

SB.259

COMMITTEE REPORT

4/15/75

HOUSE

Mr. Speaker:

Date 5-21-75

The Committee on C&RA has had SB 259 am

under consideration. A Majority of the members of the Committee

() recommends it DO PASS

() recommends it DO NOT PASS

() recommends it DO PASS WITH ATTACHED AMENDMENT(S)

() recommends it BE REPLACED WITH CS FOR _____ AND THAT

CS FOR _____ DO PASS

() "and" recommends it BE REFERRED TO THE _____

COMMITTEE

() reports it back WITHOUT RECOMMENDATION

() "other"

Members signing the Majority report:

<u>Sam P. Otter</u>	<u>DO PASS</u>	_____
<u>Kathryn Cotnam</u>	<u>" "</u>	_____
<u>Willie Hershberger</u>		_____
_____		_____

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

Sam P. Otter Chairman

House Committee on
COMMUNITY & REGIONAL AFFAIRS

Meeting Minutes
May 21, 1975

Meeting was called to order at 9:15 to discuss SB 259am, SB 138, CSSB 90.

Rep. Cotten	Barbara Thomas, Staff
Rep. Ostrosky	Andrea Guernsey, Staff
Rep. Hershberger	Senator Orsini
Rep. Freeman	Rep. Smith
	Bob LeResche, Fish & Game

SB 259am

Senator Orsini passed out a proposed Committee Substitute that would give the local government a year to act. The bill takes effect June 1, 1976. But he thinks the new Anchorage Borough Assembly will take action on it. Nobody had any objections to the substitute so it was adopted and the bill was reported out.

REPORT OUT

SB 138

Rep. Cotten suggests replacing section b with "before any such regulations are enforced they shall be submitted to and approved by the legislature."

AMENDMENT

PRIVATE LAND
IN PARK

Rep. Freeman still wants to know if private land surrounded by a state park is within that park? Rep. Smith said that according to this bill that land would be within the park and subject to zoning.

Senator Orsini offered some different language for section B, to the extent that if the legislature didn't act the regulations would take affect. Sam likes the first language better but agrees to change "are enforced" to "takes effect" for the sake of clarity.

REPORT OUT
COM. SUB.

Rep. Ostrosky moved to adopt the amendment and report the bill out. Without objection so moved.

CSSB 90

Oral still wants to know whether the equipment is sold or given. The "shall transfer" was changed to "may transfer" in the committee substitute. The bill was reported out.

REPORT OUT

Meeting was adjourned at 9:50.

House Committee on
community & regional affairs

Meeting Minutes
May 8, 1975

Meeting was called to order at 9:15 to discuss SB 209am again.

Rep. Cotten	Barbara Englert Thomas, Staff
Rep. Davis	ANDrea Guernsey, Staff
REp. Freeman	Senator Orsini, Sponsor
REp. Hackney	Senator Rodey
Rep. Hershberger	Rep. Smith
Rep. Ostrosky	Cathy Jacobsen, Dept. of Natural Resources
	Don Berry, Municipal League

SENATOR ORSINI Senator started by saying that this bill originally covered zoning in all the 18 state game refugees. But 17 of these are coincidental with national wildlife refugees and there is already a handle on the use of the land so this bill was amended to cover the only solely State game refugee, Potter Point.

WHY AMENDED

OTHER GAME REFUGEE Cotten asked what about the new ones being created? Orsini said this has been taken care of. A provision is written into the original bills.

MUNICIPAL PLANNING AND ZONING REP. Freeman said his problem was a state authority usurping the planning and zoning powers of the municipality. Orsini replied that in this case the borough has the powers but doesn't want to use it in a state game refugee. So consequently this land is unzoned. Besides this state power is not unfettered. Freeman thinks the State should just buy the land instead of zoning.

APPROPRIATION Smith explained that that is the intention of the State but there is a lack of money. Hershberger said the legislature has passed a measure appropriating \$75,000 to be matched with \$225,00 of Pitney-Roberts Federal money to buy some of this land. But this \$300,000 will only buy 15 of the 38 parcels. The zoning is to cover the land until more money can be found.

Senator Orsini suggest s changing line 17, change "IN" to "surrounded by state land" which would take care of Freeman's problem of the State zoning private land. Oral said there wouldn't be any need for the bill then.

Meeting was adjourned until 3:00 when Mr. Jones, Game Division, can come with a detailed map of private land.

House Committee on
COMMUNITY & REGIONAL AFFAIRS

Meeting Minutes
May 6, 1975

Meeting was called to order at 9:25 to discuss SB 138, SB 259am. Present:

Rep. Cotten	Senator Rodey, Sponsor, SB 138
Rep. Hershberger	Senator Croft
Rep. Ostrosky	Rep. Smith
Rep. Freeman	Frank Jones, Director, Game Division
Barbara Englert Thomas, Staff	Kathy Jacobsen, Natural Resources
Andrea Guernsey, Staff	

PRIVATE LANDS
PART OF PARK?

