

ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 86/2

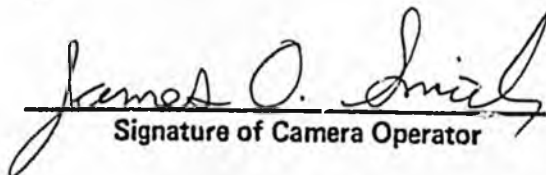
3214.35 HCRA HB 587 - HB 610

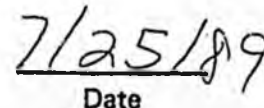


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STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

BILL SHEFFIELD, GOVERNOR

POUCH M
JUNEAU, ALASKA 99811
PHONE: 907-465-1400

March 11, 1986

The Honorable Edna DeVries
Chair, Community and Regional
Affairs Committee
Alaska State Senate
P.O. Box V
Juneau, AK 99811

Dear Senator DeVries:

I am writing with regard to SB 414, relating to municipal entitlements. The Department supports the concept of this bill and approves of changes made in the sponsor substitute. The bill now serves the interests of both increasing municipal entitlement opportunities in Alaska and cleaning up language in the existing statute.

Municipal land entitlements serve a variety of public policy goals. They increase the ability of local government to advance local purposes such as economic development or land conservation. They reduce the state's management responsibilities and role within organized areas, shifting some of the costs, difficulties, and benefits of land management from the state to local governments. They also can serve as an incentive for the organization or new boroughs and cities, to the long-term benefit of Alaska's citizens.

The proposed bill is expected to provide state lands to between ten and twenty communities which received a zero entitlement under the last municipal entitlement rewrite in 1978. Another ten to twenty communities will receive state land before 1996. A few communities which have already received land will see their existing entitlements increase. Our staff are not able to quantify the amount of state acreage that would be conveyed under SB 414, nor have we been able to identify conclusively the communities which will benefit; these tasks would require some very detailed and expensive work on the status plats. However, I am attaching some general information on the amount of state land in classifications which might be available for selection under SB 414, and a summary of municipal entitlement conveyances made to date.

The Hon. Edna Devries

- 2 -

March 11, 1986

As you can see from the enclosures, about 67.8 million acres of state land are classified in categories that would be open for selection. We do not know how much of this land is within city or borough boundaries, nor do we know how much of it is within the boundaries of communities which have already received all or most of their entitlement under previous entitlement programs.

Please contact me if you have questions or comments on the department's position on the bill. Thank you.

Sincerely,

Bob Arnold, Deputy

f
Esther C. Wunnicke
Commissioner

Attachments

cc: Senator Ferguson

ATTACHMENT ONE
Municipal conveyances (2/86)

<u>Municipality</u>	<u>Acreage</u>
Ketchikan	0.5
North Pole	0.5
Dillingham	1.0
Soldotna	14.0
Fairbanks, City	15.0
Hoonah	15.0
Homer	16.0
Kodiak	32.0
Port Lions	35.0
Bethel	40.0
Yakutat	75.0
Kupreanof	180.0
Cordova	235.0
Ouzinkie	240.0
Kenai	307.0
Wrangell	310.0
Delta Junction	400.0
Houston	405.0
Petersburg	461.0
Skagway	500.0
Seward	562.0
Whittier	600.0
Thorne Bay	612.0
Haines Borough	2,800.0
Bristol Bay Borough	2,898.0
Tenakee Springs	2,958.1
Valdez	4,805.0
Sitka, City and Borough	10,500.0
Ketchikan Gateway Borough	11,593.0
Juneau, City and Borough	19,584.0
Anchorage, Municipality	44,893.0
Kodiak Island Borough	56,500.0
Fairbanks Northstar Borough	112,000.0
Kenai Peninsula Borough	155,780.0
Matanuska-Susitna Borough	355,210.0

ATTACHMENT TWO
State Land Classifications (12/85)

<u>State land in categories open to selection:</u>	<u>Acreege:</u>
Unclassified	11,200,000
Agriculture	629,000
Grazing	152,750
Material	5,100
Public recreation	1,400,000
Resource management	39,800,000
Settlement	2,900,000
Transportation corridor	0
Forestry	3,200,000
Wildlife habitat	1,900,000
Water resources	127,500
Wildlife habitat/Public recreation	6,200,000
Forestry/Wildlife habitat	283,000
Wildlife habitat/Water resources	55,000
	<hr/>
TOTAL STATE ACREAGE IN AVAILABLE CATEGORIES	67,852,350

<u>State land not in categories open to selection:</u>	<u>Acreege:</u>
Legislatively designated areas	8,000,000
Minerals	83,750
Minerals/Wildlife habitat/Public recreation	2,100,000
Oil and gas/Wildlife habitat	352,000
Oil and gas/Wildlife habitat/Public recreation	2,400,000
Reserved use	600,000
Coal	2,500
Resource assessment	150,000
	<hr/>
TOTAL STATE ACREAGE NOT IN AVAILABLE CATEGORIES	13,688,250

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

BILL SHEFFIELD, GOVERNOR

POUCH M
JUNEAU, ALASKA 99811
PHONE: 907-485-2400

Red Dog

December 16, 1986

Mr. Willie Hensley
President
NANA Regional Corporation
4706 Harding Drive
Anchorage, AK 99503

Dear Willie:

At my request, Tom Hawkins' staff looked at the issue of a land entitlement for a future NANA area borough. The report is enclosed.

As you will note, the staff believe legislation would be required. I have asked, however, whether a change in regulation would be sufficient. Once I have an answer, I'll let you know.

Sincerely,

RD

Robert D. Arnold
Deputy Commissioner

Enclosure

MEMORANDUM

State of Alaska

DEPARTMENT OF NATURAL RESOURCES - Division of Land and Water Management

Rec'd
1/3/85
W. J. H.
(Vacation)

TO: Tom Hawkins
Director

DATE: November 25, 1985

FILE NO.

TELEPHONE NO. 762-4346

FROM: Gary Gustafson, Chief *Gus*
Land Management

SUBJECT: Entitlement for
Future NANA Borough

You recently asked for a specific explanation of how much state land would be available for selection by a new NANA Borough.

In compiling this information, I assumed the following:

1. The boundaries of a new NANA Borough would coincide with the boundaries of the existing NANA Regional Corporations.
2. The legislature will amend AS 29.18.213(1)(c) to include "resource management" as a state land classification category appropriate for municipal selection. Because the present definition excludes this category, a new NANA borough would be ineligible for an entitlement.
3. The AS 29.18.203(a) entitlement formula for newly incorporated boroughs will remain at 10 percent of the total vacant, unappropriated, unreserved state land within the boundary of the borough on the date of incorporation.

Based upon the above, my staff completed a gross acreage computation which resulted in a finding that a new NANA Borough would receive an entitlement of approximately 240,000 acres.

This figure was derived by calculating 10 percent of the total existing state land base in the region (including tentatively approved and patented lands) of approximately 2,400,000 acres. Although there are another 1,800,000 acres of state selected lands in the region, this figure should remain static as most of the area has been removed from the state's annual land conveyance priority list to BLM, pending completion of the Northwest Area Plan.

Please consider the above figures as estimates only.

