

**ALASKA STATE LEGISLATURE  
HOUSE COMMUNITY AND REGIONAL AFFAIRS  
STANDING COMMITTEE**

April 11, 2002  
8:12 a.m.

**MEMBERS PRESENT**

Representative Kevin Meyer, Co-Chair  
Representative Carl Morgan, Co-Chair  
Representative Drew Scalzi  
Representative Gretchen Guess  
Representative Beth Kerttula

**MEMBERS ABSENT**

Representative Andrew Halcro  
Representative Lisa Murkowski

**COMMITTEE CALENDAR**

HOUSE BILL NO. 500

"An Act relating to the advance acquisition of real property for public purposes."

- HEARD AND HELD

**PREVIOUS ACTION**

BILL: HB 500

SHORT TITLE:ADVANCE ACQUISITION OF REAL PROPERTY

SPONSOR(S): TRANSPORTATION

Jrn-Date	Jrn-Page		Action
02/27/02	2407	(H)	READ THE FIRST TIME - REFERRALS
02/27/02	2407	(H)	CRA, TRA
04/04/02		(H)	CRA AT 8:00 AM CAPITOL 124
04/04/02		(H)	-- Meeting Canceled --
04/11/02		(H)	CRA AT 8:00 AM CAPITOL 124

**WITNESS REGISTER**

REPRESENTATIVE VIC KOHRING  
Alaska State Legislature  
Capitol Building, Room 24  
Juneau, Alaska 99801

POSITION STATEMENT: Testified as the sponsor of HB 500.

MIKE KRIEBER, Staff  
to Representative Kohring  
House Transportation Standing Committee  
Alaska State Legislature  
Capitol Building, Room 24  
Juneau, Alaska 99801

POSITION STATEMENT: Answered questions.

BRUCE CARR, Director  
Strategic Planning  
Alaska Railroad Corporation

POSITION STATEMENT: Testified in support of HB 407.

RICK KAUZLARICH, Right-of-Way Chief  
Department of Transportation & Public Facilities  
(No address provided)

POSITION STATEMENT: Testified in support of HB 407.

JOHN BITNEY, Legislative Liaison  
Alaska Housing Finance Corporation  
4300 Boniface  
Anchorage, Alaska

POSITION STATEMENT: Testified on AHFC's provision in HB 500.

#### **ACTION NARRATIVE**

TAPE 02-22, SIDE A  
Number 0001

CO-CHAIR KEVIN MEYER called the House Community and Regional Affairs Standing Committee meeting to order at 8:12 a.m. Representatives Morgan, Meyer, Scalzi, Guess, and Kerttula were present at the call to order.

#### HB 500-ADVANCE ACQUISITION OF REAL PROPERTY

CO-CHAIR MEYER announced that the only order of business would be HOUSE BILL NO. 500, "An Act relating to the advance acquisition of real property for public purposes."

Number 0090

REPRESENTATIVE VIC KOHRING, Alaska State Legislature, testified as the sponsor of HB 500. Representative Kohring paraphrased the following portion of the sponsor statement:

Infrastructure development is key to economic development throughout Alaska. Right-of-way corridors are required to access resources and markets, enhance intrastate commerce, and improve Alaskan's quality of life. Inter-modal access to existing and future harbors and airports will also play a key role in determining many of the corridors.

Economical transportation and utilities are vital to developing Alaska's raw resources and value-added products. Lowering the cost of developing these corridors will allow Alaska's resources to compete in national and international markets.

Many times proposed resource extraction projects are hindered due to lack of established rights-of-way to access the sites or to move the resources to markets.

In urbanized areas, the public process to identify new rights-of-way (transportation and utility corridors) for past-due projects can extend over long periods. This results in bitter battles, pitting neighbor against neighbor, ending up with many dislocated property owners. Sky rocketing right-of-way costs and more expensive construction costs result in project delays and fewer projects statewide.

REPRESENTATIVE KOHRING specified that two separate groups, property owners and public entities such as the Alaska Railroad and the Department of Transportation & Public Facilities (DOT&PF), are impacted in opposite ways under the current method. Usually the process to obtain a right-of-way (ROW) is a long process, up to five years or more. During that process, costs can escalate over time. Currently there are no statutes that address this issue and allow the identification and preservation of corridors for future use, which HB 400 addresses. Representative Kohring pointed out that ROWs for roads and utilities tremendously impact property owners. The solution, HB 500, is a process that allows state and local governments and public utilities to memorialize transportation or utility ROW corridors. This legislation would allow for the advance acquisition of these corridors in order to avoid delays in construction and the cost [increases]. The result of [HB

500] is long-term savings for the ROW acquisition as well as avoiding construction delays. Furthermore, this advanced notice protects the public because the public will be better informed with access to long-range development plans.

