

**ALASKA LEGISLATURE COMMITTEE FILES 1999-2000 8672**

**10122 SENATE RESOURCES**

**ALASKA HOLDS SOVEREIGN TITLE TO AND MANAGEMENT AUTHORITY  
OVER ALASKA'S SUBMERGED LANDS, NAVIGABLE WATERS AND THE  
NATURAL RESOURCES ON AND WITHIN THOSE LANDS AND WATERS**

In his September 2, 1999 press release announcing his call for the September 22, 1999 special session on "subsistence," Alaska Governor Tony Knowles was quoted as stating:

**"It would be irresponsible to turn over our right and responsibility to manage Alaska's fish and game to the federal government, a right that was at the heart of Statehood which we are celebrating on the 40<sup>th</sup> anniversary this year."<sup>1</sup>**

However, as shown below, it was Governor Knowles himself who has tried the hardest to surrender that right to the federal government.

During his term of office, Governor Hickel brought a lawsuit in the Federal Courts titled *State of Alaska v. Babbitt*.<sup>2</sup> He challenged federal intervention and defended Alaska's sovereign "title" and right to manage its submerged lands, navigable waters and the resources therein according to State law.

The primary discussion in *Babbitt* concerned the definition of "public lands" in Section 102 of the Alaska National Interest Lands Conservation Act ("ANILCA").<sup>3</sup> The federal government argued that the definition of "public lands" includes navigable waters within and adjacent to federal uplands, by virtue of the implied reservation of water rights doctrine.<sup>4</sup> The State of Alaska objected, pointing out that "title" to Alaska's submerged lands and navigable waters had definitively been transferred to Alaska at statehood. Therefore, according to the Equal Footing Doctrine of the U.S. Constitution and the Submerged Lands Act of 1953,<sup>5</sup> ownership of and management of those lands, waters and the natural resources therein are subject to state law - not federal law. The State also pointed out that ANILCA itself clearly provides

<sup>1</sup> September 2, 1997 Press Release from Office of the Governor.

<sup>2</sup> 72 F.3d 698 (9<sup>th</sup> Cir. 1995)

<sup>3</sup> 16 U.S.C. 3102.

<sup>4</sup> See discussion in *State of Alaska v. Babbitt*, 72 F.3d 698 (9<sup>th</sup> Cir. 1995).

<sup>5</sup> Section 6(n) of the Alaska Statehood Act of July 7, 1958, provides that the Submerged Lands Act "shall be applicable to the State of Alaska and the said State shall have the same rights as do existing States thereunder." 72 Stat. 343, note following 48 U.S.C. c.2 Section 2 of the Act provides: "The State of Alaska shall consist of all the territory, together with the territorial waters appurtenant thereto, now included in the Territory of Alaska." 72 Stat. 339, note following 48 U.S.C. c.2.

that federal "public land" does not include "land validly . . . granted . . . to the State under any other provision of Federal Law."<sup>6</sup>

Once again, *Babbitt* was an "ownership" case defending Alaska's "title" to its sovereign lands and resources and Alaska's sovereign right to manage those lands and resources according to State law. It had nothing at all to do with who could hunt or fish on Alaska's submerged lands or in Alaska's navigable waters.

Shortly after taking office, Governor Knowles announced (in Fairbanks, at a luncheon meeting of the Alaska Outdoor Council) that he was dropping *Alaska v. Babbitt* because some Alaskans felt it was "anti-subsistence." Later, at its annual convention, he told the Alaska Federation of Natives he dismissed the case to fulfill a political campaign promise. Attorney General Bothello supported that admission when he testified before the State Senate that the case was not dismissed for any "legal" reason.

By dismissing *Babbitt* "with prejudice," Governor Knowles unilaterally, without legal contest, agreed to forfeit control over huge tracts of Alaska's sovereign submerged lands, thousands of miles of Alaska's sovereign navigable waters, hundreds of thousands of Alaska's sovereign lakes and all of Alaska's sovereign natural resources within those lands and waters (including but not limited to fish) to the federal government. In other words, by dismissing "with prejudice," the Governor "consented" to the federal government's blatant attempt to narrow Alaska's sovereign domain – an act the U.S. Supreme Court has recently held to be without legal basis.<sup>7</sup>

Governor Knowles knew exactly what he was doing. He, not the Legislature, has caused the dilemma that is currently facing the State. He decided not to contest the federal government's position that Alaska's sovereign submerged lands and navigable waters in and adjacent to federal uplands are "Federal Lands." It was Governor Knowles who ceded management authority to the federal government – a position that is without legal authority and is a barefaced attempt to surrender Alaska's sovereign powers to the federal government.

Now, after personally attempting to remove all avenues of appeal to the courts, the Governor is telling the Legislature that they must initiate a change in the equality provisions of Alaska's Constitution or they will take the blame for a federal takeover of Alaska's resources. His recent call for a special session (like all others the

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<sup>6</sup> 16 U.S.C. 3102(3)(a).

<sup>7</sup> *New York v. United States*, 505 U.S. 144, 182 (1992). "Where Congress exceeds its authority relative to the States . . . the departure from the constitutional plan cannot be ratified by the "consent" of state officials . . . The authority of Congress cannot be expanded by the "consent" of the governmental unit whose domain is thereby narrowed, whether that unit is the Executive Branch or the States."

Governor has initiated) is indeed a thinly veiled appeal for the Legislature to join him in his surrender of Alaska's sovereignty to the federal government

Interestingly, the last paragraph of the Governor's September 2<sup>nd</sup> press release provides:

**"Every public opinion survey says Alaskans want us to act to preserve state sovereignty and the culture of rural residents," Knowles said. "As elected leaders, we must now have the courage and foresight to take the actions necessary to achieve these worthy goals."**

Here, the Governor is right. Without a doubt, Alaskans do want a Legislature (and a Governor) with the courage and foresight to take the actions necessary to preserve (not surrender) state sovereignty. In fact, each Legislator (and the Governor) has sworn an oath to do just that. It is abundantly clear that Alaska's elected leaders cannot act to preserve Alaska's Sovereignty by surrendering to the federal government the State's ability to manage or allocate Alaska's sovereign lands, waters and wildlife resources.

What actions can the Legislature (and the Governor) take to preserve Alaska's Sovereignty?

Each member must examine the legal foundation supporting Alaska's Sovereign title and Sovereign management authority. Then, the Legislature can forge an action plan based on solid legal grounds.

Three recent U.S. Supreme Court cases: a 1975 Alaska case; a 1997 Alaska case; and a 1997 Idaho case, very clearly address the matter of state sovereignty over submerged lands.

In 1975, in *United States v. Alaska*, a case that addressed who owned the submerged lands in lower Cook Inlet, the U.S. Supreme Court ruled:

**State sovereignty over submerged lands rests on the Submerged Lands Act of 1953 . . .<sup>8</sup>**

**Section 6(m) of the Alaska Statehood Act of July 7, 1958, provides that the Submerged Lands Act "shall be**

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<sup>8</sup> *United States v. Alaska*, 422 U.S. 184, 187 (1975).

**applicable to the State of Alaska and the said State shall have the same rights as do existing States thereunder.”<sup>9</sup>**

Moreover, in June of 1997, in the Alaska case of *United States of America, Plaintiff v. State of Alaska*,<sup>10</sup> a case that addressed who owned certain submerged lands in Alaska, Justice O’Connor, delivering the opinion of the U.S. Supreme Court, wrote:

**Ownership of submerged lands – which carries with it the power to control navigation, fishing, and other public uses of water – is an essential attribute of [state] sovereignty.**

Justice O’Connor then very clearly explained how Alaska obtained sovereign title to and became owner of her submerged lands. In this 1997 Alaska case, the U.S. Supreme Court said:

**Under the doctrine of *Lessee of Pollard v. Hagan* . . . new States are admitted into the Union on an “equal footing” with the original colonies and succeed to the United States’ title to the beds of navigable waters within their boundaries.**

**The Alaska Statehood Act expressly provides that the [1953] Submerged Lands Act applies to Alaska.**

**That [Submerged Lands] Act “confirmed” and “established” States’ title to and interest in “lands beneath navigable waters within the “boundaries of the respective states.”**

**The [Submerged Lands] Act essentially confirms States’ equal footing title to tidelands and submerged lands.**

**As a general matter, then, Alaska is entitled under both the equal footing doctrine and the Submerged Lands Act to submerged lands beneath tidal and inland navigable waters, and under the Submerged Lands Act alone to submerged lands three miles seaward of its coastline.**

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<sup>9</sup> *United States v. Alaska*, 422 U.S. 184 (footnote 3) (1975).

<sup>10</sup> *United States of America, Plaintiff v. State of Alaska*, No. 84 Orig. (1997).

"Entitled" is defined as: "In its usual sense, to entitle is to give a right or legal title to."<sup>11</sup>

The Court said the only exception to this automatic transfer at statehood was if the United States had "explicitly retained" specific submerged lands prior to statehood.

Then, in the 1997 case of *Idaho v. Coeur d'Alene Tribe of Idaho*,<sup>12</sup> the U.S. Supreme Court said:

**As we stressed . . . lands underlying navigable waters have historically been considered "sovereign lands." State ownership of them has been "considered an essential attribute of sovereignty."**

**In consequence of this rule, a State's title to these sovereign lands arises from the equal footing doctrine and is "conferred not by Congress but by the Constitution itself."**

There is no doubt: The U.S. Supreme Court believes Alaska's submerged lands are State "sovereign lands" and Alaska's ownership of them is "considered an essential attribute of [State] sovereignty."

In the 1992 case of *New York v. United States*,<sup>13</sup> the U.S. Supreme Court ruled:

**[I]f a power is an attribute of state sovereignty . . . it is necessarily a power the Constitution has not conferred on Congress.**

**The constitutional authority of Congress cannot be expanded by the "consent" of the governmental unit whose domain is thereby narrowed, whether that unit is the Executive Branch or the States.**

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<sup>11</sup> Black's Law Dictionary, (1990 Ed.).

<sup>12</sup> U.S. Supreme Court No. 94-1474 (decided June 23, 1997).

<sup>13</sup> *New York v. United States*, 505 U.S. 144, 156 (1992).

Clearly, according to very recent, clear and consistent rulings of the U.S. Supreme Court: State ownership of submerged lands is an "essential attribute" of sovereignty; the power to control fishing in the water covering a state's submerged lands is an "essential attribute" of state sovereignty; and, since the power to control fishing in those waters is an "essential attribute" of state sovereignty, it is necessarily a power the Constitution has not conferred on Congress.

But, that's not all.

Notice that both Alaska cases refer to the Submerged Lands Act of 1953. Most Alaskans have never read the Act and are unaware of how directly on point it is to the current conflict. The Act was passed in 1953 by Congress to once and for all clarify which sovereign (state or federal) holds title to, ownership of and management authority over submerged lands, navigable waters and the natural resources (including fish) within those lands and waters. The Submerged Lands Act is very simple and very clear. Anyone can understand it. The portion pertinent to the matter at hand provides:

**Sec. 1311(a)(1) title to and ownership of the lands beneath navigable waters within the boundaries of the respective States, and the natural resources within such lands and waters, and (2) the right and power to manage, administer, lease, develop, and use the said lands and natural resources all in accordance with applicable State law be, and they are subject to the respective States . . .**

Clearly, Congress intended the Submerged Lands Act to be a simple quitclaim deed. Then Congress provided in the Alaska Statehood Act that the Submerged Lands Act would apply to Alaska – even though Alaska became a State long after it was passed. Therefore, since the moment of statehood, Alaska's submerged lands, navigable waters and the natural resources within such lands and waters have belonged to Alaska and their management has been subject to Alaska law. Hence, according to the clear and consistent rulings of the U.S. Supreme Court in Alaska cases, the federal government has no ownership of or title to Alaska's submerged lands, navigable waters or the resources in those lands and waters and has no management power or authority over any of those lands, waters and natural resources (including fish). Once again, the power to control fishing in Alaska's navigable waters is "necessarily a power the Constitution has not conferred on Congress."<sup>14</sup>

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<sup>14</sup> *New York v. United States*, 505 U.S. 144, 156 (1992).

Now, it is abundantly clear why the federal government is doing everything it can to frighten and coerce Alaskans into surrendering their sovereignty and equality and to keep the merits of this issue from being argued in the courts! They know Alaska would win!

The foregoing white paper was researched and prepared by Ralph Seekins, Chairman and Lynn Levengood, Executive Director of:

**ALASKA WILDLIFE CONSERVATION ASSOCIATION**  
**1625 Old Steese Highway**  
**Fairbanks, Alaska 99701**  
**(907) 456-1992**

**ACCORDING TO:**

- **THE U.S. CONSTITUTION; AND**
- **THE U.S. SUPREME COURT;**

**THE POWER TO CONTROL FISHING IS AN ESSENTIAL ELEMENT OF STATE SOVEREIGNTY AND THE U.S. CONGRESS DOES NOT HAVE ANY SIMILAR POWER IN ALASKA'S NAVIGABLE WATERS.**

**"[T]he States entered the federal system with their sovereignty intact."**

*Blatchford v. Native Village of Noatak*, 501 U.S. 775, 779 (1991)

**"Under the federal system established by the Constitution, the States retain a 'residuary and inviolable sovereignty.'"**

*Alden et al. V. Maine*, 98-436 (Decided June 23, 1999 – Citing *The Federalist* No. 39, p. 245)

**"Being an instrument of limited and enumerated powers, it follows irresistibly that what is not conferred [to the Federal Government by the Constitution] is withheld, and belongs to State authorities."**

*New York v. United States*, 505 U.S. 144, 156 (1992)

**"[I]f a power is an attribute of state sovereignty . . . it is necessarily a power the Constitution has not conferred on Congress."**

*New York v. United States*, 505 U.S. 144, 156 (1992) Referencing *United States v. Oregon*, 366 U.S. 643, 649 (1961); *Case v. Bowles*, 327 U.S. 92, 102 (1946); and *Oklahoma ex. Rel. Phillips v. Guy F. Atkinson Co.*, 313 U.S. 508, 534 (1941)

**"Ownership of submerged lands – which carries with it the power to control navigation, fishing, and other public uses of water – is an essential attribute of [Alaska's] sovereignty."**

*United States v. Alaska*, No. 84 Orig. (Decided June 19, 1997)

**ACCORDING TO:**

- **THE UNITED STATES CONGRESS;**
- **THE U.S. SUPREME COURT; AND**
- **THE U.S. JUSTICE DEPARTMENT;**

**TITLE TO ALASKA'S NAVIGABLE WATERS AND SUBMERGED LANDS BELONGS TO THE STATE OF ALASKA**

**“[N]ew States are admitted to the Union on an “equal footing” with the original 13 colonies and succeed to the United States’ title to the beds of navigable waters within their boundaries.”**

*United States v. Alaska, No. 84, Orig. (Decided June 19, 1997)*

**“The State [of Alaska] received at statehood all navigable waterways . . .”**

Judicial Admission by Elizabeth Ann Peterson – Attorney for U.S. Justice Department – during oral arguments re: *The Alaska Legislative Council, Alaska State Legislature, et al., v. Bruce Babbitt, Secretary of The Interior, et al.* held in the U.S. Court of Appeals for the District of Columbia on Thursday, April 8, 1999:

**“In 1953 . . . Congress enacted the Submerged Lands Act . . . That Act ‘confirmed’ and ‘established’ State’s title to and interest in ‘lands beneath navigable waters within the boundaries of the respective States.’”**

*United States v. Alaska, No. 84, Orig. (Decided June 19, 1997)*

**“The Alaska Statehood Act expressly provides that the Submerged Lands Act applies to Alaska.”**

*United States v. Alaska, No. 84, Orig. (Decided June 19, 1997)*

**“As a general matter, then, Alaska is entitled<sup>1</sup> under both the equal footing doctrine and the Submerged Lands Act to submerged lands beneath tidal and inland navigable waters, and under the Submerged Lands Act alone to submerged lands extending three miles seaward of its coastline.”**

*United States v. Alaska, No. 84, Orig. (Decided June 19, 1997)*

<sup>1</sup> *Black's Law Dictionary*, West Publishing Co., 1990 Edition: “Entitle. In its usual sense, to entitle is to give a right or legal title to.”

**“State sovereignty over submerged lands rests on the Submerged Lands Act of 1953.”**

*United States v. Alaska*, 442 U.S. 184, 188 (1975)

**“Section 6(m) of the Alaska Statehood Act of July 7, 1958, provides that the Submerged Lands Act ‘shall be applicable to the State of Alaska and the said State shall have the same rights as do existing States thereunder.’”**

*United States v. Alaska*, 442 U.S. 184, 188 (Footnote 3) (1975)

**“The Alaska Statehood Act expressly provides that the Submerged Lands Act applies to Alaska.”**

*United States v. Alaska*, No. 84, Orig. (Decided June 19, 1997)

## **THE SUBMERGED LANDS ACT OF 1953**

**“Sec. 1311 (a) Confirmation and establishment of title and ownership of lands and resources; management, administration, leasing, development, and use. It is determined and declared to be in the public interest that**

**(1) title to and ownership of the lands beneath navigable waters within the boundaries of the respective States, and the natural resources within such lands and waters, and (2) the right and power to manage, administer, lease, develop, and use the said lands and natural resources all in accordance with applicable State law be, and they are, subject to the respective States . . .”**

Public Law 31, 83<sup>rd</sup> Congress, Second Session: 67 Stat. 29

**THE SUBMERGED LANDS ACT AMOUNTS TO A QUIT CLAIM DEED. HENCE,  
ALL LEGAL AND JUDICIAL ROADS LEAD TO THE FOLLOWING:**

- **Title to Alaska’s Submerged Lands belongs to the State of Alaska.**
- **Alaska holds title to and owns all the natural resources in all her Submerged Lands.**
- **Alaska holds title to and owns all the natural resources in all her Navigable Waters.**
- **The right and power to manage all Alaska’s Submerged Lands and Navigable Waters belongs to the State of Alaska and is subject to State law (not Federal law).**
- **The right and power to manage all natural resources (including fish) in Alaska’s Navigable Waters belongs to the State of Alaska and is subject to State law (not Federal law).**

Section 1. Article VIII, sec. 4, Constitution of the State of Alaska, is amended to read:

- (b) Consistent with the sustained yield principle, non-wasteful and non-commercial use of wild native fish and game resources for personal and household nutrition shall be the preferred use of these resources whenever there is a historically unusual shortage.

Whenever it is determined that an unusual shortage of a wild native fish or game resource exists in a local area characteristically dependent upon subsistence use of that resource, subsistence use for human nutritional purposes may be accorded a preference among uses of that resource until such time that abundance can be restored.

This constitutional amendment, should it be approved by the voters of Alaska, shall not go into effect until such time as the Alaska National Interest Lands Conservation Act (1980) is amended to restore all traditional fish and game management authorities to the State of Alaska, as accorded to all other states. This amendment in no way precludes the State of Alaska from challenging the constitutionality of the federal subsistence law to restore all state fish and game management authorities.

