ALASKA STATE LEGISLATURE
SENATE LABOR AND COMMERCE STANDING COMMITTEE
March 11, 2003
1:32 p.m.

MEMBERS PRESENT

Senator Con Bunde, Chair
Senator Ralph Seekins, Vice Chair
Senator Gary Stevens
Senator Bettye Davis
Senator Hollis French

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 93
"An Act relating to limitations on actions to quiet title to, eject a person from, or recover real property or the possession of it; and providing for an effective date."

HEARD AND HELD

HOUSE BILL NO. 58
"An Act relating to the reinstatement of Native corporations; and providing for an effective date."

HEARD AND HELD

PREVIOUS ACTION

SB 93 - No previous action to consider.

HB 58 – See Community and Regional Affairs minutes dated 2/26/03.

WITNESS REGISTER

Ms. Amy Seitz
Staff to Senator Wagoner
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Sponsor of SB 93.

Mr. Russell Dick, Resources Manager
Sealaska Corporation
One Sealaska Plaza
Juneau AK 99801
POSITION STATEMENT: Supported SB 93.

Mr. Jon Tillinghast
Sealaska Corporation
One Sealaska Plaza
Juneau AK 99801
POSITION STATEMENT: Supported SB 93.

Mr. Peter Putzier
Assistant Attorney General for DOT/PF
Department of Law
PO Box 110300
Juneau, AK 99811-0300
POSITION STATEMENT: Opposed SB 93.

Ms. Millie Martin
PO Box 2652
Homer, AK
POSITION STATEMENT: Commented on SB 93.

Ms. Shirley Schollenberg
25701 Sterling Hwy.
Anchor Point, AK 99556
POSITION STATEMENT: Commented on SB 93.

Mr. Mike Downing, Chief Engineer
Division of Statewide Design and Engineering Services
Department of Transportation &
Public Facilities (DOT/PF)
3132 Channel Dr.
Juneau, AK 99801-7898
POSITION STATEMENT: Commented on SB 93.

Mr. Larry Labolle
Staff to Representative Foster
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Commented on HB 58.

Ms. Alice Houston, Corporation Supervisor
Department of Community & Economic Development (DCED)
PO Box 110800
Juneau, AK 99811-0800

POSITION STATEMENT: Answered questions about HB 58

ACTION NARRATIVE

TAPE 03-10, SIDE A

SB 93-ADVERSE POSSESSION

CHAIR CON BUNDE called the Senate Labor and Commerce Standing Committee meeting to order at 1:32 p.m. and announced SB 93 to be up for consideration. All members were present.

MS. AMY SEITZ, staff to Senator Wagoner, sponsor of SB 93, described the legislation as follows:

> Adverse possession is a doctrine that rewards possession of land at the expense of the true landowner. This doctrine was born 800 years ago during the Middle Ages under circumstances that do not apply today.
>
> During the settlement of North America, our courts and legislatures adopted the policy that it is better to put land to use than not. Adverse possession was the tool used to transfer title from the idle true owner to the industrious adverse possessor, thus rewarding squatters for making use of wild lands. Still, today, some feel that it is best to make use of land an owner leaves idle. However, the majority of undeveloped land belongs to the state and federal governments. Under existing laws, a person cannot take land from the government through adverse possession.
>
> SB 93 simply accords equal dignity and protection to the private land ownership rights by amending the current statute that allows land to be taken by bad faith trespassers. Because of squatters' rights, private landowners in Alaska have the harsh burden of policing their large expansive lands to insure that a squatter has not taken up residency. This legislation does not touch the statute that allows adverse possession claims to property based on color of title and it will not extinguish already vested adverse possession claims.

MR. RUSSELL DICK, Natural Resources Manager, Sealaska Corporation, applauded Senator Wagoner's efforts to bring this

bill forward. Sealaska Corporation is the regional corporation under the Alaska Native Claims Settlement Act for Southeast Alaska and represents over 16,000 shareholders. Sealaska owns 290,000 acres of fee estate land throughout Southeast Alaska and has an entitlement that is expected to reach upwards of 340,000 to 350,000 acres. Sealaska is the largest private landowner in Southeast Alaska and supports the protections this bill provides.