Number 0600

REPRESENTATIVE KOHRING pointed out that HB 500 focuses on the use of "eminent domain" for the advanced purchase of the ROW only when certain conditions are met. Representative Kohring explained that eminent domain is a request to the courts for a public entity to purchase property for ROW acquisition when a purchase agreement with a property owner cannot be obtained. Therefore, a judge would make the decision as to whether it is in the public's interest to sell the property. If so, the judge establishes the purchase price and conditions of the property, which almost always results in disagreements. For example, eminent domain might be used when a highway needs to be widened such as the case with the Parks Highway. The requirements for use of eminent domain are to ensure that the proposed future use isn't too speculative. The proposed use of the property must be reasonably foreseeable and the use of the property must be identified in a development plan that is made available to the public. Therefore, the passage of HB 500 will result in decreased ROW acquisition costs and accelerated permitting for future transportation utility projects, which would result in a more expeditious process. Furthermore, the resource extraction and value-added industries will be able to capture emerging resource markets when it's optimum for them.

REPRESENTATIVE SCALZI referred to page 3, and inquired as to what Section 4 is about.

Number 0888

MIKE KRIEBER, Staff to Representative Kohring, House Transportation Standing Committee, Alaska State Legislature, answered that [AS 18.55.550] refers to the Alaska Housing Finance Corporation (AHFC). This legislation takes AHFC's existing power of eminent domain and allows them to also utilize advanced acquisition of property through eminent domain. In response to Representative Scalzi, Mr. Kriebler said that the change of "it" to "the corporation" is merely a language cleanup. He further explained that what has changed is the advanced acquisition of property through eminent domain for AHFC.

CO-CHAIR MEYER recalled, from his days on the Anchorage Assembly, that eminent domain was a "dirty word" because it meant taking someone's property against their will, which [the assembly] tried to avoid at all costs. Co-Chair Meyer expressed concern with the possibility of using eminent domain even more aggressively than in the past.

MR. KRIEBER agreed that is a possibility. However, under the current situation property owners can block major projects. Alaska has had resource development opportunities that have been blocked, through ROW acquisition problems, because there is no way to get the resource to market. This happens in urban areas. He pointed out that the ability to have eminent domain at an earlier stage will keep further property development from occurring, which may prevent others from being unduly impacted if eminent domain was utilized just prior to the project.

Number 1106

CO-CHAIR MEYER remarked that it is a delicate balance because the American dream is to own property, and the last thing anyone wants is for the government to take it away. However, one piece of property [shouldn't be allowed] to block a project.

MR. KRIEBER provided the committee with the following situation. The Alaska Railroad is looking at relocating the tracks out of downtown Wasilla due to safety issues concerning the proximity of the Parks Highway with the railroad tracks. One of the routes that was reviewed was identical to a route DOT&PF had identified in the 1980s for a bypass. However, DOT&PF didn't memorialize that study and thus in the last 20 years people have purchased property in that area. When the study went public and community meetings were held, those folks [spoke up] because they had no idea about the project. Mr. Kriebler said that in this situation there will either be a highway bypass or the railroad will have to be relocated in order to expand the highway within the existing corridor. The alternative would be that a large part of downtown Wasilla will have to be purchased in order to widen the Parks Highway. This is a no-win situation. Had DOT&PF been able to memorialize that ROW 20 years ago and begin the acquisition process, this wouldn't be an issue.

Number 1293

REPRESENTATIVE KERTTULA asked if any place in the nation allows this advanced acquisition.

MR. KRIEBER replied yes, there are about a half dozen states that do this.

REPRESENTATIVE KERTTULA inquired as to how those states determine the fair market value to the individual [property owner]. At what point in time is that value determined.

MR. KRIEBER answered that the value is determined at the point the property is to be acquired.

REPRESENTATIVE KERTTULA pointed out that would mean five years in advance of when the property would be used. Therefore, she asked what would happen if in that time the property value rises.

