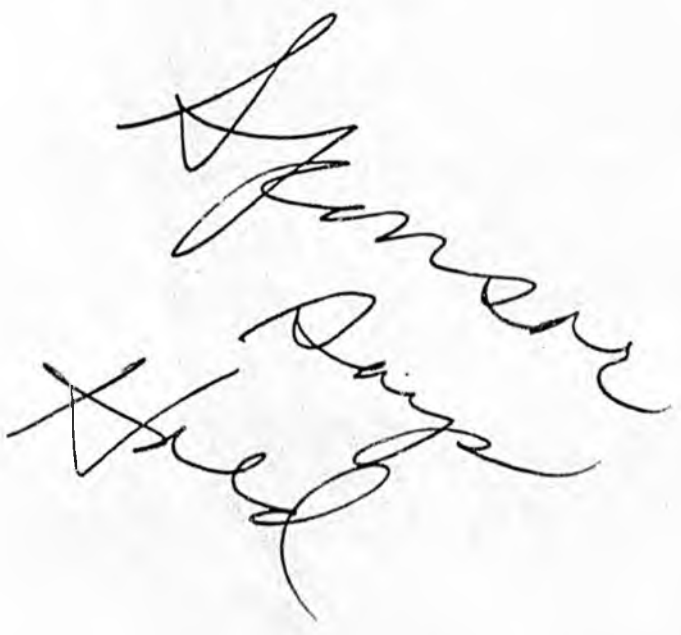
HB
156



ALASKA ASSOCIATION OF REALTORS
2223 SPENARD ROAD
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REALTOR®

March 18, 1977

The Honorable Al Osterback
Chairman
House Resource Committee
Capitol Building
Juneau, Alaska 99811

Copy in all files

Dear Representative Osterback:

The Alaska Association of Realtors questions the effect of HB 156 as written on three basic counts: This Act erodes the inherent rights to private ownership of land (fee simple title) and it will have a potential drastic effect on the tax base of municipalities and boroughs. More particularly, this Act will not assure what it presumes to protect. The purchase of development rights to agriculturally-classified land would not assure the continuing or future agricultural use of the land.

The Alaska Association of Realtors is in favor of the preservation of the opportunity for agricultural use and development of lands suited to such occupation.

May we respectfully submit that tax relief on agricultural land that is in production is an incentive that should be explored.

Very truly yours,

Elden L. Haugen

Elden Haugen
Chairman
Legislative Committee
Alaska Association of Realtors

Alaska State Legislature

House

JUNEAU ALASKA

Memo to: Alvin Osterback, Chairman
House Resources Committee

From: Subcommittee on Parks, Timber and Lands
Sally Smith, Chairman

Re: HB 156-Privately Owned Agricultural Land

February 23, 1977

On request of the sponsor, we recommend that HB 156 be held indefinitely and not be taken up by the complete Resources Committee as scheduled.

Sally Smith

Mike Miller

Dick Eliason

Tape 18 Side 2
0998 - end and Tape 19
Side 1 - 0 - 2025

HOUSE RESOURCE COMMITTEE - Minutes - April 7, 1976

Subject: HB 654 Sale of school lands & other lands

Present were Eliason, Huntington, Osterback, Smith, Brown, Staff Assistant VAn Dor_n and Chairman Anderson.

Dale Tubbs, Deputy Director of the Division of Lands, began testimony. He stated that this bill gives corrections and changes to operation of the land bill--it ties up the loopholes.

Sect. 1 38.05.430 (c)
The present language doesn't allow school grant lands to be sold except to municipalities. The change is to remove the limiting wording. It would still require the Board of Education to review any proposed sales.
Question: Does it include college lands? No.
Question: How much land is involved? A. About 100,000 acres. It doesn't involve any lands being surveyed now. Most of the lands involved are around the large cities, with some in Southeast Alaska on U.S.F.S. land.
Question: Is the Board of Education for it? A. Yes.
Q. How about the rent being charged? A. The grant says that you must create revenue from the land. Market value will be paid for all lands sold.

