

ALASKA STATE LEGISLATURE
SENATE COMMUNITY AND REGIONAL AFFAIRS STANDING COMMITTEE

March 18, 2008

3:31 p.m.

MEMBERS PRESENT

Senator Donald Olson, Chair
Senator Albert Kookesh, Vice Chair
Senator Gary Stevens
Senator Joe Thomas
Senator Thomas Wagoner

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 304

"An Act authorizing an Alaska regional development organization to use the Alaska Commercial Fisheries Entry Commission as an informational resource."

MOVED SB 304 OUT OF COMMITTEE

SPONSOR SUBSTITUTE FOR SENATE BILL NO. 228

"An Act relating to and permitting certain uses and occupancies of real property that do not comply with changes made to municipal land use ordinances."

MOVED SSSB 228 OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: SB 304

SHORT TITLE: CFEC AS INFORMATION RESOURCE

SPONSOR(S): COMMUNITY & REGIONAL AFFAIRS

03/12/08	(S)	READ THE FIRST TIME - REFERRALS
03/12/08	(S)	CRA
03/18/08	(S)	CRA AT 3:30 PM BELTZ 211

BILL: SB 228

SHORT TITLE: MUNICIPAL LAND USE REGULATION

SPONSOR(S): SENATOR(S) SENATOR DYSON

01/16/08	(S)	READ THE FIRST TIME - REFERRALS
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01/16/08 (S) CRA, STA
02/27/08 (S) SPONSOR SUBSTITUTE INTRODUCED-REFERRALS
02/27/08 (S) CRA, STA
03/04/08 (S) CRA AT 3:30 PM BELTZ 211
03/04/08 (S) -- MEETING CANCELED --
03/18/08 (S) CRA AT 3:30 PM BELTZ 211

WITNESS REGISTER

DAVE GRAY, Staff
to Senator Olson
Alaska State Legislature
Juneau AK
POSITION STATEMENT: Presented SB 304.

FRANK HOMAN, Commissioner
Commercial Fishery Entry Commission (CFEC)
Juneau AK
POSITION STATEMENT: Spoke in support of SB 304.

SENATOR FRED DYSON
Alaska State Legislature
Juneau AK
POSITION STATEMENT: Presented SSSB 228.

JEREMY THOMPSON, Staff
to Senator Dyson
Alaska State Legislature
Juneau AK
POSITION STATEMENT: Presented SSSB 228.

ACTION NARRATIVE

CHAIR DONALD OLSON called the Senate Community and Regional Affairs Standing Committee meeting to order at [3:31:32 PM](#). Senators Kookesh, Thomas, Wagoner, and Olson were present at the call to order. Senator Stevens arrived later.

SB 304-CFEC AS INFORMATION RESOURCE

[3:32:05 PM](#)

CHAIR OLSON announced the consideration of SB 304.

DAVE GRAY, Staff to Senator Olson, Alaska State Legislature, said SB 304 is a committee-sponsored bill. It is meant to provide, without charge, Alaska Commercial Fisheries Entry Commission (CFEC) information to Alaska Regional Development

Organizations (ARDOR). ARDORs are nonprofit organizations comprised of economic, political, and social interests in each region, with the purpose of encouraging and stimulating economic activity. Of the eleven regions with these organizations, eight have substantial commercial fisheries activities. SB 304 allows ARDORs to benefit, free of charge, by the fisheries information generated by the CFEC. Commercial fisheries have a multi-billion dollar impact on Alaska and are the main economic engine in many parts of the state.

[3:34:11 PM](#)

SENATOR KOOKESH asked if the CFEC has a position.

MR. GRAY said someone is here to testify.

SENATOR WAGONER said he has trouble with line 6, page 3, of the bill. "Why would the ARDOR be able to access or even be interested in individual fishermen's earnings?"

MR. GRAY said they would not have access to confidential information, only information on trends, averages, and values.

[3:35:21 PM](#)

MR. GRAY said to look at AS44.33.895. It talks about public information, not confidential information.

SENATOR WAGONER said if it defined earnings as collective, it would be fine.

MR. GRAY said that is his understanding. The CFEC won't reveal anyone's personal gain. It does composite analyses regarding harvest value and ex-vessel added value in the region and "that sort of thing."