cc: Rick Thompson, NRO
Bob Arnold, CO
Jim Barnett, CO

DEPARTMENT OF
NATURAL RESOURCES

DEC 3 1985

COMMISSIONER'S OFFICE
JUNEAU

Region	Municipality	Muni- Type	Incori. Date	Acres entitled	Source of Entitle- ment Determination
E	Baruqut	2	1975	0	Ltr 8/7/78
E	City of Borough of Juneau	M	1970	19,584	Statute
E	City of Borough of Sitka	M	1971	10,500	Statute
E	Craig	1	1922	0	Ltr 8/7/78
E	Haines	1	1910	0	Ltr 8/7/78
E	Haines Borough	B	1968	2,800	Statute
E	Hoonah	1	1946	15	Ltr 8/7/78
E	Hydaburg	1	1927	0	Ltr 8/7/78
E	Kake	1	1952	0	Ltr 8/7/78
E	Kasaan	2	1976	0	Ltr 8/7/78
E	Ketchikan	H	1900	0.5	Ltr 8/7/78
E	Ketchikan Gateway Borough	B	1963	11,593	Statute
E	Klawock	1	1929	0	Ltr 8/7/78
E	Kupreanof	2	1975	0	Ltr 8/7/78 120 ac.
E	Metlakatla	F	1944 (Federal)		
E	Pelican	1	1943	0	Ltr 8/7/78 10 ac.
E	Petersburg	H	1910	0	Ltr 8/7/78 461 ac.
E	Port Alexander	2	1974	0	Ltr 8/7/78
E	Saxman	2	1930	0	Ltr 8/7/78
E	Skagway	1	1900	35	Ltr 8/7/78
E	Tenakee Springs	2	1971	0	8/7/78 2,955 ac.
E	Thorne Bay	2	1982	612	DTA Decision
E	Wrangell	H	1903	0	Ltr 8/7/78 310 ac.
E	Yakutat	1	1948	75	Ltr 8/7/78
N	Alakanuk	2	1969	0	Ltr 8/7/78
N	Allakaket	2	1975	0	Ltr 8/7/78
N	Amble	2	1971	0	Ltr 8/7/78
N	Anaktuvuk Pass	2	1957	0	Ltr 8/7/78
N	Anderson	2	1962	0	Ltr 8/7/78
N	Atkasuk	2	1982	0	Ltr 8/7/83
N	Barron	1	1959	0	Ltr 8/7/78
N	Brevig Mission	2	1969	40	Ltr 8/7/78
N	Buckland	2	1966	0	Ltr 8/7/78
N	Deering	2	1970	0	Ltr 8/7/78
N	Delta Junction	2	1960	400	Ltr 8/7/78
N	Dionede	2	1970	0	Ltr 8/7/78
N	Eagle	2	1901	0	Ltr 8/7/78
N	Elin	2	1970	0	Ltr 8/7/78
N	Fairbanks	H	1903	15	Ltr 8/7/78
N	Fairbanks North Star Boro	B	1964	112,000	Statute
N	Fort Yukon	2	1959	0	Ltr 8/7/78
N	Galena	1	1971	0	Ltr 8/7/78
N	Gamble	2	1963	0	Ltr 8/7/78
N	Golovin	2	1971	0	Ltr 8/7/78
N	Hughes	2	1973	0	Ltr 8/7/78
N	Huslia	2	1969	0	Ltr 8/7/78
N	Kaktovik	2	1971	0	Ltr 8/7/78
N	Kaltag	2	1969	0	Ltr 8/7/78
N	Kiana	2	1964	0	Ltr 8/7/78
N	Kivalina	2	1969	0	Ltr 8/7/78
N	Kobuk	2	1973	0	Ltr 8/7/78
N	Kotzebue	2	1958	0	Ltr 8/7/78
N	Koyuk	2	1970	0	Ltr 8/7/78
N	Koyukuk	2	1973	0	Ltr 8/7/78

Region	Municipality	Year Type	Incor. Date	Acres Entitled	Source of Entitle- ment Determination
N	Kenana		1921	0	Ltr 8/7/78
N	Lone		1901	0	Ltr 8/7/78
N	Noorvik	2	1964	0	Ltr 8/7/78
N	North Pole	H	1953	0.5	Ltr 8/7/78
N	North Slope Borough	B	1972	89,850	Statute Redet.
N	Nulato	2	1962	0	Ltr 8/7/78
N	Point Hope	2	1966	0	Ltr 8/7/78
N	Ruby	2	1973	0	Ltr 8/7/78
N	Saint Michael	2	1969	0	Ltr 8/7/78
N	Savounga	2	1969	0	Ltr 8/7/78
N	Selavik	2	1977	0	Ltr 8/7/78
N	Shaktoolik	2	1969	0	Ltr 8/7/78
N	Shishmaref	2	1969	0	Ltr 8/7/78
N	Shungnak	2	1967	0	Ltr 8/7/78
N	Stebbins	2	1969	0	Ltr 8/7/78
N	Tanana	1	1982	0	Ltr 8/7/78
N	Teller	2	1963	0	Ltr 8/7/78
N	Unalakleet	2	1974	0	Ltr 8/7/78
N	Wainwright	2	1962	0	Ltr 8/7/78
N	Wales	2	1964	0	Ltr 8/7/78
N	White Mountain	2	1969	0	Ltr 8/7/78
N	Whittier	2	1969	0	600 ac. grant
S	Akhiok	2	1974	0	Ltr 8/7/78
S	Akiachak	2	1974	0	Ltr 8/7/78
S	Akiak	2	1970	0	Ltr 8/7/78
S	Akutan	2	1979	0	Rec. 5 ac under 810
S	Aleknagik	2	1973	0	Ltr 8/7/78
S	Angoon	2	1963	0	Ltr 8/7/78
S	Aniak	2	1972	0	Ltr 8/7/78
S	Anvik	2	1969	0	Ltr 8/7/78
S	Atnautluak	2	1976	0	Ltr 8/7/78
S	Bethel	2	1957	0	Ltr 8/7/78
S	Pristol Bay Borough	B	1962	2,898	Statute
S	Chefornak	2	1974	0	Ltr 8/7/78
S	Chevak	2	1967	0	Ltr 8/7/78
S	Chignik	2	1983	0	Ltr
S	Chuathbaluk	2	1975	0	Ltr 8/7/78
S	Clark's Point	2	1971	0	Ltr 8/7/78
S	Cold Bay	2	1981	0	DTS Decision
S	Cordova	H	1909	235	Ltr 8/7/78
S	Dillingham	1	1963	1.0	Ltr 8/7/78
S	Eek	2	1970	0	Ltr 8/7/78
S	Ekvok	2	1974	0	Ltr 8/7/78
S	Emmonak	2	1962	0	Ltr 8/7/78
S	Fortuna Ledge	2	1970	0	Ltr 8/7/78
S	Goodnews Bay	2	1970	0	Ltr 8/7/78
S	Grayling	2	1969	0	Ltr 8/7/78
S	Holy Cross	2	1968	0	Ltr 8/7/78
S	Honer	1	1964	16	Ltr 8/7/78
S	Hooper Bay	2	1966	0	Ltr 8/7/78
S	Houston	2	1966	405	Ltr 8/7/78
S	Kachemak	2	1961	0	Ltr 8/7/78
S	Kasiqluk	2	1982	0	Ltr
S	Kenai	H	1960	30	Ltr 8/7/78

Re- gion	Municipality	Muni- Type	Incor- Date	Acres Intitle- ment	Source of Entitle- ment Determination
S	Kenai Peninsula Borough	R	1964	155,780	Statute
S	King Cove	1	1947	0	Ltr 8/7/78
S	Kodiak	H	1940	20	Ltr 8/7/78
S	Kodiak Island Borough	R	1963	56,500	Statute
S	Kotlik	2	1970	0	Ltr 8/7/78
S	Kwethluk	2	1975	0	Ltr 8/7/78
S	Larsen Bay	2	1974	0	Ltr 8/7/78
S	Lower Kalskag	2	1969	0	Ltr 8/7/78
S	Manokotak	2	1970	0	Ltr 8/7/78
S	Matanuska-Susitna	R	1974	355,210	Statute
S	McGrath	2	1975	0	Ltr 8/7/78
S	Mekoryuk	2	1969	0	Ltr 8/7/78
S	Mountain Village	2	1967	0	Ltr 8/7/78
S	Municipality of Anch.	H	1975	44,893	Statute
S	Napakiaik	2	1970	0	Ltr 8/7/78
S	Napaskiak	2	1971	0	Ltr 8/7/78
S	New Stuyahok	2	1972	0	Ltr 8/7/78
S	Newhalen	2	1971	0	Ltr 8/7/78
S	Newtok	2	1976	0	Ltr 8/7/88
S	Nightmute	2	1974	0	Ltr 8/7/83
S	Nikolai	2	1970	0	Ltr 8/7/78
S	Nondalton	2	1971	0	Ltr 8/7/78
S	Nunapitchuk	2	1969	0	Ltr 8/7/78
S	Old Harbor	2	1966	0	Ltr 8/7/78
S	Ouzinkie	2	1967	240	Ltr 8/7/78
S	Palmer	H	1951	0	Ltr 8/7/78
S	Pilot Station	2	1969	0	Ltr 8/7/78
S	Platinum	2	1975	0	Ltr 8/7/78
S	Port Heiden	2	1972	0	Ltr 8/7/78
S	Port Lions	2	1966	35	Ltr 8/7/78
S	Quinhagak	2	1975	0	Ltr 8/7/78
S	Russian Mission	2	1970	0	Ltr 8/7/78
S	Saint George	2	1983	0	Ltr
S	Saint Mary's	1	1967	0	Ltr 8/7/78
S	Saint Paul	2	1971	0	Ltr 8/7/78
S	Sand Point	1	1978	0	Ltr 8/7/78
S	Scammon Bay	2	1967	0	Ltr 8/7/78
S	Seldovia	1	1945	0	Ltr 8/7/78
S	Seward	H	1912	240	Ltr 8/7/78
S	Shageluk	2	1970	0	Ltr 8/7/78
S	Sheldon Point	2	1974	0	Ltr 8/7/78
S	Soldotna	1	1967	10	Ltr 8/7/78
S	Togiak	2	1969	0	Ltr 8/7/78
S	Toksook Bay	2	1972	0	Ltr 8/7/78
S	Tuluksak	2	1970	0	Ltr 8/7/78
S	Tununak	2	1975	0	Ltr 8/7/78
S	Unalaska	1	1942	0	DTS
S	Upper Kalskag	2	1975	0	Ltr 8/7/78
S	Valdez	H	1901	4,805	Ltr 8/7/78
S	Wasilla	2	1974	0	Ltr 8/7/78

