

ALASKA STATE LEGISLATURE
SENATE JUDICIARY COMMITTEE

April 24, 2002
1:44 p.m.

MEMBERS PRESENT

Senator Robin Taylor, Chair
Senator Dave Donley, Vice Chair
Senator John Cowdery

MEMBERS ABSENT

Senator Gene Therriault
Senator Johnny Ellis

COMMITTEE CALENDAR

CS FOR HOUSE BILL NO. 281(JUD)

"An Act relating to civil liability for providing alcoholic beverages to a person under 21 years of age; and providing for an effective date."

MOVED CSHB 281(JUD) OUT OF COMMITTEE

SENATE BILL NO. 309

"An Act relating to actions to quiet title to, eject a person from, or recover real property or the possession of it, and to acquisition of real property by adverse possession; and providing for an effective date."

HEARD AND HELD

SENATE CS FOR HOUSE BILL NO. 405(JUD)

"An Act relating to the prosecution of criminal offenses committed on or against aircraft owned or operated by the state or ferries and other watercraft owned or operated by the state; and providing for an effective date."

MOVED SCS HB 405(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 375 am

"An Act making corrective amendments to the Alaska Statutes as recommended by the revisor of statutes; and providing for an effective date."

MOVED SCS HB 375(JUD) OUT OF COMMITTEE

SENATE BILL NO. 159

"An Act relating to retention elections for judges of the court of appeals."

SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

HB 281 - See Labor and Commerce minutes dated 3/21/02.
SB 309 - See Labor and Commerce minutes dated 3/5/02 and 4/11/02.
HB 405 - See Transportation minutes dated 4/9/02.
HB 375 - See Judiciary minutes dated 4/15/02.
SB 159 - See State Affairs minutes dated 5/05/01.

WITNESS REGISTER

Representative Kevin Meyers
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Sponsor of HB 281

Cindy Cashen
Mothers Against Drunk Driving
Juneau, AK
POSITION STATEMENT: Supports HB 281

Lindy Stoops
Youth in Action
No address provided
Juneau, AK
POSITION STATEMENT: Supports HB 281

Michael Keggy
Youth in Action
No address provided
Juneau, AK
POSITION STATEMENT: Supports HB 281

Anne Carpeneti
Assistant Attorney General
Department of Law
PO Box 110300
Juneau, AK 99811-0300
POSITION STATEMENT: Answered questions about HB 281

Pam Finley
Legislative Affairs Agency
Legislative Legal and Research
Services
State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Explained the provisions of HB 375

Mr. Jon Tillinghast
Simpson, Tillinghast, Sorenson and Longenbaugh
One Sealaska Plaza
Juneau, AK

POSITION STATEMENT: Supports SB 309, particularly Section 1

Mr. Russell Dick
Natural Resource Manager
Sealaska Corporation
One Sealaska Plaza
Juneau, AK

POSITION STATEMENT: Supports SB 309, particularly Section 1

Mr. Jim Cantor
Assistant Attorney General
Department of Law
1031 W 4th Ave., Suite 200
Anchorage, AK 99501-1994

POSITION STATEMENT: Stated that DOTPF opposes SB 309 and suggested including a 15 year statute of limitations

ACTION NARRATIVE

TAPE 02-21, SIDE A

Number 001

CHAIRMAN ROBIN TAYLOR called the Senate Judiciary Committee meeting to order at 1:44 p.m. Senators Donley, Cowdery, and Chair Taylor were present. The committee took up HB 281.

#HB281

HB 281-CIVIL LIABILITY FOR PROVIDING ALCOHOL

REPRESENTATIVE KEVIN MEYERS, sponsor of HB 281, explained that under HB 281 an adult who knowingly furnishes alcohol to a person under age 21 may be held civilly liable for the results and damages. Under current statute, only those with a liquor license can be held civilly liable. This bill holds the general public to a standard similar to that for licensees. The key word in HB 281 is "knowingly." The intent of this bill is to go after those adults who sit in parking lots of liquor stores on weekends to purchase alcohol for minors and get paid by the minors or the adult who willingly purchases alcohol for minors. HB 281 will do three things: it will deter adults from furnishing alcohol to minors; it will reduce underage access to alcohol; and it provides recourse to victims' families. He told members that the main reason he is going forward with this legislation is a

tragedy that occurred last July in which three teenagers and a police officer died. He said the bill passed the House unanimously. He asked committee members to support the bill.