MR. KRIEBER highlighted that the property owner would've already relinquished the property, in a sense, through eminent domain.

REPRESENTATIVE KERTTULA inquired as to what would happen in the case in which the property isn't used. Would the property be returned to the property owner, she asked. Furthermore, what happens if the value of the property has increased 100 times during that time; would the government be allowed to hold that property and the increased value, she asked.

MR. KRIEBER answered that can happen. However, HB 500 [requires] "some high level of assurance" that the project will move forward. In an eminent domain case, the judge would review the degree of certainty [that the project will move forward] and make a determination. For example, the Parks Highway project and its environmental impact study (EIS) was approved in 1994. However, the escalation in price for the next phase of the Parks Highway ROW acquisition, 1.5 miles, has increased to over \$15 million. Therefore, the ROW acquisition is more expensive than the road construction itself. He noted that there was a case of eminent domain for the Parks Highway project.

Number 1498

REPRESENTATIVE KERTTULA inquired as to why DOT&PF didn't condemn the ROW at the point when the project was built.

MR. KRIEBER deferred to DOT&PF. In further response to Representative Kerttula, Mr. Kriebler explained that DOT&PF operates under federal guidelines, which allows for ROW acquisition on a much shorter timeframe. Again, he deferred to

DOT&PF, but noted that there is nothing in state law that provides for state entities to perform advanced acquisition.

REPRESENTATIVE KERTTULA pointed out that [the state] has the ability to purchase the ROW at the time.

MR. KRIEBER explained that once an entity moves forward with an eminent domain act, there are "court restrictions" to proceed within a short time period. Therefore, HB 500 provides that an entity could take a 5-10 year time period and spread out the ROW acquisition. This legislation addressed the potential [obstacle] in the process.

Number 1631

REPRESENTATIVE SCALZI asked if [HB 500] provides that the property is merely identified in advance or does it provide that the property is acquired in advance.

MR. KRIEBER explained that eminent domain means that a court action is being taken in order to acquire something [for prices] at that specific time. In further response to Representative Scalzi, Mr. Krieber said that even if there are changes, the judge would still need to make the determination that this project is eminent to go forward. The judge would still need to make the same findings made under the current law for eminent domain.

REPRESENTATIVE SCALZI asked if there would be an adjustment in the price [at the time of a change in the price].

MR. KRIEBER answered that typically when the judge issues the declaration [of eminent domain] the price is established.

REPRESENTATIVE GUESS questioned whether HB 500 would resolve the problem in Wasilla. This legislation refers to situations in which something is to be done in the next five years.

MR. KRIEBER clarified that HB 500 addressed a time greater than five years. In further response to Representative Guess, he answered that the price is still set at the time eminent domain is [established], which is also at the time when the property transfer occurs.

Number 1785

BRUCE CARR, Director, Strategic Planning, Alaska Railroad Corporation, testified via teleconference in support of HB 500. Although in the history of ARRC there has been no case of eminent domain, HB 500 provides another tool that could be utilized.

Number 1861

RICK KAUZLARICH, Right-of-Way Chief, Department of Transportation & Public Facilities, informed the committee that he has worked as a ROW agent with DOT&PF for over 22 years. Mr. Kauzlarich announced that DOT&PF supports HB 500. Currently, DOT&PF has the ability to perform advanced acquisitions, although it's a very complicated process. The department must receive prior approval from the Federal Highway Administration (FHWA) for advanced acquisitions. Therefore, the department often must complete the required environmental process, which is time consuming and difficult. He pointed out that the reason for this constraint is because the majority of the department's funding comes from the federal government. Due to the obstacles that DOT&PF faces in order to obtain FHWA dollars, Mr. Kauzlarich recommended that the legislature consider an advanced acquisition fund, which would be used for properties that have been identified as necessary for a project, per HB 500. This legislation provides another tool for the department in its negotiation and acquisition process. Furthermore, HB 500 will help with the creation of the decisional document, which is created when a piece of property needs to be acquired by the condemnation process or eminent domain process. The decisional document demonstrates that the acquired property is necessary for the public good.

Number 1997

MR. KAUZLARICH turned to the issue of eminent domain, which he viewed as another tool that can be used to acquire property for a project. There are times when there is property to be acquired from someone who doesn't want to sell. Therefore, the use of eminent domain is necessary. However, there are many occasions when eminent domain is used in order to clear a title. Mr. Kauzlarich echoed earlier testimony in regard to how advanced acquisition would have saved the state money with the Parks Highway project. Mr. Kauzlarich restated that department's support of HB 500.

