ALASKA STATE LEGISLATURE
SENATE JUDICIARY COMMITTEE
March 4, 2002
1:35 p.m.

MEMBERS PRESENT

Senator Robin Taylor, Chair
Senator Dave Donley, Vice Chair
Senator John Cowdery
Senator Gene Therriault
Senator Johnny Ellis

MEMBERS ABSENT

All Members Present

COMMITTEE CALENDAR

CS FOR SENATE BILL NO. 263(L&C)
"An Act relating to the subsequent acquisition of title to, or an interest in, real property by a person to whom the property has purportedly been granted in fee or fee simple; and providing for an effective date."
HEARD AND HELD

SENATE BILL NO. 331
"An Act relating to the jurisdiction of district courts."
MOVED SB 331 OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

SB 263 - See Labor and Commerce minutes dated 2/12/02.

SB 331 – No previous action to consider.

WITNESS REGISTER

Annette Kreitzer
Staff to Senator Loren Leman
State Capitol, Rm 516
Juneau, AK 99801-1182
POSITION STATEMENT: Commented on SB 263 for the sponsor.

Russell Dick, Natural Resource Manager
Sealaska Corporation
One Sealaska Plaza

Juneau, AK
POSITION STATEMENT: Supports SB 263.

Jon Tillinghast, Attorney
Sealaska Corporation
One Sealaska Plaza, Suite 300
Juneau, AK
POSITION STATEMENT: Supports SB 263.

Bryan Merrell, Counsel and Underwriter
First American Title Insurance Company
Vice President Alaska Land Title Association
510 W. Tudor Rd.
Anchorage, AK
POSITION STATEMENT: Opposes SB 263.

Douglas Wooliver, Administrative Attorney
Alaska Court System
820 W. 4th Ave.
Anchorage, AK 99501-2005
POSITION STATEMENT: No opposition to SB 331.

ACTION NARRATIVE

TAPE 02-07, SIDE A

CHAIRMAN ROBIN TAYLOR called the Senate Judiciary Committee meeting to order at 1:35 p.m. Present were Senator Cowdery, Senator Therriault, Senator Ellis and Chairman Taylor. Senator Donley arrived at 1:55. The first order of business was CSSB 263(L&C).
#SB 263

SB 263-REAL PROPERTY CONVEYANCES

MS. ANNETTE KREITZER, Staff to Senator Leman, explained SB 263 was introduced at the request of Sealaska Corporation. The intent is to resolve a legal dilemma for shareholders. Under the Alaska Native Claims Settlement Act (ANCSA) village corporations own the surface estate to lands conveyed under ANCSA but regional corporations own the subsurface estate.

MS. KREITZER explained where estate is passed to a person by a quitclaim deed only the rights the grantor had are passed to the grantee so the village corporations could not pass on the right to disturb the subsurface of the property allowing shareholders to build a home on that property. To correct this SB 263 amends the conveyance statutes to allow what is referred to as after acquired title for shareholders.

There had been concerns the original legislation was too broad and would have unintended impacts. The Committee Substitute (CS) from the Labor and Commerce Committee was intended to correct that by deleting state property.

MR. RUSSEL DICK, Natural Resource Manager for Sealaska Corporation, said Ms. Kreitzer had done a good job explaining what they were trying to accomplish. In 1995 Sealaska Corporation entered into discussions with Kootznoohoo, the village corporation for Angoon, with regards to their home site program. The village corporation takes a portion of their ANCSA land and subdivides that land and then allocates it to shareholders under their home site program.

MR. DICK explained background on the issue. Under ANCSA Sealaska owns the subsurface estate and prior to the allocation or sale of land they enter into a subsurface easement agreement with the village corporation. Once that land starts to be allocated the subsurface easement automatically inures to the grantee. The grantee has the authority or the rights contained in that subsurface easement which allows disturbing the subsurface estate such as putting in foundations for homes.

Kootznoohoo allocated the land without getting a subsurface easement agreement from Sealaska. He thought to date they had distributed over 600 lots. Sealaska is in the same type of situation with Shaan Seet, the village corporation for Craig. Shaan Seet has distributed approximately 1300 lots to date.

