

**5.12.15 John F. Bennett:** Reviewing the legislative history of AS 9.45.015 & 9.45.052 with regard to the State's position of whether the PLO rights-of-way conveyed to the State by the Omnibus Act QCD constituted a fee or easement interest. Also, search Alaska case law for references of the PLO highway interest as an easement. See the highlighted cases for the primary references. The bill variations and committee meeting testimony was downloaded from the Legislative website.

## The Dalton Highway: A Multi-Media History of Alaska's Arctic Road Engineering / Design: Bruce Campbell

Select a section below to listen to the interview segments.

**Interviewer:** Marie Mitchell

**Date:** December 20, 2006

**Identifier:** H2006-28-15, tape 1 & 2

**Approximate Length:** 60 min.



### Biographical Information:

Born January 23, 1931 in Binghamton, New York.

Bruce Campbell came to Alaska in June 1952, fresh out of Union College with a B.S. in Civil Engineering and went to work for the Alaska Road Commission (ARC). ARC was part of the U.S. Department of Interior. When the Interstate Act passed in 1956, the ARC changed to the the Bureau of Pubic Roads. In 1959, at statehood, Campbell worked for the Alaska State Department of Highways, as Road Design Engineer, Pre-Construction Engineer, and Special Assisant to the Road Commissioner for Engineering. In 1969, he accepted a position with Burgess Construction Company in Fairbanks. Alaska Governor Egan requested Campbell to be Commissioner of Highways in 1970, and Campbell took office February 1, 1971. In 1975, Campbell opened his own engineering consulting firm, Campbell & Associates. With his educational and professional background in Civil Engineering, he played a vital role in policy planning and development of the Haul Road.

### Summary of Interview:

Bruce Campbell discusses his civil engineering studies at Union College, New York, 1952; his professional work experience as a Civil Engineer with the Burgess Construction Company; his service as a Deputy Highway Road Commissioner for Alaska; his work experience with the Bureau of Public Roads and the Alaska State Highway Department; his involvement with the Hickel Highway as Executive Vice President of Burgess Construction (1969-1971); and his work on design and construction of the Haul Road (1969-1974).

### Hickel Highway / Dalton Highway

The Hickel Highway was used from 1968 to 1969. The Hickel Highway was originally called the winter ice road, and was used to haul oil supplies to Sagwon. In 1969, Burgess Construction Company built-up the first 60 miles of this route between Livengood and the Yukon River to the standards of a secondary highway. This section was to be part of the new Haul Road, which opened in 1974. As Executive Vice-President for Burgess Construction, Campbell was the

Project Manager for this initial 60-mile construction, and later wrote the project agreement for the construction of the Haul Road (known as the Dalton Highway) on behalf of the State of Alaska.

[http://jukebox.uaf.edu/haul\\_road/htm/int\\_campbell.htm](http://jukebox.uaf.edu/haul_road/htm/int_campbell.htm)

BRUCE A. CAMPBELL, Commissioner Designee, DOT/PF, explained he came to Alaska in 1952, and went to work for the Alaska Road Commission doing construction work, etc., until 1956. In 1956, the Bureau of Public Roads took over the operation of the commission as a result of Washington passing the Interstate Act. He said he was with the bureau until statehood. Commissioner Designee Campbell said he was one of the first employees to transfer from the Bureau of Public Roads to the Department of Public Works, Division of Highways. He said he worked his way up to acting commissioner in 1964. In 1967, he left state employment and moved to Fairbanks to work with Burgess Construction Company where he did a lot of work on the North Slope. Commissioner Designee Campbell said 1971, Governor Egan asked him to be Commissioner of the Department of Highways until 1975. In 1975, he moved to Anchorage and was Construction Manager, Alaska General Construction for three years. He then opened his own business of Campbell and Associates, a consulting engineering practice. He explained he did work there until about 2 years ago and was semi retired. About four weeks ago, he was requested to be commissioner of DOT/PF.

Campbell was semi-retired through some of the early 1990s, though he did do work on some construction projects, sometimes for free.

In 1993 and 1994, Campbell was again called, this time by a re-elected Hickel, to become commissioner, this time of the state Department of Transportation and Public Facilities.

**10 Search Results for: "'public land order" and easement'**

**1. [Simon v. State](#)**

996 P.2d 1211, 2000 WL 236343, Alaska, March 03, 2000 (NO. 5244, S-8801)

**2. [Kile v. Belisle](#)**

759 P.2d 1292, 1988 WL 82128, Alaska, August 05, 1988 (NO. S-1835, 3371, S-1811)

3. [State, Dept. of Transp. & Public Facilities v. First Nat. Bank of Anchorage](#)

689 P.2d 483, Alaska, October 12, 1984 (NO. 2882, S-114, S-133)

4. [Resource Investments v. State, Dept. of Transp. & Public Facilities](#)

687 P.2d 280, Alaska, July 27, 1984 (NO. 7229, 2853)

5. [State v. Alaska Land Title Ass'n](#)

667 P.2d 714, Alaska, May 27, 1983 (NO. 5408, 2681, 5407)

6. [823 Square Feet, More or Less v. State](#)

660 P.2d 443, Alaska, March 04, 1983 (NO. 2633, 5746)

7. [Anderson v. State, Dept. of Highways](#)

584 P.2d 537, Alaska, September 15, 1978 (NO. 3439, 3481)

8. [State, Dept. of Highways v. Green](#)

586 P.2d 595, Alaska, September 01, 1978 (NO. 3184)

9. [Hahn v. Alaska Title Guaranty Co.](#)

557 P.2d 143, Alaska, December 06, 1976 (NO. 2801)

10. [Matanuska Valley Bank v. Abernathy](#)

445 P.2d 235, Alaska, September 16, 1968 (NO. 895, 893)

**Sec. 09.45.015. Land adjoining highway reservation.** (a) A conveyance of land after April 7, 1958, that, at the time the conveyance was made, adjoined a highway reservation listed in section 1 of Public Land Order 1613 of the Secretary of the Interior (April 7, 1958), is presumed to have conveyed land up to the center-line of the highway subject to any highway reservation created by Public Land Order 601 and any highway easement created by Public Land Order 1613. (b) The burden of proof in litigation involving land adjoining a highway reservation created by Public Land Order 601 or a highway easement created by Public Land Order 1613 is on the person who claims that the conveyance did not convey an interest in land up to the center-line of the highway.

Sec. 09.45.015. Land adjoining highway reservation. HISTORY(Sec. 2 ch 141 SLA 1986)

**Sec. 09.45.052. Adverse possession.** (a) The uninterrupted adverse notorious possession of real property under color and claim of title for seven years or more, or the uninterrupted adverse notorious possession of real property for 10 years or more because of a good faith but mistaken belief that the real property lies within the boundaries of adjacent real property owned by the adverse claimant, is conclusively presumed to give title to the property except as against the state or the United States. For the purpose of this section, land that is in the trust established by the Alaska Mental Health Enabling Act of 1956, P.L. 84-830, 70 Stat. 709, is land owned by the state. (b) Except for an easement created by Public Land Order 1613, adverse possession will lie against property that is held by a person who holds equitable title from the United States under paragraphs 7 and 8 of Public Land Order 1613 of the Secretary of the Interior (April 7, 1958). (c) Notwithstanding [AS 09.10.030](#), the uninterrupted adverse notorious use of real property by a public utility for utility purposes for a period of 10 years or

more vests in that utility an easement in that property for that purpose. (d) Notwithstanding [AS 09.10.030](#), the uninterrupted adverse notorious use, including construction, management, operation, or maintenance, of private land for public transportation or public access purposes, including highways, streets, roads, or trails, by the public, the state, or a political subdivision of the state, for a period of 10 years or more, vests an appropriate interest in that land in the state or a political subdivision of the state. This subsection does not limit or expand the rights of a state or political subdivision under adverse possession or prescription as the law existed on July 17, 2003.

Chapter 09.45 ACTIONS RELATING TO REAL PROPERTY Sec. 09.45.052. Adverse possession.

