



LAWS OF ALASKA

1978

Source

Chapter No.

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AN ACT

Relating to selection and transfer of state land to municipalities; and providing for an effective date.

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

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

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

ARTICLE 3A. GENERAL GRANT LAND.

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

- (1) Municipality of Anchorage -- 44,893 acres;
- (2) City and Borough of Juneau -- 19,584 acres;
- (3) City and Borough of Sitka -- 10,500 acres;
- (4) Bristol Bay Borough -- 2,898 acres;
- (5) Fairbanks-North Star Borough -- 112,000 acres;

- (6) Haines Borough -- 2,800 acres;
- (7) Kenai Peninsula Borough -- 155,780 acres;
- (8) Ketchikan Gateway Borough -- 11,593 acres;
- (9) Kodiak Island Borough -- 56,500 acres;
- (10) Matanuska-Susitna Borough -- 355,210 acres;
- (11) North Slope Borough -- 89,850 acres.

Sec. 29.18.202. DETERMINATION OF ENTITLEMENT FOR CITIES. The general grant land entitlement of a city formerly eligible to receive general grant land under the provisions of secs. 190 and 200 of this chapter, as repealed by this Act, is 10 per cent of the maximum total acreage of vacant, unappropriated, unreserved land within the boundaries of each city at any time between the initial date of eligibility under former secs. 190 and 200 of this chapter and the effective date of this Act. Within six months of the effective date of this Act, the director shall determine the entitlement for each city eligible to receive general grant land under this section and certify that entitlement to the city.

Sec. 29.18.203. DETERMINATION OF ENTITLEMENT FOR NEWLY INCORPORATED MUNICIPALITIES. (a) The general grant land entitlement of a municipality incorporated after the effective date of this Act is 10 per cent of the total acreage of vacant, unappropriated, unreserved land within the boundaries of the municipality on the date of incorporation of that municipality.

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

Sec. 29.18.204. STATUS OF ENTITLEMENTS. (a) General grant land entitlements provided in secs. 201 and 202 of this chapter constitute vested property rights which shall be fulfilled as provided in sec. 205 or sec. 208 of this chapter, but no municipal selection vests any interest in or right to receive a particular tract of land except as provided by sec. 205 of this chapter. General grant land entitlements vested under secs. 201 and 202 of this chapter may be exercised at any time before the date which is two years after the expiration of the state's right to make selections under sec. 6(a) or (b) of the Alaska Statehood Act (P.L. 85-508); however, the time limitation imposed by this subsection does not apply

(1) to the portion of an entitlement which cannot be satisfied by that date because of a shortage of appropriate vacant, unappropriated, unreserved land; or

(2) to payments for land deficiency under sec. 208 of this chapter.

(b) General grant land entitlements provided by sec.

203 of this chapter constitute property rights which vest on the date of incorporation of the municipality. The entitlement shall be fulfilled as provided in sec. 205 of this chapter, but no municipal selection vests any interest in or right to receive a particular tract of land except as provided by sec. 205 of this chapter. The general grant land entitlement vested under sec. 203 of this chapter may be exercised at any time before the date which is two years after the expiration of the state's right to make selections under sec. 6(a) or (b) of the Alaska Statehood Act (P.L. 85-508) or two years after the date of incorporation of the municipality, whichever is later; however, the time limitation imposed by this subsection does not apply to the portion of an entitlement which cannot be satisfied by the last date on which the municipality's selection may be regularly exercised under this subsection because of a shortage of appropriate vacant, unappropriated, unreserved land.

Sec. 29.18.205. FULFILLMENT OF LAND ENTITLEMENTS.

(a) The acreage of each municipality's land selections under former secs. 190 and 200 of this chapter for which patent has been issued before the effective date of this Act shall be credited toward fulfillment of the entitlement of that municipality.

(b) All approved selections under former secs. 190 and 200 of this chapter for which patent has not been issued to a municipality on the effective date of this Act shall be reviewed by the director within nine months of the effective date of this Act. Any approved selection of land which was vacant, unappropriated or unreserved on the date of selection is valid as of the date of the approval under former secs. 190 and 200 of this chapter, and a patent shall be issued to the municipality within three months after approval by the director of a plat of survey. The acreage shall be credited toward fulfillment of the municipality's entitlement. No municipality is entitled to receive patent under this chapter to more than its entitlement determined under secs. 201 - 203 of this chapter. Any prior approval by the director of municipal selections for land which was not vacant, unappropriated or unreserved on the date of selection shall be rescinded, and patent may not be issued except when disposal to a third party by sale or lease has occurred. Transfers of land to municipalities under this chapter are subject to AS 38.05.321. Classification actions as reflected upon the land status records of the Department of Natural Resources are determinative of land classification status for purposes of this chapter.

