HB
321

BILL CONTACT/ACTION

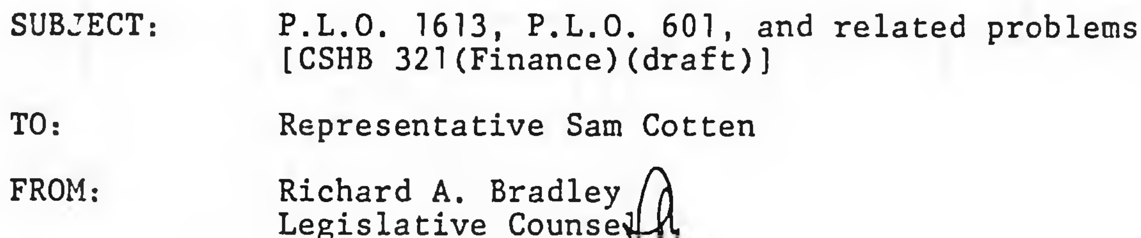
DATE	CONTACT/ACTION
4/28	Cotten (3799) notified of 5/11 meeting

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

M E M O R A N D U M   March 13, 1986



SUBJECT: P.L.O. 1613, P.L.O. 601, and related problems [CSHB 321(Finance)(draft)]

TO: Representative Sam Cotten

FROM: Richard A. Bradley
Legislative Counsel

You have requested a sectional analysis of the above described bill.

As a preliminary matter, note that a sectional analysis or summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Before preceding with the sectional analysis, it may be useful to offer some background comments.

> In 1940, in order to protect the roads that promoted the development of the Territory of Alaska, the Department of the Interior withdrew 150 feet of public lands along both sides of several "through roads," including the Glenn, Richardson, and Haines highways. [Public Land Order (PLO) 601.] Congress criticized these withdrawals as excessive, stating that they hindered commercial and private development, and, in 1956, enacted a law providing that if the Secretary [of the Interior] revoked such a withdrawal "the lands involved shall be subject to disposal only under laws specified by the Secretary of the Interior, subject to easements as established by the Secretary." [43 U.S.C. 971a.] The law authorized the Secretary to "sell such restored lands for not less than their appraised value, giving an appropriate preference right to the holders of adjoining

claims or entries and to owners of adjoining private lands. [43 U.S.C. 971b.]

In 1958 the Department issued PLO 1613 revoking the earlier withdrawals, replacing them with easements, offering for sale "the lands released from withdrawal * * * which, at the date of this order, adjoin lands in private ownership," and providing that released lands which on the same date "adjoin lands in valid unperfected entries, locations or settlement claims, shall be subject to inclusion in such entries, locations and claims." [PLO 1613.] Owners of private lands and holders of such entries were given a preference right to purchase the adjoining released lands or to amend their entries to include them, respectively . . . .

Many adjoining landowners or entry holders applied for the released lands located between the adjoining lands and the centerline of the highway, made the required payments, and received receipts, but their applications were not processed [by BLM or the Interior Department] for many years. Many who applied subsequently sold the lands adjoining the released lands. In August 1984 BLM issued decisions granting the released lands to the original applicants. In these consolidated appeals, present adjoining landowners claim the released lands should have been granted to them.

Appellants argue that Congress intended that the released lands be granted to owners of adjoining lands . . . . The released lands are important, and sometimes essential, to the present owners of the adjoining lands for access to those lands . . . and of no practical use to the original applicants, some of whom are deceased persons . . . .

BLM's decisions state that when the "purchase price was received * * * and a receipt for the purchase price was issued * * * equitable title vested in the applicant * * *." [Citations omitted.] Once equitable title vests, in BLM's view, "the Secretary has no discretion in the issuance of a patent and events subsequent to such vesting can have no bearing upon the claimant's right to patent," citing Wyoming v. United States, 225 U.S. 489 (1921).

> BLM's decisions must be affirmed. [Emphasis and bracketed material added.]

The above quote is from the decision of the Interior Board of Land Appeals, Robert and Patricia Bailey, IBLA 84-874 et al., decided November 22, 1985.

CSHB 321(Fin)(draft) is a response to the land title situation described in the Bailey decision; the Bailey decision, in fact, implicitly invites this legislation (as I note below).