MR DICK said not having a subsurface easement did two things.

- It put the shareholder in a trespass situation with the regional corporation.
- It put a cloud on Sealaska’s title.

The regional corporation has no desire to hold any shareholders liable for trespass but at the same time they do not desire to have this cloud on their title.

MR. DICK said rather than entering into individual subsurface easement agreements with each of these 2000 or 2500 different shareholders this bill would allow them to enter into one agreement with the village corporations. That agreement would automatically inure to all the grantees or owners of those lots. The after acquired rights doctrine only applies to warranty deeds and all of these lots were distributed under quitclaim deeds. The after acquired rights doctrine does not apply to quitclaim deeds.

CHAIRMAN TAYLOR asked why they could not accomplish the same goal by issuing one easement document for the benefit of that entire subdivision plat from Sealaska to the village corporation that conveyed the lots.

MR. DICK replied that is what they try to do. Cape Fox Inc. was doing the same home site program. Before Cape Fox Inc. allocated the land they sent Sealaska a letter explaining what they planned on doing and showing the property in question. They wanted a subsurface easement agreement for the entire property before they subdivided.

CHAIRMAN TAYLOR said if the agreement becomes part of the plat itself and is recorded with it anybody who has acquired title under that subdivision could easily show in their chain of title they had the authority to disturb the subsurface.

MR. DICK agreed.

CHAIRMAN TAYLOR asked why they could not do that after the fact.

MR. JON TILLINGHAST, Attorney for Sealaska Corporation, explained that courts have drawn a distinction between grantees that acquired their property under a warranty deed and those that acquired it under a quitclaim deed. When property is acquired under a quitclaim deed anything that inures to that property afterwards doesn't automatically go to the owner.

SENATOR THERRIAULT explained quitclaim. "I give to you any right I have up to this date, the date of the transfer." Anything acquired after the transfer cannot be part of that quitclaim deed.

MR. TILLINGHAST said that was correct.

CHAIRMAN TAYLOR said quitclaim could carry no warranty of title. Warranty of title requires the grantor to give all their title and all title they might later acquire would be conveyed under a warranty deed.

MR. TILLINGHAST said that was also correct.

SENATOR COWDERY said with a quitclaim deed if there were easements involved those easements carry forward. If there is encumbrance on the property the quitclaim deed gives the equity and ownership at the time. If there had been other prior easements on the property the quitclaim deed would not undo those

easements. He asked if that was correct.

MR. TILLINGHAST said that was correct. A quitclaim deed passes everything, including easements and appertances to the property that existed as of the date of the conveyance.

SENATOR THERRIAULT asked if they couldn't at this time make a conveyance of that subsurface right distributed amongst a very specific class of people and that being a class of people that have entered into these subdivision agreements.

MR. TILLINGHAST thought they could. The trouble being that class of people is quite large and there have been subsequent conveyances. They are having trouble finding all of those hundreds of people and then working out separate easements.

SENATOR COWDERY said he had homestead land back in the territory days and thought the subsurface right did not prohibit him from excavating and putting in sewer systems. He asked if there was a hard definition of subsurface rights.

MR. TILLINGHAST explained the surface rights Senator Cowdery would have received under a federal patent would have been broader than the surface rights under ANCSA. The court defined the subsurface rights under ANCSA to be broader and more encompassing than the subsurface rights the federal government retained when they granted homestead rights. Under a homestead patent Senator Cowdery would not need the subsurface owners permission to lay foundations and intrude into the sand and gravel because that resource would have been his. The courts have said under ANCSA, sand and gravel and near surface resources actually belong to the subsurface owner.

CHAIRMAN TAYLOR said prior to statehood Alaskans received their land patent from the federal government. Those patents reserved the subsurface rights to the federal government.

MR. TILLINGHAST said that was correct.

CHAIRMAN TAYLOR asked if that was common throughout the west.

MR. TILLINGHAST thought it was universal.

CHAIRMAN TAYLOR asked how the people in Oklahoma and Texas received the right to drill for oil. He asked how they own subsurface rights in California.

MR. TILLINGHAST said it was a good question and he did not know.

