch of his bill to provide for a legislated process for transferring public lands in the West to State control.

Thank you for your letter on this important matter, and you may be sure I will be supportive of the effort both in your State of Alaska as well as Nevada and other Western States.

With best wishes, I am

Sincerely,


HOWARD W. CANNON

HWC:KAbv

DAN MARRIOTT
2ND DISTRICT, UTAH

COMMITTEES:
INTERIOR AND INSULAR AFFAIRS
SMALL BUSINESS

COUNTIES:
BEAVER PIUTE
GARFIELD SALT LAKE
IRON TOOELE
JUAB WASHINGTON
KANE WAYNE
MILLARD

Congress of the United States
House of Representatives
Washington, D.C. 20515

WASHINGTON OFFICE:
1133 LONGWORTH HOUSE OFFICE BUILDING
WASHINGTON, D.C. 20515
(202) 225-3011

DISTRICT OFFICE:
2311 FEDERAL BUILDING
SALT LAKE CITY, UTAH 84138
(801) 524-4394

FEB 0 2 1982

January 28, 1982

The Honorable Richard Randolph
House of Representatives
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Representative Randolph:

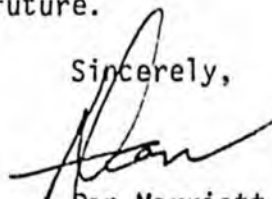
I have received your recent letter regarding the "Tundra Rebellion" and your initiative to transfer Alaskan lands from the federal government to the State of Alaska.

While I am pleased with the response that the Department of Interior under Secretary Watt has given to the land issues in the western states and Alaska, I believe there remains a fundamental inequality between states of the Union because of the distribution of land ownership.

It is unthinkable to many that the federal government should own 90 percent of the land in New York or Massachusetts, and yet citizens of these and other nonwestern states have no problem imposing that condition on your state and my State of Utah.

In the past, I have cosponsored legislation to redress this situation and I shall continue to do so in the future.

Sincerely,



Dan Marriott
Member of Congress

DM/c

JIM SANTINI
NEVADA

FEB 01 1982

WASHINGTON OFFICE:
2429 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, D.C. 20515
TELEPHONE: (202) 225-3965

DISTRICT OFFICES:
SUITE 4-620 FEDERAL BUILDING
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LAS VEGAS, NEVADA 89101
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SUITE 1139 FEDERAL BUILDING
300 BOOTH STREET
RENO, NEVADA 89502
TELEPHONE: (702) 784-3657

Congress of the United States
House of Representatives
Washington, D.C. 20515

January 7, 1982

COMMITTEES:
INTERIOR AND INSULAR AFFAIRS
SUBCOMMITTEES:
MINES AND MINING, CHAIRMAN
PUBLIC LANDS AND NATIONAL PARKS
ENERGY AND COMMERCE
SUBCOMMITTEES:
COMMERCE, TRANSPORTATION AND TOURISM
OVERSIGHT AND INVESTIGATIONS
SELECT COMMITTEE ON AGING
SUBCOMMITTEE:
HOUSING AND CONSUMER INTERESTS
U.S. CONGRESSIONAL TRAVEL
AND TOURISM CAUCUS, CHAIRMAN

Representative Dick Randolph
Alaska House of Representatives
Pouch V
Juneau, Alaska 99811

Dear Representative Randolph:

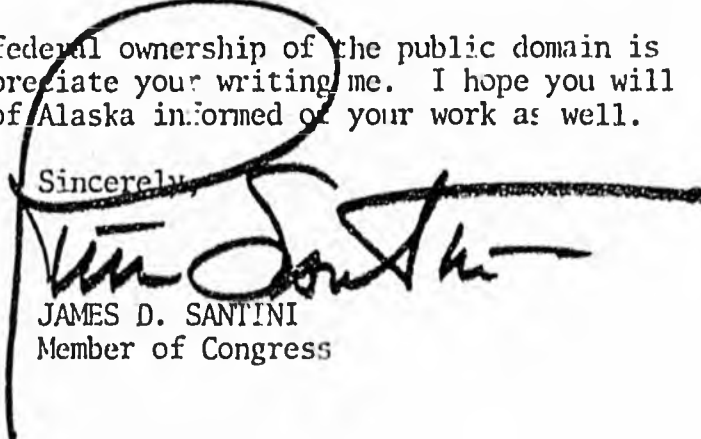
I very much appreciated hearing about the "Tundra Rebellion" in Alaska. Your goals and objectives are very similar to the Sagebrush Rebellion and I wish you the best of luck in your public initiative and in your legislative efforts.

