

Calendar No. 218

105TH CONGRESS }
1st Session }

SENATE

{ REPORT
105-113

KING COVE HEALTH AND SAFETY ACT OF 1997

OCTOBER 15, 1997.—Ordered to be printed

Filed under authority of the order of the Senate of October 9, 1997

Mr. MURKOWSKI, from the Committee on Energy and Natural
Resources, submitted the following

REPORT

together with

MINORITY VIEWS

[To accompany S. 1092]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 1092) to provide for a transfer of land interests in order to facilitate surface transportation between the cities of Cold Bay, Alaska, and King Cove, Alaska, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE MEASURE

S. 1092 would provide for a transfer of land interests in order to facilitate surface transportation between the cities of Cold Bay, Alaska, and King Cove, Alaska.

BACKGROUND AND NEED

The communities of King Cove and Cold Bay are located in the westernmost region of the Alaska Peninsula. These communities are accessible only by sea or by air. King Cove is predominately an Alaska Native community with about 900 full time residents and an additional 400–600 workers who are transported in and out of King Cove at least four times a year to work in the local fish processing plant. Cold Bay has about 150 residents employed in a variety of services supporting the Aleutian Island and Alaska Penin-

sula region. Cold Bay supports a world-class airport built during World War II. The airport has the third largest runway in the state, equipped with instrument landing system that allows operations 24 hours a day, and serves as an alternative jet aircraft runway for Anchorage during times of emergency.

King Cove and Cold Bay are separated by less than twenty miles, but there is no road between the two communities. A road is needed for two primary reasons: transportation accessibility and safety. The residents of King Cove currently have only two transportation options, planes and boats, that connect them with the rest of Alaska. Unfortunately, the weather makes King Cove one of the worst places in all of the United States to access by either of these transportation modes. Air travel is limited by both the weather and topography.

The King Cove airport has a 3,360 foot long dirt runway approximately 115 feet wide. The strip is surrounded by mountains and sharp valleys which cause venturi, both northerly and southerly winds to increase wind speed dramatically. During the winter, the prevailing northerly winds combined with the heavy snow showers, strong crosswinds and heavy turbulence virtually bring all air traffic to a halt.

Since 1981, eleven air crash fatalities involving small, single and twin engine aircraft have occurred in the flying corridor between Cold Bay and King Cove. Numerous other air crashes have occurred as well. One of these flights was a medivac flight headed for Anchorage that killed all four people aboard immediately after leaving the King Cove airport. The only reason the pilot attempted to get into King Cove was to try and assist a patient in a "life and death" situation.

Any road route between the two communities would pass through lands that are owned by the Federal Government, or the regional and village native corporation. Lands owned by the Native Corporations are inholdings within the Alaska Peninsula National Wildlife Refuge or the Izembek National Wildlife Refuge. Inholdings in the Alaska Peninsula Refuge are owned entirely by the Native Corporation and are not subject to refuge control. The Izembek Refuge, because it predated the Alaska Native Claims Settlement Act that allowed native selection of Federal lands, is a different case. The Refuge retains ownership of the subsurface estate and the King Cove Corporation owns the surface. The Izembek Refuge also has an additional layer of land use complexity as virtually all of the refuge has been designated by Congress as part of the National Wilderness Preservation system.

S. 1092 authorizes the King Cove Corporation to exchange lands with the Fish and Wildlife Service as part of an effort to build the King Cove-Cold Bay Road. The Corporation owns the surface estate of lands for half the road route within the Izembek Refuge. The Corporation has proposed an exchange of wetlands areas south of Cold Bay which act as important marine habitat for fish and wildlife resources within this marine ecosystem. The Corporation is also willing to discuss alternative sites in the Izembek or Alaska Peninsula Wildlife Refuges if the Fish and Wildlife Service identifies such lands.

LEGISLATIVE HISTORY

S. 1092 was introduced by Senator Murkowski on July 30, 1997. A hearing was held before the full Committee on September 11, 1997. At the business meeting on September 24, 1997, the Committee on Energy and Natural Resources ordered S. 1092, favorably reported.

COMMITTEE RECOMMENDATIONS AND TABULATION OF VOTES

The Committee on Energy and Natural Resources, in open business session on September 24, 1997, by a majority vote of a quorum present, recommends that the Senate pass S. 1092, if amended as described herein.