ESTIMATED BOROUGH ENTITLEMENT ACREAGE UNDER SSSB 414
Based on March, 1986 Land Status

<u>BOROUGH</u>	<u>SSSB 414 ENTITLEMENT</u>	<u>1978 ENTITLEMENT</u>	<u>APPROXIMATE ADDITIONAL ENTITLEMENT</u>
Ketchikan Gateway	1,470	11,593	0
Sitka	490	10,500	0
Juneau	430	19,584	0
Haines	13,300	2,800	10,500
Bristol Bay	12,750	2,898	9,900
Kodiak Island	41,200	58,787	0
Kenai Peninsula	76,200	155,780	0
Anchorage	1,700	44,893	0
Matanuska-Susitna	400,000	355,210	44,800
Fairbanks-North Star	223,200	112,000	111,000
North Slope	400,000	89,850*	400,000
NW Arctic (Proposed)	230,000	n.a.	<u>230,000</u>
TOTAL			806,200

* Received zero entitlement pursuant to election
of benefits in AS 29.65.110.

DNR Division of Land and Water Management
Land Management Section
March 14, 1986

A M E N D M E N T

Offered in the HOUSE

By Gruenberg

TO: CSHB 587(C&RA)

Page 1, lines 26 and 27:

After "All" delete all material and insert "conveyances of legal title to land"

Page 4, line 12:

Delete "Section" and insert "Sections 4 and"

Delete "takes" and insert "take"

Page 4, line 14:

Delete "1 - 7" and insert "1 - 3, 5 - 7,"

Cook ✓
3/19/86

Original sponsor: Adams

1 IN THE HOUSE

BY THE COMMUNITY AND REGIONAL
AFFAIRS COMMITTEE

2 CS FOR HOUSE BILL NO. 587 (C&RA)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

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

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

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

10 Sec. 29.65.015. DETERMINATION OF ENTITLEMENTS FOR MUNICIPAL-
11 ITIES. The general grant land entitlement of a municipality is 10
12 percent of the maximum total acreage of vacant, unappropriated, unre-
13 served land within its boundaries at any time between the date of its
14 incorporation and two years after the expiration of the state's right
15 to make select'ons under sec. 6(a) or (b) of the Alaska Statehood Act.
16 By January 1 of each year the director shall determine or update the
17 unfulfilled entitlement for each municipality under this section and
18 certify that entitlement to that municipality.

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

20 Sec. 29.65.025. LIMITATIONS ON ENTITLEMENTS. (a) A municipal-
21 ity is eligible for only one general grant land entitlement. A munic-
22 ipality that qualifies for an entitlement under AS 29.65.010 and
23 29.65.015 shall receive the larger of the two entitlements.

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

26 (c) ~~All selections of general grant land approved by the direc-~~
27 ~~tor on or before January 1, 1987, and all grants of general grant land~~
28 ~~by the state to a municipality under AS 29.65.010 or a former law~~
29 shall be credited toward fulfillment of the entitlement for that

1 municipality. All payments for land under AS 29.65.080 or former
2 AS 29.18.208 shall be credited toward fulfillment of the entitlement
3 for that municipality.

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

5 Sec. 29.65.040. STATUS OF ENTITLEMENTS. (a) After January 1,
6 1987, a general grant land entitlement under AS 29.65.010 is a vested
7 property right that must be fulfilled in accordance with AS 29.65.025
8 and 29.65.080.

9 (b) A general grant land entitlement under AS 29.65.015 is a
10 property right that vests on the date of incorporation of the munici-
11 pality. The entitlement must be fulfilled in accordance with AS 29.-
12 65.025.

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

14 Sec. 29.65.060. SCHOOL AND MENTAL HEALTH LAND. (a) School land
15 and mental health land within the boundaries of a municipality may not
16 be included for purposes of determining the general grant land en-
17 titlement of that municipality.

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

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

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

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

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

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

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

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

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

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

26 (C) is unclassified or, if classified under AS 38.-
27 05.300, is classified for agricultural, grazing, material, public
28 recreation, resource management, settlement, transportation
29 corridor, forestry, wildlife habitat and water resources,

1 [COMMERCIAL, INDUSTRIAL, PRIVATE RECREATIONAL, RESIDENTIAL,
2 UTILITY, OR OPEN-TO-ENTRY PURPOSES,] or is classified in accor-
3 dance with an agreement between a municipality and the state
4 providing for state management of land of the municipality.

5 * Sec. 8. Before January 1, 1987, the Department of Natural Resources
6 shall consult with each municipality affected by this Act regarding classi-
7 fications of state land within its boundaries and shall assist the munic-
8 ipality in identifying land suitable for selection in fulfillment of its
9 general grant land entitlement.

10 * Sec. 9. AS 29.65.010(b), 29.65.020, 29.65.030, 29.65.050, 29.65.090
11 and 29.65.110 are repealed.

12 * Sec. 10. Section 8 of this Act takes effect immediately in accordance
13 with AS 01.10.070(c).

14 * Sec. 11. Sections 1 - 7 and 9 of this Act take effect January 1,
15 1987.

Cook ✓
3/19/86

Original sponsor: Adams

1 IN THE HOUSE

BY THE COMMUNITY AND REGIONAL
AFFAIRS COMMITTEE

2 CS FOR HOUSE BILL NO. 587 (C&RA)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

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

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

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

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

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

20 Sec. 29.65.025. LIMITATIONS ON ENTITLEMENTS. (a) A municipal-
21 ity is eligible for only one general grant land entitlement. A munic-
22 ipality that qualifies for an entitlement under AS 29.65.010 and
23 29.65.015 shall receive the larger of the two entitlements.

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

26 (c) ~~All selections of general grant land approved by the direc-~~
27 ~~tor on or before January 1, 1987;~~ ~~and~~ ~~all grants of general grant land~~
28 by the state to a municipality under AS 29.65.010 or a former law
29 shall be credited toward fulfillment of the entitlement for that

1 municipality. All payments for land under AS 29.65.080 or former
2 AS 29.18.208 shall be credited toward fulfillment of the entitlement
3 for that municipality.

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

5 Sec. 29.65.040. STATUS OF ENTITLEMENTS. (a) After January 1,
6 1987, a general grant land entitlement under AS 29.65.010 is a vested
7 property right that must be fulfilled in accordance with AS 29.65.025
8 and 29.65.080.

9 (b) A general grant land entitlement under AS 29.65.015 is a
10 property right that vests on the date of incorporation of the munici-
11 pality. The entitlement must be fulfilled in accordance with AS 29.-
12 65.025.

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

14 Sec. 29.65.060. SCHOOL AND MENTAL HEALTH LAND. (a) School land
15 and mental health land within the boundaries of a municipality may not
16 be included for purposes of determining the general grant land en-
17 titlement of that municipality.

18 (b) A municipality may not ^{CONVEYANCE OF} receive school land or mental health
19 land in fulfillment of its general grant land entitlement.

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

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

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

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

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

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

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

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

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

26 (C) is unclassified or, if classified under AS 38.-
27 05.300, is classified for agricultural, grazing, material, public
28 recreation, resource management, settlement, transportation
29 corridor, forestry, wildlife habitat and water resources,

1 [COMMERCIAL, INDUSTRIAL, PRIVATE RECREATIONAL, RESIDENTIAL,
2 UTILITY, OR OPEN-TO-ENTRY PURPOSES,] or is classified in accor-
3 dance with an agreement between a municipality and the state
4 providing for state management of land of the municipality.

5 * Sec. 8. Before January 1, 1987, the Department of Natural Resources
6 shall consult with each municipality affected by this Act regarding classi-
7 fications of state land within its boundaries and shall assist the munic-
8 ipality in identifying land suitable for selection in fulfillment of its
9 general grant land entitlement.

