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Alaska Environmental Lobby, Inc.

204 N. Franklin Street, Suite 3 Juneau, Alaska 99801

907-586-2345

TESTIMONY ON SB 269 - Cabins on state lands
2/28/86 by Kate Pendleton

The Alaska Environmental Lobby opposes Senate Bill 269. In principle, we do not believe it is wise to promote a system of private in-holdings on public lands. This bill would allow people who built unauthorized cabins on state lands to acquire title to the land which rightfully belongs to the citizens of the state.

We believe the State has been generous in its policies regarding the use of private cabins on state lands, but to create a pattern of land ownership today that would result in future problems for our resource agencies is definitely not responsible planning.

We feel that the Department of Natural Resources has adequately addressed the concerns of those who built cabins on unauthorized lands. The current cabin permit program administered by the DNR allows applicants life-long use of existing private cabins before they revert to state ownership. In addition, leasing of state land for the construction of private cabins is allowed. (by AS 38.05.079.). Similar statutes also allow for the purchase of five acre parcels of state land by operators of existing commercial enterprises and the construction of trapping cabins for a \$10 application fee.

Under the proposed legislation, once a person owns the cabin and the surrounding acre, they can do anything they want on that piece of land. The ramifications of intensive use of this acre are far reaching. In addition, if there are many located in close proximity, there arises the questions of access, and the states responsibility for providing services for the people using these lands, the same costly issue facing the state land disposal program. In essence, this bill is just another land disposal program. In a recent Anchorage Daily News article, the state legislative finance division claimed that in the next 10 years, services for land disposals will cost the state more than a half-billion dollars.

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Testimony on SB 269

This bill does not meet the needs of the Alaskan public. It merely gives preference rights to a small, select group of people who chose to knowingly build unauthorized cabins on state land and who now feel they should be entitled not only to use of their cabin at that site, but also to title of public lands surrounding their cabins.

We believe that Alaska is doing more than is necessary to promote private use of state lands and that SB 269 goes too far in diminishing the integrity of current and potential resource management in the state.

Remarks to the House Resources Committee on 2/28/86

Mr. Chairman, members of the Committee, my name is Charles Christensen. I am an aide to Senator Don Bennett, the prime sponsor of Senate Bill 269.

SB 269 was drafted in response to an ongoing problem faced by many cabin owners in Alaska. Stated in its simplest terms, the problem is that many Alaskans own cabins, but not the land which the cabins sit upon.

The Department of Natural Resources recognized this problem in 1984, and in an effort to resolve it, drafted regulations which would allow a cabin owner to obtain a non-transferable permit to occupy his or her own cabin. SB 269 was designed to correct what many see as the deficiencies in this permit program.

I have reviewed the Substitute prepared by the Committee. Briefly, this version of the bill would grant DNR the discretion to sell up to one acre of land to the person who possessed a cabin, at the land's fair market value. In order to qualify for this program, the cabin must have been built prior to January 1, 1980. Like most of the 16 other preference statutes which give DNR the authority to dispose of state land in a non-competitive way, the Committee Substitute would require DNR to consider the state's best interests before making a sale.

There are many reasons why over the years people built cabins on land owned by the state or federal government. Some built on land which was open to entry at the time. Some built on land which they thought was open to entry, but made an honest mistake. Many built on land which they assumed, incorrectly, would eventually be made available to the public. This is a particular problem in Alaska, given the uncertain and constantly changing status of large tracts of land up until the early 1980's. Many residents of the bush built cabins in years past without any consideration given to the land's status, because their economic or physical survival required it.

And of course, many people built cabins on public land simply because the governments which controlled the land have historically been unresponsive to the desires of the people in this state to have a piece of land they can call their own.

Criticisms of this bill's objectives seem to fall into two primary categories. One is that this bill is bad public policy because it rewards people for building a cabin on land which did not belong to them.

Two response to this criticism are in order. First, for some of the reasons I have cited, there are many categories of people who did not build their cabin without regard for the land's status. The land was open to entry.

Second, statutes of this type are the rule rather than the exception in the history of American land disposal. From the earliest days of the frontier, there have been persons who built on public land before the land's status was determined by Congress. In the years from the early 1800's onward, Congress passed dozens of "pre-emption acts." These said in effect that a person who made improvements on public land could buy it from the government, notwithstanding the fact that they were trespassers.

Two types of pre-emption acts were passed. The earliest were acts of special pre-emption, which benefited only certain classes of trespassers. These are analogous to several of the preference acts passed in Alaska since statehood, which give certain categories of persons, such as persons with a cabin in an area which has since been selected for remote parcel designation, the option to purchase the land.

The second type was the general pre-emption act, the first of which was passed in 1830, which benefited anyone who improved public land. SB 269 is analogous to the general pre-emption acts.

It is important to note that the most recent federal pre-emption act passed was the Alaska Native Claims Settlement Act in 1971. In section 14(c), this statute provided that if improvements to land had been made, such as reindeer corrals, for example, the land underneath the improvement would end up in the hands of the owner, not in the hands of the native corporation which would otherwise be entitled to it.

Because we have in excess of 150 years of special and general pre-emption statutes at the federal level, and many years of such statutes at the state level, it is disingenuous to argue that SB 269 sets a bad precedent, or that it is an aberration in our land disposal policy. In fact, granting public land to the persons who expended time and money to build improvements on it is a longstanding policy in the lower 48 and Alaska.

The second category of objection which is heard is that it is not in the state's interest to dispose of this land.

