

ALASKA STATE LEGISLATURE
SENATE JUDICIARY COMMITTEE

March 30, 2001

1:41 p.m.

MEMBERS PRESENT

Senator Robin Taylor, Chair
Senator Dave Donley, Vice Chair
Senator Gene Therriault

MEMBERS ABSENT

Senator John Cowdery
Senator Johnny Ellis

COMMITTEE CALENDAR

SENATE BILL NO. 60

"An Act relating to agricultural facilities and operations as private nuisances; and to disclosures in transfers of real property located within one mile of an agricultural facility or an agricultural operation."

MOVED CSSB 60 (JUD) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

No previous action.

WITNESS REGISTER

Mr. Hans Neidig
Staff to Senator Green
Alaska State Capitol
Juneau, Alaska 99801-1182
POSITION STATEMENT: Introduced SB 60

Mr. Peter Fellman
Staff to Representative Harris
Alaska State Capitol
Juneau, Alaska 99801-1182
POSITION STATEMENT: Testified on SB 60

Mr. Larry DeVilbiss
Alaska Farm Bureau
HC 04-9302
Palmer, Alaska 99645
POSITION STATEMENT: Supports CSSB 60(JUD)

Mr. Dick Mylius
Department of Natural Resources
Division of Mining, Land and Water
550 West 7th Avenue, Suite 1050
Anchorage, Alaska 99501
POSITION STATEMENT: Supports CSSB 60(JUD)

Mr. Rob Wells
Department of Natural Resources
Division of Agriculture
1800 Glenn Highway, Suite 12
Palmer, Alaska 99645
POSITION STATEMENT: Supports CSSB 60(JUD)

Ms. Carol Carroll, Director
Department of Natural Resources
Division of Support Services
400 Willoughby Ave.
Juneau, AK 99801-1724
POSITION STATEMENT: Supports CSSB 60(JUD)

ACTION NARRATIVE

TAPE 01-13, SIDE A
Number 001

CHAIRMAN ROBIN TAYLOR called the Senate Judiciary Committee meeting to order at 1:41 p.m. Chairman Taylor announced the first order of business would be SB 60.

#SB 60

SB 60-FARM OPERATIONS: DISCLOSURE/NUISANCES

MR. HANS NEIDIG, legislative aide to Senator Lyda Green who sponsored the bill, said SB 60 provides better legal protection for Alaskan farmers. The bill was introduced at the request of farmers who believe their farming operations are not adequately protected under the current statutes. As urbanization swallows up farming areas, many farmers have experienced encroachment on their rights to farm. Often, newcomers do not like the smells, chemicals, sounds, or even the animals of agriculture. Prospective property owners need to know what they are getting into before they purchase a home in an agricultural area. In other areas of the nation, where urban sprawl has created a big problem, actions are being taken to protect existing agricultural operations from unnecessary lawsuits. The Right-to-Farm bill [SB 60] takes the reasonable and

innovative approach of coupling a farmer's grandfathered right to continue agricultural activities to the filing and maintaining of a farm conservation plan with the U.S. Department of Agriculture, Soil and Water Conservation Service. In this way, SB 60 protects the rights of farmers by insuring that they cannot be sued in Alaska for simply conducting every day farming activities.

MR. PETER FELLMAN, staff to Representative John Harris, said he would be happy to answer any questions the committee might have.

SENATOR THERRIAULT said SB 60 establishes a disclosure form that new property buyers must sign, which says they are responsible for determining whether agricultural facilities are nearby. He asked if the disclosure form would point them to the source of this information.

MR. FELLMAN said that is correct. The form is an existing real estate form that lists all the things that need to be disclosed - the disclosures fall under Megan's Law. The form also tells new buyers where they can receive the necessary information for the disclosure.

SENATOR THERRIAULT asked why bee, fur-bearing animal, and poultry farms were being dropped from SB 60.

