

HOUSE FINANCE COMMITTEE
May 08, 2002
2:23 P.M.

TAPE HFC 02 - 105, Side A
TAPE HFC 02 - 105, Side B
TAPE HFC 02 - 106, Side A
TAPE HFC 02 - 106, Side B

CALL TO ORDER

Co-Chair Williams called the House Finance Committee meeting to order at 2:23 P.M.

MEMBERS PRESENT

Representative Bill Williams, Co-Chair
Representative Eldon Mulder, Co-Chair
Representative Con Bunde, Vice-Chair
Representative Eric Croft
Representative John Davies
Representative Richard Foster
Representative John Harris
Representative Bill Hudson
Representative Ken Lancaster
Representative Jim Whitaker

MEMBERS ABSENT

Representative Carl Moses

ALSO PRESENT

Sara Wright, Staff, Senator Dave Donley; Kim Ognisty, Staff, Senator John Torgerson; John Middaughy M.D., Department of Health and Social Services; Don Etheridge, AFL-CIO, Juneau; Ron Wolfe, Corporate Forester, Sealaska Corporation, Juneau; Jon Tillinghast, Attorney, Sealaska Corporation, Juneau; Lynne Freeman, Executive Director, Alaska Commission on Aging, Juneau; Dennis Poshard, Legislative Liaison, Department of Transportation & Public Facilities; Wendy Lindskoog, Alaska Railroad Corporation, Fairbanks; Michael Downing, Director/Chief Engineer, Division of Statewide Design & Engineering Services, Department of Transportation & Public Facilities; Kevin Ritchie, Alaska Municipal League, Juneau.

TESTIFIED VIA TELECONFERENCE

Lieutenant Julia Grimes, Alaska State Troopers, Department of Public Safety, Anchorage; Janice Adair, Director, Division of Environmental Health, Department of Environmental Conservation, Anchorage; Phyllis Johnson, Alaska Railroad Corporation, Fairbanks; Alice Hsieh; Dennis

Wheeler, Deputy Municipal Attorney, Municipality of Anchorage; Jim Cantor, Assistant Attorney General, Department of Law, Anchorage; Dick Cattnach, Assistant Attorney General, Department of Law, Anchorage; Dick Mylius, Division of Mining, Land and Water, Department of Natural Resources, Anchorage; Joe McLaughlin, Department of Epidemiology, Anchorage; Michael Lohnan, Wasilla.

SUMMARY

HB 532 An Act relating to the powers and duties of the Department of Environmental Conservation, to barbers, hairdressers, estheticians, manicurists, tattoo, permanent cosmetic colorists, body piercers, and their establishments, to the licensure of child care facilities, to food establishments, to cosmetics, to tourist camps, trailer camps, motor courts, and motels, to restrooms, to smoking in public facilities, to public health nuisances, to sanitation and sanitary practices, to camps and canneries, to schools, to soft drink establishments, to beer and wine dispensaries, to other establishments, and to commercially compressed air; and providing for an effective date.

HB 532 was HEARD and HELD in Committee for further consideration.

SB 222 An Act relating to certain motor vehicles that are required to yield to following traffic.

HCS CS SB 222 (FIN) was reported out of Committee with "individual" recommendations and with fiscal notes #1 by the Department of Transportation & Public Facilities and #2 by the Department of Public Safety. Also included with the bill was a House Concurrent Resolution providing the needed title change.

SB 278 An Act requiring a good faith effort to purchase property before that property is taken through eminent domain; and providing for an effective date.

HCS CS SB 278 (FIN) was reported out of Committee with "individual" recommendations and with fiscal notes #1 by the Alaska Court System and #4 by the Department of Transportation & Public Facilities.

CS FOR SENATE BILL NO. 222(FIN)

An Act relating to certain motor vehicles that are required to yield to following traffic.

SARA WRIGHT, STAFF, SENATOR DAVE DONLEY, commented that the legislation, through the cooperation of the Department of Transportation & Public Facilities, would increase the number of posted signs along some of Alaska's highways informing motorists of the existing regulations of prohibiting a vehicle from delaying traffic. The bill would additionally increase the fine for those in violation of the law from a \$30 dollar fine to at least \$100 dollars.

Current Alaska regulation prohibits traffic traveling at less than the posted speed limit from delaying five or more vehicles. The vehicle should pull over at the first opportunity, however, many drivers are not aware of the law. It is the intent of the legislation to make motorists more conscious of the law and to lessen some of the summer congestion on highways.

