

ALASKA LEGISLATURE COMMITTEE FILES 1995-1996 8672

8825 SENATE COMMUNITY & REGIONAL AFFAIRS

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02/20/95 15:06:47 LEGISLATIVE TELECONFERENCE NETWORK SYSTEM LTN1120
MESSAGE FROM: LIOCJEN IN ANCHORAGE JNU

RE TCN: 50237 SCHEDULED FOR:02/20/95 13:30 TO 15:30
SPONSOR: SENATE COMMUNITY & REGIONAL AFFAIRS PURPOSE: PUBLIC HEARING

MESSAGE TEXT: CLIFF EAMES ALSO WANTED TO TEST ON SB56

02/20/95 14:09:19 LEGISLATIVE TELECONFERENCE NETWORK SYSTEM LTN1120
MESSAGE FROM: LIOCJEN IN ANCHORAGE JNU

RE TCN: 50237 SCHEDULED FOR:02/20/95 13:30 TO 15:30
SPONSOR: SENATE COMMUNITY & REGIONAL AFFAIRS PURPOSE: PUBLIC HEARING

MESSAGE TEXT: BOB JUETTNER TO T ON SB 56

02/20/95 14:48:02 LEGISLATIVE TELECONFERENCE NETWORK SYSTEM LTN1120
MESSAGE FROM: LIOCJEN IN ANCHORAGE JNU

RE TCN: 50237 SCHEDULED FOR:02/20/95 13:30 TO 15:30
SPONSOR: SENATE COMMUNITY & REGIONAL AFFAIRS PURPOSE: PUBLIC HEARING

MESSAGE TEXT: JOHN BAKER IS IN CONFERENCE-SB 56

SENATE COMMITTEE REPORT

First Committee of Refer.

DATE: 1/27/95

FURTHER: Resources

Date of 5-Day Notice: 2/9/95
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: 2-21-95

CRA Committee considered SB 56

Relating to rights in certain tide and submerged land.

add further referral

and recommends:

be replaced with CS SB 56 (CRA)

adopt previous CS ()

attached amendment(s)

adopt Letter of Intent by _____ Committee

further referral to the _____ Committee

Senate Bill:
 same title
 new title
House Bill:
 technical change
 new: SCR# _____

SIGNING WITH RECOMMENDATIONS:	DP	DNP	NR	AM
<i>Tim Kell</i>	<input checked="" type="checkbox"/>			
<i>Roll E. Allen</i>			<input checked="" type="checkbox"/>	
<i>Bob G. ...</i>	<input checked="" type="checkbox"/>			
<i>...</i>	<input checked="" type="checkbox"/>			
CHAIR: <i>John Ingram</i>	<input checked="" type="checkbox"/>			

NEW FISCAL NOTE(S):

Department Date Zero Fiscal

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTE(S):*

Department Date Zero Fiscal

Department	Date	Zero	Fiscal
NATURAL RESOURCES	2/6/95		6.0
Community & Regional Affairs	2/2/95	<input checked="" type="checkbox"/>	
NATURAL RESOURCES, LAND DIV.	2/5/95		(50.0)

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

2-21
Proposed CS
Copy to Sponsor &
S. Sec 1016A

9-LS0516C

CS FOR SENATE BILL NO. 56(CRA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

Offered:

Referred:

Sponsor(s): SENATOR LEMAN

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to rights in certain tide and submerged land; and providing for an
2 effective date."

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

4 * Section 1. AS 38.05 is amended by adding a new section to read:

5 Sec. 38.05.825. CONVEYANCE OF TIDE AND SUBMERGED LAND TO
6 MUNICIPALITIES. (a) Unless the commissioner finds that the public interest in
7 retaining state ownership of the land clearly outweighs the municipality's interest in
8 obtaining the land, the commissioner shall convey to a municipality tide or submerged
9 land requested by the municipality that is occupied or suitable for occupation and
10 development if the

11 (1) use of the land would not unreasonably interfere with navigation or
12 public access;

13 (2) municipality has applied to the commissioner for conveyance of the
14 land under this section;

1 (3) land is classified for waterfront development or for another use that
2 is consistent or compatible with the use proposed by the municipality, or the proposed use
3 of the land is consistent or compatible with a land use plan adopted by the municipality,
4 the department, or the Alaska Coastal Policy Council; and

5 (4) land

6 (A) is required for the accomplishment of a public or private
7 development approved by the municipality;

8 (B) is the subject of a lease from the state to the municipality; or

9 (C) has been approved for lease to the municipality.

10 (b) The commissioner may not convey land under this section that has been
11 designated by statute unless the commissioner determines that the proposed use is
12 consistent or compatible with the purpose of the statutory designation. If land designated
13 by statute is conveyed, uses of the land after conveyance are restricted to those uses
14 determined by the commissioner to be consistent or compatible with the purpose of the
15 designation.

16 (c) Upon receipt of an application, the commissioner shall determine whether the
17 requested conveyance meets the requirements of this section and issue a written decision
18 regarding that determination. Upon a determination that the requirements have been met,
19 the commissioner shall approve the conveyance of the land to the municipality. After
20 conveyance to the municipality is approved, the municipality has management authority
21 of the land and may convey the land by lease or sale. The cost of the survey and all
22 subdivision or other platting required for conveyance shall be borne by the municipality.

23 (d) A conveyance under this section may contain only those restrictions required
24 by law, including AS 38.05.127 and (b) of this section. Land conveyed is subject to the
25 public trust doctrine that may be enforced by the state in a court of competent
26 jurisdiction. The municipality shall be required to ensure that reasonable access to public
27 waters is provided. Title to land conveyed under this section that is retained by the
28 municipality reverts to the state upon the dissolution of the municipality.

29 (e) This section does not enlarge or diminish the general grant land entitlement
30 of a municipality under AS 29.65, nor is a conveyance under this section counted against
31 the municipality's general grant land entitlement.

1

* Sec. 2. This Act takes effect immediately under AS 01.10.070(c).

F A X T R A N S M I S S I O N
to follow

From: Senator John Torgerson, Alaska State Legislature
Phone: (907) 465-2828 Fax: (907) 465-4779

To: Legis Services FAX#: 2029

Attn: _____

Date: 2-20-96 Pages, including this cover sheet: 2

Memoranda: RE SENATE BILL 56 9-151516 A

SENATE COMMUNITY & REGIONAL AFFAIRS COMMITTEE PASSED
OUT SB 56 WITH ATTACHED AMENDMENT TO
BE INCORPORATED INTO CS (CRA) WITH THE
ADDITION OF AN IMMEDIATE EFFECTIVE DATE
AND TITLE CHANGE.

CS CAN BE DELIVERED TO CAP ROOM 427 -
ATTENTION: SANDY

Telephone Contact: 465-4987 SANDY

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. SB56

Revision Date: Original Dept Affected: Natural Resources
 Title: An Act relating to rights in certain BRU: Resource Development
tides and submerged land Component: Information Resource Management
 Sponsor: Senator Leman
 Requestor: _____ Component Serial No. 427

Expenditures/Revenues		(Thousands of Dollars)				
OPERATING EXPENDITURES	FY96	FY97	FY98	FY99	FY00	FY01
PERSONAL SERVICES	6.0					
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	6.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES (1005)						

FUND SOURCE		(Thousands of Dollars)				
1002 Federal Receipts						
1003 GF Match						
1004 GF	6.0					
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	6.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY95) cost: \$ None

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

ANALYSIS: (Attach a separate page if necessary)

This bill will require the development of a new Land Administration System (LAS) casetype for these conveyances to municipalities. The actual notation of these conveyances to the status plats is considered regular work and will be absorbed by the component. The incremental work to develop a new casetype is estimated to be a one-time cost of \$6.0 in personal services.

Prepared by: Nico Bus, Acting Director Phone: 465-2406
 Division: Support Services Date: 6-Feb-95
 Approved by Commissioner: Nico Bus, for M. Rutherford, Act. Comm. Date: 2/6/95
 Agency: Natural Resources

FISCAL NOTE

Revision Date: 2/1 January 31, 1995 Dept. Affected: Community & Regional Affairs
 Title: An Act relating to rights in certain tide and submerged land. BRU: none
 Component: none
 Sponsor: Senator Leman
 Requestor: Senator Leman COMPONENT SERIAL NO. _____

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
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REVENUE FUND SOURCE:						
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FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

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

Estimate of current (FY94) impact \$ none

ANALYSIS: (Attach a separate page if necessary)

This legislation would give the Department of Natural Resources (DNR) the authority to convey tidelands and submerged land to municipalities. Presently, DNR can only issue leases (unless the municipality was incorporated before 1964). There is no fiscal impact on DCRA from this bill.

Prepared by: Remond Henderson, Director *Remond Henderson* Phone: 465-4708

Division: Division of Administrative Services Date: *2/21/95*

Approved by Commissioner: *Mila M. ...* Date: *2/21/95*

Agency: Community & Regional Affairs

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FISCAL NOTE

STATE OF ALASKA

BILL NO. SB56

1995 LEGISLATIVE SESSION

Revision Date: Original Dept Affected: Natural Resources
 Title: An Act relating to rights in certain BRU: Resource Development
tides and submerged land Component: Land Development
 Sponsor: Senator Leman
 Requestor: _____ Component Serial No. 431

Expenditures/Revenues		(Thousands of Dollars)					
OPERATING EXPENDITURES	FY96	FY97	FY98	FY99	1-Y00	FY01	
PERSONAL SERVICES							
TRAVEL							
CONTRACTUAL							
SUPPLIES							
EQUIPMENT							
LAND & STRUCTURES							
GRANTS, CLAIMS							
MISCELLANEOUS							
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES (1005)	(50.0)	(50.0)	(50.0)	(50.0)	(50.0)	(50.0)
----------------------------------	---------------	---------------	---------------	---------------	---------------	---------------

FUND SOURCE		(Thousands of Dollars)					
1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1006 GF/MHTIA							
Other							
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	

Estimate of any current year (FY95) cost: \$ None

POSITIONS		(Thousands of Dollars)					
FULL-TIME	0	0	0	0	0	0	
PART-TIME	0	0	0	0	0	0	
TEMPORARY	0	0	0	0	0	0	

ANALYSIS: (Attach a separate page if necessary)

In addition to the general grant land entitlement under AS 29.65, qualified municipalities which were incorporated prior to 1964 have been conveyed tide and submerged land. This legislation would authorize the department to convey improved tidelands or land required for the accomplishment of a public or private development to all home rule, first and second class municipalities. Currently, the department can only issue leases that create a financial burden to the municipality and a liability to the state. This legislation will reduce the amount of lease monitoring and compliance activities currently required of the department on these existing leases, however the department anticipates no reduction in expenses due to the continuing effort to process and monitor other current and additional leases.

The reduction of \$50.0 in general fund program receipts is a rough estimate of the amount of annual lease revenue that will be lost with the implementation of this legislation.

See attached proposed amendments.

Prepared by: Ron Swanson, Director Phone: 762-2692
 Division: Land Date: 2-Feb-95
 Approved by Commissioner: [Signature] Date: 2-5-95
 Agency: Natural Resources

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FISCAL NOTE ATTACHMENT - PAGE 2 - SB56
Amendments Proposed

While we support the bill in concept, the changes suggested below would better protect the public interest.

The first change is the addition of the following to Section 1(a):

Unless the commissioner finds that the public interest in retaining state ownership of the land clearly outweighs the municipality's interest in obtaining the land, the commissioner shall convey to a municipality tide or submerged land requested by the municipality that is occupied or suitable for occupation and development if the...

This addition (which is already contained in HB20) will give the commissioner discretion to reject municipal selections in areas outside of legislatively designated areas which section (b) of this bill allows. This will rarely be needed and only when the greater public interest is at stake.

As example, the City of Valdez selected the entire Anderson Bay proposed Trans-Alaska Gas Pipeline terminal facility. Three years ago, for a variety of reasons, the department rejected the selections as not being in the greater public interest. Under SB56, we would not have this discretion.

The second change would be the deletions of the phrase "or sale" from page 2, line 18. Tidelands, shorelands, and submerged lands are all managed under the Public Trust Doctrine. This is a living doctrine that has evolved and continues to evolve over time. Other states and the courts have long found that the sale of these lands, while not necessarily violating the public trust doctrine at the time of sale, may by its use violate the doctrine at a later date.

In a recent survey conducted by the State of Washington, all 22 western states currently prohibit the sale or exchange of tide, shore, or submerged land. They have all found that short or long term leases (up to 55 years) provide the protection needed and allow the stipulations to be changed at periodic intervals.

As a side note, I find it somewhat ironic, except for rare circumstances, that the department cannot convey tide, shore, or submerged lands to private individuals. This proposed legislation, however, would allow local municipalities that ability without any side boards or restrictions.



RECEIVED

FEB 01 1995

Ans'd.....

Alaska State Legislature

Session:
State Capitol
Juneau AK 99801-1182

Interim:
716 W 4th Avenue
Anchorage AK 99501-2133

MEMORANDUM

To: Senator John Torgerson, Chairman
Senate Community and Regional Affairs

From: Senator Loren Leman, Sponsor

Date: January 30, 1994

Re: SB 56 - Hearing Request

A handwritten signature in cursive script that reads "Loren Leman".

I respectfully request that you schedule Senate Bill 56 for a hearing at your earliest convenience. SB 56 pertains to Title 38 of the Alaska Statutes which fails to recognize second class cities' and municipalities' eligibility to obtain tide and submerged lands despite the fact that home rule and first class cities incorporated prior to April 1, 1964 have this right. SB 56 allows all municipalities, Home Rule, First and Second class cities and boroughs to apply for tide and submerged land and to have them conveyed.