CHAIRMAN TAYLOR thought the distinction between who got subsurface and who did not was a violation of equal protection under the constitution. He said Mr. Drake had every right to dig a well and bucket out oil.

MR. TILLINGHAST said if in fact they did treat Alaska differently there is a good argument under the Equal Footing Doctrine.

CHAIRMAN TAYLOR asked why a citizen of New York could dig an oil well in his backyard but not a citizen in Alaska.

SENATOR COWDERY said water wells would be the same. He asked if things changed in the 40's and 50's before Alaska became a state or had it always been that way. He agreed with Chairman Taylor's comment concerning people having different rights in different states. He wanted to know how they obtained those rights. An oil well or water well are both wells and are going down for a resource.

CHAIRMAN TAYLOR said with a title patent from the federal government the ground can be disturbed by putting in a foundation and digging some gravel. Sewer and water lines can be put in to develop a subdivision on the property. Under ANCSA surface rights have a much narrower definition. The owner can live on the land but cannot disturb the soil without the consent of Sealaska who was conveyed the subsurface rights. He asked if Sealaska received all the subsurface rights.

MR. TILLINGHAST answered yes.

CHAIRMAN TAYLOR asked if that included oil and gold.

MR. TILLINGHAST answered yes.

CHAIRMAN TAYLOR said those who received land from the federal government under a different scheme have no rights in that oil or gold.

MR. TILLINGHAST said in a sense they have more rights because they did receive the right to disturb the surface. The village surface owner did not get the right to disturb the surface.

CHAIRMAN TAYLOR said it fascinated him that the Native corporations received the gold under their land but a white village in Alaska did not. He said that is quite a distinction.

SENATOR THERRIAULT said Sealaska was trying to go back and take

care of the problem that arose from subdivisions that did not have this subsurface agreement. He said the applicability section would apply in the future also. He asked if with this legislation the village corporations would no longer need to come to Sealaska to get a subsurface easement before subdividing.

MR. TILLINGHAST said they were trying to apply the bill to situations where the quitclaim deed had already been executed, but the after acquired right had not yet been passed on. He said the bill is attaching a different legal significance to a document that has already been executed; in this case a quitclaim deed. That always raises a potential retroactivity problem. The lawyers from legislative council, the attorney general's office and himself could think of no practical example where anybody would be upset by that problem or where it would harm or prejudice anybody. However, because of that potential, legislative affairs suggested putting in what is in essence a built in severability clause. "That if ever we step over the line of when you can be retroactive that that fact situation would take itself out of the bill."

SENATOR THERRIAULT asked the following.

> The way this all works though have you picked a date and said we're going to take care of any problems that have occurred with these transfers in the past. But from this day forward we want you, before you subdivide and transfer the land, to come and get this (indiscernible) agreement. Or will this apply to anybody that does the same thing in the future?

MR. TILLINGHAST responded it would apply to anybody who does this same thing in the future.

CHAIRMAN TAYLOR asked if they had come up with an easement form the committee could see.

MR. TILLINGHAST said they have an easement form. He did not have one with him but offered to put one together for the committee.

CHAIRMAN TAYLOR said he would like to see it because they are setting up the formula within which these things can occur but without any parameters on what the rights are that are going to be conveyed. That is still left to the owner of those rights to decide. He asked how deep is a foundation and how much gravel is necessary to be removed to put in the house and at what point does it become a gravel business. He said he was sure that was of keen interest to Sealaska who has to respond back to shareholders about what they had done with their mineral rights.

MR. DICK said they are very specific in the parameters they set in the subsurface easement agreement. They do not want anybody operating a gravel pit out of Sealaska's subsurface. They made it very clear the purpose of the subsurface easement is usually only for residential purposes. Sealaska has no problem if they need to disturb the subsurface estate to build a hole for a foundation and spread the gravel on their lot. If they truck the gravel off of their lot to somebody else's lot they need to compensate Sealaska for that gravel. They have those parameters established in the subsurface easement.

SENATOR THERRIAULT said in his subdivision there are only one or two lots undeveloped. Somebody has cleared the trees clearly planning to build a house there. He would love them to truck the extra dirt from excavating their foundation to his lot bordering on a slough. He asked if they would have to compensate for that.