As you may know, Nevada is 87 percent federally owned and controlled. I introduced H.R. 3655 in the House of Representatives to return millions of acres of federally appropriated lands (most federal lands with the exception of national forests, parks, and national wildlife refuges) to states to control and manage.

In fairness, I must tell you the support behind the Sagebrush Rebellion, which began in the Nevada Legislature, seems to be changing. The prime movers in my state have informed me they are temporarily putting off land transfers in favor of amending another federal proposal as a short term solution. You may want to contact Nevada Assemblyman Dean Rhoads, Tuscarora, Nevada to obtain his views and to discuss strategy. Assemblyman Rhoads has been very active on the Sagebrush Rebellion issue.

The whole question of federal ownership of the public domain is vitally important, and I appreciate your writing me. I hope you will keep Congressman Don Young of Alaska informed of your work as well.

Sincerely,



JAMES D. SANTINI
Member of Congress

JDS:mcs



STATE OF NEW MEXICO

OFFICE OF THE GOVERNOR

SANTA FE

87503

JAN 27 1982

BRUCE KING
GOVERNOR

January 6, 1982

The Honorable Dick Randolph
Alaska House of Representatives
1105 Cushman Street
Fairbanks, AK 99701

Dear Representative Randolph:

Thank you for your letter of December 18, 1981 setting forth your position on the "Tundra Rebellion." The question of federally administered public lands is, of course, a volatile issue with profound implications. The issue of control of the vital resources represented by these lands persists, to varying degrees, despite the apparent equivocation at the national level which you point out.

Due to this uncertainty, it is difficult to accurately discern the eventual outcome of this intense and pervasive question. Nonetheless, it is quite apparent that the fundamental questions which have been raised reflect a persistent doubt about the inviolability of the status quo. Increasingly, states have been asserting their prerogative to exercise greater control over the lands within their boundaries.

Recognizing the monumental implications of this issue, the second session of the thirty-fourth New Mexico legislature enacted into law a bill addressing state control of public lands. I am pleased to enclose a copy for your information.

I share the concern of many of those in the western states, both within and outside of government, regarding the critical importance of public lands, and will continue to advocate for the realization of states' prerogatives in this area.

Sincerely,

BRUCE KING
Governor

Enclosure



STATE OF NEW MEXICO

OFFICE OF THE GOVERNOR

SANTA FE

87503

BRUCE KING
GOVERNOR

June 17, 1980

Dr. William P. Stephens
P. O. Box 3189
NMSU Campus
Las Cruces, New Mexico 88001

Dear Bill:

I am pleased to appoint you to serve on the Public Lands Board of Review effective June 6, 1980 for a term ending at the pleasure of the Governor.

Your membership on this Board is a public service to the people of this state. Your willingness to serve is commendable, and we appreciate the contribution you will make.

Thanks for your help.

Sincerely,

A handwritten signature in cursive script that reads "Bruce King".

BRUCE KING
Governor



FEB 11 1982

The State of Nevada
Executive Chamber

Robert List
Governor

Capitol Complex
Carson City, Nevada 89710

February 8, 1982

The Honorable Dick Randolph
Alaska House of Representatives
Pouch V, Juneau, Alaska 99811

Dear Representative Randolph:

While I am not familiar with all the details of the "Tundra Rebellion", I can assure you that Nevada shares Alaska's interest in achieving genuine land reform in the West. However, I must respectfully disagree with your assessment of the Reagan Administration. We are, in fact, pleased by the efforts this Administration is making to be a more reasonable and responsive landlord.

