

ALASKA STATE LEGISLATURE
SENATE RESOURCES STANDING COMMITTEE

April 2, 2007

3:33 p.m.

MEMBERS PRESENT

Senator Charlie Huggins, Chair
Senator Bert Stedman, Vice Chair
Senator Lyda Green
Senator Gary Stevens
Senator Lesil McGuire
Senator Bill Wielechowski
Senator Thomas Wagoner

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 25

"An Act relating to landowners' immunity for allowing use of land without charge for a recreational activity; relating to landowners' liability where landowner conduct involves gross negligence or reckless or intentional misconduct; relating to claims of adverse possession and prescriptive easements, or similar claims; and providing for an effective date."

MOVED HB 25 OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HB 25

SHORT TITLE: RECREATIONAL LAND USE LIABILITY/ADV. POSS

SPONSOR(s): REPRESENTATIVE(s) SEATON, WILSON

01/16/07	(H)	PREFILE RELEASED 1/5/07
01/16/07	(H)	READ THE FIRST TIME - REFERRALS
01/16/07	(H)	RES, JUD
01/24/07	(H)	RES AT 1:00 PM CAPITOL 124
01/24/07	(H)	Moved Out of Committee
01/24/07	(H)	MINUTE(RES)
01/25/07	(H)	RES RPT 8DP
01/25/07	(H)	DP: GUTTENBERG, EDGMON, SEATON, KAWASAKI, WILSON, ROSES, JOHNSON, GATTO
01/31/07	(H)	JUD AT 1:00 PM CAPITOL 120
01/31/07	(H)	Heard & Held

01/31/07 (H) MINUTE(JUD)
02/01/07 (H) JUD AT 1:00 PM CAPITOL 120
02/01/07 (H) Heard & Held
02/01/07 (H) MINUTE(JUD)
02/05/07 (H) JUD AT 1:00 PM CAPITOL 120
02/05/07 (H) Moved Out of Committee
02/05/07 (H) MINUTE(JUD)
02/07/07 (H) JUD RPT 1DP 3NR
02/07/07 (H) DP: LYNN
02/07/07 (H) NR: GRUENBERG, HOLMES, SAMUELS
02/12/07 (H) TRANSMITTED TO (S)
02/12/07 (H) VERSION: HB 25
02/14/07 (S) READ THE FIRST TIME - REFERRALS
02/14/07 (S) RES, JUD
03/02/07 (S) RES AT 3:30 PM BUTROVICH 205
03/02/07 (S) Heard & Held
03/02/07 (S) MINUTE(RES)
04/02/07 (S) RES AT 3:30 PM BUTROVICH 205

WITNESS REGISTER

REPRESENTATIVE SEATON

Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Sponsor of HB 25.

DENNIS BAILEY

Legislative Legal Services
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Explained some provisions of HB 25.

ACTION NARRATIVE

CHAIR CHARLIE HUGGINS called the Senate Resources Standing Committee meeting to order at [3:33:54 PM](#). Present at the call to order were Senators Wielechowski, Wagoner, Stedman, McGuire, Green and Huggins.

HB 25-RECREATIONAL LAND USE LIABILITY/ADV. POSS

[3:33:54 PM](#).

CHAIR HUGGINS announced HB 25 to be up for consideration.

REPRESENTATIVE SEATON, sponsor of HB 25, gave the committee background on the bill's progress.

CHAIR HUGGINS asked if anyone was resistant to this bill.

REPRESENTATIVE SEATON replied that no groups have spoken against it, but he had been contacted by three lawyers with concerns about the definition of gross negligence. He noted a March 21 memo from Mr. Bailey, Legal Services, which explained where the Alaska pattern jury instruction for gross negligence came from. A discussion of the differences between ordinary and simple negligence followed at the bottom of the memo. He stated whether the state wanted to have a higher burden on property owners is a policy decision.

[3:37:22 PM](#)

SENATOR STEVENS joined the committee.

[3:37:49 PM](#)

SENATOR WIELECHOWSKI said this is going on to Judiciary where those issues can be considered.

SENATOR MCGUIRE asked why they were going back to adverse possession, which was her bill originally and that a compromise had been struck on prescriptive easements, page 2, subsection (d).

REPRESENTATIVE SEATON replied that a March 5 memo to Senate Resources discussed adverse possession in the 2005 legislation that was passed. He explained that one part of the bill says, "the uninterrupted adverse notorious use of private land for public access purposes including trails by the public for a period of 10 ten years or more vests an appropriate interest in the land." This allows adverse possession, but another classification says that the landowner can go back and ask for a repeal without a statute of limitations. That's what they did before. Nothing in this bill would stop previous adverse possession or prescriptive easements from being valid. He explained:

What it would mean is from this point going forward, if you gave free recreational use to somebody of your private land, that use would not gain prescriptive easement or adverse possession right. I mean you wouldn't go back 20 years and say we're voiding what has taken place. This is simply going forward and says that if you, as a private land owner, allow somebody to have a trail across your land, you don't have to worry about them gaining a prescriptive easement by

you letting them have free use of your land for a trail going across it. And the whole purpose of that is to gain more trails and recreational use in Alaska.

3:41:01 PM

SENATOR MCGUIRE responded that he was focusing on just one specific part of the law and she didn't disagree with the way he described it, but she said you have to think about the flip side:

Which is first of all adverse possession requires open notorious and adverse possession, which means it's adverse to the person who is holding it. So, it's a totally different doctrine. That's not 'Hey, you're the family next door to my cabin. By all means, snow machine across it; I'd like to share that access with you.' It's a different doctrine of law and the point of the doctrine of the law, well many years ago, is to help settle land disputes that could occur without people recognizing it - that plat lines and things are drawn in ways that the public record may not have been clear about...

She was concerned about cutting off people's access to recreation that they had used for a long time previously. Under current law that kind of access could not be barred.

3:42:49 PM

DENNIS BAILEY, Legislative Legal Services, agreed with Senator McGuire that adverse possession is a big body of law that has many twists and turns. However, he agreed with Representative Seaton's analysis, "That this bill would not affect a 20-year use issue, because it can't be used prospectively to add to the time it might be required to perfect an easement."

SENATOR MCGUIRE clarified that the logic that this bill somehow doesn't apply to current situations doesn't appease the fundamental premise of her argument. "Let's say that Lyda is five years old and I'm six and there's no cabin in our near future for quite some time, that's what I'm talking about."

3:44:14 PM

MR. BAILEY replied that the issue might come up in a circumstance where a person has vested for 9 of the required 10 years or is close to perfecting a prescriptive easement. This would cut off their right to use it for another year and perfect the easement.

CHAIR HUGGINS recommended letting those issues be taken up in the Judiciary Committee, the next committee of referral.

[3:47:18 PM](#)

SENATOR STEVENS moved to pass HB 25 from committee with individual recommendations and attached fiscal notes.

SENATOR STEDMAN objected to announce that he holds remote property; he then removed his objection and HB 25 passed from committee.

There being no further business to come before the committee, Chair Huggins adjourned the meeting at [3:48:24 PM](#).