

ALASKA STATE LEGISLATURE
SENATE RESOURCES STANDING COMMITTEE

February 20, 2017

3:31 p.m.

MEMBERS PRESENT

Senator Cathy Giessel, Chair
Senator John Coghill, Vice Chair
Senator Shelley Hughes
Senator Kevin Meyer
Senator Bill Wielechowski

MEMBERS ABSENT

Senator Natasha von Imhof
Senator Bert Stedman

COMMITTEE CALENDAR

OVERVIEW: UNIVERSITY OF ALASKA LAND GRANT STATUS

- HEARD

PREVIOUS COMMITTEE ACTION

No previous action to record

WITNESS REGISTER

JIM JOHNSEN, President
University of Alaska Anchorage (UAA)
Anchorage, Alaska

POSITION STATEMENT: Provided overview of the University of Alaska's (UA) land grant status.

ANDY HARRINGTON, Associate General Counsel
University of Alaska Fairbanks (UAF)
Fairbanks, Alaska

POSITION STATEMENT: Commented on UA's land grant status.

KIT DUKE, Director
Facilities and Maintenance
University of Alaska Anchorage (UAA)
Anchorage, Alaska

POSITION STATEMENT: Commented on UA's land grant status.

ACTION NARRATIVE

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CHAIR CATHY GIESSEL called the Senate Resources Standing Committee meeting to order at 3:31 p.m. Present at the call to order were Senators Coghill, Wielechowski, Meyer, and Chair Giessel.

Overview: University of Alaska Land Grant Status

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CHAIR GIESSEL announced that the committee would take up one item today, the overview of the land grant status for the University of Alaska (UA). The Resources Committee is interested in this subject, because it concerns the issue of possession of lands through grants, and Alaska received land grants because of the Statehood Act to Alaska Native Regional Corporations through the Alaska Native Claims Settlement Act (ANCSA), and through the Alaska National Interest Lands Conservation Act (ANILCA). Who has possession of the land and what they are allowed to do with it has significant implications. In these fiscally challenging times, it's important to constantly ask the question about how our key government services function and how they are funded.

CHAIR GIESSEL said she often hears from constituents that the University should simply sell their land and then they could be completely funded. However, the University of Alaska is the state's land grant university, and like our state, the University needs to leverage the value of its land to promote essential services and educational opportunities. If that's not happening, they should know why.

She said this committee has had well-rounded exposure to the University of Alaska. Senator Hughes, chair of the Education Committee, has had President Johnsen before that committee to talk about the University, and the Finance Committee heard an overview of their budget just last week. So, today she hoped to get further insight into the land grant opportunities that the University has. She welcomed President Johnson to the table.

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JIM JOHNSEN, President, University of Alaska, Anchorage, Alaska, said he appreciated this opportunity to shed some light on one reason why the University has historically relied on the legislature so heavily for funding, which is because of the land grant deficit. Second, he wanted to educate and discuss with the

legislature and get their views of his approach going forward. He had experts on line to address questions.

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SENATOR HUGHES joined the committee.

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MR. JOHNSEN said he would walk through four steps:

1. Provide land grant deficit history.
2. Share current thinking on a solution.
3. Review existing holdings
4. Provide a primer on the UAA Land Trust balance, the entity into which these lands would go, and how it is used now, because that may foreshadow how increased proceeds could be used going forward.

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MR. JOHNSEN said that only Delaware received a smaller land grant than the University of Alaska, and Hawaii got cash in lieu of a land grant, but some states are so small that their names can't be written on a map, like Rhode Island, Connecticut, and Massachusetts. Those states all got grants larger than Alaska's. It makes no sense.

He said that Alaska received .11 percent of the state's land grant at statehood; it amounted to approximately 110,000 acres, but that increased to close to 500,000 acres under the various federal acts. So the current deficit is about 360,000 acres.

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MR. JOHNSEN said in 1862, President Lincoln passed the Morrill Act that created land grant universities all across the country for work force development and to develop the frontier.

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In 1915, Territorial Delegate James Wickersham got a statute through Congress to provide some land for what was then the Alaska Agricultural College and School of Mines.