This bill would help correct long standing land ownership problems in various areas around the state. It also gives a greater measure of self-sufficiency to local governments and promotes economic development at the local level.

Thank You for your consideration.

Sponsor Statement

SB 56

Current state statutes are working against second class cities and municipalities incorporated after April 1, 1964. To promote self sufficiency and economic development at the local level I am proposing to change current state statute Title 38.

Title 38 of Alaska Statutes fails to recognize second class cities' and municipalities' eligibility to obtain tide and submerged lands despite the fact that home rule and first class cities incorporated prior to April 1, 1964, have this right. The effect of this oversight places coastal second class cities and municipalities at a disadvantage as they pursue economic development along their waterfronts.

SB 56 allows all municipalities, home rule, first and second class cities and boroughs to apply for tide and submerged land and to have them conveyed. There would be four conditions to meet in order for this to happen:

- (1) Lack of unreasonable interference with public access resulting from the proposed use of the land;
- (2) Application for conveyance by the municipality, with the municipality paying all cost;
- (3) Compatibility of the proposed use and the land classification or land use plan for the area;
- (4) Need for the land development.

Land conveyed under this bill is subject to the public trust doctrine. Title to land conveyed under this bill would revert to the state if the municipality is dissolved. Conveyances of land under the bill would not affect the general land entitlement of a municipality provided by AS 29.65.

Sectional Analysis of SB 56

The following is a sectional analysis of SB 56 "An act relating to rights in certain tide and submerged land."

Section 1 amends AS 38.05 by adding a new section. Title 38 deals with "Public Lands", chapter 05 deals specifically with the "Alaska Land Act"

Subsection (a) sets out the four conditions that a municipality must meet before the commissioner shall convey tide or submerged land to the municipality. These are:

- (1) Lack of unreasonable interference with public access.
- (2) The municipality must have applied for land conveyance.
- (3) Land use must be compatible with the proposed use and land classification set by the municipality.
- (4) Need for the land development.

Subsection (b) states that land designated by the legislature may not be conveyed unless the conveyance is consistent with the legislative purpose behind the designation.

Subsection (c) states that if the commissioner has determined that an application for conveyance meets the appropriate standards, the commissioner shall convey the land to the municipality. This subsection also states that after approval by the commissioner, a municipality has responsibility of management and the right to lease or sell the land.

Subsection (d) limits the restrictions that the state can put on the land conveyed under this section and requires reasonable public access to public water. Any land that has been conveyed under this section reverts back to the state upon the dissolution of the municipality.

Subsection (e) states that land transferred under this section does not count against a municipality's general land grant.

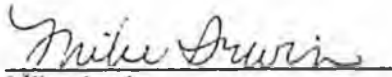
STATE OF ALASKA
DEPARTMENT OF COMMUNITY
& REGIONAL AFFAIRS


POSITION PAPER

Bill no.: SB 56
Sponsor: Senator Leman
DCRA FN: Zero (submitted)
Position: Support
Title: An Act relating to rights in certain tide and submerged land

This legislation amends AS 38.05 by adding a new section that would give the Department of Natural Resources (DNR) the authority to convey tidelands and submerged lands to municipalities. Presently, in accordance with AS 38.05.820, DNR may convey such lands only to municipalities incorporated on or before April 1, 1964. DNR may only lease these lands to municipalities incorporated after that date.

The department supports the principle of treating municipalities equally in the process of conveyence or lease of state lands. The current artificial distinction among municipalities based on date of municipal incorporation should be eliminated. Also, as an advocate for stronger local government and stronger local economies, the department supports the long-range development stability provided by municipal land ownership rather than leasing of state lands. Therefore, the department supports this legislation.


Mike Irwin
Commissioner


Date



217 Second Street, Suite 200 • Juneau, Alaska 99801 • Tel (907) 586-1325, Fax (907) 463-5480

February 3, 1995

TO: Senator Loren Leman

FROM: *Kevin C. Ritchie*
Executive Director

RE: SB 56 - Rights in certain tide and submerged land

The Alaska Municipal League supports SB 56, which would allow all Alaskan cities the right to select and receive title to state-owned tide and submerged lands within their municipal boundaries. In November 1994, AML members discussed this issue and passed Resolution 95-11 (copy enclosed) supporting the concept included in SB 56.

Present statutes limit the ability of municipalities to obtain ownership to tide and submerged lands within their boundaries, yet often these lands are among the most valuable for economic development purposes. AML and its members support making such lands available to all municipalities, as part of their municipal entitlement to state-owned land.

Attachment

JK/Leg95/hb20 126

Support:

Resolution of the Alaska Municipal League

Resolution 95-11

A RESOLUTION OF THE ALASKA MUNICIPAL LEAGUE URGING THE PASSAGE OF LEGISLATION REQUIRING THE CONVEYANCE TO CITIES AND BOROUGHES OF STATE TIDELANDS THAT ARE LEASED TO MUNICIPALITIES OR ARE NEEDED OR APPROPRIATE FOR DEVELOPMENT

WHEREAS, upon becoming a state, Alaska authorized all first class and home rule cities to receive all tidelands within their boundaries and these cities were required to reconvey to private persons only those tidelands to which such persons had a claim through their prior use and development of the tidelands; and

WHEREAS, the right to receive such tidelands was never extended to unified municipalities, second class cities, or to boroughs of any class, nor to any cities that reclassified as first class or home rule after April 1, 1964; and

WHEREAS, all coastal municipalities have similar needs for tidelands to give them the tools needed to encourage, control, and ensure responsible development of tidelands within their boundaries and to ensure that such development is consistent and coordinated with other developments and needs of the municipality; and

WHEREAS, the State of Alaska currently will convey an interest in tidelands to municipalities only through a lease; and

WHEREAS, obtaining a tidelands lease from the State of Alaska is a cumbersome, lengthy process and the leases often require the posting of a performance bond that costs the municipality more in annual premiums than the fair market annual rent for the tidelands, creates an unnecessary ongoing relationship with the State with respect to the tidelands parcel, and impose other unreasonably burdensome requirements; and

WHEREAS, municipalities, as well as the State of Alaska, have a duty to ensure that the use of their lands, including tidelands, is in the public interest; and

WHEREAS, it would be equitable and in the public interest for the State of Alaska to convey to boroughs and to cities that have not received their tidelands under AS 38.05.820 (formerly AS 38.05.320) tidelands that are needed or have been identified as appropriate for public or private development; and

WHEREAS, HB 398, as it passed the Alaska House of Representatives during the Second Session of the Eighteenth Alaska Legislature, would have met these needs of municipalities:

NOW, THEREFORE, be it resolved that the Alaska Municipal League urges the Legislature and the Governor to pass either legislation substantially in the form of HB 398 as passed by the Alaska House of Representatives during the Second Session of the Eighteenth Legislature or other legislation requiring the expedited conveyance to municipalities of tidelands leased to municipalities and tidelands that are appropriate or needed for development.



John Torgerson, President

ATTEST:



Kevin C. Ritchie, Executive Director

ALEUTIANS EAST BOROUGH

SERVING THE COMMUNITIES OF

■ KING COVE ■ SAND POINT ■ AKUTAN ■ COLD BAY ■ FALSE PASS ■ NELSON LAGOON

February 7, 1995

Senator Loren Leman
Room 113
State Capitol
Juneau, AK 99801-1182

RE: Senate Bill 56

Dear Senator Leman:

While we have not discussed the costs of tideland leasing to municipalities, I thought it would be interesting to analyze what a typical tidelands lease costs a local government.

Attached is a table called "Tideland Lease Expense" which is based on the Aleutians East Borough's most recent tideland lease with DNR. It is a 20-year lease on 4.4 acres with a rate of \$1,100 annually - and may require reappraisal every 5 years. For simplicity's sake, I have taken the actual costs and extended them over the 20 years of the lease. I made no provision for inflation or any other increases. It is interesting to note that DNR receives only 15% of the total cost to the AEB if the lease is reappraised every five years and receives 22% of the annual cost if the lease is never reappraised.

I am also attaching a recent memo to the City of Akutan which outlines the steps needed to secure a tideland's lease. You can easily cross reference the fees to the steps outlined in the memo.

If this proves useful, please feel free to use it. If you have any questions, do not hesitate to call me.

Sincerely,



Robert S. Juettner
Administrator

RSJ:amn

Enclosures as Indicated

cc: Annette Kreitzer

CLERK/PLANNER
P.O. BOX 349
SAND POINT, ALASKA 99861
(907) 383-2800
(907) 383-3488 FAX

BOROUGH ADMINISTRATOR
1600 A STREET, SUITE 103
ANCHORAGE, ALASKA 99501-5145
(607) 274-7555
(907) 274-7580 FAX

FINANCE DIRECTOR
P.O. BOX 49
KING COVE, ALASKA 99612
(907) 497-2588
(907) 497-2388 FAX

Support:

Tideland Lease Expense

Category	Unit Cost	Recurring Cost	Prorated Cost 20 Years	
			With 5 Year Re-appraisal	Without Re-appraisal
Application Fee	\$5,000	No	\$250	\$250
Survey Instructions	\$50	No	\$3	\$3
Survey Review	\$200	No	\$10	\$10
Tideland Survey	\$6,297	No	\$315	\$315
Appraisal Fee	\$5,000	Every five years	\$1,000	\$250
Appraisal Travel	\$1,172	Every five years	\$234	\$59
Lease Fee	\$1,100	Annually	\$1,100	\$1,100
Performance Bond	\$3,000	Annually	\$3,000	\$3,000
Annual Cost to Lessee			\$5,912	\$4,986
% of Annual Lease to Annual Cost			19%	22%

INTEROFFICE MEMO

To: Akutan Project Personnel
From: Terry P. Irwin P.L.S.
Date: February 1, 1995
Subject: Status of Alaska Tidelands near the Akutan Seaplane Ramp

Tidelands

The tidelands immediately adjoining the proposed seaplane ramp projects is presently designated ATS No. 781, it contains approximately 16.1 acres of property. The tidelands survey has never been completed.

A conversation with Mary Walters of DNR suggests the following facts:

- 1) The city appears to have an application on file with DNR to lease the tidelands, It's designation is ADL 224645, initiated on Nov. 23, 1988, for 17.2 acres??
- 2) To proceed with finalization of the tidelands lease, the following must take place:
 - a/ Create and submit a current development plan that notes any changes or deviations from the original plan. This development plan should also indicate proposed schedule
 - b/ Contact Coastal Zone with the new development plan and discuss whether or not a modification to the original application is needed. Fill out a new "Environmental Risk Questionnaire", and submit to DNR and DGC.
 - c/ Request survey instructions for the actual survey and monumentation of the ATS
 - d/ Perform the field survey per the state instructions.
 - e/ Request appraisal instructions from the State of Alaska.
 - f/ Select a state approved appraiser and have an appraisal performed.
 - g/ Complete final lease negotiations and pay a \$5000 bond to finalize lease.
- 3) Presently, DNR is severely understaffed due to financial cutbacks. for this reason an application for tidelands lease can take as much as two years to complete within the present first come first served basis. The applicant can chose to pay a fee of approximately \$5000 to DNR so that a single employee can be assigned their case for expediting. In this scenario a lease and plat can probably be completed in six months.

Status of Alaska Tidelands near the Akutan Seaplane Ramp

02/01/95 Page 2

4) If materials are going to be utilized for this project, a new materials sale contract may have to be negotiated, as the previous contract appears to have been closed in 1989.

5) Some additional thoughts and considerations that come to mind relative to this project:

a/ A determination needs to be made as to who owns the uplands. If the applicant is the owner the permit/lease process will go a lot smoother than if the uplands is owned by a third party. The upland owner generally has first right to adjoining tidelands.

b/ If less area is needed the development plan and subsequent lease application might want to request less acreage, as the cost to lease tidelands has increased in the past few years. It can now typically run \$2000 plus or minus, per acre per year.

c/ The city might want to see if they can obtain the tidelands under municipal entitlement statutes, that way they would own the tidelands after the survey and wouldn't have to pay for appraisal, rent, bond, or the as-built survey after completion.

CC:



Alaska Environmental Lobby, Inc.

P.O. Box 22151 Juneau, Alaska 99802

Phone: 907-463-3366

Fax: 907-463-3312

SB 56 Tide and Submerged Land

The Alaska Environmental Lobby supports efforts to allow local governments to be responsible for the development and protection of their lands.

However, SB 56 contains a grievous error. This bill neglects to supply recourse to the state; in this case represented by the Commissioner of DNR, for decisions which must be made in the best interest of the state and the public.

Certainly there are many concerns where the interests of the municipality are parallel to those of the state. But, the state needs to be assured that plans, for tide and submerged lands, are and will continued to be made with the best interests of **all** concerned. If there are conflicting use plans for state land that a municipality requests, there **must** be statutory certainty that the state will be able to review the public interest and retain state ownership of the land, if the best interest of the state clearly outweighs the municipalities interest in obtaining the land.

Without this provision the potential for conflicts and abuse, in obtaining and developing valuable tide and submerged lands, is great.

CS (CRA) for Senate Bill 56

To Page 1, line 5:

Begin first sentence in subsection (a) with the following new language:

"Unless the commissioner finds that the public interest in retaining state ownership of the land clearly outweighs the municipality's interest in obtaining the land, the commissioner shall convey....."

To Page 2:

Add new Section 2. - immediate effective date clause

Change title accordingly

sgn for Senator Torgerson
2-20-95

COMPARISON TYPE BILL HB 20 BY MOSES
SIMILAR LANGUAGE
2-2-5 HEARING CRA IN HOUSE

9-LS0516A

SENATE BILL NO. 56

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY SENATOR LEMAN

Introduced: 1/27/95
Referred: CRA, RES

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to rights in certain tide and submerged land."