MR. DICK said yes.

CHAIRMAN TAYLOR said they would if it was Sealaska land.

SENATOR COWDERY asked if it would be appropriate to place a maximum that could be removed. Having been in that business he stated there are very few lots where all the material can be saved when excavating a basement. It seemed reasonable to him to have some grace figure they could remove.

CHAIRMAN TAYLOR said the easement form was a difficult form to draw because land shapes and lot sizes are so different. A person might need to dig 10 to 15 feet on a steep sloping lot to be able to get a basement and foundation into place. They had left that up, as should be, to the owner of the property. He thought they were going to end up with a document that is general enough in scope that it can be applied to these variable. Otherwise they would be back at the same problem of having to draft 2500 easements. "I don't think it's appropriate for us to try and tell the owner what they can or can't do once we have granted them the right to at least convey and to go back and clean up this technical aspect of title."

MR. TILLINGHAST said the point to be kept in mind is whatever the owner of the subsurface estate, in this case Sealaska, decides to give to the current homeowner, they are giving them more than they have already. Right now they have no rights and Sealaska is getting nothing in return for that, they are not getting any consideration. He thought that underscored what Chairman Taylor had observed; the landowner has to decide how much they want to give.

CHAIRMAN TAYLOR said Sealaska is answerable to its shareholders.

MR. BRYAN MERRELL, Counsel and Underwriter, First American Title Insurance Company, Vice President, Alaska Land Title Association, said First American Title Insurance Company is a national and international underwriter of title insurance and has been writing title insurance in Alaska since 1965. The Alaska Land Title Association is a group of title insurance agents and underwriters who operate in the State of Alaska and has been in existence since 1976 as a group effort of all of the title agents and underwriters in Alaska.

MR. MERRELL informed the committee that First American Title Insurance Company and Alaska Land Title Association had concerns with SB 263 in the way it changes the common law. In particularly some of the changes in the Committee Substitute (CS) to this bill that carved out exceptions to where and what type of deeds it affects.

MR. MERRELL said he spent some time trying to research the laws in the other states of the United States relative to after acquired title and they were all over the map. Some states have laws similar to this one although not with the exception for state related deeds. Some states have specific statutes that say quitclaim deeds cannot carry after acquired title. That is in line with his understanding and the majority position of states where there is no statute but the common law has set the standard. Only a warranty deed carries after acquired title.

> The theory being that once you say to somebody I am going to give you title to this piece of property you cannot later claim that you didn't mean to give them something that you acquired later, some interest that you acquired later in the property.
>
> The exception to the statute, at least the first one I saw in the statute I thought well at least, you know, we'll have some specific statutory description of how the after acquired rule applied. And I wasn't overly concerned about it although there are some questions that are still raised by the fact that saying their quitclaim deed carries after acquired title. But the exception really makes it difficult, for it seems to me, for lay people than for title examiners in general to tell exactly what the intent of the parties was when there are deeds in a change of title that may or may not pass after acquired title and specifically when the state has been involved. And so it's because of that concern particularly with interfamily types of

transactions where there may be several quitclaim deeds that we've decided to say we're opposed to this bill.

For example the retroactivity aspect of it mentioned earlier. We're not really sure how that's going to work and it certainly hadn't been the intent up until now of most people giving quitclaim deeds to foreclose their ability to own title to that property ever again. Because it seems to me that if you got a transaction where A deeds to B and B deeds to C if C deeds back to A you got a question where the title has ended up. And I've spoken to a couple of real estate lawyers beside myself here in the state and they've asked that same question. And certainly not knowing for sure whether quitclaim deeds are given five, ten, fifteen years ago are supposed to pass after acquired title or not makes it pretty difficult for somebody to try to figure out how they're supposed to show the vesting or the ownership of title to a piece of property.

MR. MERRELL said it also seems somewhat difficult that they are doing this to fix a problem in a very specific instance. He was not sure there were not other ways of approaching the issue. He suggested a blanket grant of easement to all of the landowners in the subdivision rather that trying to repair hundreds of documents. There may be issues of delivery but thought into how to do that might stave off the use of a statutory change and a change in the common law of the state to fix that specific problem.