For the record, it should be noted that the DNR estimate of the number of cabins which are effected by this bill is 1500. At most, therefore, 1500 of the state's 80,000,000 acres will be disposed of. And since fair market price will be paid, the state is not giving anything away.

Moreover, this Committee's substitute does require DNR to make a case by case evaluation of the state's best interest before any land can be transferred.

In conclusion, SB 269 is a reasonable way to solve a problem which has existed for years, and which will be with us for years to come if it is ignored. Senator Bennett has reviewed this committee's substitute for his bill. While he prefers the Senate version, because it does not give DNR any discretion in transferring cabin sites, he defers to the judgement of the committee in adopting this substitute.

COMMITTEE REPORT

3/19

HOUSE

(9)

FURTHER: FINANCE

5/11/85

Date: 3/14/85

The Committee on RESOURCES has had CS SB 269 (Res)

"An Act relating to cabins on state land; and providing for an effective date."

under consideration and recommends:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for HCS SB 269 (Resources) same title
- new title
- and recommends individual recommendations
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation Zero Fiscal Note Attached
- referred to the _____ Committee

MEMBERS SIGNING DO PASS

MEMBERS HAVING OTHER RECOMMENDATIONS:

Shultz Dink Shultz

Cato Walter Cato

Jenkins Kenneth Jenkins

Miller (N) W. Miller

Adrian W. Thompson ND REC

Adrian W. Thompson ND REC

Dink Shultz Shultz CO-CHAIRMAN

2 withdrawn

AMENDMENT TO CSSB 201

ON Line 13

Insert additional language after cabin to read:

", on the condition that the cabin is only used for non-commercial purposes."

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : 03-18-86

REQUEST

Bill/Resolution No. HCS SB 269 (Res) AF
 Title : Cabins on State Land

 Sponsor : Bennett
 Requestor : House Resources
 Date of Request : 03-17-86

FISCAL DETAIL

Agency Affected : Natural Resources
 BRU : Land & Water Management; Information and Records

 Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES	87.5	380.5	438.5	438.5	438.5	438.5
TRAVEL	3.0	40.0	40.0	40.0	40.0	40.0
CONTRACTUAL	6.0	50.0	50.0	50.0	50.0	50.0
SUPPLIES	2.0	6.0	6.0	6.0	6.0	6.0
EQUIPMENT	4.0	12.0	12.0	12.0	12.0	12.0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	102.5	488.5	546.5	546.5	546.5	546.5

CAPITAL						
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REVENUE			300.0	300.0	300.0	300.0
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FUNDING : (Thousands of Dollars)

GENERAL FUND	102.5	488.5	546.5	546.5	546.5	546.5
FEDERAL FUNDS						
OTHER						
TOTAL	102.5	488.5	546.5	546.5	546.5	546.5

POSITIONS :

FULL-TIME	2	9	10	10	10	
PART-TIME		1	2	2	2	2
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

See attached explanation of yearly program goals. Within seven to ten years operating costs would be reduced to about one-third. Estimate based on 2,000 cabins.

Because this would amount to a major new land disposal program, it will require full administration support in regional offices and contract administration. Annual (See atch.)

Prepared by : DTS/DLWM/Commissioner's Office *AF* Phone : 465-2400
 Division : _____ Date : 03-18-86

Approved by Commissioner : *Norm D. Amundson* Date : 03-18-86 *AF*
 Agency : Natural Resources

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

Analysis Continued:

costs will include adjudication/survey and appraisal review/planning, etc.

FISCAL NOTE ANALYSIS
SB 269
DEPARTMENT OF NATURAL RESOURCES

With the passage of SB 269, the Department of Natural Resources would encounter a large number and variety of administrative responsibilities that could not be met under existing budgets. These responsibilities would include the implementation of regulations for the cabin program, title and records review, survey instructions and review, public notice/decisions/findings, appraisal instructions and review, issuance of title, and contract administration and enforcement where the purchaser chooses to purchase the land over a period of twenty years.

Because the Department estimates that there are 2,000 cabins on state land, and it would be impossible to accomplish the proposed conveyance in a short term, the fiscal impact is estimated for a five- to ten-year cabin land sale program. Most of the administrative handling of cabin purchase applications would be done in the three regional offices: Anchorage, Fairbanks, and Juneau. Both the Division of Land and Water Management and the Division of Technical Services would be closely involved.

YEAR ONE -

1. Prepare regulations for program. How determine the one-acre parcel? How accommodate owners who are within game refuges or state parks? Convey submerged lands title for waterside cabins? Reserve easements/rights-of-way across adjacent public lands and through the parcel? How determine 1980 appraised value and provide for appeals? Who pays survey/appraisal costs? What are conditions for contracts of sale (AS 38.05.065)? May an owner purchase more than one cabin? How prove ownership and use before 1980? What if more than one owner applies to purchase a cabin? Is program open forever at same appraisal amount? What opportunities are there for public notice/comment on proposed conveyances? May the state conduct its own land disposals, timber sales, leases, R/W conveyances if there is an unauthorized cabin nearby or within the area and an application has been filed? Can commissioner decide that less than an acre will be conveyed? May the commissioner prevent subdivision (for other cabins, trailer lots, etc.) within refuges and parks? How prepare survey/appraisal instructions?
2. Announce program to public and begin preparation for applications. Provide application forms, information sheets, procedural directions to all regional staff.

YEAR TWO -

1. Accept applications. Answer public inquiries.
2. Begin adjudicating applications. Determine which are on state lands, notify applicants who are not on state lands. Review proof of cabin construction prior to 1980.