Tubbs mentioned that some school lands had previously been sold, before 1971, in residential areas. The money is then used for schools wherever it is needed.

Huntington asked about the source of information for leasing or selling preferences. Answer was that School Board minutes contain that information.

Eliason asked about putting land into recreational lands. A. That's o.k., but the lands involved are still residential.
Question: Could control of lands be put under Natural Resources?
A. They are the managing agent now.
Question: Would money be used for buying other sites? A. Probably not. Only the interest can be spent.

Osterback asked whether homesites as defined under HB808 could go on this land. A. Not as it stands now, because the land must make money one way or another to meet requirements.

Smith added that the lands aren't necessarily in the right places for either schools or parks.

Sect 2 (regarding agricultural preference right holders.) Agricultural land is now being lost to subdivision because prices are too high to farm it. Wording needed gives the Director the responsibility of determining whether agriculture is the best use. Also, an "existing farmer" is the only one who could qualify for the agricultural lands.

Re: taxes on land forcing persons to sell, Tubbs replied that it is up to the local government unit to determine the tax on land.
Smith reminded the group that agricultural exemptions are still available.

(See approx. 1682 on tape for testimony not in minutes)

There was discussion of "adjacent" lands, as applied to the grazing industry.

Also discussed was the fact that the soil survey analysis for the state is not yet completed. In the end, the Director of Lands makes the final land use determinations.

Eliason asked about public hearings being required for agricultural land classification. A. At present none are required, just public notification. Recommendations are usually received from Planning and Zoning departments. The present law says that the state "shall negotiate". The new law would state "auction".

Rod Pegues, of the Attorney General's office presented testimony. The purpose of the change is to set a fair market value through auction of the land.. As to the price of the land at an auction being too high for the farmers, it was explained that the land that is designated agricultural would not be able to be subdivided, so the auction would be only between farmers. They themselves would determine the price.

Sect. 3. Adds wording on agricultural lands when agriculture isn't the highest and best use, in order to allow the land to be re-offered for commercial use.

Pegues stated that all decisions made by the Director of the Division of Lands are appealable. The court can then decide.

Senator Tillion stated that the state can't arbitrarily take the land from a farmer. The farmer must request the classification change.

Regarding how the conveyance is done, Tubbs stated that in paragraph 4, page 3, we need to add "agrees and consents" to accept payment. Also added should be "constructed" improvements. (Clearing the ground doesn't count as a "constructed" improvement.

Senator Tillion expressed concern that the farmer should be paid for his farm--not just the land. A discussion of "fee title" ensued--who should get the money for the farm.

Chairman Anderson stated that at the top of Page 3, language is needed to protect improvements on the land.

Re: paragraph 6. This is needed to protect the state rights to sell timber, gravel, and minerals on the land. Example was given of agricultural land with timber on it. You can use the timber on the land to develop the land, but you can't sell "off" the land, at the present. (Tape 2145)

Senator Tillion stated that what you want is to allow the guy to sell the timber, but don't allow the state to go on the land to get the timber or the gravel.

Pegues mentioned the situations where agreements can't be reached with the state. A mechanism isn't provided now for solving the problem. It must be stated--the bill can't remain silent.

Tubbs stated that lease agreements cover the situation, but a sale contract doesn't. Smith stated that a mutual agreement was needed with the proceeds going to the state.

Pegues stated that the only real problem is the disposal of gravel. Again, the basic question to solve is how to allow the farmer to use his own "things". He added that the value of the timber shows up in the bid amount.

Re: Sect. 6. Pegues said that minerals must be isolated or a lawsuit is possible. A subsection 6 can be added stating that "Nothing affects.....(tape 2308).