MR. MERRELL said First American Title Insurance Company and Alaska Land Title Association are concerned about the breath and scope of the bill. They asked further consideration be given to less intrusive alternatives into the state of the law before they do something like this. In spite of the fact that states vary on the issue this is relatively contrary to the majority of the states. Carving out an exception for state related deeds is unprecedented. He had not seen anything like that anywhere else.

CHAIRMAN TAYLOR gave a scenario where he owned a 1/8th undivided interest in Black Acre and six of his cousins own equal 1/8th shares and the last 1/8th share is owned by his grandfather. He quitclaims to cousin A his 1/8th interest. Two or three years later his grandfather dies, disinherits everybody else in the family and gives Chairman Taylor his 1/8th share. He asked if that was after acquired interest that he conveyed by the original quitclaim deed he gave to cousin A under this law.

MR. MERRELL replied that under the law being proposed he thought there was at least the argument that was the case. The question

of transfer or conveyance of title is not only what appears on the document but the intent of the party. In Chairman Taylor's case the intent may not have necessarily been to automatically transfer that title on to cousin A. But somebody examining the status of title, knowing this rule was the law in the state, would probably cloud the title and raise a question as to whether or not that was the intention.

CHAIRMAN TAYLOR said that had bothered him throughout. He presented a different fact pattern.

> All the same parties own the land but my grandfather has retained the subsurface rights. We're in a state where we own them. Now what happens when grandpa disinherits everybody else and grants me the subsurface rights three or four years later after I've sold out by quitclaim deed any interest I had in the property. Do I now loose the subsurface rights that my grandfather was conveying to me and by operation of law under this scenario do they automatically go to the cousin that I sold the property out to? That's my real question, is when does the after acquired property received by the grantor of a quitclaim deed, when does that after acquired interest not get conveyed?

MR. MERRELL said there is no limitation in the proposed statute so he could not say there was any circumstance where it would be stopped. He said whether they slice up the pie of the ownership of the property vertically, that is amongst several people or horizontally, that is surface and subsurface estate or they have the same question.

CHAIRMAN TAYLOR agreed and said they need to resolve that in some way. He said Mr. Merrell was the first one that really raised these exceptions. He said Mr. Tillinghast had referred to the necessity for a committee substitute and exempt the effect of the law upon quitclaim deeds conveyed by a municipality, a state agency of either the legislative, executive, or judicial branch of state government, including the University of Alaska, the Alaska Railroad Corporation, the Alaska Housing Finance Corporation, and the Alaska Mental Health Trust Authority. (Page 2, line 4.) He asked Mr. Merrell to give an example of his concerns based on a state title to a state land sale or a municipal sale.

MR. MERRELL said his problem was confusion over different sorts of people having different rules apply. As it stands right now the way the Supreme Court has formulated a law, again in accord with what the majority position is, a warranty deed carries after acquired title and a quitclaim deed does not. The rule is

applied that way no matter who it is. With this bill they have to consider who the people were in the past chain of title and whether or not there was a stop on the passage of the after acquired title because some state related agency or municipal related agency or some form of state government was involved in the chain of title. It is an unequal application of the rule that concerns them more than anything on that issue.

CHAIRMAN TAYLOR said he understood that distinction. They were talking about after acquired title or interest that passes by "operation of law" to the grantee or the grantee's successors. He asked Mr. Tillinghast if he could give an example or respond to the question raised about the person selling by quitclaim deed and the grandpa later giving him either the subsurface or another full interest in the property. He asked if they intended to convey that with this legislation.

MR. TILLINGHAST said he would start with the more straightforward scenario. Chairman Taylor conveyed his interest to cousin A and then later grandpa conveys another 1/8th interest in the same property to Chairman Taylor and would that then go to cousin A automatically under this bill. He explained under existing law he would have exactly that same question if his conveyance to cousin A had been by warranty deed.

CHAIRMAN TAYLOR said yes, he would.

MR. TILLINGHAST said it wouldn't be any different. In that respect the bill doesn't complicate the law it would merely extend that same question to a different class of conveyances, to quitclaim deeds.