Freeman wanted to know if the private land within the area were a part of the park or not? Croft said they were not. The language in the bills establishing Chugach and Kachemak excludes valid entries specifically. The A.G.'s office said that if SB 138 passes the courts will interpret this as an intention by the Legislature to provide zoning authority over lands, even though the language in the bill that established them excludes private lands from this.

ZONING?

Freeman's concern is the land inside municipal boundaries. Zoning should be regulated by the municipal government and not by the State. Rep. Smith disagrees. A park is an area where the State has a large interest with only isolated private parts. It is logical that it be managed by the State.

STATUS OF
EMMINENT DOMAIN
IN PARKS

Chairman cotten asked if there was a prohibition against eminent domain in Chugach? Ted Smith gave a run down of all the parks created by Legislative Action:

Nancy Lake REC. Area: no restriction against em. D.. has been zoned by Mat-Su Borough;

Chena River REC. Area: prohibition against E.D. except for access. Dept. of Natural Resources can zone;

Captain Cook Rec. Area: no restriction against E.D. Kenai Penn. Borough hasn't exercised any zoning authority;

Battery Point: prohibition against E.D. Haines
Borough has no zoning authority so none to exercise.

Chugach State Park: no prohibition against E.D.
GAAB has not exercised zoning;

Kachemak Bay St. Park: no prohibition against E.D.
Kenai Borough has not exercised zoning authority;

Denali St. Park: prohibition against E.D. Mat-Su has
not exercised zoning;

Caines Head: E.D. prohibited. Kenai has not zoned.

BOROUGH'S ZONING

Senator Rodey sees no reason for boroughs to zone
state parks. Too much of a problem for them to
exercise zoning. To avoid detail they classify
as unrestricted or unzoned. Everything not zoned
specifically is unrestricted.

Cotten asked if there were any other parks with
private property within boundaries where private
land is classified differently? Rep. Smith said
that every one of the eight parks mentioned have
at least 1 parcel of private property. Only one
has in fact been zoned (Nancy Lake in Mat-Su).
Kachemak and Chugach are the only ones with language
excluding private lands from park. The rest don't
specifically exclude.

PROBLEMS N PARKS?

Have there been any problems arising in the parks,
as far as development? Senator Croft said there
was a problem in the southern portion of Chugach.
There is a considerable amount of intent to develop,
dividing land up into acre lots, etc.

COMPATIBLE USE

Rep. Hershberger thinks that compatible use is
implicit in zoning and it is up to zoning authority
to see concept is kept.

SB 259am

Senator Rodey explained the reasoning behind this
bill. He said the difference between the original
and the amended was because it was felt that other
game refuges didn't have the problem Potter Point
did because they were inherited from the federal
gov't with no private holdings. The only problem
at present is Potter Point. The State is attempting
to buy all the lands that have been dedicated for
park purposes but don't have enough money right now.
There are still private lands inside the boundaries
of the refuge and it is important to zone these to
keep them consistent with the use of the refuge.
Right now much of the land has been purchased for
speculation by large corporations.

TAPE #13
sidel
415-1099

SB 259am
5/6/75

FRANK JONES

Mr. Jones showed the Committee a map of the Potter Point refuge. Most of the land is below the bluffs in a marshy area which is used for ducks. It is possible that some development could be made on the privatelands that wuld not be compatible. They are presently attempting to buy the 700 acres of private land involved. The purpose of the bill is to exclude any further incompatibel developemnt.

Meeting was adjourned at 10:00.

Sam - I talked to Dick Hart at the GAAAB Planning Department about SB 138 and SB 259 am. He said they would rather see the problem attacked through a resolution by the legislature urging the municipalities to zone the land or even mandating them to zone with the threat that if they don't the State will. This would allow the municipalities a little more time to get it done, but would put pressure on them to do it.

He said that 6-8 months ago the Assembly passed a new zoning ordinance that would cover a lot of this area, but that the Mayor vetoed it because the whole package set up some bad zoning patterns. At this point the land within Potter Point Game Refuge is unrestricted.

In Chugach State Park portions have been zoned R-8 (one residence per 5 acre lot). South of Rabbit Creek most of the land is unrestricted. In the Eagle River - Chugach area, most of the land is still unrestricted, because ~~they~~ of ~~didn't~~ the borough's being formed. He anticipates that most of the area will be ~~classified~~ zoned soon, possibly within the year.