3. Begin public notice, review of cabin conveyances consistent with AS 38.05.945 and AS 38.05.035(e) and constitutional provisions for equal protection and use/management of the public domain.
5. Begin to field check cabins, surveys, appraisals.
6. Begin planning/platting easements and rights-of-way for public needs.

YEAR THREE -

1. Continue 1-6 above.
2. Close application opportunities in some areas, open in others to distribute regional impact of applications on administrative staff.
3. Begin to issue accurate title/quitclaim deed to some applicants who meet conditions.
4. Issue contracts of sale and prepare twenty-year payment schedule and conditions for successful applicants wishing to pay over time.
5. Note title changes, applications on land title records (must record applications immediately on receipt for awareness during other land disposal/management planning).
6. Begin to accept new title documents in recorder's Offices.

YEARS FOUR TO TEN -

1. Continue with the program, aiming to complete within four to seven years.

LINE ITEM EXPLANATIONS - SB 269

FY 86

- 100 - Two positions, 87.5
1. Natural Resource Manager I (47.5)
Supervise start-up of program, including regulations and public information
2. Natural Resource Technician I (40.0)
Assist in program start-up, begin policy/procedures directives for regional staff, coordinate with survey/title/records staff to assure timely notation of applications on status plats and conveyance of accurate title, coordinate with contract administration staff to begin handling sales contracts
- 200 - 3.0
Travel to regions
- 300 - 6.0
Special legal research for regulations
- 400 - 2.0
Supplies and commodities for new staff
- 500 - 4.0
Office equipment for new staff (chair, desk, typewriter, file)

FY 87

- 100 - Seven new positions, 293.5 + 87.5 from FY 86
1,2,3. Natural Resource Technician in each regional office (127.5)
Begin adjudication/review of applications, provide local response to inquiries, conduct public notice, negotiate difficulties with applicant and adjacent landowners or citizens; begin review of appeals on appraisals, adjudication
4,5,6. Survey/Title Staff in central/regional offices (127.5)
Begin survey check (some field work required), conduct full title check, note applications and conveyances on state land records.
7. Accounting Technician and part-time clerical (38.0)
Begin issuing contracts of sale for successful applicants
- 200 - 40.0
Travel to field check cabins/appriasals/surveys, review area resources for possible conflicts
- 300 - 50.0
Advertising, hearings, legal assitance for adjudicating applications and administering appeals; preparation and issuance of some title documents
- 400 - 6.0
Supplies and commodities for new staff
- 500 - 12.0
Office equipment for seven new staff

FY 88-94/5

Continue all costs but add one Accounting Technician and some part-time clerical staff for future contract administration.

Original sponsors: Bennett, Ferguson
and Coghill

1 IN THE SENATE

BY THE RESOURCES COMMITTEE

2 HOUSE CS FOR CS FOR SENATE BILL NO. 269 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to cabins on state land; and provid-
7 ing for an effective date."

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

9 * Section 1. Unless prohibited by an area plan adopted under AS 38.04.-
10 065, on the application of a person who can demonstrate the historic use
11 and occupancy of a cabin on state land and investments in the cabin before
12 January 1, 1981 and continuing until the effective date of this Act, the
13 commissioner of natural resources may sell not to exceed one acre of state
14 land occupied by the cabin. If the cabin is located on state land that is
15 adjacent to a body of water, the commissioner shall reserve an easement for
16 public access not to exceed 20 feet wide above the mean high water line.
17 The commissioner may not establish restrictions on the use of the cabin or
18 on future transfers of the land sold under this section. The land may be
19 sold notwithstanding the location of the cabin on state land that has been
20 withdrawn under AS 16 or AS 41 subsequent to the erection of the cabin.
21 Land sold under this section shall be sold for the fair market value of the
22 unimproved land on the date of the application and the person is respon-
23 sible for the costs of surveying the land.

24 * Sec. 2. This Act takes effect immediately in accordance with AS 01.-
25 10.070(c).

Original sponsors: Bennett, Ferguson
and Coghill

1 IN THE SENATE

BY THE RESOURCES COMMITTEE

2 HOUSE CS FOR CS FOR SENATE BILL NO. 269 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to cabins on state land; and provid-
7 ing for an effective date."

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

9 * Section 1. On the application of a person who can demonstrate the
10 historic use and occupancy of a cabin on state land and investments in the
11 cabin before January 1, 1981 and continuing until the effective date of
12 this Act, the commissioner of natural resources may sell not to exceed one
13 acre of state land occupied by the cabin. If the cabin is located on state
14 land that is adjacent to a body of water, the commissioner shall reserve an
15 easement for public access not to exceed 20 feet wide above the mean high
16 water line. The commissioner may not establish restrictions on the use of
17 the cabin or on future transfers of the land sold under this section. The
18 land may be sold notwithstanding the location of the cabin on state land
19 that has been withdrawn under AS 16 or AS 41 subsequent to the erection of
20 the cabin. Land sold under this section shall be sold for the fair market
21 value of the unimproved land and the person is responsible for the costs of
22 surveying the land.

23 * Sec. 2. This Act takes effect immediately in accordance with AS 01.-
24 10.070(c).

adopted

AMENDMENT

by Representative Adelheid Herrmann

to Committee Substitute for Senate Bill 269 (dated 3/10/86):

On page one, line nine, begin the sentence with new language to read:

"Unless provided ^{prohibited} otherwise by an Area Plan,"

Replace the capital "o" with a lower case "o".

AMENDMENT TO CSSB 269

ON Line 13

Insert additional language after cabin to read:

", on the condition that the cabin is only used for non-commercial purposes."