CHAIRMAN TAYLOR asked him to run through the scenario where he conveys by quitclaim deed to cousin A.

MR. TILLINGHAST said he would with the preface that this scenario would be the same under existing law with respect to warranty deeds. He agreed with Mr. Merrell that in either case, whether it is a warranty deed or quitclaim deed it is a question of original intent. The question being did Chairman Taylor mean to convey just that 1/8th interest or did he mean to convey any interest he had in that property and is the 1/8th interest a separate interest in his mind as a grantor. That raises a fussy issue of fact but it is an issue of fact that is there already under existing law.

CHAIRMAN TAYLOR said when he conveys by quitclaim deed he thinks he is only conveying that interest which he has at that time. That is existing law.

MR. TILLINGHAST said that was correct.

CHAIRMAN TAYLOR said the bill read after acquired interest brought about by operation of law.

MR. TILLINGHAST said that is what happens now with warranty deeds.

CHAIRMAN TAYLOR said no it doesn't. He can convey by warranty deed his 1/8th undivided interest in this land. If he subsequently acquires another 1/8th undivided interest from grandpa he had not conveyed that.

MR. TILLINGHAST thought whether he conveyed it or not raised the same question his hypothetical possessed when it involves a quitclaim deed because under existing law after acquired interest in the same property does pass by operation of law to the grantee. They were merely extending precisely the same rule that now applies to warranty deeds to quitclaim deeds.

SENATOR THERRIAULT asked if the warranty deed could apply specifically to the surface rights and did that apply to the subsurface rights.

CHAIRMAN TAYLOR said if they divided the property vertically they have the surface right and they have the subsurface right. He and his cousins own the surface rights and grandpa always retained the subsurface because he believed there was oil there. The cousins exchanged things back and forth and he sold out his 1/8th interest in the property to one of his cousins named A and he did it by quitclaim deed. A few years later grandpa passes on and doesn't like any of the rest of those cousins and gives him all the subsurface rights. His question was had he already conveyed the subsurface rights because they then become an after acquired interest in the same property. He asked if he had conveyed them to this group of cousins that now own his interest in the surface rights. He said he was not sure he hadn't.

MR. TILLINGHAST thought Chairman Taylor may well have conveyed those subsurface rights. He reiterated that if Chairman Taylor asked that same question and just changed the hypothetical by starting off saying he conveyed his surface estate to A by warranty deed and then grandpa gave him the subsurface rights later, probably existing law would serve to pass those subsurface rights on to A.

CHAIRMAN TAYLOR asked if it was a general warranty deed without any reservations within it.

MR. TILLINGHAST said correct.

CHAIRMAN TAYLOR said Mr. Tillinghast may be right but did he

really want to extend after acquired interest to those receiving under a quitclaim deed.

MR. TILLINGHAST responded.

> If you as a grantor and I take it you do not want A to have the subsurface rights, you know they may be coming down the pike and you don't want him to get them three years from now when grandpa dies, you can always make an expressly limited conveyance to the surface estate. You can do that under existing law with your warranty deed, you can do it under this bill with a quitclaim deed. You can always make a contrary intent.

CHAIRMAN TAYLOR said that is why he had said a general conveyance would convey any after acquired. The consequence of no limitation in time would be that which he sells today may convey further 20 years later.

MR. TILLINGHAST said the only affect would be any applicable statute of limitations and he did not know how that would work.

SENATOR COWDERY asked if quitclaim deeds have to be recorded to be valid. He asked if somebody had a quitclaim deed from five years ago and only recorded it last week would it be valid.

MR. TILLINGHAST said that depended on whom he wanted to enforce it against. To oversimplify it the answer is yes.

CHAIRMAN TAYLOR said title companies don't like quitclaim deeds.

SENATOR COWDERY said he knew. He said it doesn't have to be recorded.

CHAIRMAN TAYLOR said that was right. It has to be signed it has to be sealed and it has to be delivered. They want it to be recorded and recordation has a lot to do with priorities of claims and time and all kinds of other things that may occur in the intervening period. It is wise to record them promptly but it is not required. It is valid against the person that gave the property on a quitclaim deed because of their notarized signature. They conveyed it so they cannot claim an interest in the property anymore but there may be a multitude of others that have found claim on the land in the intervening period.