The roll call vote on reporting the measure was 12 yeas, 8 nays, as follows:

YEAS	NAYS
Murkowski	Bumpers
Domenici	Ford
Nickles ¹	Bingaman ¹
Craig	Dorgan
Campbell	Graham ¹
Thomas ¹	Wyden ¹
Kyl	Johnson
Grams	Landrieu
Smith	
Gorton	
Burns ¹	
Akaka	

¹ Voted by proxy.

SECTION-BY-SECTION ANALYSIS

Section 1—Short Title.—This section cites the short title of the Act to be the “King Cove Health and Safety Act of 1997”.

Section 2—Land Exchange.—Section 2(a) requires that if within 6 months after the date of the enactment of this Act, the King Cove Corporation transfers to the United States all right, title, and interest of the Corporation in and to the land described in subsection 2(b), the Secretary of the Interior shall, not later than 30 days after such transfer, grant the Aleutians East Borough a perpetual right-of-way of 100 feet in width through the lands described in section 3(b), for the construction, operation, and maintenance of certain utility-related fixtures and of a public road between the city of Cold Bay, Alaska, and the city of King Cove, Alaska. Section 2(b) describes the Corporation land referred to in subsection (a) as land owned by the Corporation in sections 5, 6, and 7 of T 57 S, R 88 W, Seward Meridian, Alaska. Section 2(c) requires that upon transfer to the United States of the Corporation land referred to in subsection (a), such lands shall be managed in accordance with section 1302(i) of the Alaska National Interest Lands Conservation Act.

Section 3—Right-of-way.—Section 3(a) requires that unless otherwise agreed to by the Secretary and the Aleutians East Borough, the right-of-way granted under Section 2 shall: (1) include sufficient lands for logistical staging areas and construction material

sites used for the construction and maintenance of a public road on the right-of-way; (2) meet all requirements for a public highway right-of-way under the laws of the State of Alaska; and, (3) include the right for the Aleutians East Borough, or its assignees, to construct, operate, and maintain electrical, telephone, or other utility facilities and structures within the right-of-way. Section 3(b) provides the legal descriptions where the right of way granted under Section 2 shall be located unless otherwise agreed to by the Secretary and the Aleutians East Borough. Section 2(c) provides for the center line of the right-of-way referred to in subsection (b) shall be determined by mutual agreement between the Secretary and the Aleutians East Borough.

Section 4—Miscellaneous Provisions.—Section 4(a) defines certain terms used in the legislation. Section 4(b) provides that the Secretary and the Aleutians East Borough shall: (1) prior to any improvement to the right-of-way, jointly develop and agree to reasonable terms and conditions for the use of the right-of-way, including the construction, operation, and maintenance of the public road and utility-related fixtures, which will protect the Federal lands, interest in lands, and resources beneath and adjacent to the right-of-way without imposing undue costs on either party; and (2) may make mutually agreed upon modifications to an agreement reached pursuant to paragraph (1). Section 4(c) exempts certain provisions of law from applying to any right-of-way granted pursuant to this Act or any road constructed on such right-of-way. Section 4(d) authorizes the Secretary to implement and administer the rights and obligations of the Federal Government under any agreement reached pursuant to subsection (b). Section 4(e) provides that implementation of any agreement reached pursuant to subsection (b) shall not be deemed to be a major Federal action significantly affecting the quality of the human environment, nor shall such implementation require further consideration pursuant to the National Historic Preservation Act (16 U.S.C. 470 et seq.), Title VIII of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3118 et seq.), or any other law.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of the cost of this measure has been provided by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 1, 1997.

Hon. FRANK H. MURKOWSKI,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1092, the King Cove Health and Safety Act of 1997.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Victoria V. Heid.

Sincerely,

JUNE E. O'NEILL, *Director.*

Enclosure.

S. 1092—King Cove Health and Safety Act of 1997

CBO estimates that enacting this bill would have no significant impact on the federal budget. Because the bill would not affect direct spending or receipts, pay-as-you-go procedures would not apply. S. 1092 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act of 1995 and would impose no costs on state, local, or tribal governments. The land exchange authorized in this bill would be voluntary on the part of the affected local and tribal governments.