REPRESENTATIVE SCALZI restated his earlier question in regard to whether the price stays the same as was established at the time

of eminent domain even if that project doesn't move forward for five to six years and is re-evaluated after ten years.

MR. KAUZLARICH explained that during any acquisition process, the department would first have the property appraised by an independent fee appraiser and a market value is determined. The negotiator speaks with the property owner about [the acquisition]. The property owner can present the department with its own appraisal. Mr. Kauzlarich answered that the value of the property would be determined on the date the department acquires the property.

Number 2195

CO-CHAIR MEYER inquired as to what HB 500 allows the department to do that it can't already do.

MR. KAUZLARICH acknowledged that the department can already perform advanced acquisitions. However, HB 500 places in statute the notion that advanced acquisitions are a good thing for the public.

Number 2259

REPRESENTATIVE KERTTULA inquired as to what would happen if the department doesn't use the [acquired] property.

MR. KAUZLARICH speculated that the property would be available for sale some time in the future. In further response to Representative Kerttula, Mr. Kauzlarich related his understanding that if the property values increase during the time in which the property wasn't used, then those funds would return to the general fund or to the funding source if there was some sort of land bank.

REPRESENTATIVE KERTTULA remarked that the department will still have to comply with the federal law in order to receive federal funds.

MR. KAUZLARICH envisioned that the department would approach the federal government after the property has been acquired and at the time when the project is on track for development. At that time the federal government would be presented with documentation in order to be reimbursed for the department's costs for the acquisition.

REPRESENTATIVE KERTTULA related her understanding that such a process would be new and isn't in place now.

MR. KAUZLARICH replied yes. Currently, there are two types of acquisitions through the federal government. There is a hardship acquisition in which a property owner knows a project is coming and they want to sell. However, these cases don't happen very often. There is also advanced corridor purchasing, which was utilized on the Eklutna-Parks project.

Number 2451

JOHN BITNEY, Legislative Liaison, Alaska Housing Finance Corporation (AHFC), related his understanding that AHFC has the power of eminent domain under urban renewal statutes created under the former Alaska State Housing Authority in 1951. However, AHFC doesn't have any active urban renewal projects moving forward at this time nor is there any intent to do so. The AHFC statutes regarding this authority are very detailed in regard to the requirements to work closely with the local governing body if AHFC ever becomes involved in urban renewal or eminent domain. Mr. Bitney explained that if AHFC was to be involved in some urban renewal, it would be a situation in which there is a large disaster for which the corporation would be asked to take advantage of some federal assistance.

CO-CHAIR MEYER referred to a letter from the Alaska Manufactured Housing Association, which is included in the committee packet. The association opposes HB 500 because of concern that it could drop the value of their property if someone was to come in via eminent domain and purchase property and construct low income housing.

MR. BITNEY explained that the statute refers to an area that is a "slum" area and thus [an entity] would enter such an area in order to improve the property values in the area. The concept of low income housing doesn't necessarily lower the value of surrounding property. He informed the committee that generally, [AHFC] is required to do things at a higher level. Mr. Bitney pointed to the Cedar Park project as an example of a good quality property. The current concept with low income housing is to disburse it in communities rather than have concentrated complexes.

CO-CHAIR MEYER surmised then that if AHFC were to take advantage of HB 500 it would be in order to improve the value of the surrounding property.

Number 2754

REPRESENTATIVE KERTTULA said that she would like to see more work on this, in particular what has happened with this in other states.

CO-CHAIR MEYER asked if Representative Kerttula had any legal concerns with HB 500.

REPRESENTATIVE KERTTULA replied yes, and cited concerns with regard to what constitutes just compensation and at what point that is determined. "We're the [farthest] west of all the western states and traditionally western states are very pro individual property right owners oriented. And I'd just like to understand that issue better before we move it on. It's ... a little ironic ... that we would do something like this in Alaska," she remarked.

MR. KRIEBER agreed to work on HB 500 with Representative Kerttula.

CO-CHAIR MEYER announced that HB 500 would be held.

#### **ADJOURNMENT**

There being no further business before the committee, the House Community and Regional Affairs Standing Committee meeting was adjourned at 8:53 a.m.