

**ALASKA STATE LEGISLATURE  
HOUSE COMMUNITY AND REGIONAL AFFAIRS  
STANDING COMMITTEE**

May 5, 2004  
5:57 p.m.

**MEMBERS PRESENT**

Representative Carl Morgan, Chair  
Representative Kelly Wolf, Vice Chair  
Representative Pete Kott  
Representative Sharon Cissna

**MEMBERS ABSENT**

Representative Tom Anderson  
Representative Ralph Samuels  
Representative Albert Kookesh

**OTHER LEGISLATORS PRESENT**

Senator Georgianna Lincoln

**COMMITTEE CALENDAR**

CS FOR SENATE BILL NO. 132(RES)

"An Act removing the Old Minto townsite from the Minto Flats State Game Refuge; and authorizing the Department of Natural Resources to convey certain land at the historic Old Minto site to the Native Village of Minto."

- MOVED CSSB 132(RES) OUT OF COMMITTEE

CS FOR SENATE BILL NO. 382(CRA) am

"An Act relating to replat approval; relating to the platting of right-of-way acquired through eminent domain proceedings; and providing for an effective date."

- MOVED CSSB 382(CRA) AM OUT OF COMMITTEE

**PREVIOUS COMMITTEE ACTION**

BILL: SB 132

SHORT TITLE: MINTO FLATS GAME REFUGE & TOWNSITE

SPONSOR(S): SENATOR(S) LINCOLN

03/10/03           (S)           READ THE FIRST TIME - REFERRALS

03/10/03 (S) CRA, RES  
 04/07/04 (S) CRA AT 1:30 PM FAHRENKAMP 203  
 04/07/04 (S) -- Meeting Canceled --  
 04/14/04 (S) CRA AT 1:30 PM FAHRENKAMP 203  
 04/14/04 (S) Moved CSSB 132(CRA) Out of Committee  
 04/14/04 (S) MINUTE(CRA)  
 04/15/04 (S) CRA RPT CS 4DP NEW TITLE  
 04/15/04 (S) DP: STEDMAN, LINCOLN, WAGONER, ELTON  
 04/19/04 (S) RES AT 3:30 PM BUTROVICH 205  
 04/19/04 (S) Heard & Held  
 04/19/04 (S) MINUTE(RES)  
 04/26/04 (S) RES AT 3:30 PM BUTROVICH 205  
 04/26/04 (S) Moved CSSB 132(RES) Out of Committee  
 04/26/04 (S) MINUTE(RES)  
 04/27/04 (S) RES RPT CS FORTHCOMING 5DP 1NR  
 04/27/04 (S) NR: OGAN; DP: LINCOLN, ELTON,  
 04/27/04 (S) WAGONER, SEEKINS, DYSON  
 04/28/04 (S) RES CS RECEIVED NEW TITLE  
 05/03/04 (S) TRANSMITTED TO (H)  
 05/03/04 (S) VERSION: CSSB 132(RES)  
 05/04/04 (H) READ THE FIRST TIME - REFERRALS  
 05/04/04 (H) CRA, RES  
 05/05/04 (H) CRA AT 9:00 AM CAPITOL 124

BILL: SB 382

SHORT TITLE: EMINENT DOMAIN/REPLAT OF BOUNDARY CHANGES

SPONSOR(S): TRANSPORTATION

03/31/04 (S) READ THE FIRST TIME - REFERRALS  
 03/31/04 (S) TRA, CRA  
 04/01/04 (H) TRA AT 1:30 PM CAPITOL 17  
 04/01/04 (H) -- Meeting Postponed to Fri, 4/2/04 --  
 04/02/04 (S) TRA RPT CS 3DP 2NR SAME TITLE  
 04/02/04 (S) DP: WAGONER, COWDERY, THERRIAULT;  
 04/02/04 (S) NR: LINCOLN, OLSON  
 04/14/04 (S) CRA AT 1:30 PM FAHRENKAMP 203  
 04/14/04 (S) Moved CSSB 382(CRA) Out of Committee  
 04/14/04 (S) MINUTE(CRA)  
 04/15/04 (S) CRA RPT CS 2DP 2NR SAME TITLE  
 04/15/04 (S) DP: STEDMAN, WAGONER;  
 04/15/04 (S) NR: LINCOLN, ELTON  
 04/21/04 (S) BEFORE THE SENATE IN THIRD READING  
 04/22/04 (S) TRANSMITTED TO (H)  
 04/22/04 (S) VERSION: CSSB 382(CRA) AM  
 04/30/04 (H) READ THE FIRST TIME - REFERRALS  
 04/30/04 (H) CRA, TRA  
 05/01/04 (H) CRA AT 2:00 PM CAPITOL 124

05/01/04 (H) Scheduled But Not Heard  
05/03/04 (H) CRA AT 8:00 AM CAPITOL 124  
05/03/04 (H) Scheduled But Not Heard  
05/05/04 (H) CRA AT 9:00 AM CAPITOL 124

**WITNESS REGISTER**

JOHN MACKINNON, Deputy Commissioner of Highways & Public  
Facilities  
Office of the Commissioner  
Department of Transportation & Public Facilities  
Juneau, Alaska  
POSITION STATEMENT: Discussed CSSB 382(CRA) am.