We, too, are pursuing the judicial and legislative avenues for land reform while, at the same time, we are working with the federal administration to immediately reduce the burden of excessive control from Washington.

As you know, there have recently been discussions in Washington that the federal government could and should dispose of much unneeded real property to both reduce the national debt and eliminate massive operating bureaucracies. Furthermore, the States Rights Coordinating Council, composed of legislators in the western states, and the Western Council of State Governments have both passed resolutions with this in mind. Most recently, a resolution (SR 231) has been introduced in the U.S. Senate by Senator Charles Percy (R) Illinois which leads in the same direction.

Much good has been accomplished already in the land reform movement but we all need to work for permanent solutions for the future of the west. We, as westerners, must move forward with a unified front.

Sincerely,


ROBERT LIST
Governor

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COMMITTEE REPORT

HOUSE

FURTHER: FINANCE

⁹
2/2/81

(11)

Date: MARCH 25, 1981

Mr. Speaker:

The Committee on RESOURCES has had HB 31

"An Act relating to the management and use of state, municipal, and private land; annulling 11 AAC 53.450(c); and providing for an effective date."

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

- do pass do not pass
- do pass with attached amendments(s) same title
- replace with CS for _____ new title
- and recommends _____
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

Tony Gardiner

Frank J. Zboroff Lord

Frank J. Zboroff

Tony Gardiner

CHAIRMAN



THE CITY AND BOROUGH OF JUNEAU

CAPITAL OF ALASKA

155 SOUTH SEWARD ST. JUNEAU, ALASKA 99801

LAW DEPARTMENT (907) 586-3300

March 13, 1981

House Resources Committee
Pouch V
Juneau, Alaska 99811

File: 1981 Legislature - HB 31
Subject: Proposed Committee Substitute for SSHB 31

Ladies and Gentlemen:

Some of the provisions which your special subcommittee on SSHB 31 have agreed to and the problems which the subcommittee failed to deal with will leave municipalities with more problems than those which have been solved.

Alaska Statute 29.18.204 provides that the entitlements provided in AS 29.18.201 are "vested property rights which must be fulfilled as provided in AS 29.18.205 or 29.18.208." A reasonable definition of "vested property right" in this context certainly would not include what the subcommittee proposes in relation to withholding patents until the municipality has made available 20% of its entitlement for disposal under the State programs. The State would reduce each municipality's entitlement by 20% and would significantly delay the date upon which the municipality would otherwise be entitled to patent to its selections. The subcommittee's proposal would simply destroy the vested property rights given to municipalities under the Municipal Land Entitlement Act. It is probably a gross understatement to suggest that most municipalities would feel betrayed if this part of the subcommittee proposal becomes law.

The subcommittee proposal is an entirely new program aimed at land disposals. It seems that we have had a enough new land disposal programs over the last four or five years to have learned by now that each time we come up with a new land disposal program we encounter new and substantial problems and conflicts. Rather than back up and re-examine the assumptions upon which the land disposal program was based and attempt to work out solutions in light of more realistic assumptions we establish a new program or make a radical change to an existing program. This approach almost guarantees new problems and conflicts which will send us back to the drawing boards to devise another new program. I urge you not to continue this fruitless and frustrating cycle by creating yet another mandate-based land disposal program. The one which is proposed has all the earmarks of a plan which will destroy the cooperative atmosphere which presently exists between DNR and the municipalities.