DRAFT
Law

SB 269
LP57
3/11/86

Original sponsors: Bennett, Ferguson
and Coghill

IN THE _____ BY THE RESOURCE COMMITTEE

HOUSE CS FOR CS FOR SENATE BILL NO. 269 (Resources)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to cabins on state land; and provid-
ing for an effective date."

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

* Section 1. On the application of a person who can demonstrate both historic use and continuous occupancy of a cabin on state land together with an equitable interest in the cabin before January 1, 1968 and continuing until the effective date of this Act, the commissioner of natural resources may sell not to exceed one acre of state land occupied by the cabin. If the cabin is located on state land that is adjacent to a body of water, the commissioner shall reserve an easement for public access not to exceed 20 feet wide above the mean high water line. The commissioner may not establish restrictions on the use of the cabin or on future transfers of land sold under this section. Land sold under this section shall be sold for the ^{current} fair market value of the unimproved land plus the costs of surveying the land and such reasonable administrative costs as the department determines are necessary to carry out the transfer of the land.

* Sec. 2. This Act takes effect immediately in accordance with AS 01.10.070(c).

* Sec. 3. Unless reauthorized by an Act of the legislature, this Act terminates July 1, 1988.

Alaska State Legislature

ARLISS STURGULEWSKI, Chairman
BETTYE FAHRENKAMP, Vice Chairman
JACK COGHILL
DICK ELIASON
VIC FISCHER
RICK HALFORD
FRED ZHAROFF



POUGH V
JUNEAU, ALASKA, 99811
(907) 465-4907

Senate Committee on Resources

Senate Resources Committee Minutes

May 1, 1985
1:35 pm

Senate Resource Members Present

Senator Arliss Sturgulewski, Chairman
Senator Bettye Fahrenkamp, Vice Chair
Senator Fred Zharoff
Senator Vic Fischer

Senator Rick Halford
Senator Jack Coghill
Senator Dick Eliason

Calendar

SB 269 "An Act relating to cabins on state land; and providing for an effective date."

HB 280 "An Act creating the Anchor River and Fritz Creek Critical Habitat Area."

SJR 24 Relating to the Americanization of the fishery off the coast of Alaska.

SB 285 "An Act relating to the recoupmnt conveyance for land at Illinois Creek; and providing for an effective date."

HB 186 "An Act creating the Anchorage Coastal Wildlife Refuge."

Senator Sturgulewski

Called the meeting to order. Senator Sturgulewski opened the Public Hearing on SJR 24.

Paul Kelly, Bristol Bay Herring Marketing Coop, testified in opposition to lines 7 - 10 on page 2 of the bill regarding the Governor's authority to permit joint ventures in Alaska's internal waters. He also objected to the use of specific phase out dates in the resolution.

Greg Baker, Director, Office of Commercial Fisheries Development, Department of Commerce and Economic Development, testified in favor of the bill and stated the Administration supports the time certain phase out date.

Larry Cotter, USA Coalition Committee President, International Longshoremen's and Warehousemen's Union, Local 200, presented written testimony in support of the resolution to the committee and testified in favor of a time certain phase out date in the SJR 24.

Jeff Stephan, Manager, United Fishermen's Marketing Association, Inc., and member of the North Pacific Fisheries Management Council (NPFMC), testified in support of SJR 24. In response to a question from Senator V. Fischer, Mr. Stephan stated that the NPFMC's position on SJR 24 is unclear. Senator Fischer stated he would like the resolution addressed to the NPFMC also.

John Cleveland, Sea-Land Service, testified that the transportation industry supports the resolution.

Bix Bonney, representing two sportfishing groups from Anchorage, testified in support of SJR 24.

Rick Lauber, Alaska Seafood Processers, testified in support of the resolution and stated he believes there has to be a cut-off date in order to Americanize the industry.

Senator Sturgulewski stated she would continue the Public Hearing on SJR 24 on Friday.

Senator Sturgulewski opened the Public Hearing on SB 269.

Tom Hawkins, Director, Division of Land and Water, Department of Natural Resources, testified that they would like the committee to defer action on SB 269 until the recent permitting process in the Department has a chance to set a track record.

David Caylor, Alaska Environmental Lobby, testified in opposition to SB 269.

Joe Geldhof, Assistant Attorney General, Department of Law, stated that the constitutionality of the bill in its present form could be challenged and provided the committee with a written legal opinion.

Dennis Kelso, Deputy Commissioner, Department of Fish and Game, stated the department does not support SB 269.

Senator Halford moved to change the date on p. 1, line 12 from 1980 to 1968 and add "if the land was open to entry under applicable state or federal laws at the time the cabin was erected" and asked unanimous consent.

Senator Sturgulewski hearing no objection, so ordered.

Ron Somerville, Alaska Outdoor Council, supports the bill in amended form.

Senator Sturgulewski asked Mr. Geldhof if the amendment changing 1980 to 1968 would cause constitutionality problems. Mr. Geldhof stated he

believed it would. Senator Sturgulewski asked Mr. Geldhof to prepare a legal opinion for the committee.

Senator Halford moved on p. 1, line 9 to change the word "possesses" to "owns" and asked unanimous consent.

Senator Fahrenkamp objected.

Senator Sturgulewski took a roll call vote on the motion:

Senator Coghill	No
Senator Halford	Yes
Senator Fahrenkamp	No
Senator Zharoff	No
Senator V. Fischer	Yes
Senator Sturgulewski	Yes

Senator Sturgulewski stated the amendment had failed.

Senator Sturgulewski closed the Public Hearing on SB 269.

Senator Halford moved on p. 1, lines 14 and 18 to change the date from 1980 to 1968 and asked unanimous consent.

