

HOUSE FINANCE COMMITTEE
March 23, 2015
1:34 p.m.

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CALL TO ORDER

Co-Chair Thompson called the House Finance Committee meeting to order at 1:34 p.m.

MEMBERS PRESENT

Representative Mark Neuman, Co-Chair
Representative Steve Thompson, Co-Chair
Representative Dan Saddler, Vice-Chair
Representative Bryce Edgmon
Representative Les Gara
Representative Lynn Gattis
Representative David Guttenberg
Representative Cathy Munoz
Representative Lance Pruitt

MEMBERS ABSENT

Representative Scott Kawasaki
Representative Tammie Wilson

ALSO PRESENT

Tom Wright, Staff, Representative Mike Chenault; Ed Fogels, Deputy Commissioner, Department of Natural Resources; Representative Mike Chenault, Sponsor; Jane Pierson, Staff, Representative Steve Thompson.

PRESENT VIA TELECONFERENCE

Dick Coose, Self, Ketchikan; Lois Epstein, Arctic Program Director, Wilderness Society, Anchorage; William O'Leary, President and CEO, Alaska Railroad Corporation.

SUMMARY

HB 115 AK SOVEREIGNTY; US TRANSFER LAND TO ALASKA

CSHB 115(FIN) was REPORTED out of committee with a "do pass" recommendation and with one new indeterminate fiscal note from the Department of Natural Resources.

HB 140 LEG. APPROVAL: AK RAILROAD REVENUE BONDS

HB 140 was REPORTED out of committee with a "do pass" recommendation and with one new zero fiscal note from the Department of Commerce, Community and Economic Development.

Co-Chair Thompson discussed the meeting agenda.

#hb115

HOUSE BILL NO. 115

"An Act relating to the transfer of public land from the federal government to the state and to the disposal of that land; and providing for an effective date."

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Co-Chair Thompson noted that the bill had a new fiscal note. He asked for a motion on the Committee Substitute (CS).

Co-Chair Neuman MOVED to ADOPT the proposed committee substitute for HB 115, Work Draft 29-LS0587\I (Bullard, 3/18/15). There being NO OBJECTION, it was so ordered.

TOM WRIGHT, STAFF, REPRESENTATIVE MIKE CHENAULT, pointed to the change in the bill on page 2, line 24. An exemption had been added for land designated as a national park by January 1, 2015. He noted that another exemption was for land used for military or naval purposes (including a military reservation). He relayed that the bill addressed issues related to public lands including the transfer of title of public lands to the state and asserting state sovereignty under the 9th and 10th Amendments of the U.S. Constitution.

Representative Gara did not support the bill. He remarked that the State of Alaska and the federal government were negotiating over 55 million acres of land owed to Alaska under statehood [Note: this statement was corrected later

in the meeting to 5.5 million acres]. He discussed that the bill took away 168 million acres, which was significantly more than the state was owed. He referred to a Legislative Legal Services memorandum addressed to House Speaker Chenault specifying that the bill was unconstitutional (copy on file). He had not found a provision of the U.S. Constitution that would allow Alaska to take land from the federal government. He asked how the bill was not clearly unconstitutional.

Mr. Wright answered that it would be up to the courts to decide the bill's constitutionality. He stated that if the issue went to court it would be fought out there.

Co-Chair Thompson noted that Department of Natural Resources (DNR) staff were available for questions by teleconference.

Representative Gara stated that it was not necessary to go to court to determine the bill's constitutionality. He underscored that it was unconstitutional. He noted that it would cost the State of Utah a down payment of \$2 million to fight the litigation [related to similar legislation]. He pointed out that Arizona's conservative governor had vetoed similar legislation in order to avoid spending money on defending an unconstitutional law. He wondered how the legislation was not clearly unconstitutional.

Mr. Wright answered that he could not answer the question from a legal standpoint. He cited a legal overview from the Federalist Society (copy on file) on Utah's legislation. He read from the overview's conclusion:

Utah's Transfer of Public Lands Act presents fascinating issues for the areas of public lands, natural resources, and constitutional law. There are credible legal arguments supporting Utah's demand that the federal government extinguish certain public lands within the State. At the very least, it seems clear that the law is not "clearly" unconstitutional as some opponents contend.

Mr. Wright would provide the document to the committee.