I asked him about subdivisions and he said Swiss ~~Planning~~ ^{PS} ~~the Planning & Zoning~~ subdivision is in court. The Platting Board granted permission to subdivide into 1/4 acre lots and that decision was not appealed to the Assembly. After the time for appeal had run out, some property owners below the proposed subdivision brought suit, saying that the lots were too small, the drainage wasn't good enough, nor were the roads, etc. Dick said it looks like the GAAAB will lose the suit.

He said the feeling of the Assembly and the Planning & Zoning Commission seems to be that they support only low density development. There are other controls through the Dept. of Environmental Quality and the problem of access that most subdividers would have to overcome. He may come testily Thurs. - he'll call back today. BET

Introduced: 1/20/75
Referred: Community and
Regional Affairs

1 IN THE SENATE

BY ZIEGLER

2 SENATE BILL NO. 29

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 NINTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act expressly authorizing dual officeholding by
7 city managers as borough managers; and providing for
8 an effective date."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 * Section 1. AS 29.23.130 is amended by adding a new subsection to read:

11 (e) A borough adopting a manager plan may, by agreement with a
12 city or otherwise, enter into a contract providing for the
13 manager of a city located within the borough to serve also as borough
14 manager. Appointment and service of the manager as borough manager
15 shall be as otherwise provided for managers in secs. 130 - 150 of this
16 chapter and in AS 29.23.450 - 29.23.470. Nothing in this subsection
17 affects the authority of the assembly or council to provide for other
18 dual officeholding if the dual offices held are compatible or otherwise
19 to appoint officers and employees in accordance with law.

20 * Sec. 2. This Act takes effect immediately in accordance with AS 01.010.-
21 070(c).

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MEMORANDUM

State of Alaska

TO: Honorable William C. Fackler
Acting Commissioner
Dept. of Natural Resources

DATE: February 18, 1975

FILE NO:

TELEPHONE NO:

FROM: Avrum M. Gross
Attorney General
Dept. of Law

SUBJECT: Regulation of Private Land
in State Parks and Recreation
Areas

By: Rodger W. Pegues
Assistant Attorney General

The Director of the Division of Parks has requested an opinion on this subject. Rather than issuing a formal opinion, we are responding by this memorandum.

The authority of the Director to designate "incompatible uses" and establish rules and regulations governing them arises from AS 41.20.020(6) and AS 41.20.040. It is also contained, generally, in the legislation establishing or authorizing parks and recreation areas. E.g., AS 41.20.140; AS 41.20.180; AS 41.20.230; AS 41.20.310. While it may be argued that this authority is broad enough to regulate use of private lands within the boundaries of a state park or recreation area (i.e., so-called inholdings), our view is that it does not.

Each of the several statutes authorizing or establishing state parks and recreation areas refers expressly to "state-owned lands" or "state-owned land and water" and each also includes land acquired by the state in the future. See, e.g., AS 41.20.130-140. The purpose of each is set forth as "to restrict state-owned lands and waters" for use as a park or recreation area. [Cf, AS 41.20.130] While, as in the act establishing Chugach State Park, the legislature expressly reserved "the lands and waters . . . from all uses incompatible with their primary function as a state park" AS 41.20.210, those lands and waters are "state-owned", AS 41.20.200, 210, and "valid entries" within the park's boundaries are expressly excluded. AS 41.20.210. So too, in establishing Kachemak Bay State Park, the legislature expressly excluded valid entries and leaseholds (both existing and applied for) from the park. AS 41.20.260(c).

Additionally, each of the several enabling statutes and the general park and recreation act, AS 41.20.010-047, provide for the acquisition of private land. And the act establishing Chugach State Park provides for modifying its boundaries where conflicts of land ownership are "unmanageable other than at unreasonable cost and expense to the state" AS 41.20.220. While these provisions are not dispositive of the issue, coupled with the express exclusions of valid entries and the reservation

Honorable William C. Fackler
Acting Commissioner

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February 18, 1975

only and expressly of state-owned land and waters, they create a strong inference that the language prohibiting incompatible uses or authorizing their regulation refers to state-owned land and not to inholdings.

Accordingly, the statutory scheme is to reserve and protect state-owned land and water within state parks from incompatible use but to exclude from the parks both private lands and lands owned by the state but subject to a valid entry. The regulatory power extends only to the state-owned lands and not to inholdings. Indeed, the exclusion of those lands from the parks suggests that they are not, in fact, within the park boundaries, e.g., AS 41.20.260(c), and that they are not properly to be denominated as inholdings.

We can appreciate your concern and regret our negative answer. You may wish to seek amelioratory legislation.

AMG:RWP:pg
Att.

5/6/15

SB259

(2416)
 Kathy Jacobson, Dept Nat'l Resources
 Kevin Waring, CA
~~Sen. [unclear]~~
 Sen. Orsini
 Sen. Craft
 Dept. of Fish & Game
 Sen. Kacey
 Rep. Ted Smith

Notified

Present

Testified

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