Instead of "encouraging" municipalities to dispose of land by threatening them with a big stick, why not encourage land disposal through a land disposal assistance program? If land disposal is a truly high priority of the legislature, is there any reason the legislature should not provide assistance to another public agency, such as a municipality, which can, through such assistance, help the State meet its goals? The legislature seems quite willing to place

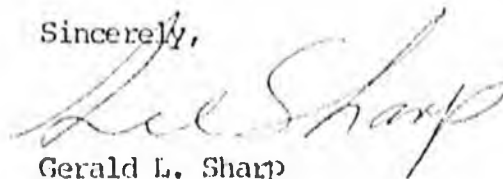
March 13, 1981

millions of dollars into various loan programs which are designed primarily to help citizens buy housing, boats, etc.; it would seem to be equally or more appropriate for the legislature to provide loans or other assistance to municipalities for the purpose of subdividing and disposing of municipal land so that the needs of individuals for land in our communities can be met. I strongly urge you to abandon the municipal disposal mandate approach and adopt instead a program of assistance for accomplishing patent surveys along with a grant or loan program to assist municipalities in meeting the costs of subdivisions. If a loan program is established to assist municipalities in meeting subdivision costs, a condition of that program could be that the municipality would be required to convey to the State a certain number of lots within a State assisted subdivision. The State, in turn, would deduct from the balance due on the loan an amount equal to the market value of these lots. The State could then dispose of such lots under any of its disposal programs.

It is also disappointing to note that the subcommittee did not deal with the problem of the loss of municipal entitlement arising out of a rejection of a selection by the Department of Natural Resources. Also, the subcommittee recommendations do not address the water access easement problem which already has two municipalities in court. Both of these matters are addressed in my letter of February 25, 1981 to the committee on the subject of suggested amendments to SSHB 31.

I urge you to take the course of action which will permit rational, planned, cooperative land disposals designed to meet the actual needs of communities rather than a course of action which will produce coerced and ill conceived land disposals which are not necessarily designed to meet the actual needs of any particular community.

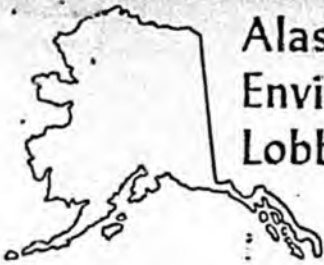
Sincerely,



Gerald L. Sharp
City-Borough Attorney

GLS: jr

cc: Rep. Fred F. Zharoff, Co-Chairman
Co-Chairmen
Rep. Terry Gardner, Co-Chairman
Rep. Joseph Chuckwuk, Vice-Chairman
Rep. Ramona L. Barnes
Rep. Robert H. Bettisworth
Rep. Ben F. Grussendorf
Rep. Richard W. Halford
Rep. Vernon L. Hurlbert
Rep. Sally Smith
Rep. Eric G. Sutcliffe
Rep. Anthony N. Vaska
Ginny Chitwood, Executive Director, AMI.



TESTIMONY BEFORE THE
HOUSE RESOURCES COMMITTEE
ON STATE LAND DISPOSAL REFORM

Thank you Mr. Chairman

I'd like to thank the committee for an opportunity to address this issue today.

I recently distributed a position paper regarding State Land Disposal Reforms. I'd like to recap those points and discuss HB 31 and HB 193 in terms of those points.

First, we felt that the 100,000 AC, statewide quota had to be removed. We felt that this forced disposals that were poorly placed and poorly planned. It has forced the disposal of important wildlife habitats, recreational areas, timber resources and mineral areas.

Secondly, we felt that Public-Use Lands needed to receive more protection. Areas that have been identified as having high wildlife, timber, mineral, recreational and other Public Use values should be protected for the benefit of all the State's residents.

Thirdly, we felt that local residents needed to have input into the decision-making process. We felt that people had a right to have a voice in the future of their areas. A borough had a right to choose if it's economy could support more people.

Fourthly, we felt the disposal decisions had to be made at a more local level. So that disposals will be more responsive to local needs and still meet statewide needs.

When we reviewed both of the proposed bills, HB 31 and HB 193, we found that HB 193 more fully met these points.

I would now like to discuss these points and how they are dealt with by these bills.

Quota

Both bills retain a quota. HB 31 establishes a state-wide 60,000 acre quota. On the other hand HB 193 establishes an annual flexible quota. It will be determined annually based on the demand for land. It will take into consideration private land currently on the market and borough land disposals.