Discussion of renewing leases brought out the fact that there used to be a standard value used ($600.00), renewable. This allowed people to get their "foot in the door" for a minimal amount of money, and acquire more land, with little if any additional money. The automatic renewal has created a problem.

Question: How about eliminating the negotiating authority? Answer: Negotiating doesn't require a survey. The timespan involved can be shorter. If an auction is used, it takes at least a year to cover all the necessary paper work, including the survey. "Spot" classification is also a problem. The year's delay is an inconvenience to the buyer or lessee.

Tubbs answered that wherever competitive interest is involved, public auction is used anyway.

Regarding eliminating the automatic renewal on negotiated leases, Pegues said that the bill doesn't eliminate it, but it could be done. Tubbs said that all current leases <u>can</u> be renewed. The new wording would only apply to new leases.

Re: Section 6 of the existing statute, the wording "equivalent other measure" is used to cover different measuring standard language. Also, the limit should be changed to $5,000 as applied to timber. Negotiation for materials becomes critical. Sometimes it becomes limited to one bidder because of location or circumstances. The higher limit allows the state to take care of these projects without bids.

Re: Sect. 7. When the land is within 6 miles of a municipality the municipality would be allowed to bid.

Re: Sect. 8--Public Utilities shouldn't have to auction for land, if there is no other place that will suit their needs. Brown stated that the language is too simple. It needs to be tightened. A higher standard than "reasonably requires" is needed.

Smith suggested that "licensed public utility" would qualify.

Pegues stressed that we don't give them a right--the need has to be demonstrated.

Sect. 11 takes out existing language. Publication rules would be changed to make at least 30 days involved. At present the wording is such that the process can take as little as 15 days.

Concern was expressed that the Director of the Division of lands has too much power without control.

(Morning meeting adjourned until after the Session)

1:30 meeting Tape 19 Side 1 0523

Present were Hershberger, Rhode, Huntington, Smith, Osterback, Eliason, Van Doren and Chairman Anderson.

Discussion began on the issue of including not only "municipalities" but also "villages" in the 6-mile requirement (or privilege). Pegues stated that the problem has been indefiniteness. Village incorporation is limited.

Tubbs stated that if villages were included care would be needed. Half are now incorporated. We assume others will be soon. That would give the certainty needed for the qualifications. Also, if villages were included it would help to include only those outside a Borough. What we're aiming for is an official Planning Authority for each contact.

Discussion continued as to the differences between the villages and the Regional Corporations. It was suggested that the Corporations could be designated the contact organization.

Chairman Anderson stated that the land use patterns are pretty well set up for Corporations.

Tubbs added that the problem (village) will be more acute as the state acquires more land. Disposal of minerals is a problem now, but land is being taken care of.

Re: Sect. 12--This would repeal the renewal of lease wording. In one place it says renew, in another it says must review first. This would apply only to future renewals--not current ones.

Discussion of "high bid" on leases, and preference right structure took place.

Clarification was given as to school sites not being the same as school grant lands.

Tubbs stated that a reappraisal is done every 5 years on all leases. As land values climb, there is pressure to change recreational leases to sales.

Tubbs explained that Section 13 makes legal what's already being done--it ratifies previous leases granted under preference rights. Possibly 40 preference right leases have been offered.

Chairman Anderson asked what would happen if the bill didn't pass. Tubbs answered that they would continue working with the Planning Authority in any affected areas. Especially needed is the school grant land part of the bill. Otherwise, the schools are losing money. It is better to have the government manage the money, as under the bill, than the land, as now is being done.

Not all of the 100,000 acres of school grant land has been appraised as yet. Most of it is in urban areas. At present, there are many uses of the Anchorage area sites, both commercial and residential.

Pegues explained that the Board of Education makes the decisions on land use. Commercial property is leased. Residential will be sold.

Huntington asked who would do the appraising of the lands. Answer was that the Division of Lands has appraisers. It must be remembered that no two appraisals match. Appraising is not an exact science. Mr. Smith mentioned that the State of Alaska has qualifications that their own employees acting as appraisers must meet.

