

HB-136

TAPE #10-Mary Froney  
side 2  
end

TAPE #11  
side 1  
0-1005

House Committee on  
COMMUNITY & REGIONAL AFFAIRS

Meeting Minutes  
April 23, 1975

Meeting was called to order at 9:00 to discuss HB 136. Present:

|                  |  |
|------------------|--|
| Rep. Cotten      | Andrea Guernsey, Staff                     |
| RNP. Ostrosky    | Barbara Englert Thomas, Staff              |
| Rep. Hackney     | Bob Pavit, Planning Consultant             |
| Rep. Ose         | Kevin Waring, Director, Community Planning |
| Rep. Hershberger | Senator Orsini                             |
| Rep. Davis       | Rod Pagues, A.G.'s Office                  |

MARY FRONEY

Before HB 136 was taken up Mary Froney from the ANchorage Borough wanted to make a few comments to the Committee on taxation. She said that ad valorem taxes weren't promoting good. They provided momentary gain but a long time loss. TAXes are paid out of usable income, land does not have income. Pressure is put on land to have income. In Anchorage in the lowlands it costs \$9-10,000 per acre for sewer, and is usually three times as much in the hills. Small areas should be responsible for service needed. INcome tax should cover people caused needs: education, libraries, health--not land.

HB 136, SB 358

The Committee now took up HB 136. Mr. Waring said that the companion bill, SB 358, came out of considerable discussion and was agreeable to the State. He wanted to parallel the two bills. The committee may want to substitute 358 for 136.

HB 136

- 1) SEC. 44.47.150- Director of Local government administers
- 2) paragraph (b), (c)-Section 1. land will be identified by the village corporations
- 3) para (d) is same as (b) in 358
- 4) page 2, subsec (2)-concurrence by Commissioners

SB 358

- Deletes Director and uses Commission
- Deletes paragraph (b) and (c) altogether
- para (b) sets up conditions to be satisfied by Commissioner before transferring land. "His" should be deleted in line 20.
- 4) deleted, too cumbersome.

HB 136

SB 358

- 5) page 2, para (e)-fiscal not clear
- 6) para (f)-"a separate account" "within 30 days"
- 7) para (g):director

- 5)para (c) qualifies fiscal-"state"
- 6)para (d) "separate accounts"--each individual account handled separately, not one big account. "Within 90 days"
- 7)uses Commissioner instead of "Director" Add "and interest" after "profits" on line 7.
- 8)new section not in HB 136-para (f) merely clarifies no adverse possession. Restates what is already in the law.
- 9) para (g) is also new-defines municipality for purposes of this act. Clarifies federal legislation. Although Pegues suggested maybe leaving this section out. Federal gov't created problem and State can't interret.

"SHALL ACCEPT"

Mr. Pegues also said that the language "shall accept" on line 13 may cause problems. It implies that it is the duty of the Commissioner to accept whatever is offered. Can't meet trust responsibility with "shall".

APPROPRIATE VILLAGE ENTITY

"appropriate village entity"--requiring approval violates trust responsibility. Court will probably rule it out.

ADJOURN

Meeting was adjourned at 10:00. (1005)

House Committee on  
COMMUNITY & REGIONAL AFFAIRS

Meeting Minutes  
March 20, 1975

Meeting was called to order at 9:15 for discussion of HB 136 (land conveyed in trust).  
Present were:

|   |                               |
|---|-------------------------------|
| Rep. Sam Cotten, Chairman                             | Rep. Larry Davis              |
| Rep. Kathryn Ostrosky                                 | Rep. Glenn Hackney            |
| Rep. Oral Freeman                                     | Andrea Guernsey, Staff        |
| Rep. Mike Hershberger                                 | Barbara Englert Thomas, Staff |
| Jack Chenoweth, Director, Local Government Assistance |                               |
| Senator Joe Orsini                                    |                               |
| Kathy Jacobson, Natural Resources                     |                               |

Mr. Chenoweth passed out a proposed substitute which was drawn up by Mr. Waring of Community Planning and the A.G.'s office. (1158) Mr. HACKNEY didn't like it; no mention of who selects the land. It was pointed out that selection is covered in the Native Claims Act.

(1171) Chenoweth talks about an interim document that would be issued by the BLM to be used as a title to the land.

(1196) There was considerable discussion of the meaning of the words "adverse possession" and "prescription". It was decided after discussion and looking at the law dictionary that they both meant basically "squatters rights".

(1219) Cotten and Orsini discuss what "profits" might mean. Senator ORSINI said that since it was free if you sell any land at all it would be a profit. The State might sell a lot.