SENATOR DONLEY pointed out the only fiscal note was prepared by the House Labor and Commerce Committee and asked if any of the departments have prepared a fiscal note for the bill.

REPRESENTATIVE MEYER said there were no other fiscal notes and that he does not anticipate any costs to the state.

CHAIRMAN TAYLOR commented that he has seen about four or five bills come out of the House Judiciary Committee that would provide immunity from negligent conduct and the damages resulting from that conduct for various groups. He asked Representative Meyer, "You realize that these are criminal acts that we're talking about?"

REPRESENTATIVE MEYER answered affirmatively.

CHAIRMAN TAYLOR asked if there is some reason why the same standards in the other bills, i.e. gross negligence, reckless, intentional, are not being used in HB 281.

REPRESENTATIVE MEYER asked if Chairman Taylor was asking why the bill contains a knowingly standard versus criminal negligence.

CHAIRMAN TAYLOR said HB 281 contains a knowingly standard but only applies to private persons, however when it comes to a business, the standard is strict liability.

REPRESENTATIVE MEYER said that is correct and that the committee wanted the standard to be higher for the general public versus license holders. Committee members had a lot of discussion about the issue of whether an adult would be held liable if a minor got a glass of champagne at a wedding reception, for example. He said the key word is "knowingly," which is hard to prove so it would have to be obvious that the adult knew that the minor was underage. He said his intention is to target adults who wait in parking lots for the specific purpose of purchasing alcohol for minors for a fee so the standard is a little higher than it would be for a package store.

CHAIRMAN TAYLOR said that requiring a knowingly standard will make it difficult to prove. He then took public testimony.

MS. CINDY CASHEN, representing Mothers Against Drunk Driving, said there are three types of people who provide alcohol to

minors: chronic alcoholics who purchase alcohol in exchange for money or alcohol of their own; friends or family; and sexual predators whose goal is to cause impaired judgment in a teenager. The last two are more common than many realize. These people need to be aggressively discouraged through laws such as HB 281. Contributing to a minor today results in a small fine with perhaps some jail time. HB 281 would make selling to minors a big deal. HB 281 sends the message to youth that they are cared for and that the state will pursue someone who was the root cause of a senseless tragedy.

MS. CASHEN said it makes no sense for Alaska to prevent restorative justice for those who suffer severe and tragic consequences from the result of those persons who supply alcohol to minors. MADD believes Alaskans want this law and needs this law for our children if not for ourselves.

MS. LINDY STOOPS, representing Youth in Action (a MADD-based program), said many people do not realize the consequences of providing alcohol to people under the age of 21. She believes it is very easy for minors to get alcohol in Juneau and that this bill will make people realize that the consequences of buying alcohol for minors are serious.

MR. MICHAEL KEGGY, representing Youth in Action, said he has seen a lot of people who drink and drive in Juneau. He has experienced incidences with alcohol, some in his family, that have affected his life and the lives of those around him.

There being no further testimony, SENATOR DONLEY moved CSHB 281(JUD) from committee with individual recommendations.

CHAIRMAN TAYLOR announced that without objection, the motion carried. He then noted the committee would take up HB 405.

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#HB405

HB 405-CRIMES ON OR AGAINST STATE VESSELS/PLANES

CHAIRMAN TAYLOR informed members that he had a committee substitute prepared as well as a concurrent resolution to address the title change.

SENATOR DONLEY asked Representative Meyer if he approves of the committee substitute.

REPRESENTATIVE MEYER said he does.

SENATOR DONLEY moved to adopt Version C (Luckhaupt 4/16/02) as the Senate Judiciary committee substitute to HB 405.

CHAIRMAN TAYLOR announced that without objection, Version C was before the committee.

