

ALASKA STATE LEGISLATURE
SENATE COMMUNITY AND REGIONAL AFFAIRS STANDING COMMITTEE

April 14, 2004

1:34 p.m.

TAPE (S) 04-10

MEMBERS PRESENT

Senator Bert Stedman, Chair
Senator Thomas Wagoner, Vice Chair
Senator Kim Elton
Senator Georgianna Lincoln

MEMBERS ABSENT

Senator Gary Stevens

COMMITTEE CALENDAR

SENATE BILL NO. 132

"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 Minto Village Council."

MOVED CSSB 132(CRA) OUT OF COMMITTEE

SENATE BILL NO. 382

"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) 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

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

WITNESS REGISTER

Janet Burlison-Baxter
Legislative Liaison
Department of Natural Resources
400 Willoughby Ave.
Juneau, AK 99801-1724
POSITION STATEMENT: Commented on SB 132

Matt Robus
Director, Division of Wildlife Conservation
Department of Fish & Game
PO Box 25526
Juneau, AK 99802-5226
POSITION STATEMENT: Stated that department has no objection to SB 132

Richard Schmitz
Aide to Senator John Cowdery
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Introduced SB 382

Peter Putzier
Assistant Attorney General, Transportation
Department of Law
PO Box 110300
Juneau, AK 99811-0300
POSITION STATEMENT: Testified on SB 382

ACTION NARRATIVE

TAPE 04-10, SIDE A

CHAIR BERT STEDMAN called the Senate Community and Regional Affairs Standing Committee meeting to order at 1:34 p.m. Present

were Senators Wagoner, Elton, Lincoln, and Chair Stedman. Senator Gary Stevens was excused for medical reasons.

SB 132-MINTO FLATS GAME REFUGE & TOWNSITE

CHAIR BERT STEDMAN announced SB 132 to be up for consideration. He asked for a motion to adopt the committee substitute (CS) for discussion purposes.

SENATOR THOMAS WAGONER made a motion to adopt \I version CS for SB 132 dated 4/6/04. There being no objection, it was so ordered.

CHAIR STEDMAN asked Senator Lincoln to introduce the bill.

SENATOR GEORGIANNA LINCOLN explained that \I version of the bill contains several changes, the largest of which is adding language from AS 38.05.125 to the bill beginning on page 2, line 16 rather than simply referring to the section. The other change was to add the legislative findings on page 1, line 7-11.

The bill would transfer about 32 acres of land, which is the Old Minto Village Site to the Native village of Minto. The old village site was established in the early 1900s, but in 1971 the state forced the relocation because of flooding and erosion. Although the village was moved about 40 miles north, villagers continue to use the old site for camping and other cultural activities. The church, cemetery, community hall and store are still located at the old site and the Interior Athabascan Cultural Heritage Education Institute holds a lease on the site until 2052 for a youth encampment.

SENATOR LINCOLN advised that Chief Andy Jimmy from Minto was on-line to testify. "It was Minto that wanted to have the 32 acres transferred over to their village so they would have some control over it and to be able to use it as an educational site," she said. She and her staff have worked with DNR extensively and they are supportive of the transfer.

Finally, she noted that the work draft fiscal note is zero. However, there will be a change in the analysis section. It says that DNR will sell the land, which is not the case. There was never any intent for the land to be sold to the village. The land reverted to DNR and then became part of the Minto Flats State Game Refuge in 1988. Under SB 132, the land will revert to the Village of Minto.

SENATOR THOMAS WAGONER asked whether the land that the village was relocated to was a Native allotment or state land.

SENATOR LINCOLN replied they relocated to a Native allotment.

SENATOR KIM ELTON remarked that he was surprised at all the reservations that the state wanted and questioned whether the state had the same rights of access delineated on page 2 prior to the 1971 relocation.

SENATOR LINCOLN said the state did have all those easements outlined on page 2 prior to the 1971 relocation because the land was an established town site and not a reservation.

CHAIR STEDMAN asked how far apart the two sites are.

SENATOR LINCOLN said the Village of Minto is located about 40 miles north of Old Minto. Old Minto is only accessible by river while the new site is accessible by road and looks out over Minto Flats. It's on a hillside and is in no danger of flooding.

CHAIR STEDMAN opened public testimony.

He called a brief at-ease at 1:45 pm due to teleconference equipment difficulty. The difficulty was not resolved and no teleconference testimony could be taken.