**ACTION NARRATIVE**

**TAPE 04-18, SIDE A**  
Number 0001

**CHAIR CARL MORGAN** called the House Community and Regional  
Affairs Standing Committee meeting to order at 5:57 p.m.  
Representatives Morgan, Wolf, Kott, and Cissna were present at  
the call to order.

SB 132-MINTO FLATS GAME REFUGE & TOWNSITE

CHAIR MORGAN announced that the first order of business would be  
CS FOR SENATE BILL NO. 132(RES), "An Act removing the Old Minto  
townsite from the Minto Flats State Game Refuge; and authorizing  
the Department of Natural Resources to convey certain land at  
the historic Old Minto site to the Native Village of Minto."

Number 0054

REPRESENTATIVE KOTT moved to report [CSSB 132(RES)] out of  
committee with individual recommendations and the accompanying  
fiscal notes. There being no objection, [CSSB 132(RES)] was  
reported from the House Community and Regional Affairs Standing  
Committee.

SB 382-EMINENT DOMAIN/REPLAT OF BOUNDARY CHANGES

CHAIR MORGAN announced that the final order of business would be  
CS FOR SENATE BILL NO. 382(CRA) am, "An Act relating to replat  
approval; relating to the platting of right-of-way acquired  
through eminent domain proceedings; and providing for an  
effective date."

The committee recessed from 5:55 p.m. to 5:58 p.m. while waiting for representatives from the Department of Transportation & Public Facilities.

[Not on tape, but taken from the Gavel to Gavel recording on the Internet, was the following:

Number 0234

JOHN MACKINNON, Deputy Commissioner of Highways & Public Facilities, Office of the Commissioner, Department of Transportation & Public Facilities (DOT&PF), explained that many highway projects require widening the existing right-of-way, which requires the state to acquire property from adjacent property owners. The aforementioned have typically been done through a short plat process rather than a long plat process, which is the current interpretation. He informed the committee that 90 percent of the property acquisitions are voluntary, but about 10 percent result in condemnation. In order to go through the long plat process, the property owner's signature is required. However, that can't be done in a condemnation because the property owner won't give his or her signature. The aforementioned has resulted in some difficult situations in a couple of projects in which the department can't acquire the necessary right-of-way. Therefore, this legislation corrects the aforementioned situation with regard to municipalities [requiring a long plat process that requires the signature of the property owner] and does so in statute.

REPRESENTATIVE CISSNA inquired as to what the municipalities are requiring.

MR. MACKINNON explained that the municipality agrees that the short plat process is efficient, but the statute is interpreted to specify that the department must go through the long plat process. He mentioned that this interpretation [to follow the long plat process] is holding up a fairly significant process in Anchorage and Kenai.

REPRESENTATIVE KOTT asked if CSSB 382(CRA) am will solve the problem with the C Street extension in Anchorage.

MR. MACKINNON answered that CSSB 382(CRA) am would resolve the problem with the C Street project in Anchorage as well as the Kenai River bridge in Soldotna. However, he noted that HB 327, presently in the House Rules Standing Committee, addresses

another process that attorneys have successfully used to slow the process.]

[The recording on the tape begins with the testimony below. At this point the counter numbers were reset.]

MR. MACKINNON related that this takes care of C Street in Anchorage. The list of projects that this could affect is fairly long. He explained that once attorneys have the template for slowing or stopping a project, it's very easy to take it and plug in other projects.

REPRESENTATIVE KOTT turned attention to the retroactivity clause.

MR. MACKINNON reiterated his belief that the retroactivity clause applies to State of Alaska v. Hartman, which deals with C Street. He noted that State of Alaska v. Hinkel deals with the Kenai River bridge.

Number 0114

REPRESENTATIVE WOLF inquired as to how this legislation would help the state with regard to the river terrace Hinkel project.

MR. MACKINNON related his belief that the state isn't acquiring right-of-way with the Hinkel project, but rather it's a right of entry issue. However, he said he understood that this legislation corrects that issue as well.

REPRESENTATIVE WOLF related his understanding that the Hinkel project is a three-year lease that is currently in condemnation. However, he related his further understanding that there is lien on the property from another state agency, the Department of Environmental Conservation (DEC). He explained, "They are being 'liened' on the property by a state agency using federal dollars to do the project." Representative Wolf said that he had understood that this legislation didn't address the Hinkel project, but now he is concerned with it.

Number 0280

REPRESENTATIVE CISSNA indicated that there is probably a "rich history" with the two cases cited in the legislation, and therefore she expressed the desire to hear it.

MR. MACKINNON said that he didn't have an answer with regard to the "rich history" of these projects. However, he pointed out that right-of-way acquisition for projects is a bottleneck. The state has to follow fairly concise federal rules on right-of-way acquisition and now there is a new interpretation of state statute.