Dewey & Kelly George  
Box 210225  
Auke Bay, Alaska 99821  
Sept. 21, 1999

To: Fran Ulmer  
Lieutenant Governor - State of Alaska

Mrs. Ulmer:

I write to you for your consideration of my wife, my children, and their people. The topics that I would like to address are subsistence and relationships. On the surface, one might surmise that the intent of the Federal Government has been to protect the rights of the natives, since federal regulations on federal lands restrict subsistence practices to "rural" residents. State policies and practices, on the other hand, appear to have a history of leaning towards the promotion and protection of the economic interests of the citizens of the State of Alaska. And although I have spent much time listening to the comments of many people from many different backgrounds, I still am not convinced that there are many who have a true grasp of the concept of subsistence or the impacts of its alteration.

I will not go into a detailed description at this time, but will only offer that Subsistence was a complete way of life that provided harmony for a people and their surroundings in a manner that few of today's cultures can comprehend. Because of their simple ways their attributes as a culture were little understood, and even less accepted, by their European "replacements." But nonetheless, the fact remains that, as a culture, the beliefs and practices of the native cultures far exceeded any and all of the environmental and natural resource management practices of their contemporaries. Their way of life is gone now and only a shattered remnant of their people still survive.

So, since subsistence is soon coming to the table, I offer the people of the State of Alaska a proposal for their consideration and promotion. From its inception of Statehood, the native cultures of Alaska have been forced into a situation of assimilation and the effects from this continued policy and practice are all too obvious. The native cultures are a separate people and, if they wish to remain such, should not only be allowed, but even supported in their efforts to do so. The positive attributes of this culture also need to be identified, recognized, and implemented for the benefit of all cultures, native and non-native alike in order to insure a peaceful and prosperous future for all residents of the State of Alaska. True prosperity is a result of the adherence to the principles of peaceful co-existence and the best way to insure this prosperity is to insure that these principles can (and will) always be implemented.

And with these basic concepts in mind, I would encourage the elected officials of the State of Alaska to adopt a policy of the subsistence way of life that allows (and encourages) the native cultures to practice the "subsistence" ways of their ancestors if they so choose. If other non-native rural residents wish to do the same, then allow those to do so by separate license or State Permit.

And if it be the desire of the resident body of the State of Alaska to protect and preserve its remaining wildlife and still abundant (but diminishing) resources, I would encourage the residents to consider the practices and policies of Alaska's native cultures, and to perhaps even authorize jurisdiction for such to the native governments. The time has come for us to recognize the importance of protection of our natural resources, as well as the consequences that result for our failure to do so. Peaceful co-existence between all men and other life forms should be our goal, but this goal will never be attained until its "Promise" can be realized!

Sincerely

Dewey P. George

\*  
P. O. Box 718  
Pelican, Alaska 99832  
17 September 1999

To Whom It May Concern,

If you could solve the State's Subsistence dilemma tomorrow, would you?

If you could do so without having to amend Alaska's State Constitution, would you?

If you can honestly answer "yes" to these questions, then I sincerely request that you read the enclosed proposal.

Please, please, please try to struggle through the poor wording, misspelling, and typos to get at the intent of the concepts. I realize that my phrasing is awkward, which makes the concepts hard to grasp and maybe even unclear. But, I sincerely feel that this is a workable solution.

Also, please remember to keep in mind that this proposal is a STRAWMAN. The wording can and probably should be changed. The priorities may need to be altered. The concepts should be clarified and maybe changed. This is just an idea that I think should be discussed, and possibly worked into an acceptable concept for a bill that could be passed.

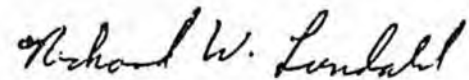
And finally, but of greatest importance, this proposal is for a bill, not for an amendment to the State's Constitution. It could probably be passed, signed, and enacted within a week. If this happened, the State would be in immediate compliance with ANILCA.

Even if the Feds decided this proposal/bill didn't meet the intent of ANILCA and we weren't in compliance, they would have to take us to court and we would have until the courts ruled against us (if they did) to find an acceptable solution.

And I don't think that would happen, because I truly think this proposal does comply with ANILCA and is acceptable.

Thank you.

Sincerely,



Richard W. Lundahl

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ECNETSISBUS  
(pronounced Ec-net-sis-bus)  
(a strawman/draft proposal for a subsistence bill)

by Richard W. Lundahl  
2/24/90  
(revised 5/15/90, 12/20/90, 6/20/1997, and 9/12/1999)

AUTHOR'S PREFACE

With the enclosed draft/strawman bill proposal, I am attempting to solve the State's subsistence dilemma without amending the State's Constitution.

Why do I think that this draft bill "ECNETSISBUS" can solve Alaska's Subsistence Dilemma without amending the State's Constitution?

Because we have already done so!

In 1970, we amended Art. VIII Section 15. of the State's Constitution to allow us to limit entry into any fishery for various listed reasons (see Appendix IV).

I am attempting to solve the dilemma, then, by using the definitions and concepts set forth in ANILCA and further defining some of the troubling and fear-invoking terms therein. And further, I am attempting to frame strategies and concepts which the Alaska Boards of Fish and Game have been using to protect Alaskan resident users of fish and game since Statehood.

It may be that I didn't need to define some of the terms that I did, such as, "Alaska Resident" or "Residence". Fine, then eliminate them. I was just trying to get ideas down on paper to be considered.

I am a very poor writer. My wording is awkward. My phrasing is difficult. This all tends to make the concepts difficult to understand. I am sorry. Further, I am not a lawyer. The punctuation, numbering, wording, and concepts will have to be gone over and "nitpicked" by one.

Finally, you may feel that the courts have already forced us into a particular type of approach to subsistence. I disagree. I feel that the courts have ruled the way they have because of the lack of a clear definition of subsistence, and therefore, the lack of a clear approach to the subsistence issue. I feel that legislation should come from the legislature and not from the courts. Further, I feel that if the legislature adopts this proposal, or one like it, then the courts will "accept the will of the people", review their decisions and reverse them where necessary to comply with ANILCA and "ECNETSISBUS". (i.e. the \$17,000 subsistence barter sales of herring roe on kelp, etc.).

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INTENT OF PROPOSAL (continued)

CATEGORIES OF SUBSISTENCE EMERGENCIES AND SUBSISTENCE USERS.

This proposal establishes 8 categories of Subsistence Emergencies and seven categories of Subsistence Users.

PRIORITY LIST

I hope and think that "ECNETSISBUS", as it is currently written, establishes the following priority of users for times of resource crisis. All of these users must be legally licensed and/or Permitted.

1. The rural Alaskan village resident Personal Subsistence User and Subsistence Barter.
2. The Alaskan City resident Personal Subsistence User and Subsistence Barter. And also, the rural Alaskan village resident Subsistence Commercial Fisherman.
3. The rural Alaskan village resident Sport Fisherman. And also, the Alaskan City resident Subsistence Commercial Fisherman.
4. The Alaskan City resident Sport Fisherman. And also, the non-Alaskan resident Commercial Fisherman.
5. The non-Alaskan resident Sport Fisherman. And also, the all participants of Alaskan Sport Fishing Derbies.
6. All Non-Alaskan U.S. resident commercial fishermen who are legally fishing but who don't hold Alaska Licenses and/or Permits. Also, all foreign citizen Sport Fishermen who are legally licensed.
7. All other legal fishermen not included above, including foreign commercial fishermen and ventures.

ECNETSISBUS  
(pronounced Ec-net-sis-bus)  
(a strawman/draft proposal for a subsistence bill)

by Richard W. Lundahl  
2/24/90  
(revised 5/15/90, 12/20/90, 6/20/1997, and 9/12/1999)

INTENT OF PROPOSAL

The word "subsistence" has been fear invoking because of a lack of common understanding about what is being discussed. To one person "subsistence" may mean eating out of garage cans in order to "subsist". Another may subsist on fine wine, filet mignon, and caviar. There is no common and complete definition of "subsistence" and of all of the terms used in its official definition.

This subsistence proposal, "ECNETSISBUS", (which is just the word "subsistence" spelled backwards), then, does four major things:

PARADIGM SHIFT

"ECNETSISBUS" should allow and maybe force the State and Federal Governments and the Courts to review their paradigm of subsistence and their approach to it. Subsistence is not welfare and should never be viewed as such.

DEFINITIONS

This proposal defines many of the terms used in ANILCA but which until now have been fear invoking because of a lack of common understanding about just what is being discussed. One of these terms is "customary trade".

From Statehood until the passage of ANILCA in 1979, subsistence was a part of commercial fisheries; namely: The Subsistence Section of the Commercial Fishing Division of the Department of Fish and Game. ANILCA invoked a lot of fear and Subsistence became a whole new, fearful Division of the Department. "ECNETSISBUS" would just bring us back to the days before ANILCA, with the paradigm shift that Commercial Fishing, Barter, Manufacture of Handicraft Articles, and much of Personal Use (but not Sport Fishing and not Sport Charter Fishing) would become Sections of the Subsistence Division of the Department.

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ECNETSISBUS  
(pronounced Ec-net-sis-bus)  
(a strawman/draft proposal for a subsistence bill)

by Richard W. Lundahl  
2/24/90  
(revised 5/15/90, 12/20/90, 6/20/1997, and 9/12/1999)

Be it hereby enacted:

TITLE X

Sec. Y. (a)

1. That for the purposes of fish and game laws and regulations the phrase "Alaskan resident" shall mean: any living, real U.S. citizen who is currently living in the state of Alaska, and has lived within the state of Alaska for the preceding year, and who intends to remain living within the State for at least another year, and who is eligible for an Alaska Permanent Fund Dividend. And,
2. That further, for the purposes of fish and game laws and regulations the "residence" of an Alaskan resident shall mean, and shall be determined by: the permanent physical address to which eligible Alaska Permanent Fund Dividends are sent. And,
3. That for the purposes of subsistence, the State of Alaska hereby adopts the definitions of subsistence as defined in ANILCA, Title VIII, Sec. 803. The State of Alaska further defines, breaks down, and clarifies that definition. As used in this Act, the term "subsistence uses" means the customary and traditional uses by rural Alaskan residents of wild, renewable resources:
  - a). for direct personal or family consumption, as food, shelter, fuel, clothing, tools, or transportation;
  - b). for the making and selling of handicraft articles out of the nonedible by-products of fish and wildlife resources taken for Personal Subsistence Use;
  - c). for barter, or sharing for personal or family consumption;
  - d). and for customary trade.For the purposes of this section, the term:
  - e). "family" means all persons related by blood, marriage, or adoption, or any person living within the household on a permanent basis;
  - f). "barter" means the exchange of fish or wildlife or their parts, taken for subsistence uses:
    - (1) for other fish or game or their parts; or
    - (2) for other food or for nonedible items other than money if the exchange is of a limited and noncommercial nature; and
  - g). "customary trade" means any and all commercial harvesting of fish and game as has been legally allowed in, licensed by, and or permitted by the State of Alaska, the International Pacific Halibut Commission, and or the National Marine Fisheries Service to this date, especially Alaska Limited Entry Commission Permits, and NOAA IFQs. And,

- \*
- h). "rural" means that the location of the principal home or dwelling of the Alaska resident is in Alaska and is either --
- (1) "isolated" meaning that a round trip to and from the nearest Alaskan city with a population of more than 8,000 would normally take more than one hour and cost more than fifty 1970 dollars (\$50.00) per person; or
  - (2) "semi-isolated" meaning that a trip to Seattle would normally only involve a normal local trip to the local airport and boarding only one flight of a major commercial airlines (i.e.. Alaska, Delta, Northwest, United, etc.).

Further, for the purposes of this section, the use:

- i). as described in Sec. Y (a) 3). a). above namely "for direct personal or family consumption, as food, shelter, fuel, clothing, tools, or transportation" shall be called "Personal Subsistence Use"; and a person who is legally exercising that use shall be designated a "Personal Subsistence Use Fisherman";
- j). as described in Sec. Y (a) 3). b). above namely "for the making and selling of handicraft articles out of the nonedible by-products of fish and wildlife resources taken for Personal Subsistence Use" shall be called "Personal Handicrafts Subsistence Use"; and a person who is legally exercising that use shall be designated a "Personal Handicrafts Subsistence User";
- k). as described in Sec. Y (a) 3). c). above namely "for barter, or sharing for personal or family consumption" shall be called "Subsistence Barter"; and a person who is legally exercising that use shall be designated a "Subsistence Barterer";
- l). as described in Sec. Y (a) 3). d). above namely "and for customary trade" shall be called "Customary Subsistence Trade" and a person who is legally exercising that use shall be designated a "Customary Subsistence Trade Commercial Fisherman" and such a person must meet the criteria set forth in this Section especially Sec. Y. (a) 3. g).

4. That for the purposes of Subsistence as defined in ANILCA, the State of Alaska, hereby designates eight categories of Subsistence Emergencies for its fish and game resources as hereby defined.

- A. "No Subsistence Emergency" shall mean that no level of emergency exists and all peoples (Category 0 thru 6 Ushers) may harvest fish and game in any manner legally provided for by Alaska laws and/or regulations.
- B. A "Class 6 Subsistence Emergency Closure" shall mean that a very low level of subsistence emergency exists and all Category 6 Ushers (defined in item 5. G) shall be prohibited (excluded) from harvesting the resource designated.
- C. A "Class 5 Subsistence Emergency Closure" shall mean that a low level of subsistence emergency exists and all Category 5 Users (defined in item 5. F) shall be prohibited (excluded) from harvesting the resource designated.

- \*
- D. A "Class 4 Subsistence Emergency Closure" shall mean that a medium level of subsistence emergency exists and all Category 4 Users (defined in item 5. E) shall be prohibited (excluded) from harvesting the resource designated.
  - E. A "Class 3 Subsistence Emergency Closure" shall mean that a higher level of subsistence emergency exists and all Category 3 Users (defined in item 5. D) shall be prohibited (excluded) from harvesting the resource designated.
  - F. A "Class 2 Subsistence Emergency Closure" shall mean that a very high level of subsistence emergency exists and all Category 2 Users (defined in item 5. C) shall be prohibited (excluded) from harvesting the resource designated.
  - G. A "Class 1 Subsistence Emergency Closure" shall mean that the highest level of subsistence emergency exists and all Category 1 Users (defined in item 5. B) shall be prohibited (excluded) from harvesting the resource designated.
  - H. A "Conservation Class Emergency Closure" shall mean that the very resource itself is threatened and that the highest possible level of resource emergency exists and that it is both realistic and possible by strict adherence to sound biological methods and management to bring that resource back to health and all Category 0 Users (defined in item 5. A) shall be prohibited (excluded) from harvesting the resource designated.
5. That for the purposes of Subsistence as defined in ANILCA, the State of Alaska, hereby designates seven Categories of Users of its fish and game resources.
- A. Category 0 Users shall include:
    - a). All Category 1 Users, and
    - b). All isolated rural Alaskan resident Personal Subsistence Use Fishermen, Personal Handicrafts Subsistence Users, Subsistence Barterers, and hunters, and trappers.
  - B. Category 1 Users shall include:
    - a). All Category 2 Users, and
    - b). All semi-isolated rural Alaskan resident Personal Subsistence Use Fisherman, Personal Handicrafts Subsistence Users, Subsistence Barterers, and hunters, and trappers.
    - c). All isolated rural Alaskan resident Customary Subsistence Trade Commercial Fishermen, (and holders of isolated rural Alaska resident trapping licenses).
  - C. Category 2 Users shall include:
    - a). All Category 3 Users, and
    - b). All isolated rural Alaskan resident sport harvesters who hold valid Alaska (rural?) resident licenses,
    - c). All semi-isolated rural Alaskan resident Customary Subsistence Trade Commercial Fishermen, (and holders of semi-isolated rural Alaska resident trapping licenses).

- \*
- D. Category 3 Users shall include:
    - a). All Category 4 Users, and
    - b). All semi-isolated rural Alaskan resident sport harvesters who hold valid Alaska (rural?) resident licenses,
    - c). All commercial harvesters who reside outside of the State of Alaska and who hold valid Alaska resident licenses, and/or permits (such as: An Alaska resident trapping license, or an Alaskan Commercial Fisheries Entry Permit, or NOAA IFQs.
  
  - E. Category 4 Users shall include:
    - a). All Category 5 Users, and
    - b). All non-Alaskan nonresident U.S. citizen sport harvesters who hold nonresident Alaska sport fish, hunting or trapping licenses.
    - c). All official and all non-official Alaska fishing derbies and trophy hunts and their participants.
  
  - F. Category 5 Users shall include:
    - a). All Category 6 Users, and
    - b). All non-Alaska resident U.S. commercial harvesters, who do not hold valid Alaska licenses, and/or permits (such as U.S. trawlers and U.S. factory trawlers), but are harvesting legally.
    - c). All foreigners holding valid Alaska nonresident sport fishing, hunting or trapping licenses.
  
  - G. Category 6 Users include:
    - a). Any and all other legal users not mentioned in the previous categories 0 thru 5 including foreign (non U.S. citizens) commercial fishing and hunting operation participants.

OTHER PROVISIONS THAT MAY BE NEEDED IN THE PROPOSAL.  
(after debate and discussion).

Emergencies which arise could be recognized by:

1. Alaska Board of Fisheries and/or Game,
2. Alaska Department of Fish and Game,
3. Appropriate Regional ADF&G Advisory Council,
4. Appropriate Local ADF&G Advisory Committees,
5. Local City, Town, or Village Council,
6. Petition by concerned groups or individuals.

Emergencies, including which species and areas were involved, and class or seriousness of emergency would be determined jointly by:

1. The Appropriate Alaska Board of Fisheries and/or Game,
2. The Alaska Department of Fish and Game, and
3. The Appropriate Regional ADF&G Advisory Council, with the Appropriate Local ADF&G Advisory Committees required in attendance.

Definitions for "general", "overall" conservation closures for entire regions or the entire state may be needed and enacted.

Provisions and/or regulations for declaring and implementing these closures must be written and passed.

\*

DETAILED DISCUSSION IN FAVOR OF THIS PARTICULAR BILL PROPOSAL DRAFT  
and/or  
THIS TYPE OF SUBSISTENCE LEGISLATION  
2/24/90  
(revised 5/15/90, 12/20/90, and 9/12/99)

The following three pages of discussions are fairly detailed and are best studied with the applicable Sections of ANILCA in hand (see Appendix III & Appendix VI) and after the proposal itself is read and understood.

DISCUSSION OF BENEFITS AND EFFECTS OF THIS (OR THIS TYPE OF) PROPOSAL

Determination of eligibility to harvest fish and/or game in any particular legal manner will be easily made based on:

- a). Status of resource.
- b). Place of residence.
- c). Legal licenses and permits held.

A person may become eligible or ineligible to harvest if they move, or (commercially) if they buy or sell their permit. Commercial permits should migrate back to the rural villages without direct government involvement as they become valueless to nonresidents if that class emergency is declared.

Costs of collecting and analyzing great amounts of individual and community historical use data will be eliminated or greatly reduced.

Fish and Game managers will be able to determine harvest levels for particular species in relatively broad or very specific areas as the biology, habitat, movement, population, etc. of that species dictates.

Obviously, general and overall "Conservation Class Emergency" and "Class 1 Subsistence Emergency" and Class 2 Subsistence Emergency" Closures are exceptional cases indicating that the entire State's (or Region's) resource management has failed or is failing.

Specific species or specific area Conservation or Subsistence Emergency Closures would be more common. The harvest of one species of fish and/game may be severely restricted in an area while another species in the same area is being harvested commercially by all users.