Senator Sturgulewski hearing no objection, so ordered.

Senator Halford moved to rescind his motion on the date change on line 14 and delete the phrase "on January 1, 1980" on line 14 and asked unanimous consent.

Senator Sturgulewski hearing no objection, so ordered.

Senator Halford moved to delete the word "higher" on p. 1, line 17 and asked unanimous consent.

Senator Sturgulewski hearing no objection, so ordered.

Senator Halford moved to rescind the committee action on the failure of his motion to change the word "possesses" to "own" on p. 1, line 9 and asked unanimous consent.

Senator Fahrenkamp objected and so Senator Sturgulewski took a roll call vote:

Senator Coghill	No
Senator Halford	Yes
Senator Fahrenkamp	No
Senator Zharoff	No
Senator Eliason	Yes
Senator V. Fischer	Yes
Senator Sturgulewski	Yes

The motion carried and Senator Sturgulewski took a roll call vote on

Senator Halford's motion to change the word "possesses" to "own" on p. 1, line 9:

Senator Coynill	No
Senator Halford	Yes
Senator Fahrenkamp	No
Senator Zharoff	No
Senator Eliason	Yes
Senator V. Fischer	Yes
Senator Sturgulewski	Yes

Senator Sturgulewski stated that the motion had passed.

Senator Fahrenkamp moved CS SB 269 (Resources) with individual recommendations and asked unanimous consent.

Senator Sturgulewski hearing no objection, so ordered.

Senator Sturgulewski opened the Public Hearing on SB 285.

Roy Huhndorf, President, Cook Inlet Region, Inc., testified in support of SB 285 and gave the history leading up to the bill. He stated that this bill would bring them up to about 90% of their land entitlement.

Gary Gustufson, Chief, Land Division, DNR, testified in support of the bill.

Senator Sturgulewski closed the Public Hearing on SB 285.

Senator V. Fischer moved SB 285 with individual recommendations and asked unanimous consent.

Senator Sturgulewski hearing no objection, so ordered.

Senator Sturgulewski stated that CS HB 186 (Resources) was before the committee.

Senator V. Fischer stated that this same bill had already been before the committee in the form of a senate bill and been passed out of the committee. He noted two changes in the house version. Senator Fischer moved CS HB 186 (Resources) and the letter of intent with individual recommendations and asked unanimous consent.

Senator Sturgulewski hearing no objection, so ordered.

Senator Sturgulewski adjourned the meeting.

Alaska State Legislature

ARLISS STURGULEWSKI, Chairman
BETTYE FAHRENKAMP, Vice Chairman
JACK COGHILL
DICK ELIASON
VIC FISCHER
RICK HALFORD
FRED ZHAROFF



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JUNEAU, ALASKA. 99811
(907) 465-4907

Senate Committee on Resources

Senate Resources Committee Minutes

April 29, 1985
1:35 pm

Senate Resource Members Present

Senator Arliss Sturgulewski, Chairman
Senator Bettye Fahrenkamp, Vice Chair
Senator Fred Zharoff
Senator Dick Eliason

Senator Vic Fischer
Senator Jack Coghill
Senator Rick Halford

Calendar

State Planning Overview

SB 269 "An Act relating to cabins on state land; and providing for an effective date."

HB 280 "An Act creating the Anchor River and Fritz Creek Critical Habitat Area."

Senator Sturgulewski stated that the state planning overview would be the first order of business.

Don Collinsworth, Commissioner, Department of Fish and Game, stated that the ADF&G's planning breaks down into two categories. The first is where they participate in planning processes that are being led by either other state or federal agencies. The second is where ADF&G has the planning lead to develop management plans for critical habitat areas, state game refuge areas, and state game sanctuaries. In the first instance, Commissioner Collinsworth stated they provide much of the fish and wildlife population and life history information that goes into the management plans. He stated they also provide much of the habitat information that becomes part of the habitat inventory information that is part of the plans. He stated they participate in the review of state plans as they reach completion and through a cooperative agreement, they participate as a planning team member for DNR's area plans, provide technical information and expertise as the plans are developed. They review other state plans fully before they are finalized. He stated they are involved in the review of the federal land use plans through the Conservation System Unit (CSU) coordination process

and membership on the Alaska Land Use Council (ALUC). Commissioner Collinsworth stated they are currently involved in completing 3 state area plans and DNR is proposing to start 3 more plans.

Commissioner Collinsworth stated they received funding for a planning position in FY 85 and they have worked to develop a planning process that provides for wide agency and public involvement meeting the mandates of the Administrative Procedures Act to help move those plans through a public participation process. He stated they have also developed a plan schedule.

In answer to questions, Commissioner Collinsworth stated that there are a wide range of activities that are compatible in critical habitat areas.

Vince O'Reilly, Deputy Commissioner, Department of Commerce and Economic Development, stated their plans come from various sources. Federal plans covering wilderness and national parks. He stated that decisions concerning economic development have largely been made for this class of plan before it comes DC&ED. He stated they are involved in federal plans for BLM and other federal lands which have a multi-purpose use. They are also involved in the Coastal Zone Management Plans. He stated they have input into state plans principally from the departments of Natural Resources and Transportation and Public Facilities. They try to bring economic development into the plan. He stated they do not get too involved in local comprehensive plans.

Mr. O'Reilly stated that a plan comes into the department and is routed to the divisions that would be concerned with it. Reviews are then conducted and consolidated. If there are conflicts between divisions, the Deputy Commissioner steps in to resolve them. From there comments on the the plan goes to the Commissioner for his review and signature.