MR. DICK didn't think anyone would doubt the economic burden of actively policing large expanses of land or the fact that it is [not] the best use of Sealaska's economic resources. The issue goes beyond the corporations that have the resources to police tracts of land; it affects small mom and pop property owners who don't have the same financial resources. He maintained:

> The doctrine of adverse possession is inconsistent with the recognition of private property ownership and its associated rights. This is made ever more clear through the fact that state and federal land is immune to the doctrine of adverse possession due to the expansive nature of its lands and the remoteness of its lands and the economic burden associated with having to police these large tracts of lands. We simply believe that private property owners, regardless of their size, regardless of their financial resources, should be afforded those same protections.

CHAIR BUNDE asked what Sealaska does now to enforce a no trespassing policy and whether it has ever had to follow through on an adverse possession case.

MR. DICK replied that he has been at Sealaska for six years and knows of one case. It was not on ANGSA land, but on some real estate in Cordova. Sealaska had to go through a lengthy legal proceeding to get the trespasser evicted from the property before the adverse possession claim kicked in. At this point, a large portion of its property is on Prince of Wales Island and it has hired a land technician security guard to protect the corporate assets in terms of existing timber operations. However, the guard does not have the time, a vehicle, or the capabilities to get to remote areas to insure that trespassers aren't taking residence on Sealaska lands.

SENATOR STEVENS asked how long a squatter has to be on the land to make a claim.

MR. DICK replied that the length of time for a bad faith squatter is 10 years.

SENATOR FRENCH said this seems to be a phenomenon in the western states where there are big land holdings. He asked if other states have taken the same action.

MR. DICK replied the only other state he is aware of is Oregon, which imposed a requirement that an adverse possessor must be acting in good faith.

MR. JON TILLINGHAST, legal counsel to the Sealaska Corporation, informed members that this bill was introduced in a longer form last year and covered the two types of adverse possession. He explained:

> One is the squatter who simply waits for 10 years to pass without anyone noticing him. The other, and probably the most common in Alaska, is where someone builds their fence to the right of where it ought to be built and everyone has always agreed that's the property line, but it really isn't.
>
> That later form of adverse possession is where the adverse possessor acts in good faith and he acts under color of title. In other words, he's got a deed to his house; it's just that he built the fence in the wrong place. This year the bill doesn't touch that statute. The only ones that will be affected by this bill are people who have adversely possessed property without any written instrument to support their claim, whatsoever.

SENATOR FRENCH asked if SB 93 does not affect good faith possessors.

MR. TILLINGHAST said that is correct and added that a good faith possessor must have a piece of paper on which the claim is based.

SENATOR FRENCH asked if this bill would eliminate a person's color of title or whether it allows a person to pursue it.

MR. TILLINGHAST replied that it lets a person pursue it. All the law requires is a written instrument of some sort. He believes the statutory language that governs color of title on the basis

of a written instrument needs to be tightened up, but when Sealaska tried to deal with that as well, the bill got too heavy. SB 93 is more focused.

SENATOR FRENCH said he was curious about the language on page 1, line 9, that reads, "(b) An action may be brought at any time by a person whose ownership interest in real property is recorded under AS 40.17 to". He thought that meant property under color of title.

MR. TILLINGHAST replied that the section that will be changed, AS 09.10.030, talks about what the record title owner can or can't do. Another section, AS 09.45.052, deals with "under color of title." The part of the statute that is being left untouched says if an individual possessed title under color in good faith, that individual will win that lawsuit.

SENATOR FRENCH asked if, under the new section, an action could be taken against him at any time if he squatted for 20 years.

MR. TILLINGHAST said that is correct. The period for kicking someone off land in England used to be up to 20 years. However, the number of years gets shorter as you move west across the United States. The time period is 20 years in Connecticut, but 7 or 8 years in Utah. Back in the 19th Century, Western state legislators liked the squatters' rights doctrine because it enabled homesteaders to get land from the railroads.

SENATOR SEEKINS asked if the lands Sealaska has title to are recorded under AS 40.17.

MR. DICK responded they are.

SENATOR SEEKINS asked if any of their recorded lands are riparian lands, navigable streams or submerged lands.