DISCUSSION OF CUSTOMARY TRADE (See Appendix III)

Notice in first sentence of ANILCA Sec. 803 (See Appendix III) that the definition of subsistence is broken down into 4 uses by the use of the semicolon ";" as follows: "Sec. 803. As used ..... the term "subsistence" means ..... for the customary ..... transportation; for the making ..... consumption; for barter ..... consumption; and for customary trade. The word "for" is used four different times for four different uses of subsistence.

\*

This proposal, "ECNETSISBUS", defines the term "Customary Trade" which is used in the ANILCA Section 803 definition of "subsistence uses". Notice that the term "Barter" in the ANILCA Sec. 803. definition of "Subsistence Uses" is separated from the term "Customary Trade" by a phrase and by a semicolon. This strongly implies that, although "barter" is a noncommercial use of the resources, "customary trade" may, in fact, be a commercial use. It further implies the term "customary trade", since it is not defined in ANILCA, is open to State interpretation and the legislative definition thereof. "ECNETSISBUS" does just that.

#### DISCUSSION OF CATEGORIES OF SUBSISTENCE USERS (See Appendix III)

This proposal, "ECNETSISBUS", creates "categories of subsistence users" which is in complete compliance with the "preferences for subsistence uses" as stated in ANILCA Section 804. (see Appendix III). ANILCA'S intention seems obviously meant to protect the rural Alaskan resident both "personal use-wise" and "commercial use-wise" or as in "ECNETSISBUS" both "Personal Subsistence Use" and "Customary Subsistence Trade".

ANILCA just as obviously seems to mean to protect the urban Alaska resident both "personal use-wise" and "commercial use-wise", but on a lower priority level. As discussed previously [in this paper and in ANILCA Section 804.(1)] both rural and urban commercial user has customary and direct dependence upon the resource as the mainstay of livelihood. Between the rural and urban Alaska commercial user, only their "availability of alternative resources" [ANILCA Section 804.(3)] is different and it is severely limited in both cases.

And the State's Constitution in Art. VIII Section 15. (see Appendix IV) allows us "... to limit entry into any fishery for purposes of resource conservation, to prevent economic distress among fishermen and those dependent upon them for a livelihood ....". In fact, when the State established the Salmon Limited Entry System and "grandfathered" the various permits, it used the personal history of past participation, the economic dependence upon that fishery, and the availability of alternative occupations of the different applicants to award the permits. Two of those same criteria were used in the awarding of the initial "grandfathered" IFQs for black Cod and Halibut by the IPHC and NMFS.

The second sentence of ANILCA Sec. 804. (see Appendix III) states "Whenever it is necessary to restrict the taking of populations of fish and wildlife on such lands for subsistence uses in order to protect the continued viability of such populations, or to continue such uses, such priority shall be implemented through appropriate limitations based on the application of the following criteria:

- (1) customary and direct dependence upon the population as the mainstay of livelihood;
- (2) local residency; and
- (3) the availability of alternative resources.

This implies that the Alaska commercial fisherman is a subsistence user. In fact, close reading of ANILCA Sec. 804. (see Appendix III) almost demands that the rural Alaska resident commercial fisherman be designated a subsistence user.

DISCUSSION OF SOLVING PREVIOUS LEGAL PROBLEMS IN COMPLYING WITH ANILCA

This type of proposal should require no constitutional amendment for the State to come into complete compliance with ANILCA for Fisheries based on the following logic.

1. The constitutional amendment which enabled limited entry to be enacted enables us to discriminate between fisheries users based on conservation needs.
2. Limited Entry further allowed us to discriminate between fisheries users based on past participation.
3. All this proposal does is recognize conservation needs and, in compliance to ANILCA, spreads the discrimination over several categories of users based upon the severity of the emergency, the customary and direct dependence upon the resource populations as the mainstay of livelihood, the availability of alternative resources, and subsequently upon a person's residence.

This type of proposal should require only a minor constitutional amendment for the State to come into complete compliance with ANILCA for Game based on the following logic.

1. Addition of only the two words "AND GAME" to the 1970 amendment which allowed limited entry should allow the legislature to enact this proposed bill and thus come into complete compliance with ANILCA.

This type of proposal seems legal under ANILCA, our past Alaska legislation, and (with minor amendment) our State Constitution.

## DISCUSSIONS IN FAVOR OF A NEW AND DIFFERENT TYPE OF APPROACH

The following three pages of discussion, together with the previous more detailed discussion, should show that the intent of the ANILCA subsistence sections can be acceptably implemented by the enactment of this (or this type of) bill proposal.

### DISCUSSION OF TYPES OF ATTEMPTS MADE TO DATE TO COMPLY WITH ANILCA

All attempts to date by the State to comply with ANILCA have relied upon and have been built upon:

- A. Individual's History of Subsistence Use Data;
- B. Community's History of Subsistence Use Data;
- C. Individual's History of Areas of Subsistence Use Data;
- D. Community's History of Areas of Subsistence Use Data;
- E. Individual's History of Species of Subsistence Use Data;
- F. Community's History of Species of Subsistence Use Data;

This type of data is extremely prejudicial, biased and discriminatory. Too much so. It is also too costly to collect and too subjective.

People throughout Alaska and especially in the rural areas truly do rely upon their renewable resources. This type of data does not allow for the real and/or changing needs of either individuals or their communities. It does not allow for changes in fish and wildlife populations, especially from area to area. It leaves no alternatives if a particular species suffers a severe population decline. It cannot react timely to changing populations. It involves too much litigation from individuals and communities. It is unacceptable.

### DISCUSSION OF ATTEMPTS MADE BY THE STATE TO COMPLY WITH THE SUBSISTENCE NEEDS OF ITS CITIZENS BOTH PRIOR TO AND AFTER ANILCA

Pelican ADF&G Advisory Committee has gone on record in 3/3/82 with its views of the subsistence issue. At its 3/3/90 meeting it again unanimously supported the exact same position. This position supports State control of its fish and game resources and requests the State to demand its right to do so. See Appendix I for that position paper.

The importance of commercial fishing to the town of and the residents of Pelican plus the frustration over the constant curtailment thereof lead the Pelican ADF&G Advisory Committee to consider their resolution of 11/16/91 (see Appendix V). Although it didn't pass in 1991, it was reconsidered and passed in the mid 1990s.

#### DISCUSSION OF INTENT OF ANILCA (PLACE OF RESIDENCE - RURAL ALASKA)

ANILCA (as far as subsistence is concerned) obviously intends (or means) to protect the life-style, culture, and livelihoods of rural Alaskans from the urban Alaskans and from the residents of the south 48 and from foreigners. This is because the rural Alaskan has absolutely no (or almost) no alternative life-style, culture, or livelihoods to fall back on if their supply of fish and game is significantly diminished or wiped out. They absolutely depend on their wild renewable resources.

#### DISCUSSION OF INTENT OF ANILCA (NATIVE VERSUS NON-NATIVE)

ANILCA is basically an Act about Lands in Alaska which are of National Interest. Although ANILCA has large portions dealing with Native lands and the Alaska Native Claims Settlement Act, ANILCA very specifically and clearly states, in Section 801.(1) (see Appendix III), that, as far as subsistence is concerned, Natives and non-Natives are to be treated alike.

#### DISCUSSION OF INTENT OF ANILCA (CUSTOMARY TRADE VERSUS COMMERCIAL USE)

"Customary Trade" (as used in ANILCA Section 803) (see Appendix III) can be easily defended as meaning that for purposes of fish and game laws and regulations, "any and all commercial harvesting of fish and game as has been legally allowed, licensed and/or permitted by in the State of Alaska to this date".

Clearly, Alaska residents had the history of some 60 years of U.S. Law and Regulation and Management before Statehood to decide what was acceptable commercial practice ("customary trade") in the harvesting of its wild renewable resources.

With Statehood (when Alaska residents received the right to make laws and regulations based on these decisions) many changes were implemented (i.e.. elimination of fish traps). After a further 15 year history, Alaska amended its constitution to allow for the protection of its residents from non-Alaskan residents and entrepreneurs (i.e.. Limited Entry in the commercial fisheries).

The enactment of Commercial Fisheries Entry Legislation brought about an almost immediate migration of permits (opportunities of livelihood) out of the rural areas of the State to the urban areas of the State and to an even greater extent out of the State entirely. This is probably the chief reason for the enactment of the Subsistence Section (Title VIII) of the ANILCA legislation. And it happened within 6 years of the (final) enactment of limited entry.

The past twenty years of trial and error regulations designed to implement ANILCA subsistence have been very frustrating, unproductive, and extremely fear provoking. (ANILCA subsistence could very possibly destroy the very life-style, culture, and livelihoods is was designed to create).

It should be clear from a perusal of the history of the regulations designed for the protection of Alaskan residents, especially rural residents, who in many cases are commercial users, that ANILCA's clear intent is to protect the commercial user; and it can do so by defining customary trade as in the following bill proposal.

#### DISCUSSION OF INTENT OF ANILCA (PLACE OF RESIDENCE - URBAN ALASKA)

Further, this perusal of the history of Alaska law and regulations and ANILCA (as far as subsistence is concerned) can easily further be interpreted to intend (or mean) to protect the life-style, culture, and livelihoods of urban Alaskans from the residents of the south 48 and from foreigners (see ANILCA Section 804 in Appendix III). This is because the urban Alaskans have almost no (or very little) alternative life-style, culture, or livelihoods to fall back on if their supply of fish and game is significantly diminished or wiped out. They also very much depend on their wild renewable resources.

#### DISCUSSION OF INTENT OF ANILCA (SPORT VERSUS COMMERCIAL HARVESTING)

Sport hunting and fishing (and trapping?) as now separated from "Personal Use" hunting and fishing (and trapping?), can be viewed either as a direct use of the resource for recreation or an indirect use of the resource for livelihood (as in the case of sport fishing and hunting suppliers, outfitters, guides, and lodges).

Commercial fishing and trapping (and hunting?) can be viewed as a direct use of the resource for livelihood.

Study of ANILCA, then, in its Section 803 (see Appendix III) definition of subsistence uses, seems to give commercial fishing and trapping (and hunting?) a higher priority than sport fishing and hunting.

Study of ANILCA Sections 801.1 and 801.4 (see Appendix III) seems to give the same interpretation.

Study of ANILCA Sections 801.3 (see Appendix III) seems to allow for a use priority schedule such as is given in this proposal.

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## QUESTIONS TO ASK YOURSELF

1. OVERVIEW Do we want to support this type of legislation?  
Generally?  
Specifically?  
Can you support it individually?
2. Are there gross errors in the proposal or in the discussion.?
3. Is each user group in the category you would like to see it in?  
And can you support your preference?
4. Are there other user groups not included that should be?
5. What about Sport Commercial Charter Boats? Are they in the correct category? Where should they fit into the category range? Should they be required to buy a Power Troll Permit?
6. What about Commercial Guides?
7. How should emergencies be recognized and by whom? Who should see that they are actually responded to?
8. What about elderly people who have lived off the land in rural communities but are now forced to live in urban areas because of ill health and the need to be near medical facilities?
9. Will this proposal cause a migration of nonresidents into rural areas instead of a migration of commercial permits into these areas, creating even worst situations?
10. How extensive should Subsistence Class Closures be? Should "Conservation Closure" and "Class 1 and Class 2" Subsistence Emergency closures "kick in" limited to their areas only?
11. DOES THIS PROPOSAL REALLY DO WHAT WE THINK IT DOES?

## PELICAN'S POSITION ON SUBSISTENCE

## PELICAN ADF&amp;G ADVISORY COMMITTEE

## SUBSISTENCE COMMENTS

3/3/82

In attempting to come up with Pelican's definition of subsistence we have come to realize that:

1. Every man "needs" to subsist;
2. Every man will utilize any resource to stay alive and/or to keep his family alive, be it fish, fowl, flora, or fauna, a renewable resource or a non-renewable resource;
3. That our governments ((community, state, and federal) have been created to safeguard these basic needs and rights;
4. That our Alaska Boards of Fisheries and of Game, in particular, have been created to and have been doing just that.

We have also come to recognize the Con Game of the ANILCA subsistence issue for what it is:

1. An insidious method of gaining further Federal control over Alaska's resources, and
2. A method for lawyers, attorneys, Federal bureaucrats, and other Con Men to milk the public.

We citizens are tired of expending great amounts of time, effort, and monies in "good faith" attempts to sit down with highly paid attorneys and bureaucrats to develop realistic definitions and laws for resource management, only to find that we have wasted our family lives and exhausted our personal finances, while the attorneys have been getting rich, and further, only to find that once the issues, definitions, and laws have been ironed out and agreed upon in "good faith" and enacted, that these same lawyers and bureaucrats will then "take the other side" and further drain our treasuries and pocket books by representing various groups (supposedly wronged by legislative or regulatory oversight) in court using legal loopholes.

We recognize the Con Game for what it is --- a highly evolved and very expensive method for milking the public under the guise of protecting our rights, our interests, and our resources.

We feel that the Alaska Boards of Fisheries and of Game do now, and always have had the Alaskan citizen's interests at heart; and that they have shown exceptional sensitivity in meeting subsistence needs of the Alaskan without the expensive Con Game of statutes, definitions, and regulations. We feel that the State of Alaska has a very good batting average in the management of its resources -- at least the few that it is allowed to manage.

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On the other hand, we feel that the Federal Government has shown a real lack of understanding of Alaskans and the needs of Alaskans, and consequently, has a history of insensitivity to Alaska's needs; witness:

Clearcut logging,  
The Marine Mammal Act,  
Wolf control, etc., and now  
The subsistence issue.

We feel that the State of Alaska should at this time take a strong stand against federal control of subsistence in Alaska and/or federal mandates to Alaska concerning subsistence. The State should sue the federal government if necessary. We should be demanding our State's rights to manage our own renewable resources. We fought for these rights at Statehood and we should not be letting the Federal Government abridge them.

We feel that the Federal Government should re-examine the implications of ANILCA and back off.

Our nation was founded with the concept of all men being equal under the law. We ask, then, that the Federal Government re-examine the ANILCA Subsistence Sections as creating classes of people with different rights:

Subsistence users over "others",  
Rural over urban,  
Traditional user over "??????".

Further, we ask that the United States Government cease and desist this practise of taking over State's rights and authorities under the guise of righteously protecting its citizens.

APPENDIX II

4

# AUTHOR'S REASONS FOR PROPOSAL

## DISCUSSION OF THE AUTHOR'S REASONS FOR THIS PAPER AND PROPOSAL

Although I am on the Pelican ADF&G Advisory Committee and wholeheartedly support its position on Subsistence and State's rights (see Appendix I), it is my opinion that:

1. The Federal government will continue to usurp our State's rights, despite their obvious ignorance of our traditional, customs, and needs.
2. The State of Alaska, The Office of the Governor, The Alaska State Legislature, The Boards of Fisheries and Game, and The Department of Fish and Game either lack the desire, the will, the muscle, and/or the courage to fight the Federal government; or they truly know that they would lose this battle at further loss to the State.
3. The Boards of Fisheries and Game have occasionally (but very rarely) bowed to political pressures and put the interest of the urban users above the needs of the rural user (i.e. the Cook Inlet/Kenia River Subsistence issue).
4. Many other State agencies do not have the protectionist attitude toward "subsistence" and "personal use" rural users that the Alaska Boards of Fisheries and Game has shown (i.e. the clearcut, no buffer strip policies of the Alaska Department of Natural Resources).

It is for these reasons that I submit this paper. I do so with great reluctance as I feel that State will take any alternative it can to avoid this very necessary battle over its right to govern itself, regardless of the lack of existence of acceptable legislation for compliance to ANILCA.

It is with these reservations, therefore, that I submit this paper. I feel that, notwithstanding the need for a strong stand over Alaska's right to govern itself, the preceding approach to compliance with ANILCA Subsistence is the least disruptive to the State and the customs, life-style, and livelihoods of its citizens both rural and urban. It should, I believe, allow the State to manage its fish and game resources pretty much as it has in the past.

If we accept this proposal, however, the State will continue to be ruled by our absentee owners in Washington D.C. and we will continue to have many such conflicts in the future (i.e. the Tongass Reform issue, the Glacier Bay Park versus Commercial Fishing issue).

SINCERELY,

*Richard W. Lundell*

## TITLE VIII—SUBSISTENCE MANAGEMENT AND USE

## FINDINGS

16 USC 3111.

Sec. 801. The Congress finds and declares that—

(1) the continuation of the opportunity for subsistence uses by rural residents of Alaska, including both Natives and non-Natives, on the public lands and by Alaska Natives on Native lands is essential to Native physical, economic, traditional, and cultural existence and to non-Native physical, economic, traditional, and social existence;

(2) the situation in Alaska is unique in that, in most cases, no practical alternative means are available to replace the food supplies and other items gathered from fish and wildlife which supply rural residents dependent on subsistence uses;

(3) continuation of the opportunity for subsistence uses of resources on public and other lands in Alaska is threatened by the increasing population of Alaska, with resultant pressure on subsistence resources, by sudden decline in the populations of some wildlife species which are crucial subsistence resources, by increased accessibility of remote areas containing subsistence resources, and by taking of fish and wildlife in a manner inconsistent with recognized principles of fish and wildlife management;

48 USC 1601  
note.

(4) in order to fulfill the policies and purposes of the Alaska Native Claims Settlement Act and as a matter of equity, it is necessary for the Congress to invoke its constitutional authority over Native affairs and its constitutional authority under the property clause and the commerce clause to protect and provide the opportunity for continued subsistence uses on the public lands by Native and non-Native rural residents; and

(5) the national interest in the proper regulation, protection, and conservation of fish and wildlife on the public lands in Alaska and the continuation of the opportunity for a subsistence way of life by residents of rural Alaska require that an administrative structure be established for the purpose of enabling rural residents who have personal knowledge of local conditions and requirements to have a meaningful role in the management of fish and wildlife and of subsistence uses on the public lands in Alaska.

## POLICY

16 USC 3112.

Sec. 802. It is hereby declared to be the policy of Congress that—

(1) consistent with sound management principles, and the conservation of healthy populations of fish and wildlife, the utilization of the public lands in Alaska is to cause the least adverse impact possible on rural residents who depend upon subsistence uses of the resources of such lands; consistent with management of fish and wildlife in accordance with recognized

scientific principles and the purposes for each unit established, designated, or expanded by or pursuant to titles II through VII of this Act, the purpose of this title is to provide the opportunity for rural residents engaged in a subsistence way of life to do so; \* Ante, p. 2377.

(2) nonwasteful subsistence uses of fish and wildlife and other renewable resources shall be the priority consumptive uses of all such resources on the public lands of Alaska when it is necessary to restrict taking in order to assure the continued viability of a fish or wildlife population or the continuation of subsistence uses of such population, the taking of such population for nonwasteful subsistence uses shall be given preference on the public lands over other consumptive uses; and

(3) except as otherwise provided by this Act or other Federal laws, Federal land managing agencies, in managing subsistence activities on the public lands and in protecting the continued viability of all wild renewable resources in Alaska, shall cooperate with adjacent landowners and land managers, including Native Corporations, appropriate State and Federal agencies, and other nations.