Tubbs stated that on school grant lands, development plans are submitted, then accepted if there is no competition for the land.

Question was raised about the problem in Southeast (possible problem) of school grant sections conflicting with Claims Act selections. Answer was given that exchanges can be made if problems are encountered.

Eliason expressed concern as to public input before the Director can classify land.

Re: Section 4, Tubbs would recommend passage. Smith mentioned that he would prefer retaining control by keeping the $250 limit as pertains to this section.

Re: Section 7, this is considered critical. Guidelines are created. A new subsection (b) is needed to cover the Regional Corporation responsibility as a Planning Agent.

Re: Section 13, this is needed for Title companies. i.e. if you deal with the government, but the government acts illegally, you're out of luck.

Smith asked that in Section 1, leave in the now-deleted words, but add "or for residential purposes". Also, on Page 3, Paragraph 6, Add a new subsection.

Recommendation was made to delete Section 4 leaving the section as it is in existing law. This would retain the $250 per year limit and 5-year leases.

Pegues explained that it is basically an inflation amendment.

Committee agreed to delete section 4.

Smith asked that on Page 4, between Lines 6 and 7, add (b) changing exempt limits to $500. Committee adopted the amendment.

Committee approved the "right of renewal" appeal wording.

Chairman Anderson asked that the Committee Substitute be drafted and ready as soon as possible.

Meeting adjourned.

Rep Sally Smith

P. O. Box 223
Douglas, Alaska 99824

February 3, 1977

The Honorable Alvin Osterback
Chmn., House Resources Committee
Alaska State Legislature
Juneau, Alaska

Dear Representative Osterback:

During the last few weeks, I have been developing an administrative manual for the State Board of Education. (I am a retired, former employee of the Department of Education for 25 years.) During the course of the project, I reviewed the various statutes applying to the Board and I noticed that legislation enacted a year ago expanded on the Board's responsibilities in connection with the leasing of school lands.

Prior to last year, the Board was required to approve the lease or other disposition of school lands. Their responsibilities and prerogatives have now been increased to the point where the Board is now the trustee for school lands and has the authority to employ special legal counsel and technical assistance to administer this program.

In my opinion, this is a misapplication of the Board of Education's function, and the Board's involvement in the management of school lands should be repealed.

School lands, like other categories of state lands, should be administered by the Division of Lands, Department of Natural Resources, the agency especially created for land management.

Actually, there is no connection between the Department of Education (Board of Education) and school lands. Up to statehood, certain surveyed sections of lands in each township were designated school lands (Sections 16-36, of each township). When such lands were leased or sold, the funds were placed in the "permanent school fund" and invested. The income (interest) from the permanent fund then goes to the State General Fund. Relatively speaking, the income from the permanent fund is small and is only indirectly involved in financing educational programs.

It is my understanding there has been some criticism of the Division of Land's handling of school leases in the past. If

there are problems concerning the leasing of school lands, they should be resolved by strengthening procedures in the Division of Lands, not by involving another agency in lands administration.

In ord[illegible]l its trusteeship responsibilities, the Board of Educ[illegible]quired to employ additional personnel to administer the [illegible].

I submit that the Board of Education should not be in the land leasing business, that it detracts from their primary educational function, and furthermore, could result in a needless expense.

With the above in mind, I respectfully request the Resources Committee to initiate legislation which would repeal the Board of Education's involvement in the leasing of school lands.