MR. DICK replied the corporation has lands existing in those areas, but it doesn't get title to submerged lands or navigable streams; it gets title to the subsurface estate underneath those streams.

SENATOR SEEKINS asked if the corporation gets title to natural resources under any navigable streams.

MR. DICK replied yes.

SENATOR SEEKINS asked by what authority. He said he didn't want to have an inadvertently quiet title act that would cause the state to give away some of its lands.

MR. TILLINGHAST said he didn't think anything in the bill would do that. He related that when Sealaska successfully defended the Cordova situation, Sealaska asked him how the problem could be fixed. He responded that the state and federal governments are exempt from adverse possession. Sealaska wanted to know: Why them and not us? He answered that the rationale the state gives is that its land holdings are largely remote and policing them would be a financial burden, however Sealaska is in the same position.

SENATOR SEEKINS said he agrees with Mr. Tillinghast. He added that the State of Alaska doesn't have a statute that corrects for surface movement from earthquakes and such and he thought that should be addressed.

MR. PETE PUTZIER, Assistant Attorney General, said he represents the Department of Transportation and Public Facilities and that SB 93 would do away with the doctrine of adverse possession, which has been around a long time. Its purpose is to provide a practical and efficient means of clearing title. He explained:

> While it is certainly true that Alaska does not need to follow what other states are doing, at a minimum it should perhaps give the committee pause to consider whether doing away with adverse possession is truly in the state's best interests....
>
> In regards to road projects, DOT has thousands of miles of roadway existing in Alaska and many of those have been in place for over 10 years. DOT relies on the doctrine of adverse possession all the time as a means of clearing title. That's significant for the following reason that over 90 percent of the road projects and road improvement projects that we do are federally funded and they cannot proceed without a certification being provided to the federal government that the title is clear. If the adverse possession doctrine would be abolished, the practical impact to DOT would potentially be to delay the road improvement projects anywhere from 1 to 3 years as the title clearing process occurs.

As an example, he said DOTPF has a gravel-to-pavement project, which improves gravel roads by paving them. They are in the areas of Tok, Fairbanks, Delta, Healy, Manly, Cordova and Nome. An average of $7 million per year has been spent for the last five years on road improvement projects. Potentially, under the proposed changes in SB 93, those projects would either be cancelled or delayed for years in an effort to include or encompass some kind of a right-of-way acquisition process. He maintained:

> The reason is this. Currently, the state can rely on the unchallenged title to the roads as a means to provide a certification of title. In other words, the roads have been there in excess of 10 years and DOT then makes the assertion under the adverse possession doctrine that it believes that it has title - the road existed for a long time and we can provide this certification. My discussions with the right-of-way agents have indicated to me that with this amendment, they would not necessarily be able to do that any more and would have to implement a formal right-of-way acquisition process. In short, the development and improvement of existing roads in the state could be seriously and negatively impacted by the proposed change in SB 93.
>
> I guess I would impress upon you that title is often not clear. There are oral conveyances or old records, missing records, people die, memories fade, surveys may be incorrect, deed descriptions might be incorrect. On a given length of road, there might be multiple ownership interests spanning many years including federal interests, private interests, Native land interests and so on. So any road project will involve an entire patchwork of ownership interests and sometimes for better or worse, title might be unclear. Now adverse possession is a practical and reasonable means of clearing these various interests and allowing the state to perform valuable road improvement work.
>
> There are always going to be situations, not only now, but in the future, where a title is unclear. Adverse possession clears the title in essence by saying that the road exists and is being used in some open and notorious fashion and the state can rely on that as a means of providing a certification that it has provided to the federal government. SB 93 arguably

would not allow that and again, for better or worse, sometimes locations of the road might be in the wrong position for whatever reasons. DOT as a practical matter might be considered a bad faith squatter, but if the road has been here for over 10 years, we can nevertheless proceed to provide whatever certifications are necessary and proceed with our road improvement such as under the gravel-to-pavement project.

I focused my comments on DOT's interests, but the bill would affect not only DOT, of course, but other public entities as well as landowners across the state without there being some time period - 10 years, 15 years, 20 years - within which title can be cleared [indisc.] effectively be left in limbo and without adverse possession, a valuable means of clearing title in the state will have been lost.