REPRESENTATIVE MEYER, sponsor of HB 405, informed members that the only change made to Version C is that state-owned aircraft was added. He explained that HB 405 gives the state jurisdiction over state-owned watercraft and aircraft traveling outside state waters. He introduced this legislation because recently an Alaska Superior Court judge dismissed a prosecution for sexual assault that occurred on a state-owned ferry in Canadian waters. He stated:

Last year a young woman, 16 years old, was sexually assaulted when she was on the Alaska ferry, Matanuska, en route from Seattle to Ketchikan. The ferry was in Canadian waters at the time of the assault. The district attorney in Ketchikan presented the case to the Grand Jury there, and the Grand Jury returned an indictment for one count of sexual assault in the first degree and one count of sexual assault in the second degree, and four counts of misdemeanor assault. Unfortunately the court found that there was no statutory authority for the State of Alaska to prosecute the crime, even though the victim was an Alaskan and it happened on an Alaskan owned state ferry. Under federal maritime law, the United States government has jurisdiction over crimes that occur on U.S. vessels in Canadian waters but the dismissal by the state court is of concern because the crime is unlikely to be prosecuted by the federal government and certainly not by the Canadian government. The federal government doesn't usually pursue smaller crimes, even though sexual assault is not a smaller crime, and the Canadian government has very little interest in pursuing a crime that occurred on the Alaska owned ferry system to a U.S. citizen. So, I believe it's prudent that we pass this law that specifically gives the State of Alaska the power to prosecute cases like this that occur on our state-owned watercraft and now aircraft.

This problem is not going to go away, Mr. Chairman. Just as recently as in December, we had an incident where a passenger attacked two crewmembers with a broken vodka bottle and caused some injury to the

crewmembers. The passenger has since filed a motion to dismiss based upon the dismissal of this case with the sexual assault. Also this occurred on the state ferry system in Canadian waters. This bill is a simple bill but it provides a solution to a very serious problem. The bottom line, to summarize what we're trying to do here, is that if the Canadian government does not want to prosecute criminal activity on our state-owned vessels, and the federal government doesn't have any interest, then the state should have the right and the option to do so and this bill will allow that. Thank you.

SENATOR DONLEY said that he supports this legislation but is flabbergasted because he assumed the federal government did not step in and prosecute that case.

MS. ANNE CARPENETI, representing the Criminal Division of the Department of Law, said it is her understanding that the United States Attorney's Office is reviewing the case. No charges have been filed yet, to her knowledge.

SENATOR DONLEY asked what the time frame is.

MS. CARPENETI said she is not familiar with the federal statute of limitations but she would find out.

SENATOR DONLEY said he thinks it's dreadful that this happened on a state ferry and no federal decision about whether to prosecute has been made, given there was a grand jury indictment under state law.

REPRESENTATIVE MEYER said he has written letters to Alaska's congressional delegation about the matter.

MS. CARPENETI said the federal statutes are different and she is not familiar with federal screening rules.

CHAIRMAN TAYLOR said the bill was amended to include state-owned aircraft, but he is concerned that by limiting the bill to only those aircraft owned or operated by the state, the question remains open of who has jurisdiction and who will prosecute on an aircraft owned or operated by the state flying over Canadian air space. He said he would like Alaska's long-arm jurisdiction to be as long as possible for the protection of Alaska's citizens.

MS. CARPENETI commented that the bill was originally drafted to address a particular problem on a state ferry. She explained that traditionally, criminal jurisdiction of a state is based on territorial considerations. The theory behind HB 405 is that an

Alaska ferry or aircraft is "like a little piece of Alaska going through Canadian waters." She noted if the state expands jurisdiction too far, it is liable to be subject to a due process claim and dismissal so the theory was to address the current problem and consider how to handle future situations under due process considerations to expand the program.

SENATOR DONLEY moved SCS CSHB 405(JUD) from committee with individual recommendations, as well as its accompanying concurrent resolution.

CHAIRMAN TAYLOR announced that without objection, SCS CSHB 405(JUD) moved from committee with its accompanying resolution.

SENATOR DONLEY asked Representative Meyer for a copy of the correspondence he sent on this subject and then moved that the Senate Judiciary Committee send a letter to the U.S. Attorney's Office expressing its concern and support for examining this case in an expedited manner.

CHAIRMAN TAYLOR announced that with no objection, Representative Meyer would work with staff to draft such a letter.

REPRESENTATIVE MEYER said he would be willing to do so.

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#HB 375

CSHB 375(JUD)-REVISOR'S BILL

SENATOR DONLEY reminded members that the committee held a hearing on CSHB 375(JUD) the previous week.

