

**ALASKA STATE LEGISLATURE
HOUSE RESOURCES STANDING COMMITTEE**

May 2, 2001

1:12 p.m.

MEMBERS PRESENT

Representative Drew Scalzi, Co-Chair
Representative Hugh Fate, Vice Chair
Representative Joe Green
Representative Mike Chenault
Representative Lesil McGuire
Representative Gary Stevens
Representative Mary Kapsner
Representative Beth Kerttula

MEMBERS ABSENT

Representative Beverly Masek, Co-Chair

COMMITTEE CALENDAR

SENATE JOINT RESOLUTION NO. 30

Urging the United States Forest Service to acknowledge all of the rights of the state to rights-of-way to state highways that pass through federal land.

- MOVED HCS SJR 30(RES) OUT OF COMMITTEE

PREVIOUS ACTION

BILL: SJR 30

SHORT TITLE:HIGHWAY RIGHTS-OF-WAY IN FEDERAL AREAS

SPONSOR(S): TRANSPORTATION

Jrn-Date	Jrn-Page		Action
04/27/01	1303	(S)	READ THE FIRST TIME - REFERRALS
04/27/01	1303	(S)	RLS
04/28/01	1329	(S)	RULES TO CALENDAR 4DP 1OR 4/28/01
04/28/01	1329	(S)	DP: PEARCE, THERRIAULT, COWDERY,
04/28/01	1329	(S)	PHILLIPS;
04/28/01	1329	(S)	OTHER RECOMMENDATION: ELLIS
04/28/01	1330	(S)	FN1: ZERO(S.RLS)
04/28/01	1336	(S)	READ THE SECOND TIME

04/28/01	1336	(S)	ADVANCED TO THIRD READING UNAN CONSENT
04/28/01	1336	(S)	READ THE THIRD TIME SJR 30
04/28/01	1337	(S)	PASSED Y20 N-
04/28/01	1337	(S)	ELLIS NOTICE OF RECONSIDERATION
04/28/01		(S)	RLS AT 2:00 PM FAHRENKAMP 203
04/28/01		(S)	MINUTE(RLS)
04/30/01	1355	(S)	CORRECTED FN1: ZERO(S.RLS)
04/30/01	1381	(S)	RECONSIDERATION NOT TAKEN UP
04/30/01	1382	(S)	TRANSMITTED TO (H)
04/30/01	1382	(S)	VERSION: SJR 30
05/01/01	1423	(H)	READ THE FIRST TIME - REFERRALS
05/01/01	1423	(H)	RES
05/02/01		(H)	RES AT 1:00 PM CAPITOL 124

WITNESS REGISTER

DON KUBLEY (PH)
Yakutat Lodge
Alaska Airports Incorporated
(No address provided.)
POSITION STATEMENT: Presented SJR 30.

DICK BISHOP
Alaska Outdoor Council
1555 Gus's Grind
Fairbanks, Alaska 99709
POSITION STATEMENT: Testified in support of SJR 30.

ACTION NARRATIVE

TAPE 01-47, SIDE A
Number 0001

CO-CHAIR DREW SCALZI called the House Resources Standing Committee meeting to order at 1:12 p.m. Representatives Scalzi, Fate, Green, McGuire, Stevens, Kapsner, and Kerttula were present at the call to order. Representative Chenault arrived as the meeting was in progress.

SJR 30-HIGHWAY RIGHTS-OF-WAY IN FEDERAL AREAS

CO-CHAIR SCALZI announced that the only order of business before the committee would be SENATE JOINT RESOLUTION NO. 30, Urging the United States Forest Service to acknowledge all of the

rights of the state to rights-of-way to state highways that pass through federal land.

[There was an unnecessary motion to place SJR 30 before the committee as the working document.]

Number 0075

DON KUBLEY (PH), Yakutat Lodge; Alaska Airports Incorporated, explained that there is one road leading out of Yakutat into the "hinterlands," which is the Alsac-Dangerous River Highway. That highway was built and has been maintained by the State of Alaska. In the 1960s and 1970s the title and right-of-way was conveyed to the State of Alaska formally. Last December several of the few folks, outfitters, that were allowed to use the road on a commercial basis received a letter from the U.S. Forest Service saying that since this road passes through the Tongass National Forest, the [Forest Service] owns it. Furthermore, the letter said that no commercial business would be done on this highway unless they issued permits. Moreover, the letter said no permits would be issued. Therefore, there was much concern in Yakutat, especially from the sports fishermen and the guides. In particular, this was of concern for the Yakutat Lodge, which has been in business for over 20 years. [The owner] of the Yakutat Lodge, former Senator Fanning, knew better and thus the committee has SJR 30 before it. Mr. Kubley said, "This is a very black and white state's rights issue. We own the road. We own the access to the easement on either side of it."

