

ALASKA STATE LEGISLATURE
SENATE RESOURCES COMMITTEE

April 19, 2002
3:32 p.m.

MEMBERS PRESENT

Senator John Torgerson, Chair
Senator Gary Wilken, Vice Chair
Senator Robin Taylor
Senator Ben Stevens
Senator Kim Elton

MEMBERS ABSENT

Senator Rick Halford
Senator Georgianna Lincoln

COMMITTEE CALENDAR

HOUSE JOINT RESOLUTION NO. 48
Relating to federal land withdrawals.

MOVED HJR 48 OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 358(CRA)
"An Act relating to an optional exemption from municipal property taxes for certain land from which timber is harvested and for certain improvements used in or necessary to the harvest of timber; and providing for an effective date."

MOVED CSHB 48(CRA) OUT OF COMMITTEE

HOUSE BILL NO. 447
"An Act relating to the interest rates that may be charged on loans by the Commercial Fishing and Agriculture Bank."

HEARD AND HELD

PREVIOUS COMMITTEE ACTION

HJR 48 - No previous action to consider.
HB 358 - See CRA minutes dated 4/8/02.
HB 447 - No previous action to consider.

WITNESS REGISTER

Ms. Judy Ohmer
Staff to Representative Pete Kott
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Commented on HJR 48.

Mr. Jeff Jahnke, Director
Division of Forestry
Department of Natural Resources
550 W 7th Ave, Ste 1450
Anchorage AK 99501
POSITION STATEMENT: Supported HB 358.

Mr. Tim Navarre, President
Kenai Peninsula Borough Assembly
144 N. Binkey
Soldotna AK 99669
POSITION STATEMENT: Supported HB 358.

Mr. Dale Anderson
Staff to Representative Mulder
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Commented on HB 447.

Mr. Ed Crane, President
Alaska Commercial Fishing and Agriculture Bank
No address provided
POSITION STATEMENT: Supported HB 447.

Mr. Jerry Weaver, Senior Vice President
Wells Fargo Bank of Alaska N.A. and
Secretary, Alaska Bankers Association
305 W. Northern Lights Blvd.
Anchorage AK 99503
POSITION STATEMENT: Comment on HB 447.

ACTION NARRATIVE

TAPE 02-21, SIDE A
Number 001
#HJR48

HJR 48-TERMINATION OF FED LAND WITHDRAWALS

CHAIRMAN JOHN TORGERSON called the Senate Resources Committee meeting to order at 3:32 pm and announced HJR 48 to be up for

consideration. Present were Senators Wilken, Stevens, Taylor, Elton and Chairman Torgerson.

MS. JUDY OHMER, staff to Representative Pete Kott, said HJR 48 encourages Congress to amend its public lands laws to provide a timely way to return withdrawn land to fuller public use.

Throughout much of the United states, especially the Western states and Alaska, the federal government has withdrawn lands for various reasons. Withdrawn lands are then off limits to other selections and designations such as state's right-of-ways, state selections, mining claims, Native allotments, etc. Many federal withdrawals were for public purposes such as parks and refuges; others were withdrawn to give agencies the flexibility to consider proposed uses of the land; and still others have been withdrawn for seeming arbitrary political purposes. When federal land is withdrawn it is closed until the withdrawal is remove, which in some instances requires an act of Congress. This creates the problem where land remains close to entry even when the original purpose for the withdrawal has been accomplished or has lapsed.

In Alaska many of these federally withdrawn lands have been selected by the State of Alaska in accordance with the Alaska Statehood Act for transfer to become state-owned lands. Some of these lands in withdrawal status have high mineral potential that could benefit the state's economy. Other lands were selected for access corridors. In all cases, these state selected lands cannot be transferred and Alaska loses opportunities.

HJR 48 requests that Congress amend our country's public lands laws so that the land withdrawals sunset in 10 years unless the agency responsible for managing the land provides Congress with a justification.