(c) All municipal land selections under former secs. 190 and 200 of this chapter not approved as of the effective date of this Act shall be recognized by the director as representing the priority interests of the municipalities, and the selections shall be given first consideration under (e) of this section unless the municipality indicates different priorities.

(d) On the effective date of this Act and for five years thereafter, no classification of a parcel of general grant land in excess of 3,200 acres under AS 38.05.300 shall be effective, unless otherwise required by law, if the municipality in which the parcel is located, within 30

days after receipt of notice of the proposed classification, advises the director in writing that it does not consent to the classification and indicates the reasons for its nonconsent.

(e) Each eligible municipality and the director shall jointly consider which vacant, unappropriated, unreserved land, including federal land of interest to a municipality which may be selected by the state as general grant land, located within the boundaries of the municipality, is appropriate for municipal selection and approval by the director to fulfill any remaining municipal general grant land entitlement. The joint consideration made by the parties shall include a cooperative land planning process which will, in addition to the normal objectives of such a process, seek to identify both local and state interests in tracts of vacant, unappropriated and unreserved land remaining within the municipality. Adjacent tracts shall be considered simultaneously except when such simultaneous consideration would cause significant delay or expense. Once a tract has been jointly considered, it may be selected by a municipality.

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

(g) In reviewing a municipal selection, the director shall consider the state's responsibilities for developing and protecting values which are of greater than local concern, including development which will have statewide impact, and critical environmental concerns. Land considered appropriate for municipal selection is land that is suitable and appropriate for an identifiable present or future municipal use or for disposal to private use by the municipality by sale or other means. A selection by a municipality of land which is primarily of local concern shall be approved. When the interests of the state may be protected through the conveyance of title that is less than a fee title, the municipality, at its option, may accept the title in acre-for-acre fulfillment of its entitlement. Specific state responsibilities to be considered, if those responsibilities have not been authorized or delegated by the state to a municipality, include air quality; water, minerals and energy; timber; agriculture; fish and wildlife and their habitat; public recreation, natural, historical, and archaeological areas of greater than local concern; transportation of greater than local concern; communications; and public safety. Specific municipal interests to be considered include

(1) residential, commercial and industrial purposes; and

(2) other responsibilities of the local government, including but not limited to, support of municipal services; education; local transportation; private recreation; public recreation, natural, historical and archaeological areas of local concern; and other responsibilities authorized or delegated by the state to the municipality.

(h) Every decision of approval or disapproval of a municipal selection by the director under (f) of this section shall include a written explanation of the decision based upon the criteria of (g) of this section. Before issuing any decision to disapprove a selection, the director shall notify the affected municipality in writing, by certified mail, of his reasons for the proposed decision. The municipality shall have 30 days from receipt of the proposed decision to respond to the director in writing enumerating the reasons for which the municipality believes the proposed decision to be in error. After receipt of the municipality's statement of reasons, or after expiration of the period in which the municipality may respond to the proposed decision, the director shall, within 30 days, affirm, modify or reverse his proposed decision in writing and give written notice of his decision to the municipality. The decision of the director constitutes final administrative action in the matter.

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

Sec. 29.18.206. SCHOOL, UNIVERSITY AND MENTAL HEALTH LAND. (a) If an entitlement determined in sec. 201 or 202 of this chapter results in a per capita entitlement for the municipality of less than one and one-half acre, the municipality may select vacant school, university or mental health land within the municipality in partial fulfillment of its land entitlement under this chapter. School, university or mental health land may be selected notwithstanding the fact that these lands are not unappropriated and unreserved within the meaning of this chapter and secs. 190 and 200 of this chapter, repealed by this Act, but each selection of school, university or mental health land by a municipality must be vacant, unappropriated, or unreserved land as defined in this chapter, except that it need not be general grant land.

(b) The acreage of school, university or mental health land, if any, within a municipality may not be included in the determination of entitlement under sec. 201 or 202 of this chapter.