MS. PAMELA FINLEY, Revisor of Statutes, Alaska State Legislature, said she would like the committee to focus on Section 2 because it is misleading in that it appears to change the statute of limitations. She explained that last year a floor amendment changed the statute of limitations but did not change this related piece. Section 2 is an attempt to amend the action that was taken via the floor amendment.

MS. FINLEY said before the floor amendment was adopted, the statute of limitations for sexual abuse and sexual assault was defined in terms of specific criminal statutes. The statute of limitations was three years for civil actions. The floor amendment repealed and reenacted it so there is no statute of limitations for felony sexual abuse or sexual assault and it's not defined in regard to any criminal statutes. As a result, the question then becomes what applies to misdemeanor sexual abuse and sexual assault offenses. The statute of limitations was three

years but now it is not covered at all. Because no special statute of limitations exists, she understood that to mean the standard two-year tort statute of limitations applies. If the crime occurs when the victim is a minor, the statute of limitations does not start to run until the victim hits majority. Section 2 is a subset of that so that if the victim is under 16, special provisions apply, the main one being the discovery provision on page 2, lines 9-16.

MS. FINLEY said when this statute was originally written, the statute of limitations was three years. Then when it changed to two years for misdemeanors and no limitation for felonies, this was not amended.

SENATOR DONLEY expressed confusion and said it didn't seem there was any affirmative act of the Legislature to change the statute of limitations to two years, it's just that the issue was ignored so that the existing presumption of two years for everything else then applied.

MS. FINLEY said the floor amendment did not specify that the statute of limitations for misdemeanors would become two years but that is what happened.

SENATOR DONLEY said he believes a strong case could be made to do just the opposite of what CSHB 375(JUD) does, and that is to say that the intent of the Legislature was not to shorten the statute of limitations for misdemeanor sexual abuse offenses, but to leave it as it was. He noted the revisor's bill could actually incorporate that as the correct intent of the Legislature.

MS. FINLEY said to do that, the underlying statute of limitations would have to be rewritten. She said she is reluctant to do that because the sponsor of that floor amendment showed no inclination to do that and the bill had been through the House Judiciary Committee.

SENATOR DONLEY asked who sponsored the floor amendment.

MS. FINLEY answered Representative Berkowitz. She said she put Section 2 in because she felt it was her duty to deal with the issue but Section 2 could be removed from the bill.

SENATOR DONLEY said he would prefer to take Section 2 out of the bill.

CHAIRMAN TAYLOR said that taking it out of the bill will leave the statute of limitations at three years. However, it could be

argued that it could be two years because it is a gray area.

MS. FINLEY said she is not sure what a court would do. She assumed if the victim is not 16 or under, the court would have to conclude that the statute of limitations is two years for a misdemeanor sexual assault because the issue is basically when the clock starts running.

CHAIRMAN TAYLOR asked if this is for civil purposes.

MS. FINLEY said it is. She said she would be perfectly happy to remove Section 2 but hopes someone will deal with the question because it is problematic.

SENATOR DONLEY asked Ms. Finley to give him a copy of the original floor amendment and information describing the inconsistency so that he could work on it.

MS. FINLEY agreed.

SENATOR DONLEY moved to delete Section 2 of CSHB 375(JUD) because he does not support shortening the statute of limitations for these sorts of crimes.

CHAIRMAN TAYLOR announced that with no objection, the motion carried. He then thanked Ms. Finley for her great work as she does a high quality job that often goes unnoticed.

SENATOR DONLEY agreed and said Ms. Finley is one of the best attorneys in the Division of Legal Services.

There being no further questions, SENATOR DONLEY moved SCS CSHB 275(JUD) from committee with individual recommendations.

CHAIRMAN TAYLOR announced that with no objection, SCS CSHB 375(JUD) will move to the next committee of referral as soon as it is prepared.

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#SB309

SB 309-ADVERSE POSSESSION

SENATOR THERRIAULT said he agreed to introduce SB 309 but it pertains to an area of statute that he has not dealt with before. He noted the committee discussion to this point has raised some interesting public policy calls. He said he is not an expert in this area but others are here to testify on the legislation.

MR. RUSSELL DICK, resource manager for the Sealaska Corporation, introduced Mr. John Tillinghast, legal counsel for Sealaska Corporation and said they would address any technical/legal issues with this bill.