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Co-Chair Thompson requested a copy of the document for the committee. He noted that Vice-Chair Saddler and Representative Pruitt had joined the committee meeting.

Representative Gara remarked that he had not seen the document [written by the Federalist Society]. He asked if it included a citation of any provision in the U.S. Constitution allowing a state to take federal land. Mr. Wright answered not that he was aware of.

Co-Chair Thompson noted that Representative Chenault had joined the meeting.

Representative Guttenberg observed that the former fiscal note and its replacement were the same, but the explanations were different. He asked how DNR would facilitate the land transfer. He wondered if similar action had occurred in the past and if so, how the federal government had reacted. He believed that unless the federal government acquiesced the bill could result in ongoing court cases.

ED FOGELS, DEPUTY COMMISSIONER, DEPARTMENT OF NATURAL RESOURCES, replied that he could not readily answer the question. He stated that if the bill passed and the federal government decided to give the lands to the state, the department would have additional lands to manage and additional revenues generated from the lands. He stated that the indeterminate fiscal note reflected that the department could not specifically identify what the cost would be. He did not believe speaking to any potential litigation was in the department's realm of expertise.

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Representative Guttenberg asked what the department would do to implement the change of ownership from federal to state land. Mr. Fogels replied that DNR's response would partly depend on which lands the state received. He noted that the bill considered national forests, wildlife refuges, and Bureau of Land Management (BLM) land. He noted the importance of identifying and refusing land that the state did not want (e.g. contaminated sites), which would be a key component of DNR's action.

Representative Guttenberg remarked that the state, Native entities, cities, municipalities, and boroughs had all

over-selected lands. He remarked that the entities did not lose their ability for selection. He wondered how the department would mitigate the issue. In the past the department reflected that all of the entities wanted to over-select and then went through a long-term process of whittling down what each entity actually received. He wondered how the relationship with the other entities with land to select would play out.

Mr. Fogels responded that the Native corporations were almost complete with their land entitlement. He guessed that the state would not accept the lands that Native corporations had selected (that were yet to be conveyed). He relayed that municipalities received their lands from the state; therefore, opportunities for municipalities to get land could increase if the state's holdings increased.

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Co-Chair Neuman noted that under the Alaska Statehood Act the federal government had granted the state 28 percent of the total land within its borders with additional land grants for schools, the University of Alaska, and the Alaska Mental Health Trust Authority (AMHTA). According to DNR, the state had received about 99.5 million acres and awaited transfer of the remaining 5.5 million. He wondered if the federal government had approached the state about settling up.

Mr. Fogels replied that DNR was in constant communication with the federal government regarding the remaining 5.4 million acres and what could be done to resolve the issue. He detailed that the state needed to address some significant issues before it picked which 5.4 million acres it wanted. He elaborated that public land orders were at the top of the list of items that needed resolution. The department did not want to accelerate the remaining 5.4 million acres until the public land orders were lifted.

Co-Chair Neuman wondered if the federal government recognized that the state depended on the development of its resources. He noted that the state would like lands that had economic value for resource development. He wondered if it was the goal. Mr. Fogels replied in the affirmative. He elaborated that the purpose of the statehood land entitlement was to generate an economy for

the state; therefore, DNR looked for lands that would maximize that potential in the future.

Co-Chair Neuman believed the state's only option would be to do as directed in the bill and to sue the federal government to enable the state to select lands it could use for resource development. He wondered if there were other options available.

Mr. Fogels replied that DNR would prefer to work amicably with the federal government and have it relinquish the public land orders in order to broaden the selection pool for the state. The state was currently working on the issue with the federal government; if all went well the government would lift all or some of the public land orders to provide the state access to the highest potential lands. He added that if the method did not succeed DNR may have to look at other options in the future, but it was working to solve the issue without litigation.

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Co-Chair Neuman asked for verification that the other option would be to sue the federal government over the selection of lands. Mr. Fogels agreed that it would be one option.

Co-Chair Thompson referred to a question from Vice-Chair Saddler in a previous meeting regarding Section 2(b). The question pertained to the value of the injuries caused from the federal government. He asked Mr. Fogels to reiterate the information.

Mr. Fogels answered that he had sent an email to Co-Chair Thompson and Co-Chair Neuman regarding the question (copy on file).