10 * Sec. 9. AS 29.65.010(b), 29.65.020, 29.65.030, 29.65.050, 29.65.090
11 and 29.65.110 are repealed.

12 * Sec. 10. Section 8 of this Act takes effect immediately in accordance
13 with AS 01.10.070(c).

14 * Sec. 11. Sections 1 - 7 and 9 of this Act take effect January 1,
15 1987.

A M E N D M E N T

Offered in the HOUSE

By Adams

TO: CSHB 587(C&RA)

Page 1, line 26:

After "All" delete all material.

Page 1, line 27:

Delete all material and insert "conveyances of land"

Page 2, after line 3 insert a new subsection to read:

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

Page 3, on line 29 delete "and" ^{and} "water resources"
and put an "and" in between "forestry"
and "wildlife habitat". The line
would then read:
corridor, forestry and wildlife habitat

Alaska MUNICIPAL League

TELEPHONE
(907) 586-1325

105 MUNICIPAL WAY, SUITE 301
JUNEAU, ALASKA 99801

TO: Representative Peter Goll, Chair
Members of the House Community and Regional Affairs Committee

FROM: Scott A. Burgess, Executive Director *SA Burgess*

DATE: March 19, 1986

SUBJECT: HB 587 - Municipal Land Entitlements

The Alaska Municipal League strongly supports HB 587. Attached is a resolution generally supporting such legislation adopted by the AML membership at their annual conference and business meeting in Fairbanks in November. The legislation would recognize past inequities, recognize the needs of growing municipalities, and make more efficient use of state land by encouraging development and effective use near population, employment and service centers.

As written, the bill would appear to have three major proposals.

1. It would extend the date during which a municipality could receive 10% of the total vacant, unappropriated, unreserved (VUU) state land within its municipal boundaries until 1996, two years after 1994. Under the Statehood Act, the State has 35 years in which to select. → which is 1994.

2. It would require the annual recomputation of the maximum total acreage base from which to determine the 10% entitlement to account for additional acreage available for selection through reclassification (see #3 below), additional state selections, and annexation. On this point some clarification of the intent and a definition of "mileage rate equivalent" in Section 2 would be helpful.

3. It expands the state land classifications from which a municipality may select land.

The legislation could potentially benefit all municipalities, equally in proportion to municipal land area and depending on available State VUU land. This would include municipalities which did not received a statutory entitlement and the North Slope Borough which lost its entitlement in a court battle with the State. Also, it could benefit those who received statutory entitlements and newly incorporated municipalities which received 10% under the existing law, now or over time, by recomputing the base as the result of annexations or in the event the State has selected additional land within its boundaries, and by increasing the types of VUU land with the new classifications eligible for selection. The specific effects on individual municipalities will vary by community, size, incorporation date, amount of VUU land, entitlement

AML Testimony on HB 587

March 19, 1986

Page 2

status etc. The Department of Natural Resources did not have a list of municipalities potentially affected by this legislation available at the time I prepared this memo, and such a list may not be possible with the varying circumstances.

One concern I would raise is the fiscal note. Without adequate funding, this legislation will present false hopes and probable frustrations. Inadequate funding for municipalities and the Department of Natural Resources is presumably a major deterrent to satisfying municipal entitlements under current law. While state revenues will be continued to be strapped, this legislation will only add to the land selection, planning, survey, transfer and development costs of the land entitlement program, and must be addressed by the Legislature to realize the intent of this bill.

Again, the Alaska Municipal League supports HB 587, and appreciates the effort of the sponsor, and urges passage by the Committee. Thank you.

Attachment

RESOLUTION OF THE ALASKA MUNICIPAL LEAGUE

RESOLUTION NO. 86-21

A RESOLUTION ADDRESSING LAND ENTITLEMENTS.

WHEREAS, the purpose of municipal entitlements is to provide local governments throughout Alaska a land base with which to meet a broad variety of present and future needs, and

WHEREAS, many municipalities throughout the State have not received entitlements, and

WHEREAS, while the problems associated with the fulfillment of municipal entitlements for each municipality may vary with individual communities, concern over the fulfillment of entitlements is deeply shared by all communities, and

WHEREAS, the lack of municipal entitlements presents hardships for municipalities and severely restricts the ability of communities to plan effectively for the future, and

WHEREAS, fulfillment of municipal entitlements is one of the most important and basic rights of municipalities and a duty of the State;


NOW, THEREFORE, BE IT RESOLVED that the Alaska Municipal League calls upon the Legislature, the Governor, and the Alaska Department of Natural Resources to take whatever actions are necessary to correct existing inequities and overcome any and all remaining obstacles to fulfill land entitlements for all municipalities.

Adopted this 16th day of November, 1985.



LEO B. RASMUSSEN, President

ATTEST:



SCOTT A. BURGESS, Executive Director

Alaska State Legislature
House of Representatives

WHILE IN SESSION
Pouch V
State Capitol
Juneau, Alaska 99811
(907) 465-3706

OUT OF SESSION
P.O. Box 333
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(907) 442-3320

1024 W. 6th
Anchorage, Alaska 99501
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Official Business

Al Adams
Chairman
Committee on Finance

March 18, 1986

MEMORANDUM

TO: Representative Peter Goll, Chair
House C&RA Committee

FROM: Representative Al Adams *APA*

SUBJ: HB 587

I request that the Committee adopt a committee substitute that would incorporate the changes made to the Senate version of the bill in Senator Ferguson's sponsor substitute and some additional changes requested by the Department of Natural Resources. All of these changes are supported by the two state agencies affected by the bill -- the Department of Community & Regional Affairs and the Department of Natural Resources.

The language for the proposed C.S. is attached, along with other information pertinent to your consideration of the bill. DNR is preparing a sectional analysis of the proposed C.S. for you. You should receive it by the end of today.

As you can see, DNR is requesting over \$200,000 to implement the bill. I think that this amount far exceeds what is necessary. I am currently reviewing the DNR budget to assess how many additional positions, if any, are really needed to implement HB 587. I would respectfully request that your committee consider the merits of the bill and leave consideration of its fiscal impact to the Finance Committee.

Please let me know if you need any additional information.

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date: 3/13/86

REQUEST

Bill/Resolution No.: HB 587
 Title: An Act..Municipal land entitlements & effective date
 Sponsor: Rep. Adams
 Requestor: _____
 Date of Request: _____

FISCAL DETAIL

Agency Affected: Community & Regional Affairs
 BRU: Local Government Assistance
 Components: Training & Development

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

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

REVENUE						
---------	--	--	--	--	--	--

FUNDING : (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

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

ANALYSIS : Attach a separate page if necessary

Prepared by: Doug Griffin, Deputy Director
 Division: Municipal & Regional Assistance

Phone: 465-4750
 Date: 3/13/86

Approved by Commissioner: [Signature]
 Agency: Community & Regional Affairs

Date: 3/13/86

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor ✓
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date: 03-13-86

REQUEST

Bill/Resolution No.: SSSB 414
Title: Municipal Land Entitlements

Sponsor: Sen. Ferguson
Requestor: Sen. C&RA
Date of Request: 03-13-86

FISCAL DETAIL

Agency Affected: Natural Resources
BRU: Land & Water Management

Components: _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		165.9	91.9	43.0	43.0	43.0
TRAVEL		12.0	6.0	4.0	4.0	4.0
CONTRACTUAL		21.0	10.5	6.0	6.0	6.0
SUPPLIES		.3	.3	.2	.2	.2
EQUIPMENT		.9				
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		200.1	108.7	53.2	53.2	53.2

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

REVENUE						
---------	--	--	--	--	--	--

FUNDING : (Thousands of Dollars)

GENERAL FUND		200.1	108.7	53.2	53.2	53.2
FEDERAL FUNDS						
OTHER						
TOTAL		200.1	108.7	53.2	53.2	53.2

POSITIONS :

FULL-TIME		4	2	1	1	1
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

See attached.

Prepared by: Gary Johnson
Division: Land & Water Management

Phone: 762-4355
Date: 03-11-86

Approved by Commissioner: Ann S D Ann M
Agency: Natural Resources

Date: 3/14/86

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

03-14-86

Analysis - SSSB 414

The analysis includes funding for two Nat'l Res Officer II and two Nat'l Res Tech II. These positions will be placed in the regional offices to determine entitlements for the entities in the region.

Most of the work to prepare certificates of entitlement will occur in the first year of the project. Successive years will require less intense activity to update land records in preparation of annual certificates, thus fewer employees will be needed in succeeding years. In the second year the department anticipates the project requiring only two Nat'l Res Officer II positions to continue with certification and decision processing. In years 89,90, and 91, we anticipate handling the statewide workload with a single NRO II.