(1259) Rep. Hackney wanted to know if this included subsurface rights. No it does not.

(1319) Paragraph B of the new draft was discussed. Hackney wanted to know the procedure behind the village transferring land. Was it a legal procedure? Chenoweth answered that it would mean a public hearing or show transfer of title a benefit to the community. Para B covered transfer of land after selection, Orsini said.

(1395) Rep. Ostrosky asked if this draft had the endorsement of the AFN. Chenoweth didn't know for sure since the draft was just finished last night.

(1415) Senator Orsini would like to see language included concerning professional planning in selection of land. (1470) Ostrosky said that according to the Act, the Regional Corporations are involved and this is where the expertise would come from.

Chairman Cotten wants to talk further with Roger Lang and Shively of AFN before anything further is done.

Meeting was adjourned at 10:00.

House Committee on  
COMMUNITY & REGIONAL AFFAIRS

Meeting Minutes  
March 13, 1975

Meeting was called to order at 9:00 for discussion of HB 136 and HB 259. Present:

Rep. Kathryn Ostrosky                      Rep. Glenn Hackney  
Rep. Oral Freeman                          Rep. Mike Hershberger  
Rep. Larry Davis                          Rep. Sam Cotten, Chairman  
Rep. Al Ose  
Barbara Englert Thomas, Staff  
ANDrea Guernsey, Staff  
Michael Harper, Deputy Commissioner, Dept. of Community and Regional Affairs  
Roger Lang, President, AFN  
John Shively, Vice President, AFN *Har. Dir.*  
Don Berry, Municipal League  
Jack Chenoweth, Director. Local Government Assistance, C&RA  
Pat Corbett, Staff, Senate Committee on C&RA  
Senator JOe Orsini

- 1182 - Harper started by saying that there were approximately 115 communities that the State would be trustee for. He suggested several changes: rather than the Director of Local Government Assistance administering they want the commissioner of Community & REgional Affairs. The Director already has too many other things to take care of and can't devote enough time. 2) In sec B, they want to change village corporations to some member of the State, preferably C&RA to identify the land. This person would have equal weight on a committee of the president of the village corporation concerned, the president of the regional corporation.
- 1230 - Rep. Hackney asked why they wanted the State in on the decision. Harper said the State has the obligation as trustee so they should have part of the decision.
- 1237 - Hackney-How do you identify the land? Basically surveying, Harper said.
- 1243 - Freeman-Is this all new language? yes. Is there anything on the books now? No. Why do villages want to convey land to the State in trust? Harper answered that there was a provision in the land Claims Law.
- 1269 - Hackney-The mechanism is not included in the Act? Harper said no, its a matter of debate.
- 1282 - Hackney thinks they're doing what the State is trying to avoid.
- 1299 - Freeman asked if the State will have to also take on the expense. Yes.
- 1305 - Ostrosky asked if these amendments were suggested by the Dept. of C&RA. Yes.
- 1314 - Harper reads a passage from a letter from the A.G.
- 1329 - Freeman asked if there was going to be testimony in opposition to this bill. Yes.
- 1338 - Mr. Harper continued with his suggested amendments: change sec D, a public hearing held in the community by the Commissioner would suffice; 2) add a new section H to allow the Dept. to employ legal counsel when dealing with other State agency to avoid conflict of interest. (1378) Hackney asked if the mechanics would be to contract for legal counsel.
- 1393 - End Harper.
- 1394 - Chairman Cotten asked Mr. Lang for his comments but he deferred to Senator Orsini.
- 1402 - There were a few things that Senator Orsini was concerned with. He also wants C&RA involved in sec 1, subsec B. IN line 24 and 25 he wants to delete the wording excluding private dwellings and commercial activities. Defeats the purpose of the bill which is for the community to expand.

Chairman Cotten asked Orsini for his opinion on Harper's amendment concerning conveyance. Orsini didn't have any particular opinion.