Mr. O' Reilly stated they sit on the following committees: Fisheries Mini-Cabinet, Timber Task Force, Tuesday Club, Tourism Advisory Board, Alaska Power Authority, Alaska Railroad, Coastal Policy Council. He stated formal and informal discussions and conferences are held at the cabinet level.

In summary Mr. O'Reilly noted (1) that plans reviewed come from various sources, some have the capability of being modified by economic development considerations, some don't; (2) assignment of personnel and funding will barely achieve the amount of department input to be effective in reviewing plans from an economic development perspective; (3) the department's organization of planning effort is in place though thin.

In answer to a question, Mr. O'Reilly stated the department does take an advocacy role in development areas. He also stated that they are more involved in commenting on plans than drafting the plans.

Richard Knapp, Commissioner, Department of Transportation and Public Facilities, stated that each regional division has a planning section and are charged with regional planning. The headquarters planning organization looks at an overall statewide plan and ties together system plans and analyzing developmental plans so they can come up with regional system

plans. He stated that development plans look at what may be happening in a region and what will its impact be on transportation needs. This involves other departments and so they are formally involved with them. System plans can deal with a region down to a municipality. This would be a plan like the Anchorage Municipal Area Transportation System. This is to minimize conflicts between municipal and state concerns.

Commissioner Knapp stated they have a seat on the Alaska Land Use Council and on the Coastal Zone Management Committee.

In answer to questions, Commissioner Knapp answered they get involved with the CSU's at the review stage. As far as development of state plans, Commissioner Knapp stated they have not been as involved as they should be. He stated that their involvement with the federal plans has been unsatisfactory but he stated he now has a special assistant who will be his liaison on the Land Use Council and will be involved with the plans from the beginning.

Jeff Smith, Deputy Commissioner, Community and Regional Affairs, stated they are involved in planning in three major categories: (1) special and statewide programs; (2) coastal management and regional strategy programs operating primarily at the regional level; and (3) local planning programs.

He stated that under the special programs category, Commissioner Notti is chairman of the Rural Issues Mini-Cabinet. This cabinet has looked at a number of planning issues such as the Alaska Land Bank Program, Capital Improvement Planning and the Rural Energy Technical Assistance Program. Also under the special programs category are the Oil and Gas Leasing Programs, Fisheries and Mining. He stated the department has also been involved with the Conservation System Unit planning.

Mr. Smith stated that under the Regional Scale Planning Projects, the department has been involved with the Alaska Coastal Management Program and the department's own Regional Strategies Program.

Mr. Smith stated the department has been involved with local planning programs financially, technically, and implementational assistance to communities both urban and rural throughout the state.

Mr. Smith noted that under Section 14(c)(3) of the Alaska Native Claims Settlement Act, the village corporation is required to convey land to the community for existing and foreseeable community needs. He stated that the department's ANCSA Assistance Program is designed to assist the 200 ANCSA communities in preparing community plans to identify current and foreseeable land needs, including rights of way and plans of survey necessary to accomplish the conveyance of 14(c)(3) land.

Terry Hoefflerle, Southeast Alaska Community Action Program, spoke to the committee about Native Allotments. He stated that over 9,000 Alaskans have unsatisfied allotment claims on Alaskan lands. He stated that their land holdings compromise inholding in all the CSU's that have been discussed. He stated the land claims are within and around nearly every community in the state. He stated they pose serious problems to development of those

communities as long as their claims remain unresolved. He stated the Alaska Land Use Council can help these people and urged the Legislature to do what they can to help.

Senator Sturgulewski opened the public hearing on CS SS HB 280.

Mike Navarre, prime sponsor of the bill, gave an overview of the critical habitat area discussed in the bill.

Senator Sturgulewski opened the public hearing on SB 269.

Senator Bennett, prime sponsor of the bill, testified in support of the bill and gave an overview of the bill.

Senator Sturgulewski stated the public hearing on SB 269 would be continued.

Senator Sturgulewski stated the committee would return to the public hearing on CS SS HB 280.

Joanna, Paul and Nora Manwiller testified via the Homer teleconference in favor of the bill.

Vicke Pugil, Mayor, Kachemak, via Homer teleconference, testified in support of the bill.

Senator Paul Fischer, testified in support of the bill.

Roberta Highland, Co-chairman, Citizens for Responsible Land Use, testified in support of the bill via Homer teleconference.

Senator Zharoff pointed out the permanency of the designation of a critical habitat area.

David Vanderbrink, Chairman, Critical Habitat Area Task Force, testified via Homer teleconference in support of the bill.

Paul Carlson, 25 year resident of the area, testified via Homer teleconference in support of the bill.

Chuck Parker, Wildlife Alliance of Alaska, Hunting Guide, and the Sierra Club, testified via the Anchorage teleconference in support of the bill.

Cliff Eames, Alaska Center for the Environment, testifies via the Anchorage teleconference in support of the bill.

Ned Farquhar, Special Assistant, DNR, testified the department had worked closely with the sponsor of the bill to provide for multiple-use. He noted that critical Habitat area designation is probably the most restrictive language in statute but believes the language in the bill allows them to continue with other uses in the area but would probably prevent conveyance to the municipality.

Denny Kelso, Deputy Commissioner, ADF&G, testified the department supports the bill because of the moose population. He noted that Fritz Creek could be used as a water source. He stated he has worked with DNR and the sponsor of the bill.

Senator Zharoff stated he would like an amendment to put a repealer on the bill.

Senator Sturgulewski stated the public hearing would be continued and adjourned the meeting at 3:30.