HJR 48 also requests that Congress require the federal land managing agencies to compile a comprehensive listing of the withdrawn lands under their jurisdictions to include (1) the exact geographical coordinates of the withdrawals, (2) the legal authority for the withdrawal and (3) the document establishing the withdrawal and (4) the proposed disposition of the affected land and file a plan with Congress within one year defining how the withdrawals will be terminated. This requirement would extend to all agencies in the

United States that manage public lands, as a lot of federal departments and agencies are involved in land management, but some are ones that wouldn't immediately come to mind like the Post Office, the Department of Agriculture, the Department of Defense, the Bureau of Land Management, the National Park Service, the Fish and Wildlife Service, etc.

CHAIRMAN TORGERSON said on page 2, line 4 that "several states" are mentioned, but that the resolution wouldn't be sent to them. He asked states that refers to.

MS. OHMER replied that she thought it referred to the western states.

SENATOR WILKEN moved to pass HJR 48 from committee with individual recommendations and the attached zero fiscal note. There were no objections and it was so ordered.

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#HB358

CSHB 358(CRA)-EXEMPTION FROM PROPERTY TAX: TIMBER

CHAIRMAN TORGERSON announced CSHB 358(CRA) to be up for consideration.

REPRESENTATIVE CHENAULT, sponsor, said that HB 358 gives municipalities an additional tool to lower the threat of wild fires on the spruce bark beetle killed forest land by giving the municipalities the option of raising property taxes on roads or other property improvements that facilitate the removal of the beetle killed timber.

The Kenai Peninsula has about 2.2 million acres of timberland and of that a little over 1 million acres are infested with the spruce bark beetle. These areas have been identified as a high fire threat with limited access to firefighting resources.

He said that the Kenai Peninsula Borough tried to adopt a property tax and other plans as part of a beetle mitigation effort, but it was blocked when borough attorneys found that state law would not allow for such breaks. CSHB 358(CRA) simply makes changes to law that would allow the Kenai Peninsula Borough and other municipalities in a similar situation to protect them without having to take on additional tax liabilities. It does not mandate tax breaks but allows the option.

SENATOR ELTON said he was assuming on page 2, line 1, that the municipalities would be the ones to determine what "at risk of being infected by insects" means.

REPRESENTATIVE CHENAULT said that was his assumption, also.

CHAIRMAN TORGERSON said that the Kenai Borough has a forester on staff, but the Forest Service is also right there.

SENATOR ELTON said he was assuming this problem was primarily in the Kenai region.

CHAIRMAN TORGERSON added that the Mat-Su area was also infested.

SENATOR TAYLOR commented that language on page 1, line 10 says, "The municipality may provide that an exemption for land under this subsection applies only to increases in assessed value that result from the timber harvest." He asked how the assessor in the area would show an increase in value because the timber has been removed.

REPRESENTATIVE CHENAULT replied that the increase would occur if the parcel was of such a configuration that they had to build a road into it, for instance. The road would become an improvement.

SENATOR TAYLOR said:

So, the only tax break anybody is going to get is they're going to pay the same amount of taxes they paid the year before or the year before that and they will not have to pay an increased tax because they improved the property by removing the bad timber.

REPRESENTATIVE CHENAULT replied that that was his assessment of it.

SENATOR TAYLOR said he wanted it on the record that harvesting timber can improve the value of property. He remarked, "A unique concept that most people don't realize."

MR. JEFF JAHNKE, Director, Division of Forestry, Department of Natural Resources (DNR) supported CSHB 358(CRA) and said he would answer any question committee members might have.

MR. TIM NAVARRE, Kenai Borough Assembly, said the Assembly supported CSHB 358(CRA) for all the reasons previously stated.

SENATOR TAYLOR moved to pass CSHB 358(CRA) from committee with individual recommendations and its zero fiscal note. There were no objections and it was so ordered.

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#HB447

HB 447-COM FISH & AGRICULTURE BANK INTEREST RATE

MR. DALE ANDERSON, staff to Representative Mulder, said that HB 447 addresses language in AS 45.45 that inhibits the ability of the Alaska Commercial Fishing and Agriculture Bank (CFAB) from serving its mandated purpose. He explained:

Like most states, Alaska has what is commonly called a usury law: the limitation on the rate of interest for certain types of loans, usually small loans. AS 45.45.010 defines a small loan as under \$25,000 and establishes a maximum annual fixed interest rate for such loans at 5% above the Twelfth Federal Reserve District discount rates, currently 2%.