Ms. Wright advised that the Department of Transportation & Public Facilities had committed to placing twenty (20) signs in key areas on the Alaskan Highway. The signs would indicate that it is unlawful to delay five or more vehicles. The violation would be punishable by a fine. She added that the bill would apply only to drivers delaying five or more vehicles while traveling at five or more miles below the posted speed limit.

Co-Chair Mulder referenced the House Finance Committee substitute, #22-LS0611\R, Ford, /07/02, indicating that it would address concerns voiced by the sponsor. (Copy on File).

Co-Chair Mulder commented that the work draft included a section, which would amend statutes, created several years ago. In the draft, the fines have been doubled for violation in work zones, suggesting that was a public safety consideration. Co-Chair Mulder noted that there has been concern that constructions zone signs remain in place when there is no work happening in the area. He added that Section 2 would include verbiage-doubling fines when there are workers present at the site. The Department needs to develop regulations for when the workers are not on the job site; when the work is finished, the signs should be removed.

Co-Chair Mulder MOVED to ADOPT the work draft for HCS CS SB 222 (FIN). There being NO OBJECTION, it was adopted.

Vice-Chair Bunde inquired about the additional twenty-eight signs associated with the fiscal note.

Ms. Wright agreed that there is signage, however, the Senator believes that there is not enough. The intent is to place signs in key spots.

Representative Hudson asked how the bill would affect those people driving below the speed limit, as many of the highways do not have places to pull over. He suggested that the legislation was "troublesome".

Co-Chair Mulder pointed out that there currently is regulation in place between Anchorage and Soldotna, which is already enforced, and that SB 222 would only place it into law.

Representative Lancaster interjected that driving that stretch of road is not as bad as it use to be, noting that the highway has been upgraded.

Representative Croft recommended that the legislation should read while driving "well below" the speed limit rather than just "below". He asked why the legislation was not providing a specific number.

Ms. Wright explained that language was part of existing regulation, "driving below the posted speed limit".

Representative Harris questioned the unintended consequences of the legislation and the committee substitute. He suggested that there should be a penalty to the contractor doing the roadwork if signs were left hanging. The signs should act as a warning to drivers.

Co-Chair Mulder agreed that if and when the signs are up, motorists should obey that indication. That could be accomplished through regulation. He added that it would not be fair to penalize motorists when the signs are not taken down and the work is complete.

Vice-Chair Bunde pointed out that if a contractor was saving money by not taking the signs down, they should be ticketed and that no one should be subject to double fines.

Representative Croft commented that laws should not be written that are technically difficult to comply with. For people interested in obeying the law would be in an impossible dilemma. He referenced the current regulation, suggesting that verbiage be removed. He recommended that the language indicate a "safe" zone for compliance.

Representative Davies suggested that the speed limit reference be removed, leaving language that if five or more cars are held up, then the front driver should pull over.

Vice-Chair Bunde thought that the basic speed law in Alaska supercedes all other speed limits.

Representative Hudson asked if it was intended to target the driver causing the traffic back up. He recommended changing language on Page 1, Lines 8 & 9. He advised that it should be differentiated who would be responsible for paying the fees.

Co-Chair Williams understood that it would be the first car in the backed-up line.

Ms. Wright advised that the drafter indicated that it would be "pointless" to place such a stipulation in the bill.

Representative Hudson pointed out that the legislation would be creating law.

Representative Lancaster noted that signs on the Kenai Peninsula do not indicate a speed limit.

LIEUTENANT JULIA GRIMES, (TESTIFIED VIA TELECONFERENCE), ALASKA STATE TROOPERS, DEPARTMENT OF PUBLIC SAFETY, ANCHORAGE, noted that the Department did support Section 1 of the House Finance committee substitute. She added that in new Section 2, it would be unclear to the public to determine if work was complete or not. She thought that it could be complex trying to prove in court. There needs to be discretion when working in a construction zone and that language must be clear.

Vice-Chair Bunde pointed out that if someone exceeds the speed limit in a construction zone, they would be subject to a citation. The referenced language addresses whether that person would receive a double fine.

Lt. Grimes acknowledged that in current statute, the reduced speed limit was ten to twenty miles an hour in a work zone. If the lower limit was exceeded, the person could be subject to a fine.