MR. FELLMAN replied that bees are covered under apicultural, which is on page 2, line 25. The Department of Law felt that poultry was a redundant term and could be dropped because SB 60 uses the language, "and other animals kept for the use or profit" - page 3, line 12. This also applies to fur-bearing animals.

Number 315

CHAIRMAN TAYLOR read from page 2, line 7, and asked why the word "illegal" was necessary.

- (b) The provisions of (a) of this section do not apply to
 - (1) liability resulting from improper, illegal, or negligent conduct of agricultural operations; or

MR. FELLMAN said the application of pesticides or herbicides could be construed as illegal. Alaska requires that the directions on the packages of these products be followed and, if not, the use becomes an illegal operation.

CHAIRMAN TAYLOR said sometimes chemicals in a product shipped to Alaska are not always on Alaska's approved list of chemicals.

MR. FELLMAN said Alaska's list is a mirror of federal regulation, and he did not know if Alaska had a specific list specifying what chemicals were acceptable. He said some herbicides and pesticides are legal in Canada but not in the United States and some of those chemicals cross the border into Alaska.

CHAIRMAN TAYLOR said there must be some way of adjusting the federal list so products that are beneficial for northern climates may be used in Alaska.

CHAIRMAN TAYLOR said he thought Megan's Law involved a criminal event that required the registration of sex offenders.

MR. FELLMAN said that is correct. The real estate industry suggested that because those statutes allow for disclosure with an existing form, the language needed for SB 60 could easily be inserted.

CHAIRMAN TAYLOR noted the first three sections of SB 60 precluded the opportunity for filing a suit under the nuisance laws of the state, and he asked why an additional registration law was needed.

SENATOR THERRIAULT said one of the reasons new buyers would not be able to sue is because they would be given notice and a source of information to discover the facts.

MR. FELLMAN said that is correct.

CHAIRMAN TAYLOR said disclosures are set up to protect realtors from being sued by anyone who buys property and then discovers a problem.

SENATOR THERRIAULT moved to adopt CSSB 60 (JUD), 22-LS0464\C, as the working document of the committee. There being no objection, CSSB 60(JUD) was adopted.

Number 808

MR. FELLMAN said SB 60 was researched thoroughly, and it was found that the only Right-to-Farm law that has withstood a Supreme Court challenge required disclosure and a vehicle to make the determination that farmers were operating in a normal, reasonable, and safe way. SB 60 has attached this provision to the Soil and Water Conservation Service. Last year 22 states without this provision had their farm laws stricken down.

MR. LARRY DE VILBISS, Alaska Farm Bureau, said the farmers were apprised of the proposed amendments and although they are not

excited about being "thrown in the bucket with sex offenders," they would agree to go along with the Megan's Law approach if that is the most feasible way.

MR. DE VILBISS noted that the farmers would like snow blowing added to the list of nuisances because when subdivisions are developed next to existing fields, blowing snow is an issue. They would also like to have bison added to the list of livestock. The Matanuska-Susitna (Mat-Su) Assembly, the Alaska Farm Bureau, the Farmers Union, and the Board of Agriculture support SB 60.

SENATOR THERRIAULT asked if the definition on page 3, lines 11 and 12, covers bison.

MR. DE VILBISS said the board felt that bison are covered in this section, but this suggestion would be presented in the future by the board secretary.

SENATOR THERRIAULT asked how blowing snow could be a nuisance.

MR. DE VILBISS said there are half a dozen places in the Mat-Su Valley where blowing snowdrifts pile up on driveways and a subdivision resident could decide that was something a farmer needed to fix - this has been a huge problem.

SENATOR THERRIAULT asked if there had ever been a lawsuit or complaint about snow blowing.

MR. DE VILBISS said there had been complaints but never a lawsuit. Adding this to SB 60 would be an attempt to head off future problems.

Number 1130

CHAIRMAN TAYLOR said it would be important to add this amendment, and he suggested adding bison and moose to page 3, line 11.