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

3 * Section 1. AS 38.05 is amended by adding a new section to read:

4 Sec. 38.05.825. CONVEYANCE OF TIDE AND SUBMERGED LAND TO
5 MUNICIPALITIES. (a) The commissioner shall convey to a municipality tide or
6 submerged land requested by the municipality that is occupied or suitable for occupation
7 and development if the

8 (1) use of the land would not unreasonably interfere with navigation or
9 public access;

10 (2) municipality has applied to the commissioner for conveyance of the
11 land under this section;

12 (3) land is classified for waterfront development or for another use that
13 is consistent or compatible with the use proposed by the municipality, or the proposed use
14 of the land is consistent or compatible with a land use plan adopted by the municipality.

HOUSE BILL NO. 20

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE MOSES

Introduced: 1/16/95

Referred: Community and Regional Affairs, Resources, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to rights in certain tide and submerged land."

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

3 * Section 1. AS 38.05 is amended by adding a new section to read:

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6 retaining state ownership of the land clearly outweighs the municipality's interest in
7 obtaining the land, the commissioner shall convey to a municipality tide or submerged
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10 (1) use of the land would not unreasonably interfere with navigation
11 or public access;

12 (2) municipality has applied to the commissioner for conveyance of the
13 land under this section;

14 (3) land is classified for waterfront development or for another use that
15 is consistent or compatible with the use proposed by the municipality, or the proposed

CORRECTION

THE FOLLOWING DOCUMENT(S)
HAVE BEEN REFILMED TO
ASSURE LEGIBILITY OR PAGINATION



Rev. 6'98

Central Microfilm Services
Department of Education
State of Alaska

COMPARISON TYPE BILL HB 20 BY MOSES
SIMILAR LANGUAGE
2-2-5 HEARING CRA IN HOUSE

9-LS0516A

SENATE BILL NO. 56

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY SENATOR LEMAN

Introduced: 1/27/95
Referred: CRA, RES

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to rights in certain tide and submerged land."

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8 (1) use of the land would not unreasonably interfere with navigation or
9 public access;

10 (2) municipality has applied to the commissioner for conveyance of the
11 land under this section;

12 (3) land is classified for waterfront development or for another use that
13 is consistent or compatible with the use proposed by the municipality, or the proposed use
14 of the land is consistent or compatible with a land use plan adopted by the municipality,

1 the department, or the Alaska Coastal Policy Council; and

2 (4) land

3 (A) is required for the accomplishment of a public or private
4 development approved by the municipality;

5 (B) is the subject of a lease from the state to the municipality; or

6 (C) has been approved for lease to the municipality.

7 (b) The commissioner may not convey land under this section that has been
8 designated by statute unless the commissioner determines that the proposed use is
9 consistent or compatible with the purpose of the statutory designation. If land designated
10 by statute is conveyed, uses of the land after conveyance are restricted to those uses
11 determined by the commissioner to be consistent or compatible with the purpose of the
12 designation.

13 (c) Upon receipt of an application, the commissioner shall determine whether the
14 requested conveyance meets the requirements of this section and issue a written decision
15 regarding that determination. Upon a determination that the requirements have been met,
16 the commissioner shall approve the conveyance of the land to the municipality. After
17 conveyance to the municipality is approved, the municipality has management authority
18 of the land and may convey the land by lease or sale. The cost of the survey and all
19 subdivision or other platting required for conveyance shall be borne by the municipality.

20 (d) A conveyance under this section may contain only those restrictions required
21 by law, including AS 38.05.127 and (b) of this section. Land conveyed is subject to the
22 public trust doctrine that may be enforced by the state in a court of competent
23 jurisdiction. The municipality shall be required to ensure that reasonable access to public
24 waters is provided. Title to land conveyed under this section that is retained by the
25 municipality reverts to the state upon the dissolution of the municipality.

26 (e) This section does not enlarge or diminish the general grant land entitlement
27 of a municipality under AS 29.65, nor is a conveyance under this section counted against
28 the municipality's general grant land entitlement.

HOUSE BILL NO. 20

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE MOSES

Introduced: 1/16/95

Referred: Community and Regional Affairs, Resources, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to rights in certain tide and submerged land."**

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6 **retaining state ownership of the land clearly outweighs the municipality's interest in**
7 **obtaining the land, the commissioner shall convey to a municipality tide or submerged**
8 **land requested by the municipality that is occupied or suitable for occupation and**
9 **development if the**

10 **(1) use of the land would not unreasonably interfere with navigation**
11 **or public access;**

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13 **land under this section;**

14 **(3) land is classified for waterfront development or for another use that**
15 **is consistent or compatible with the use proposed by the municipality, or the proposed**

1 use of the land is consistent or compatible with a land use plan adopted by the
2 municipality, the department, or the Alaska Coastal Policy Council; and

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22 borne by the municipality.

23 (d) A conveyance under this section may contain only those restrictions
24 required by law, including AS 38.05.127 and (b) of this section. Land conveyed is
25 subject to the public trust doctrine that may be enforced by the state in a court of
26 competent jurisdiction. The municipality shall be required to ensure that reasonable
27 access to public waters is provided. Title to land conveyed under this section that is
28 retained by the municipality reverts to the state upon the dissolution of the
29 municipality.

30 (e) This section does not enlarge or diminish the general grant land entitlement
31 of a municipality under AS 29.65, nor is a conveyance under this section counted

1

against the municipality's general grant land entitlement.

FISCAL NOTE

No. 1
 Bill Version: HB 20
 (H) Publish Date: 2/3/95

STATE OF ALASKA
1995 LEGISLATIVE SESSION

Revision Date: Original Dept Affected: Natural Resources
 Title: An Act relating to rights in certain BRU: Resource Development
tides and submerged land Component: Information Resource Management
 Sponsor: Representatives Moses, Kubina
 Requestor: _____ Component Serial No. 427

Expenditures/Revenues	(Thousands of Dollars)					
	FY96	FY97	FY98	FY99	FY00	FY01
OPERATING EXPENDITURES						
PERSONAL SERVICES	6.0					
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	6.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES (1005)						

FUND SOURCE	(Thousands of Dollars)					
	FY96	FY97	FY98	FY99	FY00	FY01
1002 Federal Receipts						
1003 GF Match						
1004 GF	6.0					
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	6.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY95) cost: \$ None

POSITIONS	FY96	FY97	FY98	FY99	FY00	FY01
FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

This bill will require the development of a new Land Administration System (LAS) casetype for these conveyances to municipalities. The actual notation of these conveyances to the status plats is considered regular work and will be absorbed by the component. The incremental work to develop a new casetype is estimated to be a one-time cost of \$6.0 in personal services.

Prepared by: Rich McMahon, Chief Phone: 762-2384
 Division: Land Records Information Section Date: 26-Jan-95
 Approved by Commissioner: [Signature] Date: 1/26/95
 Agency: Natural Resources

FISCAL NOTE

No. 2
 Bill Version: HB 20
 (H) Publish Date: 2/3/95

STATE OF ALASKA
1995 LEGISLATIVE SESSION

Division Date: Original Dept Affected: Natural Resources
 Title: An Act relating to rights in certain BRU: Resource Development
tides and submerged land Component: Land Development
 Sponsor: Representatives Moses, Kubina
 Requestor: _____ Component Serial No. - - 431

Expenditures/Revenues	(Thousands of Dollars)					
OPERATING EXPENDITURES	FY96	FY97	FY98	FY99	FY00	FY01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES (1005)	(50.0)	(50.0)	(50.0)	(50.0)	(50.0)	(50.0)

FUND SOURCE	(Thousands of Dollars)					
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY95) cost: \$ None

POSITIONS	FY96	FY97	FY98	FY99	FY00	FY01
FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

In addition to the general grant land entitlement under AS 29.65, qualified municipalities which were incorporated prior to 1954 have been conveyed tide and submerged land. This legislation would authorize the department to convey improved boulderlands or land required for the accomplishment of a public or private development to all home rule, first and second class municipalities. Currently, the department can only issue leases that create a financial burden to the municipality and a liability to the state. This legislation will reduce the amount of lease monitoring and compliance activities currently required of the department on these existing leases, however the department anticipates no reduction in expenses due to the continuing effort to process and monitor other current and additional leases.

The reduction of \$50.0 in general fund program receipts is a rough estimate of the amount of annual lease revenue that will be lost with the implementation of this legislation.

Amendment to this bill and HB79 could be combined as they are very similar, but address different tide and submerged land conveyance issues.

Prepared by: Ron Swanson, Director Phone: 762-2692
 Division: Land Date: 25-Jan-95
 Approved by Commissioner: [Signature] Date: 1/25/95
 Agency: Natural Resources

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

FISCAL NOTE

Revision Date: January 24, 1995 Dept. Affected: Community & Regional Affairs
 Title: An Act relating to rights in certain tide and submerged land. BRU: none
 Sponsor: Representative Moses Component: none
 Requestor: House C & RA Committee COMPONENT SERIAL NO. _____

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0

REVENUE FUND SOURCE:

--	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

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

Estimate of current (FY94) impact \$ none

ANALYSIS: (Attach a separate page if necessary)

This legislation would give the Department of Natural Resources (DNR) the authority to convey tidelands and submerged land to municipalities. Presently, DNR can only issue leases (unless the municipality was incorporated before 1964). There is no fiscal impact on DCRA from this bill.

Prepared by: Remond Henderson, Director *Remond Henderson* Phone: 485-4708
 Division: Division of Administrative Services Date: 1/24/95
 Approved by Commissioner: *Shirley Brown* Date: (1/24/95)
 Agency: Community & Regional Affairs

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H: CERA Room 129
1 PM

9-LS0118C

HOUSE BILL NO. 20

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE MOSES

Introduced: 1/16/95

Referred: Community and Regional Affairs, Resources, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to rights in certain tide and submerged land."

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

3 * Section 1. AS 38.05 is amended by adding a new section to read:

4 Sec. 38.05.825. CONVEYANCE OF TIDE AND SUBMERGED LAND TO
5 MUNICIPALITIES. (a) Unless the commissioner finds that the public interest in
6 retaining state ownership of the land clearly outweighs the municipality's interest in
7 obtaining the land, the commissioner shall convey to a municipality tide or submerged
8 land requested by the municipality that is occupied or suitable for occupation and
9 development if the

10 (1) use of the land would not unreasonably interfere with navigation
11 or public access;

12 (2) municipality has applied to the commissioner for conveyance of the
13 land under this section;

14 (3) land is classified for waterfront development or for another use that
15 is consistent or compatible with the use proposed by the municipality, or the proposed

1 use of the land is consistent or compatible with a land use plan adopted by the
2 municipality, the department, or the Alaska Coastal Policy Council; and

3 (4) land

4 (A) is required for the accomplishment of a public or private
5 development approved by the municipality;

6 (B) is the subject of a lease from the state to the municipality;
7 or

8 (C) has been approved for lease to the municipality.

9 (b) The commissioner may not convey land under this section that has been
10 designated by statute unless the commissioner determines⁴ that the proposed use is
11 consistent or compatible with the purpose of the statutory designation. If land
12 designated by statute is conveyed, uses of the land after conveyance are restricted to
13 those uses determined by the commissioner to be consistent or compatible with the
14 purpose of the designation.

15 (c) Upon receipt of an application, the commissioner shall determine whether
16 the requested conveyance meets the requirements of this section and issue a written
17 decision regarding that determination. Upon a determination that the requirements
18 have been met, the commissioner shall approve the conveyance of the land to the
19 municipality. After conveyance to the municipality is approved, the municipality has
20 management authority of the land and may convey the land by lease or sale. The cost
21 of the survey and all subdivision or other plating required for conveyance shall be
22 borne by the municipality.

23 (d) A conveyance under this section may contain only those restrictions
24 required by law, including AS 38.05.127 and (b) of this section. Land conveyed is
25 subject to the public trust doctrine that may be enforced by the state in a court of
26 competent jurisdiction. The municipality shall be required to ensure that reasonable
27 access to public waters is provided. Title to land conveyed under this section that is
28 retained by the municipality reverts to the state upon the dissolution of the
29 municipality.

30 (e) This section does not enlarge or diminish the general grant land entitlement
31 of a municipality under AS 29.65, nor is a conveyance under this section counted
against the municipality's general grant land entitlement

Alaska State Legislature

Representative Carl E. Moses

CHAIRMAN
HOUSE RULES COMMITTEE

CHAIRMAN
HOUSE SPECIAL COMMITTEE FISHERIES

MEMBER FINANCE SUBCOMMITTEES ON
DEPT. OF FISH AND GAME
DEPT. OF PUBLIC SAFETY

SESSION
CAPITAL BUILDING ROOM 204
JUNEAU ALASKA 99901-1132
PHONE (907) 465-4451
FAX (907) 455-3445

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716 W 4TH AVE #630
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FAX (907) 258-8468

SPONSOR STATEMENT

HB 20, relating to rights in certain tides and submerged land

I have introduced HB 20, relating to conveyance of tide and submerged lands to assist communities at the local level in obtaining tide and submerged lands for waterfront development.

Background: Upon becoming a state, Alaska authorized all first class and home rule cities to receive all tidelands within their boundaries. These cities were required to reconvey lands to private persons based on prior use and development of the tideland. Tidelands can't be conveyed to first class and home rule cities formed after April 1, 1964, but the Alaska Department of Natural Resources (DNR) can issue leases.

Reason for the bill:

I have introduced HB 20 because leases vary in terms and duration, and because unified municipalities, second class cities, or boroughs of any class cannot qualify for conveyance of tide and submerged land. All coastal municipalities have similar needs for tidelands to give them the tools needed to encourage, control, and ensure responsible development of tidelands within their boundaries. Obtaining a tidelands lease can be a cumbersome, lengthy process that may require the posting of a performance bond that costs the municipality more in annual premiums than the fair market annual rent for the tidelands. Properly administering leases to remote areas is cumbersome for the department.