JANET BURLESON-BAXTER, legislative liaison for DNR, said she was available to answer questions, but the technical experts intended to participate via teleconference.

She affirmed that the language on page 2, (b) is standard conveyance language and the word "sell" in the draft fiscal note should be changed to "convey."

CHAIR STEDMAN called a brief at-ease at 1:51 pm to check on the teleconference equipment.

MATT ROBUS director of the Division of Wildlife Conservation, Department of Fish and Game (ADF&G), said he was available for questions and advised that ADF&G has no objection to the proposal. There is dual agency management of the land because ADF&G is the refuge manager under the refuge management plan while DNR is the state's land manager. But in terms of refuge management, the transfer makes perfect sense.

There were no further questions or testimony. [The teleconference equipment continued to give problems.]

SENATOR WAGONER made a motion to move CSSB 132(CRA) from committee with individual recommendation and attached fiscal note. There being no objection, it was so ordered.

SENATOR ELTON told the Chair he assumed that there would be a corrected fiscal note.

CHAIR STEDMAN agreed saying it would reflect conveyance of the land rather than sale of the land.

CHAIR STEDMAN called an at-ease at 1:53 pm then reconvened and reported to everyone who was listening online and was unable to communicate that CSSB 132(CRA) moved from committee.

SB 382-EMINENT DOMAIN/REPLAT OF BOUNDARY CHANGES

CHAIR BERT STEDMAN announced SB 382 to be up for consideration and noted that there was a committee substitute.

SENATOR THOMAS WAGONER made a motion to adopt CSSB 382, \H version as the working document. There being no objection, it was so ordered.

RICHARD SCHMITZ, aide to Senator John Cowdery, stated that the representatives from the Department of Law and the Department of Transportation and Public Facilities (DOT/PF) were better able to explain the bill.

PETER PUTZIER, assistant attorney general representing the Department of Transportation & Public Facilities, explained that the bill is the result of Anchorage court cases regarding eminent domain. One case concerned the Kenai River Bridge and the other the C Street Project in Anchorage.

The court challenges suggested that DOT didn't have condemnation authority based on an interpretation of the eminent domain statute, AS 09.55.275. The argument is that:

In 1975 when the statute was passed, it was the legislative intent back then to require DOT or municipalities when they acquire right-of-way to go through the exact same subdivision approval process that a developer would have to go through even though the two processes are, as you can imagine, quite

distinct. On the one hand you've got a developer who is going to be putting interior streets, lighting, sewer and so on. On the other hand you've got this right-of-way process that involves odd shaped parcels where you don't have any of those same considerations.

Kenai, Municipality of Anchorage, Matanuska-Susitna Borough, I believe the City and Borough of Juneau although I'm not sure, most of these communities have a specific ordinance particular to the right-of-way acquisition process and it says to DOT or the municipality 'If you want preliminary replat approval follow this process particular to the right-of-way acquisition.' And the argument that's being made in court is that that process set up in these different towns is unconstitutional and contrary to legislative intent back in 1975 in AS 09.55.275. This bill is meant to correct that.

Sitka, the City and Borough of Juneau, Ketchikan, Kodiak, the Matanuska Susitna Borough, and the Municipality of Anchorage have been contacted regarding their views on the issue. The City and Borough of Juneau raised a concern that the initial draft was ambiguous regarding the scope of regulatory power given to DOT for drafting regulations to address this issue. As a result, they clarified that DOT's intent is specifically to eminent domain and the right-of-way acquisition process. There is no intent for DOT to venture into general zoning and subdivision lines. The \H version is meant to restrict what DOT may do by regulation and all but Anchorage have responded and agreed with the changes. The Municipality of Anchorage is still circulating the draft, "but they are keenly aware of this issue because they've been litigating it now for many months."

CHAIR STEDMAN referred to the two lawsuits and commented that if the plaintiffs prevail, then:

The state would be forced to go through a replat like at a regular municipality or city, which would be going through the planning and zoning commission - having hearings and then going on up to the city council or the assembly for final approval - subject to all appeals in that process. Is that correct?

MR. PUTZIER said that's true, but DOT is already required to go through whatever process the municipality has. The real issue is the allegation that the process that these different municipalities have is unconstitutional in that they deviate

from the normal subdivision process, which entails a lengthy hearing process that is subject to appeal rights as they apply to local zoning standards. Typically, the process for right-of-way acquisition is a bit more streamlined.