ATTACHMENT ONE
Municipal conveyances (2/86)

<u>Municipality</u>	<u>Acreage</u>
Ketchikan	0.5
North Pole	0.5
Dillingham	1.0
Soldotna	14.0
Fairbanks, City	15.0
Hoonah	15.0
Homer	16.0
Kodiak	32.0
Port Lions	35.0
Bethel	40.0
Yakutat	75.0
Kupreanof	180.0
Cordova	235.0
Ouzinkie	240.0
Kenai	307.0
Wrangell	310.0
Delta Junction	400.0
Houston	405.0
Petersburg	461.0
Skagway	500.0
Seward	562.0
Whittier	600.0
Thorne Bay	612.0
Haines Borough	2,800.0
Bristol Bay Borough	2,898.0
Tenakee Springs	2,958.1
Valdez	4,805.0
Sitka, City and Borough	10,500.0
Ketchikan Gateway Borough	11,593.0
Juneau, City and Borough	19,584.0
Anchorage, Municipality	44,893.0
Kodiak Island Borough	56,500.0
Fairbanks Northstar Borough	112,000.0
Kenai Peninsula Borough	155,780.0
Matanuska-Susitna Borough	355,210.0

ATTACHMENT TWO
State Land Classifications (12/85)

<u>State land in categories open to selection:</u>	<u>Acreage:</u>
Unclassified	11,200,000
Agriculture	629,000
Grazing	152,750
Material	5,100
Public recreation	1,400,000
Resource management	39,800,000
Settlement	2,900,000
Transportation corridor	7
Forestry	3,200
Wildlife habitat	1,900,000
Water resources	127,000
Wildlife habitat/Public recreation	6,200,000
Forestry/Wildlife habitat	283,000
Wildlife habitat/Water resources	55,000
 TOTAL STATE ACREAGE IN AVAILABLE CATEGORIES	 67,852,350

<u>State land not in categories open to selection:</u>	<u>Acreage:</u>
Legislatively designated areas	8,000,000
Minerals	83,750
Minerals/Wildlife habitat/Public recreation	2,100,000
Oil and gas/Wildlife habitat	352,000
Oil and gas/Wildlife habitat/Public recreation	2,400,000
Reserved use	600,000
Coal	2,500
Resource assessment	150,000
 TOTAL STATE ACREAGE NOT IN AVAILABLE CATEGORIES	 13,688,250

M E M O R A N D U M

S t a t e o f A l a s k a

To:
DISTRIBUTION

Date: March 19, 1986

From: Gary Gustafson, Chief
Land Management
Land and Water Management

File no:

Telephone no: 762-4346

Subject: Proposed CS HB 587

Analysis of Proposed Committee Substitute for House Bill 587

Section 1. This section allows a borough with a 1978 statutory entitlement per AS 29.65.010(a) to increase its entitlement if the new entitlement formula provided in AS 29.65.020 or 29.65.030 (10 percent of vacant unappropriated, unreserved land) results in a higher entitlement figure. Under no circumstances, however, shall a borough's entitlement exceed 400,000 acres. This should benefit those boroughs which encompass a substantial amount of available state land (i.e. Bristol Bay, Fairbanks North Star Borough, Matanuska-Susitna, Haines, North Slope Borough).

Section 2. The existing entitlement formula now applicable to cities - 10 percent of total acreage of vacant, unappropriated, unreserved land - is expanded to include all municipalities (organized boroughs and cities). There is no maximum entitlement threshold applicable to cities.

Entitlements for municipalities are also allowed to increase if the state has received additional land within municipal boundaries, up until two years after the expiration of state selection rights. As state selection rights will expire after January 2, 1994, municipal entitlements could increase (subject to the state's receipt of land) until January 2, 1996. The director is also required to determine or update entitlements for each municipality by January 1 of each year.

Section 3. This eliminates the previous language which did not grant additional entitlements to cities incorporated before January 1, 1986. Instead, a subsection is added which provides that

any prior conveyances of state land to municipalities (including those which occur outside AS 29.65) shall be counted against that municipalities entitlement. This includes prior direct legislative land conveyances, such as those to Whittier and Pelican.

Section 4. Similar to Section 2 (above), the entitlement for newly incorporated municipalities is allowed to increase if additional land is conveyed to the state within municipal boundaries before two years after the expiration of the state's selection rights expire (January 2, 1996).

NOTE: The title of this section should read "DETERMINATION OF ENTITLEMENT FOR NEWLY INCORPORATED MUNICIPALITIES".

Section 5. This section previously allowed municipalities to select and receive school and mental health land, under certain circumstances. If school or mental health land was selected, the director was to identify replacement land of approximately equal value and propose such replacement land for the concurrence of the appropriate board. If approved, the replacement land was then to be managed in accord with the purposes for which the land was originally acquired.

The section is now proposed for repeal because a recent Alaska Supreme Court decision (Weiss v. Alaska) ordered the state to return mental health land to trust status and prohibited the department from divestiture of mental health land unless the trust is compensated for at least fair market value of the land. As school lands pose very similar trust obligations (although there has been no court determination), it is prudent to also exclude school lands from municipal selection. University lands are proposed for exclusion because a 1982 agreement with the university has transferred title to these lands to the University of Alaska.

However, any conveyances of school, university or mental health land which occurred under AS 29 prior to the effective date of the proposed legislation is to be credited against entitlements of municipalities.

- Section 6. Amends the definition of "general grant land" for purposes of municipal selection to exclude school and mental health land. The definition already excludes university land.
- Section 7. This section amends the definition of "vacant, unappropriated and unreserved land" to eliminate those classification categories no longer in existence (commercial, industry, private, recreational, residential, utility, open-to-entry) and replaces them with those new classification categories considered appropriate for municipal entitlement determinations and selection (material, public recreation, resource management, settlement, transportation corridor, wildlife habitat and water resources). The agricultural and grazing classifications have not been altered and remain available for selection, as do unclassified lands. The classification categories ineligible for municipal selection are oil and gas, coal, minerals, heritage resources, geothermal and reserved use.
- The majority of the state's vacant, unappropriated and unreserved land is presently classified as resource management.
- Section 8. As the act is not proposed to take effect until January 1, 1987 (see Section 10), this section will ensure coordination and consultation with affected municipalities should the department proceed with a land classification effort prior to the effective date of the act.
- Section 9. This section repeals several provisions of AS 29.65 which are either out-dated or inconsistent with this bill. Specifically,
- (a) AS 29.65.030(c) - Is inconsistent with the bill because it specified the section will not grant additional entitlements to municipalities incorporated before January 1, 1986.
 - (b) AS 29.65.040(e) - This provision is out-dated and no longer serves any useful purpose.
 - (c) AS 29.65.050(b) and (c) - Subsection (b) is

out-dated as all approved selections under former AS 29.18.190 and 29.18.200 for which patent was not issued on July 1, 1978 by the director have now been reviewed. Subsection (c) required the director to approve each municipal selection for patent within nine months of selection and a patent within three months of approval of plat of survey. These requirements simply can not be met under the new bill due to lack of sufficient departmental staff to process the increased workload. Alternative deadlines could be proposed, although the department prefers to repeal the requirement and process selections as staff and resources allow.

- (d) AS 29.65.090 - This would repeal the present authorization for the state and municipalities to exchange land or interests in land of approximate value if in the public interest. It is the experience of department that this exchange authority is very difficult to administer because it does not require trades to be based upon equal appraised value and exempts such trades from the more stringent public review and legislative approval requirements otherwise necessary for exchanges under AS 38.50. Furthermore, there are no regulations to implement the existing section. The repeal of this section will not eliminate state land exchanges with municipalities. Instead, such trades may still occur, only subject to AS 38.50.
- (e) AS 29.65.110 - The election of benefits covered by this section no longer apply as no municipalities are still engaged in litigation regarding a claim to state land under former AS 29.18.190 or 29.18.200 and the statute of limitations has expired.

Section 10. Provides that the municipal coordination requirement in Section 8 takes effect immediately in order to ensure prior coordination and consultation with municipalities should the department engage in land classification actions which may affect municipal entitlement calculations prior to the effective date.

of the remainder of the act.

Section 11. Making the act effective on January 1, 1987 will reduce associated fiscal impacts of the bill for FY 87 and allow the state to complete any classification actions necessary to protect sensitive state lands.