S. 1092 provides that if the King Cove Corporation transfers to the United States certain lands within the boundaries of the Izembek National Wildlife Refuge in Alaska, then the Secretary of the Interior is directed to grant to the Aleutians East Borough a perpetual right-of-way 100 feet wide through the Izembek National Wildlife Refuge. The right-of-way would be used for utility-related fixtures and for a public road between the cities of Cold Bay, Alaska, and King Cove, Alaska. The bill provides that the land transferred to the United States be managed by the U.S. Fish and Wildlife Service as part of the Izembek National Wildlife Refuge. Based on information from the U.S. Fish and Wildlife Service, CBO estimates that enacting the bill could increase management costs for the refuge because it might result in additional traffic through the area, but any such additional costs would likely total less than \$500,000 per year and would be subject to appropriation action.

The CBO staff contact for this estimate is Victoria V. Heid. This estimate was approved by Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 1092. The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 1092, as ordered reported.

EXECUTIVE COMMUNICATIONS

The pertinent legislative report received by the Committee from the Department of the Interior setting forth Executive agency recommendations relating to S. 1092 is set forth below in a letter dated September 25, 1997 along with the testimony provided by the Department at the Committee hearing:

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, DC, September 25, 1997.

Hon. FRANK H. MURKOWSKI,
Chairman, Committee on Energy and Natural Resources,
Washington, DC.

DEAR MR. CHAIRMAN: This letter presents the Department's position with regard to S. 1092, the King Cove Health and Safety Act of 1997. The Department strongly opposes S. 1092 and, if presented to the President in its current form, the Secretary will recommend that the President veto the legislation.

Although the Department understands and supports the desire to ensure safe transportation between the King Cove and Cold Bay communities, S. 1092 would result in a perpetual right-of-way through the lands and waters of Izembek National Wildlife Refuge and Izembek Wilderness. This right-of-way would be for the purpose of constructing a public road, and constructing, operating, and maintaining utility related fixtures between two rural communities located near the tip of the southern Alaska Peninsula. The proposed corridor would bisect a narrow isthmus between Isembek and Kinzarof Lagoons while traversing 10 miles of Refuge lands, including 7 miles of designated wilderness.

The Department is sympathetic to safe and economical transportation for remote communities in the State of Alaska. At the same time, we, as an agency, must also safeguard the resources of the National Wildlife Refuge System. The Izembek Lagoon complex is vital habitat to hundreds of thousands of waterfowl, including the world's population of the regal emperor goose and the Pacific black brant. These waterfowl species descend on Izembek and Kinzarof lagoons during spring and fall migrations.

Construction and the use of the proposed road as outlined in S. 1092 would disturb internationally-unique waterfowl populations. Construction through this fragile tundra environment also would result in increased silt loads and alter drainage patterns into Kinzarof Lagoon. Increased siltation will affect the health of the eelgrass beds upon which these waterfowl species depend.

The proposed road also would parallel the Joshua Green River system, a key brown bear denning area, and bisect an important wintering and primary migration corridor of the southern Alaska Peninsula Caribou Herd. Vehicular traffic and increased human presence will affect adversely seasonal distributions and migration routes for this important species.

Construction of a road through this pristine wilderness area would not be compatible with the purposes for which the Izembek National Wildlife Refuge was established. We believe, however, that viable alternatives to a proposed road exist and warrant further evaluation.

The Alaska Department of Transportation and Public Facilities (ADOT/PF) is currently evaluating transportation alternatives. Some of these alternatives have the potential to provide safe, highly reliable, and environmentally-compatible travel between the Cold Bay and King Cove communities. We urge further consideration of these alternatives.

The communities of King Cove and Cold Bay are separated by approximately 20 miles of marine waters that have provided passage between the communities for over 50 years. Enhancing the marine transportation and shipping facilities would provide improved safe travel to the entire region. Regularly scheduled ferry service between King Cove and Cold Bay would provide safe and reliable travel with fewer environmental impacts than a road. The development of routine marine service would entail improving the docking facility at Cold Bay and providing a vessel equipped with state of the art navigational aids to travel between the two communities. In addition, improvements to air travel would also benefit the King Cove and Cold Bay communities. Relocating or upgrading the current air facility could greatly improve air access.

The Department is working cooperatively with the state in the consideration and planning of alternatives to meet the transportation needs of King Cove and the surrounding communities. The Department does not see the goals of safety for Alaskan citizens and conserving vital fish and wildlife populations and habitat of the Izembek National Wildlife Refuge as mutually exclusive. We support working within the framework of existing public processes to reach a solution that provides safe and reliable transportation for the citizens of Alaska, without compromising the ecological integrity of this pristine wildland area.