- 1486 - Orsini continued with amendments: Conveyance in section D should be defined. "Surface resources" should be used instead of "materials". 2) sec D, subsec 1- The public is living in the area so they should decide what to do withland. Delete village corporation--doesn't include non-native. 3) sec D, subsec 2- the process is cumbersome, C&RA should do it in consultaion with the Commissioner of Natural Resources and the Director of Planning and Research. 4) sec E- define fiscal year--who's. Define municipality--under the law that includes cities and boroughs. If it's for just the village then you should change the wording. 5) sec F--definition of investments; staatement should also be sent to village council. (1564) sec f-administrative costs.
- 1575 - Orsini had said that these recommendations were made by a Mr. Katz. Freeman asked who he was. The Attorney for Federal State Land use Planning Commission.
- 1582 - Mr. Lang now presented his comments. As for Orsini's comments about private dwellings on line 24, Lang said that was put in there last year by the State and AFN had no qualms with removing it. He has no qualm with deleting village corp. for transference but he does with restricting to public hearing.
- 1660 - Hackney-1280 acres X 112 villages
- 1673 - Lang- Transfer of lands basis of Act. He has qualms about the State being part of the land selection process.
- 1712 - Cotten & Shively-Village lands and BLM.
- 1726 - Ose asked if it was possible to take land from unincorporated cities. No, may only select from vacant or unappropriated lands. (1747) Does the land have to be in one area? Yes, has to be compact.
- 1751 - Freeman still doesn't get it. This bill is talking about mechanics of a Federal law.
- 1778 - Ostrosky asked about the private land part again. Shively responded. (1796)(TApe ran out)

Lang talked about working out a system iwth the Feds for an interim document.

Ose brought up the subject of selecting lands in piece meal. GAVE the example of Tok. Shively answered that there were a few times when this happened. One was when the State picked a lot of land near by or when there were private lands.

Meeting was adjourned at 10:00. HB 259 was not taken up today.

ALASKA FEDERATION OF NATIVES, INC.  
1675 "C" Street  
Anchorage, Alaska 99501

March 13, 1975

Samuel Cotten, Chairman  
House Committee on  
Community and Regional Affairs  
Juneau, Alaska 99811

Dear Mr. Cotten:

As a result of the testimony heard by your Committee on House Bill 136, the Alaska Federation of Natives, Inc. would like to offer the following comments.

Section 1.

Sec. 44.47.150. (a) As far as we can tell there is no opposition to this subsection and it should be left as is.

Sec. 44.47.150. (b) The State feels that they should participate in the selection process of the lands to be conveyed in trust. We strongly disagree. The Land Claims Act states in Section 14(c)(3): "the Village Corporation shall then convey to any Municipal Corporation in the Native Village or to the State in trust for any Municipal Corporation established in the Native Village in the future, title to the remaining surface estate of the improved land on which the Native Village is located and as much additional land as is necessary for community expansion, and appropriate rights-of-way for public use, and other foreseeable community needs: Provided, That the amount of lands to be transferred to the Municipal Corporation or in trust shall be no less than 1,280 acres:"

As you can see from the language in the Act, Congress did not intend that the Municipal Corporations of the State participate in the identification of land to be conveyed. The State's trust responsibility begins after the Village Corporation conveys the land to the State.

We believe that there are other good reasons for having the lands identified by the Village Corporation. The Administration and the Legislature is moving away from having policy decisions made at the State level and towards policy making at the local level. Having the Village Corporation identify the lands to be conveyed would seem to be in keeping with the philosophy of "local control."

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Your committee should also recognize that, if the State becomes involved in the process of identifying the lands to be conveyed for over 100 villages which now have no municipal government, the cost of the trust lands program would rise considerably. This is not a time in our State's history when we should be thinking of ways to increase the budget.

Therefore, we believe Sec. 44.47.150. (b) should be left as is.

Sec. 44.47.150. (c) We recommend the committee use the language which is in the Land Claims Act so that Subsection (c) would read: "The land to be acquired under this section would, to the extent feasible, consist of the remaining surface estate of the improved land on which the Native Village is located and as much additional land as is necessary for community expansion and appropriate rights-of-way for public use, and other foreseeable community needs: Provided, That the amount of lands to be transferred shall be no less than 1,280 acres.

We believe this change in Sec. 44.47.150. (c) would address the concerns expressed by Senator Orsini and the State.

Sec. 44.47.150. (d) We are strongly opposed to the State's suggestion that the Commissioner be allowed to convey trust lands after holding a public hearing. Again, we believe the decision should be made at the local level in keeping with the State's philosophy of "local control."

However, we would agree to several changes in Subsection (d). The term "Village Corporation" could be deleted. The term "materials" should be changed to "surface resources". The term "conveyances of land..." could be changed to "Transfer of land including transfer of surface resources by sale, lease, right-of-way, easement, or permit...".

There are a couple of other issues which the Committee might want to address. It has been suggested that the term municipality be defined to include only First, and Second Class Cities. We concur with this suggestion and believe that such a definition to be in keeping with the intent of Congress.