#### DEFINITIONS

SEC. 803. As used in this Act, the term "subsistence uses" means 16 USC 3113.  
the customary and traditional uses by rural Alaska residents of wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation; for the making and selling of handicraft articles out of nonedible byproducts of fish and wildlife resources taken for personal or family consumption; for barter, or sharing for personal or family consumption; and for customary trade. For the purposes of this section, the term—

(1) "family" means all persons related by blood, marriage, or adoption, or any person living within the household on a permanent basis; and

(2) "barter" means the exchange of fish or wildlife or their parts, taken for subsistence uses—

(A) for other fish or game or their parts; or

(B) for other food or for nonedible items other than money if the exchange is of a limited and noncommercial nature.

#### PREFERENCE FOR SUBSISTENCE USES

SEC. 804. Except as otherwise provided in this Act and other 16 USC 3114.  
Federal laws, the taking on public lands of fish and wildlife for nonwasteful subsistence uses shall be accorded priority over the taking on such lands of fish and wildlife for other purposes. When-  
ever it is necessary to restrict the taking of populations of fish and wildlife on such lands for subsistence uses in order to protect the continued viability of such populations, or to continue such uses, such priority shall be implemented through appropriate limitations based on the application of the following criteria: Priority criteria.

(1) customary and direct dependence upon the populations as the mainstay of livelihood;

(2) local residency; and

(3) the availability of alternative resources.

RESOLUTION OF  
THE PELICAN ADF&G ADVISORY COMMITTEE  
CONCERNING  
INCLUDING COMMERCIAL FISHING WITHIN SUBSISTENCE

11/16/91

Whereas, Pelican is an isolated and rural town of about three hundred in Southeast Alaska,  
and

Whereas, Pelican's primary industry is commercial fishing, and

Whereas, The economy of Pelican would completely fold, property values would drastically drop, and its residents would go bankrupt and be forced to move from the area since there is no significant number of alternative occupations available in Pelican if commercial fishing was closed in Southeast Alaska for any extended period of time, and

Whereas, We feel that the same phenomenon would occur in almost all isolate, rural villages and towns throughout Southeast Alaska if commercial fishing was closed in Southeast Alaska for any extended period of time, and

Whereas, We peoples of Pelican and of Southeast Alaska do to a large percentage depend directly upon Commercial fishing for our livelihoods and ways of life, and

Whereas, We feel that this is what ANILCA is addressing in its Subsistence Sections;

Therefore, We, the Pelican ADF&G Advisory committee, do hereby adopt in essence the idea and concept of the Richard Lundahl Subsistence Proposal as previously submitted and as attached; and

Further, We request that the Southeast Regional ADF&G Council, the State of Alaska, and the U.S. Federal Government do the same.

among beneficial uses, concurrent or otherwise, as prescribed by law, and to the general reservation of fish and wildlife.

**Cross references.** — See note to Alaska Const., art. VIII, § 15.

## NOTES TO DECISIONS

**Legislative intent.** — The provisions in this article were intended to permit the broadest possible access to and use of state waters by the general public.

Wernberg v. State, 516 P.2d 1191 (Alaska 1973), rehearing denied, 519 P.2d 801 (Alaska 1974).

**Section 14. Access to Navigable Waters.** Free access to the navigable or public waters of the State, as defined by the legislature, shall not be denied any citizen of the United States or resident of the State, except that the legislature may by general law regulate and limit such access for other beneficial uses or public purposes.

**Opinions of attorney general.** — The owner of the uplands has been stated to have the right of access for the purpose of navigation, but no right of possession of the land below high water mark as against another. 1959 Op. Att'y Gen. No. 1.

In Dalton v. Hazelet, 182 F. 561 (9th Cir. 1910), it was recognized that the right of free and unobstructed access may be exercised by means of a wharf or other structure over shoal water from the upland property

to deep water. 1959 Op. Att'y Gen. No. 1.

The mere physical passage is not the only right involved in the right of access. The upland owner has the right to use the foreshore in such manner as is necessary for the complete enjoyment of his right. 1959 Op. Att'y Gen. No. 1.

Any use of tidelands in such a manner as to deny the upland owner access to the navigable waters would be actionable. 1959 Op. Att'y Gen. No. 1.

## NOTES TO DECISIONS

**Legislative intent.** — The provisions in this article were intended to permit the broadest possible access to and use of state waters by the general public. Wernberg v. State, 516 P.2d 1191 (Alaska 1973), rehearing denied, 519 P.2d 801 (Alaska 1974).

The Alaska Constitution allows the state to take riparian or littoral property rights for "beneficial or public uses" other than in aid of water navigation. Wernberg v. State, 516 P.2d 1191 (Alaska 1973), rehearing denied, 519 P.2d 801 (Alaska 1974).

**Section 15. No Exclusive Right of Fishery.** No exclusive right or special privilege of fishery shall be created or authorized in the natural waters of the State. This section does not restrict the power of the State to limit entry into any fishery for purposes of resource conservation, to prevent economic distress among fishermen and those dependent upon them for a livelihood and to promote the efficient development of aquaculture in the State.

**Cross references.** — For provisions relating to the limitation of entry into the fisheries of the state, see AS 16.43.

**Effect of amendments.** — The amendment effective October 14, 1972 (7th Legislature's HCS CSSJR 10 (1971)) added the last sentence.

**Opinions of attorney general.** — This section was derived from the White Act, 48 U.S.C. §§ 221, 222. 1961 Op. Att'y Gen. No. 3.

Under the language of the White Act (48 USC § 222) the Secretary of Interior was prohibited from granting any exclusive or several right of fishery in favor of the Natives on the Karluk River on Kodiak Island. The court held that the prohibition against granting and exclusive right of fishery applied to

commercial fishing by natives equally with fishing companies, and that the secretary could not grant to the occupants of an Indian reservation the privilege of exclusive commercial fishing rights. 190 Op. Att'y Gen. No. 9, citing Hynes v. Grimes Packing Co., 12 Alaska 348, 337 U.S. 86, 69 S. Ct. 968, 93 L. Ed. 1231 (1949).

AS 38.05.082, which authorizes shore fishery leases, does not create an exclusive right of fishery and therefore is not unconstitutional under this section. 1983 Op. Att'y Gen. No. 03.

AS 38.05.082 can be amended to limit the issuance of state tidelands leases for fisheries development to residents of Alaska. 1983 Op. Att'y Gen. No. 03.

## NOTES TO DECISIONS

**Applicability.** — The right to lead subsistence lifestyles is not limited to Alaska Natives; the benefits of subsistence living are shared by all Alaskans and class of Alaska Natives could not bring a public

nuisance action based on interference with subsistence lifestyles because they could show no special injury different in kind from that suffered by the general public. Alaska Native Class v. Exxon Corp.,

Page 2 of 2

104 F.3d 1196 (9th Cir. 1997).

The first judicial application of this constitutional provision should properly be by an Alaska court. *Reetz v. Bozanich*, 397 U.S. 82, 90 S. Ct. 788, 25 L. Ed. 2d 68 (1970).

The White Act merely expressed the common law in prohibition against exclusive fishing rights. *Grimes Packing Co. v. Hynes*, 11 Alaska 154, 67 F. Supp. 43 (D. Alaska 1946), vacated and remanded on other grounds, 12 Alaska 348, 337 U.S. 86, 69 S. Ct. 968, 93 L. Ed. 1231 (1949).

It did not permit a monopoly of fishing in Indian citizens as a conservation measure. *Hynes v. Grimes Packing Co.*, 11 Alaska 564, 165 F.2d 323 (9th Cir. 1947), vacated and remanded on other grounds, 12 Alaska 348, 337 U.S. 86, 69 S. Ct. 968, 93 L. Ed. 1231 (1949).

The purpose of the 1972 amendment, which added the second sentence to this section, was to grant the state the power to impose a limited entry system in any fishery, notwithstanding any state constitutional provisions otherwise prohibiting such a system. *State v. Ostrosky*, 667 P.2d 1184 (Alaska 1983), appeal dismissed, 467 U.S. 1201, 104 S. Ct. 2379, 81 L. Ed. 2d 339 (1984).

**Differential treatment not prohibited.** — While this section does prohibit granting monopoly fishing rights, it was not meant to prohibit differential treatment by the Board of Fisheries of such diverse user groups as commercial, sports, and subsistence fishermen. *Kenai Peninsula Fisherman's Coop. Ass'n v. State*, 628 P.2d 897 (Alaska 1981).

**Statute granting a preference to rural residents to take fish and game for subsistence purposes violated this section.** *McDowell v. State*, 785 P.2d 1 (Alaska 1989).

**A ban on the use of a means of fishing does not equal a creation of an exclusive right or a special**

privilege. *Alaska Fish Spotters Ass'n v. State, Dep't of Fish & Game*, 838 P.2d 798 (Alaska 1992).

**Regulation upheld.** — A superexclusive use regulation prohibiting fishermen who operate in one of the superexclusive fisheries from participating in any other superexclusive fishery reflects an allocation decision which is both necessary and authorized under Article VIII, § 4 of the Alaska Constitution, and does not violate any of the Article VIII clauses prohibiting exclusive or special privileges to take fish and wildlife. *State v. Herbert*, 803 P.2d 863 (Alaska 1990).

A regulation allocating harvest levels of sockeye salmon did not violate either Article VIII, § 3 or Article VIII, § 17 of the Alaska Constitution, as the regulation was not arbitrary and capricious, did not create an exclusive right, and the affected fisheries were not "similarly situated". The regulation reflected an allocation decision authorized under Article VIII, § 4 which the Board of Fisheries must necessarily make between users involved in different fisheries. *Gilbert v. Department of Fish & Game*, 803 P.2d 391 (Alaska 1990).

**Constitutionality of ch. 186, SLA 1968.** — See *Bozanich v. Reetz*, 297 F. Supp. 300 (D. Alaska 1969); *Reetz v. Bozanich*, 397 U.S. 82, 90 S. Ct. 788, 25 L. Ed. 2d 68 (1970).

**Quoted in Metlakatla Indian Community Annette Island Reserve v. Egan**, 362 P.2d 901 (Alaska 1961), vacated and remanded, 363 U.S. 45, 82 S. Ct. 552, 7 L. Ed. 2d 562 (1961); *Isakson v. Rickey*, 550 P.2d 359 (Alaska 1976); *Commercial Fisheries Entry Comm'n v. Apokedak*, 606 P.2d 1255 (Alaska 1980); *State v. Alex*, 646 P.2d 203 (Alaska 1982); *Johns v. Commercial Fisheries Entry Comm'n*, 758 P.2d 1256 (Alaska 1988).

**Cited in Wickersham v. State, Com. Fisheries Entry Comm'n**, 680 P.2d 1135 (Alaska 1984); *State v. Morry*, 836 P.2d 358 (Alaska 1992).

**Section 16. Protection of Rights.** No person shall be involuntarily divested of his right to the use of waters, his interests in lands, or improvements affecting either, except for a superior beneficial use or public purpose and then only with just compensation and by operation of law.

#### NOTES TO DECISIONS

**Legislative intent.** — The provisions in this article were intended to permit the broadest possible access to and use of state waters by the general public. *Wernberg v. State*, 516 P.2d 1191 (Alaska 1973), rehearing denied, 519 P.2d 801 (Alaska 1974).

The "use of water" language of this section is coterminous with riparian rights. *Classen v. State, Dep't of Hwys.*, 621 P.2d 15 (Alaska 1980).

This section affords protection against the involuntary divestment of private property rights for a superior beneficial use, such as the construction of a by-pass, by specifying that it shall be "only with just compensation and by operation of law." *Wernberg v. State*, 516 P.2d 1191 (Alaska 1973), rehearing denied, 519 P.2d 801 (Alaska 1974).

**Property owner has private right of littoral access.** — See *Wernberg v. State*, 516 P.2d 1191 (Alaska 1973), rehearing denied, 519 P.2d 801 (Alaska 1974).

**There is little difference between land-access and water-access situations, at least where the**

facts establish actual use of water access. *Wernberg v. State*, 516 P.2d 1191 (Alaska 1973), rehearing denied, 519 P.2d 801 (Alaska 1974).

The supreme court questioned the validity of a restricted definition of the private right of access in water cases, especially in view of the more realistic right of access recognized in land-access cases. *Wernberg v. State*, 516 P.2d 1191 (Alaska 1973), rehearing denied, 519 P.2d 801 (Alaska 1974).

A party was not entitled to compensation under this section when construction of a bridge destroyed his ability to use his residence on the river as a base for his floatplane air taxi service because although the construction made his floatplane operation more expensive and difficult, it did not actually prevent his use of the river for that purpose or interfere with traditional riparian rights. *Classen v. State, Dep't of Hwys.*, 621 P.2d 15 (Alaska 1980); *Ellis v. State, Dep't of Natural Resources*, 944 P.2d 491 (Alaska 1997).



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September 22, 1999

Senator Rick Halford, Chair  
Senate Resources Committee  
State Capitol, Rm., 121  
Juneau, AK 99801-1182

*Via Fax: 465-4928*

Dear Senator Halford and Committee Members:

I am writing to provide written testimony on behalf of Shee Atiká, Incorporated's 2,442 shareholders for today's subsistence hearing.

Shee Atiká, Incorporated is the ANCSA Urban Corporation for Sitka. Shee Atiká has a long history of supporting efforts to implement a rural priority for subsistence hunting and fishing in the state. We are dismayed by the total lack of understanding displayed by the Alaska legislature of the importance of subsistence hunting and fishing to the Native peoples of Alaska. The lack of progress to resolve this impasse is not acceptable.

With proper management of state resources, subsistence is not a threat to either commercial or sport harvest of fish and game. In fact, compared to these two entities, the subsistence harvest is minute! Proper management requires local, not federal, control.

We urge you to end the impasse now and take those measures necessary, including a constitutional amendment, to implement the rural priority under state law and ensure that control of fish and game remains with the state.

We look to you and our other legislators to do the right and courageous thing.

Thank you for considering our opinion. Please make this letter part of the hearing record.

Sincerely,

Marta Ryman  
Chairman of the Board



# ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the \_\_\_\_\_

Committee Name

Committee on \_\_\_\_\_ Dated \_\_\_\_\_

Bill / Subject

*THIS OPINION IS RESPECTFULLY SUBMITTED FOR YOUR  
THOUGHTFUL CONSIDERATION. EQUAL RIGHTS FOR ALL ALASKANS  
IS SO FUNDAMENTAL AS TO BE BEDROCK TO THE ALASKA  
CONSTITUTION, AS WELL AS THAT OF THE UNITED STATES.*

SIGNED:

*[Signature]*  
\_\_\_\_\_  
Testifier

*W.R. COX COL. USA RET.*

*SELF*  
\_\_\_\_\_  
Representing

Representing

*1223 SKYLINE DR. FBKS AK 99712 (907) 457-9000*  
\_\_\_\_\_  
Address / Phone Number

Address / Phone Number

CoxII

## WONDERING IF IT WAS WORTH WAS IT

Guest Opinion by Col. W. R. Cox USA Ret.

It's not unusual for a former soldier to look back at his career and wonder if it was worth it. This is one of those times for me. I spent 30 years in the US Army defending the values of the United States Constitution. It didn't matter whether I was a "shavetail Lieutenant" threatened with courts martial for standing up to a Sergeant-Major who was lying about the pay list, a field officer in combat, or post commander in "peacetime." My choice was to defend the US Constitution, and do what was right. I decided the risks, whether to my military career or in pitting my life and fighting skills against those of other men opposing freedom and human dignity, were worth it. The values of human respect and equality were worth taking those risks, even death.

With this as my past, I wonder what's gone wrong with equal rights for all Alaskans and our rights as a state in the subsistence issue. How can Alaskans even consider amending our state constitution to allow preference when the US Constitution and all federal laws, except ANILCA, forbid it? Preference for folks in need sounds noble, but we shouldn't get so emotional that we overlook this logical fact: you can't give one man preference without discriminating against another. To me granting preference violates the most important American principle, that all are equal under the law. I fought for that.

I don't have a problem with some folks having an advantage because they've worked harder or made other sacrifices to gain advantages. However, I can clearly see the difference between earning advantage and receiving preference because of where you live or who your ancestors chanced to be. It took this nation a long time to get over preference based on race, and I'm not about to go back to it.

I wonder how we've come to this. I'm no expert on ANLCA history or Native grievances, but I can certainly identify the main players pushing for the discrimination required by preference. It's no secret that Ted Stevens has family (if not monetary) ties to the law firm which has Cook Inlet Regional Native Corporation as its major Alaska client, and the last time I checked Ted's brother-in-law was chief lobbyist for the Alaska Federation of Natives in Washington DC. The same Ted Stevens says ANILCA can't be amended, but has quietly amended it dozens of times to benefit Alaska Native financial interests, in some cases specifically those of Cook Inlet Regional Corporation. He's also the Senate appropriations chairman who said he couldn't block federal funds to take over management and then made a deal with Bruce Babbitt to "buy" an Alaska constitutional amendment for \$10 million. Unfortunately, I've come to expect this from Stevens; I don't know what to expect from Senator Murkowski. If he were governor, would he stand up for Alaska?

Still, the guy who really confuses me is Governor Tony Knowles. Governor Knowles served his country at one time...the same Army as I, and apparently took some of the same risks. Yet, he's pushing preference as though it wouldn't result in discrimination and violate the principle that all men are created equal. I can't understand how a man who actually fought for his country can do a thing like that.

I have nothing but respect for those legislators who are willing to take a stand for equality under law regarding rural preference. I hope they can handle the pressure from those who want to do management the federal way so they can feel good and get back to making money with (and from) Alaska Natives. This crowd includes many of my former colleagues in the Chamber of Commerce.

For those who want to settle by accepting a federal law which doesn't uphold equality and lack the stomach to fight for equal justice for Alaska as a state and for all Alaskans, I have a sort of bemused contempt. I'm wondering if the risks I took fighting for the rights of these people were really worth it. They certainly don't seem to appreciate the principles for which I was willing to die, but, by the Grace of God, didn't have to.

To those who resist caving in to the feds, I say "Thank you for validating the risks I took in your service!"

Col. W. R. "Wally" Cox, a retired soldier, served in the Army for 30 years including 2.5 years of combat in Viet Nam, was post commander at Ft. Wainwright from May 1984 to August 1987, and president of the Fairbanks Chamber of Commerce for three years.

**SB**

**6**

# Alaska State Legislature

*Chairman,*  
Judiciary Committee

State Capitol  
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*Senator Robin L. Taylor*

## **SPONSOR STATEMENT** **SENATE BILL 6**

**"An Act Relating To The Disposal Of State Land."**

Senate Bill 6 is basically a housekeeping measure to provide the Department of Natural Resources, Division of Lands, with the tools necessary to offer for sale, land that has been previously sold and returned to the state or previously been offered for sale.

Currently, there is approximately 50,000 acres of land that has been subdivided and surveyed, that the Division of Lands feels it cannot make available for purchase because of stale dated appraisals and the lack of funds to obtain new appraisals.

The language contained in SB 6 was suggested last year by the Division of Lands last year as a means to once again make this land available for purchase. The bill allows the Division to require an applicant to post a deposit to pay for an updated appraisal or to provide an appraisal at the applicant's expense if the director considers that a change in value has occurred since the last appraisal.

District A:

Hyder • Ketchikan • Kupreanof • Meyers Chuck • Petersburg • Saxman • Sitka • Wrangell

SENATOR TAYLOR asked the Department what volume of acreage they already have identified, surveyed, and have old appraisals on.

MS. ANGVIK answered that the Department has approximately 5,000 parcels of land that have been previously surveyed and offered for sale which has been returned to the State and will require an appraisal to prepare them for disposal, again.