#### REFERENCES

AS 09.25.050 AS 09.65.202 Tort immunity for landowners' allowing recreational activity; adverse possession.

#### HISTORY

(Sec. 3.15 ch 101 SLA 1962; am Sec. 1 ch 141 SLA 1986; am Sec. 58 ch 66 SLA 1991; am Sec. 3, 4 ch 147 SLA 2003)

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HB321

3/25/85

Transportation and Judiciary

BY COTTEN AND MARROU

IN THE HOUSE

HOUSE BILL NO. 321

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled:

"An Act relating to the title to property abutting certain highways in the state; and providing for an effective date."

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

\* Section 1. AS 09.45 is amended by adding a new section to read:

Sec. 09.45.015. PRESUMPTION IN CERTAIN CASES.(a) If a person in possession of real property holds title that is derived from a patent from the United States and if the land had been subject to the Act of August 1, 1956(70 Stat. 898) and to PLO 1613 of the Secretary of the Interior (April

7, 1958), unless the patent from the United States stated that the land conveyed was subject to the Act of August 1, 1956 and PLO 1613 of the Secretary of the Interior, it is presumed that the land conveyed was not subject to the restrictions stated in the Act of August 1, 1956 and in PLO 1613 of the Secretary of the Interior and that the patent from the United States conveyed the land abutting the highway as a part of the estate conveyed in the patent.

(b) A person claiming an interest in land that relies on the Act of August 1, 1956 and PLO 1613 of the Secretary of the Interior bears the burden of proof of showing that the patent from the United States did not convey the land abutting the highway as a part of the estate conveyed in the patent.

\* Sec. 2. AS 19.05 is amended by adding a new section to read:

Sec. 19.05.112. AUTHORITY TO CONDEMN OR ACQUIRE CLAIMS TO PRIVATE PROPERTY NECESSARY TO RESOLVE TITLE PROBLEMS. (a) When the commissioner formally declares that it is in the best interests of the state to resolve title problems, to permit access to an otherwise isolated parcel, to consolidate land ownership, or to resolve other problems determined by the commissioner to be not in the public interest, the department may condemn or acquire land that was subject to the Act of August 1, 1956 (70 Stat. 898) and to PLO 1613 of the Secretary of the Interior (April 7, 1958) and that was formerly within a right-of-way for highway purposes (1) if the land within the right-of-way was conveyed by the U.S. Bureau of Land Management to a person who was not at the time of the conveyance the owner of the land otherwise abutting the highway;

(2) if the original patent from the United States described the land, except for the land subject to the Act of August 1, 1956 and to PLO 1613 of the Secretary of the Interior, as abutting on the highway; and

(3) if the owner of the land otherwise abutting the highway and the predecessors in interest of the owner of the land has exercised dominion and control over the entire parcel of land since the original conveyance from the United States.

(b) The commissioner shall consider the action permitted under (a) of this section on the request of the original grantee of the land or the successor in interest of the original grantee of the property who has exercised dominion and control over the entire parcel of land since the original conveyance from the United States and on the determination of the commissioner that adverse claims against the land have or will adversely affect the use of the land, access to the land, or other considerations of the public interest.

(c) The commissioner may not use the authority granted under (a) of this section to vacate a highway right-of-way. The commissioner may reserve a right-of-way determined by the commissioner to be in the public interest.

\* Sec. 3. This Act takes effect immediately in accordance with AS 01.10.070(c).

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HTRA 04/09/85 0700

Committee: HTRA Date: 85/04/09 Time: 0700 HOUSE TRANSPORTATION STANDING COMMITTEE April 9, 1985 7:00 a.m.

Members Present: Representative Bette Cato, Chairman Representative Mike Davis, Vice-Chairman Representative Dick Shultz Representative Walt Furnace Representative Marco Pignalberi Representative Andre Marrou Members Absent: Representative Adelheid Herrmann **HB 321**

"An Act relating to the title to property abutting certain highways in the state; and providing for an effective date." Original sponsor: Representative Sam Cotten. HB 159 "An Act relating to utilities and encroachments in state airports, public facilities, and highways; and providing for an effective date." Original sponsor: The Rules Committee by Request of the Governor. HB 160 "An Act relating to relocation of utilities incident to highway projects; and providing for an effective date." Original sponsor: The Rules Committee by Request of the Governor.

WITNESS: Representative Sam Cotten Alaska State Legislature Pouch V Juneau, AK 99811 Mail Stop: 2100 Telephone: (907) 465-4858 Position Statement: As sponsor of HB 321, he urged that it do pass.

WITNESS: Warren Sparks, Deputy Commissioner The Department of Transportation and Public Facilities 3132 Channel Drive Pouch Z Juneau, AK 99811 Mail Stop: 2500 Telephone: (907) 465-3900 Position Statement: Opposed HB 321.

WITNESS: Susan Fleischhauer, Legislative Liaison The Department of Transportation and Public Facilities 3132 Channel Drive Pouch Z Juneau, AK 99811 Mail Stop: 2500 Telephone: (907) 465-3900 Position Statement: Observer

WITNESS: Milton Lentz The Department of Transportation and Public Facilities 3132 Channel Drive Pouch Z Juneau, AK 99811 Mail Stop: 2500 Telephone: (907) 465-3900 Position Statement: Opposed HB 321.

WITNESS: Jack McGee, Attorney The Department of Law Juneau Annex Office Pouch K Juneau, AK 99811 Telephone: (907) 465-3604 Position Statement: Answered questions on HB 321.

WITNESS: Dave Hutchens Alaska Rural Electric Cooperative Association, Ind. 237 East Firewood Lane, #301 Anchorage, AK 99503 Telephone: (907) 276-3235 Position Statement: Urged that CSHB 159(TRSP) and CSHB 160(TRSP) do pass.

WITNESS: Bruce Freitag The Department of Transportation and Public Facilities 3132 Channel Drive Pouch Z Juneau, AK 99811 Mail Stop: 2500 Telephone: (907) 465-2957 Position Statement: Urged that CSHB 159(TRSP) and CSHB 160(TRSP) do pass.

WITNESS: Gordon Parker Alaska Telephone Association 201 East 56th, Suite 321 Anchorage, AK 99502 Telephone: (907) 563-4000 Position Statement: Observer

WITNESS: Mike Vediner The Department of Natural Resources Pouch M Juneau, AK 99811 Telephone: (907) 465-2400 Position Statement: Was present to answer questions on HB 321. HB 321: Read the first time on 03/25/85. HB 159: Read the first time on 02/01/85. Reported out of the Community and Regional Affairs Committee on 02/22/85 with a committee substitute and four members recommending that it do pass, one member having no recommendation, and two members recommending that the bill do not pass. The bill was first heard by the House Transportation Committee on March 14 and March 19--please refer to the minutes. HB 160: Read the first time on 02/01/85. Reported out of the Community and Regional Affairs Committee on 02/22/85 with a committee substitute and four members recommending do pass and three members having no recommendation. TAPE #32, SIDE

ONE Recording Number 005 Chairman Cato called the meeting to order at 7:10 a.m. and noted for the record the following members present: Representative Davis, Representative Shultz, Representative Marrou, and Representative Cato.