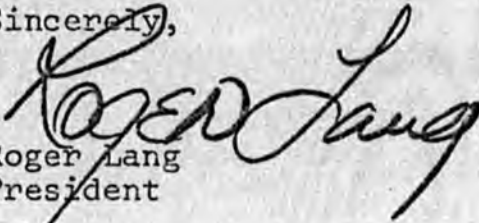
The State has suggested need for authority to contract for legal services in cases where the Department of Law might have a conflict of interest. We have not given this idea a

Mr. Sam Cotten  
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great deal of thought, but it might be beneficial.

We would be happy to work with you in redrafting House  
Bill 136.

Sincerely,

  
Roger Lang  
President

cc: House Committee on Community and Regional Affairs  
Representative Nels Anderson  
Senator John Sackett  
Senator Joe Orsini  
Deputy Commissioner Mike Harper

Federal-State  
Land Use Planning Commission  
For Alaska

733 W. FOURTH AVENUE, SUITE 400  
ANCHORAGE, ALASKA 99501

March 21, 1975

Honorable John Sackett  
Alaska State Senate  
Pouch V  
State Capitol  
Juneau, Alaska 99801

Dear Senator Sackett:

This letter is written in response to your request to John Katz for our comments on Senate Bill No. 139 entitled, "An Act relating to land to be conveyed to the state in trust for the future cities under the Alaska Native Claims Settlement Act; and providing for an effective date."

We share your view that legislation implementing Section 14(c)(3) of the Settlement Act should be enacted within the reasonably near future so that at the time when village corporations must reconvey municipal lands pursuant to this subsection, the State is in a position to exercise the trust responsibilities assigned to it therein. Our specific comments regarding SB 139 are as follows:

1. We believe that the bill would benefit from the inclusion of a section stating the general objectives of the Legislature in enacting this legislation. While much of the Legislature's intent can reasonably be implied from the language of Section 14(c)(3), the inclusion of such a section would help the director of local government assistance, the residents of affected villages, and the courts to know more precisely what the Legislature expects of the State trustee. In our opinion, the most important element of a statement of policy or purpose would be a declaration that the trustee's actions should be tested against the standard of what is best for the body politic now and in the future in each village under his jurisdiction. In turn, this consideration translates itself into a careful study by the trustee of all factors bearing upon a particular decision, including the relevant economic, social, cultural, environmental, and land use consequences. Such an analysis might include an informal examination of short and long term costs and benefits and a scrutiny of reasonable alternatives, including the possibility that no action should be taken. In short, what we are suggesting

is that it might be helpful for the Legislature to list some of the relevant criteria that the trustee should utilize in making decisions pursuant to the authority granted to him in the bill.

2. While subsection (c) does contain mitigating language, subsection (b) of SB 139 can be read to imply that the village corporation has the unilateral, unconstrained right to designate the lands which the State will receive in trust. Clearly, the village corporation is responsible for granting the land referred to in Section 14(c)(3). However, we do not think that this decision can be made unilaterally. Rather, the land which is to be conveyed must be generally suitable for municipal purposes and, where applicable, must meet the general and specific criteria provided in Section 14(c)(3). To avoid any misconceptions which might be created by the present language of subsection (b), we suggest that a comma be substituted for the period after the word "corporations" and that the following language be added: "after consultation with the director of local government assistance and for the purposes specified in subsection (c) below."
3. Given the language and intent of Section 14(c)(3) of the Settlement Act, we do not think that implementing State legislation can exclude land for private dwellings and commercial activities from the categories of land which the village must reconvey. Section 14(c)(3) itself refers to "the improved land on which the Native village is located and as much additional land as is necessary for community expansion." This language seems to indicate that grants of land for private dwellings and commercial activities, among other things, were contemplated by Congress. This conclusion is buttressed by the fact that many municipalities in Alaska do own lands which are chiefly valuable for these purposes. Additional support can be derived from the fact that Congress required the allocation of not less than 1,280 acres to each municipal corporation. Yet, in most instances, the amount of land needed for the functions referred to in the first part of subsection (c) will total far less than this amount. The difference between the two allocations may well be lands suitable for commercial activities and private dwellings. Given one of the purposes of the Act to enable Native village and regional corporations to become viable economic units, we do think that lands for resource production may properly be excluded from the reconveyance requirement specified in subsection (c).