Yours truly,

Robert P. Isaac

cc: Senate Resources Committee
State Department of Education
State Department of Natural Resources

(14) School Lands - Title 38

Section 38.05.030(e). The sale, lease or other disposal of school lands under the jurisdiction of the department shall be made by the commissioner in accordance with the provisions of this chapter. However, disposal of school lands under this subsection, other than disposal by lease for a term of years, shall be made only for sites for school facilities or for public park and public recreation purposes. School lands may be exchanged for (1) state lands, (2) vacant, unappropriated and unreserved public lands and (3) lands owned by a city, borough or other public entity. In the case of unequal values, cash may be used to equalize land values. When the department determines that it is in the best interest of the state to dispose of the school lands located within Sections 16 and 36 in an organized borough or city of any class, the borough or city is authorized, and has preference for six months after notice, to acquire the land at the appraised value by purchase or exchange of land acceptable to the department. No sale, lease, exchange or other disposal of school lands may be made without the approval of the state Board of Education. The state Board of Edudation shall act as a trustee of school lands. The board may retain private counsel or other professional assistance when necessary to carry out its duties as a trustee.

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

MEMORANDUM

February 15, 1977

SUBJECT: HB 156, "An Act Relating to the Conservation of Privately Owned Agricultural Land" (W.O.# 3319, Partial)

TO: The Honorable Sally Smith

FROM: George Utermohlen
Research Analyst

SUMMARY

House Bill 156 is a companion bill to Senate Bill 66 introduced by Senator Tillion. These bills seeks to conserve agricultural land by severing the rights to develop agricultural land from the fee title. Once the landowner has sold his development rights to the state, he is relieved of the tax burden associated with the development rights as well as the pressure to develop. The decreased tax burden is important to those who own agricultural land near major population centers where there is the greatest pressure to convert agricultural land to more intense use.

The landowner who wishes to sever the development rights from his agricultural land may sell them to the state. The purchase price of the development rights shall be determined by an independent appraisal of the value of the development rights. The cost of the appraisal is deducted from the purchase price. The development rights remain with the state until the landowner requests that the development rights be sold or leased and the Director of the Division of Lands and the Commissioner of Natural Resources agree. When the development rights are sold at public auction, the landowner has thirty days to meet the high bid. In exericing his preference right, the landowner may credit the value of improvements on the land towards the purchase price.

The only lands affected by this act are those lands for which a soil survey has been completed by the U.S. Soil Conservation Service. Those areas which have been surveyed by the Soil Conservation Service are the Kenai Peninsula, Anchorage, Matanuska Valley, Fairbanks, and Delta Junction.

At least 60% of the agricultural land for which the development rights are acquired must be rated as Class V or better by the Soil Conservation Service. A copy of the soil classification scheme is attached.

COMMENT

That area of law dealing with the acquisition of development rights is relatively new. No state has had similar legislation in effect long enough for all the potential problems to be realized. The best that can be done with new kinds of legislation is to address all the foreseeable problems in the initial legislation and to hope for sucess.

Those parts of the bill which deserve scrutiny in committee are addressed below.

1. In the proposed subsection 38.60.010(b), the only criterion for selecting land to be protected is the soil capability classification assigned to the land by the Soil Conservation Service. Other criteria which might also be considered are minimum acreage and past agricultural use. The state gains little in protected agricultural potential if the plots which are protected are too small for agricultural purposes or if the land has an unknown agricultural potential.

2. In subsection 38.60.010(c) the purchase price of the development rights is established by an appraisal of the development rights by an independent appraiser. The cost of the appraisal is deducted from the purchase price. This provision is meant to assure the landowner the best price for his development rights. However, if the cost of the appraisal is deducted from the purchase price, it may be in the best interests of the property owner to accept an appraisal by the Division of Lands, which will not be subject to a deduction equal to the appraiser's fee. It is suggested that the provision for an independent appraisal be at the option of the landowner.

3. Under subsection 38.60.020(a) are listed a few of the provisions to be included in any development rights purchase agreement. One of these provisions allows the construction of only those structures consistent with agricultural purposes. It is not clear if this provision would prevent a landowner who has not already built a home on the land from building a one-family residential structure for his personal use. Examples of those structures which would be allowed to be built while the state holds the development rights could be included as a guide for Division of Lands.