HB 20:

HB 20 requires DNR to convey to a municipality tide or submerged land that is occupied or suitable for occupation and development if four conditions are met. The four conditions required are: (1) lack of unreasonable interference or public access resulting for the proposed use of the land; (2) application for conveyance by the municipality; (3) compatibility of the proposed use and the land classification or land use plan for the area; and (4) need for the land for development.

Public interest safeguards are provided for in the bill. Land conveyed under the bill is subject to the public trust doctrine which is expressly stated in the bill. Title to land conveyed would revert to the State if the municipality is dissolved. Conveyances of land under the bill would not enlarge or diminish the general land grant entitlement of a municipality provided under AS 29.65 nor does a conveyance count against the municipality's general grant land entitlement.

Prior legislative history:

HB 20 essentially contains section 2 of HB 398, relating to rights in certain tide and submerged land by Representative Olberg, which passed the House last year and died in Senate Rules Committee in the final day of session (bill history is in your packet).

I have provided you with some background materials, including a general history of tide and submerged lands, and position papers that help explain the need for and effect of this bill. The bill is supported by the Alaska Department of Natural Resources (no formal position paper until Commissioner Shively is on board) and the Department of Community and Regional Affairs. It is also supported by the Alaska Municipal League and the Alaska Association of Harbormasters & Port Administrators, Inc.

I would appreciate your support.

H C + R A

2/2/75

Aleutians East Borough legal counsel: Bill will greatly streamline transfer of DNR lands to municipalities.

Ron Swanson, DNR: Suggested deleting clause "or sale" from page 2 line 20, because he felt that land leased, rather than sold, by municipalities would be easier for the state to reclaim under public trust provisions. Swanson also reasserted that a municipality must specify a purpose for wanting the tideland in their application.

City Manager from Sitka (didn't catch name) called in with his support for the bill.

William Hunter, the Bethel City Manager, called in with his support for the bill.

The Sand Point City Administrator called in with his support for the bill.

Jim Burnett, the City of Whittier's legal counsel, explained the city's desire to ensure its access to the waterfront. He suggested adding ". . . relating to rights OF MUNICIPALITIES in certain. . ." to the title to make it more specific. He then pointed out, in response to Swanson's concerns, that on page 2, lines 24-26, it specifically affirms that lands conveyed under this act would still be fully subject to the state's Public Trust doctrine.

Richard Wilson, the City Manager from St. George, testified that this bill would make it much easier for his city to diversify its economy, by removing red tape and streamlining the conveyance process. He suggested that local governments are as capable of administering these lands responsibly as is the State.

Gary Williams, the Whittier City Manager, talked about how vital managing waterfront lands is to the city, since it is expecting a new road and "a quarter of a million" tourists along with it.

Rep. Carl Moses, sponsor, testified in favor of keeping the "or sale" clause in p2 ln20.

Rep. Austerman moved to pass the bill out of C&RA and into Resources, w/fiscal note attached. Passed unanimously.

SENATE BILL 56
(Leman)

Rights in Certain Tide and Submerged Lands
In: 1/27/95 Out:
Further referral: Resources
Request for hearing: 1/30
Hearing date: 2/20 (rescheduled from 2/15)

Remarks: Companion bill with similar language introduced in House this Session (House Bill 20 - Moses)
Passed out of House CRA 1DP/3NR
Further referrals to Resources and Finance
Passed out of House Resources 2DP/4NR with title amendment after "submerged land" add "to municipalities"
No House Finance hearing scheduled to date

Similar language contained in legislation during last session (House Bill 398 - Olberg)
Introduced 1994
Passed House 37-0
SCS CRA out of committee with 1DP/2NR 0 fiscal note
Senate Resources recommended CRA CS 4DP
Died in Senate Rules

NOTES FOR HEARING:

FOLLOWING HAVE REQUESTED TO OFFER TESTIMONY FROM OUT OF TOWN:

BOB JUETTNER (Administrator, Aleutians East Borough) Off net - Anch
JOHN BAKER (Attorney General's Office at request of Department of Natural Resources) Off net - Anchorage

*AMENDMENT BEING PROPOSED BY DEPARTMENT OF NATURAL RESOURCES

SPONSOR OPPOSED TO AMENDMENT - SUGGEST DEPT. PROPOSE IN RESOURCES COMMITTEE

VOTING HISTORY ON HB 398 FROM LAST SESSION

Final passage in House:

*Hoffman excused day of passage

Committee reports:

1DP/2NR on Senate Community & Regional Affairs CS

*Phillips signed 'no rec'

4DP on Senate Resources CS

*Present CRA committee members

HB 9**HOUSE BILL NO. 9**

"An Act relating to recovery of damages from a minor's parent or legal guardian when property is destroyed by the minor."

and recommends it be replaced with:

CS FOR HOUSE BILL NO. 9(FIN)

"An Act relating to recovery of damages from a person having legal custody of a minor when property is destroyed by the minor, and to recovery from a minor's permanent fund dividend for injury or damage caused by the minor."

The report was signed by Representative Hanley, Co-chair, with the following individual recommendations:

Do pass (8): Hanley, Mulder, Parnell, Kohring, Grussendorf, Navarre, Kelly, Therriault

No recommendation (1): Brown

The following fiscal notes apply to CSHB 9(FIN):

Indeterminate fiscal note, Alaska Court System, 2/13/95

Zero fiscal note, Dept. of Administration, 2/13/95

Zero fiscal note, Dept. of Law, 1/30/95

Zero fiscal notes (2), Dept. of Administration, 1/30/95

Zero fiscal notes (2), Dept. of Health & Social Services, 1/30/95

HB 9 was referred to the Rules Committee for placement on the calendar.

HB 20

The Resources Committee has considered:

HOUSE BILL NO. 20

"An Act relating to rights in certain tide and submerged land."

and recommends the following title amendment:

HB 20

Page 1, line 1, after "submerged land":

Add "to municipalities"

The report was signed by Representative Green, Co-chair, with the following individual recommendations:

Do pass (2): Williams, Ogan

No recommendation (4): Nicholia, Barnes, Austerman, Green

The following fiscal notes apply:

Fiscal notes (2), Dept. of Natural Resources, 2/3/95

Zero fiscal note, Dept. of Community & Regional Affairs, 2/3/95

HB 20 was referred to the Finance Committee.

HB 32

The State Affairs Committee has considered:

HOUSE BILL NO. 32

"An Act relating to administrative proceedings involving a determination of eligibility for a permanent fund dividend or authority to claim a dividend on behalf of another."

and recommends it be replaced with:

CS FOR HOUSE BILL NO. 32(STA)
(same title)

The report was signed by Representative James, Chair, with the following individual recommendations:

Do pass (5): James, Porter, Green, Robinson, Ogan

No recommendation (2): Ivan, Willis

The following fiscal note applies to CSHB 32(STA):

Fiscal note, Dept. of Revenue, 2/13/95

Continued from Page A-1

YOUNG: Congressman wants to give federal properties to the states

part of four Democrats as well. The 22-10 vote was a strong signal that Young will continue to have his way on future attempts to transfer land.

The National Taxpayers Union, a defender of federal taxpayer interests, doesn't see that as inspiring news.

In tough budgetary times, the federal government ought to be getting its money's worth for selling off federal assets."

Union spokesman Pete Sepp said, "We're all for selling off federal assets. But if a hatchery is valuable to someone, they should be willing to pay a fair price for it."

Hatchery manager Bruce Strunk said in a telephone interview that he is delighted by the committee action. Strunk works for the state of Iowa, which has been operating the hatchery since 1973 at no cost to the federal government.

According to Strunk, Iowa needs title to the hatchery and its surrounding 60 acres of federal land to arrange financing for improvements. He said the state has been trying for nearly a decade to get the property, but its efforts have been thwarted by "bureaucratic red tape."

While the federal government last valued the property at \$717,000 in 1983, Strunk said it could be worth a lot more if zoning for the site were

changed from agricultural to industrial.

Part of the property is on the main channel of the Mississippi, which Strunk said makes it an ideal site for a factory or barge terminal.

"It could be valuable," Strunk said of the hatchery, which produces about a million bass and blue gill fingerlings each year for Iowa sport fishermen.

"You don't just want the federal government giving away property," Strunk said. "But how much of a

difference would that make in comparison to the good this does for Iowa?"

Most members on Young's committee couldn't agree more. Rep. Jim Saxton, R-NJ, said the hatchery giveaway advances the cause of federal "partnerships with the states."

Rep. Gerry Studds, D-Mass., noted that fish won't care who owns the property.

And freshman Rep. Linda Smith, R-Wash., said all the quibbling about federal

of state ownership is meaningless anyway because it still is "the people's own it."

After approving a bill authorizing the Fairport hatchery transfer, Young's committee authorized two more — the Corning National Fish Hatchery to the state of Arkansas and the New London National Fish Hatchery to the state of Minnesota.

The committee action clears these bills for consideration on the House floor.

Young: Give it to states

Alaskan wants feds to shed properties

By DAVID WHITNEY
Daily News reporter

WASHINGTON — Rep. Don Young's House Resources Committee voted Wednesday to give away a federal fish hatchery on the banks of the Mississippi River to the state of Iowa.

Young said there will be a lot more of this while he is chairman of the committee that oversees hundreds of millions of acres of federal property, including national parks and wildlife refuges and about a dozen more fish hatcheries that states are angling to get for free.

"We're going to do a lot of transferring of federal responsibilities over to the states," Young said. "The states have a better handle on what's occurring."

But the panel's ranking Democrat, California Rep. George Miller, complained that it's an unbridled raid on the federal treasury during an era of unrelenting attacks on federal mandates and runaway budget deficits.

Instead of giving away federal property, Miller said federal taxpayers should be paid for their investments. Miller said the Fairport National Fish Hatchery near Davenport is worth more than \$700,000.

"This is a question of priorities," Miller said.

"It's not a major item but it's one on a long continuum that has led people to believe that perhaps the federal government doesn't have its priorities right," he said. "It's all these little acts that add up to the red ink that we're so roundly criticized for on a daily basis."

Miller's argument was unanimously rejected by committee Republicans, and he failed to win sup-

\$6816
Feb

YOUNG: Congressman wants to give federal properties to the states

Continued from Page A-1

port of four Democrats as well. The 22-10 vote was a strong signal that Young will continue to have his way on future attempts to transfer land.

The National Taxpayers Union, a defender of federal taxpayer interests, doesn't see that as inspiring news.

"In tough budgetary times, the federal government ought to be getting its money's worth for selling off federal assets."

union spokesman Pete Sepp said. "We're all for selling off federal assets. But if a hatchery is valuable to someone, they should be willing to pay a fair price for it."

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\$6816 per

SB 56
by DNR

DEPT MAY OFFER
AS AMENDMENT
SPONSOR OPPOSED
TO IT

Senate C&RA
2/15/95

While we support the bill in concept, the changes suggested below would better protect the public interest.

→ The first change is the addition of the following to Section 1(a):

Am#1
Unless the commissioner finds that the public interest in retaining state ownership of the land clearly outweighs the municipality's interest in obtaining the land the commissioner shall convey to a municipality tide or submerged land requested by the municipality that is occupied or suitable for occupation and development if the...

This addition (which is already contained in HB20) will give the commissioner discretion to reject municipal selections in areas outside of legislatively designated areas which section (b) of this bill allows. This will rarely be needed and only when the greater public interest is at stake.

As example, the City of Valdez selected the entire Anderson Bay proposed Trans-Alaska Gas Pipeline terminal facility. Three years ago, for a variety of reasons, the department rejected the selections as not being in the greater public interest. Under Sb56, we would not have this discretion.

→ The second change would be the deletions of the phrase "or sale" from page 2, line 18. Tidelands, shorelands, and submerged lands are all managed under the Public Trust Doctrine. This is a living doctrine that has evolved and continues to evolve over time. Other states and the courts have long found that the sale of these lands, while not necessarily violating the public trust doctrine at the time of sale, may by its use violate the doctrine at a later date.

In a recent survey conducted by the State of Washington, all 22 western states currently prohibit the sale or exchange of tide, or submerged land. They have all found that short or long term leases (up to 55 years) provide the protection needed and allow the stipulations to be changed at periodic intervals.

Like other western states the DNR is prohibited by law from conveying tide, shore, or submerged lands to private individuals. This proposed legislation, however, would allow local municipalities to sell tidelands without any side boards or restrictions.

per: Nico Bus

S B

79

SENATE COMMITTEE REPORT
First Committee of Referral

DATE: 2/9/95

FURTHER:

Date of 5-Day Notice: 4/6/95
 (in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: 4/20/95

CRA Committee considered SENATE BILL NO. 79

"An Act relating to errors in surveys of land."

and recommends:

- be replaced with _____ CS 50 (CRA)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to the _____ Committee

- Senate Bill:**
 same title
 new title
House Bill:
 technical change
 new: SCR# _____

SIGNING <u>DO</u> PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
		<u>Roll & Call</u>	<input checked="" type="checkbox"/>		
		<u>Tim Kelly</u>	<input checked="" type="checkbox"/>		
CHAIR: <u>John Torger</u>	<input checked="" type="checkbox"/>				

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal
<u>Natural Resources</u>	<u>4/11/95</u>	<input checked="" type="checkbox"/>	
<u>DCRA</u>	<u>4/11</u>	<input checked="" type="checkbox"/>	

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

CS FOR SENATE BILL NO. 79(CRA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

Offered:

Referred:

Sponsor(s): SENATOR RIEGER

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to errors in surveys of land and amending Alaska Rules of**
2 **Civil Procedure 4 and 12."**

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

4 *** Section 1. MANIFESTLY DEFECTIVE SURVEYS.** (a) An action in rem to determine
5 and recognize boundaries of and within a subdivision within a municipality as they presently
6 exist and to quiet title within the boundaries of the subdivision to the persons judicially found
7 entitled to title under this section may be maintained if the platted description or field location
8 of streets, tracts, and lots of or within a subdivision are manifestly defective due to a defective
9 survey so as to create sufficient uncertainty as to affect the quiet enjoyment and property
10 rights of the owners and an owner of land within the subdivision objects to the results of a
11 resurvey and preliminary plat.