As a collateral matter, we are aware that an amendment has been proposed to delete subsection (c) from SB 139 on the theory that the Supremacy Clause to the U.S. Constitution will require adherence to the criteria specified in Section 14(c)(3) whether or not such criteria are explicitly referred to in implementing State legislation. While the Supremacy Clause will operate as indicated, we believe that any implementing State law should include the governing criteria

wherever possible. In this way, State officials and others will be guided by a mandate coming from the Alaska Legislature, which we believe is the appropriate entity to translate the criteria specified in Section 14(c)(3) of the Settlement Act into the Alaska context. In addition, if sufficient guidance is provided in the Alaska Statutes, persons desiring information concerning the matter of municipal land grants will not be required to research Federal law or to know how it should be interpolated into State law under the Supremacy Clause. In this regard, it is worth noting that the position which we are contending for here was the one apparently utilized by the Legislature in passing complementary legislation creating the Land Use Planning Commission.

4. While the Supremacy Clause to the U.S. Constitution will operate to insure that each municipal corporation will receive not less than 1,280 acres, as specified in Section 14(c)(3) of the Settlement Act, we think that any implementing State legislation should also indicate the minimum quantum which may be transferred. Our reasons for this suggestion are identical to those discussed in section 3 above.
5. The word "conveyance" in subsection (d) of SB 139 could be read narrowly to require use of the procedures specified therein only in situations constituting an actual transfer of title. We believe that the intent of this subsection is broader in scope. Accordingly, it is recommended that the first portion of subsection (d) be deleted and the following language inserted in lieu thereof: "Any sale, lease, permit, easement, or other transaction disposing of an interest in land or creating a right of use in land may be made by the director only after approval of ...."
6. While it may be possible to imply adequate authority from existing State law or from the use of such terms as "lease" and "permit," we believe that subsection (d) should be amended to empower and direct the director, in effecting sales or other transactions pursuant to this provision, to include any covenants, stipulations, restrictions, reservations, or other provisions which he deems necessary to protect and promote the health, safety, and general welfare of present and future inhabitants. Inclusion of such language would give the director the flexibility to take cognizance of the varying conditions and needs existent in different village situations and would put the Legislature on record as explicitly favoring the utilization of appropriate protective measures.
7. If the present language is to be retained, we believe that the words "surface resources" should be substituted for the word "materials" in the first line of subsection (d). The word "materials" is too narrow and is susceptible of many meanings. Use of the term "surface resources" would more clearly include land resources such as timber within the ambit of the procedure established in subsection (d).

8. With respect to subsection (d)(1), we do not think that the village corporation is an appropriate entity to make the type of decision required by this provision. In most if not all instances, the village corporation will be a profit-making entity whose purpose will be to maximize profits for its shareholders. It cannot be expected to speak for all village residents, some of whom may not be stockholders in that corporation, or to have the community perspective which would be reflected by the other entities and mechanisms referred to in subsection (d)(1). Accordingly, we suggest that the words "village corporation" be deleted from this provision.

In further regard to the present language, it might be appropriate to establish a priority of entities and mechanisms with the capacity to approve the director's decision. Thus, you may wish to indicate that one or the other of the mechanisms referred to in subsection (d)(1) will have preference over the others and that the other alternatives will be utilized only if circumstances preclude the preferred entity or group from making the decision. Such an approach would avoid future confusion and conflict about which approach to utilize in a particular instance. In situations where a traditional council exists and can speak for all the residents of a village, it might be inappropriate and destructive to create a new decisionmaking process. If such an entity does not now exist, we think that the village meeting would be the best device for promoting dialogue and informed decisionmaking.

9. With respect to subsection (d)(2), it seems to us that the approval function specified therein is needlessly cumbersome and therefore might delay the implementation of decisions clearly of benefit to village residents. For this reason, we suggest that the Commissioner of Community and Regional Affairs or the director (see below) be permitted to make the decision required by subsection (d)(2) on his own or after consultation with (not the approval of) the Commissioner of Natural Resources. Either one of the procedures just described should adequately protect State interests. As a corollary matter, we suggest that the Director of Planning and Research be deleted from this aspect of the decisionmaking process. His role, as we understand it, is to assist the Governor in developing rather broad public policy. If so, he would not have any real interest in or knowledge about individual decisions respecting relatively small parcels of land. As previously noted, subsection (d)(2) requires the Commissioner of Community and Regional Affairs to approve contemplated land transactions. Yet, other portions of SB 139 allocate various responsibilities to the director of local government assistance within the Department of Community and Regional Affairs. We believe that this apparent discrepancy should be resolved by consistently giving either the Commissioner or the director the authority to carry out the responsibilities which are assigned to the Department of Community and Regional Affairs.