MR. DICK said that Sealaska is very supportive of SB 309, which will restrict claims of adverse possession against private property. Sealaska Corporation is the regional corporation under the Alaska Native Claims Settlement Act and the largest private property landowner in Southeast Alaska. Alaska Native Corporations are the largest private landowners in Alaska in general. Sealaska has talked with other regional corporations who indicated their support for SB 309 as well.

MR. DICK explained that lands conveyed to the Native corporations serve two fundamental purposes: to settle Alaska Natives aboriginal claims and to meet the social, cultural and economic needs of Natives, hence these lands are the foundation of Native people's existence. Congress imposed a prohibition of adverse possession claims as long as these lands remained in an undeveloped state. Sealaska felt that was probably good policy when ANCSA was first created, but many did not recognize how expansive these land bases would become in the future. ANCSA didn't consider the degree of development on these lands nor did it consider the burden that it places on having to actively police these large, remote landholdings. Sealaska alone has 290,000 acres of land throughout Southeast Alaska with an entitlement expected to reach upwards of 350,000 acres. The burden of having to police those lands doesn't serve any public purpose and seems to Sealaska to be an economic waste. In addition, Sealaska has a real estate department to purchase non-ANCSA lands. Those lands do not maintain the same prohibition of adverse possession claims so Sealaska must deal with that as well.

MR. DICK said that Alaska has always seemed to respect private property rights, as there is so little private property in Alaska: the doctrine of adverse possession seems inconsistent with that recognition. The state has made itself immune to adverse possession claims due to the expansive nature of its lands and the economic burden associated with having to police them. Sealaska, as a private property owner, is asking for those same protections.

CHAIRMAN TAYLOR asked if any state allows adverse possession of state land.

MR. JON TILLINGHAST said to the best of his knowledge, every state prohibits its land from being taken by adverse possession, as does the federal government.

CHAIRMAN TAYLOR commented, "And that is because every state has either the Fifth Amendment that the federal government has or has an amendment identical to it that the state cannot take land - the king cannot take land from its citizens without a payment of just compensation. Right?"

MR. TILLINGHAST said he understood the question to be whether any state allows land to be taken from the king. They do not. He thought the policy justification for that is that the state and federal government own large parcels of remote land and it would be too much of a burden on the public fist to require the government to patrol its own lands.

CHAIRMAN TAYLOR said it is also part of the Fifth Amendment that the king is not allowed to take by adverse possession either. The king must take land by eminent domain and pay full, fair and true value and use a formal process. He asked why the state should afford the same privilege to a private landowner.

MR. TILLINGHAST responded:

Two answers. First, we are also firm believers in state and private land being treated equally and if you were going to elevate the one over another, frankly my ideology suggests that you elevate private land over public but we're not asking for that, we're just asking for equal treatment. My understanding is that state does take land from private people by adverse possession.

CHAIRMAN TAYLOR said he just learned that the other day and he does not believe the state or a city or borough should be able to "take private land by road grader." He explained:

They're taking a ten-foot wide easement and every year when they grade the road they move a little further out in the guy's yard. The next thing you know the street's 25 feet wide. They never purchased it. They never condemned it and took it. They never paid a dime for it and here the city or the state is enforcing some right of adverse possession through prescription, some sort of prescriptive right, because 'well we've used it all of these years so now it's ours.' I think that is totally backwards and we should not tolerate it.

MR. TILLINGHAST replied that during the earlier hearings on this bill, the Alaska Department of Transportation and Public Facilities (DOTPF) opposed it because it wanted to preserve its right to take people's private property without paying for it. Sealaska was shocked.

CHAIRMAN TAYLOR said he wanted that on the record because he was given that information yesterday and he too was stunned. That is a major shift in real property law in this state and he is thinking about drafting legislation to address the problem.

MR. TILLINGHAST remarked that SB 309 will prevent anyone from doing that. He said the only justification for the doctrine of adverse possession in Alaska Supreme Court cases is the theory that if you have an idle capitalist doing nothing with vacant land, and an industrious worker is willing to squat on it and grow corn, it is good public policy to let the squatter take the land. He said in his mind, it is none of the state's business what a private property owner does with his property. He said he does not believe any other state has done what SB 309 proposes to do but Alaska has always been proud that it does not do things the same way as other states.