SENATOR TAYLOR asked how many parcels have also been prepared, but have never been placed up for sale.

MS. ANGVIK replied none.

SENATOR TAYLOR asked what the total acreage was for the 5,000 parcels.

MR. MYLIUS answered that they average around 10 acres; so around 50,000 acres.

Number 500

SENATOR TAYLOR asked if they just had to do an appraisal, then, on 5,000 parcels before they would be ready.

MR. MYLIUS said that was correct.

SENATOR SHARP said he waited two and a half years for an appraisal once and he didn't know if this was doable.

MS. ANGVIK said if it was the intent for the Department to take the 5,000 parcels they have today and appraise them for a sale by November 1, 1998, they would not be able to meet that deadline. She has talked to Senator Taylor's staff about the possibility of having the individual purchaser pay for and arrange for an appraisal which would relieve the Department of the money problem, but they would still have the logistics problem of directing traffic.

SENATOR TAYLOR asked why they even need an appraisal with an outcry auction.

MS. ANGVIK explained that a fair market value has to be set before hand.

SENATOR TAYLOR responded that's because this law establishing a \$100 minimum hasn't been passed yet.

MR. MYLIUS replied that is a minimum; the Department is still required to sell the land at fair market value and so they need to find what that is. The \$100 is essentially the minimum for the auction price. They do not want to offer a water front lot in Southeast Alaska for \$100.

SENATOR TAYLOR said that an appraisal is only someone's theory about what something is worth. It is based on comparable sales of which there are probably none. So they are paying a lot for someone's speculation about what the value may be. This is why they have 50,000 acres no one wants to buy right now. We should go out and sell it for a lesser price. He asked if he comes up to the counter to buy a piece of land, does he have to pay the price that no one bid on.

MS. ANGVIK replied yes.

SENATOR TAYLOR said with a system like that, they would end up with a whole lot of land around.

MS. ANGVIK responded that that figure is set by the market; the Department does not make up that number.

SENATOR TAYLOR parried that it is only someone's theory about a value; it may be close to, above, or far below what the true market value is. Market value is determined by a willing buyer and a willing seller. He thought the State might not understand that concept, but it works that way in the rest of the world.

CHAIRMAN HALFORD said he didn't know what Senator Taylor wanted to do at this point.

SENATOR TAYLOR said he felt like putting it into the PFD distribution, have the computer do a random selection, and getting rid of every bit of land in one six-month period.

# SENATE COMMITTEE REPORT

## First Committee of Referral

DATE: 1/19/99

FURTHER: Finance

Date of 5-Day Notice: 1/21/99  
(in accordance with Uniform Rule 23)

DATE TURNED  
IN TO OFFICE: 1/25/99

Resources Committee considered      SENATE BILL NO. 6

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

and recommends:

- be replaced with \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- 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:**
- same title
  - technical title
  - new: SCR# \_\_\_\_\_

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>[Signature]</i>	X	<i>[Signature]</i>	✓		
<i>Allen R. Parrell</i>	X				
<i>Adrian L. Taylor</i>	X				
<i>Linda Hagan</i>	✓				
<i>Bob Kobby</i>	✓				
<i>[Signature]</i>					
<b>CHAIR:</b> <i>Kick Halford</i>	✓	<b>CHAIR:</b>			

**NEW FISCAL NOTE(S):**

Department	Date	Zero	Fiscal
DNR	1/25	✓	

**PREVIOUS FISCAL NOTE(S):\***

Department	Date	Zero	Fiscal

APPROPRIATION -- no fiscal note

\*include fiscal notes accompanying Governor's bill

# FISCAL NOTE

**STATE OF ALASKA**  
**1999 LEGISLATIVE SESSION**

**BILL NO. SB6**

Revision Date: \_\_\_\_\_ Dept Affected: Natural Resources  
 Title: An Act relating to the disposal of state land. BRU: Land Development  
 Component: Land Development  
 Sponsor: Senator Taylor  
 Requestor: (S) Resources Component Serial No. #431

Expenditures/Revenues (inflation not included unless otherwise noted below)

(Thousands of Dollars)

OPERATING EXPENDITURES	FY2000	FY2001	FY2002	FY2003	FY2004	FY2005
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>

<b>CAPITAL EXPENDITURES</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>
-----------------------------	------------	------------	------------	------------	------------	------------

<b>CHANGE IN REVENUES (fund code)</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>
---------------------------------------	------------	------------	------------	------------	------------	------------

FUND SOURCE

(Thousands of Dollars)

FUND SOURCE	FY2000	FY2001	FY2002	FY2003	FY2004	FY2005
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>

Estimate of any current year (FY99) cost: \$ none

POSITIONS

POSITIONS	FY2000	FY2001	FY2002	FY2003	FY2004	FY2005
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 with implementation of this legislation.

Prepared by: Dick LeFebvre, Acting Director Phone: 269-8502  
 Division: Land Date: 25-Jan-99  
 Approved by Commissioner: *Arval Gruell* Date: 1/25/99  
 Agency: Natural Resources

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**SB**

**7**

DNR - MARY RUTHERFORD

Senate Bill 7 testimony - 1/25/99

This bill, which is an appropriation of state lands and subsurface resources, and the revenues from them to the University of Alaska, is similar to bills passed by the legislature in 1995, 1996, and in 1959. Each time those bills have been vetoed; including the 1959 version which was vetoed by Governor Bill Egan. Therefore it will come as little surprise to you today that I am testifying in opposition to Senate Bill 7.

However, the message I wish to leave with you today has to do with how very difficult it will be for the Dept. of Natural Resources to carry out this conveyance, the complexity of identifying lands for conveyance, the complexity of managing all state lands until such a conveyance is complete, the impact to Alaska's development community while this 20 year (or longer) process is occurring, the serious impacts to existing municipalities who have outstanding municipal entitlements, the unknown impact to future municipalities that might incorporate, and, last but certainly not least, the interplay between this entitlement with the new School Trust Lands litigation, which has proposed a reconstitution of the school lands trust. I also want to ask you to seriously consider an alternative proposal that would bring to the state new revenues. not just redirect existing revenues.

While you are aware that the state owns tremendous acreage, only a very small amount of this land can produce revenue. As a direct result of the Mental Health Trust Litigation and Settlement processes, and efforts to convey municipal entitlement lands to existing Municipalities for their commercial, residential and industrial purposes, the state has found that there is minimal viably developable land. And, since the purpose of SB7 is to convey lands to the University for revenue generation purposes, it only follows that the University will select the most productive lands.

This will, in turn, make it extremely difficult for existing municipalities to fulfill their municipal land entitlements. The state currently owes existing munis over 600,000 acres of land. I hear, on a regular basis, from Mayors, and their municipal Planners and Managers, that there is a very limited amount of revenue-generating lands within the various municipal boundaries and they are frustrated identifying lands that can be used for their residential and economic development purposes. This is critical since these entitlement lands were designated as both an incentive for incorporation and as a means for these munis to support themselves through revenue generation. And, while this legislation protects existing selections, virtually all the municipalities have found it necessary to modify selections over time as they grow and evolve, their priorities change and land ownership patterns change. Obviously, this legislation will severely limit their abilities to modify and refine those selections.

Furthermore, about one-half of Alaska remains in the unorganized borough. A University entitlement will make it very difficult for future boroughs to receive any developable entitlement lands. This is a serious issue for the state, as the lack of good lands will remove one of the few remaining incentives for municipal incorporation, and should they

ever be required to incorporate this bill may ensure they have no good tax base with which to generate revenues to support themselves.

SB 7 also may negatively impact our development community. The bill will create tremendous uncertainty about land ownership as the University has given no indication as to what lands it will select. Furthermore, the process that will eventually be used by the University to evaluate development proposals for mining, oil and gas development, surface leasing, timber sales, land sales, and public use, are unknown and will be determined by the Board of Regents rather than the legislature, as is currently the process. I might also note here that SB 7 allows the University to select access corridors and Rights-of-Way that may be needed in the future for resource development projects. We believe these issues to be a concern to Alaska's development interests as we experienced very similar concerns during the Mental Health Lands litigation and settlement processes. And, that concern caused a cautious approach to their investment strategies in Alaska.

The bill will also reduce in-state timber processing. The University will likely select the most productive timber lands, thus reducing the state's timber base which is used to calculate the sustained yield and allowable harvest levels, which in-turn impacts our timber sale program. And, as a trust, the University manages its land for maximum revenue and, therefore, typically sells its timber for export. As a result, this bill will hinder the state's effort to establish timber sales that support local processing.

This bill allows the state's Oil & Gas properties to be selected unless they are already leased or proposed for leasing every year during the University's twenty year selection period. This bill does not protect from selection areas of interest under the new Oil & Gas Exploration Licensing Program. And, this is at a time when we are just beginning to experience interest in areas where heretofore there has been no industry interest in exploration.

SB 7 also essentially eliminates the state land disposal program for the next twenty years as the University will likely select most of the already subdivided state tracts which are the most suitable future land disposal areas.

In opening I mentioned a new and extremely significant complexity. During the legislative interim new litigation has been filed against the state with the allegation the state breached the trust of the School Trust Lands. This litigation has proposed reconstituting the School Lands Trust. SB 7 compounds the difficulty in resolving this litigation as the University will no doubt select lands that may be necessary if the state is required to reconstitute the School Land Trust.

I don't intend to spend much time on process issues today, except to say that the process of selecting and deciding what lands the University will receive will be contentious and time consuming. And it will pit the University and municipalities, and perhaps a School Land Trust, against each other in competition over DNR's services to transfer the land. It will also be extremely expensive to transfer 250,000 acres to the University. Our

conservative estimates are over \$1,500,000 per year for at least ten years. While the bill provides that these costs will be borne by the University, these are still state monies that could best be spent operating the University rather than transferring lands from one state agency to another.

Which brings me to my final point. Much of the states' revenues are produced from state land and subsurface resources. The University will select the most productive lands it can, within the boundaries of SB 7, thus removing them from management in the best interest of all Alaskans and decreasing revenues to the general fund. Currently you, the legislature, has the ability to direct general fund revenues to those public purposes you deem most important in a given year. Why should the legislature simply redirect the existing revenue stream and thereby limit your own discretion?

As you know, the Administration has historically supported increasing the university's land entitlement from the federal government. This support was premised upon the Governor's belief that the university did not receive a fair and equitable land entitlement from the federal government, when compared to the acreage transferred to other land grant institutions. This limited federal conveyance foreclosed the University's ability to generate revenues. However, the Governor has also stated that lands conveyed by the federal government to the state under the Alaska Statehood Act should be managed for the benefit of all Alaskans and not earmarked for a single agency.

But despite support for a federal land entitlement for the University, it appears there is little likelihood of such federal legislation being enacted into law. Given this reality, the Governor believes it is time to pursue a new initiative to assist the University. The recommendation, which you heard about in the Governor's State of the State speech last week, recommends seeking the enactment of legislation which would earmark a portion of the federal revenues (bonuses, rentals and royalties) from oil and gas development in the National Petroleum Reserve-Alaska (NPR-A) to fund the corpus of a university endowment. Interest from this endowment could then be used by the University to diversify its funding and serve as a financial foundation for excellence.

This proposal responds to the University's need for a new revenue stream, it doesn't dilute existing general fund revenues, it doesn't further segment nor complicate land management within the state, it and doesn't further terrify the development community.

In 1959, when Governor Egan vetoed the University Lands Bill, he said the bill was "wrong in principle, inconsistent with constitutional concepts and not in the public interest". I believe these sentiments remain accurate today.

Thank you for this opportunity to comment today and I'd like to note that DNR has twelve (12) specific amendments to propose if this bill moves forward. I have them available for your staff here at the LIO, or to read into the record, whichever you prefer.

# SENATE COMMITTEE REPORT

## First Committee of Referral

DATE: 1/19/99

FURTHER: Finance

Date of 5-Day Notice: 1/21/99  
(in accordance with Uniform Rule 23)

DATE TURNED  
IN TO OFFICE: 2/5/99

Resources Committee considered      SENATE BILL NO. 7

"An Act relating to the University of Alaska and university land, and authorizing the University of Alaska to select additional state land."

and recommends:

- be replaced with \_\_\_\_\_ CS SB 7 (RES)
- 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:**
- same title
  - technical title
  - new: SCR# \_\_\_\_\_

SIGNING <u>DO</u> PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>[Signature]</i>	✓	<i>[Signature]</i>			
<i>Robin L. Taylor</i>	✓	<i>[Signature]</i>			
<i>Linda Breen</i>	✓				
<i>Pete Kelly</i>	✓				
CHAIR:		CHAIR: <i>[Signature]</i>	x		

**NEW FISCAL NOTE(S):**

Department	Date	Zero	Fiscal
DNR	1/25		1,657.0
UNIV	1/22		1,627.0
ADP:LG	1/29		70.0
<i>To CS:</i> DNR	2/4		1,157.0
ADP:LG	2/4		76.0
UNIV	2/4		1,627.0

**PREVIOUS FISCAL NOTE(S):\***

Department	Date	Zero	Fiscal

APPROPRIATION -- no fiscal note

\*include fiscal notes accompanying Governor's bill

# FISCAL NOTE

**STATE OF ALASKA**  
**1999 LEGISLATIVE SESSION**

**BILL NO. CSSB 7 (Resources)**

Revision Date: 3-Feb-99 Dept Affected Natural Resources  
 Title: An Act relating to the U. of A. and univ. land, & BRU: Resource Development  
authorizing the U. of A. to select additional state land. Component: Land Development  
 Sponsor: Sen. Taylor, et al.  
 Requestor: Sen Resources Component Serial No. 431

Expenditures/Revenues (inflation not included unless otherwise noted below) (Thousands of Dollars)

OPERATING EXPENDITURES	FY2000	FY2001	FY2002	FY2003	FY2004	FY2005
PERSONAL SERVICES	142.0	161.0	161.0	161.0	161.0	161.0
TRAVEL	15.0	15.0	15.0	15.0	15.0	15.0
CONTRACTUAL	1,000.0	1,000.0	1,000.0	1,000.0	1,000.0	1,000.0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>1,157.0</b>	<b>1,176.0</b>	<b>1,176.0</b>	<b>1,176.0</b>	<b>1,176.0</b>	<b>1,176.0</b>

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES (fund code)	see note					
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	30.0	32.0	32.0	32.0	32.0	32.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
I/A (University)	1,127.0	1,144.0	1,144.0	1,144.0	1,144.0	1,144.0
<b>TOTAL</b>	<b>1,157.0</b>	<b>1,176.0</b>	<b>1,176.0</b>	<b>1,176.0</b>	<b>1,176.0</b>	<b>1,176.0</b>

Estimate of any current year (FY99) cost: \$ \_\_\_\_\_

**POSITIONS**

FULL-TIME	3	3	3	3	3	3
PART-TIME						
TEMPORARY						

**ANALYSIS:** (Attach a separate page if necessary)

This fiscal note is the minimum necessary for DNR to process land selections and conveyances to the University of Alaska. Costs could be higher depending on what lands are selected and the level of controversy relating to individual parcels. Most costs for the conveyance work will be paid for by the University using Interagency Receipts; however, this money still must come from state funds.

For FY 00, staff will include 2 mos. of a Natural Resource Manager I, 12 mos. Natural Resource Officer (NRO) II, and 12 mos. NRO I who will help identify parcels for University selection, check land status and land records, prepare public notice, respond to public inquiries, negotiate with the University, and perform other tasks to prepare land lists. Includes 6 mos. for a Land Surveyor I to prepare survey instructions and contracts for survey. Large [cont.]

Prepared by: Richard A LeFebvre, Acting Director Phone: 907-269-8503  
 Division: Land Date: 4-Feb-99  
 Approved by Commissioner: [Signature] Date: 2-5-99  
 Agency: Natural Resources

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**ANALYSIS [continued]:**

contractual expenditures reflect the cost to survey parcels. FY 01 and following years include the above costs, plus costs to issue title documents.

\* Note: It is impossible to project how much revenue these conveyances will generate for the University, and will be lost to the state, without knowing exactly what lands will be transferred. However, it can be assumed the University will select the most valuable parcels it can find. The effect is to divert a significant revenue stream out of the general fund, where it would have been available for those public purposes the Legislature deemed most important in a given year, into the hands of the Board of Regents for strictly university purposes. Also, by removing the most valuable parcels from the state's asset base, the bill reduces one of the most important incentives for local government to incorporate: the opportunity to select top-quality commercial, residential, and industrial land for municipal ownership under AS 29.65.

# FISCAL NOTE

**BILL NO. CS SB 7 (RES)**

**1999 LEGISLATIVE SESSION**

Revision Date (Note if correction) \_\_\_\_\_ Dept. Affected University of Alaska  
 Title An Act relating to the University of Alaska and BRU University of Alaska  
university land, and authorizing selection of additional land. Component Statewide Services  
 Sponsor Senate Judiciary  
 Requester Senate Finance Component Serial No. 730

**Expenditures/Revenues**

OPERATING EXPENDITURES	FY 00	FY 01	FY 02	FY 03	FY 04
Personal Services					
Travel					
Contractual	1,627.0	1,627.0	1,627.0	1,627.0	1,627.0
Supplies					
Equipment					
Land & Structures					
Grants & Claims					
Miscellaneous					
<b>TOTAL OPERATING</b>	<b>1,627.0</b>	<b>1,627.0</b>	<b>1,627.0</b>	<b>1,627.0</b>	<b>1,627.0</b>

<b>CAPITAL EXPENDITURES</b>					
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<b>CHANGE IN REVENUES ( )</b>					
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**FUND SOURCE**

1002 Federal Receipts					
1003 GF Match					
1004 GF					
1005 GF/Program Receipts					
1037 GF/Mental Health					
1048 University Receipts	1,627.0	1,627.0	1,627.0	1,627.0	1,627.0
<b>TOTAL</b>	<b>1,627.0</b>	<b>1,627.0</b>	<b>1,627.0</b>	<b>1,627.0</b>	<b>1,627.0</b>

Estimate of any current year (FY99) cost: none

**POSITIONS**

Full-time					
Part-time					
Temporary					

**ANALYSIS:**

*(Attach a separate page if necessary)*

This bill provides for the selection and conveyance to the University of Alaska of 250,000 acres of land conveyed to the state under the Alaska Statehood Act. A list of land to be conveyed is to be presented to the legislature within 30 days of the beginning of each regular session, with each list to contain at least 25,000 acres. The bill also provides that the University of Alaska shall bear all costs of selection, platting, surveying and conveyance. This fiscal note assumes that the minimum 25,000 acreage will be platted and surveyed each year, at an estimated cost of \$1,627. All costs will be paid from the university land grant trust fund as provided for in AS 14.40.400; related expenditures will also be reflected in the university's annual operating budget as university receipts.