GG/jlj

Introduced: 2/14/86
Referred: Community & Regional
Affairs and Finance

1 IN THE HOUSE

BY ADAMS

2 HOUSE BILL NO. 587

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

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

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

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

10 Sec. 29.65.020. DETERMINATION OF ENTITLEMENT FOR MUNICIPALITIES
11 [CITIES]. (a) The general grant land entitlement of a municipality
12 [CITY] formerly eligible to receive general grant land under the
13 provisions of former AS 29.18.190 and 29.18.200 is 10 percent of the
14 maximum total acreage of vacant, unappropriated, unreserved land
15 within [IN] the boundaries of each municipality [CITY] at any time
16 between the initial date of eligibility under former AS 29.18.190 and
17 29.18.200 and two years after the expiration of the state's right to
18 make selections under Sec. 6(a) or (b) of the Alaska Statehood Act.
19 By January 1 of each calendar year [JULY 1, 1978. WITHIN SIX MONTHS
20 AFTER JULY 1, 1978], the director shall determine or update the en-
21 titlement for each municipality [CITY] eligible to receive general
22 grant land under this section [FORMER AS 29.18.202] and certify that
23 entitlement to the municipality [CITY].

24 * Sec. 2. AS 29.65.030(a) is amended as follows:

25 Sec. 29.65.030. DETERMINATION OF MILEAGE RATE EQUIVALENT [EN-
26 TITLEMENT FOR NEWLY INCORPORATED MUNICIPALITIES]. (a) The general
27 grant land entitlement of a municipality incorporated after July 1,
28 1978, is 10 percent of the total acreage of vacant, unappropriated,
29 unreserved land within the boundaries of the municipality at any time

1 between the date of incorporation and two years after the expiration
2 of the state's right to make selections under Secs. 6(a) and (b) of
3 the Alaska Statehood Act [ON THE DATE OF ITS INCORPORATION].

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

5 (b) Within six months after the date of incorporation of a
6 municipality that is incorporated after July 1, 1978, the director
7 shall determine the entitlement of each municipality eligible to
8 receive general grant land under (a) of this section and certify the
9 entitlement to the municipality. The director shall hereafter update
10 the entitlement of each eligible municipality by January 1 of each
11 calendar year and certify that entitlement to the municipality.

12 * Sec. 4. AS 29.65.130(10) is amended to read:

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

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

18 (B) has not been approved for patent to a municipal-
19 ity under this chapter or former AS 29.18.190 and 29.18.200; or

20 (C) is unclassified or, if classified under AS 38.-
21 05.300, is classified for agricultural, grazing, material, public
22 recreation, resource management, settlement, transportation
23 corridor forestry, wildlife habitat and water resources. [COM-
24 MERCIAL, INDUSTRIAL, PRIVATE RECREATIONAL, RESIDENTIAL, UTILITY,
25 OR OPEN-TO-ENTRY PURPOSES,] or where [IS] classified in accor-
26 dance with an agreement between a municipality and the state
27 providing for state management of land of the municipality.

28 * Sec. 5. AS 29.65.020(b) and AS 29.65.030(c) are repealed.

29 * Sec. 6. This Act takes effect immediately in accordance with

1 AS 01.10.070(c).

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M E M O R A N D U M

S t a t e o f A l a s k a

To:
DISTRIBUTION

Date: March 19, 1986

From: Gary Gustafson, Chief
Land Management
Land and Water Management

File no:

Telephone no: 762-4346

Subject: Proposed CS HB 587

Analysis of Proposed Committee Substitute for House Bill 587

Section 1. This section allows a borough with a 1978 statutory entitlement per AS 29.65.010(a) to increase its entitlement if the new entitlement formula provided in AS 29.65.020 or 29.65.030 (10 percent of vacant unappropriated, unreserved land) results in a higher entitlement figure. Under no circumstances, however, shall a borough's entitlement exceed 400,000 acres. This should benefit those boroughs which encompass a substantial amount of available state land (i.e. Bristol Bay, Fairbanks North Star Borough, Matanuska-Susitna, Haines, North Slope Borough).

Section 2. The existing entitlement formula now applicable to cities - 10 percent of total acreage of vacant, unappropriated, unreserved land - is expanded to include all municipalities (organized boroughs and cities). There is no maximum entitlement threshold applicable to cities.

Entitlements for municipalities are also allowed to increase if the state has received additional land within municipal boundaries, up until two years after the expiration of state selection rights. As state selection rights will expire after January 2, 1994, municipal entitlements could increase (subject to the state's receipt of land) until January 2, 1996. The director is also required to determine or update entitlements for each municipality by January 1 of each year.

Section 3. This eliminates the previous language which did not grant additional entitlements to cities incorporated before January 1, 1986. Instead, a subsection is added which provides that

any prior conveyances of state land to municipalities (including those which occur outside AS 29.65) shall be counted against that municipalities entitlement. This includes prior direct legislative land conveyances, such as those to Whittier and Pelican.

Section 4. Similar to Section 2 (above), the entitlement for newly incorporated municipalities is allowed to increase if additional land is conveyed to the state within municipal boundaries before two years after the expiration of the state's selection rights expire (January 2, 1996).

NOTE: The title of this section should read "DETERMINATION OF ENTITLEMENT FOR NEWLY INCORPORATED MUNICIPALITIES".

Section 5. This section previously allowed municipalities to select and receive school and mental health land, under certain circumstances. If school or mental health land was selected, the director was to identify replacement land of approximately equal value and propose such replacement land for the concurrence of the appropriate board. If approved, the replacement land was then to be managed in accord with the purposes for which the land was originally acquired.

The section is now proposed for repeal because a recent Alaska Supreme Court decision (Weiss v. Alaska) ordered the state to return mental health land to trust status and prohibited the department from divestiture of mental health land unless the trust is compensated for at least fair market value of the land. As school lands pose very similar trust obligations (although there has been no court determination), it is prudent to also exclude school lands from municipal selection. University lands are proposed for exclusion because a 1982 agreement with the university has transferred title to these lands to the University of Alaska.

However, any conveyances of school, university or mental health land which occurred under AS 29 prior to the effective date of the proposed legislation is to be credited against entitlements of municipalities.

Section 6. Amends the definition of "general grant land" for purposes of municipal selection to exclude school and mental health land. The definition already excludes university land.

Section 7. This section amends the definition of "vacant, unappropriated and unreserved land" to eliminate those classification categories no longer in existence (commercial, industry, private, recreational, residential, utility, open-to-entry) and replaces them with those new classification categories considered appropriate for municipal entitlement determinations and selection (material, public recreation, resource management, settlement, transportation corridor, wildlife habitat and water resources). The agricultural and grazing classifications have not been altered and remain available for selection, as do unclassified lands. The classification categories ineligible for municipal selection are oil and gas, coal, minerals, heritage resources, geothermal and reserved use.

The majority of the state's vacant, unappropriated and unreserved land is presently classified as resource management.

Section 8. As the act is not proposed to take effect until January 1, 1987 (see Section 10), this section will ensure coordination and consultation with affected municipalities should the department proceed with a land classification effort prior to the effective date of the act.

Section 9. This section repeals several provisions of AS 29.65 which are either out-dated or inconsistent with this bill. Specifically,

(a) AS 29.65.030(c) - Is inconsistent with the bill because it specified the section will not grant additional entitlements to municipalities incorporated before January 1, 1986.

(b) AS 29.65.040(e) - This provision is out-dated and no longer serves any useful purpose.

(c) AS 29.65.050(b) and (c) - Subsection (b) is

out-dated as all approved selections under former AS 29.18.190 and 29.18.200 for which patent was not issued on July 1, 1978 by the director have now been reviewed. Subsection (c) required the director to approve each municipal selection for patent within nine months of selection and a patent within three months of approval of plat of survey. These requirements simply can not be met under the new bill due to lack of sufficient departmental staff to process the increased workload. Alternative deadlines could be proposed, although the department prefers to repeal the requirement and process selections as staff and resources allow.

- (d) AS 29.65.090 - This would repeal the present authorization for the state and municipalities to exchange land or interests in land of approximate value if in the public interest. It is the experience of department that this exchange authority is very difficult to administer because it does not require trades to be based upon equal appraised value and exempts such trades from the more stringent public review and legislative approval requirements otherwise necessary for exchanges under AS 38.50. Furthermore, there are no regulations to implement the existing section. The repeal of this section will not eliminate state land exchanges with municipalities. Instead, such trades may still occur, only subject to AS 38.50.
- (e) AS 29.65.110 - The election of benefits covered by this section no longer apply as no municipalities are still engaged in litigation regarding a claim to state land under former AS 29.18.190 or 29.18.200 and the statute of limitations has expired.