Section 1 of the bill amends AS 09.25.050 by adding new subsections. The section itself now provides:

> Sec. 09.25.050. CONCLUSIVE EVIDENCE OF ADVERSE POSSESSION. The uninterrupted adverse notorious possession of real property under color and claim of title for seven years or more is conclusively presumed to give title to the property except as against the state or the United States.

Sec. 50(b) as added in Section 1 of the bill is self explanatory; it provides that "possession" means "the exercise of dominion and control of the real property, including use, care, maintenance, the establishment of improvements, the payment of ad valorem property taxes, and other acts of ownership that openly and visibly indicate to the community in which the land is situated that it is in the possession and enjoyment of the claimant."

Sec. 50(c) is significant; it provides that except for the "easement created by Public Land Order 1613 [the reservation of the highway itself], adverse possession will lie against property that is held by a person who holds equitable title from the United States" under PLO 1613.

Recall that the Bailey decision holds that those who applied for the land and received a receipt from BLM have "equitable title." If the applicant has not been in "possession" of the land (compare Sec. 09.25.050(b) as added in this bill), then the present person in possession may gain title to the land by the principles of adverse possession. See AS 09.25.050, above.

Section 2 of the bill add a new section to AS 09.45, "Actions Relating to Real Property".

Sec. 09.45.015(a) establishes a "statutory presumption" that a patent for land that was issued before April 7, 1958 (the date of PLO 1613) to land that adjoined a highway reservation listed in section 1 of PLO 1613 is presumed to have conveyed land up to the center-line of the highway subject only to the reservation for the highway itself created by PLO 601 as well as any highway easement created by PLO 1613. The statutory presumption would be of use to a person litigating the title to the land released from PLO 601 by PLO 1613.

Sec. 09.45.015(b) makes a similar point in a different way: it provides that the burden of proof in litigation involving title to the released land is "on the person who claims that the patent did not convey an interest in land up to the center-line of the highway."

Section 3 of the bill provides for an immediate effective date.

If I may be of further assistance, please advise.

RAB:csh
c6/036

REPRESENTATIVE
SAM COTTEN
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ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES

TO: All House members
FROM: Rep. Sam Cotten SC
DATE: April 2, 1986
RE: CSHB 321 (Fin)

The proposed CS for HB 321 aims to resolve rights-of way problems plaguing Chugiak area residents living along the Old Glenn Highway; it also affects similarly situated residents living on other Alaska highways. The problem stems from the federal government awarding ownership of a narrow strip of land in front of the lots to someone else.

The situation dates back almost 30 years when the Act of August 1, 1956 and Public Land Order 1613 (in 1958) allowed people to purchase highway lots and file for patents to the abutting highway easements. The intent of the law was to award the highway easement to the abutting landowner. However, after a decades-long delay, BLM has only recently started issuing these patents. In doing so, BLM has decided to award the patents to the original applicants, who in many cases, no longer live there, rather than the abutting owners. (In some cases the original applicants have died, in other cases the land has changed hands several times.) This administrative delay by BLM has meant that current highway residents face the situation of having someone else claim ownership to the highway easement they thought they owned. This clearly contradicts the intent of the law.

The situation has caused much distress and confusion among Chugiak area residents in particular. The lots have little value except nuisance value. The lots are fairly small, and are long narrow strips. They are also subject to highway easement which diminishes any potential value.

The original version of HB 321 required involvement by the Department of Transportation and would have used condemnation as the method to gain the P.L.O. lots. The proposed CS would solve the problem without cost to the state.

The proposed CS for HB 321 gives the abutting lot owner the ability to gain possession of the P.L.O. highway lots, subject to any P.L.O. easements, by use of adverse possession laws. The bill changes the existing law of adverse possession, by allowing adjoining owners to count time they occupied the highway lot while legal title was held by the federal government toward the seven year period required to gain title to the land. This is legal, as the federal government has determined that title is transferred upon payment of the purchase price of the highway lot.

Additionally, the bill provides that in cases where the existing owner believes the sale included the highway lot, the highway lot owner has the burden of proving that the deed clearly excluded the highway lot. If the highway lot owner fails to meet this burden, the adjoining land owner will get the highway lot in a quiet title action.

Passage of this bill would give the affected highway property owners a way to resolve a serious problem. The Dept. of Transportation has issued a zero fiscal note for the proposed CS.