12 (b) An action under (a) of this section may only be maintained

13 (1) by

14 (A) the municipality the subdivision is located within; or

- 1 (B) a person granted permission by the court to bring the action; and
- 2 (2) if
- 3 (A) the municipality the subdivision is located within has
- 4 (i) by resolution supported an action under this section for the
- 5 subdivision; and
- 6 (ii) established a special assessment district in the manner
- 7 provided for capital improvements under AS 29.46.010 - 29.46.140 or under
- 8 municipal ordinance; and
- 9 (B) a resurvey and preliminary plat has been completed by the
- 10 assessment district and one or more property owners of or within the subdivision
- 11 object to the results of the resurvey and filing of the preliminary plat.
- 12 (c) The complaint in an action under this section must include
- 13 (1) a statement of facts showing how this section is applicable;
- 14 (2) the current plat of the subdivision;
- 15 (3) a description of the entire real property sought to be affected by the action,
- 16 including a description of all improvements to the real property and any existing boundary
- 17 evidence along with a description of the location of all general topographic features;
- 18 (4) if the action is not brought by the municipality, a specification of the estate,
- 19 title, and interest owned and in the actual possession of the person bringing the action in
- 20 described parts of the entire real property affected by the defective survey;
- 21 (5) a specification of the estate, title, and interest in and owners of each
- 22 separate part of the entire real property affected by the defective survey so far as they are
- 23 known to the person bringing the action, and so far as they are capable of being discovered
- 24 by reasonably diligent search by the person bringing the action;
- 25 (6) a specification of the street, public, or other areas offered, or that may be
- 26 offered, for vacation in whole or in part for judicial equitable allocation to landowners for the
- 27 mitigation of the losses inflicted upon the landowners by the defective survey;
- 28 (7) the preliminary plat undertaken by the assessment district of the entire real
- 29 property affected by the defective survey, embodying the land boundaries contained within the
- 30 legal boundary of the defective survey.
- 31 (d) In addition to other notice required by applicable court rule, notice shall be

1 published as provided in Alaska Rule of Civil Procedure 4(e), and a copy of the notice shall
2 be posted in a conspicuous place on each separate parcel of the entire real property described
3 in the complaint within 20 days after the first publication of the notice.

4 (e) An answer to the complaint must

5 (1) be served within 90 days after the first publication of the notice; the court
6 for good cause shown may allow up to an additional 180 days to answer;

7 (2) specifically set out in detail the way in which the answering party's estate,
8 right, title, or interest in or to, or lien on all or any part of the property is different from, or
9 greater than, the interest of the party as it is described in the complaint;

10 (3) be confined to rights based on events occurring at the time of, or since the
11 time of, the defective survey.

12 (f) A claim, right, or action that a party may have against a person based upon facts
13 or events that occurred before the action under this section, remains unaffected by the action
14 brought under this section and may be asserted at any time and in any manner permitted by
15 law. However, a judgment in an action under this section is final as to the consequences, with
16 respect to land boundaries, of the replat of the defective survey.

17 (g) A party to an action authorized by this section may record a notice of the
18 pendency of the action in the form and at the place and with the effects specified in
19 AS 09.45.940.

20 (h) The vacating of streets, public areas, and other areas in whole or in part by the
21 voluntary action of a municipality, for the purpose of making it possible for the court to
22 mitigate the hardships suffered by individuals because of the defective survey, can be
23 accomplished by the offer of the municipality expressed in the complaint followed by the
24 court's approval of it in the action authorized in this section, without other formalities. This
25 provision is a special substitute for the provisions contained in AS 29.40.120 - 29.40.160.

26 (i) In an action under this section, judgment may not be given by default, but the court
27 shall require proof of the facts alleged in the complaint and other pleadings.

28 (j) The judgment must

29 (1) determine the land boundaries of each parcel of land located within the
30 entire area of real property sought to be affected by the action, whether owned publicly or
31 privately after judicial equitable allocation of land voluntarily vacated by a municipality under

1 (h) of this section;

2 (2) determine the person or persons having estates, rights, titles, interests, and
3 claims in and to each parcel, whether legal or equitable, present or future, vested or
4 contingent, or whether they consist of mortgages or liens of any description;

5 (3) approve and direct the proper filing of a new plat covering the entire area
6 of real property sought to be affected by the action, as a substitute for the plats previously
7 filed, that were based upon the defective survey;

8 (4) to the extent reasonably practicable, attempt to minimize disruption to lines
9 or boundaries of parcels or lots that are not found to be materially incorrect;

10 (5) give effect to the changes in land boundaries reflected by the resurvey and
11 preliminary plat, mitigated so far as can equitably be done by allocating to contiguous lots
12 parts of the land released by the municipality under (h) of this section.

13 (k) A judgment under this section

14 (1) is conclusive with respect to land boundaries on each person who, at the
15 commencement of the action, had or claimed an estate, right, title, or interest in or to a part
16 of the entire area of real property described in the complaint as intended to be affected by this
17 action, and upon each person claiming under any such person by title subsequent to the
18 commencement of the action;

19 (2) may not solely, by reason of the judgment or its effect, make a parcel or
20 lot ineligible for a use or development for which it was eligible before the judgment.

21 (l) The court shall assess the cost of the action under this section and the replat to the
22 assessment district.

23 (m) The person bringing the action shall record a certified copy of the judgment at
24 the expense of the assessment district with the recorder for the recording district in which the
25 land is situated.

26 (n) This section does not affect the right of a person harmed by a defective survey to
27 recover damages for the defective survey or limit the liability of the person who performed
28 the defective survey.

29 (o) The remedy provided by this section is cumulative and in addition to any other
30 remedy provided by law for quieting or establishing title to real property or the boundaries
31 of it.

1 (p) In this section, "defective survey"

2 (1) means that the original monumentation set by the surveyor of record to
3 represent the property corners, or the distance and direction calls, on a plat of public record
4 are sufficiently and manifestly erroneous so as to create gross uncertainty and ambiguity as
5 to the

6 (A) position of property lines within a subdivision; or

7 (B) location of lots, streets, and tracts of a subdivision; and

8 (2) does not include Bureau of Land Management rectangular plats, United
9 States surveys, and state rectangular plats.

10 * Sec. 2. An action under sec. 1 of this Act that is commenced before December 31, 1998,
11 may proceed under the provisions of sec. 1 of this Act notwithstanding the repeal of that
12 section under sec. 4 of this Act.

13 * Sec. 3. Section 1 of this Act has the effect of amending Alaska Rule of Civil Procedure 4
14 relating to service of process, and Alaska Rule of Civil Procedure 12, relating to answers in
15 civil actions.

16 * Sec. 4. Section 1 of this Act is repealed December 31, 1998.

FISCAL NOTE

STATE OF ALASKA

BILL NO. CSSB79 (CRA)

1995 LEGISLATIVE SESSION

Revision Date: 11-Apr-95 Dept Affected: Natural Resources
 Title: An Act relating to errors in surveys of land. BRU: Resource Development
 Component: Land Development
 Sponsor: Senator Rieger
 Requestor: CRA Component Serial No. 431

Expenditures/Revenues	(Thousands of Dollars)					
	FY96	FY97	FY98	FY99	FY00	FY01
OPERATING EXPENDITURES						
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE	(Thousands of Dollars)					
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY95) cost: \$ None

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

ANALYSIS: (Attach a separate page if necessary)

There is no fiscal impact anticipated for the Department of Natural Resources associated with implementation of this legislation.

In Anchorage, two subdivisions, Rabbit Creek View and Rabbit Heights were done by the same surveyor 25 years ago, who has had his license revoked. Boundaries of the plat don't close by hundreds of feet. These problems have manifested themselves to the point where lending institutions and title companies are electing not to service the lot owners in the area. Surveyors have also not elected to perform surveys and road and drainage improvement is stopped due to the uncertainty in determining the position of right-of-ways.

Prepared by: Ron Swanson, Director Phone: 762 2692
 Division: Land Date: 11-Apr-95
 Approved by Commissioner: [Signature] Date: 4-11-95
 Agency: Natural Resources

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FISCAL NOTE

Revision Date: April 11, 1995 Dept. Affected: Community & Regional Affairs
 Title: An Act relating to errors in survey of land BRU: none
 Component: none
 Sponsor: Senator Rieger
 Requestor: Senate CRA COMPONENT SERIAL NO. _____

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
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REVENUE FUND SOURCE:						
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FUNDING: (Thousands of Dollars)

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1003 GF Match						
1004 GF						
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POSITIONS:

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

Estimate of current (FY94) impact \$ none

ANALYSIS: (Attach a separate page if necessary)

This legislation would have no fiscal impact on the department.

Prepared by: Remond Henderson, Director *Remond Henderson* 465-4100
 Division: Division of Administrative Services Date: 4/11/95
 Approved by Commissioner: *Julia Gruen* Date: 4/11/95
 Agency: Community & Regional Affairs

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F A X T R A N S M I S S I O N
to follow

From: Senator John Torgerson, Alaska State Legislature
Phone: (907) 465-2828 Fax: (907) 465-4779

To: SENATOR RIEGER FAX#: 2069

Attn: HWN

Date: 4-19-95 Pages, including this cover sheet: 2

Memoranda: WHAT DID WE DO BEFORE FAX MACHINES?
SENT OF MAIL LIKE WHAT DID WE DO BEFORE
SCOTCH TAPE!

Telephone Contact: 4989 SANDY



Alaska State Legislature

RECEIVED
APR 19 1995
Ans'd.....

Please enter into the record my testimony to the Senate Committee on Comm. Affairs
committee name

committee on SB 79 , dated 4-19-95
bill/subject change to

Page 2 Line 11 [~~Filing~~] submittal

" 2 Line 30 legal boundary of the
subdivision qualifying as a
defective survey.

" 4 After Line 12 Add §
(6) DIRECT THE CLERK OF THE COURT
TO ISSUE Replacement deeds for
property ~~located~~ REPLATED.

~~4~~ Line 21

~~4~~ Line 21.

after replat. and issuance
of title

~~§5~~ ~~line 4 thru~~
line 2-7

Relace with ^{COMMITTEE} ASPLS ^{orig} version which follows.
current definition is not
reading correctly.

Signed: Robert J. Kean
Testifier

Robert Kean

ASPLS committee on defective Survey
Representing (Optional)

14510 ATTENA CIRCLE, Anch, AK 99516
Address

345 2098
Phone No.

9-LS0563F ✓
Luckhaupt
4/12/95

CS FOR SENATE BILL NO. 79()
IN THE LEGISLATURE OF THE STATE OF ALASKA
NINETEENTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): SENATOR RIEGER

A BILL

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2 (2) determine the person or persons having estates, rights, titles, interests, and
3 claims in and to each parcel, whether legal or equitable, present or future, vested or
4 contingent, or whether they consist of mortgages or liens of any description;

5 (3) approve and direct the proper filing of a new plat covering the entire area
6 of real property sought to be affected by the action, as a substitute for the plats previously
7 filed, that were based upon the defective survey;

8 (4) to the extent reasonably practicable, attempt to minimize disruption to lines
9 or boundaries of parcels or lots that are not found to be materially incorrect;

10 (5) give effect to the changes in land boundaries reflected by the resurvey and
11 preliminary plat, mitigated so far as can equitably be done by allocating to contiguous lots
12 parts of the land released by the municipality under (h) of this section.

13 (k) A judgment under this section

14 (1) is conclusive with respect to land boundaries on each person who, at the
15 commencement of the action, had or claimed an estate, right, title, or interest in or to a part
16 of the entire area of real property described in the complaint as intended to be affected by this
17 action, and upon each person claiming under any such person by title subsequent to the
18 commencement of the action;

19 (2) may not solely, by reason of the judgment or its effect, make a parcel or
20 lot ineligible for a use or development for which it was eligible before the judgment.

21 (l) The court shall assess the cost of the action under this section and the replat to the
22 assessment district.

23 (m) The person bringing the action shall record a certified copy of the judgment at
24 the expense of the assessment district with the recorder for the recording district in which the
25 land is situated.

26 (n) This section does not affect the right of a person harmed by a defective survey to
27 recover damages for the defective survey or limit the liability of the person who performed
28 the defective survey.

29 (o) The remedy provided by this section is cumulative and in addition to any other
30 remedy provided by law for quieting or establishing title to real property or the boundaries
31 of it.

1 (p) In this section, "defective survey"

2 (1) means that the original monumentation set by the surveyor of record to
3 represent the property corners, or the distance and direction calls, on a plat of public record
4 are sufficiently and manifestly erroneous so as to create gross uncertainty and ambiguity as
5 to the

6 (A) position of property lines within a subdivision; or

7 (B) location of lots, streets, and tracts of a subdivision; and

8 (2) does not include Bureau of Land Management rectangular plats, United
9 States surveys, and state rectangular plats.

10 * Sec. 2. An action under sec. 1 of this Act that is commenced before December 31, 1998,
11 may proceed under the provisions of sec. 1 of this Act notwithstanding the repeal of that
12 section under sec. 4 of this Act.