MR. KUBLEY posed a situation in which a person wants to go fishing on the Situk River. If an outfitter helps put a boat on a trailer or drives it to the river, puts it in the river, or helps take the boat out of the river, then it is considered a guided trip and thus a permit from the Forest Service is required. "Well, that's absolutely wrong," charged Mr. Kubley. He pointed out that this river is a navigable river that was conveyed to the state during statehood and yet there are Forest Service agents on the river stopping boats on their way down and questioning them regarding from whom their equipment was rented and from whom they received help with their boats. Therefore, "we would like for the State of Alaska to make it perfectly clear that this is in fact state domain; that their jurisdiction is null and void," he requested.

MR. KUBLEY emphasized that there is an issue bigger than Yakutat and that is:

If you go by the letter that was sent to the people of Yakutat in December saying that because this road goes through the Tongass National Forest we own it - even though we didn't build it, even though we don't maintain it, even though we don't have title to it - then every road ... in the Tongass National Forest ... [can fall under the whim of] some ranger ... [who] can use that as a precedent and say there'll be no commercial traffic on this road. ... I think it's a real dangerous situation to allow them to think that ... that's an acceptable situation. I think this is a way of showing them that it's not and it's a good start in resolving the situation.

Number 0523

REPRESENTATIVE KERTTULA referred to page 2, line 8, and asked if the state has absolute sole authority on public access. She recalled that in some instances there are some shared rights.

MR. KUBLEY answered, "That would have to be a negotiated situation. In this case, this is ... a state highway, it's state access, it's a state river."

REPRESENTATIVE KERTTULA pointed out that the language refers to "all state highways passing through Forest Service lands." She reiterated her remembrance that it wasn't all of them.

MR. KUBLEY said that he wasn't aware of any such situation.

Number 0629

DICK BISHOP, Alaska Outdoor Council, testified in support of SJR 30. Mr. Bishop remarked that SJR 30 expresses a concern that isn't unique. He supposed that "we" could sympathize with the federal agencies trying to properly implement the terms of federal rules, and in particular, ANILCA (Alaska Native Interest Land Claim Act), which is so complex. Perhaps, this is an honest mistake based on a lack of knowledge. However, it is an unacceptable situation that should be addressed. He remarked that such situations are epidemic with the difficulties of the implementation of federal rules.

REPRESENTATIVE FATE inquired as to other examples in which Mr. Bishop felt that the federal government overstepped its bounds.

MR. BISHOP recalled a situation from two years ago in which the National Park Service declared that it was implementing emergency regulations to prohibit the use of snow machines in the old Denali National Park. Clearly, that was inconsistent with the terms of ANILCA. Furthermore, it was inconsistent with the authority they have to regulate; that is they didn't follow the rules of their own laws. This resulted in a lawsuit brought by the Alaska State Snowmobile Association and the [National Park Service] lost. Therefore, [the National Park Service] had to propose regulations in the proper manner and those regulations were established. However, they are again in court because it isn't clear that those regulations are consistent with the intent of ANILCA.

REPRESENTATIVE FATE noted that there has been a recent incident on the Yukon River that would seem to corroborate such situations.

Number 0945

MR. KUBLEY reiterated that if the situation in Yakutat is allowed, then [the federal government] could, by precedent, do the same thing with every road in Southeast Alaska because those are all in the Tongass National Forest. He concluded by saying, "This is extremely serious."

CO-CHAIR SCALZI announced that public testimony was closed.

Number 1000

REPRESENTATIVE GREEN referred to page 2, line 4, after "door" and asked if there would be any merit to deleting "to" and inserting "for it and". Representative Green offered that as an amendment. There being no objection, the amendment was adopted.

REPRESENTATIVE KERTTULA noted for the record that there are some cooperative agreements in place that the state has with the Forest Service. She said, "They don't necessarily relinquish the state's authorities."

REPRESENTATIVE KERTTULA then directed attention to the first full paragraph on page 3 of the letter from the Senate President and the Speaker of the House dated April 28, 2001. [This letter is included in the committee packet.] She commented:

I think that ... when we're in these very complicated issues, I think that it would be a good thing for all

us to remember that we have issues of sovereignty, of tribal rights, and other issues that ... are truly important to many of us, all Alaskans. When we're dealing with these kinds of contentious issues, it's best ... to try to think of us all when we're going forward.

She also expressed some concern about the tone of the resolution, although she said that she wouldn't object to it.

Number 1249

REPRESENTATIVE McGUIRE moved to report SJR 30 as amended out of committee with individual recommendations and the accompanying zero fiscal note. There being no objection, HCS SJR 30(RES) was reported from the House Resources Standing Committee.

ADJOURNMENT

There being no further business before the committee, the House Resources Standing Committee meeting was adjourned at 1:28 p.m.