CHAIRMAN TAYLOR was concerned about the aspect of after acquired interest. He did not mind helping Sealaska solve their problem but did not want to set something in state law that could have unintended consequences in the future. He was especially concerned they were not providing the same level of opportunity

to those people who acquired title under state law.

MR. TILLINGHAST reiterated they were not creating any problem that did not exist with respect to all conveyances done by warranty deed. With this legislation that issue is now going to apply to conveyances by quitclaim deed. As always the general rule will apply whereby if the people involved want to manifest the contrary intent they can always do it in the document.

MR. TILLINGHAST said he was speaking for the attorney general and was uncomfortable doing that, in terms of not applying the bill to the state and political subdivisions. The state felt because its situation is unique and their rights often come in "dribbles and drabs" this legislation would create a problem for the state different not only in degree but different in kind from private grantors and grantees. He said the committee might feel differently and obviously that exemption did not come from Sealaska.

CHAIRMAN TAYLOR said he assumed the agencies said they had sold people property but do not necessarily want to give them additional benefits because the state received additional benefits. He understood there might be times when it would be a wise decision on the part of the state not to have additional benefits automatically revert over to the property owner. It is a much more complex question than it first appears when these issues come up.

MR. MERRELL said while they presently have some of these same problems with warranty deeds it is much clearer when a person gives a warranty deed it is that person's intent to give away the interest they have or would acquire in the future. That is the law. With a quitclaim deed that intent is not as clear. Parties, particularly interfamily, have a tendency to sort of flip around quitclaim deeds to interest in real property many times. In a situation like this where they are not sure the bill is going to apply retroactively or not, it is going to raise some horrible questions and title issues for people who end up wanting to sell this property. They will come to the title company for an exam and there will be a mess because of the question of the interplay in the after acquired title.

CHAIRMAN TAYLOR asked Mr. Merrell to clarify that in writing and send it to the committee. He wanted to understand that problem. He did not want to pass a law to help Sealaska and at the same time have the people in the title business writing up exceptions to title that resulted from after acquired interest from the state. He did not want bankers to get cold feet on a transaction because they cannot get anything other than a quitclaim deed from the state. The state and municipalities do not grant by warranty deed they all grant by quitclaim deed forms. He wants to see a

tremendous amount of state land sold and does not want those owners to end up having clouded titles because of this after acquired interest clause.

MR. MERRELL said he would be happy to send some scenarios but the one Chairman Taylor mentioned with the 1/8th interest with grandpa and cousin A is an example of a situation where the title company cannot be sure what the parties intent was and therefore will take an exception. If all the cousins get together later and decide they want to sell that piece of property or borrow money against it that is going to show up as an exception on the title report.

CHAIRMAN TAYLOR said it would be cleared up by the passage of this law.

MR. MERRELL said he was not sure that it would because the question still exists whether Chairman Taylor's quitclaim deed to cousin A in the past was intended to pass title of the subsurface estate that grandpa gave him by operation of law later through his will. "I'm not so sure that I'm willing to say that a quitclaim deed in such circumstances does pass after acquired title."

CHAIRMAN TAYLOR thought with the passage of this law it would.

TAPE O2-07, SIDE B

MR. MERRELL said he thought Chairman Taylor was telling him by the way he posed the question that really isn't his intent and he really did want to keep grandpa's potential oil bonanza himself. Chairman Taylor would end up suing his insured to preserve whatever that right was.

CHAIRMAN TAYLOR said the insured would defend by saying the Senate Judiciary Committee changed that law. When he gave up that quitclaim deed he gave up any after acquired interest that he might receive just as if he had done it by warranty deed. That doesn't belong to him anymore even though grandpa wanted him to have it, that just automatically moves over to the cousins. That is their oil field now.

MR. MERRELL said in spit of the law he was not sure he would be willing to go that far.

CHAIRMAN TAYLOR asked if he would still want to see some level of intent. He said there is no level of intent that has to be shown by Sealaska in its desire to convey a portion of the subsurface right, their easement. Sealaska carries all of those rights and wishes to only convey a small part of them.