In addition to the above concern, the Administration strongly objects to language in Sections 4(c) and (e) that exempts the land exchange from requirements of the National Environmental Policy Act, 49 U.S.C. 303(c), the Alaska Native Claims Settlement Act, the Alaska National Interest Lands Conservation Act and the National Historic Preservation Act. Such exemptions undercut the applicability of the laws, undermine enforcement, possibly lead to serious environmental problems, and set a dangerous precedent by encouraging similar waivers.

The Office of Management and Budget advises that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

WILLIAM L. LEARY,

Acting Assistant Secretary for Fish and Wildlife and Parks.

STATEMENT OF JOHN ROGERS, DEPUTY DIRECTOR, UNITED STATES FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

Mr. Chairman, I appreciate the opportunity to provide testimony on S. 1092. Although we understand and support your desire to ensure safe transportation between the King Cove and Cold Bay communities, we strongly oppose S. 1092. If enacted, the Secretary of the Interior will recommend to the President that he veto S. 1092 because of the negative impact it would have on a fragile wilderness area within the Izembek National Wildlife Refuge, the bill's broad waivers from application of important environmental laws, and because there are other transportation alternatives currently under consideration by the State of Alaska.

S. 1092 would result in a perpetual right-of-way through the lands and waters of Izembek National Wildlife Refuge and Izembek Wilderness. This right-of-way would be for the purpose of constructing a public road, and constructing, operating, and maintaining utility related fixtures between two rural communities located near the tip of the southern Alaska Peninsula. The proposed corridor would bisect a narrow isthmus between Izembek and Kinzarof Lagoons while traversing 10 miles of Refuge lands, including 7 miles of designated wilderness.

We are sympathetic to safe and economical transportation for remote communities in the State of Alaska. At the same time, we, as an agency, must also safeguard the resources of the National Wildlife Refuge System. The Izembek Lagoon complex is vital habitat to hundreds of thousands of waterfowl, including the world's population of the regal emperor goose and the Pacific black brant. These waterfowl species descend on Izembek and Kinzarof lagoons during spring and fall migrations.

Each fall, approximately 150,000 Pacific black brant converge on these lagoons coming from distant breeding grounds in Russia, Canada and Alaska. In recent years, an increasing proportion of brant remain to overwinter on Kinzarof and Izembek Refuge lagoons. The wilderness character of the Izembek Lagoon complex provides vital habitat for these species of international significance.

Over half of the world's population of the threatened Stellar's eider also flock to the Izembek lagoons to molt and spend the winter in the security of the tidal waters. The extensive eelgrass beds, among the largest in the world, provide the food necessary for this species to replenish the nutrients depleted by migration, molting and brood rearing.

Construction and the use of the proposed road as outlined in S. 1092 would disturb these internationally-unique waterfowl populations. Construction through this fragile tundra environment would also result in increased silt loads and alter drainage patterns into Kinzarof Lagoon. Increased siltation will affect the health of the eelgrass beds upon which these waterfowl species depend.

The proposed road would also parallel the Joshua Green River system, a key brown bear denning area, and bisect an important wintering and primary migration corridor of the southern Alaska Peninsula Caribou Herd. Vehicular traffic and increased human presence will affect adversely seasonal distributions and migration routes for this important species.

Construction of a road through this pristine wilderness area would not be compatible with the purposes for which the Izembek National Wildlife Refuge was established. We believe, however, that viable alternatives to a proposed road exist and warrant further evaluation.

The Alaska Department of Transportation and Public Facilities (ADOPT/PF) is currently evaluating transpor-

tation alternatives. Some of these alternatives have the potential to provide safe, highly reliable, and environmentally-compatible travel between the Cold Bay and King Cove communities. We urge further consideration of these alternatives.

The communities of King Cove and Cold Bay are separated by approximately 20 miles of marine waters that have provided passage between the communities for over 50 years. Enhancing the marine transportation and shipping facilities would provide improved safe travel to the entire region. Regularly scheduled ferry service between King Cove and Cold Bay would provide safe and reliable travel with fewer environmental impacts than a road.

The development of routine marine service would entail improving the docking facility at Cold Bay and providing a vessel equipped with state of the art navigational aids to travel between the two communities. In addition, improvements to air travel would also benefit the King Cove and Cold Bay communities. Relocating or upgrading the current air facility could greatly improve air access.