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In 1929, the Sutherland Land Grant Statute granted an additional 100,000 acres of land to the Territory for the exclusive use of the Alaska Agricultural College and School of Mines. In 1935, it became the University of Alaska.

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An early version of the statehood bill set aside 10 million acres for the University of Alaska. But the final Statehood Act was a whole lot different: it repealed the Wickersham land grant of 1915 and removed Alaska's eligibility for Morrill Act lands, all the while giving a substantial grant of 103 million acres to the state. The University got nothing. Congress's expectation was that the University's land grant would be included in the state's land grant. In other words, the state would just turn, pivot, and grant it some land and everybody would be good.

MR. JOHNSEN said one of the first acts of the first Alaska Legislature in 1959 was to grant the University 1 million acres. That was vetoed by Governor Egan. Additional land bills have been passed by Congress over the years, but full transfer of those lands are still in many cases to be finished, and the University's land grant, despite those various attempts, remains unresolved.

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CHAIR GIESSEL asked why Governor Egan vetoed the 1 million acres.

ANDY HARRINGTON, Associate General Counsel, University of Alaska, Fairbanks, Alaska, answered that Governor Egan was concerned about the anti-dedication clause in the Constitution.

MR. JOHNSON said between 1997 and 2005 several bills were introduced in an attempt to address the deficit, but none were successful. However, significant progress was made in 2000 when the State Legislature authorized the University to select 260,000 acres of land, but that got vetoed. The legislature overrode that veto, and then the issue went to the Supreme Court, the question being whether a conveyance of land was or was not an appropriation for purposes of an override. The court ruled it was not, but the dedication issue was unresolved.

The University went to work selecting lands and identified them in HB 130. That went back to the Supreme Court and the state was found to have violated the dedication clause of the Constitution, so the University started handing land back to DNR.

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Is there a solution? Mr. Johnson said they believe there is.

He said the deficit is now approximately 360,000 acres. A permanent land endowment would be very beneficial for the

University in years to come. It would allow it over time to moderate the reliance it has on the general fund. Many Alaskan heroes have attempted to remedy the deficit, but the Constitution is pretty clear in the Supreme Court's mind. And the federal government is supportive in general, but has said "we gave you the land." Everyone wants the University to have more land, but the question is who is going to pay for it.

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MR. JOHNSEN said the Constitution's anti-dedication clause has an exception that says: "Except when required by the federal government for state participation in federal programs." So, now the University is in preliminary discussions with the DNR and the congressional delegation on federal legislation to establish precisely that program.

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CHAIR GIESSEL said the state participates in the federal student loan program and asked if that is the kind of federal program he is talking about.

MR. HARRINGTON answered that the federal student loan program is one of many different types of programs that have federal/state cooperation, but the concept they are marketing with the federal congressional delegation now follows the voluntary state/federal cooperative model that basically sets up a permanent land endowment to consist of a mix of state and federal lands. If the state doesn't want to put any lands into this program, then it doesn't participate, and the federal government has no obligation to hand over any lands either. The mix of lands would then constitute the UA permanent land endowment.

SENATOR HUGHES asked if the program could be set up through a regulatory framework or would it take an act of congress.

MR. HARRINGTON answered it would take an act of congress, and they are cautiously optimistic that in its current configuration, congress might be receptive.

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SENATOR WIELECHOWSKI asked if the congress passed an act and the state set up its own program, would the legislature still be required to make the appropriation or would the funds automatically transfer into the University's Trust Fund.

MR. HARRINGTON answered that the lands would be in the hands of the UA Board of Regents who would develop income and revenues

from those lands, and those would not require annual appropriation from the legislature. The thought is that the land endowment wouldn't ever get to the point of completely replacing the general fund contribution. So, the University would still be subject to the discretion of the legislature for some revenues.

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SENATOR WIELECHOWSKI asked if he was aware of any dedicated fund issues that the state would have in doing that.