Co-Chair Thompson confirmed that he had the email. Mr. Fogels relayed that DNR did not have a comprehensive list of all the injuries it believed the federal government had caused the state. There were many different ways to look at the issue. He had cited two prominent examples in his email including potential revenue the state would not receive if Alaska National Wildlife Refuge (ANWR) continued to be off limits and the loss of 5,000 timber jobs in Southeast due to federal land management policies in the Tongass National Forest.

Co-Chair Thompson referred to the Mr. Fogel's email stating that the estimated loss of revenue to the state related to ANWR was between \$94.8 billion and \$210 billion. Additionally, 5,000 jobs in the timber sector had shrunk to a few hundred jobs; 6 communities had seen schools close due to low student enrollment, which in many cases was directly or indirectly related to the health of the forest product industry.

Representative Munoz wondered if the bill's purpose was to expand the land selection pool or to obtain land beyond the state's entitlement. Mr. Wright answered that the original intent was to receive the remaining 5.5 million acres; however, the state would gladly take additional lands.

Representative Munoz asked for verification that the bill identified all federal land with the exception of land used by the military and national parks. Mr. Wright answered in the affirmative.

Representative Munoz asked for confirmation that the bill also asked for the removal of land orders on 10.3 million acres that were top-filed. Mr. Wright responded in the affirmative.

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DICK COOSE, SELF, KETCHIKAN (via teleconference), testified in support of the legislation. He discussed his professional background in forestry management. He believed the federal government no longer had the desire, direction, or ability to manage the land to utilize the goods and services needed by local residents, communities, or the nation. He stated that federal land management was currently driven by politics, false public information, and excessive regulations and legal actions. He opined that the cost was excessive. He had observed that land management by the State of Alaska was much more cost-effective, efficient, and provided for the needs of the people. He reasoned that people needed the jobs and the state and communities needed the economic benefits of the available land resources (i.e. oil, minerals, fish, timber, wildlife, recreation, tourism, and scenery). He believed if the state was managing the lands, especially in Southeast Alaska, the jobs related to the management would greatly increase. Additionally, the communities would be economically healthy

and the state treasury would benefit. He communicated that earlier in his career the national forest system lands had contributed more to the treasury than its budget by several billion dollars. He believed additional lands could have a positive impact on the state's revenue. He noted that the Alaska Statehood Act had limited the selection from the Tongass to approximately 500,000 acres in order to ensure that the pulp mills always had timber. He stated that the reason for the limitation was no longer valid because the federal government ran the pulp mills off. He believed the issue should not be partisan; the issue was about Alaskans determining their future as a resource-based state. He believed many of the resources were renewable indefinitely (fish, wildlife, timber, water, recreation, and tourism). He encouraged the committee to pass the legislation.

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LOIS EPSTEIN, ARCTIC PROGRAM DIRECTOR, WILDERNESS SOCIETY, ANCHORAGE (via teleconference), testified against the legislation on constitutional grounds. She relayed that the society had been following the issue in other states. She communicated that the issue had been vetoed by the Arizona Governor Jan Brewer due to its unconstitutionality. The group was not opposed to the land selection process moving forward. However, the most sensitive federal lands were under federal protection for a reason, which went back to statehood and the Alaska National Interest Lands Conservation Act (ANILCA). The Wilderness Society was working with the state and federal governments to ensure appropriate protections for the lands. She reiterated opposition to the bill.

Co-Chair Thompson CLOSED public testimony.

Vice-Chair Saddler asked if it was likely that revenue from the development of resources on the land would be equal to or greater than the costs managing the land. Mr. Fogels referred to his email to the co-chairs and a recent presentation in the House Resources Committee that projecting revenues from ANWR would be between \$90 billion and \$200 billion.

Representative Gara remarked that Legislative Legal Services had deemed the bill unconstitutional. He asked if the department had spoken to the administration to determine whether the state's attorney general believed the

bill was unconstitutional. Mr. Fogels answered in the negative.

Vice-Chair Saddler read from page 5 of legal overview from the Federalist Society:

As Governor Herbert has noted, the legal case for H.B. 148 may not be a "slam dunk," but there are legitimate arguments to support the law and certainly critics of the law overstate their legal case against the law. At the very least, there are open legal questions involved in the TPLA that have never received definitive resolution in the courts. As such, critics cannot make a cut and dry case against the law. In fact, if anything, opposition statements made so fare regarding the law may reflect an over-confidence in its unconstitutionality and an overstatement of the strength of precedent.