The chairman brought before the committee **HB 321**, "An Act relating to the title to property abutting certain highways in the state; and providing for an effective date." She then called to the table Representative Sam Cotten, the sponsor of the bill. Representative Cotten: "I am a member of a corporation and a different partnership and each of these groups are affected by this legislation. This legislation may affect our properties. We discovered that after we started working on the problem. "**Just to give you a basic description of the problem that has occurred.** Several years ago, the federal government laid a 300 foot swath through the countryside in order to allow for the construction of a highway and the people who owned lots adjacent to that to the highway didn't think that there would be a problem with the...I think that I'll have to draw you a picture... "The road came through and they didn't need the entire 300 feet for the road, so those abutting land owners on what is now known as highway lots-- these lots then became sort of forgotten about them. What the bill originally intended to do was to deed these lots since they weren't on the state highway rights-of-way, nor were they needed by the federal highway, was to deed them back to the abutting land owners. "What they originally intended to do was to give those highway lots to the original owner and so a lot of people did apply and some people did not apply for those lots. They took their time, it's been twenty or thirty years since that original order came down. I believe it was in 1958, PLO 1613. Since then, a lot of those lots have been sold. So there is a new owner and BLM, **and apparently their intention now is to deed those highway lots back to the original owner instead of the current owner.** In some cases you're talking about a fifty foot and in some cases up to 50 to 100 feet wide swath of land in front of another person's piece of property that abuts the highway and that restricts their access or in some cases, it's almost wide enough for a person to put a structure on a highway lot. I don't believe that was ever BLM's intention and my feeling and most people's feeling in the area there that it certainly wasn't fair, that the old owner would have some sort of claim to a strip of land in front of the new owner's property. "What this bill does is two separate things: (1) it presumes that, as an example, that a person has already sold a lot that they have also sold that highway lot with it unless that person who originally sold that lot can come back in and prove that they didn't sell it. Right now, it's just the opposite. If the person who owns the lot sold it, the new owner has to prove that that highway lot belongs to him and that the person had intended to sell it to the new owner and it have it attached to the lot. "**(2) the bill gives the state the authority to condemn those highway strips and sell them back to the new owner.** "...We have contacted the Interior Board of Land Appeals and asked them to expedite the action. Again, they have been working on this, or at least BLM has been working on this, for 25 or 30 years. We have also asked Senator Stevens to shift the jurisdiction of the appeals from the Board over to the Secretary of the Interior. We haven't had a positive response from either BLM or Senator Stevens, although we are still working on it." Representative Cato: "Have the original owners started to ask for this strip back?" Representative Cotten: "In some cases they have. In some cases the patent has been issued to those original owners. Another case, the person knocked on the new owner's door and allowed that he would sell the property for \$20,000 and, of course, the new owner



didn't know what he was talking about and they thought they owned the property out in front of their house. "...In addition to the other efforts we have made with the Department of Interior, this would be an effort to say again that the person who now owns the property is presumed to have also ownership of that highway lot and if a patent had been issued, the state would have the authority to condemn that property and sell it back to the current owner." "...In most cases, it isn't usable property anyway but to anybody who owns the property right now." Representative Shultz asked why the Department of Transportation and Public Facilities opposed the bill and why it had written a very high fiscal note. Representative Cotten deferred the question to the Department of Transportation and Public Facilities. Representative Davis asked about how much property was affected by this bill. Representative Cotten: "It affects any land that was affected by the land order of 1958. These are the ones that have been identified as lots that have been surveyed in addition there is some land down there on the Seward Highway that the lots have been surveyed, so they would be most easily resolved. When we met with DOT, they explained that they had a lot of very similar problems and not necessarily those that were caused by PLO 1613. A lot of title companies, apparently, have been having some trouble because they have written title insurance on property and later found out that there was a land order that they should have known about. There's some problems that have developed over this, but this is not intended to affect anything other than the type of lots that we have described here. I'm not certain as to the limit of number of lots. As far as I know, they occur in Chugiak and Peters' Creek and Seward Highway near Rabbit Creek." Representative Cato summed up Representative Cotten's testimony and Representative Marrou sited cases which this bill would address and further elaborated on the history behind the problem the bill addresses. He also stressed that this is an issue which affect nearly everyone statewide. Representatives Furnace and Pignalberi joined the meeting. Representative Furnace: "I noticed in section two of the bill that you give DOT/PF the ability to condemn the property and they, in turn, sell the property back to the current land owner. Why is it necessary for them to sell it? Why couldn't they simply transfer that as part of, as I understand the original intent of the law, that easement at some point in time, could be transferred to that property owner. Why should they sell it?" Representative Cotten: "There would be a possibility that during eminent domain proceedings, the state might incur expense or they may actually have to purchase it when they condemn it. If I condemn your property, I cannot just simply take it without compensation, so if the state had to pay he person, and, again, we have suggested that these lots are worth \$100 or \$200 so if you are the one who has the title, and the state comes and takes it away from you, the court may subsequently rule that I have to give you a couple of hundred dollars. In that case, I would give the money, take the deed, and then sell it to the current owner and he would have to cover the expenses that the state went to." Representative Furnace asked a question relating to the first part of the bill. Representative Cotten: "Right now the burden of proof is on me--I have to prove that you sold me not only the lot, but also the highway lot. This would switch and it would require you to prove that you didn't sell me the highway lot when you sold me the other lot." Representative Cato then called Warren Sparks of the Department of Transportation and Public Facilities to the table. Mr. Sparks brought with him Milt Lentz, chief of the right-of-way section of the department, and Jack McGee of the Department of Law. Mr. Sparks voiced



his opposition to the bill and compared it to SB 141 which also deals with land ownership. He said that the department objects to the way both bills try to solve problems of land ownership. Mr. Sparks: "The net result of these bills is the weakening of the position that the state has in its rights-of-way in order to manage and construct its highways. This particular bill puts us into a second tier of litigation anytime we have a conflict." He then gave a background history of the problem which HB 321 addresses: "The bill that we have here just addresses one unique situation out of many public land orders. In this particular case, all the land that was set aside that was given to the state under PLO 601 (1949)--that granted to the state a complete withdrawal. There was no transferred property to anybody else except both to the territory and to the land inherited by the state. PLO 1613 then came along and converted that from all intents and purposes back to a fee simple right-of-way with, in this particular case 300 feet, to nothing more than an easement. "As far as the state is concerned, we still have unlimited use of those (property lots) under our PLO 1613." Representative Cato: "Even to the ones where the original patent has been relayed back to the original owner?" Mr. Sparks: "Yes." Representative Cato: "Then what you are saying, is the original owner wouldn't have a patent, the state actually owns that." Mr. Sparks: "No, we don't own it. We have a potential easement." Mr. McGee: "We have an easement across the service of the underlying fee which is owned by whoever got it from BLM whoever that might be." Representative Furnace asked what the average width was of a highway easement. Mr. McGee replied that it was 100 to 300 feet. The easements vary depending on certain kinds of road. Representative Furnace then asked whether the state would need the easements in the future to which Mr. Sparks said, "Most definitely." Mr. Sparks: "This particular bill addresses just one quirk and it's the relationship of PLO 601 to PLO 1613. Those two PLO's involve the Alaska Highway, the Richardson Highway, the Glenn Highway, the Haines Highway, the Seward-Anchorage Highway, the Spenard Road, and the Fairbanks College Road. You're talking about maybe 2000 miles of road." Representative Cotten: "Your thing says 950." Mr. Lentz: "This PLO is not just straight through these road system, they are sort of patch mill. We may have one section that comes under PLO 16 \_sic\_ and then a different authority on each side of these. What we're looking at is a quiltwork all across our systems." Representative Furnace asked what the department has done to address the problem that HB 321 addresses. Mr. Lentz: "In most cases we have pretty much reserved our rights under these easements to retain that much land out here which gets us into a situation as we mentioned in our fiscal note for Senate Bill 141 is that we need certain clear zones along our roadways for the safety of the public. We most certainly need a clearance on each side for maintenance, snow removal, this kind of thing...I think it's the position of the department to maintain our rights under these different PLO's for the full extent of the PLO's." Representative Furnace asked how many people were affected in Representative Cotten's area. He replied that around 40 people have been affected. Representative Cotten: "Again, there have been people who have been affected differently. In some cases, the original owner has been issued the patent, and in some cases there is a contested application. One thing that I would like to make a point of, we have told the department that our intent is to preserve the highway rights-of-way. We don't want to change whatever easements that they have in the property. If they continue to need that, then the new title would be subject to the same easements." Representative Pignalberi blasted the department's fiscal and called it far too bloated and asked why the department