MR. HARRINGTON answered that he couldn't pretend comprehensive knowledge of dedicated funds. The Supreme Court said there are three exceptions: one is the Permanent Fund, another is dedicated funds that existed at the time the Constitution was ratified, and the third is any dedications when they are required by the federal government for state participation in federal programs. He didn't know how many situations like that fit into one of those three exemptions aside from the Permanent Fund.

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SENATOR WIELECHOWSKI said the Fish and Game Fund, the cigarette tax fund, and the highway fund require further legislative appropriation, and the only one that has a direct transfer is the Permanent Fund, which the state is arguing before the Supreme Court right now in a case he is involved with. The ruling in that case could have a big impact on the ability to get money transferred directly to the University.

MR. HARRINGTON said he agreed.

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MR. JOHNSEN said it would be helpful to review current land holdings and how they are utilized. They have approximately 151,000 acres of land, most of it acquired under the 1929 Sutherland Act, from other parties and local state or federal governments. For example, a couple of community campuses are on lands donated by those communities to further the interests of vocational and technical education.

He said the University has a statewide land management office that is responsible for managing, developing, acquiring, and disposing of the University's real property, and since 1987 they have generated over \$200 million from them. That income is deposited into the University's Land Grant Endowment Trust Fund, a permanent endowment. It generates earnings that are used for various educational purposes and research, particularly purposes

related to natural resources: fisheries research, ocean sciences, biology, and agriculture. Perhaps the single most important purpose for the last 18 years has been the use of these funds to pay for the Alaska scholars program that awards a \$12,000 tuition scholarship to the top 10 percent of Alaska's high school graduates if they attend the University of Alaska. Since the formation of the Alaska Scholars Program, 3,882 Alaskans have graduated benefiting from this program.

MR. JOHNSEN said their intent is to deposit these lands into the endowment and to use the generated revenues for educational purposes.

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CHAIR GIESSEL asked about the National Park Service.

MR. JOHNSEN responded that the university has about 30 National Park Service in-holdings around the state. A slide summarized the uses of the 150,000 acres; 12,000 acres have an educational purpose: their campuses are on those lands. That leaves 138,000 acres for investment purposes. He provided a description of how those lands are allocated and said they simply haven't had the opportunity to really assess the commercial monetary value of the 96,000 remaining acres. Their land holdings now include timber development, park inholdings, and current subdivisions, material sales (gravel and the like), and about 2,000 acres of potential oil and gas development.

SENATOR GIESSEL asked what kind of access challenges he has with the National Park Service.

MR. JOHNSEN responded that he couldn't say specifically where the access issues are, but they do have serious challenges, which constrains the monetary value of those particular inholdings.

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KIT DUKE, Director, Facilities and Maintenance, University of Alaska Anchorage (UAA), Anchorage, Alaska, said those properties are in the Wrangell Saint Elias National Park around the McCarthy area, and some are in Southeast and the Chugach. All of them have access challenges. They are called in-holdings, because there is no way to get to those parcels other than maybe float down a river or fly. She said they had been able to monetize a couple of parcels recently: one as a sale to the Park Service and one as a trade for land that was in the Seward area and accessible by road.

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MR. JOHNSEN said he would provide maps and follow-up information, so they can see precisely where the land holdings are located. Other parcels are near White Mountain east of Fairbanks, and near the Gulf of Alaska.

SENATOR MEYER said it looks like the bulk of their acreage is on the Gulf of Alaska.

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SENATOR WIELECHOWSKI said he was curious about the HB 130 lands that the University selected.

MR. JOHNSEN said he would be happy to include that as well.

SENATOR COGHILL said he was interested in knowing who bore the cost of all the selections.

MR. JOHNSEN said he would find that out also.

SENATOR MEYER said slide 11 indicated 17,000 acres of potential timber development and asked if he is aggressively trying to develop it.

MR. JOHNSEN replied that they have absolutely harvested timber and have an active timber harvest program; Ms. Duke could go through the details. He added that timber provides a substantial amount of revenue.

SENATOR MEYER said he also wanted to know more about where the potential oil and gas development is located.