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Representative Gara understood the sponsor's frustration. He recognized there were many instances in Alaska where the federal government had taken inappropriate actions. For example, when the federal government had prevented ConocoPhillips from building a bridge over the Colville River to access oil field development in the National Petroleum Reserve-Alaska (NPR). He and others had contacted federal agencies in opposition to the ruling; subsequently, the bridge was eventually approved. Additionally, he had fought and helped resolve federal land-access rulings that prevented public fishing access along the Kenai River. He remarked that there were many places the legislature could discuss things the federal government had done either to give the state money or to take away rights that belonged to the state. However, he reasoned, "if you're angry at your neighbor you can't just bulldoze their house." He corrected his earlier statement about the acreage owed to the state by the federal government under statehood; it was owed 5.5 million acres. He stated that the bottom line is "we are both Alaskans and Americans. We can't violate the United States Constitution." He reasoned that the U.S. Constitution included no provision allowing the state to take land from the federal government. He noted that legislators had an oath to uphold both the state and federal constitutions.

Representative Gara continued that the bill would take 166 million acres of non-park land from the federal government when the state was only owed 5 million. He stated that it was not legal. He referred to the state's \$3.5 billion deficit. He elaborated that Utah estimated its litigation would cost \$2 million. He stressed that it was not the responsible thing to do with limited state funding. He discussed that Utah had a claim under its statehood compact where it was promised that some of the federal lands would only remain in federal hands temporarily. He noted that the same did not apply to Alaska. He highlighted that under the bill any state could take any federal land it wanted. He reasoned that if that were the case the State of Kentucky could take the U.S. Mint, which would be an economic disaster. He believed it meant the State of New York could take the U.S. Mint at West Point and Philadelphia could take the liberty bell for sale to the highest bidder. He agreed with Mr. Fogels that the state should harshly negotiate for the lands it was owed under statehood. He believed the state should either negotiate or litigate if there was a valid legal claim on the 5.5 million acres. He opined that taking another 163 million acres with no legal authority would just cost the state money. He agreed that in many areas the federal government had been very harsh on Alaska's access to lands within the state. However, he could not vote for something that was unconstitutional. He stated that he could support the bill if it addressed the 5.5 million acres and offered something legal.

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Co-Chair Neuman believed that in the event of a dispute anyone should have a right to go to court. He believed there was a dispute between the state and the federal government as to the lands that should be purveyed back to the state. He stressed that under the Alaska Statehood Act with the federal government, the state was owed another 5.5 million acres. He elaborated that the state wanted the ability to specify the acreage it would like conveyed. He continued that the federal government knew that Alaska was a resource development state, which it needed to create jobs. He reasoned that if the acreages were resource rich, it would be prudent for the state to receive the lands for development in order to help with its deficit. He referred to revenue from potential royalty shares in addition to job creation. He did not know how the issue could be resolved without going to court. He surmised that attorneys had

varying opinions on the legality. He concluded that the legislation directed the state to continue to move forward to try to select lands for transfer from the federal government. He supported the legislation and the benefits it could provide to the state. He opined that benefits would outweigh any litigation costs.

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Vice-Chair Saddler stated that he was not an attorney, but cited Amendment 10 in the U.S. Constitution:

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Vice-Chair Saddler remarked that the text was open to interpretation. He stated that the U.S. Constitution meant what the U.S. Supreme Court says it means. He supported the bill. He reasoned that the courts would decide the matter if there was a constitutional challenge.

Representative Guttenberg wondered if the legislature would have intentionally negated its half of the statehood act if the legislation was passed. He read from Section 4:

As a compact with the United States said State and its people do agree and declare that they forever disclaim all right and title to any lands or other property not granted or confirmed to the State or its political subdivisions by or under the authority of this Act.

Representative Guttenberg was concerned that if the state went to court it would put everything on the table; the state's right in addition to the federal government's claim for whatever it may want back. He noted that the courts could choose to "call it quits." He believed more information about the liability was needed. He had respect some of the bill's concepts, but he did not believe enough thought had gone into the end process.

REPRESENTATIVE MIKE CHENAULT, SPONSOR, believed the issues had all been discussed. He opined that it was important to keep the type of issues out in front in terms of how the legislature represented the people of Alaska. He was not afraid of a fight or of doing what he believed was right. He stated that there had been increased federal overreach

in regards to federal lands in Alaska. He spoke to the concerns Alaskans had around not having a say in the issues.