13 * Sec. 3. Section 1 of this Act has the effect of amending Alaska Rule of Civil Procedure 4
14 relating to service of process, and Alaska Rule of Civil Procedure 12, relating to answers in
15 civil actions.

16 * Sec. 4. Section 1 of this Act is repealed December 31, 1998.

CS FOR SENATE BILL NO. 79()
IN THE LEGISLATURE OF THE STATE OF ALASKA
NINETEENTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): SENATOR RIEGER

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to errors in surveys of land and amending Alaska Rules of
2 Civil Procedure 4 and 12."

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

4 " Section 1. MANIFESTLY DEFECTIVE SURVEYS. (a) An action in rem to determine
5 and recognize boundaries of and within a subdivision within a municipality as they presently
6 exist and to quiet title within the boundaries of the subdivision to the persons judicially found
7 entitled to title under this section may be maintained if the plat description or field location
8 of streets, tracts, and lots of or within a subdivision are manifestly defective due to a defective
9 survey so as to create sufficient uncertainty as to affect the quiet enjoyment and property
10 rights of the owners and an owner of land within the subdivision objects to the results of a
11 resurvey and replat.

12 (b) An action under (a) of this section may only be maintained

13 (1) by

14 (A) the municipality the subdivision is located within; or

CORRECTION

THE FOLLOWING DOCUMENT(S)
HAVE BEEN REFILMED TO
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CS FOR SENATE BILL NO. 79()
IN THE LEGISLATURE OF THE STATE OF ALASKA
NINETEENTH LEGISLATURE - FIRST SESSION

BY

Offered:

Referred:

Sponsors: SENATOR RIEGER

A BILL

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7 entitled to title under this section may be maintained if the platted description or field location
8 of streets, tracts, and lots of or within a subdivision are manifestly defective due to a defective
9 survey so as to create sufficient uncertainty as to affect the quiet enjoyment and property
10 rights of the owners and an owner of land within the subdivision objects to the results of a
11 resurvey and replat.

12 (b) An action under (a) of this section may only be maintained

13 (1) by

14 (A) the municipality the subdivision is located within; or

1 (B) a person granted permission by the court to bring the action; and
 2 (2) if

3 (A) the municipality the subdivision is located within has
 4 (i) by resolution supported an action under this section for the
 5 subdivision; and

6 (ii) established a special assessment district in the manner
 7 provided for capital improvements under AS 29.46.010 - 29.46.140 or under
 8 municipal ordinance; and

9 (B) a resurvey and replat has been completed by the assessment district
 10 and one or more property owners of or within the subdivision object to the results of
 11 the resurvey and replat.

12 (c) The complaint in an action under this section must include

13 (1) a statement of facts showing how this section is applicable;

14 (2) the current plat of the subdivision;

15 (3) a description of the entire real property sought to be affected by the action,
 16 including a description of all improvements to the real property and any existing boundary
 17 evidence along with a description of the location of all general topographic features;

18 (4) if the action is not brought by the municipality, a specification of the estate,
 19 title, and interest owned and in the actual possession of the person bringing the action in
 20 described parts of the entire real property affected by the defective survey;

21 (5) a specification of the estate, title, and interest in and owners of each
 22 separate part of the entire real property affected by the defective survey so far as they are
 23 known to the person bringing the action, and so far as they are capable of being discovered
 24 by reasonably diligent search by the person bringing the action;

25 (6) a specification of the street, public, or other areas offered, or that may be
 26 offered, for vacation in whole or in part for judicial equitable allocation to landowners for the
 27 mitigation of the losses inflicted upon the landowners by the defective survey;

28 (7) the proposed replatting undertaken by the assessment district of the entire
 29 real property affected by the defective survey, embodying the land boundaries contained within
 30 the legal boundary of the defective survey.

31 (d) In addition to other notice required by applicable court rule, notice shall be

1 published as provided in Alaska Rule of Civil Procedure 4(e), and a copy of the notice shall
2 be posted in a conspicuous place on each separate parcel of the entire real property described
3 in the complaint within 30 days after the first publication of the notice.

4 (e) An answer to the complaint must

5 (1) be served within 90 days after the first publication of the notice; the court
6 for good cause shown may allow up to an additional 180 days to answer;

7 (2) specifically set out in detail the way in which the answering party's estate,
8 right, title, or interest in or to, or lien on all or any part of the property is different from, or
9 greater than, the interest of the party as it is described in the complaint;

10 (3) be confined to rights based on events occurring at the time of, or since the
11 time of, the defective survey.

12 (f) A claim, right, or action that a party may have against a person based upon facts
13 or events that occurred before the action under this section, remains unaffected by the action
14 brought under this section and may be asserted at any time and in any manner permitted by
15 law. However, a judgment in an action under this section is final as to the consequences, with
16 respect to land boundaries, of the results of the defective survey.

17 (g) A party to an action authorized by this section may record a notice of the
18 pendency of the action in the form and at the place and with the effects specified in
19 AS 09.45.940.

20 (h) The vacating of streets, public areas, and other areas in whole or in part by the
21 voluntary action of a municipality, for the purpose of making it possible for the court to
22 mitigate the hardships suffered by individuals because of the defective survey, can be
23 accomplished by the offer of the municipality expressed in the complaint followed by the
24 court's approval of it in the action authorized in this section, without other formalities. This
25 provision is a special substitute for the provisions contained in AS 29.40.120 - 29.40.160.

26 (i) In an action under this section, judgment may not be given by default, but the court
27 shall require proof of the facts alleged in the complaint and other pleadings.

28 (j) The judgment must

29 (1) determine the land boundaries of each parcel of land located within the
30 entire area of real property sought to be affected by the action, whether owned publicly or
31 privately after judicial equitable allocation of land voluntarily vacated by a municipality under

1 (h) of this section:

2 (1) determine the person or persons having estates, rights, titles, interests, and
3 claims in and to each parcel, whether legal or equitable, present or future, vested or
4 contingent, or whether they consist of mortgages or liens of any description;

5 (2) approve and direct the proper filing of a new plat covering the entire area
6 of real property sought to be affected by the action, as a substitute for the plats previously
7 filed, that were based upon the defective survey;

8 (3) to the extent reasonably practicable, attempt to minimize disruption to lines
9 or boundaries of parcels or lots that are not found to be materially incorrect;

10 (4) give effect to the changes in land boundaries reflected by the resurvey and
11 replat, mitigated so far as can equitably be done by allocating to contiguous lots parts of the
12 land released by the municipality under (h) of this section.

13 (k) A judgment under this section

14 (1) is conclusive with respect to land boundaries on each person who, at the
15 commencement of the action, had or claimed an estate, right, title, or interest in or to a part
16 of the entire area of real property described in the complaint as intended to be affected by this
17 action, and upon each person claiming under any such person by title subsequent to the
18 commencement of the action:

19 (2) may not solely, by reason of the judgment or its effect, make a parcel or
20 lot ineligible for a use or development for which it was eligible before the judgment.

21 (l) The court shall assess the cost of the action under this section and the replat to the
22 assessment district.

23 (m) The person bringing the action shall record a certified copy of the judgment at
24 the expense of the assessment district with the recorder for the recording district in which the
25 land is situated.

26 (n) This section does not affect the right of a person harmed by a defective survey to
27 recover damages for the defective survey or limit the liability of the person who performed
28 the defective survey.

29 (o) The remedy provided by this section is cumulative and in addition to any other
30 remedy provided by law for quieting or establishing title to real property or the boundaries
31 of it.

1 p) In this section, "defective survey"

2 (1) means that the original monumentation set by the surveyor of record to
3 represent the property corners on a plat of public record are sufficiently and manifestly
4 erroneous so as to create gross uncertainty and ambiguity as to the

5 (A) position of property lines within a subdivision; or

6 (B) location of lots, streets, and tracts of a subdivision; and

7 (2) does not include Bureau of Land Management rectangular plats, United
8 States surveys, and state rectangular plats.

9 * Sec. 2. An action under sec. 1 of this Act that is commenced before December 31, 1998,
10 may proceed under the provisions of sec. 1 of this Act notwithstanding the repeal of that
11 section under sec. 4 of this Act.

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13 relating to service of process, and Alaska Rule of Civil Procedure 12, relating to answers in
14 civil actions.

15 * Sec. 4. Section 1 of this Act is repealed December 31, 1998.

Alaska State Senate

SENATOR STEVE RIEGER
District 1

Senate Finance Committee
Chair, Senate Transportation Committee

Legislative Budget and Audit Committee
Administrative Regulation Review Committee
Legislative Council

During Session:
State Capitol, Room 516
Juneau, Alaska 99801
(907) 465-3879

716 West 4th Avenue, Suite 530
Anchorage, Alaska 99501
(907) 258-8188

- SB 79 -

"An Act relating to errors in surveys of land."

When outside survey lines of a subdivision are "manifestly defective", the inside lines of some or all of the individual lots will be incorrect as well. When this occurs, no one in the subdivision is afforded clear title, creating difficulties in title transfer, mortgage insurance and financing. While it is true that a property owner can bring quiet title action against lots surrounding his or her own, it is not practical to solve multi-owner, multi-lot problems under a single quiet title action when the outside markers are so far off the mark.

SB 79 would allow a party to enjoin all property owners of record, (after proper petition to the court, resolution by a local government, and creation of a special assessment district,) to request a resurvey and replat of manifestly defective subdivision lines and subsequent changes in individual lots through Superior Court action.

The Municipality of Anchorage has requested this legislation to help correct two "manifestly defective" subdivision surveys containing 347 lots in the Anchorage area. Staked lot corners are not in the same position as shown on the plats, and in many cases, lot lines are 20 to 30 feet off from their noted position on the plats. The Municipality has exhausted all other aspects of law to correct this problem and finds that this legislation is the only practical solution to offer relief to assist property owners in correcting this defect. While the immediate reason for this legislation occurs in Anchorage, the changes would be available statewide for manifestly defective surveys.

SB 79 can only be utilized to resolve manifestly defective survey problems if specific circumstances with a boundary dispute cannot be resolved with existing common law boundary resolution principles. SB 79 is crafted to allow for a vote of all the affected landowners to determine if a resurvey of the entire subdivision(s) should occur. A majority must concur to form a special assessment district; the Municipality must also pass a resolution supporting this action and formation of an assessment district. A complaint must be filed with the court with a statement of facts surrounding the survey area in question, i.e. persons with interest in the affected property, the type of interest they have, facts about the problem and the proposed replat, including an as-built survey showing current improvements and landmarks, with existing boundary evidence. Also included could be a listing of all property or properties that may be offered to compensate landowners for mitigation of losses. A certified statement by a competent authority citing that a majority of the affected landowners voted for the replat and voted to set up an assessment district to fund the replat must also be submitted to the court.

The court may accept, modify, or direct the surveyor(s) to modify the proposed replat. The court assesses the special assessment district for the costs of the replat. Once the court has acted, the replat is recorded as the official record.

A subcommittee of the Alaska Society of Professional Land Surveyors (ASPLS) concluded that when a subdivision survey is "manifestly defective", it cannot be resolved on a piecemeal basis and unless all the land owners participate, it will never be resolved. A subcommittee of the ASPLS worked with the sponsor's office, the Municipality of Anchorage, the Department of Natural Resources and various affected entities to craft the language in SB 79.

APR-29-94 FRI 15:30

ANCH AGO OGM

FAX NO. 9072798644

P. 02

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

April 29, 1994

Honorable Con Bunde
State Representative
Room 112
State Capitol
Juneau, Alaska 99801-1182

Re: Review of CSSB 355 (Res)

Dear Representative Bunde:

Your office has requested a legal review of CSSB 355 (Res), relating to errors in surveys of land. The legislation would amend AS 09.45.800 - 09.45.880, the Earthslide Relief Act, by allowing private or public landowners to bring a quiet title action to resolve alleged defects in surveyed property boundaries. An expedited review of the bill reveals no clear legal or constitutional difficulties, but the bill does pose one legal concern which may bear further consideration.

Concerns have apparently been raised that the bill might effect a "taking" of vested property rights. The United States and Alaska Constitutions prohibit the deprivation of property without due process of law. United States Const. amend. V; Alaska Const. art. I, sec. 7. Under Alaska law, due process is satisfied if the statutory procedures provide an opportunity to be heard in court at a meaningful time and in a meaningful manner. Keyes v. Humana Hosp. Alaska, Inc., 750 P.2d 343, 353 (Alaska 1988). Under the proposed amendment, a disputed boundary could be adjusted only after a judicial determination that the survey upon which the boundary is based is defective. Such a procedure would afford all affected landowners a full opportunity to be heard before any boundary adjustment. In addition, the quiet title action contemplated by the bill is designed to address the threshold question of ownership, rather than a deprivation of property where underlying ownership is unquestioned. Therefore, it does not appear that a taking claim could arise from the operation of the bill.

Section 13 of the bill raises a separate legal issue of some concern. That section defines the term "defective survey" as a survey that "cannot be reconciled with the plat of the property, does not conform with the physical location of the property boundaries, and is manifestly defective for a subdivision." The imprecision of the phrase "manifestly defective" appears to carry

WALTER J. HICKEL, GOVERNOR

PLEASE REPLY TO:

1031 WEST 4TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE: (907) 289-5100
FAX: (907) 278-3697

KEY BANK BUILDING
100 CUSHMAN ST., SUITE 400
FAIRBANKS, ALASKA 99701-4879
PHONE: (907) 481-2811
FAX: (907) 451-2048

P.O. BOX 110300 - STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 463-5295

FRI 15:31

ANCH AGO OGM

FAX NO. 9072798644

P.03

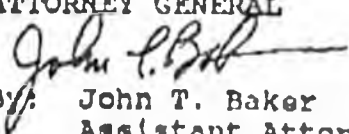
Honorable Con Bunda
State Representative

April 29, 1994
Page 2

the potential to authorize quiet title claims under an extremely broad range of circumstances. Please advise this office if you need additional assistance on this matter.

