

**ALASKA STATE LEGISLATURE  
HOUSE RESOURCES STANDING COMMITTEE**

May 8, 2004

1:11 p.m.

**MEMBERS PRESENT**

Representative Nancy Dahlstrom, Co-Chair  
Representative Beverly Masek, Co-Chair  
Representative Cheryll Heinze, Vice Chair  
Representative Carl Gatto  
Representative Nick Stepovich  
Representative Kelly Wolf  
Representative Beth Kerttula  
Representative David Guttenberg  
Representative Bob Lynn

**MEMBERS ABSENT**

All members present

**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 HCS CSSB 132(RES) 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  
 05/05/04 (H) Moved Out of Committee  
 05/05/04 (H) MINUTE(CRA)  
 05/06/04 (H) CRA RPT 4DP  
 05/06/04 (H) DP: KOTT, WOLF, CISSNA, MORGAN  
 05/08/04 (H) RES AT 1:00 PM CAPITOL 124

**WITNESS REGISTER**

TED POPELY, Majority Legal Counsel  
 Majority Legal Office  
 Alaska State Legislature  
 Juneau, Alaska

POSITION STATEMENT: Responded to questions during discussion of SB 132.

SENATOR GEORGIANA LINCOLN  
 Alaska State Legislature  
 Juneau, Alaska

POSITION STATEMENT: Sponsor of SB 132.

**ACTION NARRATIVE**

**TAPE 04-28, SIDE A**

Number 0001

**CO-CHAIR NANCY DAHLSTROM** called the House Resources Standing Committee meeting to order at 1:11 p.m. Representatives Masek, Dahlstrom, Gatto, Stepovich, Guttenberg, and Kerttula were present at the call to order. Representatives Heinze, Lynn, and Wolf arrived as the meeting was in progress.

SB 132 - MINTO FLATS GAME REFUGE & TOWNSITE

Number 0059

CO-CHAIR DAHLSTROM announced that the only 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 0077

REPRESENTATIVE STEPOVICH moved to adopt the proposed House committee substitute (HCS) for SB 132, Version 23-LS0578\U, Bullock, 5/6/04, as the work draft.

Number 0086

REPRESENTATIVE KERTTULA objected. She turned attention to the language on page 3 of Version U, lines 13-15, which read: "(4) the Native Village of Minto may not transfer the land to any other private or governmental entity for any purpose or duration unless approved in advance by the legislature.". She characterized this language as unusual and asked why, in conveying the land, they would want to preclude further transfer without legislative approval.

Number 0213

TED POPELY, Majority Legal Counsel, Majority Legal Office, Alaska State Legislature, acknowledged that the language is unusual, but pointed out that the whole context of the bill - transferring land to the Native Village of Minto - is unusual as well; he opined that the language in paragraph (4) is included as a protective measure. The Bureau of Indian Affairs (BIA) and the U.S. Department of the Interior (DOI) consider the Native Village of Minto to be a federally recognized Indian tribe and, as such, its status is in a state of legal flux, and so the land transfer proposed via SB 132 is not a typical land transfer. The legislature regularly challenges the notion that there are federally recognized Indian tribes in Alaska, though the Alaska Supreme Court has, in several cases, acknowledged the existence of such.

MR. POPELY relayed that when land has been transferred to Native corporations under the Alaska Native Claims Settlement Act (ANCSA) format, there hasn't been a lot of problem with respect to jurisdiction over the land, governmental powers, or things of

that nature. Senate Bill 132 proposes something different, however, and it would be hard to predict all the ramifications of such a unique transfer; therefore, the language in paragraph (4) is intended to ensure, in giving the land to the Native Village of Minto, that the state doesn't cede any of its authority or create any hybrid jurisdictional problems that it can't later correct.

REPRESENTATIVE KERTTULA remarked that the simple fact that a tribe exists, in and of itself, doesn't seem like justification for saying that it can't alienate land. She opined that the language in paragraphs (1) and (2) of page 3 should sufficiently address the concerns Mr. Popely has expressed. In response to a comment regarding paragraph (2), she asked whether the term, "sovereign jurisdiction", which is used in CSSB 132(RES), is broader than the term, "civil, criminal, and regulatory jurisdiction", which is used in Version U.