Prepared by Pat Pitney, Director Phone 474-5889  
 Division UA Budget and Institutional Research Date 2/4/99  
 Approved by Commission Pat Pitney, Director Date 2/4/99  
 Agency University of Alaska

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# FISCAL NOTE

**STATE OF ALASKA**  
**1999 LEGISLATIVE SESSION**

**BILL NO. CSSB 7**

Revision Date/Time (Note if correction) \_\_\_\_\_ Dept. Affected ADF&G  
 Title University lands bill BRU Habitat and Restoration  
 Component Habitat  
 Sponsor Senator Taylor  
 Requester Senate Resources Component Serial No. 486

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services	64.5	64.5	64.5	64.5	64.5	64.5
Travel	3.5	3.5	3.5	3.5	3.5	3.5
Contractual	1.5	1.5	1.5	1.5	1.5	1.5
Supplies	0.5	0.5	0.5	0.5	0.5	0.5
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>70.0</b>	<b>70.0</b>	<b>70.0</b>	<b>70.0</b>	<b>70.0</b>	<b>70.0</b>
<b>CAPITAL EXPENDITURES</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
<b>CHANGE IN REVENUES ( )</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	70.0	70.0	70.0	70.0	70.0	70.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	<b>70.0</b>	<b>70.0</b>	<b>70.0</b>	<b>70.0</b>	<b>70.0</b>	<b>70.0</b>

Estimate of any current year (FY99) cost: \_\_\_\_\_

**POSITIONS**

Full-time	1	1	1	1	1	1
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

The Habitat and Restoration Division would require one additional Habitat Biologist III position to conduct the statewide reviews of the proposed land selections to provide input to DNR as to whether or not the conveyance of specific parcels out of the public domain was in the best interest of the state given the value of the public trust fish and wildlife resources produced on those parcels. Assumptions:

- 1) many University selections will be in remote locations requiring travel from ADF&G offices;
- 2) between 25,000 and 62,500 acres would need review by ADF&G each year; and
- 3) field reviews would only be affordable for those parcels thought to be of highest value for the continued production of fish and wildlife important for commercial and sport fishing, hunting, subsistence, and /or tourism.

Prepared by Janet Kowalski *JK* Phone 465-4105  
 Division Habitat and Restoration Date/Time 02/04/99  
 Approved by Commissioner Frank Rue Date \_\_\_\_\_  
 Agency Fish and Game

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Luckhaupt ✓  
2/3/99

CS FOR SENATE BILL NO. 7( )  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY

Offered:  
Referred:

Sponsor(s): SENATORS TAYLOR, Tim Kelly, Donley, Wilken, Leman

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the University of Alaska and university land, and authorizing  
2 the University of Alaska to select additional state land."

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

4 \* Section 1. FINDINGS AND PURPOSE. The legislature finds that

5 (1) as the beneficiary under the provisions of the Acts of August 30, 1890, and  
6 March 4, 1907, designating the Alaska Agricultural College and School of Mines as  
7 beneficiary, and of March 4, 1915, 38 Stat. 1214, transferring certain land for its location and  
8 support, the University of Alaska is a land grant university;

9 (2) under the Acts of March 4, 1915, 38 Stat. 1214, and January 21, 1929, 45  
10 Stat. 1091, the Congress of the United States granted to the Territory of Alaska certain federal  
11 land to be held in trust for the benefit of the predecessor of the University of Alaska;

12 (3) the Territory was unable to receive most of the land conveyed by the Act  
13 of March 4, 1915, before repeal of that Act by Sec. 6(k) of the Alaska Statehood Act (P.L. 85-  
14 508, 72 Stat. 339);

1 (4) the Congress of the United States granted the State of Alaska the right to  
2 select 102,500,000 acres of federal land under Sec. 6(b) of the Alaska Statehood Act;

3 (5) the land selection rights embodied in the Alaska Statehood Act reflect in  
4 part congressional recognition that the state would need the land to support its government and  
5 programs, and the Congress assumed that the State of Alaska would in turn devote some of  
6 the land or the income from it for the use and benefit of the University of Alaska;

7 (6) most land grant colleges in the western United States have obtained a larger  
8 land grant from the federal government than the University of Alaska has received;

9 (7) an academically strong and financially secure state university system is a  
10 cornerstone to the long-term development of a stable population and to a healthy, diverse  
11 economy in the state;

12 (8) it is in the best interests of the state and the University of Alaska that the  
13 university take ownership of a significant and substantial portfolio of income producing land  
14 in order to provide income for the support of public higher education in the state; and

15 (9) renewable resources should be managed on a sustained yield basis, taking  
16 into account the total land grant.

17 \* Sec. 2. LEGISLATIVE INTENT. It is the intent of the legislature that the University  
18 of Alaska

19 (1) receive land under this Act in an expeditious fashion; and

20 (2) encourage the development of in-state value-added industries to the  
21 maximum extent feasible when developing land conveyed under AS 14.40.365.

22 \* Sec. 3. AS 14.40.170(a) is amended to read:

23 (a) The Board of Regents shall

24 (1) appoint the president of the university by a majority vote of the  
25 whole board, and the president may attend meetings of the board;

26 (2) fix the compensation of the president of the university, all heads of  
27 departments, professors, teachers, instructors, and other officers;

28 (3) confer such appropriate degrees as it may determine and prescribe;

29 (4) have the care, control, and management of

30 (A) all the real and personal property of the university; and

31 (B) land

1 (i) conveyed to the Board of Regents by the  
2 commissioner of natural resources in the settlement of the claim of the  
3 University of Alaska to land granted to the state in accordance with the  
4 Act of March 4, 1915 (38 Stat. 1214), as amended, and in accordance  
5 with the Act of January 21, 1929 (45 Stat. 1091), as amended; and

6 (ii) selected by the University of Alaska and conveyed  
7 to it by the commissioner of natural resources under AS 14.40.365,  
8 except as provided in AS 14.40.368(3);

9 (5) keep a correct and easily understood record of the minutes of every  
10 meeting and all acts done by it in pursuance of its duties;

11 (6) under procedures to be established by the commissioner of  
12 administration, and in accordance with existing procedures for other state agencies,  
13 have the care, control, and management of all money of the university and keep a  
14 complete record of all money received and disbursed;

15 (7) adopt reasonable rules for the prudent trust management and the  
16 long-term financial benefit to the university of the land of the university;

17 (8) provide public notice of sales, leases, exchanges, and transfers of  
18 the land of the university or of interests in land of the university.

19 \* Sec. 4. AS 14.40.291 is amended to read:

20 Sec. 14.40.291. Land of the University of Alaska not public domain land.

21 (a) Notwithstanding any other provision of law, university-grant land, state  
22 replacement land that becomes university-grant land on conveyance to the university,  
23 land selected by and conveyed to the University of Alaska under AS 14.40.365, and  
24 any other land owned by the University of Alaska is not and may not be treated as  
25 state public domain land. Land conveyed to the University of Alaska under  
26 AS 14.40.365 shall be managed under AS 14.40.365 - 14.40.368 and policies of the  
27 Board of Regents of the University of Alaska.

28 (b) Title to or interest in [TO] land described in (a) of this section may not  
29 be acquired by adverse possession, prescription, or in any other manner except by  
30 conveyance from the university.

31 (c) The land described in (a) of this section is subject to condemnation for

1 public purpose in accordance with law.

2 \* Sec. 5. AS 14.40 is amended by adding new sections to read:

3 **Sec. 14.40.365. University land from Statehood Act land selection**  
4 **conveyances.** (a) The University of Alaska may select and is entitled to receive the  
5 conveyance of not less than 250,000 and not more than 260,000 acres of land  
6 conveyed to the state under Sec. 6(b) of the Alaska Statehood Act (P.L. 85-508, 72  
7 Stat. 339). The Board of Regents of the University of Alaska shall annually submit  
8 a list of selections to the commissioner of natural resources. If there is disagreement  
9 between the university and the commissioner of natural resources about the land  
10 selected, the disagreement must be submitted to the governor, who shall make the final  
11 decision. The Board of Regents and the governor shall annually and jointly submit to  
12 the legislature, within 30 days of the beginning of a regular legislative session, a list  
13 of the selections of land proposed to be conveyed by the state to the University of  
14 Alaska under this section. Each list must contain not more than 25 percent of the total  
15 acres of land to which the university is entitled after subtracting previous conveyances  
16 under this section, but not less than 25,000 acres or the remaining entitlement under  
17 this section, whichever is less. The legislature may by law approve or disapprove the  
18 list of selections submitted to it. A list of selections submitted shall be considered  
19 approved for conveyance to the University of Alaska if the legislature does not  
20 disapprove the list during the legislative session during which the list was submitted.  
21 If the amount of land to be conveyed exceeds the balance due the university under this  
22 section, the university shall set out the land to be conveyed in priority order. Land  
23 may not be selected if, on the date of its selection by the university, it

24 (1) has been reserved by law from the public domain;

25 (2) is land

26 (A) included in a five-year proposed oil and gas leasing  
27 program under AS 38.05.180(b); or

28 (B) leased under, or for which a lease application is pending  
29 under, AS 38.05.180(d) or 38.05.150;

30 (3) is subject to

31 (A) an oil, gas, or coal lease, or coal prospecting permit;

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(B) a mining claim, a prospecting site, an upland mining lease, or a mining leasehold location;

(4) is necessary to carry out the purpose of an interagency land management agreement; or

(5) is subject to conveyance under a land exchange or land settlement agreement.

(b) Notwithstanding AS 38.05.125(a), the transfer of ownership and management of land from the Department of Natural Resources to the Board of Regents of the University of Alaska under this section includes the interest of the state in

(1) the coal, ores, minerals, fissionable materials, geothermal resources, and fossils that may be in or on the land; and

(2) the oil and gas that may be in or on the land, but only as to land that is selected by the University of Alaska under this section on and after the date that is the fifth anniversary of the effective date of this section.

(c) When the University of Alaska selects the land to which it is entitled under this section, selections must be made in parcels of 640 acres or larger unless the selection is an isolated tract or the commissioner of natural resources finds it is in the best interest of the state to convey less. When the University of Alaska becomes entitled to land under this section, the commissioner of natural resources shall convey a document of interim conveyance under (j) of this section or a patent to land.

(d) Notwithstanding any other provision of law, for land selected under (a) of this section but not yet patented to the University of Alaska or for which a document of interim conveyance has not been issued to the University of Alaska under this section,

(1) the state is authorized to enter into contracts and grant leases, licenses, prospecting sites, claims, permits, rights-of-way, or easements and any interim conveyance or patent shall be subject to the contract, lease, license, prospecting site, claim, permit, right-of-way, or easement, except that the authority granted the state by this subsection

(A) is the authority that the state otherwise would have had

1 under existing laws and regulations had the land not been selected by the  
2 University of Alaska; and

3 (B) may be exercised only if the University of Alaska has  
4 concurred before the action is taken by the state;

5 (2) income from and management of the land is subject to  
6 AS 14.40.368.

7 (e) Unless the governor provides otherwise under (a) of this section, the  
8 governor may not include on a list of selections of land submitted to the legislature a  
9 land selection made by the University of Alaska under this section if the commissioner  
10 of natural resources determines that the proposed selection

11 (1) includes land for which, at the time of its selection under this  
12 section,

13 (A) a municipality has made a selection under AS 29.65 unless  
14 the land selection is, at a later date, rejected by the commissioner of natural  
15 resources or relinquished by the municipality; or

16 (B) the commissioner reasonably believes the land may be  
17 selected by a municipality under AS 29.65, but the commissioner may not  
18 withhold under this subparagraph the conveyance of title to land selected by the  
19 university longer than three years after the date of the municipality's  
20 incorporation; or

21 (2) includes land that, at the time of its selection under this section,

22 (A) is subject to an oil and gas exploration license; or

23 (B) the commissioner reasonably believes will be made part of  
24 an oil and gas exploration license issued under AS 38.05.131 - 38.05.134; the  
25 commissioner may not refuse to convey title to land to the University of Alaska  
26 under this subparagraph for more than three years after its first selection by the  
27 University of Alaska.

28 (f) When land is conveyed to the University of Alaska under this section, the  
29 University of Alaska takes the land subject to any possessory interest held by another  
30 person on the effective date of the conveyance.

31 (g) In conveying land to the University of Alaska under this section, the

1 commissioner of natural resources shall give public notice that substantially complies  
2 with notice requirements under AS 38.05.945(b) and (c) and provide for access under  
3 AS 38.05.127, but other provisions of AS 38.04 and AS 38.05 do not apply.

4 (h) Land transferred or conveyed to the University of Alaska under this section

5 (1) is subject to

6 (A) Sec. 6(i) of the Alaska Statehood Act (P.L. 85-508, 72 Stat.  
7 339);

8 (B) art. IX of the state constitution;

9 (C) AS 19.10.010;

10 (D) the payment requirements to the Alaska permanent fund  
11 under AS 37.13.010(a) and (b); and

12 (E) the rights of the state under former 43 U.S.C. 932 (sec. 8,  
13 Act of July 26, 1866, 14 Stat. 253);

14 (2) excludes any interest transferred to the state by quitclaim deed dated  
15 June 30, 1959, under authority of the Alaska Omnibus Act, P.L. 86-70, 73 Stat. 141;

16 (3) based on a land selection filed by the University of Alaska on or  
17 after the effective date of this section and until the day before the day that is the fifth  
18 anniversary of the effective date of this section, is subject to reservation by the state  
19 in perpetuity of all oil and gas that may be in or on the land, together with the right  
20 to explore the land for oil and gas and to remove from the land all oil and gas located  
21 in and on it.

22 (i) The University of Alaska shall bear all costs of selection, platting,  
23 surveying, and, except as provided in (k) of this section, conveyance of the land that  
24 it selects under this section and, subject to appropriation, shall reimburse the  
25 Department of Natural Resources for the reasonable costs incurred by that department  
26 relating to that selection, platting, surveying, and conveyance. As to land due the  
27 University of Alaska under (c) of this section,

28 (1) if the land has been surveyed, the boundaries of the land conveyed  
29 must conform to the public land subdivisions established by the approved survey;

30 (2) if the land is unsurveyed, the commissioner shall survey the exterior  
31 boundaries of the land to be conveyed without interior subdivision and shall issue

1 patent in terms of the exterior boundary survey within one year of the later of the  
2 effective date of the approval by the legislature of the list containing the land or the  
3 adjournment of the legislative session during which the list containing the land was not  
4 disapproved by the legislature.

5 (j) For land due the University of Alaska under (c) of this section that is  
6 unsurveyed, pending the survey of exterior boundaries and issuance of patent, the  
7 commissioner of natural resources shall, within one year of the later of the effective  
8 date of the approval by the legislature of the list containing the land or the  
9 adjournment of the legislative session during which the list containing the land was not  
10 disapproved by the legislature, prepare and provide to the University of Alaska a  
11 document of interim conveyance for the land to be conveyed.

12 (k) Except as provided in AS 14.40.368(3), management of land conveyed to  
13 the University of Alaska by patent or by a document of interim conveyance vests with  
14 the University of Alaska from the date of recording of the patent or document of  
15 interim conveyance. The state shall pay the cost of recording all patents and  
16 documents of interim conveyance.

17 (l) The University of Alaska may not make a land selection under this section  
18 after December 31, 2020.

19 **Sec. 14.40.366. Management requirements for university land.** (a) The  
20 Board of Regents shall, by policy, establish procedures for mineral entry or location  
21 and mineral leasing on university land selections made under AS 14.40.365 that are  
22 substantially similar to mineral entry, location, and leasing procedures for state land  
23 under AS 38.05.185 - 38.05.275.

24 (b) Notwithstanding other provisions of law, the University of Alaska shall  
25 seek public comment on proposals for development, exchange, or sale of university  
26 selections made under AS 14.40.365. The Board of Regents shall adopt policies that  
27 provide that the university shall prepare an annual plan for management and  
28 disposition of university land under this section and shall, not less than 60 days before  
29 scheduled approval by the Board of Regents of the plan,

30 (1) make copies of the plan available at all legislative information  
31 offices and at other locations as the university may designate;

1 (2) publish a notice in newspapers of general circulation in the state  
2 that provides the public with information on the locations where the plan is available  
3 for public inspection;

4 (3) give notice to all legislators and to local governments with  
5 jurisdiction over the land affected by the proposal; and

6 (4) seek public comment on the annual plan before action by the Board  
7 of Regents approving the plan.

8 (c) Subject to appropriation of the income, the Board of Regents shall use an  
9 amount up to 20 percent of the earnings derived from the management of university  
10 land conveyed to the university under AS 14.40.365 for programs and services  
11 supporting the development of natural resources within the region from which the  
12 earnings were derived. The earnings shall be used by the campus or campuses located  
13 within the region from which the earnings were derived if a municipality within which  
14 the campus or campuses are located provides to the campus or campuses a match of  
15 the same amount. This subsection does not apply if the match is not made available  
16 by a municipality.

17 **Sec. 14.40.367. Confidential records.** Notwithstanding AS 09.25.100 -  
18 09.25.220, on a determination that it is in the best interest of the University of Alaska  
19 or on the request of the person who has provided the information, the president of the  
20 university may keep the following confidential:

21 (1) the name of a person applying for the sale, lease, or other disposal  
22 of university land or an interest in university land;

23 (2) before the issuance of a notice of intent to award a contract relating  
24 to a sale, lease or disposal of university land or an interest in university land, the  
25 names of the participants and the terms of their offers;

26 (3) all geological, geophysical, engineering, architectural, sales,  
27 appraisal, gross receipts, net receipts, or other financial information relating to  
28 university land or an interest in university land and considered for or offered for  
29 disposal or currently subject to a contract;

30 (4) cost data and financial information submitted by an applicant in  
31 support of applications for bonds, leases, or other information in offerings and ongoing

1 operations relating to management of university land;

2 (5) applications for rights-of-way or easements across university land;  
3 and

4 (6) requests for information about or applications by public agencies  
5 for university land that is being considered for use for a public purpose.

6 **Sec. 14.40.368. Land subject to encumbrances and trespasses.** Except as  
7 provided in AS 14.40.365(b), for the land selected by the University of Alaska under  
8 AS 14.40.365 that is subject to a lease, license, contract, prospecting site, claim, sale,  
9 permit, right-of-way, or easement, or to trespass,

10 (1) the state is entitled to receive the income obtained from the lease,  
11 license, contract, prospecting site, claim, sale, permit, right-of-way, or easement, or  
12 from trespass,

13 (A) for the duration of the term of the lease, license, contract,  
14 prospecting site, claim, sale, permit, right-of-way, or easement, or from  
15 trespass, and during any renewal of it that is authorized by the lease, license,  
16 contract, prospecting site, claim, sale, permit, right-of-way, or easement, or by  
17 law, if the lease, license, contract, prospecting site, claim, sale, permit, right-of-  
18 way, or easement existed before the selection of the land by the University of  
19 Alaska;

20 (B) until the recorder of the conveyance to the University of  
21 Alaska by the issuance of a document of interim conveyance or a patent;

22 (2) the University of Alaska is entitled to receive the income obtained  
23 from the lease, license, contract, prospecting site, claim, sale, permit, right-of-way, or  
24 easement, or from trespass, in situations not described in (1) of this section;

25 (3) the responsibility for the management of the land vests with the  
26 University of Alaska only upon conclusion of the term of the lease, license, contract,  
27 prospecting site, claim, sale, permit, right-of-way, or easement, and any renewal  
28 authorized by the lease, license, contract, prospecting site, claim, sale, permit, right-of-  
29 way, or easement, or by law, if the lease, license, contract, prospecting site, claim,  
30 sale, permit, right-of-way, or easement existed before the land's being selected by the  
31 university; if the lease, license, contract, prospecting site, claim, sale, permit, right-of-

1 way, or easement was entered into after selection, then the responsibility for  
2 management rests with the university on the date of recording of the conveyance of  
3 the land to the university by a document of interim conveyance or patent.