DENNIS POSHARD, LEGISLATIVE LIAISON, DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES, noted that the Department of Transportation & Public Facilities has been supportive of the legislation throughout the process. He referenced the new proposed new section. When the work zone provisions were initially proposed, the double fine provisions created concern for the workers. There is additionally concern for the safety of the traveling public.

Another issue is whether the signs are up or down. The State does have regulations and contract provisions in place that require contractors to take signs down more often to

provide a more consistent application. The public should not be the ones to determine if there are workers present.

DON ETHERIDGE, AFL-CIO LABOR UNION, JUNEAU, noted that the Union does not support Section 2, but does support Section 1. Sometimes, construction crews work late at night, and moving the signage could prove to be fatal for some workers and drivers who have no incentive to slow down. He agreed that there is concern regarding the traveling public.

Representative Davies MOVED to delete language on Page 1, Lines 5 & 6: "below the posted speed limit at any time".

Representative Croft OBJECTED.

Representative Davies commented that there is an issue about what the safe speed is in the State of Alaska. There are times when the posted speed limit is unsafe. There are also times when the posted speed limit is perfectly safe. The legislation does not refer to the speed limit but rather addresses a "matter of politeness" regarding when five or more cars are backed behind you.

Representative Croft addressed his objection to Amendment 1 both on legal and practical grounds. He stated that it would be inappropriate for the Legislature to punish the person complying with the law and then encourage disobeying the law. He thought that the amendment would cause prosecutions to double. He stated that laws should not be written like that. Representative Croft claimed that the amendment would take the State backward.

Co-Chair Mulder responded that in the real world, a trooper would not issue a citation when the car is going at the speed limit with five cars following behind. He might pull the driver over and ask that he let traffic pass by. He noted that he had confidence in the State Trooper's ability to determine the consideration fairly. He added that some people do not read signs.

Ms. Wright noted that section had been left open in the initial drafting and that seemed to satisfy the public. She pointed out that the sponsor did not support the amendment.

Vice-Chair Bunde suggested that the amendment would encourage speeders. He agreed that the posted speed limit should be included in issuance of a ticket, however, the driver needs to use common sense when to pull over.

Ms. Wright acknowledged that perhaps she did not understand the amendment.

Co-Chair Williams explained what the amendment would do.

disadvantage in trying to protect their property rights. By requiring a "reasonable and diligent effort" to justify the State's authority of eminent domain, the landowner would have the benefit of full disclosure of information used by the State to determine the public purpose and legitimate value before property could be taken.

Representative Davies voiced concern that the legislation could drive up costs by establishing a new set of court standards.

Ms. Ognisty acknowledged that those concerns had been expressed previously.

Representative Harris questioned if the legislation would prolong the time that a construction projection goes on.

Ms. Ognisty indicated that the Department of Transportation & Public Facilities had previously noted that concern. It is Senator Torgerson's intent that if the situation does occur with private landholders, then those individuals must be dealt with fairly during the process that their land is being condemned. She added that then both sides would be coming from equal ground.

Representative Harris understood that in the process, some of people would not want to sell their land or would want more money than being awarded. It will not always be a "willing to sell, willing to buy situation".

Ms. Ognisty explained that most situations do not reach the point addressed through the legislation.

Co-Chair Williams noted that the committee substitute basically addressed technical changes in the legislation, version #22-LS1399\T, Kurtz, 5/8/02. (Copy on File).

Representative Harris MOVED to ADOPT committee substitute version #22-LS1399\T, Kurtz, 5/8/02, as the version of the bill before the Committee. There being NO OBJECTION, the committee was substitute was adopted.

TAPE HFC 02 - 105, Side B

DENNIS POSHARD, LEGISLATIVE LIAISON, DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES, noted that because of the work done in the House Judiciary Committee, the proposed legislation is better. However, the Department objects to the bill. The basic issue is that the current process is very fair and there is no need to change it. He pointed out that 93% of the State's properties are acquired through negotiation and only 7% of the acquired parcels are through

condemnation. That is an excellent record compared to other states.

The Alaska Constitution requires that the State justly compensate property owners for the fair market price of their property value. Occasionally, there is a dispute by the property owners over the value as different appraisers come up with different values. The current system does well working that out.