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

(d) Within six months after approval of a municipal selection of school, university, or mental health land, the director shall identify state general grant land of approximately equal value to the land requested by the municipality, and shall propose the replacement land for the concurrence of the appropriate board. If a proposal by the director is rejected by the board, the director shall meet with the board as often as necessary to determine the type and amount of equal value replacement land that would be required to obtain the board's concurrence, and shall propose the replacement land for consideration by the board. The replacement land shall thereafter be managed for the purposes for which the land selected by the municipality was acquired by the Territory and State of Alaska.

(e) The notice and review provisions of AS 38.05.305 and 38.05.345 are applicable to the designation of other general grant land as school, university or mental health land in replacement of land selected under this section. The provisions of AS 38.50 and AS 38.05.032 do not apply to such designations under this section. The provisions of AS 38.05.030(a), 38.05.030(e), and 38.05.035(a)(13) which require the approval of the respective trust board before disposal of lands by the director do not apply to selections of school, university or mental health land by a municipality under this section.

(f) For purposes of determining the per capita entitlement under (a) of this section, the population of a municipality shall be the population determined by the commissioner of the Department of Community and Regional Affairs under AS 43.18.010 for the program year beginning July 1, 1978 for a municipality whose entitlement is determined under sec. 201 or 202 of this chapter.

Sec. 29.18.207. SELECTION AND CONVEYANCE PROCEDURE.

(a) All municipal selections shall, whenever possible, be made in reasonably compact tracts, taking into account the use capabilities of a tract and its relationship to surrounding land uses. A selection filed by a municipality which has not been approved by the director may be relinquished at any time. An approved selection may be relinquished by a municipality if the relinquishment is approved by the director. An approved selection relinquished by a municipality increases the remaining entitlement of the municipality on an acre-for-acre basis.

(b) By August 1 of each year the director shall certify to each municipality having an entitlement under secs. 201 - 203 of this chapter the acreage of patented selections, approved selections not yet patented, pending municipal land selections neither approved nor disapproved by the director, and the remaining entitlement of the municipality.

(c) If land selected by a municipality is unsurveyed at the time of approval, the director shall survey, or may approve the municipality's survey of, the exterior boundaries of an approved selection without interior subdivision, and shall issue patent in terms of the exterior boundary survey. The cost of the survey shall be borne by the municipality. If land selected by a municipality has been surveyed at the time of its selection, the boundaries shall conform to the public land subdivisions established by the approved survey.

(d) The director may approve municipal selections of land which have been tentatively approved or patented to the state by the federal government, but he may not issue patent to a municipality until the land has first been patented to the state. After approval of a selection by the director, but before patent to a municipality, the municipality may execute conditional leases and make conditional sales only with the consent of the director. Conditional sales and conditional leases made before the effective date of this Act do not require the consent of the director.

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

Sec. 29.18.208. PAYMENT FOR LAND DEFICIENCY. (a) There is established within the general fund the Alaska municipal land account for the following purposes:

(1) providing payment to the boroughs and unified municipalities designated in sec. 201 of this chapter for a deficiency of land physically suitable for the purposes described in sec. 205(g)(1) of this chapter; or

(2) providing payment to the boroughs and unified municipalities designated in sec. 201 of this chapter for certain general grant lands selected by the state and conveyed to a Native corporation under the provisions of the Alaska Native Claims Settlement Act.

(b) A municipality shall receive payment for its land deficiency from the account established in (a) of this section. A municipality is eligible to receive payment for land deficiency if, after July 1, 1980, the amount of land physically suitable for the purposes described in sec. 205(g)(1) of this chapter for which approval has been given by the director under sec. 205(g) of this chapter within one year of selection amounts to less than one-third acre per capita. Any entitlement under sec. 201 of this chapter which is less than one-third acre per capita will, for the purposes of this subsection, be considered a land deficiency. An unselected remaining entitlement will, for the purpose of deficiency payment under this subsection, be considered as land physically suitable for the purposes described in sec. 205(g)(1) of this chapter. A municipality eligible under this subsection is entitled to receive a payment for land deficiency equal to \$1,000 per acre for a number of acres equal to the difference between one-third of the population of the municipality less the number of acres physically suitable for the purposes described in sec. 205(g)(1) of this chapter for which approval has been given by the director under sec. 205(g). For the purpose of this subsection, the population of the municipality shall be the population determined in accordance with sec. 206(f) of this chapter. No payment may be made to a municipality under this subsection in excess of \$9,000,000.