CHAIR BUNDE asked him if there is any compromise that would allow the state to use a specific mechanism that wouldn't exist for the general public.

MR. PUTZIER replied that he couldn't think of an exception that could be carved out for DOTPF at the moment but he would think on it.

CHAIR BUNDE said it is interesting to note the state can use adverse possession to take private land, but a private person can't use it to take state lands.

2:00 p.m.

SENATOR SEEKINS asked if DOTPF would first look at recorded deeds in a section of land it was thinking about working in.

MR. PUTZIER responded if it's a brand new road, typically DOTPF would go through a formal right-of-way acquisition process, which is extremely long and complicated. He was referring to thousands of miles of existing roadway.

SENATOR SEEKINS asked if he would only be concerned about future roads if existing roads were grandfathered in.

MR. PUTZIER replied that he thought the same issues would arise on future roads, but as recordkeeping improves with technology,

there will be fewer oral conveyances and less missing information.

SENATOR SEEKINS asked what would happen if DOTPF just went to the federal government and said it had clear title citing the doctrine of adverse possession.

MR. PUTZIER replied that DOTPF provides certification that title has been cleared, but doesn't mention using the adverse possession doctrine. If the federal agency wants background on that determination, it has the right to ask.

SENATOR SEEKINS asked if the federal agency normally asks.

MR. PUTZIER replied that he didn't think so.

SENATOR FRENCH asked if all land ownerships are recorded in Alaska.

MR. PUTZIER replied that he didn't think so and that is part of the problem.

SENATOR FRENCH asked if it is possible for someone to have a piece of paper at home saying they own a piece of land, but it isn't recorded anywhere.

MR. PUTZIER replied that could happen, in which case he would have to see if that piece of paper met AS 40.17, which is referenced in (b), which would preserve the person's right.

MS. MILLIE MARTIN said she is an interested citizen who is representing herself. She thought elements of this bill are desperately needed, in particular the provision that addresses squatters' rights. She believes it is wrong that people could live on her property for 10 years and use it as if they owned it, although they didn't pay taxes and didn't buy it, and can claim the land under present adverse possession laws.

She asked if [SB93] would apply to prescriptive easements as she thought they are particularly important in this state. Her concern was that it is often impossible to access a parcel of land on the section line when land is being developed in Alaska because of the topography. Therefore, access is built on someone else's land and the owners cannot handshake an agreement. Without a paper trail and prescriptive easements, a property owner could lose the right to use their property. She concluded,

"And so I think there is a legitimate need for prescriptive easements."

MS. SHIRLEY SCHOLLENBERG, an Anchor Point resident, said she also has a concern with prescriptive easements, especially as they apply to trail maintenance in the Homer area. She said she wouldn't support this bill if it did away with them. She supports getting rid of the idea that a person could illegally live on another person's land and eventually own it.

CHAIR BUNDE asked Ms. Seitz to address the issue of prescriptive easements.

MS. SEITZ replied that Legislative Legal and Research Services responded to that issue this morning and it was the attorney's opinion that prescriptive easements are included in this bill.

CHAIR BUNDE asked if this problem could be fixed with a longer time limit, such as 15 to 20 years.

MS. SEITZ replied they weren't sure of all the issues that deal with prescriptive easement, but they are looking into other ways of going about it.

MR. TILLINGHAST explained that his comments applied to both prescriptive easements and the DOTPF roads. Under section 2 of the bill, any road or public trail across private property that has been there for 10 years is unaffected by the bill. The bill applies only to the establishment of new prescriptive easements across private property. He noted that he uses a prescriptive easement in Juneau on the Dan Moeller trail because it goes through someone's private lot.

He explained the bill says if a party wants to have a public access point through private property or a public road through private property, unfortunately that party will have to pay for it. Sealaska's position is that's not a problem if people have prospective notice of that. He felt that people like those who testified via teleconference deserve reassurance that existing access points through private property are not going to be affected by the bill.

CHAIR BUNDE asked if the bill will have any retroactive impacts or whether it only applies to actions in the future.

MR. TILLINGHAST replied [it is prospective].