The 60,000 acre quota will retain all the problems associated with the 100,000 acre quota, except we'll have one-third less problems. We'll still have the same problems with areas important for public-use still being put up for disposal. In HB 193 the quota will float not only annually but by regions of the State. The other day Representative Freeman gave us a very eloquent speech on the frustrations of Alaskans not being able to get land to live on. The regional quota in HB 193 would highlight problems such as he discussed in Ketchikan. It would force DNR to attempt to meet that demand. The demand assessment required in Section 5 would bring a spotlight to problems such as this. The statewide 60,000 acre quota of HB 31 would not spotlight a problem of that sort. And if it did come to DNR's attention, there would be no way to force them to meet that need. They could still dispose of vast acreage in the Interior and avoid problems of that sort. The system developed would also give the legislature oversight authority then the budget process.

Protection of Public Use Lands

While neither of the bills include statutory protection of Public Use Lands, we feel that the restructuring of the quota included in HB 193 will help protect these areas. We also feel that the addition to AS 38.04 included in Section 1 will offer these areas some protection. We would also offer an amendment.

Section AS 38.05.305 is amended by adding a new subsection (e) to read:

- ^e
- (3) Before any lands classified under AS 38.05.047 (a) (1)-(4) or AS 38.05.047 (a) (5) (E), (F), (G), (I), (J), (K), (L), (M), (N), and (O) may be reclassified to categories permitting disposal other than by lease or permit, in addition to the notice required by this section public notice as required by AS 38.05.345 shall be given; and, in addition, the House of Representatives and the Senate of the State of Alaska, and the governor or his designated representative, shall be notified of any such proposed reclassification. Such a reclassification

shall not take effect until forty-five days after the notice required by this section has been given.

This amendment will require that the Governor and both house of the legislature will be notified before Public Use Land is moved into a disposal classification. Also the requirement that land be classified within two years of T.A. or patent will help protect these areas.

Local Control of Disposals

HB 193 gives the boroughs back some of their platting power. It includes provisions that allow the state to appropriate funds to bring subdivisions up to borough standards. This should allow the state to meet borough standards. We don't feel that the state should be able to ride rough shod over the boroughs, and create subdivisions that will become an economic burden to the borough or the new landowners. We also feel that people in the unorganized borough deserve a means to address these issues. Therefore I'd like to offer an amendment that would establish local advisory boards.

AS 38.05 is amended by adding a new section to read:

Section 38.05.048. STATE LAND ADVISORY COMMITTEES. The commissioner shall adopt regulations which establish advisory committees for the various regions of the state in which he intends to dispose of state lands. With the exception of Southeast Alaska, an advisory committee shall be established within each municipality in which disposals are proposed. In Southeast Alaska, one advisory committee shall be established for the northern and one for the southern portion of the area. In the unorganized borough, an advisory committee shall be established for each AS 14.08.031 regional educational attendance area in which disposals are proposed. The advisory committees shall be appointed by the commissioner and shall consist of persons residing in or using state lands in the appropriate regions who represent a variety of interests and are well informed regarding state lands and resources in the regions. The commissioner shall authorize each advisory committee to hold public hearings and gather information on management of state lands in the region which the committee represents, and shall provide staff support for the committees' activities. The advisory committees may by resolution make recommendations regarding the classification, reclassification, disposal, methods of disposal and management of state lands in the regions which they represent. The commissioner shall make written findings which address the recommendations of the advisory committees.

De-centralization of Disposal Decisions

We feel that the flexible quota established in HB 193 will help to decentralize the disposal decisions. By establishing regional quotas the disposal decisions will be made at the local level. We feel that putting the disposal decisions at the local levels will make it more responsive to local needs. It would also make it easier for local DNR officials to work out problems with borough officials.

In reviewing HB 31 we also found some other problems that we feel make this bill unacceptable.