Co-Chair Neuman MOVED to REPORT CSHB 115(FIN) out of committee with individual recommendations and the accompanying fiscal note.

Representative Gara remarked that he would not object to the bill moving out of the committee; he believed House Speaker Chenault was entitled to have the bill move forward.

There being NO OBJECTION, CSHB 115(FIN) was REPORTED out of committee with a "do pass" recommendation and with one new indeterminate fiscal note from the Department of Natural Resources.

[2:15:00 PM](#)

#hb140

HOUSE BILL NO. 140

"An Act authorizing the Alaska Railroad Corporation to issue revenue bonds to finance a positive train control rail transportation safety project that qualifies for federal financial participation; and providing for an effective date."

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JANE PIERSON, STAFF, REPRESENTATIVE STEVE THOMPSON, communicated that the bill would authorize the Alaska Railroad Corporation to issue up to \$37 million in tax exempt bonds backed by the federal transit administration formula funds received annually by the corporation. She detailed that bond proceeds would be used to finance positive train control, a safety program mandated by federal government without any correlating funding.

Co-Chair Neuman noted that the railroad needed approximately \$55 million to complete the program. He referred to the bonding authority of \$34.1 million provided under the bill, which left \$18 million. He asked if it was the intent of the Alaska Railroad Corporation to ask the legislature for the additional funds.

WILLIAM O'LEARY, PRESIDENT AND CEO, ALASKA RAILROAD CORPORATION (via teleconference), replied that the railroad had yet to determine where it would obtain the remaining \$18 million; \$55 million would be addressed through the legislation. He elaborated that \$37 million would get the railroad through approximately two years of activity on the project, which would provide the railroad time to look at options.

Co-Chair Neuman asked if the corporation had discussed the \$18 million with its board and the possibility the legislature may need to provide additional funding in the future. Mr. O'Leary in the affirmative. He detailed that originally the plan had been to request the full \$55 million over a three-year period from the legislature. The corporation's had the ability to refinance existing debt, which created headroom to bond for the \$37 million. He addressed the remaining \$18 million and agreed that everyone was considering where the funds would come from. He stated that the corporation did not currently know where the additional funds could come from.

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Co-Chair Neuman was concerned that the state did not have capital funds to put towards the project. He wondered what would happen in three years' time. He wondered what other options the corporation had besides requesting the funds from the legislature.

Mr. O'Leary replied that he did not know. He reasoned that the issue would be dealt with as the project went forward. He communicated that the corporation's primary objective was to keep the project moving forward and to continue to make a good faith effort as required by its regulators. He believed that the legislation would hopefully provide time to come up with a solution for the remainder of funds needed to complete the project by 2018.

Co-Chair Neuman commented that he did not mind moving the bill forward, but he wanted assurance from the railroad that it did not intend to come forward with further capital fund requests in the future.

Representative Gattis wanted assurance that the corporation did not intend to come back to the state for funds. She spoke to decisions businesses were required to make related

to financing; there were choices to sell assets, to re-bond, or other.

Mr. O'Leary answered that he was not trying to be coy in his response. The corporation did not know where the funds would come from. He agreed that the corporation's major focus was continuing to move forward with the unfunded mandate. He mentioned options of state, federal, and railroad funds. He underscored that the railroad understood that it had to obtain the funds somewhere and that it was necessary to keep moving forward on the project.

Representative Gattis asked if the corporation had the assets it could utilize if push came to shove. Mr. O'Leary answered that the railroad did not have the money or assets currently. He noted that if it did have the money it would most likely be moving forward with those funds. The goal was to begin to determine what the corporation would need to do to obtain the \$18 million.

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Co-Chair Thompson believed the railroad had significant assets that it may need to consider utilizing. He hoped the committee had adequately conveyed that the state would probably not have any money for three or four years.

Co-Chair Thompson CLOSED public testimony.

Co-Chair Neuman MOVED to REPORT HB 140 out of committee with individual recommendations and the accompanying fiscal note. There being NO OBJECTION, it was so ordered.

HB 140 was REPORTED out of committee with a "no recommendation" recommendation and with one new zero fiscal note from the Department of Commerce, Community and Economic Development.

Co-Chair Thompson discussed the schedule for the following day.

ADJOURNMENT

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The meeting was adjourned at 2:26 p.m.