Very truly yours,

BRUCE M. BOTELHO
ATTORNEY GENERAL


By: John T. Baker
Assistant Attorney General

JTB/mw

cc: Raga Elim, Office of the Governor
Deborah Behr, Department of Law

Municipality of Anchorage



P.O. Box 196650
Anchorage, Alaska 99519-6650
Telephone: (907) 343-4545

Rick Mystrom, Mayor

OFFICE OF THE MUNICIPAL ATTORNEY

SENT VIA FAX

February 23, 1995

Senator Steven Rieger
State Capitol
Room 516
Juneau, Alaska 99801

RE: Senate Bill No. 79

Dear Senator Rieger:

The Municipality of Anchorage strongly endorses passage of this legislation. As you are aware, this legislation was introduced last year to try and alleviate a recurring problem which faces Alaskans across the state today. The need for the bill arose from the problems which grossly defective subdivision surveys have had on at least three subdivisions in the Greater Anchorage Area, as well as other problems in other areas in the state, including Ketchikan, Cordova and Nome.

Particularly with the areas in the Anchorage area, these problems are not amicable to the usual solutions of having the courts decide on a case-by-case basis, each property owners' specific interests. In each of the Anchorage area problem subdivisions, the defective surveys are so bad that each of the 150 lots in the subdivisions is impacted somehow by the survey errors. The impact on the effected property owners has now become severe. Title insurance companies are refusing to issue policies covering the properties. Banks and other lenders are likewise refusing to finance sales due to the uncertain nature of the property boundaries.

Under present law the only way to correct the problem is to have the original surveyor file a corrected plat within two years after the plat is filed. This of course raises two problems. The first is that only the original surveyor can correct the problem, so if that surveyor is no longer available (the case in most of the local and statewide problems discovered to date), there is no way to correct the problems under current law.

The second problem is that the statutory time frame also prevents the property owners from accomplishing a correction as well since many of these properties are sold sometime after the two year period after the plat is initially filed. This leaves the property owner with the only recourse to sue his neighbors for a quiet title

Senator Steven Rieger
Page 2
February 23, 1995

owner with the only recourse to sue his neighbors for a quiet title action if the neighbors cannot agree and file the appropriate deeds on their respective common boundaries.

This proposed legislation allows some manifestly defectively survey errors to be corrected by the superior courts under powers already granted in a quiet title action, except that rather than 150 quiet title actions, only one is necessary. It also allows the municipal government to undertake the action which individual owners might not be able to afford to bring. Clearly in our specific cases, few of the residents in these areas could afford undertaking to do the title research, since all affected parties must be named, or organize and manage such litigation.

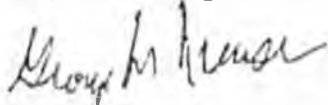
The proposed legislation is codified with the slide statute since there was an already approved method for quieting title to property in groups of parcels rather than by individual parcel litigation. It provided the most convenient method of legislative coordination.

The Municipality of Anchorage actively supports this legislation. The Municipal Attorney's office provided assistance in drafting this legislation. It remains a priority for residents in our area. This problem is not however, solely one for Anchorage. Anecdotal evidence of this problem ranges from Cordova to Nome. The legislation provides guidance to the court as to the standards to be applied to the new subdivision to, as much as practical, take into account the features, structures and other improvements already made to the lots and to give that primary weight in setting out the new plat or subdivision. Many innocent people have invested substantial amounts into their properties and now are prevented from buying or selling properties in these areas due to survey errors that need a coordinated approach to solve.

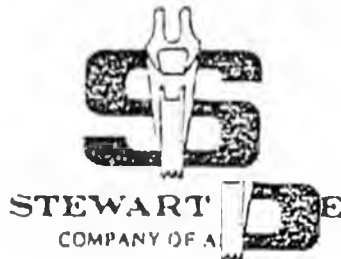
We hope that the legislation passes during this session. The Municipality has already amended our Code to provide for a financing mechanism to be voted upon by the effected area residents as a preliminary step in the subdivision replatting in hopes of this legislation's passage.

If I can be of any assistance, pleas feel free to contact me.

Very truly yours,



George M. Newsham
Assistant Municipal Attorney



BACKGROUND

November 16, 1992

Mr. Paul Richardson
Performance Real Estate

Re: Rabbit Creek Heights/Rabbit Creek View

Dear Paul:

As discussed with you Thursday, I am writing to clarify our Company's position as to the survey/boundary discrepancies of the above referenced subdivisions.

It is commonly known that when these two subdivisions were originally surveyed and platted the common boundary between the two contained errors in the bearings and distances and therefore creating encroachments, location, boundary and area discrepancies that spread throughout and affect all lots in these subdivisions. Many surveyors will not even perform as-built surveys because of this problem. Many lenders will not lend either.

An Alaska Owner's Policy of Title Insurance (insuring the buyer) contains a general exception as follows:

"Encroachments or questions of location, boundary and area, which an accurate survey may disclose...."

This exception means that the policy does not afford coverage relating to these problems in these subdivisions.

As far as possible solutions of this problem, it would require a comprehensive replat of both subdivisions. This would have to be accomplished by agreement between all property owners or by a court action that would bind all property owners to cause a replat.

Page 2


Mr. Paul Richardson

Under today's municipal regulations for platting, the costs involved could be astronomical, however, this is the only appropriate solution to this dilemma.

Best of luck in your endeavors and please call if I may be of further assistance.

Yours truly,

STEWART TITLE COMPANY OF ALASKA, INC.


Howard Hancock
Advisory Title Officer

HH:bt

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NOT FILM LEGIBLY BECAUSE OF
THE POOR QUALITY OF THE ORIGINAL

City of Anchorage Assemblymembers Abney and Bell
Department of Law
September 14, 1993

CLERK'S OFFICE
APPROVED

Date: 11-9-93 ANCHORAGE, ALASKA
AS NO. 93- 156

ORDINANCE OF THE MUNICIPALITY OF ANCHORAGE AMENDING CHAPTER 19.10 OF THE ANCHORAGE MUNICIPAL CODE REGARDING SPECIAL ASSESSMENT DISTRICTS, ADDING SURVEYING AS A PURPOSE FOR WHICH SPECIAL ASSESSMENT DISTRICTS AUTHORIZED.

THE ANCHORAGE ASSEMBLY ORDAINS:

Section 1: That AMC 19.10.020 is amended to read as follows

19.10.020 Special assessment districts--Aut
Improvements.

A special assessment district for a public improvement including, without limitation, for any one or more of the following improvements may be initiated:

- A. Streets, roads, parkways, street lighting, curbs and gutters, driveways, curb cuts and sidewalks;
- B. Storm sewers or drains;
- C. Sanitary sewers;
- D. Parks, creation of open space;
- E. Off-street parking areas;
- F. Changes in channels and watercourses;
- G. Bridges, culvert bankments and levees for streams or waterways;
- H. Water supply including water mains, water connections and hydrants;
- I. Fallout or disaster shelters;
- J. Street, road, parkway and sidewalk drainage, oil and snow removal;
- K. Placing of street utility distribution lines as defined in section 19.20.010, underground;
- L. Natural gas lines[...];
- M. The re-surveying of manifestly inaccurate surveys.

Post-Net brand fax transmittal form 7671

To City of Anchorage	From D. Bell
Co. City of Anchorage	Co. D. Bell
Dept. City of Anchorage	Phone # 342-2111
Fax # 342-2069	Fax # 342-2111

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Section 2: That this ordinance shall become effective immediately upon passage and approval.

PASSED AND APPROVED by the Anchorage Assembly this 9th day of November, 1993.

Bill Paul
Chairman of the Assembly

ATTEST:

Lynne Ferguson
Municipal Clerk
llgald@assylaotourvey.sba/dpt

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MUNICIPALITY OF ANCHORAGE
Memorandum

Date: January 24, 1992
To: Tom Knox
From: Larry Ison
Subj: Rabbit Creek Heights Subdivision Problems

To begin with, the legal description shown on sheet 1 does not close by 14.46 feet. The first two calls of the description are along the boundary of the Rabbit Creek View plat and the distances differ 0.47' and 0.08' between the legal description and the Rabbit Creek View plat. The two plats also differ at the most southeasterly leg along Rabbit Creek by $1^{\circ} 27' 35''$ and 11.18 feet! Since the Rabbit Creek View plat does not close by 206.07 feet to 25.41 feet, I assume the plat of Rabbit Creek Heights is closer to being correct.

The exterior boundary of the Rabbit Creek Heights plat has the same bearings and distances as the legal description. See attached drawing of exterior boundary.

This plat is not a total mess, Block 2 works out pretty well on paper. I computed a misclosure of ~~on~~ 0.46' for the exterior block boundary and the side lot lines inversed within about 10" for bearing and 0.02' for distance. I did check the square footage of two lots, one was good (Lot 17) and the other, Lot 10, Bk 2, I compute 3661 square feet less than what is shown on the plat.

The plat has recurring problems throughout. They are as follows:

1. Very few radii lengths given. For deltas near 90° at rounded lot corners there seems to be little problem.
2. Cul de sac "return radii" lengths are not provided and when I tried to hold the given arc lengths, I found the curves were either non-tangent or the radius was some really odd distance such as 37.58'. When I assumed a 50' radius for the "return radius" I generally found one side of the cul de sac seemed to work well but the other side didn't. I have problems with all but one or two of the cul de sacs fitting together.
3. Blocks with walkways in them do not work well. I suspect that the walkways may have been inserted as an after thought and not all the computations/numbers on the plat were properly changed to reflect the changes.
4. There are numerous places with distances not shown and a few places with out bearings. Trying to compute the value of the missing data on a plat with as many problems as this one, is not desirable.

5. This plat does not seem to tie to the north with the Rabbit Creek View plat very well. I have tried to tie in a few places. Computing the same point from three directions I have found some places where 22' is the least difference in the three positions! Other places are not as bad.

6. There are many places where the sum of the lot line distances varies from the total distance shown along a street centerline or block/subdivision boundary. For example, Diane Drive centerline between blocks 2 and 3, centerline distance = 1401.91 feet, the southwest boundary of block 3 lot summation = 1410 feet.

A few of the other problems are:

7. Curve 7, the radius does not agree with the other curve information.
8. Curve 12, delta does not compute from bearings of tangents by about seven minutes.
9. Curve 15, length computes 23.12 feet longer than shown.
10. The distance of the lot line common to Lots 6/7 Block 6, appears to include the distance to the cul de sac radius point.

Some street intersections have positional differences of about 0.9 feet but generally the streets intersections fit together within a tenth. Using Lot/Block bearings and distances, positional differences of 3 feet to 10 feet are common throughout the plat. This plat is a computation mine field.

rchs

MUNICIPALITY OF ANCHORAGE
Memorandum

Date: December 6, 1991

To: Tom Knox

From: Larry Ison

Subj: Rabbit Creek View Plat 70-133

I have checked computations on the Rabbit Creek View plat 70-133 and observed the following problems:

1. The exterior boundary does not close by approximately 35.5 feet. I suspect the problem is along the creek/south boundary.
2. This plat's south boundary adjoins the boundary of Rabbit Creek Heights plat 70-181. Near Carl Street, the two plats have two legs that disagree by approximately 11 feet in distance and as much as 1' 47' 18" in bearing. As of this date I have not computed the exterior boundary of Rabbit Creek Heights closure.
3. South boundary near Lot 5, Bk 3, the distance is shown as 239.14, the plat of Rabbit Creek Heights shows 259.14 along the same line. The distance scales closer to 259.14'. I have not checked the exterior closure using 259.14 as of this date. One common thing I noticed while checking the computations of this plat, distances between two points will scale close to what I get inverting between points that are a part of what appears to be a good traverses.
4. Tract A, the north and east boundary dimensions have errors, the tangent lengths were not subtracted, thus the distances shown are 20.01 feet too long.
5. Nickleen Street from Jamie St. south to Francesca Drive, along the street centerline the distance is 2022.93 feet, along the west right of way of Nickleen St. the distance adds up to 2020.79 feet, 2.14 feet shorter than centerline.
6. Leo Circle and Lots 13, 14, 16 and 17, Block 37, this is a real quiz as to what is wrong/right. The exterior boundary of the lots as a block closes 0.01 feet. Setting the radius point of Leo Circle by a bearing bearing intersect, along lot lines 13/14 and 16/17, the distance to the S.I. at Nickleen computes out to 209.56 feet versus 186.70 feet shown. The distance from the radius point to lot corners 16/17, 16/13 computes to 50.00 feet, the distance to corner 13/14 computes as 59.92 feet versus 50.00 feet.
7. The lot line common to lots 13/16 Block 37, the bearing from the radius point set by BBI, of Leo Circle to the west corner of the lots computes to with a second however, the distance computes to 388.39 feet, 99.99 feet longer than the plat's distance.

8. Francesca Drive, the center line ties into the boundary within 0.02', however the north right of way computes out to between 27.40' and 28.06 feet from centerline, the south and north right of ways compute out to within a couple of hundredths of 60 feet. Going west from Nickleen to Carl, the north right of way does not close by 5.95 feet.

9. Francesca Drive, the south right of way going west from Nickleen to Carl, then southeast along the back property lines to a closing point at the southeast corner of Lot 5, Block 3, does not close by 6.49 feet. Inversing along the common property lines along the south side Francesca results in bearings differing from about 20 minutes to over 4 degrees and distances varying from about a 0.5 feet to as much as 12.24 feet along the line common to lots 4/5!

10. Sheet 2, east boundary and Genevieve Drive centerline, distance shown as 445.50 feet does not include the 30.00 feet for the north right of way of George Court, the distances should be shown as 475.50.