CHAIRMAN TAYLOR moved amendment 1 to read:

(3) "livestock" means horses, cattle, sheep, bees, goats, swine, poultry, reindeer, elk, bison, moose, musk oxen, and other animals kept for use or profit,"

There being no objection, amendment 1 passed.

CHAIRMAN TAYLOR asked Mr. DeVilbiss if there was a certain area in SB 60 where he wanted blowing snow inserted.

MR. DE VILBISS suggested page 3, line 26 or 27.

CHAIRMAN TAYLOR said his concern with that subsection was that it referred to "operations that might produce." Merely having an open field where natural forces produce snowdrifts may be a stretch for a lawsuit.

SENATOR THERRIAULT said the current list is a mixture of different things.

CHAIRMAN TAYLOR then suggested the insertion of blowing snow after the word "dust".

SENATOR THERRIAULT moved amendment 2 to read:

(3) that they are responsible for determining whether, in the vicinity of the property that is the subject of the transferee's potential real estate transaction, there is an agricultural facility or agricultural operation that might produce odor, fumes, dust, blowing snow, smoke, burning, vibrations, insects, rodents, the operation of machinery including aircraft, and other inconveniences or discomforts as a result of lawful agricultural operations.

There being no objection, amendment 2 passed.

MR. DICK MYLIUS, Division of Mining, Land and Water, Department of Natural Resources (DNR), said DNR had been concerned with the original bill but those concerns had been addressed in CSSB 60(JUD).

Number 1380

MR. ROBERT WELLS, Division of Agriculture, DNR, said all of the division's concerns had been met. He wanted the committee to know that the Board of Agriculture and Conservation had sent an endorsement of SB 60 to all legislators.

CHAIRMAN TAYLOR said the notification provisions had been defined as involving an agricultural facility or operation. He noted there was no inclusion for noise.

SENATOR THERRIAULT noted that vibrations and the operation of machinery, including aircraft, had been included. He was not sure this was broad enough to cover what the Chairman had in mind, though.

CHAIRMAN TAYLOR moved amendment 3 to read:

(3) that they are responsible for determining whether, in the vicinity of the property that is the subject of the transferee's potential real estate transaction, there is an agricultural facility or agricultural operation that might produce odor, fumes, dust, blowing snow smoke, burning, vibrations, noise insects, rodents, the operation of machinery including aircraft, and other inconveniences or discomforts as a result of lawful agricultural operations.

There being no objection, amendment 3 passed.

CHAIRMAN TAYLOR said because the terms "forestry" or "timber harvesting operations" only include logging in the woods, it would be appropriate to add the words "or manufacturing operation," which would include pulp, veneer, saw mill, or whatever. This would provide immunity from liability under the nuisance laws.

SENATOR THERRIAULT asked if the word "manufacturing" would be better than the word processing and he wondered if the choice of words would make a difference.

CHAIRMAN TAYLOR said he did not know. He suggested also adding the words "or processing."

CHAIRMAN TAYLOR moved amendment 4, on page 2, line 29 to read:

(vi) [(F)] forestry or timber harvesting or manufacturing or processing operations;

MS. CAROL CARROLL, Division of Administrative Services, DNR, said the fiscal notes in the committee packet were for SB 60 in its original form. CSSB 60(JUD) would have no fiscal impact on DNR as amended.

CHAIRMAN TAYLOR asked if DNR supported CSSB 60(JUD).

MS. CARROLL replied yes.

SENATOR THERRIAULT said there had been no "call to question amendment 4."

CHAIRMAN TAYLOR asked if there was an objection to amendment 4. There being no objection, amendment 4 passed.

SENATOR THERRIAULT moved to adopt the proposed CS and report it

from committee with individual recommendations and a zero fiscal note. There being no objection, CSSB 60(JUD) moved from committee.

CHAIRMAN TAYLOR thanked Senator Green for her hard work on bringing SB 60 forward. He said SB 60 would probably be only one of four major pieces of tort reform legislation the legislature would be enacting this year.

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There being no further business to come before the committee, CHAIRMAN TAYLOR adjourned the meeting at 2:14 p.m.