4 \* Sec. 6. AS 14.40.400(a) is amended to read:

5 (a) The Board of Regents shall establish a separate endowment trust fund in  
6 which shall be held in trust in perpetuity all

7 (1) [ALL] net income derived from the sale or lease of the land granted  
8 under the Act of Congress approved January 21, 1929, as amended; [AND]

9 (2) net income derived from the sale, lease, or management of the  
10 land selected by and conveyed to the University of Alaska under AS 14.40.365;  
11 and

12 (3) [ALL] monetary gifts, bequests, or endowments made to the  
13 University of Alaska for the purpose of the fund.

14 \* Sec. 7. AS 29.45.030(a) is amended to read:

15 (a) The following property is exempt from general taxation:

16 (1) municipal property, including property held by a public corporation  
17 of a municipality, [OR] state property, property of the University of Alaska, or land  
18 that is in the trust established by the Alaska Mental Health Enabling Act of 1956, P.L.  
19 84-830, 70 Stat. 709, except that

20 (A) a private leasehold, contract, or other interest in the  
21 property is taxable to the extent of the interest;

22 (B) notwithstanding any other provision of law, property  
23 acquired by an agency, corporation, or other entity of the state through  
24 foreclosure or deed in lieu of foreclosure and retained as an investment of a  
25 state entity is taxable; this subparagraph does not apply to federal land granted  
26 to the University of Alaska under AS 14.40.380 or 14.40.390, [OR] to other  
27 land granted to the university by the state to replace land that had been granted  
28 under AS 14.40.380 or 14.40.390, or to land conveyed by the state to the  
29 university under AS 14.40.365;

30 (C) an ownership interest of a municipality in real property  
31 located outside the municipality acquired after December 31, 1990, is taxable

- 1 by another municipality; however, a borough may not tax an interest in real  
2 property located in the borough and owned by a city in that borough;
- 3 (2) household furniture and personal effects of members of a  
4 household;
- 5 (3) property used exclusively for nonprofit religious, charitable,  
6 cemetery, hospital, or educational purposes;
- 7 (4) property of a nonbusiness organization composed entirely of persons  
8 with 90 days or more of active service in the armed forces of the United States whose  
9 conditions of service and separation were other than dishonorable, or the property of  
10 an auxiliary of that organization;
- 11 (5) money on deposit;
- 12 (6) the real property of certain residents of the state to the extent and  
13 subject to the conditions provided in (e) of this section;
- 14 (7) real property or an interest in real property that is exempt from  
15 taxation under 43 U.S.C. 1620(d), as amended;
- 16 (8) property of a political subdivision, agency, corporation, or other  
17 entity of the United States to the extent required by federal law; except that a private  
18 leasehold, contract, or other interest in the property is taxable to the extent of that  
19 interest;
- 20 (9) natural resources in place including coal, ore bodies, mineral  
21 deposits, and other proven and unproven deposits of valuable materials laid down by  
22 natural processes, unharvested aquatic plants and animals, and timber.

*(S) Resources Cmte***ALASKA CENTER for the ENVIRONMENT**

519 West 8th Avenue, Suite 201 • Anchorage, Alaska 99501  
(907) 274-3621 • fax: 274-8733 • e-mail: akcenter@alaska.net

February 1, 1999

Senate Resources Committee  
Alaska State Legislature  
State Capitol (MS 3101)  
Juneau, AK 99801-1182

Re: SB 7 - University Land Disposal Bill

Dear Committee Member:

Although we are strong supporters of education in general, and of the University of Alaska in particular, we do not believe that SB 7 is sound public policy. Especially when Alaska is facing a budget shortfall that could go as high as \$1 billion, we should retain our possible funding sources to help meet a wide variety of important state needs rather than eliminate options by permanently dedicating resources to a single purpose. SB 7:

- \* is probably unconstitutional
- \* if not actually unconstitutional, violates the important public policy behind the dedicated fund prohibition, eliminating options for the future use of revenues
- \* nullifies years of hard work and good faith public participation in land use planning
- \* reduces local control by depriving nearby communities and the public of any significant role in the future management of the lands transferred to the university
- \* reduces or eliminates long-standing public uses of the lands
- \* creates conflicts for rural residents, remote cabin owners, and recreationists
- \* allows the university to select the best remaining undesignated lands, leaving the poorer lands for the public
- \* "Son of mental health lands," this controversial legislation would be a lightning rod for litigation.

Enclosed is a more detailed position paper. Thank you for your consideration of these materials.

Sincerely,

Cliff Eames  
Issues Director



# ALASKA CENTER *for the* ENVIRONMENT

519 West 8th Avenue, Suite 201 • Anchorage, Alaska 99501  
 (907) 274-3621 • fax: 274-8733 • e-mail: akcenter@alaska.net

## SB 7. DISPOSAL OF LAND TO THE UNIVERSITY

The Alaska Center for the Environment opposes SB 7, which would transfer to the University of Alaska 250,000 acres of multiple use public land to be used for the single purpose of generating the maximum amount of revenue for the university's operations.

**\*\* ACE and other conservation organizations strongly support the university.** However, the university, like other important public institutions, facilities, programs, and services, should continue to be funded through the normal annual appropriations process—a process which allows us to adapt to changing conditions and needs—rather than further fragmenting Alaska's land ownership and management patterns. The university is no more entitled to a dedicated source of revenue than is any other state entity (although putting a portion of our savings account to work as an endowment could perhaps be explored).

**\*\* In fact, gratuitously transferring land to the university is probably illegal as a violation of the dedicated fund prohibition in the state constitution.** Even if it's not illegal, it runs counter to the wise policy adopted by our founding fathers. At the very least it creates a *de facto* dedicated fund or entitlement that effectively ties the hands of both the legislature and the general public during the appropriations process and in land management, and that forecloses funding and land management options for the future.

**\*\* These fiscal responsibility issues are especially important when Alaska is facing such a huge budget shortfall (estimated to be about \$1 billion).** We need to retain all possible funding sources to meet a wide variety of important general fund needs, not hamstringing ourselves and limit our options by disposing of public lands that might be able to generate revenue to help meet these needs.

**\*\* That the university was established decades ago as a land grant university is irrelevant.** The question we should be asking is: what is the most sensible way to fund it and other public programs in 1999 and in the foreseeable future? We believe the answer is: with annual appropriations.

**\*\* Public lands should remain in general public ownership so that nearby communities, and all Alaskans, can continue to participate in decisions affecting their use.** SB 7 exempts the land transferred to the university from virtually all of the public participation and resource protection requirements of the Alaska Lands Act (AS 38.04 and 38.05). It negates years of good faith public participation in state land use planning that resulted in decisions to retain most lands for fish and wildlife habitat, public recreation and a host of other purposes (including development).

**\*\* The lands will no longer be managed for multiple public uses, such as fishing, hunting, and other public recreation, and the protection of fish and wildlife habitat, water quality, and scenic beauty (as well as for direct revenue generating purposes), but for revenue generation only—which will**

generally be incompatible with those other uses and also with industries like tourism and commercial fishing.

**\*\* The university will select the best and most valuable land leaving the poorer land to the public.**

**\*\* Political opposition is substantial, and will only increase as lands to be transferred are actually identified on the ground. Attempts to compensate the mental health lands trust with large amounts of public land (some sort of reasonable compensation was mandated by the court in that instance; the university land dispute has already been settled) generated opposition, both in and out of court, not only from conservationists but also from sport and commercial fishers, hunters, other recreationists, subsistence users, recreational cabin owners, local residents, lodge owners, air taxi operators, and many resource developers (as well as mental health advocates who recognized that managing land was likely to create more headaches and blemishes on their reputation than revenue, and that in any case any revenue that might be generated would almost certainly result in an equal reduction in their general fund support).**

**\*\* The use of public lands for fishing, hunting, trapping and many other recreational purposes will be lost or restricted after their transfer.**

**\*\* Development on public lands transferred to the university will conflict with existing uses of private lands by neighboring landowners, and communities will lose the ability to influence the management of nearby lands.**

2/1/99

# FISCAL NOTE

**STATE OF ALASKA**  
**1999 LEGISLATIVE SESSION**

**BILL NO. SB 7**

Revision Date/Time (Note if correction) \_\_\_\_\_ Dept. Affected ADF&G  
 Title University lands bill BRU Habitat and Restoration  
 Component Habitat  
 Sponsor Senator Taylor  
 Requester Senate Resources Component Serial No. 486

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services	64.5	64.5	64.5	64.5	64.5	64.5
Travel	3.5	3.5	3.5	3.5	3.5	3.5
Contractual	1.5	1.5	1.5	1.5	1.5	1.5
Supplies	0.5	0.5	0.5	0.5	0.5	0.5
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>70.0</b>	<b>70.0</b>	<b>70.0</b>	<b>70.0</b>	<b>70.0</b>	<b>70.0</b>

<b>CAPITAL EXPENDITURES</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
-----------------------------	------------	------------	------------	------------	------------	------------

<b>CHANGE IN REVENUES ( )</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
-------------------------------	------------	------------	------------	------------	------------	------------

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	70.0	70.0	70.0	70.0	70.0	70.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	<b>70.0</b>	<b>70.0</b>	<b>70.0</b>	<b>70.0</b>	<b>70.0</b>	<b>70.0</b>

Estimate of any current year (FY99) cost: \_\_\_\_\_

**POSITIONS**

Full-time	1	1	1	1	1	1
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

The Habitat and Restoration Division would require one additional Habitat Biologist III position to conduct the statewide reviews of the proposed land selections to provide input to DNR as to whether or not the conveyance of specific parcels out of the public domain was in the best interest of the state given the value of the public trust fish and wildlife resources produced on those parcels. Assumptions:

- 1) many University selections will be in remote locations requiring travel from ADF&G offices;
- 2) between 25,000 and 62,500 acres would need review by ADF&G each year; and
- 3) field reviews would only be affordable for those parcels thought to be of highest value for the continued production of fish and wildlife important for commercial and sport fishing, hunting, subsistence, and /or tourism.

Prepared by Janet Kowalski Phone 465-4105  
 Division Habitat and Restoration Date/Time 01/29/99  
 Approved by Commissioner Frank Rue Date 1/29/99  
 Agency Fish and Game

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**DNK SB + AMENDMENTS**

**PER SEN. HALFORD'S REQUEST**

**BACKGROUND/LEGISLATIVE INTENT**

**ANALYSIS OF BILL/PROGRAM EFFECTS**

**AMENDMENTS PROPOSED continued**

Post-it* Fax Note	7671	Date	1/25/99	# of pages	▶
To	SEN. HALFORD	From	DICK MYLIUS		
Co./Dept.		Co.	DIV. of LAND		
Phone #		Phone #			
Fax #		Fax #			

Section 5, new AS 14.40.365(a) needs to include a limit on University selections so that the University does not tie up considerably more land than it is entitled to; selections should be restricted to no more than 25% of remaining entitlement.

Section 5, new AS 14.40.365(a)(3)(A). change coal prospecting lease to coal prospecting permit; there is no such thing as a coal prospecting lease under AS 38.05.

Section 5, new AS 14.40.365(a)(3)(B). Add to the exemptions "a mining leasehold location".

Section 5, new AS 14.40.365(c)(1) - minimum parcel size should be greater than 40 acres to increase efficiency of land management and to reduce the costs of land transfers (surveys). We suggest a minimum of 640 acres, with smaller parcels allowed where the University is selecting an isolated tract of state land.

Section 5, new AS 14.40.365(c)(2) and elsewhere - the legislation uses the terms "interim conveyed" for lands approved but not yet surveyed. Because this term has a particular (and different) legal meaning under the Alaska Native Claims Settlement Act, we suggest the legislation use a different term to avoid confusion.

Section 5, new AS 14.40.365(d)(2) needs to be amended to make it clear that the 90 percent escrow account does not start until the land has been approved for transfer to the university.

Section 5, new AS 14.40.365(f) and Section 5, new AS 14.40.368(2). These sections conflict regarding how DNR is to deal with existing leases and other third party interests.

Section 5, new AS 14.40.365(i) The provision that says "subject to appropriations" needs to be expanded to say that if money is not appropriated to the University to pay DNR's expenses, the University does not get the land. Otherwise, DNR is obligated to process the University's requests without legislative funding to do so.

Section 5, new AS 14.40.365(i)(2). Delete or modify the provision that requires DNR to survey and issue patent within one year of selection. It may take the better part of a year to complete public review and comment, and for the governor to resolve any disputes, leaving little time for survey and patent. This could dramatically increase survey costs (as winter survey may be required). In addition, the provision (new AS 14.40.365(j)) that requires DNR to issue an interim conveyance document within one year of the selection is unrealistic in the case of controversial or disputed selections, or if the University selects significantly more than 25,000 acres in any given year.

Section 5, new AS 14.40.366(c). Requires the University to spend 20% of revenues at the nearest campus. We see this as an accounting nightmare. This provision should be deleted.

A new section should be added that this bill only goes into effect if the federal legislation passes that enables the University to acquire an additional 250,000 acres if the state provides matching acreage.

**AMENDMENTS PROPOSED**

Section 5, new AS 14.40.365(a) needs to be amended to say "up to 250,000 acres." We will make every attempt to meet this figure but there are too many outside influences to guarantee the acreage quota can be met by the 2020 deadline.

# FISCAL NOTE

BILL NO. SB 7

**1999 LEGISLATIVE SESSION**

Revision Date (Note if correction) _____	Dept. Affected <u>University of Alaska</u>	
Title <u>An Act relating to the University of Alaska and</u>	BRU <u>University of Alaska</u>	
<u>university land, and authorizing selection of additional land.</u>	Component <u>Statewide Services</u>	
Sponsor <u>Senate Judiciary</u>		
Requester <u>Senate Finance</u>	Component Serial No. <u>730</u>	

**Expenditures/Revenues**

OPERATING EXPENDITURES	FY 00	FY 01	FY 02	FY 03	FY 04
Personal Services					
Travel					
Contractual	1,627.0	1,627.0	1,627.0	1,627.0	1,627.0
Supplies					
Equipment					
Land & Structures					
Grants & Claims					
Miscellaneous					
<b>TOTAL OPERATING</b>	<b>1,627.0</b>	<b>1,627.0</b>	<b>1,627.0</b>	<b>1,627.0</b>	<b>1,627.0</b>

<b>CAPITAL EXPENDITURES</b>					
-----------------------------	--	--	--	--	--

<b>CHANGE IN REVENUES ( )</b>					
-------------------------------	--	--	--	--	--

**FUND SOURCE**

1002 Federal Receipts					
1003 GF Match					
1004 GF					
1005 GF/Program Receipts					
1037 GF/Mental Health					
1048 University Receipts	1,627.0	1,627.0	1,627.0	1,627.0	1,627.0
<b>TOTAL</b>	<b>1,627.0</b>	<b>1,627.0</b>	<b>1,627.0</b>	<b>1,627.0</b>	<b>1,627.0</b>

Estimate of any current year (FY98) cost: none

**POSITIONS**

Full-time					
Part-time					
Temporary					

**ANALYSIS:**

*(Attach a separate page if necessary)*

This bill provides for the selection and conveyance to the University of Alaska of 250,000 acres of land conveyed to the state under the Alaska Statehood Act. A list of land to be conveyed is to be presented to the legislature within 30 days of the beginning of each regular session, with each list to contain at least 25,000 acres. The bill also provides that the University of Alaska shall bear all costs of selection, platting, surveying and conveyance. This fiscal note assumes that the minimum 25,000 acreage will be platted and surveyed each year, at an estimated cost of \$1,627. All costs will be paid from the university land grant trust fund as provided for in AS 14.40.400; related expenditures will also be reflected in the university's annual operating budget as university receipts.

*Pat Pitney*

Prepared by Pat Pitney, Director  
 Division UA Budget and Institutional Research  
 Approved by Commissioner Pat Pitney, Director  
 Agency UA Budget and Institutional Research

Phone 474-5889  
 Date 1/22/99  
 Date 1/22/99

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Nov 8, 1998

## The Anchorage Times

Publisher: BILL J. ALLEN

"Believing in Alaskans, putting Alaska first"

Editors: DENNIS FRADLEY, PAUL JENKINS, WILLIAM J. TOBIN

The Anchorage Times Commentary in this segment of the Anchorage Daily News does not represent the views of the Daily News. It is written and published under an agreement with former owners of The Times, in the interests of preserving a diversity of viewpoints in the community.

# Trees for UA

**B**ESIDES MEASURING the popularity of candidates, professional pollsters often sample public opinion on a variety of issues.

Dave Dittman did such a sampling in a statewide poll in September at the request of Sen. Frank Murkowski. The subject was the University of Alaska. Specifically, he wanted to find out whether Alaskans think the state's university system needs improvement. If so, where should money come from to do the job?

An overwhelming 94 percent said Alaska needs a good, high-quality, state-supported university. However, a majority said the school should meet needs at the community and state level, rather than be developed to excel nationally.

Two out of three agreed that the university needs major improvements. But when asked whether the state should provide more money, the public was evenly divided. Half said it already gets enough state support. Half said it needs more.

Very few favored higher taxes or raiding the Permanent Fund to come up with additional money. Only 1 percent thought increasing the cost of tuition would be a good idea.

A majority endorsed the idea of an endowment fund created from revenues generated by mining and timber development on state lands.

Dittman asked: "There has been a proposal to give the University of Alaska a land grant of approximately 750,000 acres of state and federal lands which could then be developed to provide an endowment fund to help finance the university system. Do you support or oppose that proposal?"

Seventy-one percent of those polled supported it. Only 19 percent opposed.

With this strong public support, you'd think political leaders would be anxious to get behind a land grant effort. But so far they haven't.

Year after year, proposals to provide the university with an additional land grant have been defeated — either by the legislature or by a veto from the governor. At statehood, Alaska received by far the most generous land grant — 104 million acres — of any of the 50 states. Yet Alaska's land grant college has the next-to-lowest amount of land earmarked to raise money in support of higher education.

Murkowski has been leading the effort in Congress to obtain an additional allocation of federal lands for the university. But to succeed he needs the state to make a similar commitment out of its tremendous land bank.

Dittman found a majority of Alaskans support a greater university land endowment. The governor and Legislature should work with the congressional delegation to make this a reality.

pups  
Dogs sink Sailors



SPORTS \*D-1

16 months of service  
for cyclist's death

LOCAL \*B-1

UPON A WALK

Health clubs take clients out of the gym

HEALTH \*C-1



Cloudy and mild with  
periods of snow.  
High 20, Low 10

Page A-2

FAIRBANKS



# Daily News-Miner



The Voice of Interior Alaska

VOL. XCVII, No. 22

FAIRBANKS, ALASKA, SATURDAY, JANUARY 23, 1999

75 cents per copy

28 Pages

## Washington rejects Knowles' plan for UA

By DOUGLAS FISCHER  
Staff Writer

In clear language, U.S. Sen. Frank Murkowski and the Clinton administration have dismissed as unworkable Gov. Tony Knowles' plan to link University of Alaska revenues to oil development in the National Petroleum Reserve-Alaska.

"We do not believe the University of Alaska is owed any more federal lands or resources than have already been given," said Stephanie Hanna, spokes-

woman for Interior Secretary Bruce Babbitt, on Friday.

The plan, announced in Wednesday in Knowles' State of the State speech, would divert federal taxes from the yet-to-be-developed oil patch to university coffers. In exchange, the state would relinquish its continual claim for a university land grant from Congress.