MR. TILLINGHAST asserted that ANCSA corporations have enormous holdings in remote places and the cost of policing those lands to make sure that squatters are not living on them is huge. It might be a cost worth bearing if it served a valid public purpose but it does not. Squatters should not be rewarded by the state for living on private land. He said if the state wants to send a clear signal that it respects private property rights, it should enact SB 309.

CHAIRMAN TAYLOR recounted a case he had that went to the Supreme Court but was dismissed. He represented a couple that owned a small house in Wrangell for over 50 years. The couple had loaned money to their nephew to buy an adjoining piece of property. The state came along and widened Evergreen Ave., which they lived on. The state did a survey for right-of-way purposes and found the lines for all of the lots on the street to be incorrect. The nephew's lot was a pie shaped piece that took in the couple's sidewalk, garden and a corner of their house. The neighbors had a new survey done of the whole neighborhood and "each guy handed the other guy a quit claim deed" so that they owned their original pieces of property, except the nephew.

TAPE 02-21, SIDE B

CHAIRMAN TAYLOR then explained the nephew insisted the couple pay him for the corner of their property at close to the amount the couple had loaned him. If SB 309 had been enacted, the couple would have to pay to the nephew, from the day they took possession, full market value at the current appraisal plus interest plus the cost of an appraisal. In addition, the couple would have to pay in a short time frame otherwise ownership would revert to the nephew. Chairman Taylor said he was able to find U.S. Forest Service aerial photographs of the land in 1954 and, coupled with reliable testimony, was able to establish by adverse possession that the couple had occupied the area of the lot with the garden.

MR. TILLINGHAST said Chairman Taylor interpreted the legislation correctly and drew a distinction that the bill itself draws. Section 1 is the "anti-squatter act," which is aimed at the bad-faith guy who puts up a shack on land with no legitimate claim or title. Section 2 involves those situations in which both sides are proceeding with some good faith, or certainly the adverse possessor is. The possessor has some claim of title but something went wrong, such as an erroneous survey. The bill proposes to keep the doctrine of adverse possession in those instances because that's where the doctrine does have a legitimate current use. He suggested in a situation where the adverse possessor is making a claim under claim of title in which the couple had a deed but the survey was wrong, the allocation of rents and payments ought to be discretionary with the court. He noted in the case Chairman Taylor described, it would be unfair to make the couple pay.

CHAIRMAN TAYLOR commented that most folks in Wrangell leased before the 1970s and everything was done on contract of sale, which was not recorded. He noted that the couple he represented would not have been able to comply with some of the provisions of Section 2(a)(1), in which the possessor would need "(C) an instrument under which the possessor claimed title was recorded at the time the possessor's claim of title began;".

MR. TILLINGHAST said the intent of SB 309 is to make major changes to the squatter provision in Section 1. It was not Sealaska's intent to unduly complicate or change the situations Chairman Taylor is talking about. He said it may well be that some of the items in Sections 2 and 3 should be removed and that it is healthy to take a critical look at the details of Sections 2 and 3 because that has not happened yet. To this point, the debate has been about Section 1 with the state arguing that it still wants to take people's land for highways.

CHAIRMAN TAYLOR said he is willing to work with Mr. Tillinghast on Sections 2 and 3. He noted he has some sympathy for a vast landowner who must patrol for squatters, but Congress has already given protection on undeveloped land. He said he owns undeveloped remote acreage and gets to that property once every year to make sure no one has put a cabin on it. He believes that is part of the responsibilities of a diligent landowner. He said he is not ready to rewrite the property laws on adverse possession yet but he is willing to look at the other provision. Chairman Taylor noted that he has hired Mike Wright, an attorney, as committee staff until the end of the session so Mr. Wright will be available to provide additional effort in this regard.

SENATOR THERRIAULT commented that his wife had a pro bono case that was similar to the one Chairman Taylor related so he is aware that there are instances in which the adverse possession doctrine has proved useful.

CHAIRMAN TAYLOR asked Jim Cantor to testify.

MR. JIM CANTOR, Assistant Attorney General, Department of Law, Transportation Section, informed members he was testifying on behalf of the Department of Transportation and Public Facilities (DOTPF).

CHAIRMAN TAYLOR noted, for the record, that he discussed this legislation for an hour the previous day with Assistant Attorney General Bill Cummings.