hasn't tried to address this problem which has existed since 1949. Mr. Sparks expressed his concern with SB 141 and the department's concern about the federal aid participation program. He also expressed the department's discomfort with the second section of the bill which would give the department the right to condemn property. **Mr. McGee:** "This is a very complicated question in these public land orders, easements, and withdrawals, and so on. To back up a little bit, let's go back to Public Land Order Number 601. Now, that created a whole number of highway withdrawals throughout the state. And what that meant, is that when it created a withdrawal, that meant that that land was not--BLM could not dispose of the land within the withdrawal, they could not patent that land to private owners. And that was the problem up until Public Land Order 1613 which came along and said hey, look, we got all these slots of land here that BLM owns fee simple, there's no question of an easement, they just own the entire hunk. **What happened, then, is that Public Land Order 1613 came along and converted the withdrawal to an easement.** What that did was that freed up along these highways a kind of a narrow strip of land that was eventually sold off as highway lots to, in some cases the adjoining owner if the adjoining owner didn't want them, to somebody else. So, now what you got along these 1613 highways is you got arguments, basically, two private land owners. One land owner says, hey, wait a minute, I didn't know that when I bought that larger parcel in the back there that I didn't get up to the center line. And the other guy says, no, you didn't I got this highway lot and I got a pack from BLM. They're essentially private disputes. And Representative Cotten's intent is to somehow is to resolve these disputes between these private land owners. As I heard him say this morning, he wants to reverse the burden of proof and that may be the case, but the problem with section one of the bill is that it doesn't do that. What section one of the bill does, it reverses the burden of proof as to the existence of the easement and not the ownership of the land. And that's where DOT's problem comes in. In other words, DOT is going to have to come in and say, hey, we have an easement and we want to widen the highway or we want to take out a curb and the owner of the highway lot is going to say, wait a minute, on the basis of this bill, there's a presumption in this bill that you don't have an easement, you prove differently. So, DOT is going to have to go into court and prove that it has an easement. "Now, section one won't change anything as to who owns the small highway lot between, let's say, the adjoining land owner and the owner of the highway lot--that will stay the same. What the bill does, it just raises question as to the easement, not the ownership. So, there's a problem in the language of the bill in section one as it really doesn't do exactly what it was designed to do. I think it needs some adjustment there. "The second problem, which DOT articulated, has to do with coming on to what is a dispute between two private land owners and condemning one of them's land and selling it to the other one. I think DOT, as a matter of policy, would just as soon stay out of that kind of situation. The easement still exists, by the way, it's not a question of condemning the easements, you're condemning the underlying fee, selling it to one of the two disputing parties, that the easement still stays in place and I think DOT's concern is getting involved in those kinds of disputes." Representative Cotten proposed getting together with the Department of Law and the Department of Transportation and Public Facilities to draft a bill that would best satisfy the department's concerns in resolving this issue. Representative Marrou questioned rights-of-way variations and the public's not being aware of titles listed in the federal registers of years gone by. Number 107 Representative Cotten repeated his request

to work with the Department of Law and the Department of Transportation and Public Facilities in drafting a committee substitute. Representative asked whether there were any objections to this idea. Being no objections, Representative Cotten said that he would try to have the changes done by the end of the day.

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HTRA 4/11/85 0700

Committee: HTRA Date: 85/04/11 Time: 0700 HOUSE TRANSPORTATION STANDING COMMITTEE April 11, 1985 7:00 a.m.

Members Present: Representative Bette Cato, Chairman Representative Mike Davis, Vice-Chairman Representative Dick Shultz Representative Adelheid Herrmann Representative Walt Furnace Representative Marco Pignalberi Representative Andre Marrou

SB 115 "An Act relating to land use and disposal near a highway right-of-way; and providing for an effective date." (Resources) HB 143 "An Act relating to oil and gas activities along highway rights-of-way; and providing for an effective date."(Resources) HB 321 "An Act relating to the burden of proof in litigation arising out of patents issued for land that adjoins highway reservations created by PLO 601 and to the authority of the state to condemn or acquire claims to private property that are necessary to resolve title problems arising out of the conversion of PLO 601 highway reservations to highway easements by PLO 1613; and providing for an effective date." Original sponsor: Representative Sam Cotten. (Transportation)

Representative Marrou suggested that the committee include a letter expressing the committee's support of the Senate's letter of intent which would read: "The House Transportation Committee supports the letter of intent and passes the letter of intent out of committee." Representative Cato asked if there were any objections. Being none, so ordered. Number 256 Representative Cato then brought before the committee CSHB 321 (Transportation), "An Act relating to the burden of proof in litigation arising out of patents issued for land that adjoins highway reservations created by PLO 601 and to the authority of the state to condemn or acquire claims to private property that are necessary to resolve title problems arising out of the conversion of PLO 601 highway reservations to highway easements by PLO 1613; and providing for an effective date." She called to the table the original sponsor of the bill, Representative Sam Cotten. Representative Cato asked Representative Cotten to address the change in titles from the original bill to the committee substitute. Representative Cotten: "This will ease the concerns of some that this bill could turn into a monster might devour too many of the states dollars. This takes it down to talking about specifically and only the concern that we are trying to address here...I believe that it is a big title, too, but that it's the safest way to go." Representative Cato then called to the table Jack McGee of the Department of Law and asked him to address the changes made in this bill. Mr. McGee: "I think Section One does remove the difficulties that DOT was concerned about in the original bill. Section Two, however, I don't want to speak for the Department of Transportation. I don't know, I think that's policy question. Two what extent the Department of Transportation has strong feeling about it, I don't know. I don't pretend to speak for the Department of

Transportation on Section Two. "But, I will say that Section One, I think, does address the concern the DOT representatives had yesterday morning that we pointed out to the committee." Representative Pignalberi asked Mr. McGee to describe the differences between Section One of the original with Section One of the committee substitute. **Mr. McGee:**

"The concern in the original Section One was the presumption was not addressed to the parcel of land--the patent being conveyed land up to the center line of the highway. The presumption was that the easement didn't exist. That was the problem that DOT was concerned. **The way it's written now, the patent is presumed to have conveyed land up to the center line of the public land or the highway, but subject to any highway reservation or easement.**

The department's concern there is really addressed...I think the concern that they did raise on Section One has been addressed." Representative Marrou moved to change "the" to "a" on page one on line 16 and on line 18. Number 375 Representative Marrou moved to adopt the committee substitute for HB 321 and then moved to pass it out with individual recommendations. Both motions carried. Representative Cato adjourned the meeting at 7:22 a.m.

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CSHB321(TRSP)

**4/12/85**

Judiciary and

Finance

Cotten and Marrou

BY THE TRANSPORTATION COMMITTEE

IN THE HOUSE

CS FOR HOUSE BILL NO. 321 (Transportation)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled:

"An Act relating to the burden of proof in litigation arising out of patents issued for land that adjoins highway reservations created by PLO 601 and to the authority of the state to condemn or acquire claims to private property that are necessary to resolve title problems arising out of the conversion of PLO 601 highway reservations to highway easements by PLO 1613; and providing for an effective date."

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

\* Section 1. AS 09.45 is amended by adding a new section to read:

Sec. 09.45.015. PRESUMPTION IN CERTAIN CASES. (a) A patent for land that was patented before April 7, 1958, and that, at the time a patent was issued, adjoined one of the highway reservations listed in section 1 of PLO 1613 of the Secretary of the Interior (April 7, 1958), is presumed to have conveyed land up to the center-line of the highway subject to any highway reservation created by PLO 601 and any highway easement created by PLO 1613.

(b) The burden of proof in litigation involving land adjoining a highway reservation created by PLO 601 or a highway easement created by PLO 1613 is on the person who claims that a patent did not convey an interest in land up to the center-line of the highway.