We are working cooperatively with the state in the consideration and planning of alternatives to meet the transportation needs of King Cove and the surrounding communities.

The Service does not see the goals of safety for Alaskan citizens and conserving vital fish and wildlife populations and habitat of the Izembek National Wildlife Refuge as mutually exclusive. We support working within the framework of existing public processes to reach a solution that provides safe and reliable transportation for the citizens of Alaska, without compromising the ecological integrity of this pristine wildland area.

In addition to the above concerns, the Administration strongly objects to language in Sections© and (e) that exempts the land exchange from requirements of the National Environmental Policy Act, 49 U.S.C. 303©, the Alaska Native Claims Settlement Act, the Alaska National Interest Lands Conservation Act and the National Historic Preservation Act. Such exemptions undercut the applicability of the laws, undermine enforcement, possibly lead to serious environmental problems, and set a dangerous precedent by encouraging similar waivers.

Thank you for the opportunity to testify on S. 1092. I would be happy to answer any questions you may have.

MINORITY VIEWS OF SENATOR BUMPERS

S. 1092 directs the Secretary of the Interior to transfer a perpetual 100-foot right of way through the Izembek National Wildlife Refuge, including a wilderness area, to the Aleutians East Borough for the purpose of constructing a public road from King Cove to Cold Bay. The total length of the proposed road is approximately 30 miles. Of that total, approximately 11 miles traverse the Izembek National Wildlife Refuge, eight of those 11 miles would be within lands designated as wilderness.

While I understand and can appreciate the desire of the residents of King Cove for improved access to adequate health care, I believe that this legislation is premature at this point because I am not convinced that other available alternatives have been thoroughly evaluated.

Given the potential federal funding requirements and the fact that the road is proposed to cross a wildlife refuge wilderness, it is imperative to adequately examine all available alternatives. The current estimate to construct the proposed road is \$40 million. Normally, federal highway funds cover ninety percent of such construction costs. Maintenance of the proposed road will cost at least \$500,000 per year. Federal highway funds are also available for such maintenance costs. Within this level of federal expenditures, I am quite certain that acceptable alternatives exist that can meet the village's needs without the road.

Upgrading the existing medical facilities in King Cove should definitely be considered as a component of any effort to better meet the health care needs of the community of King Cove. My understanding is that an Indian Health Service facility is currently operated in King Cove. Indian Health Service facilities are funded through the Interior Appropriations bill. In addition, medical facilities funded and operated by other entities should be examined as a possibility.

The Alaska Department of Transportation and Public Facilities is currently conducting a study, called the King Cove-Cold Bay Transportation Improvement Assessment, to assess the need to improve the transportation connection between King Cove and Cold Bay and develop options to improve the connection. The study includes an economic analysis which will be used to determine the level of need, as well as an assessment of health and safety issues. The study will identify a variety of aviation, highway, marine, or a combination of alternatives that could meet this need. The study will consider community impacts, wildlife and environmental factors, fiscal implications, and the use of alternative communication technology, including telemedicine. Transportation options being considered include the establishment of an all weather port facility and marine ferry system, with state of the art navigational aids, to run between King Cove and Cold Bay; a road from King Cove

to a new airport that would be constructed north of Mt. Dutton; a hovercraft from Lenard Harbor to Cold Bay; and an emergency helicopter to serve the entire region. The final report defining the purpose and need of the project will be available in November 1997. It is obvious that critical and appropriate information will be available next month that will enable everyone to more adequately assess the situation.

I am concerned about two other issues regarding this bill. First, the bill contains provisions that contain specific waivers to existing federal laws including the National Environmental Policy Act, the National Historic Preservation Act, the Alaska Native Claims Settlement Act, and the Alaska National Interest Lands Conservation Act. Second, no valuation work has been initiated to my knowledge to determine whether this would be an equal value exchange.

The Secretary of the Interior has repeatedly stated that he will recommend that the President veto this bill. I know that the Majority is not interested in passing a bill that will not be signed into law and I am willing to work with Senator Murkowski and others on legislative language that is acceptable to all parties. If this bill comes before the full Senate in its current form, I plan to oppose it and urge my colleagues to do the same.

DALE BUMPERS.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law are made by the bill S. 1092, as ordered reported.