Number 0599

MR. POPELY acknowledged that the term, "sovereign jurisdiction" is broader, but said he is uncomfortable with it because it is not often used in state statutes and has a different meaning to different people. He opined that using the term, "civil, criminal, and regulatory jurisdiction" will better address concerns regarding inadvertently ceding any state authority. He suggested that part of the reason that the language in paragraph (4) has been added is because there is "a possibility that land can be transferred and it will change its status in federal Indian law, partially, with respect to trust land, for example": if land is transferred to the DOI, to be taken in trust by the federal government, it raises a new level of jurisdictional questions about the land itself. He reiterated his opinion that the language in paragraph (4) is a protective measure.

REPRESENTATIVE KERTTULA surmised that the issue is really about maintaining state sovereignty over the land rather than about whether the Village of Minto will at some later time elect to transfer the land.

MR. POPELY concurred, adding that without somehow ensuring the state's sovereignty over this land, the state might someday face the possibility of preemption by the federal government.

REPRESENTATIVE KERTTULA reiterated her belief, however, that the language currently in paragraphs (1) and (2) are sufficient to address the issue, and thus paragraph (4) is not needed and goes

a step too far. She asked why, if the Village of Minto does decide to transfer the land later, they should be required to obtain legislative approval rather than departmental approval - by the commissioner, for example.

MR. POPELY indicated that the latter would be acceptable, just so long as at least some type of public decision-making process is undertaken. In response to questions, he mentioned that part of the land that's being transferred is cemetery land, and reiterated his earlier comments regarding the concern over state sovereignty and the legal problems that might result from transferring lands to a federally recognized Indian tribe.

Number 1271

SENATOR GEORGIANA LINCOLN, Alaska State Legislature, sponsor, expressed appreciation to the committee for holding a hearing on SB 132. She turned attention to CSSB 132(RES) and said it underwent a lot of scrutiny during its Senate hearings. Language of particular importance is on page 3, lines 7-9, which says, "(1) the Native Village of Minto waives for itself and for its lessees, successors, and assigns forever any claim to sovereign immunity with respect to the land or activities on the land;" She opined that this language will be more than sufficient to address Mr. Popely's concerns. She elaborated:

"Forever" ... the claim to any sovereign immunity is gone, that the land remains under the sovereign jurisdiction of the state - very clear. And then it goes on to say that the Native Village of Minto shall submit the waiver required under this in writing before the land is conveyed.

SENATOR LINCOLN referred to a map in members' packets, and said that in 1969, the State of Alaska said to the people of Old Minto, "You must move to higher ground; we're not going to give you an option because your land is subject to erosion and flooding, and we're not going to put any more money into the airport, we're not going to put any more money into the facilities here - you have to move." They did not want to move, but they agreed to move to higher ground 40 miles away. Meanwhile, the ancestral gravesites and church at Old Minto have remained, and are still used and maintained by the people. Additionally, the people also maintain a youth camp and a recovery camp at Old Minto.

SENATOR LINCOLN pointed out that back in 1999, the Matanuska-Susitna Borough received 160 acres of state land that had been part of the Hatcher Pass Public Use Area, and that the authorizing Act read in part:

The legislature finds that making the lands specified in sec. 2(b) of this Act available to the Matanuska-Susitna Borough for selection and conveyance is consistent with the testimony and position of the Department of Natural Resources at the time the Hatcher Pass Public Use Area was created. Furthermore, the selection is consistent with that area of the public use area that is contained within the development lease and authorized for development purposes in the Hatcher Pass Management Plan, as amended.

Number 1582

SENATOR LINCOLN said that "this" is exactly what [CSSB 132(RES)] proposes, and noted that of the over 500,000 acres of land [that make up] the Minto Flats State Game Refuge, Minto is asking for less than 32 acres. "This is the elders that requested this - it wasn't [the] 'Native Council for Sovereignty' - I mean, my goodness, that was the last thing in their mind; what they're thinking of is to have their ancestral lands for their gravesite and what they're doing on that land," she remarked. The way that CSSB 132(RES) is written, she opined, there is neither any way the land can be transferred nor any way for the Native Village of Minto to claim sovereignty.