\* Sec. 2. AS 19.05 is amended by adding a new section to read:

Sec. 19.05.112. AUTHORITY TO CONDEMN OR ACQUIRE CLAIMS TO PRIVATE PROPERTY NECESSARY TO RESOLVE TITLE PROBLEMS. (a) When the commissioner formally declares that it is in the best interests of the state to resolve title problems, to permit access to an otherwise isolated parcel, to consolidate land ownership, or to resolve other problems determined by the commissioner to be not in the public interest, the department may condemn or acquire land that was subject to the Act of August 1, 1956 (70 Stat. 898) and to PLO 1613 of the Secretary of the Interior (April 7, 1958) and that was formerly within a right-of-way for highway purposes

(1) if the land within the right-of-way was conveyed by the U.S. Bureau of Land Management to a person who was not at the time of the conveyance the owner of the land otherwise abutting the highway;

(2) if the original patent from the United States described the land, except for the land subject to the Act of August 1, 1956 and to PLO 1613 of the Secretary of the Interior, as abutting on the highway; and

(3) if the owner of the land otherwise abutting the highway and the predecessors in interest of the owner of the land has exercised dominion and control over the entire parcel of land since the original conveyance from the United States.

(b) The commissioner shall consider the action permitted under (a) of this section on the request of the original grantee of the land or the successor in interest of the original grantee of the property who has exercised dominion and control over the entire parcel of land since the original conveyance from the United States and on the determination of the commissioner that adverse claims against the land have or will adversely affect the use of the land, access to the land, or other considerations of the public interest.

(c) The commissioner may not use the authority granted under (a) of this section to vacate a highway right-of-way. The commissioner may reserve a right-of-way determined by the commissioner to be in the public interest.

\* Sec. 3. This Act takes effect immediately in accordance with AS 01.10.070(c).

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HJUD 04/27/85 1330

Committee: HJUD Date: 04/27/85 Time: 1330 HOUSE JUDICIARY STANDING COMMITTEE April 27, 1985 9:00 a.m.

Members Present: Rep. Mike M. Miller, Chairman Rep. John Sund, Vice-Chairman Rep. Max Gruenberg Rep. Robin Taylor Rep. Don Clocksin Rep. Randy Phillips Members Absent: Rep. Fritz Pettyjohn HB 238 "An Act relating to credit for service in the state's retirement systems for certain leave without pay; and providing for an effective date." by Rules.

HB 321 "An Act relating to the burden of proof in litigation arising out of patents issued for land that adjoins highway reservations created by PLO 601 and to the authority of the state to condemn or acquire claims to private property that are necessary to resolve title problems arising out of the conversion of PLO 601 highway reservations to highway easements by PLO 1613; and providing for an effective date." by Transportation.

WITNESS: Bob Stalnaker Division of Retirement and Benefits Pouch CR Juneau, Alaska  
99811 465-4470 Position Statement: Supports HB 238

WITNESS: Frank Mielke Aide to Representative Cotten House of Representatives Pouch  
V Juneau, Alaska 99811 465-3799 Position Statement: Supports HB 321

WITNESS: Milton H. Lentz Department of Transportation and Public Facilities Pouch Z Juneau,  
Alaska 99811 465-3900 Position Statement: Opposes HB 321

WITNESS: Representative Sam Cotten House of Representatives Pouch V Juneau, Alaska  
99811 465 -3799 Position Statement: Supports HB 321 HB 238: Read the first time 02/25/85  
and referred to SA, Jud, Fin and Rules; fiscal note in Supplement No. 22; please refer to  
Jud Committee minutes dated 04/10/85 and 04/22/85 for previous committee action. Today  
Jud reported out with CS and new title SDP, 1NR. HB 321: Read the first time 03/25/85 and  
referred to TRSP, Fin, Jud and Rules; fiscal note in Supplement No. 47; no previous committee  
action to record. Today Jud reported out with 3DP, 3NR. TAPE #99 SIDE  
ONE Recording Number 000

The meeting was called to order at 9:05 a.m. by Chairman Miller. Present were Representatives Miller, Phillips, Sund , and Gruenberg. Representatives Clocksin and Taylor came later. Frank Meilke, on the staff of Representative Cotten, testifies in support in HB 321. Although this affects a local problem, other areas of the state will be affected. In 1949 the Bureau of Land Management, Secretary of the Interior, issued Public Land order 601 which allowed the Department of the Interior to make land withdrawals along existing highways. A withdrawal segregates the land from public entry and everything else. In 1956 Congress passed a law and subsequently issued Land Order 1613 which changed the withdrawals to easements and allowed the then adjoining owner to purchase the land that was formerly withdrawn. Most of the lots are encumbered by the highway right-of-way easements and have very little value. BLM did not do anything for 25 years and now interprets the 1956 law to mean that the right of acquisition belongs to the person who owned the adjoining land in 1956. There has been much growth in this area and the land has been sold several times over. In many cases the adjoining owner may have improvements on the highway lots. The people owning the highway lots are trying to sell them for a substantial amount.

In some cases there was no title insurance involved in the sale of the lot. The biggest thing is to try to bring some certainty into the situation. Most of these lots are in appeal to the Federal Board of Land Appeals, ultimately about half the lots will go to adjoining owners. The Chairman asks why only half of the lots will go to adjoining owners. Mr. Mielke responds that in some cases the lots were not applied for and in others people said they didn't want them. Along the upper side of Fire Lake there are no highway lots. These were withdrawn by Eklutna Inc. which is something BLM shouldn't have allowed. This bill does two things: the first section created a



presumption in favor of the adjoining owner, the second section gives the state the authority to acquire any rights and convey it back to the adjoining owner. Representative Sund comments that the wording is not great. Mr. Mielke responds that the drafter was trying to get the right language in so the bill would be sustained on the same basis as the Bishop Trust Case in Hawaii. The Chairman states he can easily see what section 2 will do. However, isn't section 1 setting federal policy. Mr. Mielke responds that this act will not go into effect until BLM has formally transferred the land. Representative Sund asks to whom BLM passes the title. Mr. Mielke responds that this doesn't affect the BLM process. Section 1 gives the existing owner a rebuttable presumption. Failing that section 2 gives the state the authority to condemn the land and convey it back. Representative Taylor arrives at 9:15 a.m. Representative Phillips asks some questions about the map. Representative Clocksin arrives at 9:20 a.m. Representative Gruenberg asks which other parts of the state will be affected. He also asks if anyone from DNR will testify on the bill. Mr. Mielke responds that DNR will not be affected by the bill. He also states that the bill is of general application and will apply to other areas. Representative Gruenberg asks if Mr. Mielke is happy with the language of the bill. Mr. Mielke responds that the title has been made narrower and now he is satisfied. Representative Clocksin asks if there is some litigation in the state Supreme Court affecting these easements. Mr. Mielke responds that those grew out of the 601 withdrawals. Those are federal withdrawals and no title could pass even though title companies had guaranteed title. Representative Clocksin asks if the title insurance people will testify on this bill. Mr. Mielke responds that this bill deals not so much with 601 but with 1613 where the old original owner got the right to buy these highway lots from BLM. Public Order 1613 converted the withdrawals to easements and gave the authority to convey these lots to the person who owned them in 1956. Representative Sund ascertains that the purpose of the bill is to give the existing owner the right of first refusal on the highway lots. Representative Taylor asks if the lots will be paid for by the existing owner. The response is yes, at fair market value, which is figured by BLM at \$100. Representative Taylor questions the use of the right-of-way property. Mr. Mielke responds that the owner can use it but would have to give it up if the state ever wanted it. Representative Taylor discusses some problems his district is having with right-of-way. He also asks if it is normal to create highway lots. Mr. Mielke responds that it is unusual. The Chairman asks if some of these lots have been conveyed to the other owners. Mr. Mielke responds that they have and this bill will help reconvey the land to the adjoining owner. Milton Lentz, Chief of Right-of-Ways and Land Acquisition, testifies against HB 321. The Department of Transportation is aware of the problem. They don't feel they have the right to condemn property from one private party and give it to another. He feels there are currently two remedies for the problems. One of these is the appeal through BLM and the other is through a court of law on a case by case basis. In preparing a fiscal note it is very seldom that anything is purchased for \$100. When you offer a man \$100 he is going to ask about the \$30,000 or \$40,000. The Department hopes some sort of relief can be found for the problems BLM has created. These problems have been created by BLM. Representative Cotten asks what the Department of Transportation or the Department of Law has done so far. At one point they were told by the Department of Law to go hire their own private attorney. Mr. Lentz responds that DOT has not come into this except to be granted the easement across the properties. This has been a BLM affair. If the Department could set some sort of limit to pay to resolve the problems it would