11. Sheet 2, exterior boundary, the bearing to the southwest of Lot 4, Block 6, shown as N 41° 35' W appears to have been transposed, the property line bearing is shown as N 14° 35' W. The boundary does not close by 216.50 feet using the shown bearing, using N 14° 35' W the boundary does not close by 10.94 feet.

12. The square footage for Lots 1 thru 4, Block 6 is from about 1350 to 2500 square feet greater than what I compute. The boundary and side lot inverses are with in seconds and a couple of hundredths.

13. Lot 9, Block 3, the lot closes within 0.01 but I compute the square footage as being 3612 square feet greater than shown.

The errors in this plat appear to be of a random nature.

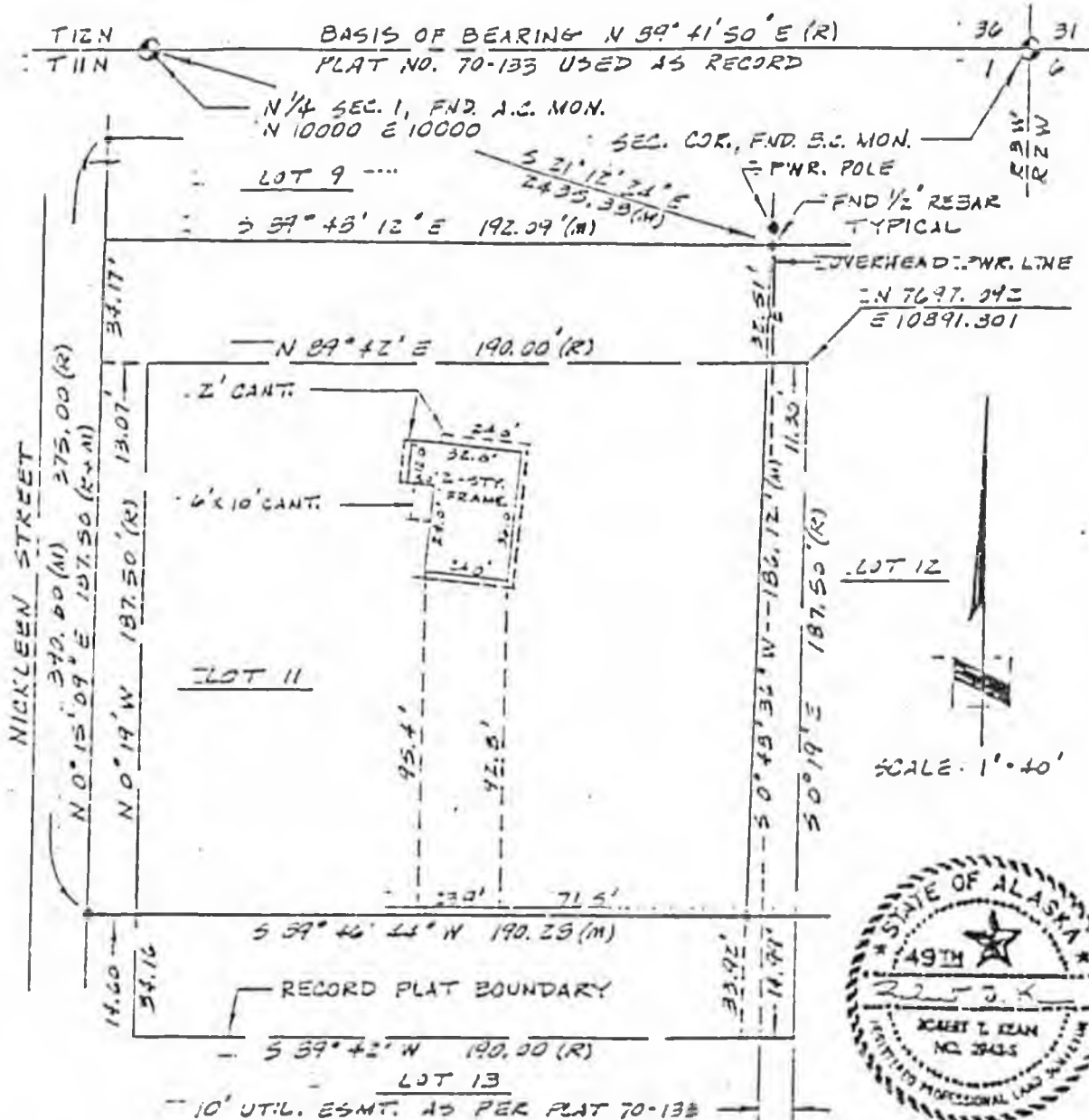
rcv

Rabbit Creek Heights and Rabbit Creek View Subdivisions:

In Anchorage two subdivisions, Rabbit Creek Heights and Rabbit Creek View, have a notorious reputation for multiple plat and survey problems. These problems have manifested themselves to the point where lending institutions and title companies are electing not to service the lot owners in the area. Many surveyors have elected not to perform surveys in the area and progress in terms of road and drainage improvement is stopped due to the uncertainty in determining the position of the right-of-ways. Some septic system approval is ongoing as long as the lot owner can produce an as-built showing sufficient area free of conflicting boundary conflicts. The survey shown in Figs. 1, 2 is an example of an as-built conducted solely for the purpose of septic system approval in Rabbit Creek View Subdivision. It shows the relationship between the subdivision lot established from original exterior monumentation and the position of the lot based on the rebar marking the corners of the lot. The difference is then depicted. If the area free of conflict is of sufficient size for system approval then Anchorage Health and Human Services (HHS) will pass the system.

It is purported that some of these lots are up to 100' feet off and some lots extend or exist entirely or partially outside of the boundaries of the subdivision. Subdivisions that are grossly in error need to be resolved as a whole. There first has to be legislation in place to force the landowner to accept the amended plat and alternate positions of his or her land. There has to be a means to pay for the survey, plating, and title work. The next step is to determine what is wrong by retracement, as-built surveys, and use of precision aerial photography. A pool of money has to be available to purchase land to provide the needed flexibility in areas of gross error. One person has to have the freedom and responsibility (subject to review) for sorting out conflicting information and distributing excesses and deficiencies fairly. And most importantly the property owners, lending institutions and title companies have to accept the results without prejudice. The end product should be clear title, an accurate plat and visible property monuments accurately set according to the plat.

By Bob Kean, RLS



NOTE:
 (R) = RECORD PLAT NO. 70-133
 (M) = MEASURED THIS SURVEY

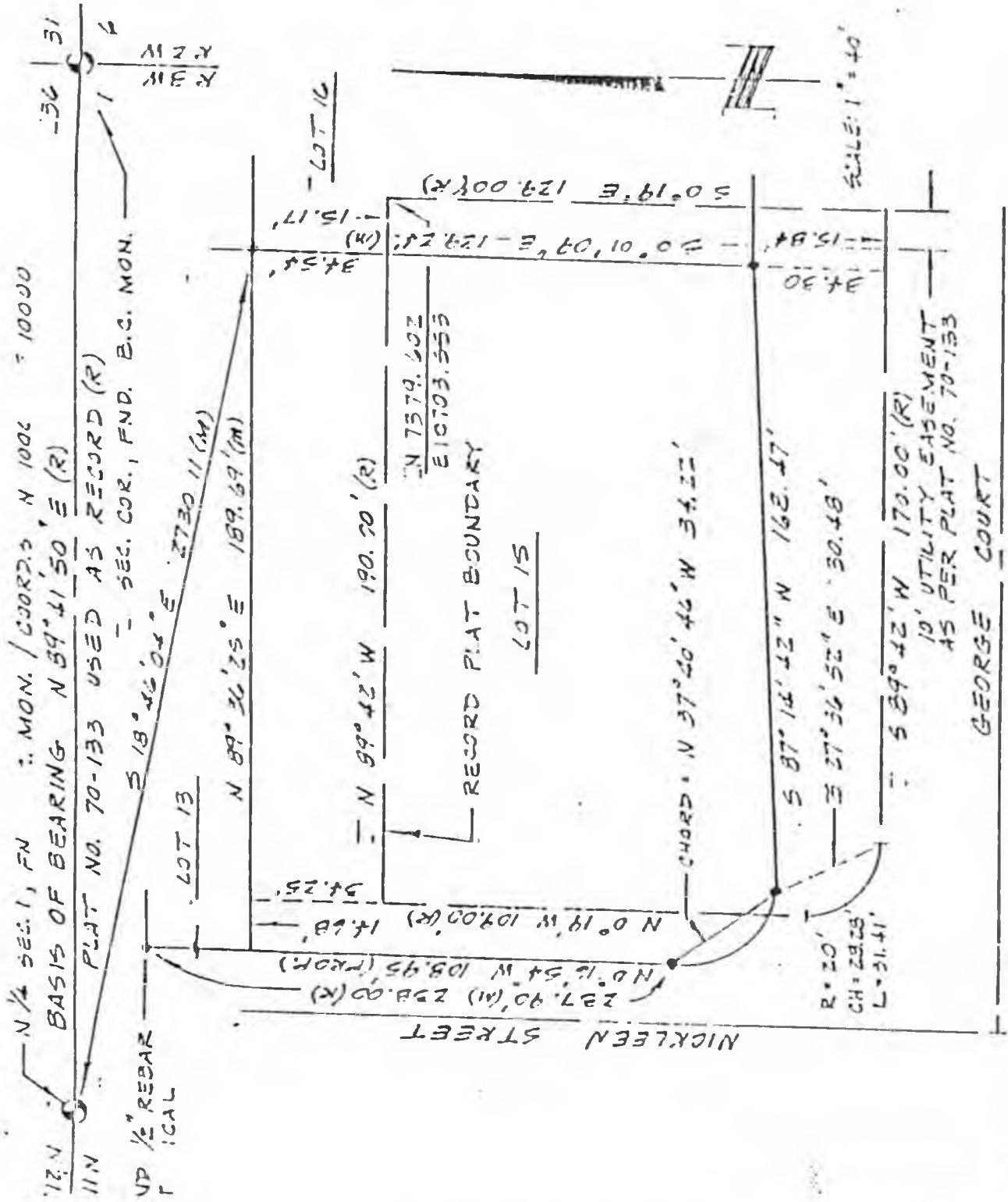
NOTE: This survey represents the location of existing record corners as located this date. It is apparent that a substantial discrepancy exists between these corners and their position as called for on the record plat 70-133. Fean and Associates accepts no responsibility for corners set incorrectly by the original surveyor, or problems arising there from.

EASEMENTS OF RECORD, OTHER THAN THOSE SHOWN ON THE RECORDED PLAT ARE NOT SHOWN HEREON.

AS-BUILT NO CORNERS SET THIS DATE

I hereby certify that I have performed a Mortgagee's inspection of the following described property:
 LOT 11 / BLOCK 4
 RABBIT CREEK VIEW SUBD.
 Anchorage Recording Precinct, Alaska, and that the improvements situated thereon are within the property lines and do not overlap or encroach on the property lying adjacent thereto, that no improvements on property lying adjacent thereto encroach on the premises in question and that there are no roadways, transmission lines or other public easements on said property except as indicated hereon.
 Dated at Anchorage, Alaska
 this 3-2 day of May 19 95
 ROBERT T. FEAN & ASSOCIATES
 Surveyors

FIG 1



- NOTE:
- 1) (R) = RECORDED DATA (PLAT NO. 70-133)
 - 2) (M) = MEASURED THIS SURVEY
 - 3) (PROP) = PROPORTIONED DISTANCE
 - 4) EASEMENTS OF RECORDED OTHER THAN THOSE SHOWN ON THE RECORDED PLAT ARE NOT SHOWN HEREON.



DATE: 5-20-85

SURVEY OF: LOTS 13/15/16
 RABBIT CREEK VIEW SUBD.
 SURVEYED BY: KEEN + ASSOC.
 6510 HOMER DR. ANCHORAGE, AK.

NOTE: This survey represents the location of existing monuments as located this date. It is apparent there is a material discrepancy exists between those corners and their position as called for on the record plat # 70-133. Keen and Associates accepts no responsibility for corners set incorrectly by the original surveyor, or problems arising there from.



Anchorage Office, Region X
 222 W. 8th Avenue, #64
 Anchorage, AK 99513-7537

RECEIVED

JUN 26 1991

JUN 27 1991

Thomas W. Knox, RLS
 Municipal Surveyor
 Municipality of Anchorage
 P.O. Box 196650
 Anchorage, AK 99519-6650

ENGINEERING DIVISION
 PUBLIC WORKS

Dear Mr. Knox:

Subject: Rabbit Creek and Rabbit Creek Heights Subdivisions

The Department of Housing and Urban Development (HUD) has become aware of the survey problems in the subject subdivisions. We have received information that lot corners as staked are not in the same position as shown on plats and that some surveyors are finding positional errors in the range of 20 to 30 feet.

In the past, HUD/FHA has insured properties in the Rabbit Creek and Rabbit Creek Heights Subdivisions, being unaware of the discrepancies in the lot plats and surveys. In the past year our Property Disposition Branch has received a number of homes in these subdivisions back in foreclosure and HUD sustains significant losses if the properties cannot be resold with mortgage insurance.

Please advise our office as to what steps are being taken by the Municipality to solve these problems. Until these problems can be resolved HUD will be unable to insure any homes in the Rabbit Creek and Rabbit Creek Heights areas.

If you have any questions regarding this matter, please contact Alice Bethka, Valuation Branch, at 271-4657.

Sincerely,

Arlene L. Patton
 Arlene L. Patton
 Manager

Post-it brand fax transmittal memo 7571 # of pages = 9

To	CON RIONAY	From	RASS
Co.		Co.	DPU
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Fax	465-3871	Fax	512-5762