SENATOR ELTON said it's clear that this gets to some of the statutory issues, but he didn't think it was a fix for the remnant constitutional issue. The bill has a retroactive effective date, but if the constitutional issues aren't addressed then the points raised by the lawsuits are still out there.

MR. PUTZIER thought that the intent section, combined with deleting the last sentence of AS 09.55.275, would address the points raised in court.

I think striking that last sentence is a clear indication from the Legislature that it was never intended to have an identity of process put in place such as being suggested. Back in '75 when the statute was put in passed, the concern was that DOT was doing these projects without consulting with municipalities. I think the Legislature meant, the intent was to make DOT consult and submit their plans to municipalities for comment and DOT has been doing that and it's been working out relatively harmoniously with municipalities across the state. The arguments in court, I think, just take the intent too far when you say the Legislature was trying to demand a particular process. It's that problem that we're trying to correct right now.

SENATOR ELTON asked if that means that the constitutional problem goes away with the change in statute.

MR. PUTZIER hesitated and said he wasn't sure there was a constitutional issue.

And I'm sorry if I misspoke earlier. There's an argument being made that the ordinances violate the statute because the statute, the allegation is being made, is a demand for a particular process. If we change the statute, I think that would solve the problem or the argument of the ordinances being in conflict with the statute. DOT can only conduct its eminent domain proceedings if it strictly abides by the requirements of the statutes.

SENATOR ELTON acknowledged that he might have misheard, but earlier in the presentation he thought that he heard mention of unconstitutional and contrary to statute. He then said he would like to hear from the Department of Law about making this retroactive, which would wipe out the lawsuits.

MR. PUTZIER replied:

There could be challenges made to that. There is significant case law on it and as long as the Legislature - the general law is - as long as the Legislature clearly expresses its intent to make it retroactive, and if there is no improper purpose behind it, that retroactive legislation has been upheld under a number of circumstances. There are, theoretically, challenges that could be leveled, but what this bill does is good. [It should not only] address the existing litigation, but also has benefits obviously five, ten years down the road by clarifying it now.

SENATOR LINCOLN asked where the last, [\H version], committee substitute originated.

CHAIR STEDMAN said it came from the sponsor's office [Transportation Committee].

SENATOR LINCOLN said she asked because the changes address some of the concerns she expressed in the Transportation Committee. "Changing the municipal authority from a may to a shall on page 3, line 7, I think is a great addition and the other two parts as well where it includes the rights of municipalities to regulate the remnant parcels and the other whole new section that was added in Section 3"

SENATOR WAGONER asked that John MacKinnon with DOT come forward and tell him what the fiscal impact would be if these projects were delayed by at least a year.

JOHN MACKINNON, deputy commissioner of transportation with the Department of Transportation and Public Facilities, said there would be considerable additional expenses if the projects were delayed. "Every time a project comes up, if somebody wants to delay the project there is the cost of litigation and whenever we hire the AG's office - they don't come cheap."

SENATOR WAGONER asked what the cost is in the Kenai River Bridge in Soldotna and guesstimated that it would be between \$28 and \$30 million.

MR. MACKINNON said that is a \$28 million project and it's ready to advertise in the middle of May. "A delay of a year could easily be a couple of hundred thousand dollars, easily."

SENATOR WAGONER said he wanted that on the record.

SENATOR LINCOLN asked if Fairbanks had been given the opportunity to review and state their views on the bill.

MR. MACKINNON told her that Fairbanks hadn't responded.

SENATOR ELTON commented that Anchorage and Fairbanks have over half the state's population and because of that, he would hope that they would submit their comments to the committee before the bill goes to the floor.

MR. PUTZIER added that the City and Borough of Juneau also wanted him to state the following for the record:

That DOT prior to enacting any regulations would coordinate with and afford the opportunity to all affected platting authorities to provide comments on the regulations. DOT certainly has no objection to that and, in fact, welcomes the opportunity to work together with the platting authorities in drafting those regulations.

There was no further testimony.

SENATOR WAGONER made a motion to move CSSB 382(CRA) from committee with individual recommendations and attached fiscal note. There being no objection, it was so ordered.

CHAIR STEDMAN adjourned the meeting at 2:15 pm