help. Sometimes even in the fiscal note, the amount paid is only a small part of the actual costs of litigation. As to what this affects, the best estimate is 950 miles of road. Two parcels per mile is the basis of the fiscal note. The Chairman asks if fair market value would be the amount BLM sells the parcels to the original owners for. Mr. Lentz responds that fair-market-value is possibly not the proper terminology. Representative Gruenberg is concerned about the language on the first 4 lines of page 2. Feels there are severe constitutional problems under Article 1, section 18, of the constitution. This doesn't allow condemnation of property except for public use. Representative Sund says Hawaii has taken the Bishop case up and condemned leased land and conveyed it to condominiums. Mr. Mielke responds that public use and public purpose may be the same thing. Representative Taylor thinks it is surprising that such a thing as the Bishop case could occur. Mr. Mielke responds that the Hawaii land trusts are unique. A discussion of this follows. Representative Sund asks why the revenue from selling the land back doesn't wash out the fiscal note. Mr. Lentz responds that if the legislation is clear and can prevent long and costly condemnations, it will be fine. Representative Gruenberg discusses the two options available without this legislation. The first is the appeal through BLM. The second is the court system. Generally if a person builds something on another persons property he can take adverse possession after 7 years. However, one cannot get adverse possession against the federal government. Is there any legal cause of action which will allow a person to resolve a suit. Perhaps a quiet title action. Representative Sund moves the bill with individual recommendations. Mr. Lentz responds that when the highway lots are sold to a different owner from the adjoining lot, the title goes to the former owner. In many cases these lots were purchased for \$25. Representative Gruenberg states that the reason these lots would be sold to the different owner is because he was the original applicant. So what we really have is a federal problem because the federal government is conveying the land to the wrong person. Isn't the solution in the federal legislature. Mr. Lentz responds that is the department's contention. Originally the lots were offered to the adjoining owners and if they did not want them then anyone could come in and buy them. Chairman Miller asks if the cost for acquiring the land can be passed on to the adjoining owner. Representative Taylor would like to see the bill passed out. If the court has any problems with this solution they will let us know. Mr. Lentz asks if cost means actual purchase price or what it costs to get the land. By the time it gets through the process of condemnation it could get quite costly. There is no further discussion and the committee votes unanimously to move the bill with individual recommendations. Representatives Miller, Sund, and Phillips signed DO PASS, Representatives Clocksin, Taylor and Gruenberg signed NO RECOMMENDATION. At 9:56 a.m. the committee is recessed till after session.

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HFIN 3/14/86 1330

Committee: HFIN Date: 86/03/14 Time: 1330 HOUSE FINANCE COMMITTEE March 14, 1986 1:30 P.M.

CALL TO ORDER Chairman Adams called the meeting to order and informed members they would be considering HB 286, HB 321, HB 503 and HB 510. PRESENT All members of the committee were present. ALSO PRESENT: Representative Koponen, Tom Hawkins - Director - Division of Land & Water Management, Warren Latvala - Registered Land Surveyor - Alaska Section of American Congress on Surveying and Mapping, Patrick Kalen - President/Chairman - Legislative Affairs - Alaska Society of Professional Land Surveys, Jack McGee - Department of Law and Milton Lentz - Department of Transportation and Public Facilities.

**JACK MCGEE** - Department of Law gave a presentation on HB 321. He advised members the problem started in 1949 when the Public Land Order 601 was issued by the Secretary of Interior. Mr. McGee said what the PLO did was reserve federal land in Alaska for highway purposes involving approximately 8 highways. He said included in the withdrawals were the highway lots located along the public land order highways. Mr. McGee said the lots immediately adjacent to the highways were not available for sale, however, a lot directly behind the lot would be available for sale. Mr. McGee said in 1956 Congress enacted a law that would provide that if the secretary of the interior would revoke Public Land Order 601, the highway lots could be sold off. He said the law stated that preference be given to the adjoining land owners. **In 1958 the Secretary of Interior issued Public Land Order 1613 which revoked the PLO 601 creating easements in place of the withdrawals.** He said from a legal point of view it opened up those highway lots making them available for sale. Mr. McGee said after PLO 1613 was issued, many of the landowners applied for the released highway lots. He advised members it was not until 1984 that the BLM granted the highway lots to the original owners. He said in many instances, between 1958 and 1984 the original applicant sold off interest in a given lot. Representative Pourchot said he was somewhat concerned with changing the adverse possession statute and asked if the Department of Law had any problem with it. Mr. McGee said he did not see a problem with it in regard to HB 321 as in sub section (c) of section 1 **restricts the claim of adverse possession to easements created by PLO 1613.** MILTON LENTZ - Department of Transportation and Public Facilities advised committee members of the highways involved under PLO 613, which were Alaska Highway, Richardson Highway, Glenn Highway, Haines Highway, Seward/Anchorage Highway, Seward Highway and the Fairbanks College Road. Representative Cotten MOVED TO ADOPT CS HB 321 (Fin). Representative Pourchot OBJECTED for purpose of a question. Representative Pourchot asked what the difference was between the Transportation version and the Finance version of HB 321. Representative Cotten stated what they had before was the proposition that the State could condemn the lots which would have amounted to a sizable expense to the state. Representative Pourchot REMOVED HIS OBJECTION. There being NO OBJECTION, CS HB 321 (Fin) was Adopted by the Finance Committee. Representative Cotten MOVED to Report Out of Committee CS HB 321 (Fin) with the zero fiscal note. He advised members there would be a public hearing in Eagle River the following weekend on the proposed legislation. There being NO OBJECTION, it was so ordered. CS HB 321 (Fin) was Reported Out of Committee with a zero fiscal note dated 2/18/86 and a DO PASS RECOMMENDATION. ADJOURNMENT The Meeting Adjourned at 3:30 P.M.

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CSHB321(FIN)

3/17/86

Rules

Cotten and Marrou

BY THE FINANCE COMMITTEE

IN THE HOUSE

CS FOR HOUSE BILL NO. 321 (Finance)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled:

"An Act relating to adverse claims and boundary disputes; and providing for an effective date."

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

\* Section 1. AS 09.25.050 is amended by adding new subsections to read: (b) As used in (a) of this section, "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.

(c) Except for an easement created by Public Land Order 1613, adverse possession will lie against property that is held by a person who holds equitable title from the United States under paragraphs 7 and 8 of Public Land Order 1613 of the Secretary of the Interior (April 7, 1958).

\* Sec. 2. AS 09.45 is amended by adding a new section to read:

Sec. 09.45.015. PRESUMPTION IN CERTAIN CASES. (a) A conveyance of land after April 7, 1958, that, at the time the conveyance was made, adjoined a highway reservation listed in section 1 of Public Land Order 1613 of the Secretary of the Interior (April 7, 1958), is presumed to have conveyed land up to the center-line of the highway subject to any highway reservation created by Public Land Order 601 and any highway easement created by Public Land Order 1613.

(b) The burden of proof in litigation involving land adjoining a highway reservation created by Public Land Order 601 or a highway easement created by Public Land Order 1613 is on the person who claims that the conveyance did not convey an interest in land up to the center-line of the highway.

\* Sec. 3. This Act takes effect immediately in accordance with AS 01.10.070(c).

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CSHB321(FIN)AM

3/17/86

Rules

Cotten and Marrou

BY THE FINANCE COMMITTEE

IN THE HOUSE

CS FOR HOUSE BILL NO. 321 (Finance) am (FINAL)

IN THE LEGISLATURE OF THE STATE OF ALASKA  
FOURTEENTH LEGISLATURE - SECOND SESSION  
A BILL

For an Act entitled:

"An Act relating to adverse claims and boundary disputes; and providing for an effective date."