REPRESENTATIVE CISSNA surmised that if this legislation doesn't pass, then the department would have to wait until the cases move through the court process.

MR. MACKINNON explained his understanding of condemnation as follows. Once one files for condemnation, there is the right of entry to use the property while the courts settle the value. Condemnation occurs because either the property owner doesn't want to sell the property or doesn't agree with the appraisals of the property.

REPRESENTATIVE CISSNA further surmised that the ultimate result [of CSSB 382(CRA) am] would be to increase the price.

Number 0417

MR. MACKINNON informed the committee that the department must follow the Uniform Relocation Act that was the result of a federal process, and therefore there are limits with regard to how much the state can pay for property. When the property owner and the state disagree on the value of the property, the courts determine the value. Mr. Mackinnon said that the Right-of-Way division stretches things as far as possible in order to obtain agreement because condemnation is a time consuming and costly process.

REPRESENTATIVE WOLF surmised then that this legislation attempts to obtain authorization to proceed with a project and deal with condemnation later.

MR. MACKINNON agreed. He explained that typically the department likes to settle before the project begins, but when that isn't possible the condemnation process begins. The condemnation process allows the project to proceed and settle later with the value determined by settlement or by the courts.

REPRESENTATIVE WOLF said that he is very nervous. He informed the committee that the river terrace project has a rich history in which there has been seven years of abusive power by the government. The project is going to court, where he predicted a

host of environmental issues will be brought up. Representative Wolf noted that he spent since June of last year trying to resolve this situation and came very close to resolution. However, the administration refused to meet with the property owners.

MR. MACKINNON recalled that on the [river terrace project] there was an old dry cleaning plant.

Number 0620

REPRESENTATIVE CISSNA posed a situation in which an environmental issue comes to light after the condemnation process has resulted in the project proceeding. She inquired as to what would happen in that case.

MR. MACKINNON replied that it would depend upon the source of the contamination; it would be the original perpetrator's responsibility. He mentioned that such a situation exists in Whittier. During the 1964 earthquake there were some U.S. Army fuel tanks that were ruptured and contaminated the soil. The contaminated soil still exists and while the government owns the property it's the responsibility of the U.S. Army. As soon as the property transfers to private hands, the U.S. Army's responsibility is absolved. Mr. Mackinnon indicated that the contamination [at the river terrace project] was the result of practices of the time. He related his understanding that the contamination is contained, although a disturbance could cause it to migrate and no one wants the contamination to migrate into the Kenai River.

REPRESENTATIVE WOLF commented that this isn't the place to go into the history of this. Representative Wolf further commented that he has tried to warn DOT&PF and keep the department out of this.

REPRESENTATIVE CISSNA questioned how [the river terrace project] could go forward.

MR. MACKINNON clarified that the contamination of the soil is a separate issue, and the contamination is in a different location. He said he understood this legislation to allow use of a portion of the property for the construction of the new bridge.

Number 0826

REPRESENTATIVE WOLF explained that a portion of the property is being used as temporary access to construct a temporary bridge in order to construct the new bridge. Therefore, a temporary bed is being laid down over the contaminated soil. He noted that working over the contaminated soil could, in the Department of Environmental Conservation's worst case scenario, result in a difficult situation [in which the contamination migrates].

CHAIR MORGAN questioned whether the discussion is going beyond the scope of the legislation.

REPRESENTATIVE CISSNA surmised then that passage of this legislation wouldn't compromise the community or the river. Therefore, the state would need its rights-of-way, but not at the sake of the community.

REPRESENTATIVE WOLF said that [this legislation] wouldn't compromise the river or the community. However, it could compromise the property owner(s).

CHAIR MORGAN, upon determining no one else wished to testify, closed public testimony.

REPRESENTATIVE WOLF stated that he would object to reporting CSSB 382(CRA) am from committee.

REPRESENTATIVE KOTT indicated that he was speaking on behalf of the mayor of Anchorage when he noted that the C Street extension is an important project to Anchorage. Therefore, he said that the mayor of Anchorage would appreciate Representative Cissna making the motion to report the legislation from committee.

Number 1064

REPRESENTATIVE CISSNA moved to report CSSB 382(CAR)am out of committee with individual recommendations and the accompanying zero fiscal note.

REPRESENTATIVE WOLF objected.

A roll call vote was taken. Representatives Cissna, Kott, and Morgan voted in favor of reporting CSSB 382(CRA) am. Representatives Wolf voted against it. Therefore, CSSB 382(CRA) am was reported out of the House Community and Regional Affairs Standing Committee by a vote of 3-1.

REPRESENTATIVE WOLF explained that his objection is related to the concerns of the private property owner in Soldotna, possible litigation, and the cost to the state for that.

REPRESENTATIVE KOTT mentioned that he wasn't familiar with the [river terrace project] and thus would like to work with Representative Wolf on the matter.

#### **ADJOURNMENT**

There being no further business before the committee, the House Community and Regional Affairs Standing Committee meeting was adjourned at 6:18 p.m.