Section 10. Provides that the municipal coordination requirement in Section 8 takes effect immediately in order to ensure prior coordination and consultation with municipalities should the department engage in land classification actions which may affect municipal entitlement calculations prior to the effective date

of the remainder of the act.

Section 11. Making the act effective on January 1, 1987 will reduce associated fiscal impacts of the bill for FY 87 and allow the state to complete any classification actions necessary to protect sensitive state lands.

GG/jlj

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : 03-18-86

REQUEST

Bill/Resolution No. : CSHB# 587CRA
 Title : Municipal Land Entitlements

 Sponsor : Rep. Adams
 Requestor : House C & RA
 Date of Request : 03-18-86

FISCAL DETAIL

Agency Affected : Natural Resources
 BRU : Land & Water Mgmt-Public Use

 Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		165.9	91.9	43.0	43.0	43.0
TRAVEL		12.0	6.0	4.0	4.0	4.0
CONTRACTUAL		21.0	10.5	6.0	6.0	6.0
SUPPLIES		.3	.3	.2	.2	.2
EQUIPMENT		.9				
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		200.1	108.7	53.2	53.2	53.2

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

REVENUE						
---------	--	--	--	--	--	--

FUNDING : (Thousands of Dollars)

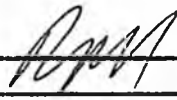
GENERAL FUND		200.1	108.7	53.2	53.2	53.2
FEDERAL FUNDS						
OTHER						
TOTAL		200.1	108.7	53.2	53.2	53.2

POSITIONS :

FULL-TIME		4	2	1	1	1
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

The analysis includes funding for 2 Nat'l Res Officer II and 2 Nat'l Res Tech II. These positions will be placed in the Regional Offices to determine entitlements for the entities in the region.

Prepared by : Gary Johnson  Phone : 762-4355
 Division : Land & Water Management Date : 03-18-86

Approved by Commissioner : Ned Fanger for EW Date : 03-18-86
 Agency : Natural Resources

Distribution (by Agency preparing fiscal note) :

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

MOST OF THE WORK TO PREPARE CERTIFICATES OF ENTITLEMENT WILL OCCUR IN THE FIRST YEAR. SUCCESSIVE YEARS WILL REQUIRE LESS INTENSE ACTIVITY TO UPDATE LAND RECORDS IN PREPARATION OF ANNUAL CERTIFICATIONS, THUS FEWER EMPLOYEES WILL BE NECESSARY. IN THE SECOND YEAR THE DEPARTMENT ANTICIPATES REDUCTION TO TWO NRO II POSITIONS TO CONTINUE WITH CERTIFICATION AND DECISION PROCESSING. IN YEARS THREE TO FIVE WE ANTICIPATE HANDLING THE STATEWIDE WORKLOAD WITH A SINGLE NRO II.



RECORDS CERTIFICATION



I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

7/25/89
Date

HB

610

Introduced: 2/14/86
Referred: Community & Regional
Affairs and Judiciary

1 IN THE HOUSE

BY CLOCKSIN BY REQUEST

2

HOUSE BILL NO. 610

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act relating to the power of eminent domain of a

7

home rule municipality."

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

9

* Section 1. AS 09.55.250 is amended to read:

10

Sec. 09.55.250. CLASSIFICATION OF ESTATES AND LAND SUBJECT TO BE

11

TAKEN. The following is a classification of the estates and rights in

12

land subject to be taken for public use:

13

(1) a fee simple, when taken for public buildings or

14

grounds, or for permanent buildings, for reservoirs and dams and

15

permanent flooding occasioned by them, or for an outlet for a flow, or

16

a place for the deposit of debris or tailings of a mine, or when, in

17

the judgment of the Department of Natural Resources, [OR] the Depart-

18

ment of Transportation and Public Facilities, or the governing body of

19

a home rule municipality, a fee simple is necessary for any of the

20

purposes for which the department, on behalf of the state, or the home

21

rule municipality is authorized by law to acquire real property by

22

condemnation;

23

(2) an easement when taken for any other use;

24

(3) the right of entry upon an occupation of land, and the

25

right to take from the land earth, gravel, stones, trees, and timber

26

as may be necessary for a public use.

27

* Sec. 2. AS 29.35.090 is amended by adding new subsections to read:

28

(b) When a part of a parcel of land is taken and the remainder

29

is in a shape or condition that is of little value to its owner, or

1 gives rise to claims or litigation concerning severance or other
2 damage, a home rule municipality may acquire the whole parcel and may
3 sell the remainder or exchange it for other property.

4 (c) When property that is devoted to or held for another public
5 use for which the power of eminent domain may be exercised is taken by
6 a home rule municipality for a street, the home rule municipality may,
7 with the consent of the governmental body in charge of the other
8 public use, condemn real property that is to be exchanged for the real
9 property taken. This section does not limit the authority of the home
10 rule municipality to acquire property for that purpose in a manner
11 other than by condemnation.

12 (d) When the governing body of a home rule municipality declares
13 by resolution that it is in the best interest of the home rule munic-
14 ipality to do so, the home rule municipality may acquire by condem-
15 nation or otherwise privately or publicly owned land or an interest in
16 it for the purpose of exchanging it for privately or publicly owned
17 land that the home rule municipality is authorized by law to acquire.

STATE OF ALASKA

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

April 14, 1986
(Corrected)

BILL SHEFFIELD, GOVERNOR

POUCH B
JUNEAU, ALASKA 99811
PHONE: (907) 465-4700

949 E. 3TH AVENUE, SUITE 400
ANCHORAGE, ALASKA 99508
PHONE: (907) 563-1073

POSITION PAPER

RE: HB 610

SPONSOR: Representative Clocksin by request

Program Effects of Bill

The bill contains several specific authorizations relating to the eminent domain powers of a home rule municipality. Under the bill, a home rule municipality is authorized to:

1. acquire fee simple title in real property when the governing body so acts;
2. acquire an entire parcel of land when it needs only part of it, and the remainder is of little value to the owner or gives rise to claims or litigation concerning severance or other damage;
3. condemn real property to be exchanged for other real property taken by eminent domain for use as a street, upon approval of the governing body; and
4. acquire, by condemnation or otherwise, privately or publicly owned land or an interest in it, for the purpose of exchanging it for privately or publicly owned land that the home rule municipality is authorized by law to acquire, with the consent of the governing body by resolution.

Comments

Title 29 does not now distinguish between classes of municipalities with respect to their authority to exercise eminent domain, except that second class cities may exercise the power only upon voter approval.

HB 610 specifically confers the power of eminent domain to home rule municipalities, without mention of general law municipalities. By this specific granting of powers, it is possible that other municipalities (i.e., general law) could be construed not to have this power. Specific reference should be made to general law municipalities as well, to preserve equity between classes and types of municipalities in their ability to exercise eminent domain.

HB 610
April 14, 1986
Page Two

The bill is being requested by the Municipality of Anchorage, to assist in the city's timely acquisition of property for development under the accelerated road program. The city feels the change in statute is needed to specify and underwrite their authority, and to simplify property acquisition.

The eminent domain authority expressed in Title 9 of Alaska Statutes is evidently antiquated, and would benefit from revision and consolidation of the relevant (i.e., municipal) elements into Title 29. It may be worthwhile to consider the creation of a uniform, comprehensive condemnation act to replace existing statute. However, the Department believes that the private landowner must be assured full protection and be allowed to receive just and fair compensation for land acquired under eminent domain provisions. While the exercise of eminent domain is a vital governmental function, substantial justification for meeting the public interest should be required. The Department is also wary of use of land exchanges as a means to compensate individuals whose land holdings are subject to condemnation and taking.

In short, the eminent domain process is one of government's greatest and most far reaching powers. It needs to be handled with sensitivity and awareness to protect, to the greatest degree possible, the rights and interests of private landowners.



Emil Notti, Commissioner

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

April 16, 1986

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949 E. 36TH AVENUE, SUITE 400
ANCHORAGE, ALASKA 99508
PHONE: (907) 563-1073

POSITION PAPER

RE: CS for HB 610

SPONSOR: House Community and Regional Affairs Committee

Program Effects of Bill

The bill contains authorization relating to the eminent domain powers. Specifically the bill permits municipalities fee simple acquisition of property for roads.

Comments

The Department does not oppose this legislation and has no comments of a specific nature to make on the legislation.

The original bill was requested by the Municipality of Anchorage, to assist in the city's timely acquisition of property for development under the accelerated road program. The committee substitute should accomplish the same purpose as the original legislation.