[3:37:48 PM](#)

FRANK HOMAN, Commissioner, Alaska Commercial Fishery Entry Commission, said normally the CFEC would be reluctant to make more work for themselves without charging a fee. But there are only a few ARDORs, and he doesn't anticipate a big rush of requests. There is a zero fiscal note because the impact would not be great. It is a matter of spending a few hours of a technician's time to generate a report that is tailored to each region. He said much of the CFEC's information is presented more broadly than that. He is personally sympathetic because he was president of the Southeast ARDOR. The ARDORs have very little money. He believes that SB 304 only allows public information to be released. The confidentiality statute says that the

commission may release information that does not identify individual fishers, buyers, or processors, or the specific area where fish had been taken. The CFEC also has the requirement of not releasing any information that is not aggregated to protect individual information.

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CHAIR OLSON asked if there is a charge for the information now.

MR. HOMAN said it runs from \$20 to \$50 per hour of work, depending on the quality the information. These types of requests will run from a few hundred dollars to \$1,500. Even with several requests, there will only be a slight impact.

MR. HOMAN said the CFEC gets harvest and earnings information from the Alaska Department of Fish and Game.

SENATOR THOMAS asked if this just expedites the access to this information since it is public information.

MR. HOMAN said this bill just allows the CFEC to provide the information without charge.

SENATOR THOMAS asked why an ARDOR would want the information.

MR. HOMAN said ARDORS look at the economics of the region to stimulate development. "They use it as part of a package to portray their region that would encourage people to come there and stimulate economic development."

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MR. GRAY said there is a lot of support from ARDORS even though this bill has only recently been introduced.

SENATOR KOOKESH moved SB 304 from committee with individual recommendations and attached fiscal note(s). There being no objection, SB 304 moved out of committee.

The committee took a brief at-ease at [3:45:13 PM](#).

SB 228-MUNICIPAL LAND USE REGULATION

[3:45:57 PM](#)

CHAIR OLSON announced the consideration of SB 228.

SENATOR FRED DYSON, Alaska State Legislature, noted that he had a sponsor substitute for SB 228.

CHAIR OLSON said that SSSB 228, version \C, was before the committee.

[3:47:04 PM](#)

SENATOR DYSON said this bill has no dollar signs, but is significant in protecting the rights of Alaskans. He has been in touch with people across the nation. Some might not recognize real property issues in major urban centers created by urban planners and zoning regulations. SSSB 228 guarantees that a property owner will keep the use of property even if the zoning and land-use regulations change. The guarantee is for ten years, but if a person is a senior, disabled, or a veteran, it will be a lifetime. "In the area where I live lots of very well-meaning people have put their regulations on top of long-standing pioneers in the area and have had a very negative effect, both on their lifestyle, income, and ultimately their mental health."

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SENATOR DYSON said he is fine with a new subdivision that has land-use regulations and everyone moving in knows about them, but he strongly objects to development that moves near a pioneer and imposes its will on that person. There are some places in his jurisdiction that won't allow unapproved house colors, a truck with a logo, a vehicle in the yard, or a political sign, which is a huge abrogation of rights. It seems to be contrary to Alaskans' natures. He assumes he will hear from urban planners who say this will restrict their rights, "and it does restrict their right to impose a change of values for the use of the land on somebody, unless they can demonstrate that it has a negative impact on the neighborhood." His original version said that whatever someone is doing and a person can't "hear it, smell it or see it, it's none of the government's darn business." The drafters toned him down to the definition of a public nuisance. The right of life, liberty, and the pursuit of happiness was debated when our country was founded. He said he is often astonished at the wisdom of the founders of America. He quoted several people on the topic of private property, and he submitted the quotes for the record. Blackstone said regard of the law for private property is above the good of the community. John Locke said the preservation of property is the reason for society, and the government can never take property without consent. Samuel Adams said that inalienable rights include life, liberty, and property. He quoted others.

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SENATOR DYSON said many battles, including ones in South America, are over the fact that common people don't have access to the land - an impetus to the Marxist movement of taking land from the rich and giving it to ordinary folks.

SENATOR KOOKESH said he can read the quotes himself.

SENATOR DYSON quoted Thomas Jefferson: it is the unalienable and god-given right and duty to take none of the property from us, including the right to own, use, and enjoy one's own private property.

SENATOR DYSON said his bill tries to keep the government from imposing a change of land use. One section deals with home-based businesses. Grandfathering of a business is already allowed, but that is not sufficient because that only means that a person can only continue the level of activity that was already there.

The committee took a brief at-ease at [3:55:56 PM](#).

[3:56:34 PM](#)

VICE-CHAIR KOOKESH took the gavel.

SENATOR DYSON said SSSB 228 makes sure a use that was permitted before the zoning change can continue. If erecting a Quonset hut was permitted prior to a zoning change, for example, a person will still be able to put one up afterwards. That right will terminate with the transfer of the property or ten years.