MR. MERRELL said there would be a manifestation of their intent with the easement document showing they were trying to give that easement away.

CHAIRMAN TAYLOR asked where it said Sealaska would be giving only an easement right and not the full after acquired, which is the full subsurface.

SENATOR DONLEY said this was pretty complicated. He suggested it would be better to hold the bill over and allow individual members to talk with individuals about it.

CHAIRMAN TAYLOR said Senator Donley was right. He would be talking with Mr. Merrell and Mr. Tillinghast about the bill. The committee would hold the bill to work out these questions and he would bring it back up in committee.
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#SB 331

SB 331-DISTRICT COURT JURISDICTIONAL AMOUNT

SENATOR THERRIAULT, SB 331 sponsor, informed the committee SB 331 was introduced to clarify an issue brought to his attention with regards to the jurisdictional limits for district court. Currently in the State of Alaska AS 22.15.031 on page 1, line 7 of the bill reads; for the recovery of money or damages when the amount claimed exclusive of costs, interest, and attorney fees does not exceed $50,000. He said it is unclear whether that is $50,000 per case or $50,000 per defendant.

> What this has the result of causing to happen is, if you are out say along the Richardson Highway or other highways in the more sort of remote areas of the State of Alaska, if you want to assure yourself that you can get to the upper jurisdictional limits you have go into one of the urban areas and file your case in Superior Court. It's more expensive for the court system; it's twelve jurors instead of six. And I think it puts those people out in the more rural areas at a little bit of a disadvantage as far as whether they can have a trial take place in the area that they live and whether they can have it then judged by their peers or jurors selected from the community in which they live.

SENATOR THERRIAULT worked on this with the court system. Emails were sent to different judges asking questions about this and a number of justices came back and said there is a question that perhaps did need clarification. He spoke to Chairman Taylor to get more information on exactly how it works. He said perhaps he

should have paid a visit to Chairman Taylor, being a former district court judge, before he introduced the bill.

He understood the court system is willing to say there is a zero fiscal impact.

SENATOR DONLEY said he thought it would save some money.

CHAIRMAN TAYLOR said he supported the bill. He had always supported expansion of district court jurisdiction because it is an anachronism. He would like to get rid of district courts altogether and make them superior/district so they could better utilize the judicial talent around the state. People ought to be fully authorized when sent to towns and cities to handle any case and not be constrained by judicial jurisdictional levels.

MR. DOUGLAS WOOLIVER, Administrative Attorney for the Alaska Court System, stated they did not have any objection to SB 331. He checked with presiding judges and individual superior court judges and district court judges from all the districts. The court did not have any objection one way or the other. This would affect very few cases. He said he talked to Judge Weeks in Juneau who thought he remembered a case about twelve years ago that might have fallen into this category but there are not very many. Some judges in Anchorage and Fairbanks know there are cases with a handful of defendants this could affect but they are really looking at a small number of cases every year.

To the extent there is any confusion about whether it is $50,000 per case or $50,000 per defendant, his general understanding has always been per case. At least one judge told him the statute isn't clear and this bill clears it up.

CHAIRMAN TAYLOR gave a scenario where he brought suit against his neighbor and guessed the damages were $40,000. At the trial a jury of six people said he did not calculate damages correctly. The jury said the damages were really $75,000 and the judgment is for $75,000. He asked if that judgment could be challenged and limited to $50,000 because that was the jurisdiction of the court.

MR. WOOLIVER said that is correct.

SENATOR DONLEY said the way it works judgment is good for up to the jurisdictional limit of the court.

MR. WOOLIVER said that is correct. Any cases that are the least bit marginal would want to go to the court of general jurisdiction.

SENATOR THERRIAULT disclosed that this issue was brought to his

attention because of a case his wife's law firm is handling. He had made sure that any change in the law would not impact that case even though it is under appeal.

SENATOR DONLEY moved SB 331 from committee with the zero fiscal note and individual recommendations. There being no objection, the motion carried.
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CHAIRMAN TAYLOR adjourned the meeting at 2:30 p.m.