Section 1

This section seems to mandate borough disposals. We don't feel that it is proper to mandate borough disposals. While the bill conveying land to the boroughs stated that part of the land should be disposed of, we feel that it is the borough's decision as to how and when it's done. In any case the time-frame in the bill doesn't allow the borough any time to do any adequate planning. If we are going to force these disposals we should give them time to plan the disposals. Also HB 31 does not include any funding for borough disposal. This will force the municipalities to come up with the front-end money to develop these disposals. We made the borough pay the survey cost to get the land now we're going to make them pay the development cost to dispose of the land. That sounds like a hell of a deal.

The section titled Determinations Before Disposals of Land for Private Ownership requires that auctions and lotteries be held in the nearest municipality "in which regular sessions of the Superior Court are held. On the face this seems like a good idea. It will give locals an advantage in getting parcels. But will it really? It only will if you live in a city with a Superior Court. But, if you live in Tok, Galena, or McGrath, you may have to travel to Fairbanks, Nome, or Dillingham to buy the land.

In the section amending AS 38.05.057(a) it mandates that the commissioner "shall sell land by lottery for less than the fair market value of the land if he determines that scarcity of Land for private use in the area of the land to be sold has resulted in unrealistic land values." While we can agree with the idea of bringing down land values by dumping cheap land on the market. We feel that it may be unfair to other private land owners in the area. Anybody who currently has land in wilderness subdivisions,

like Wild Lake or Kennitot should be worried about their future land values.

There are also some other provisions in HB 193 that we feel are very important.

Sections 7 & 14 provide loans to municipalities to do the planning, surveying, and construction needed to carry out borough disposals. This will allow the boroughs to make disposals without increasing the tax burden on current landowners. This allows the development costs to be included in the price of the land to be disposed of. We feel this is an equitable way to spread the cost of needed improvements.

Section 10 & 11 establish Lakeshore Development Standards and mandate their inclusion in regional land use plans. We feel that it is very important to protect our lakeshore. However we must ask why weren't river banks included. We feel that both lakeshore and river bank areas should be protected both to protect the habitat for fish, but to insure that those resource remain available for all the people of the state.

HB 193 would also require that only the person who staked a remote parcel could file on it. It also allows the rental fees to go toward the purchase price. It also allows already existing lease to convert to these new terms.

All and all we feel that HB 193 provides a much better answer to the problems associated with the land disposal system. It would remove the 100,000 acre quota and replace it with a quota that is flexible, that will change from year to year and region to region and that will truly meet the demands of Alaskans for land. At the same time it will protect those lands most important to Alaskans. Those lands that have important, wildlife, mineral, timber, recreation and other public use resources. Those lands where Alaskans make their living and where Alaskans ~~work~~ RECREATE. - HB 193 will also give local people control over their own communities. It allows local people to be part of the decision making process. And it will bring that process closer to the local people.

So once again I would urge you to support HB 193 and to give serious consideration to the amendments we suggested on Notice and Local Advisory committees.

HB 31 v HB 193

1. a. HB 31 - All municipalities with land entitlements under 29.18.201 must submit to the legislature a five-year municipal land disposal plan by March 15, 1982. (Section 1)
- b. HB 193 - Establishes a program for disposal of municipal entitlement land into private ownership with State assistance. Allows municipalities to submit funding requests through the legislature to cover disposal costs provided the request is accompanied by a five-year disposal schedule and a description of sale terms. Treats appropriations as loans to be repaid to the State under established conditions. (Section 17)
2. a. HB 31 - Provides that public access to navigable and public waters of the State shall be preserved only under 38.05.127. (Section 2) annuls 11 AAC 53.450(c) (Section 35)
- b. HB 193 - No parallel provision.
3. a. HB 31 - Adds agricultural land to the land disposal bank; deletes obsolete reference to July 1, 1979 (Section 3).
- b. HB 193 - Same provision; also requires all State land to be classified by November 1, 1983; clarifies categories of land which are deposited in the land disposal bank - remote cabin sites, recreational, residential, commercial and industrial land (Sections 2, 3 & 4).
4. a. HB 31 - Reduces quota from at least 100,000 acres per year to 60,000 acres per year (excluding agricultural land); amount of municipal land offered for private ownership by municipalities after January 1, 1980, may be credited against the quota. (Section 4)