MR. MIKE DOWNING, Chief Engineer, DOT/PF, said it appears that Sealaska's attorneys and DOT/PF's attorneys have a different view of how this bill would actually affect the highway system. If it's not going to affect the highway system, DOTPF is not concerned about it. However, right now DOTPF believes it will. He wanted an opportunity to get further clarify on that question.

CHAIR BUNDE said that it is not his policy to move bills out of committee without a chance to work out issues. He announced the bill would be held in committee for further work.

HB 58-REINSTATEMENT OF NATIVE CORPS

CHAIR BUNDE announced HB 58 to be up for consideration.

MR. LARRY LABOLLE, staff to Representative Foster, sponsor of HB 58, said that HB 58 deals with a perennial problem, which is the involuntary dissolutionment of Native village corporations. Some corporations have received certified letters that said their incorporation expired; they then received letters that said their grace period is lapsing. Then they are involuntarily dissolved and are no longer corporations. Savoonga, a remote village without legal counsel, brought the situation to Representative Foster's attention. These corporations have shareholders and assets; returning the assets creates a problem.

In the past, the Department of Commerce and Economic Development (DCED) opened a window of opportunity to give a corporation 60 or 90 days to apply and be reinstated as a corporation. Currently, three corporations have been involuntarily dissolved. He said this is the fourth time this bill has gone through the legislature in 15 years.

CHAIR BUNDE asked if an expense is involved in going through this process.

MR. LABOLLE replied there is an expense and penalties have to be paid as well. The department assured him that if the fiscal note wasn't zero, it would be a positive, but so slight that it would be inconsequential.

CHAIR BUNDE said he hoped that next time around, there wouldn't even be three, because they'll realize it's costing them money to do this.

MR. LABOLLE replied that is probably the case. The first time this happened all of the villages weren't remote, but this time they are very remote.

TAPE 03-10, SIDE B

SENATOR FRENCH asked how often Native corporations need to be reauthorized.

MR. LABOLLE replied every three or five years.

SENATOR FRENCH commented that's probably why the villages are in trouble.

MS. ALICE HOUSTON, Corporation Supervisor, DCED, clarified that corporations of any type have to file bi-annual reports every other year. After two years, post offices don't forward mail so if the department hasn't been notified of an address change, the corporations don't get the notice.

SENATOR FRENCH recapped that every two years the corporations have to renew their authorization; most remember and a few don't.

MS. HOUSTON agreed and added that most remember; others are reminded with notices by certified mail. After the dissolution takes place, they have two years to reinstate before they get to this point.

SENATOR FRENCH asked how many Native corporations exist.

MS. HOUSTON replied that there are 119 ANGSA corporations.

CHAIR BUNDE asked if she could answer his question about the cost to the corporation.

MS. HOUSTON replied that a for-profit corporation's bi-annual fee is $100; the late penalty is $37.50. Once a corporation is dissolved, the fee is double or $275 for each two-year period.

CHAIR BUNDE asked why they must reauthorize bi-annually and whether it would make more sense to reauthorize every five years.

MS. HOUSTON replied that she didn't know the history, but she thought she would have more trouble getting notices to folks

every five years. She pointed out the bi-annual requirement is in statute.

CHAIR BUNDE asked why paperwork needs to be generated over this.

SENATOR SEEKINS responded that he thought a lot of corporations just voluntarily dissolve. It takes no affirmative action on DCED's part and it has a chance, on a regular basis, to clean out the corporations that didn't renew.

MS. HOUSTON agreed and said requiring the information every five years would make it outdated.

CHAIR BUNDE asked if the information equaled the cost of generating that paper work.

MS. HOUSTON said she would research that for him.

SENATOR STEVENS asked if it is true that the communities are very remote or unsophisticated.

MS. HOUSTON replied that most of the corporations were very small and were dissolved in 2000 or earlier.

SENATOR SEEKINS asked when a corporation voluntarily dissolves and then applies for reinstatement, if there is any other examination to see whether it has acted as a corporation to issue the certificate.

MS. HOUSTON replied that DCED is just a filing agency and doesn't do any investigation.

CHAIR BUNDE said they would bring the bill up again after some work and adjourned the meeting at 2:25 p.m.