Mr. Poshard added that in addition to being a fair process, it is also a mature process governed by the Constitution and federal law and years of litigation in case law. Changes to the statute would invite expensive litigation, which would likely delay projects. Interpretation of the new standard would take years to sort out. The Department's concern is that an unhappy property owner could be given a "tool" to stop or delay the project to attempt to get more money out of the State. The consequences of the bill would not only affect the Department of Transportation & Public Facilities but also anyone given eminent domain authority under State statute. The bill would affect lessees under the Alaska Right of Way Leasing Act, those in charge of oil and gas pipelines, public utilities, all municipalities, and the Alaska Railroad Corporation. The Department knows that many of those agencies have not come forward to address their concerns.

Mr. Poshard added that in addition, the up to 10% penalty listed in Section 4 would be non-participating general fund dollars. The federal government only participates in just compensation to the property owner. They do not participate in the payment of penalty or any type of interest that goes to the property owner. Those funds would be dispersed out of the State's general fund.

Mr. Poshard acknowledged that the Department understands the concerns indicated by the supporters of the bill and is attempting to alleviate them. He referenced memos in the member's packets that address that. Mr. Poshard reiterated that the Department does oppose the proposed legislation.

Co-Chair Williams inquired how many cases go through the litigation process.

Mr. Poshard reiterated that 93% of the properties are acquired through negotiation and 7% are acquired through condemnation. The litigation is usually over that 7% amount. There are some cases in which the property owner objects to the "taking" altogether. In the current legal standard, they must determine whether or not the Department has the authority and the necessity to take that property. The Department has the authority based upon State statute. Regarding the necessity, the Department usually has been

though an environmental and public involvement process, which usually is an easy standard to meet. He reiterated that the process is a fair process and sometimes the dollar value requires litigation.

MICHAEL DOWNING, DIRECTOR/CHIEF ENGINEER, DIVISION OF STATEWIDE DESIGN & ENGINEERING SERVICES, DEPARTMENT OF TRANSPORTATION & PUBLIC FACILITIES, stressed that the value litigation is essentially 7%. One concern with the bill is that it will encourage further litigation.

Co-Chair Williams questioned if funding came from the general fund.

Ms. Poshard advised that the money used to pay the attorney's fee or the property owner award did not come out of the general fund. The amount from the general fund is the charges of the additional penalty resulting from Section 4 of the bill. Currently, the award to the property owner is covered through project funds, which are partly federal and partly State matched funds. However, the penalty does have to come out of the participating general fund pot.

Co-Chair Williams asked for further information regarding the situation with Sealaska and Phillip Evans.

Mr. Downing acknowledged that situation has precipitated the concern. He stated that he and the Department's Commissioner would be making decisions regarding the appeal of the master determination of the property value. He noted that rarely occurs. Sealaska's biggest concern is that they do not want to see a reduction in the acreage that they hold. Sealaska is only interested in an exchange of properties. Mr. Downing advised that it is important to determine ways to expedite the project. He added that passage of the bill would not encourage such action.

Co-Chair Williams inquired about the potential delay in the railroad and/or pipeline projects.

Mr. Poshard explained that the concern for delay rests in language in Sections 1, 2 & 3 of the bill. Section 1 provides the prerequisites, which clarifies that before a property can be taken, it should appear that the Department has made a reasonable effort. Section 2 of the bill attempts to put steps on that process, however, there is language in that version that requires giving the property owner a reasonable time frame to make a reasonable counter offer. The concern for the Department is that language invites litigation from a property owner who is unhappy with the amount of the offer made. They may use that to delay the project. He reiterated that the language invites litigation and has the potential to cause more delays on projects.

Vice-Chair Bunde questioned whether any State agency would be concerned about "reasonable efforts". He suggested that even if the legislation did invite litigation, would it tend to not error on the side of the State.

Mr. Poshard agreed. He added that current law requires the Department to offer a fair market value from the beginning. He emphasized that the State currently is 'reasonable' and the Department does not see the need for the additional language, which would create potential for more litigation.

Mr. Downing interjected that the concern regards what should be issued for the staff if the bill should pass. The staff would simply need to comply with sections (b) & (c). Right of way is typically on the critical path to the development of a project. The delay to right of way does amount to a delay of a project. He added that the cumulative effect of all the legislation over the past few years has gotten Alaska to a point where it takes a long time to develop any project. The proposed bill is not necessary and needs to be considered in relationship to all the other steps that have been added.