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

\* Section 1. AS 09.25.050 (Now AS 09.45.052 Adverse Possession) is amended by adding a new subsection to read:

(b) Except for an easement created by Public Land Order 1613, adverse possession will lie against property that is held by a person who holds equitable title from the United States under paragraphs 7 and 8 of Public Land Order 1613 of the Secretary of the Interior (April 7, 1958).

\* Sec. 2. AS 09.45 is amended by adding a new section to read:

Sec. 09.45.015. PRESUMPTION IN CERTAIN CASES. (a) A conveyance of land after April 7, 1958, that, at the time the conveyance was made, adjoined a highway reservation listed in section 1 of Public Land Order 1613 of the Secretary of the Interior (April 7, 1958), is presumed to have conveyed land up to the center-line of the highway subject to any highway reservation created by Public Land Order 601 and any highway easement created by Public Land Order 1613.

(b) The burden of proof in litigation involving land adjoining a highway reservation created by Public Land Order 601 or a highway easement created by Public Land Order 1613 is on the person who claims that the conveyance did not convey an interest in land up to the center-line of the highway.

\* Sec. 3. This Act takes effect immediately in accordance with AS 01.10.070(c).

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STRA 4/21/86 1530

Committee: STRA Date: 86/04/21 Time: 1530 SENATE TRANSPORTATION STANDING COMMITTEE April 21, 1986

MEMBERS PRESENT: Senator Jack Coghill, Chair Senator Jan Faiks Senator Joe Josephson MEMBERS ABSENT: Senator Paul Fischer, Vice Chair Senator Mitch Abood

COMMITTEE CALENDAR: HB 689: An act relating to required equipment on and the transportation of certain loads by, motor vehicles HB 321: An act relating to adverse claims and boundary disputes; and providing for an effective date. SB 424: An act relating to studded tires or chains on rented motor vehicles.

Senator Coghill brought the meeting to order at 3:37 p.m. and noted for the record the presence of Senators Abood, Faiks, Josephson and Coghill. Senator Coghill brought HB 689 to the table and asked Rep. Cotten to come testify on the bill. Cotten: "Thank you Mr. Chairman, as

background let me tell you a little about this bill. About 30 years ago there was a federal withdrawal to facilitate highway construction going North from Anchorage and the withdrawal included a strip of land required for the highway. Subsequent to that the federal and state government decided that they did not need as much land as was originally withdrawn. A public land order was issued in 1958 (PLO 1613) that allowed the people that lived along the highways effected by the original PLO to purchase that extra highway footage. A lot of people applied for them and never got them and to make a long story short, there are people that are living there now that purchased land that borders the highway and they assumed that they also purchased the strip of land in front of their houses. In fact some of the deeds say that they did, some say that they didn't. What this legislation addresses is to allow the people that now own the land to gain possession of the thin strips between their land what the easement is. In some cases BLM has issued a patent to the original entryman rather than the present owner. So this bill would do two things. It would propose the adverse possession law be changed and allow the time to run against the owner as long as they have equitable title. The other piece of the bill says that an Alaska court, in a title action, would presume that, when you purchased that land, you also purchased that highway lot. If another arrangement had been made, it would be the burden of proof on the person that sold you the land to show that they intended only to sell you part of it and not all of it. Again, when the bill was first introduced, it was quite a different proposition." Coghill: "Does CSHB 321 (finance) am get to your problem?" Cotten: "Yes and it does not cost the state anything. The highway department still maintains an easement, so they are still protected if they need the room for highway expansion." The person who owns the land and should own the highway lot would be able to go into court and assume ownership." Abood: "Any bill that was sponsored by Cotten and Marou can't be all that bad." Coghill: "We have been through this whole process in detail a year ago." Cotten: "The other approach would have required quite a fiscal note and the department didn't like it. I think that they support this bill." Josephson: "Are there any people against whom the presumption would fall who have made improvements or other such on the equitable areas?" Cotten: "Not to my knowledge. We have held several hearing in Eagle River and Chugach. There has never been brought to my attention that there were improvements on any of the land in question." Senator Abood moved and asked unanimous consent that CSHB 321 (fin) am be moved from committee with individual recommendation. With no objection, it was so ordered by Senator Coghill. Senators Faiks, Abood, Josphson and Coghill signed Do Pass.

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SB141 2/8/85

Transportation and Resources

BY COGHILL IN THE SENATE

SENATE BILL NO. 141

IN THE LEGISLATURE OF THE STATE OF ALASKA FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled:

"An Act releasing claims of the state to land within certain rights-of-way; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA: (Similar to ROW Act of 1966 – relief to economic hardship caused by '47 Act reservations)

\* Section 1. LEGISLATIVE PURPOSE AND FINDING. The purpose of this Act is to release certain highway rights-of-way claimed by the state that are causing economic hardship and physical and mental distress to persons who hold title to land under a reservation to the state by virtue of 33 Stat. 616 (Act of January 27, 1905); 47 Stat. 446 (Act of June 30, 1932); 48 U.S.C. secs. 321(a) - 327 (Act of July 24, 1947); Public Land Order 601, 14 Fed. Reg. 5048 (1949); Public Land Order 757, 16 Fed. Reg. 10, 749 (1951); Public Land Order 1613, 23 Fed. Reg. 2376, 2378 (1958); or Departmental Order 2665, 16 Fed. Reg. 10, 752 (1951).

\* Sec. 2. RELINQUISHMENT OF RIGHT-OF-WAY. The commissioner of transportation and public facilities shall vacate and relinquish to the adjoining property owners any and all rights-of-way for a road, roadway, highway, tramway, trail, bridge, or appurtenant structure created, withdrawn or reserved under 33 Stat. 616 (Act of January 27, 1905); 47 Stat. 446 (Act of June 30, 1932); 48 U.S.C. secs. 321(a) - 327 (Act of July 24, 1947); Public Land Order 601, 14 Fed. Reg. 5048 (1949); Public Land Order 757, 16 Fed. Reg. 10, 749 (1951); Public Land Order 1613, 23 Fed. Reg. 2376, 2378 (1958); or Departmental Order 2665, 16 Fed. Reg. 10, 752 (1951) if the right-of-way on the effective date of this Act is not physically occupied by a road, roadway, highway, tramway, trail, bridge, or appurtenant structure.

\* Sec. 3. TAKING OF RIGHT-OF-WAY WITHOUT JUST COMPENSATION VOID. The vacated and relinquished right-of-way under sec. 2 of this Act may not be taken, claimed, asserted, or used by the state without the payment of just compensation.

\* Sec. 4. PHYSICAL OCCUPATION OF RIGHT-OF-WAY. (a) The provisions of this Act do not divest the state of its interest in a right-of-way to land or require compensation by the state for land physically occupied on the effective date of this Act by a road, roadway, highway, tramway, trail, bridge, or appurtenant structure then constructed within the right-of-way created, withdrawn, or reserved under the Acts of Congress and the orders described in sec. 2 of this

Act; nor do the provisions of this Act divest the state of an interest in an easement of specific width set out in the original patent from the state or federal government.

(b) Expansion beyond an existing road, roadway, highway, tramway, trail, bridge, or appurtenant structure requires the payment of just compensation to the owner of the land and no other acts or actions by the state constitute a physical occupation within the meaning of this section. The state has the burden of proof to show by clear and convincing evidence that the physical occupation occurred before the effective date of this Act.

\* Sec. 5. APPLICATION TO FEDERAL LAND. The provisions of this Act do not divest the state of its interest in a right-of-way that affects land in which fee title is, on the effective date of this Act, vested in the United States of America.

\* Sec. 6. DEFINITION. As used in this Act, "physically occupied" means the construction of the actual roadway, including its shoulders and ditching, highway, tramway, trail, bridge, or appurtenant structures, before the effective date of this Act.