(c) If a municipality selected vacant, unappropriated, unreserved land on or before December 18, 1971, to which the state had received tentative approval or patent, and such land was also selected by a Native corporation organized under the Alaska Native Claims Settlement Act (P.L. 92-203), and title to that land is ultimately vested in that Native corporation, the municipality may, at its option, request payment for land deficiency from the account established in (a) of this section. The acceptance of payment under this subsection by a municipality constitutes a relinquishment of any other right, title or claim to the land by that municipality. The total payment to a municipality under this subsection may not exceed

\$1,000 per acre to a maximum of 8,000 acres.

(d) The governor shall annually submit to the legislature a request for an appropriation to the account for the municipalities which have elected to receive payments under (b) or (c) of this section. The request for appropriation shall distinguish between amounts necessary to make payments for land deficiency under (b) of this section and those required to make payments for land deficiency under (c) of this section.

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

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

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

(f) If an annual appropriation is not sufficient to meet the amount due to all municipalities which have elected to accept payment for land deficiency under (b) or (c) of this section, the governor shall apportion the appropriation among the municipalities in proportion to the payment calculated for each municipality for that year. When a distribution of payments is made under (c) of this section, the remaining entitlement of a municipality to which payment is made shall be reduced in an amount equal to the number of acres for which payment was received. An appropriation made under this section is in addition to other grants and entitlements authorized to eligible municipalities.

(g) Payments authorized by this section may not be made to a municipality eligible for an entitlement under sec. 202 or 203 of this chapter.

(h) Payments made under this section shall be used by those local governments which levy property taxes to reduce those levies in proportion to the amount of state payments received by a local government for a given fiscal year. The governing body of each local government shall furnish a notice with the tax statement describing the effect on property tax levies of payments received under this section.

Sec. 29.18.209. AUTHORIZATION FOR LAND EXCHANGES. The director, with the concurrence of the commissioner, and any municipality are authorized to exchange land or interests in land when it is in the public interest. Land or interests in land exchanged under this section must be of approximately equal value, including the non-monetary value of public benefits. Exchange procedures shall comply with applicable law and municipal ordinances. The notice and review provisions of AS 38.05.305 and 38.05.345 are applicable to exchanges of land under this section. The provisions of AS 38.50 do not apply to exchanges of land under this section.

Sec. 29.18.210. PUBLIC PURPOSE AND EXPANSION NEEDS.

(a) Consistent with the best interests of the state, if a municipality does not contain and cannot reasonably acquire sufficient nonfederal land within its boundaries to meet its legitimate needs for public or private settlement or development, it shall be the policy of the state to select federal land reasonably necessary to meet the needs of the municipality and to make the land selected available to the municipality under AS 38.05.315 or (b) of this section.

(b) Where state land is the most logical location for demonstrated municipal expansion for nonpublic settlement and development purposes, and when an exchange of land under sec. 209 of this chapter is not possible or is not in the public interest, it is the policy of the state to sell or lease the land at public auction. The state may contract with a municipality to act as its agent in an auction of state land under applicable statutes. When a municipality acts as the agent of the state in an auction, the municipality may retain from the proceeds of the auction the expenses which the director determines to be necessary and reasonable.

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

Sec. 29.18.211. ELECTION OF BENEFITS. (a) A municipality which on the effective date of this Act is engaged in litigation, or which becomes engaged in litigation, regarding a claim to state land under former secs. 190 and 200 of this chapter shall elect either to obtain the benefits provided in secs. 201 - 213 of this chapter or to pursue the litigation and thereby waive any claim to entitlement under secs. 201 - 213 of this chapter. An election shall be made by filing a motion for dismissal with prejudice in the court in which the litigation is pending. If the claim involves a municipality identified in sec. 201 of this chapter, the municipality shall file its motion for dismissal within 60 days of the effective date of this Act. If the claim involves a city eligible to receive an entitlement under sec. 202 of this chapter, the city shall file its motion for dismissal within 60 days after receiving the certificate of entitlement provided by the director under sec. 202 of this chapter. Failure of the municipality to file a motion for dismissal during the time period provided in this subsection shall be considered a waiver of entitlement under secs. 201 - 213 of this chapter.