Representative Hudson asked about the new elements contained in Section 2. He understood that the legislation would require the Department to advise the property owner to obtain an appraisal and then subject to that, the Department could either buy the land or make a counter offer.

Mr. Downing responded that each property owner is unique. The new language would require that each step could delay the process.

Co-Chair Williams stated that CS SB 278 (FIN) would be HELD in Committee for further consideration.

HOUSE BILL NO. 532

An Act relating to the powers and duties of the Department of Environmental Conservation, to barbers, hairdressers, estheticians, manicurists, tattooers, permanent cosmetic colorists, body piercers, and their establishments, to the licensure of child care facilities, to food establishments, to cosmetics, to tourist camps, trailer camps, motor courts, and motels, to restrooms, to smoking in public facilities, to public health nuisances, to sanitation and sanitary practices, to camps and canneries, to schools, to soft drink establishments, to beer and wine dispensaries, to other establishments, and to commercially compressed air; and providing for an effective date.

Co-Chair Williams explained that HB 532 had been introduced to pare back some responsibilities of the Department of Environmental Conservation. Under the legislation, the Department would no longer have responsibility to inspect restaurants, food markets, temporary food service (fairs), cosmetology businesses, pool/spas, washeterias, public toilets, and overnight accommodations.

Co-Chair Williams advised that the legislation would remove the State's responsibility for oversight of those items, and would then leave it to local governments whether to do the functions. Currently, the State provides no food inspections in Anchorage, as the Municipality has their own program. Municipalities should work together to come up with a program that fits individual needs.

Representative Davies questioned why this bill had not been submitted earlier.

Co-Chair Williams responded that he had attempted that in subcommittee and had met opposition. He reminded members that there is now a serious budget shortfall and that current inspections are not occurring often enough.

Representative Davies commented that there could not be adequate testimony heard from affected municipalities at such a late time in the session.

Co-Chair Williams acknowledged there could not be and that the bill would not be moved from committee at present time, indicating that there would be a public hearing within the next few days.

Representative Harris inquired if the intent of the legislation was to transfer the Department of Environmental Conservation's oversight to the local communities. He questioned what federal funding would be lost in that transfer.

Co-Chair Williams responded that schools and canneries would be subject to the loss of federal funds.

Representative Harris requested that the Committee hear testimony from the Department of Environmental Conservation before the legislation moved forward. He pointed out that the legislation could have dramatic affects on food service.

Co-Chair Williams agreed. He observed that to do an adequate inspection job, it would cost the State between \$8 and \$9 million general fund dollars and the current level of funding is around \$1 million dollars. He maintained that there is enough incentive for the private industry to assure that services were covered.

Representative Lancaster recommended that the issue be reviewed and that the legislation be considered during the next year.

Co-Chair Williams emphasized the lack of funding. He maintained that local communities should take care of these concerns. He questioned where the appropriate funding would come from.

Representative Hudson acknowledged the increased fees. He recommended that the Legislature proceed cautiously so not to abrogate the constitutional responsibility.

Co-Chair Williams pointed out that seafood processing would continue to be funded by the Department. He observed that schools and senior facilities receive federal funds and must be inspected. He maintained that \$1.4 million dollars would be saved.

Representative Davies stressed that \$1.2 million dollars of that budget is from program receipts and that the remaining would be general funds. He questioned eliminating food inspection in the State of Alaska, which will seriously impact schools and then save only \$200 thousand dollars. He stressed that this is not an issue that will close the fiscal gap or save money. The Department is currently doing an "okay" job of providing inspections and on the average, there is an inspection once a year.

The Department of Environmental Conservation is attempting to inspect some restaurants twice a year when there is an indicated need. He thought that it was fair to charge restaurants more because all restaurants profit from having a level playing field. Restaurants depend on tourism and passage of the legislation would threaten the tourist industry.

Representative J. Davies reiterated his question of why this issue had not been introduced earlier. He maintained that the current program is okay and stressed that fees are currently paying for these programs.

Co-Chair Williams asserted that the State is charging for services that are not being supported. He maintained that communities could better perform those services.

JANICE ADAIR, (TESTIFIED VIA TELECONFERENCE), DIRECTOR, DIVISION OF ENVIRONMENTAL HEALTH, DEPARTMENT OF ENVIRONMENTAL CONSERVATION, ANCHORAGE, referred to Section 7, which prohibits the Department and the State from any way regulating food establishments and wholesale establishments. She referenced Section 21, which is part of the statutory repeal of AS 44.46.0205, the Department's authority to establish standards and sanitation for a number of

facilities such as childcare centers, body piercing shops and tourist accommodations. The rest of the bill is just technical amendments to affect those changes.