\* Sec. 7. RETROACTIVE APPLICATION. This Act does not relieve, alter, or void a voluntary conveyance of an easement including an easement dedicated by plat.

\* Sec. 8. EFFECTIVE DATE. This Act takes effect immediately in accordance with AS 01.10.070(c).

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SJR0026

**SJR26 4/29/85 (Note: This came after the Alaska Land Title Case dated May 27, 1983.)**

Transportation

BY COGHILL

IN THE SENATE

SENATE JOINT RESOLUTION NO. 26

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

Relating to the payment of just compensation to landowners for certain rights-of-way across land in Alaska.

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

WHEREAS the Federal Government created certain rights-of-way for highway purposes across land in the state under Public Land Order 601, Public Land Order 757, Department Order 2665, and Public Land Order 1613; and

WHEREAS the rights-of-way created by the Federal Government were not identified in the patents issued to Alaska homesteaders nor were the original homesteaders informed as to the location or true width of the rights-of-way claimed for highway purposes by the Federal Government across their land; and



WHEREAS the original homesteaders and their successors in interest have had no knowledge of the claim of the Federal Government to the rights-of-way along or across their properties and have often utilized and improved the portion of the right-of-way claimed by the Federal Government; and

WHEREAS the enforcement of the rights-of-way would be unfair to homesteaders who entered their property between August 1949 and Alaska statehood in 1959; and

WHEREAS the rights-of-way created by the Federal Government were not recorded in any territorial or state recording office for the purpose of public notice; and

WHEREAS the right to utilize the rights-of-way for highway purposes was conveyed to the state in 1959; and

WHEREAS the United States Department of Transportation has declined to pay federal highway funds to the state to allow the state to pay just compensation to the landowners whose properties are affected by the rights-of-way; and

WHEREAS U.S. Senator Ted Stevens has attempted in the Federal Aid Highway Act of 1970, sec. 138, to require the United States Department of Transportation to compensate the State of Alaska for money paid as just compensation for the taking and utilization of the rights-of-way;

BE IT RESOLVED by the Alaska State Legislature that the Alaska delegation to U.S. Congress is urged to introduce and support legislation to require reimbursement by the United States Department of Transportation to the State of Alaska for money paid by the state as just compensation for the use of any right-of-way created, established, or claimed under Public Land Order 601, Public Land Order 757, Department Order 2665, and Public Land Order 1613. COPIES of this resolution shall be sent to the Honorable Ted Stevens and the Honorable Frank Murkowski, U.S. Senators, and the Honorable Don Young, U.S. Representative, members of the Alaska delegation in Congress.

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HTRA 3/12/86 0700

Committee: HTRA Date: 86/03/12 Time: 0700 HOUSE TRANSPORTATION COMMITTEE March 12, 1986 7:00 a.m. Members present: Rep. Bette Cato Rep. Mike Davis Rep. Dick Shultz Rep. Marco Pignalberi Rep. Adelheid Herrmann

COMMITTEE CALENDAR SJR 26 Relating to the payment of just compensation to landowners for certain rights-of-way across land in Alaska.

WITNESS REGISTER Milton H. Lentz Chief of Right-of-Way and Land Acquisition Engineering and Operation Standards Department of Transportation Box Z Juneau, Alaska 99811 Phone: 465-

3900 Position: Observer Senator Jack Coghill Chairman, Senate Transportation Committee Pouch V Juneau, Alaska 99811 Phone: 465-3900 Position: sponsor of the bill PREVIOUS ACTION SJR 26 DATE PAGE ACTION 04/29/85 (S) 965 Read the first time - referrals 05/02/85 (S) 1012 Trsp report 4DP 05/07/85 (S) 1107 RIs report Calendar today 05/07/85 (S) 1118 Read the second time Advanced to third reading Unanimous consent Read the third time SJR 26 05/07/85 (S) 1119 Passed Y15 N1 A4 Kertulla notice of recon 05/08/85 (S) 1145 Recon taken up in third reading 05/08/85 (S) 1146 Passed on recon Y18 N- X1 A1 05/08/85 (S) 1152 Transmitted to House SJR 26, Continued 05/09/85 (H) 1449 Read the first time - referrals Transportation, Rules

Chair Cato called the meeting of the House Transportation Committee to order at 7:02 with Rep. Davis, Rep. Shultz and Rep. Herrmann present. Number 027 Rep. Coghill testified, "SJR 26 came out of the frustration of trying to pass a bill last year which was SB 141. SB 141 addressed the right-of-way problems that we had particularly on the Richardson Highway and on the highway just north of Palmer towards Glenallen on the Glenallen Highway. The problem that we had was that ...after WWII, the granting of furtherance of rights-of-ways through public land orders and the Senate Joint Resolution in the first 'whereas' addresses public land order 601, public land order 757, department order 2665, and public land order 1613. ...What we did is, in the frustration of trying to get 141 passed, we found out that if you took a blanket on trying to resolve all of the right-of-way problems in the state due to these public land orders, it would cost hundreds of thousands of dollars. Some of them are going to be sleepers for a long time. "What basically happened was that you have a right-of-way of 33 feet, I believe, in the old system...prior to 1947. And then the roads were established after 1947 in a special federal statute which granted the right-of-way...up to 66 feet. Then... a general reservation for highway rights-of-ways to be placed in all patents where the homestead entered after July of '47 but prior to that, why you still had that problem. Unfortunately, the 1947 law did not establish where the roads were or where their widths were. In 1949, the department attempted to clarify this problem by publishing the first land order which is 601 which established the width of various types of highways in Alaska. The public land order withdrew from public domain strips of land along the highways in Alaska. By withdrawing the strips of land, the federal government actually made those portions of federal lands unavailable for homesteading... "Public land order 601 established several classifications of roads...300 foot right-of-ways were established for the Alaska Highway, the Richardson Highway, the Glenn Highway, the Haines Highway, Tok Cutoff and the right-of-way of 150 feet on each side of the right-of-way. So here all at once... you've got three right-of-ways taken from your property without any notification to you, without any record that the right-of-ways had been taken from your private property. "Now when we're getting into larger highways, more sophisticated highways and everything, they're coming along and they're saying 'you got to move over, you're on our state highway'. The most burdensome affect of the highway right-of-way problem lies in the fact that the federal government mishandled the implementation of the program. The only notice was published in the federal register. The federal register is a relatively obscure document to most people. Indeed in the late 40's and 50's the existence of the federal register, let alone the potential impact on their lives, was not realized by most people. The rights-of-ways were not placed on record against the specific parcels in case and

where the statute or the land order required that a map be made ...was often not done. "Further, over the years, the state has upgraded, improved highways, has moved the location of highways. Now it is difficult to know exactly where the highway was in the 1950's to determine how much property could be taken for the landowner without compensation. ...It's a defacto... taking your land without any compensation to you. "On the plats, on the maps, on the tax records, you've been paying for it, it's your land. Along comes the state government that says by public land order, this right of way has been taken over. The problem we ran into is that in the whole process, the State of Alaska was denied the right to get federal reimbursement or federal participation on highway construction for the right-of-way that is taken from you. So when they go to court, you win your battle because it's by record that you own the land, Public land order's not withholding. The Supreme Court has upheld those. We're in a position where the federal government is saying 'State of Alaska it's your problem because we deeded all that land to you in 1959 at statehood.' So the problem even gets more complex. At 7:11, Rep. Furnace joined the committee. Rep. Cato said that it was "a mess" when they put in the transmission lines along the Seward Highway because of the different widths of rights-of-ways. Senator Coghill said, "Actually there's 33, 66, 200, and 300 (feet). ...You've got two ways that you can solve it: ...the state paying for it or asking the federal government to pay for it because the property right of the individual has been violated. At 7:14 Rep. Pignalberi joined the committee. Senator Coghill continued, "Each little individual item that comes up. They take it to the legislature and the legislature passes a special act to take care of that but it doesn't take care of the neighbor." Rep. Shultz moved to pass the bill out of committee with individual recommendations. There were no objections. The meeting was adjourned at 7:18.

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