MS. DUKE responded that they are working closely with the DNR's Division of Forestry and the Mental Health Trust Land Office to do coordinated offerings of sales. They have completed two in the last two years bringing in about \$1 million. So, it is possible to be in the timber business, again, although not at the Icy Bay scale. They are trying to do it well by coordinating with local communities and using local people in jobs. The two sales have been well-received. The University could potentially make tens of millions of dollars from the land currently identified. It could be as much as \$100-150 million if they get some additional lands jointly identified by the state and USFS to come to the University if the program for additional land is successful.

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As to the potential for oil and gas development, University land is not on the North Slope, but royalties are received from developments on the Kenai and the Cook Inlet.

SENATOR MEYER asked where the out-of-state land came from.

MS. DUKE replied those lands were donations. The University has not purchased any out-of-state holdings.

SENATOR MEYER asked how much and how often land is donated.

MS. DUKE answered in the last five years they have gotten one or two donations a year. They are usually not significant acreages. For instance, one is the Rasmussen House in Anchorage that was donated two years ago.

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SENATOR WIELECHOWSKI asked when the University owns subsurface rights for oil and gas does it get the royalties instead of the state and does the University negotiate directly with the oil companies or is that done by the state.

MS. DUKE answered when the University owns the subsurface it receives the revenues from whatever is below the surface, whether minerals, or gravel, or oil and gas.

SENATOR WIELECHOWSKI asked if that money goes directly to the University or if it is appropriated by the legislature.

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MR. JOHNSON answered that it gets deposited into the trust and it is not appropriated by the legislature. Like other endowments and trusts, the balance of the trust has grown over the years, but it took a hit in the market crash due to its cash and equities investments. He emphasized that the earnings from the trust are used for university purposes.

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Slide 14 indicated five years of trust balances; in FY16 it had \$138 million. He said the University is trying to diversify and reduce its reliance on the legislature for funds.

SENATOR COGHILL said they would watch with interest how he will approach the federal government, but it sounds like at this point he expects the federal program would allow state lands to

be conveyed over under some federal authority. He asked if he anticipated some federal land being added to the state land.

MR. JOHNSEN said he hoped so.

SENATOR WIELECHOWSKI asked if that is how they get around the dedicated funds clause now: because the land was designated prior to enactment of the Alaska Constitution.

MR. JOHNSEN answered that he wouldn't use "get around," but in as much as it's a legal question, he would ask Mr. Harrington to respond.

MR. HARRINGTON answered the Alaska Supreme Court noted in the SEACC opinion that what the Alaska Legislature tried to accomplish in 2002/2005 was analogous to how the federal land grants had worked during territorial days when the money from the federal land grants was used for the University. It didn't explicitly state what the system meant with the exception of funds that were already in place at the time the Constitution was ratified. That was not the question before them; the court was trying to decide whether the new 2000/2005 legislation complied with the anti-dedication clause and said it did not. It's fair to say the pre-statehood federal land grants did not violate the current constitution and most logically that is because they were already in place at the time of statehood.

SENATOR WIELECHOWSKI asked who decides how funds are disbursed from the UA Land Trust balance.

MR. JOHNSEN answered the Board of Regents makes that decision upon a recommendation from himself.

SENATOR COGHILL asked if he was going to look at the lands that were already outlined in bulk by the 2000/2005 legislation.

MR. JOHNSEN replied that they certainly would look there, and at other lands to the extent they have learned more about oil and gas opportunities and where sustainable energy sources are located. He noted that the UAF has the Alaska Center for Energy and Power and they have done an "impressive census" of alternative energy resources across the state.

SENATOR COGHILL said the only reason he brought those lands up is because they were "compromise selections" that went through a pretty rigorous process and he sees no sense in reinventing that. He was also a little conflicted because the University has

about 12,000 agricultural acres outside of his home town that he guessed had some potential gas and transportation corridors, and between the University, the state, and Doyon, he wanted to see something happen out there.

CHAIR GIESSEL found no further questions and thanked Mr. Johnson and his team.

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CHAIR GIESSEL adjourned the Senate Resources Committee meeting at 4:13 p.m.