Ms. Adair explained that the bill would mean that the State would have no authority to recall foods that are not safe to serve the public, and would be unable to close down any retail establishments that are suspected of causing illness. She added that there would be no standards for service of food at public schools, senior citizen facilities, childcare centers, grocery stores and fairs or other special events. Millions of dollars that Alaska receives from the federal government for school lunches, breakfasts and senior citizen meals would be jeopardized.

Ms. Adair continued, there would be no standard of care for sanitization for childcare facilities, tattoo and body piercing shops and public schools. The State would have no authority to assure chlorination of public pools. The recently passed legislation regulating tattooing would not be implemented.

Ms. Adair maintained that the current program is not new, and that it is not failing. The record is improving. The Department is trying to prioritize their work, which is supported by industry. Fees were increased at the direction of the Legislature and non-profits are not charged a fee.

She added that the Division works with operators before they open their business to learn how to properly handle food. There are legal impediments to local governments assuming the service. Local governments cannot work with the federal government on food recalls or bio-terrorism. She emphasized that the statutes and Title 29 would have to be changed; cities and boroughs would have to change their charters.

Ms. Adair observed the difficulty in filling positions. Inspectors are trained within the Department. Many local governments only have a hand-full of establishments and do not have the economy-of-scale to develop a program. She pointed out the outbreak in Canada that resulted in sick tourists in Fairbanks.

Ms. Adair acknowledged that Anchorage does have a good program, but emphasized that the system is evolving and that they do have outbreaks. She stressed that the Department works to prevent outbreaks. If the proposed legislation passes, the safety net will be gone. That safety net will affect people throughout the State. She pointed out that the National Restaurant Association estimates that an outbreak costs a business around \$75 thousand dollars. The last one in Kenai closed that business.

TAPE HFC 02 - 106, Side A

Co-Chair Williams asked if the qualifications for a food inspector could be lowered.

Ms. Adair responded that food inspectors must understand how a bacterium works in an environment, how it can be spread through food, and how humans help that spread. Food inspectors usually have a degree in biology, chemistry or microbiology. The Department does have an 'in-house' training program. She stressed that the standards cannot be lowered because it is critically important that there is someone well trained going into the facilities.

Co-Chair Williams questioned if a one-year training was sufficient.

Representative Davies asked if the State were to switch to the local governments providing the inspections, would they need to have the State standards in place in order to meet the federal requirements.

Ms. Adair affirmed that local governments would have to follow State standards and the standards would have to be uniform.

Representative Lancaster questioned if the local governments could hire the current State staff.

Ms. Adair thought that it would be unlikely that local governments would be ready to hire laid off employees by July 1, 2002.

In response to a question by Representative Hudson, Ms. Adair explained that the school lunch program and senior nutrition programs have a federal requirement for inspections and that the programs are in compliance with the safety statutes. Intrastate food safety issues are at the discretion of each individual state.

KEVIN RITCHIE, ALASKA MUNICIPAL LEAGUE, JUNEAU, commented that there are only a few boroughs that could administer and assume these programs. He addressed the scale of who could provide the inspections the best. The Legislature would have to establish who would pay; essentially the Legislature is the assembly for the unorganized borough.

LYNN FREEMAN, EXECUTIVE DIRECTOR, ALASKA COMMISSION ON AGING, voiced concern with HB 532, specifically Section 7. If budget reduction occurs, there will be no food safety oversight anywhere in Alaska outside of the Municipality of Anchorage. The federal government does not have nor will it

establish a food safety and sanitation inspection program for State's without their own program.

Ms. Freeman claimed that the budget cut would jeopardize the loss of approximately \$4 million dollars spent in Alaska to fund senior nutrition programs. Federal dollars cannot be expended for statewide senior meal programs unless the food is prepared in a commercial kitchen that has been approved by the State or local agency responsible for food safety. Ms. Freeman urged that HB 532 does not pass out of Committee.

Co-Chair Williams stated that HB 532 would be HELD in Committee for further consideration.

CS FOR SENATE BILL NO. 278(FIN)

An Act requiring a good faith effort to purchase property before that property is taken through eminent domain; and providing for an effective date.