- b. HB 193 - Repeals quota; department would make a recommendation each year to the legislature based upon an assessment of demand; land bank still must contain at least 500,000 acres of state land available for purposes set out above. (Section 5).
- 5.
- a. HB 31 - Revises financing request language to provide that department submit three alternatives financing requests - a request for 100,000 acres mandated by law; a request for appropriations required to finance disposal of 50% of that amount (Now the law says "one-half"), and an estimate of the appropriations required to finance a disposal of twice the amount (now the law says "50%" more). (Section 5).
 - b. HB 193 - Rewrites financing request section to provide that the request must include (1) an estimate of the appropriations required to finance disposal of lands identified for disposal of lands recommended for disposal during that fiscal year; (2) an estimate of the appropriations required to finance the survey of the amount of land recommended for disposal during the first succeeding fiscal year and (3) an estimate of the appropriations required to finance the identification and classification of the amount of land recommended for disposal during the second succeeding fiscal year; and (4) any required capital improvements for subdivisions scheduled for disposal within municipalities. The State also is required to submit along with its financing request, a map showing the areas in which the disposals are to occur. Any request by municipalities for loans, would also be included in the Department's financing submittal. (Section 7).
- 6.
- a. HB 31 - Technical Amendment which excludes school land as lands which may be made available at fair market value for private school lands use. Designation was repealed during 1978 session. (Section 6).

- b. HB 193 - No parallel provision.
7. a. HB 31 - Provides that easements and rights-of-way on or across land which is made available for private use may include established trails traditionally used for commerce, recreation or transportation. (Section 7)
- b. HB 193 - No parallel provision.
8. a. HB 31 - Contracts with an appraised value of up to 50,000 may be signed by the Director without the Commissioner's concurrence (now it is 1,000); and leases with an annual rental value of up to \$5,000 may be approved by the Director without the consent or approval of the Commissioner. (Now 1,000) Further provides that contracts for negotiated sale authorized by AS 38.05.115, permits issued under 38.05.330, or are exempt from this section. (Section 8)
- b. HB 193 - No parallel provision.
9. a. HB 31 - Authorizes conveyance to an adjoining landowner parts of land created by highway right-of-way alignment or realignment or a parcel created by the vacation of a state on right-of-way not to exceed one acre under certain specified circumstances. Parcels conveyed under this section must be sold at fair market value as determined by the Director on the basis of an appraisal. (Sections 9 & 10).
- b. HB 193 - No parallel provision.
10. HB 31 - Subdivision parcels may exceed five acres if a municipal ordinance or regulation adopted by the Department of Environmental Conservation requires larger parcels to prevent water pollution. (Now parcels cannot exceed five acres.) The Commissioner is

required to give priority to surveying districts which contain land that "is in the vicinity of existing access roads". (Section 11).

- b. HB 193 - The requirement to establish survey districts has been deleted. However, all lands which are subdivided for residential services or purposes must be sold in accordance with current AS 38.05.047(f) (80% lottery, 10% homesite under 3C.08, 10% homesite lottery). Parcels cannot exceed five acres unless a larger size is necessary for the "full use and enjoyment of the land". The maximum is 40 acres. The Department is also required to include a municipality in its planning for State land located within the boundaries of the municipality by providing each municipality information regarding the amounts and location of State land within that municipality proposed for classification or survey or disposal at least 60 days before submission to the Governor of its financing request. Within 30 days of receipt, the municipality may recommend alternative locations, terms, and subdivision designs. If municipal land is recommended for disposal to satisfy all or part of the accessed need for land within the municipality, the Department's financing request must identify state lands for which disposal is not recommended if loans for the disposal of municipal lands are approved by the legislature. HB 193 also clarifies which lands are available for disposal following the classification process. (Sections 13 through 16).

- 11. a. HB 31 - Requires that auction, lotteries, or homesites disposals must be held in a municipality that is "closest to the land to be sold or disposed of and in which regular sessions of the Superior Court are held". (Section 12)

- b. HB 193 - No parallel provision.