MR. CANTOR informed members that DOTPF opposes SB 309 as it raises two areas of concern. The first is with accommodation between neighbors, which is more of a problem in rural areas. For example, a maintenance crew may show up to deal with a drainage problem and work with the landowner to come up with a solution. The solution may inadvertently or intentionally involve a pipe that crosses into another piece of property. Sometimes the adjoining landowner has given explicit or tacit approval that is not recorded. Time then passes, the adjoining landowner has moved on and the new landowner looks at SB 309 and sees a way to collect money on what was actually done permissively. He noted there have been many situations where crews in the field work with landowners and things are done permissively. The current statute of limitations is 10 years, which would be changed by SB 309, so that a cause of action could exist 30 years later, after all memory of the arrangement is gone. He noted this situation primarily arises with drainage issues and driveway linkage issues.

In regard to Chairman Taylor's comment about the movement of road right-of-ways, MR. CANTOR pointed out that gravel roads tend to drift as they are maintained. DOTPF now has a program that local governments have pushed to put asphalt on gravel roads and those roads are eventually turned over to the local governments. He said the initial objection to that program was that all roads would have to be surveyed. The communities' response was that they knew the roads were there so they encouraged the state to put the asphalt on them. Essentially the communities did that knowing adverse possession claims could be made on the areas where the road had drifted.

MR. CANTOR noted that SB 309 has no statute of limitations. He recounted that when he was in law school, he bought a house in Upstate New York. Before he signed the papers, the lawyers told him the title had a flaw, that being that a group of investors bought a large part of the parcel during the Civil War. They disappeared and no heirs came forward. They assumed the matter was cleared up by adverse possession by the 1870s. He signed the papers but, under SB 309, he would have had to worry about record interests back to the Civil War. Those interests could have been resurrected. He suggested, on behalf of DOTPF, changing the statute of limitations to 15 years to give property owners a little more certainty as to who owns the land.

CHAIRMAN TAYLOR asked Mr. Cantor to forward to his office the legal theories and precedent cases upon which the state bases its arguments that it, through inverse condemnation, takes land over time because a road grader drifts to the outside corner of a road each time it is graded so that after 15 years the state owns the property that a private property owner is paying taxes on. He said Mr. Cummings said some of the judges in this state allow the state to acquire private property in that way.

MR. CANTOR said he was not versed in the names of those cases but would look into them and that the theory used in those cases is the statute of limitations on inverse condemnation.

CHAIRMAN TAYLOR said he is aware that is a positive way for the state to acquire land at no cost but he does not feel it is appropriate.

MR. TILLINGHAST said he realizes SB 309 has raised complex issues, particularly Sections 2 and 3. He asked Chairman Taylor if the committee would be comfortable allowing Section 1 to move out of committee so that at least the private landowners of the state can stop spending money chasing after squatters.

CHAIRMAN TAYLOR replied:

I'm concerned about some of the ways in which the state itself is using that. We do have properties we have sold under the state sales. We have now retaken some of those. There's adverse possession claims within those too. I just have a general concern about that entire body of law at this point, Jon, and I'd like to instead hold the bill, work with you, and work with the state to see if we can come up with some additional alternatives. A whole batch of this West was settled by squatters, most of Oklahoma - they call their football team the "Sooners" because they got there sooner than they were supposed to and they squatted on that land. We used to allow squatters in this state - we called them homesteaders. Go out and squat on any piece of land you can and make a house out of it, make a cabin, clear a little bit of land - if you live there, we'll give you 160 acres. That's what the federal government did so I think there's a whole body of law and reasons why we have something like the adverse possession laws and I really want to think about this one a little further before we go forward with it. Thank you very much Jon, I appreciate it.

SENATOR THERRIAULT said that now that he understands the problems associated with Sections 2 and 3, he would be agreeable to dropping those sections, if that is the Chair's desire. He said knowing that Chairman Taylor is a strong proponent of putting large amounts of remote land in private ownership, he hopes Chairman Taylor can see the benefit of Section 1.

CHAIRMAN TAYLOR said he intends to work on Section 1. He then noted SB 159 was also on today's calendar but Senator Donley asked that it not be taken up at this time. He then adjourned the meeting at 2:56 p.m.

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