SENATOR LINCOLN said she is not supportive of the language in Version U, and reiterated her belief that Mr. Popely's concerns are adequately addressed by the language in CSSB 132(RES).

REPRESENTATIVE HEINZE asked whether the spirit camp is located at the Old Minto site.

SENATOR LINCOLN said yes.

REPRESENTATIVE STEPOVICH asked how many people live in Old Minto and how many people live in Minto.

SENATOR LINCOLN said that a little less than 300 people reside at the new Minto site, and the population in Old Minto fluctuates depending on how many clients are at the youth, recovery, and spirit camps. In response to another question,

she indicated that the goal of the bill is to ensure that the people of Minto retain the use of the area where Old Minto is located. She relayed that the Department of Natural Resources (DNR) and the Alaska Department of Fish & Game (ADF&G) have testified in complete favor of the [transfer].

REPRESENTATIVE GATTO offered his belief that Version U merely puts one more protection in place.

CO-CHAIR MASEK relayed that there are other similarly situated villages - for example, the people of Grayling used to live in [Holikachuk] but had to move because of flooding. She asked whether the bill would have any impact on those villages.

SENATOR LINCOLN indicated that it wouldn't because of ANCSA stipulations; the people of Minto, on the other hand, moved from Old Minto before ANCSA and so, unlike the people of Grayling and other similarly situated villages, they didn't have the ability to select that land under ANCSA.

Number 1976

REPRESENTATIVE GUTTENBERG said he opposes adopting Version U.

CO-CHAIR DAHLSTROM asked Mr. Popely to comment on the use of the word "forever" on page 3, line 8, of CSSB 132(RES).

MR. POPELY, acknowledging that that language has been removed from Version U, opined that it is statutorily impossible to waive sovereign immunity, if it turns out that the Native Village of Minto actually has such, to any future lessees, successors, or assigns.

REPRESENTATIVE KERTTULA argued, "If you've got immunity, you've got immunity; the language really won't change that."

MR. POPELY said he supposes that to be true, but opined that by referring to sovereign immunity in statute, someone could argue that sovereign immunity does exist.

REPRESENTATIVE KERTTULA, in response to a question, said she maintains her objection to the adoption of Version U as a work draft.

REPRESENTATIVE STEPOVICH opined that the spirit of the bill is still maintained in Version U. He surmised that the Native

Village of Minto has no intention of ever transferring the land in the future.

SENATOR LINCOLN expressed concern that changing the bill at this late date could cause it to fail simply because there wouldn't be time for concurrence. She opined that Version U does not guarantee the state any more protection than what is in CSSB 132(RES). She agreed with Representative Stepovich that the Native Village of Minto will not be selling or otherwise conveying the land described in the bill.

REPRESENTATIVE HEINZE called the question.

Number 2312

A roll call vote was taken. Representatives Gatto, Heinze, Lynn, Stepovich, Masek, and Dahlstrom voted in favor of the motion to adopt Version U as a work draft. Representatives Guttenberg and Kerttula voted against it. Therefore, Version U was before the committee by a vote of 6-2.

Number 2348

REPRESENTATIVE KERTTULA moved to report the proposed HCS for SB 132, Version 23-LS0578\U, Bullock, 5/6/04, out of committee with individual recommendations and the accompanying fiscal note.

Number 2351

CO-CHAIR DAHLSTROM objected for the purpose of discussion.

REPRESENTATIVE KERTTULA indicated that she'd like to see the bill move on to House floor.

Number 2369

CO-CHAIR DAHLSTROM withdrew her [objection] and asked whether there were any further objections. There being none, HCS CSSB 132(RES) was reported from the House Resources Standing Committee.

#### **ADJOURNMENT**

Number 2397

There being no further business before the committee, the House Resources Standing Committee meeting was adjourned at 1:46 p.m.