Bradley
2/15/86 ✓

Original sponsors: Bennett, Ferguson
and Coghill

1 IN THE SENATE BY THE RESOURCES COMMITTEE
2 HOUSE CS FOR CS FOR SENATE BILL NO. 269 (Resources)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to cabins on state land; and provid-
7 ing for an effective date."

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

9 * Section 1. On the application of a person who possesses a cabin on
10 state land on the effective date of this Act, the commissioner of natural
11 resources may sell not to exceed one acre of state land occupied by the
12 cabin if the cabin had been erected on the land before January 1, 1980.
13 The state land shall be sold for the fair market value of the land as
14 determined by the commissioner. The applicant shall pay costs of surveying
15 the land. If the cabin is located on a waterfront, the commissioner shall
16 reserve an easement not to exceed 20 feet wide above the mean higher high
17 water line. If the cabin is located in land that has been withdrawn under
18 AS 16 or AS 41 since January 1, 1980, the land may be sold notwithstanding
19 its withdrawal. The commissioner may not establish restrictions on use of
20 the cabin or on future transfers of the land sold under this section.

21 * Sec. 2. This Act takes effect immediately in accordance with AS 01.-
22 10.070(c).

SENATE FINANCE COMMITTEE

May 11, 1985

2:35 p.m.

SFC 85-61, Side 1, #001 - End
SFC 85-61, Side 2, #001 - #325

Excerpt from Minutes:

SB 269 "An Act relating to cabins on state land; and providing for an effective date."

Senate President Don Bennett, prime sponsor, advised this bill was introduced predicated upon what he believes as inequities currently going on within the State. Unfortunately, he said, cabins are so often thought of as the duck shacks from Anchorage. He assured the Committee this is not what prompted this legislation.

Providing historical data, Senate President Bennett stated that, when people came to Alaska in the 1920s-1950s, they were called settlers or pioneers or trappers, and many built liveable abodes, now referred to by modern standards as "cabins". According to the Department of Natural Resources, there are about 2,000 of these cabins scattered from Barrow to Ketchikan that have been in existence for a number of years. The problem, he continued, is with the status of ownership of the land constantly changing. Early on it was territorial land, and no one cared where the cabin was built. A mining claim was filed or the ground was staked out, and the settler would get to the recording office eventually. However, in 1967, Mr. Udall put a freeze on this situation, and the concensus was that after that freeze was lifted, a settler could once again get things straightened out by filing. This has never happened, he said, but what did happen is that the State received its 104 million acres, native corporations received their 44 million acres, and the federal government kept the residual. Although this bill does not pertain to them, there have been various land swaps before those various entities, he continued. It appears that this involves numerous cabins and that, if the State would allow these people to pay the fair market price, pay for the survey, they could get their abode and one acre of land. This is the intent and what he hopes to accomplish if this legislation becomes law, he said.

Co-chairman John Sackett MOVED to report SB 269 out of Committee with individual recommendation. There being no objection, it was so ordered. CS SB 269 (Res) was REPORTED OUT with a \$102.5 fiscal note from Department of Natural Resources and a majority of those Committee members present signing a "do pass" recommendation on the Committee Report.

Alaska State Legislature

P. O. BOX 2801
FAIRBANKS, ALASKA 99707



P. O. BOX V — STATE CAPITOL
JUNEAU, ALASKA 99811

Senate
Office of the President

To: House Resources Committee Members
From: Senator Don Bennett
Date: February 24, 1986
Re: Senate Bill 269

Enclosed for your review you will find a copy of the Fairbanks Daily News-Miner editorial for Monday, February 24, 1986, regarding Senate Bill 269. The News-Miner states:

SB 269 is a one-time solution to a continuing problem. It would create a network of cabins in just the places where Alaskans have found them useful, make it possible to hand them down to future generations, avoid a new layer of bureaucracy, and even bring a little cash to the state. It's a good bill that should be adopted this year.

I hope you will agree.

A handwritten signature in black ink, appearing to be "D. Bennett", written over a horizontal line.

Editorial Opinion and Comment of

FAIRBANKS

Daily News - Miner

"Independent in All Things . . . Neutral in None"

Other opinions expressed on this page do not necessarily reflect those of the Daily News-Miner.

Good idea for cabins

Two bills are pending in the Legislature this year relating to "trespass cabins"—one is good and the other is not.

Trespass cabins are those cabins Alaskans built on state (and federal) land during the 1960s and earlier when it was impossible to get title to public lands.

Last year, the state adopted a set of regulations which allowed the owners of such cabins on state land to get permits to use them. But the regulations were so restrictive they did little to help many users—besides creating yet another permit. You can't get a permit, for example, if you want to use your cabin for anything with an economic value, like trapping or guiding or fishing.

A far better solution is outlined in SB269. This bill, sponsored by Interior Sens. Don Bennett and Jack Coghill along with Kotzebue's Frank Ferguson, would allow the owner of a cabin built on state land before 1968 to buy an acre of land surrounding the cabin by paying fair market value plus the cost of the survey. The sale could proceed even if the land had been withdrawn for a state park or forest after 1968.

A different approach is outlined in HB561, a bill that ought not to be passed. It would create a whole new state bureaucracy to administer a system of public use cabins, which would include "cabins that were constructed on public land without proper authority and that have been or will be acquired by the state."

It took a landslide vote in favor of the Beirne Homestead Initiative—a measure thrown out by the courts that would have allowed every Alaskan to obtain some essentially free state land—to convince the state that we needed an aggressive land disposal program. But land disposal programs have not resolved the problem of these trespass cabins.