Eminent domain authority is contained in Title 9 of Alaska Statutes. It may be worthwhile to consider the creation of a uniform, comprehensive condemnation act to replace existing statute through consolidation of the relevant (i.e., municipal) elements of Title 9 into Title 29. However, the Department believes that the private landowner must be assured full protection and be allowed to receive just and fair compensation for land acquired under eminent domain provisions. While the exercise of eminent domain is a vital governmental function, substantial justification for meeting the public interest should be required.

In short, the eminent domain process is one of government's greatest and most far reaching powers. It needs to be handled with sensitivity and awareness to protect, to the greatest degree possible, the rights and interests of private landowner.


Emil Notti, Commissioner

Original sponsor: Clocksin by request

1 IN THE HOUSE

BY THE COMMUNITY AND REGIONAL
AFFAIRS COMMITTEE

2 CS FOR HOUSE BILL NO. 610 (C&RA)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act permitting a fee simple interest in land to
7 be taken for roads through eminent domain."

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

9 * Section 1. AS 09.55.250 is amended to read:

10 Sec. 09.55.250. CLASSIFICATION OF ESTATES AND LAND SUBJECT TO BE
11 TAKEN. The following is a classification of the estates and rights in
12 land subject to be taken for public use:

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14 grounds, or for permanent roads, or for permanent buildings, for
15 reservoirs and dams and permanent flooding occasioned by them, or for
16 an outlet for a flow, or a place for the deposit of debris or tailings
17 of a mine, or when, in the judgment of the Department of Natural
18 Resources, or the Department of Transportation and Public Facilities,
19 a fee simple is necessary for any of the purposes for which the
20 department, on behalf of the state, is authorized by law to acquire
21 real property by condemnation;

22 (2) an easement when taken for any other use;

23 (3) the right of entry upon an occupation of land, and the
24 right to take from the land earth, gravel, stones, trees, and timber
25 as may be necessary for a public use.

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Original sponsor: Clocksin by request

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17 of a mine, or when, in the judgment of the Department of Natural
18 Resources, or the Department of Transportation and Public Facilities,
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20 department, on behalf of the state, is authorized by law to acquire
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25 as may be necessary for a public use.
26
27
28
29



REPRESENTATIVE DON CLOCKSIN

Alaska House of Representatives

MAJORITY LEADER

1024 WEST SIXTH AVENUE
ANCHORAGE, ALASKA 99501
(907) 274-4031

WHILE IN JUNEAU:
POUCH V
JUNEAU, ALASKA 99811
(907) 465-3704

M E M O R A N D U M

TO: Representative Peter Goll DATE: April 16, 1986
Chair
Community and Regional Affairs
Committee

FROM: Representative Don Clocksin *DC* SUBJECT: CS SSHB 610
Majority Leader

CS SSHB 610 adds "roads" to the list of projects for which a fee simple interest may be taken in AS 09.55.250(1). Its effect is to allow all condemning authorities to condemn a fee interest for a road project rather than an easement.

Currently AS 19.20.010-.090 as well as AS 09.55.250(1) allow the Department of Transportation and Public Facilities to condemn fee interest for road projects. That is their universal practice. Platting authorities also uniformly require that subdivision roads be dedicated to the public in fee simple. This bill allows condemning authorities to take a fee interest for roads that fall between those two categories -- state roads and subdivisions. This will eventually provide for a greater uniformity of interests of the public in its thoroughfares.

CS SSHB 610 also removes an ambiguity created by the current AS 09.55.250(2) and AS 19.20.010-.090 as to the power of municipalities to condemn a fee interest for roads. Since all roads can be taken in fee, there is no question as to the authority of a municipality to do so.

Taking a fee is not unfair to the landowner on highway projects because he does not lose any substantial interests. Under Alaska Supreme Court law, Fisher v. GVEA, 658 P.2d 127 (Alaska 1983), a road right-of-way easement carries with it the right to place utilities within the easement. Taking a fee interest removes possible areas of dispute over gray-area use of right-of-way easements, i.e., utilities not envisioned as of the date of taking, or other public uses. Thus, although a condemnor has greater certainty of freedom of use when it takes in fee, the landowner has not effectively lost any greater rights due to the dominance of a road easement and its uses over property.

Taking a fee interest also removes any question of whether a taxable interest remains in the land for tax-assessment purposes -- clearly it is unfair to tax a landowner for land under a road even if he remains the fee owner and is technically the owner of the record.

MEMORANDUM

To : Representative Clocksin
From: Municipality of Anchorage
Date: April 9, 1986
Re : SSHB 610

*** Note to the Committee*
while this memo addresses an earlier form of the bill, it does provide a good statement of the reasons that Municipality of Anchorage wants the option of Taken Fee Simple Estate for Roads. (staff HCRN)

You have asked for a technical explanation of the effect of SSHB 610. The following presents a brief explanation of its impacts. Tamara Cook's analysis dated April 7, 1986 is concise and accurate. The Municipality offers the following as rationales for why SSHB 610 should be adopted.

Section 1. Power to Take Fee Simple.

The purpose of the section is to clarify any ambiguities regarding the power of a municipality to condemn property in fee simple for road purposes. Although that power seems to be granted by AS 19.20.010-.090, its omission in AS 09.55.250(1) creates an unfortunate question as to whether the scope of a municipality's power extends this far.

There should be little concern over a municipality's power to condemn a road in fee simple. First, it is fair to the landowner because it removes the landowner from the title chain to the condemned property. Landowners' concerns over premise liability cannot be allayed if only an easement is taken; taking a fee interest removes such a concern. One potential landowner in the

Page: 2
To : Representative Clocksin
From: Municipality of Anchorage
Date: April 9, 1986
Re : SSHB 610

Spenard-McRae project has raised this specific concern during settlement discussions. The concern was that he may be sued if an accident occurred on the road above his fee interest.

Taking a fee interest also removes any question of whether a taxable interest remains in the land for tax-assessment purposes -- clearly it is unfair to tax a landowner for land under a road even if he remains the fee owner.

Taking a fee is not unfair to the landowner on highway projects because he does not lose any substantial interests. Under Alaska Supreme Court law, Fisher v. GVEA, 658 P.2d 127 (Alaska 1983), a road right-of-way easement carries with it the right to place utilities within the easement. Taking a fee interest removes possible areas of dispute over gray-area uses of right-of-way easements, i.e., utilities not envisioned as of the date of taking, or other public uses. Thus, although a condemnor has greater certainty of freedom of use when it takes in fee, the landowner has not effectively lost any greater rights due to the dominance of a road easement and its uses over property.

This statute does not allow a condemnor to indiscriminately take an interest greater than needed as the requirements of AS 09.55.430(7) still require a finding of compatibility with the greatest public good and least private injury. Exercise of discretion requires a reasoned discretion -- the courts would not

To : Representative Clocksin
From: Municipality of Anchorage
Date: April 9, 1986
Re : SSHB 610

abide by a taking of a fee interest when lesser interests alone, i.e., drainage or electrical utility easements, fully serve the condemnor's needs.

It is an anomaly that all roads in subdivisions are dedicated in fee simple to the public yet the ambiguity remains in AS 09.55.250 whether roads may be condemned in fee. It is also anomalous having state and municipal roads sitting side by side, each with a different interest taken -- fee for the state and easements for a municipality. SSHB 610 would remove such anomalies.

Cook

Original sponsor: Clocksin by request

1 IN THE HOUSE

BY THE COMMUNITY AND REGIONAL
AFFAIRS COMMITTEE

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23 (3) the right of entry upon an occupation of land, and the
24 right to take from the land earth, gravel, stones, trees, and timber
25 as may be necessary for a public use.

**HOUSE
COMMITTEE REPORT**

(7)

Date referred: 2/14/86

FURTHER REFERRALS: JUDICIARY

DATE: _____

The COMMUNITY AND REGIONAL AFFAIRS Committee has considered HB 610

"An Act relating to the power of eminent domain of a home rule municipality."

and recommends:

- do pass
- do not pass
- do pass with attached amendment(s)
- no recommendation
- replace with _____ same title
- new title

and recommends _____

further referral to the _____ Committee

- and attaches:
- letter of intent
 - first fiscal note
 - new fiscal note
 - zero fiscal note

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

Mr. J. Greenberg

Peter J. ...

Roll E. Roll - Do Not Pass

Alvin Kozman - no rec.

F. Kay Wallis - No Rec.

W. A. ... (Furnell)

...

Peter J. ...
Chairman