(b) A municipality which was eligible to file land selections under former secs. 190 and 200 of this chapter and which does not enter into litigation over a claim to rights under those sections before the expiration of the time period within which it could make an election under (a) of this section shall be considered to have elected to receive benefits under secs. 201 - 213 of this chapter and to have waived any claim which might have been raised under former secs. 190 and 200 of this chapter.

(c) The provisions of secs. 201 - 213 of this chapter

do not affect the rights, if any, of any party to litigation regarding the former AS 29.18.190 - 29.18.200 or 29.18.420, which litigation is maintained by a municipality that has elected not to obtain the benefits provided by secs. 201 - 213 of this chapter.

Sec. 29.18.212. ADMINISTRATION. The commissioner may adopt regulations in accordance with the Administrative Procedure Act (AS 44.62) necessary to carry out the purposes of secs. 201 - 213 of this chapter.

Sec. 29.18.213. DEFINITIONS. In secs. 201 - 213 of this chapter, unless the context otherwise requires,

(1) "appropriate vacant, unappropriated, unreserved land" means vacant, unappropriated, unreserved land which meets the criteria for municipal selection under sec. 205(g) of this chapter;

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

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

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

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

(6) "municipal land selection" means a request by a municipality, filed in writing with the director under authority of secs. 190 and 200 of this chapter repealed by this Act or under secs. 201 - 213 of this chapter for vacant, unappropriated, unreserved general grant land within its municipal boundaries in partial fulfillment of its municipal entitlement;

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

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

(9) "remaining entitlement" means the general grant land entitlement determined in accordance with secs. 201 - 203 of this chapter, reduced by the total acreage of approved selections, including both patented and unpatented parcels;

(10) "school land" means those rectangular sections 16 and 36 within each township surveyed on or before January 3, 1959, and confirmed and transferred to the State

of Alaska upon its admission under sec. 6(k), Alaska Statehood Act, 72 Stat. 339, and any other land designated solely for school revenues;

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

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

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

(B) has not been approved for patent to a municipality under secs. 201 - 213 of this chapter or former secs. 190 and 200 of this chapter repealed by this Act; or

(C) is unclassified or, if classified under AS 38.05.300, is classified for agricultural, grazing, commercial, industrial, private recreational, residential, utility or open-to-entry purposes, or where classified in accordance with an agreement between a municipality and the state providing for state management of land of the municipality.

* Sec. 3. AS 38.05.321 is repealed and re-enacted to read:

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

(b) State land classified as agricultural land which has been selected by a municipality under AS 29.18.190 - 29.18.200 or 29.18.205(e) may be approved by the director for patent under AS 29.18.205(f); however, only rights in the land for agricultural purposes may be transferred and all other interests in the land will remain with the state. Agricultural land approved for patent to a municipality under AS 29.18.205(f) shall be credited, acre for acre, toward fulfillment of that municipality's entitlement under AS 29.18.201 - 29.18.203. If the director later determines it to be in the best interests of the state to transfer some or all of the additional rights in that approved or patented agricultural land, those rights shall pass without consideration to the municipality in which the land is located. The notice and review provisions of AS 38.05.305 and 38.05.345 are applicable to conveyance of rights under this section.

(c) The provisions of this section do not apply to state land classified as agricultural land which has been selected by a municipality under the provisions of AS 29.18.190 - 29.18.200 if the selection is an approved selection before April 1, 1978 and is otherwise valid under AS 29.18.205(b).

Chapter 180

* Sec. 4. AS 38.05.290 is amended by adding a new subsection to read:

(b) Consistent with the best interests of the state, in the selection of general grant land it is the policy of the state to make available the maximum land area from which municipalities may fulfill land entitlements under AS 29.18.201 - 29.18.213.

* Sec. 5. AS 29.18.190, 29.18.200, and 29.18.420 are repealed.

* Sec. 6. REPORT. Within 30 days after the convening of each regular session of the Eleventh and Twelfth Legislatures and the first regular session of the Thirteenth Legislature, the director of the division of lands shall report to the legislature on the implementation of AS 29.18.201 - 29.18.213 in sec. 2 of this Act.

* Sec. 7. This Act takes effect July 1, 1978, except that AS 29.18.208, enacted by sec. 2 of this Act, takes effect July 1, 1980.