Murkowski, whose effort to transfer up to 500,000 acres of federal property to the university stalled in Congress last

year, said an outright cash grant is "a tough one."

"It's a lot easier to get land than it is to get dollars," he said in a Thursday news conference. "This would be a first."

The Clinton administration was even more direct: The United States owes nothing more to the University of Alaska.

"The underlying concern, one that caused a veto threat for Sen. Murkow-

ski's bill, still remains," Hanna said.

The Knowles administration has remained staunchly opposed to any transfer of state lands to the university, claiming that lands conveyed to the state under the Alaska Statehood Act belong to all Alaskans, not one particular agency. Knowles says he supports a federal grant.

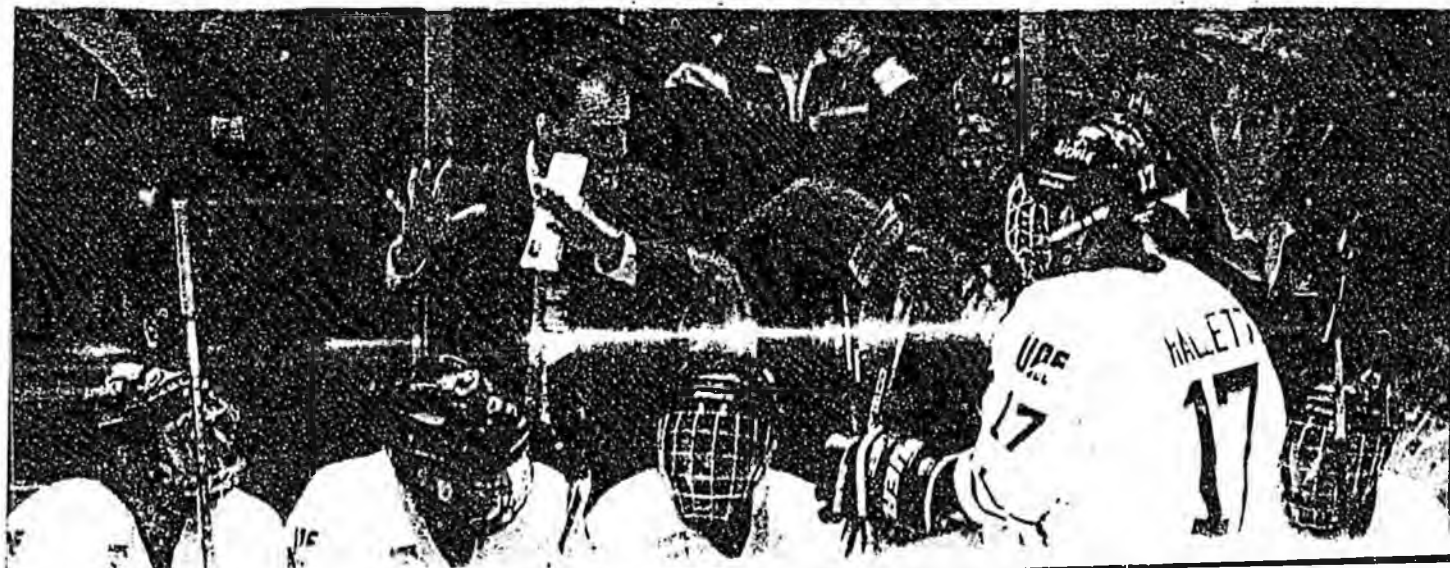
But talk of any land transfer raises hackles on environmentalists, who claim the land will be removed from the public

domain with an eye on aggressive development.

Murkowski's 1998 proposal would have given an immediate 250,000 acres to the university and up to another 250,000 acres if matched acre for acre by the state. Knowles has vetoed a state grant approved by the Legislature and threatened to veto other attempts.

The diversion of federal oil taxes, Knowles said, is a compromise. He  
See PLAN, Page A-10

### NANOOKS LOSE LEADER



## Senator calls for an end to Clinton trial

The New York Times

WASHINGTON—With a small, but increasingly important, number of Republicans expressing reservations about the wisdom of calling witnesses, Sen. Robert Byrd, D-W.Va., a leading authority on Senate traditions, said on Friday that President Clinton's impeachment trial should come to a swift end, and he announced that he would offer a motion to dismiss the charges next week.

"I am convinced that the necessary two-thirds for conviction are not there and that they are not likely to be," Byrd said.

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## PLAN

Continued from Page A-1  
remains optimistic despite the unambiguous opposition in Washington, D.C., added spokesman Bob King.

"Many times the initial reaction is not the way things turn up at the end," he said Friday. "Upon reflection, hopefully, they'll agree that this is a workable alternative."

University of Alaska President Mark Hamilton was out of town and unavailable for comment Friday. His chief spokeswoman was similarly unavailable.

Occupying a parcel of land on the North Slope about the size of Indiana, the NPR-A was set aside in 1923 after explorers found oil seeping from the ground. In April, the Bureau of Land Management is scheduled to hold the first lease sale in NPR-A in years, in a 4 million acre corner of the preserve.

Under Knowles' proposal, an undetermined portion of the revenues—bonuses, rentals and royalties—generated by the development would form an endowment for the university.

Murkowski promised to forge ahead with his land bill again this year and questioned Knowles' opposition. "When is it not OK to take the land, but OK to take the money from the land?" he asked.

And with oil prices at an all-time low on the North Slope, now might not be the time to be linking university revenues to the commodity, he added.

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## MEMORANDUM

January 25, 1999

**SUBJECT:** Sectional summary (SB 7) (Work Order No. 21-LS0072D)

**TO:** Senator Robin Taylor  
Attn: Mel Krogseng

**FROM:** Gerald P. Luckhaupt *GL*  
Legislative Counsel

Sec. 1. Findings and purpose, including that the University of Alaska should own income producing land to provide income for the support of public higher education.

Sec. 2. Legislative intent that the University encourage the development of in-state value-added industries when developing the land conveyed to it.

Sec. 3. Technical amendment to add the land conveyed under this bill to the provision granting the Board of Regents the care, control, and management of other University land.

Sec. 4. Technical amendment to account for the land conveyed under this bill.

Sec. 5. Adds new section dealing with new land selections.

Sec. 14.40.365. Allows the University to select 250,000 acres of state land. Sets out requirements for the land that may be selected. The transfer of ownership of the land to the University includes the interest of the state in minerals and to oil and gas, but only as to land that is selected at least 5 years after the effective date of the bill. Describes the power of the state to manage the land selected but not yet conveyed. Lists types of land that may not be conveyed, including land the conveyance of which is determined by the Commissioner of Natural Resources not to be in the best interest of the state. The University bears costs of selection, platting, surveying, and conveying the land, except the state pays the cost of recording patents and documents of interim conveyance. The University must make all selections by December 31, 2020.

Sec. 14.40.366. The Board of Regents must establish procedures for mineral leasing on the conveyed land that are substantially similar to state procedures. The board must prepare an annual plan for the management of the land and seek public comment on the plan. At least 20 percent of the income derived from the management of selected land must be used at the campus that is closest to the land from which the income was derived if the local municipality matches the income.

Sec. 14.40.367. Permits the president of the university, on a determination that it is in the best interest of the university or on request of a person who provided the information, to keep confidential certain types of information relating to land conveyed to the university under AS 14.40.365.

Sec. 14.40.368. For land conveyed that is subject to certain types of agreements (leases, claims, permits, etc.), the state is entitled to receive the income, and the management of the land is turned over to the University only after the term of the agreement expires.

Sec. 14.40.369. Before conveying or disposing of an interest in selected land the University is required to manage the land in a manner that permits customary and traditional uses of resources to the maximum extent practicable.

Sec. 6. Includes income derived from the management of selected land in the endowment trust fund.

Sec. 7. Exempts from municipal taxation property of the University.

GPL:jdr  
99-036.jdr

# Alaska State Legislature

*Chairman,*  
Judiciary Committee  
  
State Capitol  
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*Senator Robin L. Taylor*

## SPONSOR STATEMENT SENATE BILL 7

**“Relating to the University of Alaska and university land, and authorizing the University of Alaska to select additional state land.”**

The University of Alaska system was created under federal authority as a land grant institution to provide for the higher education requirements of Alaska's people in perpetuity. Most colleges established under the land grant program were endowed with sizable land bases from which to generate income to be used for operating purposes. Unlike most institutions in the lower 48 states, the University of Alaska does not have the relatively larger population base and proximity to other support services that are so beneficial. The University of Alaska also suffers from a smaller pool of alumni and other normal sources of endowment income which many institutions rely on to help support operations, especially subsidies from teaching positions.

In the past decade several legislators have introduced legislation allowing the University of Alaska to select additional lands from the State. The purpose of all legislative attempts to provide more land for the University statewide system has been to provide more income producing assets as monetary resources are becoming scarcer and more unpredictable. This bill continues that effort to give the University of Alaska a larger more productive land base. The bill also provides clear expectations that land conveyed is to be used for the development of value added industries where appropriate.

The provisions of SB 7 allow the University of Alaska to select 250,000 acres of state land. Land selected for transfer would include interests in minerals and to oil and gas subject to certain limitations. Certain lands would be exempt from selection, such as:

- \* lands subject to a coal lease or where a lease application is pending,
- \* land reserved by law from the public domain,
- \* land included in a five-year proposed oil and gas leasing program, and
- \* leased land where the lease application is pending.

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All land selections must be made by December 31, 2020.

In an endeavor to encourage local support, up to twenty percent (20%) of the income derived from lands conveyed as a result of this legislation is to be given to the campus or campuses in the region from which the earnings are derived. This revenue is to be used for programs and services that support the development of natural resources within the region. This appropriation by the Board of Regents would only occur if the local municipality where the campus or campuses are located provides a match of the same amount.

It is this sponsor's hope, that this legislation will enable the University of Alaska to begin making its way toward equal footing with other land grant universities around the Nation.

# FISCAL NOTE

**STATE OF ALASKA**  
**1999 LEGISLATIVE SESSION**

**BILL NO. SB 7**

Revision Date: \_\_\_\_\_ Dept Affected: Natural Resources  
 Title: An Act relating to the University of Alaska BRU: Resource Development  
and university land & authorizing U of A to select additional land Component: Land Development  
 Sponsor: Sen. Taylor, et.al.  
 Requestor: Sen Resources Component Serial No. 431

Expenditures/Revenues (Inflation not included unless otherwise noted below)

(Thousands of Dollars)

OPERATING EXPENDITURES	FY2000	FY2001	FY2002	FY2003	FY2004	FY2005
PERSONAL SERVICES	142.0	161.0	161.0	161.0	161.0	161.0
TRAVEL	15.0	15.0	15.0	15.0	15.0	15.0
CONTRACTUAL SUPPLIES	1,500.0	1,500.0	1,500.0	1,500.0	1,500.0	1,500.0
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>1,657.0</b>	<b>1,676.0</b>	<b>1,676.0</b>	<b>1,676.0</b>	<b>1,676.0</b>	<b>1,676.0</b>

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES (fund code)	see note					
--------------------------------	----------	--	--	--	--	--

FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	30.0	32.0	32.0	32.0	32.0	32.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
I/A (University)	1,627.0	1,644.0	1,644.0	1,644.0	1,644.0	1,644.0
<b>TOTAL</b>	<b>1,657.0</b>	<b>1,676.0</b>	<b>1,676.0</b>	<b>1,676.0</b>	<b>1,676.0</b>	<b>1,676.0</b>

Estimate of any current year (FY99) cost: \$ \_\_\_\_\_

POSITIONS

FULL-TIME	3	3	3	3	3	3
PART-TIME						
TEMPORARY						

ANALYSIS:

(Attach a separate page if necessary)

This fiscal note is the minimum necessary for DNR to process land selections and conveyances to the University of Alaska. Costs could be higher depending on what lands are selected and the level of controversy relating to individual parcels. Most costs for the conveyance work will be paid for by the University using Interagency Receipts; however, this money still must come from state funds.

For FY 00, staff will include 2 mos. of a Natural Resource Manager I, 12 mos. Natural Resource Officer (NRO) II, and 12 mos. NRO I who will help identify parcels for University selection, check land status and land records, prepare public notice, respond to public inquiries, negotiate with the University, and perform other tasks to prepare land lists. Includes 6 mos. for a Land Surveyor I to prepare survey instructions and contracts for survey. Large [cont.]

Prepared by: Richard A LeFebvre, Acting Director Phone: 907-269-8503  
 Division: Land Date: 22-Jan-99  
 Approved by Commissioner: [Signature] Date: 1-25-99  
 Agency: Natural Resources

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**ANALYSIS [continued]:**

contractual expenditures reflect the cost to survey parcels. FY 01 and following years include the above costs, plus costs to issue title documents.

\* Note: It is impossible to project how much revenue these conveyances will generate for the University, and will be lost to the state, without knowing exactly what lands will be transferred. However, it can be assumed the University will select the most valuable parcels it can find. The effect is to divert a significant revenue stream out of the general fund, where it would have been available for those public purposes the Legislature deemed most important in a given year, into the hands of the Board of Regents for strictly university purposes. Also, by removing the most valuable parcels from the state's asset base, the bill reduces one of the most important incentives for local government to incorporate: the opportunity to select top-quality commercial, residential, and industrial land for municipal ownership under AS 29.65.



## Legislative Resources

Mr. President, in my State of Alaska the University of Alaska is the oldest post-secondary school. The university was chartered prior to statehood and has played a vital role in educating Alaskans as well as students from around the world. The expertise of the university has been in many areas, mining, agriculture, arctic and subarctic sciences.

Additionally, the university has served as an important cornerstone in the history of our State. For example, the university housed the Alaska Constitutional Convention where the fathers of our statehood act carved out the rights and privileges guaranteed to Alaskan citizens. Further, Mr. President, the university is proud of the fact that it began life as the Alaska Agricultural and Mining College. However, Mr. President, what makes the University of Alaska unique is the fact that it is the only land-grant college in the Nation that is virtually landless today.

As some of my colleagues know, one of the oldest and most respected ways of financing America's educational system has been from the land-grant system. This was established in 1785 and the practice gives land to schools and universities for their use in supporting their educational endeavors. In 1862, Congress passed what was then known as the Morrill Act, which created the land-grant colleges and universities as a way to underwrite the cost of higher education to more and more of America's young people. These colleges and universities received land from the Federal Government for facility location, and more importantly as a way to provide for sustaining revenues to those educational institutions.

Mr. President, the University of Alaska received the smallest amount of land of any State, with the exception of Delaware that has a land-grant college. Delaware received about 90,000 acres. Even the land-grant college in Rhode Island received more land from the Federal Government than has the University of Alaska. Rhode Island received 120,000 acres.

In a State the size of Alaska, about 365 million acres, we should logically have one of the best and most fully funded land-grant colleges in the country.

Yet, to date, the University of Alaska only has about 111,000 acres. Unfortunately, without the land promised to Alaska under the land-grant allocation system in earlier legislation, the university is unable to share as one of the premier land-grant colleges in this country.

Previous efforts were made in Congress to fix this problem. These efforts date back to 1915, less than 50 years after the passage of the Morrill Act, when Alaska's delegate to Congress, Delegate James Wickersham shepherded a measure through Congress that set aside potentially more than a quarter of a million acres in the Tanana Valley outside Fairbanks for the support of an agriculture college and school of mines.

Following the practice established in the lower 48 States for the other land-grant colleges, Wickersham's bill set aside every section 33 of the unsurveyed Tanana Valley for the Alaska Agriculture College and Schools of Mines.

Alaska's educational future at that time looked favorable. Many Alaskans saw the opportunity to set up an endowment system similar to that set up by the University of Washington in the downtown center of Seattle, WA, where valuable university lands are leased providing funding for the university's maintenance and upkeep as well as some capital projects.

However, in Alaska's case, before the land could be transferred to the Alaska Agricultural College and School of Mines, renamed the University of Alaska in 1935, the land had to be surveyed in order to establish the exact acreage included in the reserve lands.

The section reserved for education could not be transferred to the college until they had been delineated. According to records at the time, it was unlikely given the incredibly slow speed of surveying that the land could be completely surveyed before the end of the current century. Surveying is still an extraordinarily slow process in Alaska's remote and unpopulated terrain.

In all, only 19 section 33's, or approximately 11,211 acres, were ever transferred to the University of Alaska. Of this, 2,250 acres were used for the original campus, and the remainder was left to the discretion of the board of regents to support educational programs and facilities.

Recognizing the difficulties of surveying in Alaska, subsequent legislation was passed in 1929 that simply granted land for the benefit of the university. This grant totaled approximately 100,000 acres, and to this day comprises the bulk of the university's total 111,211 acres of land--less than one-third of what was originally promised. In 1958, the Alaska Statehood Act was passed which extinguished the unfulfilled land grants. The university was thus left with little land with which to support itself and is thus unable to completely fulfill its mission as a land-grant college.

Mr. President, the legislation I am introducing today would redeem the promises made to the university in 1915 and put the university on an even footing with other land-grant colleges in the United States. It provides the university with the land needed to support itself financially and it offers the chance to grow and continue to act as a responsible steward of the land and educator of young Alaskans. It also provides a concrete timetable under which the university must select its land and the Secretary of Interior must act upon those selections.



This legislation also contains significant restrictions on the land that the university can select. The university cannot select land located within a conservation system unit, land validly conveyed to the State or an ANCSA corporation or land used in connection with Federal or military institutions.

Accordingly, Mr. President, under my bill, the university must relinquish extremely valuable inholdings in Alaska once it receives its second-tier State/Federal grant under section 6, of this bill. Therefore, the result of this legislation will mean, specifically, relinquishment of prime university inholdings in such magnificent areas as the Alaska Peninsula and Maritime National Wildlife Refuge, the Kenai Fjords National Park, Wrangell St. Elias National Park and Preserve and Denali Park and Preserve. Mr. President, not only does this bill uphold a decades-old promise to the University of Alaska, it further protects Alaska's unique parks and refuges.

Recognize, Mr. President, my bill requires the State to participate in the process, as well, under an option. Specifically, the bill would grant the university 250,000 acres of Federal land. The university would be eligible to receive another 250,000 acres of Federal land on a matching basis with the State, for a total of 500,000 additional acres. This would be at the option of the legislature, the Governor, and the university's board of regents

Mr. President, the State matching provision is an important component of this legislation. Most agree with the premise that the university was shorted land. However, some believe it is the sole responsibility of the Federal Government to compensate the university with land, while others believe it is solely the responsibility of the State to grant the university land. The legislation I am introducing today offers a compromise, a compromise giving both the State and the Federal Government the opportunity to contribute, as well as provide the Government with valuable inholdings in Federal parks and preserves.

With the passage of this bill, Mr. President, the University of Alaska will finally be able to act fully as a land grant college, and will be able to select lands that can provide the university with stable revenue sources, as well as provide responsible stewardship for the lands.

This is an exciting time for the University of Alaska. The promises that were made 82 years ago could be fulfilled with this legislation, and Alaskans could look forward to a very bright future for the university and the many Alaskans who receive an education there.

I ask unanimous consent, at this time, to have printed in the Record the proposed inholdings that the University has which would be deeded over to the Federal Government under this legislation, a history of the university of Alaska's land grant from the time we were designated as a territory, land grant rankings of all the States, as well as a copy of the bill.