There are about a thousand statewide, and they are located in places Alaskans have found them to be useful. In more than one case, the presence of a cabin has meant life instead of death for an Alaskan stranded by weather or injuries. In a multitude of other cases, the cabins have provided comfort and shelter to Alaskans engaging in legitimate uses of the land and its resources.

The last thing we need is a bureaucracy to take care of these cabins with permits and expenses, especially when there already is a group of Alaskans willing to take care of them at their own expense if only they can get clear title to the land. If we just set up a permit system, we'll only be hemmed in with more restrictions, at a cost that could be substantial. By selling the land, the state has nothing to lose and will even come out financially ahead.

Legislators need to hear from Alaskans who support passage of SB269 which will permit the sale of an acre of land to a cabin owner. To send a free 50-word public opinion message to legislators, stop by the Legislative Information Office at 315 Barnette St. (in the back of the downtown post office building) or call the LIO at 452-4448.

SB269 is a one-time solution to a continuing problem. It would create a network of cabins in just the places where Alaskans have found them useful, make it possible to hand them down to future generations, avoid a new layer of bureaucracy, and even bring a little cash to the state. It's a good bill that should be adopted this year.

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF LAW

POUCH K - STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

OFFICE OF THE ATTORNEY GENERAL

April 29, 1985

COMMISSIONER'S OFFICE
RECEIVED
MAY 1 - 1985

Honorable Arliss Sturgulewski
Alaska State Legislature
Pouch V
Juneau, AK 99811

DEPARTMENT OF FISH AND GAME

Re: SB 269

Dear Senator Sturgulewski:

At the Senate Resources Committee hearing on Friday, April 26, 1985 you requested that the Attorney General's office provide you with a written opinion pertaining to SE 269. In its current form, Senate Bill 269 contains significant constitutional problems. If SB 269 is enacted into law, there is a very high probability that some individual or group would raise a judicial challenge to the measure on equal protection and possibly other constitutional grounds. In its current form, this legislation would be difficult for the State to sustain in a court of law. Our reasoning follows.

The legislation under consideration provides a means for persons who previously trespassed on State land to acquire title to the land which belongs to all the citizens of the state. Previous attempts to carry out similar policy have been viewed with skepticism by the Department of Law. For example, AS 38.05.079, which was enacted in 1979 as part of FCCSHB 66, gave trespassers a "remote cabin permit" for shelters previously built on State land. This provision of Alaska law was not enacted administratively because of potential constitutional problems. Instead, in 1984, the current administration promulgated regulations found at 11 AAC 65, to develop a cabin permit system which would phase out the existing trespass structures on State land over a period of years. This program, embodied in regulation, apparently meets the needs of individuals who used State land without authorization while avoiding the constitutional problems embodied in SB 269.

Honorable Arliss Sturgulewski
Senator

April 29, 1985
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The basic problem with which SB 269 runs afoul is the constitutional provision requiring that "all persons are equal and entitled to equal rights, opportunities, and protection under the law...". Article 1 Section 1 of the Alaska Constitution. SB 269 does not treat the citizens of Alaska in an equal fashion. The equal protection clause of the Alaska Constitution was "designed to protect the fragile values of a vulnerable citizenry from the overbearing concern for efficiency and efficacy that is often characterized in the most praiseworthy legislation." Isakson v. Ricky, 550 P.2d 359, 365 (1976). But, equal protection, "even under Alaska's stricter standard, does not demand perfection in classification." Commercial Fisheries Entry Commission v. Apokedak, 606 P.2d 1255 (1980). The Supreme Court applies a single test when weighing constitutional questions. That test is:

"flexible and dependent upon the importance of the rights involved. Based on the nature of the right, a greater or lesser burden is placed on the state to show that the classification has a fair and substantial relation to a legitimate governmental objective".

Commercial Fisheries Entry Commission v. Apokedak 606 P.2d 1255, 1264 (1980).

We think there are important rights that the citizens of Alaska each enjoy in owning State land. Article 8, Section 6 states that the "lands and interests therein... constitute the State public domain." The means used in SB 269 to give trespassers an exclusive right to land in the public domain severely strain the concept of equal protection.

Citizens who abided by the law and did not trespass on State land would not have an opportunity to procure State land, even at fair market value, as is contemplated by SB 269. Under the test articulated by the Alaska Supreme Court, it is our belief that legislation such as SB 269 would place a great burden on the State to show that the classification favoring trespassers is a fair means for effectuating a legitimate government objective. The legitimate governmental objective in ending continued trespass has been accomplished through 11 AAC 65 and has avoided the constitutional problems edemic in the current bill.

Honorable Arliss Sturgulewski
Senator

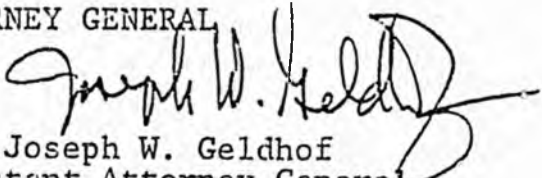
April 29, 1985
Page 3

It is possible other attorneys may harbor a different opinion with respect to this situation and the applicability of the Alaska Supreme Court standards. We urge you to consult with the attorneys in the Legislative Affairs Agency for an additional opinion on this particular bill and concerning this matter in general.

Sincerely yours,

NORMAN C. GCRSUCH
ATTORNEY GENERAL

By:


Joseph W. Geldhof
Assistant Attorney General

JWG/gle

cc: Members of Senate Resources Committee

Commissioner Esther Wunnicke
Department of Natural Resources

Commissioner Don Collinsworth
Department of Fish and Game