Another provision of this subsection limits the kinds of interest which a landowner can sell in his land if the state owns the development rights. This provision should be written so that it is clear that the landowner may not sell any interest in his land which would substantially hinder agricultural operations and that scenic, access, and utility easements would be permitted by the development rights purchase agreement.

4. Subsection AS 38.60.020(b), as proposed, would permit the Director of Lands to offer the development rights for sale or lease if requested by the landowner. The sale of development rights is by public auction. The landowner has 30 days to meet the high bid and repurchase the development rights. The value of improvements owned by the landowner may be credited toward the purchase price. The value of improvements owned by the landowner who is engaged in certain forms of capital intensive agriculture, as dairy farming, could be worth much more than the development rights. If these improvements could be credited toward the repurchase of the development rights, the landowner would be able to receive cash for his development rights, tax relief while the state holds the development rights, and then repurchase his development rights at no cost at any time before the value of the development rights exceeds the value of the improvements. An alternative form of improvement credits would allow credit only for those improvements made during the period when the development rights purchase agreement is effective.

5. The phrase beginning on line 26 of page 2 "included with the development rights sold" may be deleted because it is unnecessary and complicates interpretation of the section.

6. By requesting the Director of Lands to make the development rights available for purchase, the landowner consents to the sale and acknowledges that the development rights may be sold to a third party if he cannot meet the bid received at public auction. The provision of 38.60.020(b)(3)(B) is not consistent with the other sections of the bill and should be deleted, because it requires the landowner to assent to the sale of improvements. No improvements made by the landowner are affected by the sale of development rights; all improvements remain the property of the landowner.

7. The phrase "together with improvements" should be deleted from line 7 of page 3 [sec. 38.60.020(b)(4)] because it is not applicable to the situation which is addressed by this bill for the same reasons as given in Six above.

8. A new definition of "agricultural operations" which would change only the form of the existing definition is suggested as follows:

"agricultural operations" means those activities related to the production of domesticated plants and animals useful to man, including forage and sod crops, grains and feed crops, fruits, vegetables, and livestock;

9. A proposed amendment of the definition of "agricultural use" which alters the form of the definition, but not the meaning, is suggested as follows:

"agricultural use" means the use of substantially undeveloped land for the production of domesticated plants and animals useful to man, including forage and sod crops, grains and feed crops, fruits, vegetables and livestock; and other related uses and activities.

Because this aspect of land use legislation is relatively new, this bill is, in many respects, very general. It will be the responsibility of the Division of Lands to promulgate regulations which will enumerate the procedures to be employed in purchasing development rights to privately owned agricultural land.

This legislation shall benefit both the agricultural landowner who wishes to remain in agriculture, but is subject to pressure to convert his land to more intense uses, and the state, which will be able to conserve productive agricultural land. The ability of the state to acquire development rights to farm land will promote the retention of open space in areas subject to intense development pressure, however, the ability of the state to utilize this land use planning tool will depend upon the monies appropriated.

GU:mo
Attachment

SOIL CONSERVATION SERVICE

Soil Capability Classes

Class I soils have few limitations that restrict their use.

Class II soils have moderate limitations that reduce the choice of plants or that require moderate conservation practices.

Class III soils have severe limitations that reduce the choice of plants, require special conservation practices, or both

Class IV soils have very severe limitations that reduce the choice of plants, require very careful management, or both.

Class V soils are subject to little or no erosions but have other limitations, impractical to remove, that limit their use largely to pasture, range, woodland, or wildlife habitat.

Class VI soils have severe limitations that make them generally unsuited to cultivation and limit their use largely to pasture or range, woodland, or wildlife habitat.

Class VII soils have very severe limitations that make them unsuited to cultivation and that restrict their use largely to pasture or range, woodland, or wildlife habitat.

Class VIII soils and land forms have limitations that preclude their use for commercial plants and restrict their use to recreation, wildlife habitat, or water supply, or to esthetic purposes.