In Alaska, conventional lending institutions, including commercial banks and credit unions, are able to gain exemption from state statutes by means of federal preemption provisions. Because of CFAB's organizational structure as a cooperative bank, it has no such option for exemption. Subject to federal law, the organization cannot charge too much interest. In reality a percentage of the interest collected in excess of its needs is given back to the borrowers. In the past the commercial fishing community has not generated significant demands for small loans. However, because limited entry permits have recently begun trading in the \$20,000 - \$40,000 range, there is a much greater need for small loans.

CFAB's subjectivity to the existing statutes along with the period of lowest financial market rates in over 20 years renders it unable to make significant numbers of small loans to Alaskan residents, opening the potential for a drastic shift of permit ownership demographics. The basic purpose of HB 447 is to insure that CFAB is able to continue serving its Alaskan member borrowers in an efficient manner and equitably compete with other lending institutions.

MR. ED CRANE, President, Alaska Commercial Fishing and Agriculture Bank, said this is a simple issue from their standpoint. He supported HB 447 and said he would answer questions.

MR. JERRY WEAVER, Senior Vice President, Wells Fargo, and Secretary of the Alaska Bankers' Association, said he wanted to make a technical correction in what's been said as to whether or

not Alaska banks are subject to that statute or to the usury limitations on loans below \$25,000. The actual wording to the 1980 Federal Depository Institution Deregulatory Act basically states that:

Interest may not be charged that is 5% above the annual rate of interest charged member banks by the Twelfth Federal Reserve District. However, a loan or a contract that exceeds \$25,000 is exempt from this provision.

In essence that means that the banks making loans in Alaska are subject to the usury statute. They believe it would set a very poor precedent to excuse one of the senior lenders in the state from that usury standard. They don't disagree with the position CFAB is in, in regard to limited entry permit loans, and believe it would be useful to the state to keep the laws consistent and add a short line to the end of HB 447 that says something like: "money under this chapter in connection with extension of credit using the security of limited entry permits."

MR. CRANE said he had an informal legal opinion, dated 1986, on the Deregulatory Act of 1980 and it appears that Mr. Weaver may be reading only part of that law. In addition, by coincidence, it was a former senior vice president of National Bank of Alaska who discussed this at length with him several years ago and explained what is called "the most favored lender" doctrine and how it applies to commercial banks in Alaska and preempts the state usury law. The federal law that is being referred to appears to have a limitation related to business and agricultural loans. He noted:

Empirical evidence over the years has suggested to me that there's some misinterpretation occurring here. The limitations being suggested, frankly, I don't know whether that would be any particular problem or not. I guess I would observe that the reason CFAB seems to, at least in my view, appear so frequently in the legislature is because our statute, AS 44.81, has set forth a business plan, if you will, in stone in a sense, and we operate in a rather dynamic and evolving industry and we have quite consistently found over the years that things have outgrown what the statute says and I frankly hate to see just little limitations thrown in here and there. We're here today because of the fact that the legislature created a platypus and we don't fit anywhere else. At least from that standpoint, I tend to think it's really not a good idea to throw in some additional little limitation for CFAB. I'm not suggesting that it would hinder us.

CHAIRMAN TORGERSON said the banking community is concerned about the loans that they make on the last authority they give [CFAB] for the tourism business and not having the same rules that they do.

MR. CRANE said that some members of that community have been happy to refer applicants to him.

CHAIRMAN TORGERSON said they would hold the bill for a legal opinion.

MR. WEAVER responded that sounds like a very reasonable thing to do.

CHAIRMAN TORGERSON said he didn't want just an opinion from a banker's point of view. He wanted them to actually quote some federal laws that they are trying to get back to.

MR. CRANE suggested checking with Representative Murkowski who had looked into this issue at one point. The applications they cannot entertain tend to be loans for gear or vessel improvements.

SENATOR TAYLOR asked if he foresaw having to make loans where the security of the limited entry permit itself might not be the primary security that they would be looking to.

MR. CRANE replied, "Exactly."

CHAIRMAN TORGERSON said they had to check that out. There being no further business to come before the committee, he adjourned the meeting at 4:00 p.m.