[3:57:45 PM](#)

JEREMY THOMPSON, Staff to Senator Dyson, said a person cannot separate the possession of private property from the use of that property. "When you take away the freedom to use private property, in a certain way, you take away a piece of it." SSSB 228 makes things less confusing for the property owner. "Pages and pages of regulations to memorize and know on what you can and cannot use on your land is confusing." The bill restrains the government from committing unjust acts. Local control is a moral good, but it should not be arbitrary or maintained at the expense of private property. SSSB 228 recognizes that there is a common law tradition of what is a public nuisance, "and if you want to restrict a private citizen's right to use his or her land, you need to appeal to that tradition." If the laws of that tradition are cut down for economics or politics, there will be no where to hide when those forces are turned against us. He suggested two books on the subject of property rights.

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SENATOR STEVENS said he understands the principle, but there are also communities that want to establish their own rules. In Kodiak a person can't have barnyard animals in the city, "and I think that's probably good." It is good not to have chickens next door waking people up. He asked if the bill will allow someone to have chickens even within the city limits.

SENATOR DYSON said yes. If the city changes the rules, a person can continue to do what was permitted before. He mentioned people in his district who race dogs. If the municipality determines that the act would have a negative impact on the neighborhood -- if it can make that case - then it can prohibit it. But when the city changes a rule, whoever was there before has a right to continue the use until the property changes hands or in ten years.

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SENATOR STEVENS said he sees problems. It stands on their heads all the laws the communities have passed. Firecracker rules, for example.

SENATOR DYSON said if the city changes its mind, then a person doesn't have to cease doing it the next morning.

MR. THOMPSON said not to underestimate the common law tradition. There's a well-defined tradition in common law that talks about what is a public nuisance. Senator Stevens' concern is dealt with in that. The tradition goes back hundreds of years and these issues are not new. What is disconcerting is that it is being pushed aside, and local governments are governing people. "Why do we have confidence in that, rather than the common law tradition?"

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SENATOR STEVENS said it reminds him of a homeowner who had a junk yard with old cars and magazines. It was attracting rats, and the community wanted it cleaned. It took the borough a number of years and an enormous amount of money to force him to clean up. This bill will make it more difficult for the borough to do its job for the neighbors.

[4:04:27 PM](#)

SENATOR DYSON said it is only when the city changes things - "the guy's had a wrecking yard there, been a pioneer, and his yard is full of old snow machines and old outboards, and the city moves in and decides that that's no longer. He will have

this transition time to deal with it." In his area, a garage was put out of business after 35 years because a subdivision was built around him. He collected Ford pick-ups and had half a dozen sitting around the property, and the neighbors ran him off. "But he was there before; they knew it when they came in."

SENATOR WAGONER said he likes parts of the bill. In his hometown the city rezoned property, and a man was not allowed to sell his print shop. A simple zoning change cost him several thousand dollars in business and property value when he sold it. "And I think that's what you're trying to get to." He supports the bill because he was appalled that the city could do that.

[4:06:43 PM](#)

SENATOR DYSON said unfortunately this bill will not protect that because he could not transfer that right. The man could stay and even expand his business but it couldn't change hands.

SENATOR THOMAS noted Lines 1 and 2 on Page 2 where it says the property must be allowed to continue to be used for the home business until ownership of the property is transferred. What if the business was sold but the property wasn't?

SENATOR DYSON said the right does not go with the business but with the property. With a transfer, the previous usage ends.

SENATOR WAGONER said the sponsor statement says if the ordinance is changed to prohibit the use of the land that was previously permitted - and that was the case of the print shop - the use of the land that was permitted under the old ordinance must be allowed to continue unless it's determined that the use constitutes a common law nuisance.

SENATOR DYSON said it is still predicated on the same ownership.

SENATOR THOMAS said that could be clarified to say: until ownership of the property or business is transferred.

SENATOR DYSON said yes, and that is in the third paragraph.

[4:09:15 PM](#)

SENATOR DYSON said Mr. Thompson spoke with someone from Fairbanks who sent 13 pages of municipal code "that regulates this whole business."

SENATOR WAGONER moved to report SSSB 304 from committee with individual recommendations and attached fiscal note(s).

SENATOR STEVENS objected and asked for input from the Alaska Municipal League and communities. He sees problems with the bill, and it would be hasty to move it without any comments.

SENATOR DYSON said his bill has very little chance to get through during the session. He expects "some of that push-back" in the next committee.

4:11:32 PM

SENATOR STEVENS said he sits on state affairs and won't mind dealing with his concerns there.

CHAIR OLSON said he is comfortable moving it. Hearing no further objections, SSSB 228 moved out of committee.

The committee adjourned at 4:12:11 PM.