RON WOLFE, SEALASKA CORPORATE FORESTER, SEALASKA CORPORATION, JUNEAU, spoke in support of the proposed legislation. The bill would allow the State to make a diligent effort to negotiate the purchase of real property from a private landowner or make a similar effort to make an exchange of property before condemning it. Sealaska Corporation has faced a threat of eminent domain a few times over the past several years in respect to public work projects.

Mr. Wolfe claimed that those actions resulted in protracted lengthy fights for Sealaska rights. They were resolved with a great deal of difficulty. He added that the process usually is hostile because of the rules and the lack of a level playing field. SB 278 could remedy that process.

Mr. Wolfe advised that Sealaska believes that by establishing the requirement in law, it would provide private landowners insurance that the eminent domain process will be fair. The result would be less litigation if those individuals were treated fairly. The efforts to negotiate with an individual in a reasonable manner would make it less likely to go to court.

Mr. Wolfe noted that earlier versions of the bill had been amended so that the delay process would not occur. The current provisions in the bill provide for a 10% surcharge to landowners above the fair market value of the property in the event that the condemnor has found that to be unfair.

Vice-Chair Bunde asked if there was anything in the legislation that could encourage the delay of projects.

Mr. Wolfe responded that the earlier versions had been amended to address that there are not delays in the projects. He noted that Sealaska's attorney could better address that idea.

Mr. Wolfe pointed out another provision within the bill, which would advise private landowners that they could get their own appraiser. He thought that would be a good idea especially for the unsophisticated owners. He added that could add to leveling the playing field.

JON TILLINGHAST, ATTORNEY, SEALASKA CORPORATION, JUNEAU, stated that the bill before the committee would not delay the acquisition of any property under an eminent domain proceeding. He added that the Department of Transportation & Public Facilities had acknowledged that to the House Judiciary Committee. The bill does not have a subjective or ambiguous standard that the Department or the Courts would have trouble interpreting. He added that Mr. Poshard assured the House Judiciary Committee that the proposed version took care of those concerns. Mr. Tillinghast stated that they were disappointed seeing those same concerns currently on the table.

The idea of having a statute, which requires the condemning authority to be reasonable and diligent, is not unique. It is a recommended provision of the model domain code. If the government comes first to the landowner as an equal to purchase the property, that immediately creates a better atmosphere than the government coming to the same person stating that they are the government and are here to take the property.

Mr. Tillinghast noted that at least 23 states have adopted laws similar to SB 278, however, there is a big difference between the laws of the sister states and the bill before the Committee. Under such statutes, it is generally held that a bona fide attempt to purchase the land by agreement between the parties and a failure to do so is a condition precedence to eminent domain proceedings. Failure to comply with that requirement renders any subsequent proceedings void. He stated that the land owner can not dismiss or delay an eminent domain proceeding by going to Court and that is the rule which the sister state's have. That is the rule that went to the House Judiciary Committee. The Department of Transportation & Public Facilities expressed concern that providing additional basis for delaying or stopping their acquiring of the property could delay their acquiring of a right of way.

Sealaska agreed to a "watering down of the bill", which removed that aspect. Under the proposed legislation before the House Finance Committee, it would be legally impossible

to stop, halt or in any manner delay the acquisition of any property through any authority. That remedy was stripped from the bill; it had been contained in Section 4 of the prior versions of the bill.

Vice-Chair Bunde asked if the person's whose property was being condemned could delay that action.

Mr. Tillinghast replied that person's property could no longer delay or hinder the State's acquisition of a piece of property of eminent domain under the proposed bill. Instead, the only remedy that the landowner has is to convince the Court to add a 10% surcharge onto the ultimate eminent domain award.

Representative Whitaker questioned the delay issue.

Mr. Tillinghast stressed that a case could not be made and that the Department of Transportation & Public Facilities has acknowledged that. He commented that he was surprised to see the issue before the Committee and stressed that the sole remedy would be the 10% surcharge.

Representative Whitaker asked if the procedure would change as a result of the bill.

Mr. Tillinghast interjected that it would because under present law, if the State is not reasonable and diligent with you, the Court cannot add the 10% surcharge on a condemnation award. Through the bill, they would be able to do that and it would not change procedure but does change the substance.

Representative Whitaker asked if the bill would change the procedure.

Mr. Tillinghast replied that the bill has not changed any procedure.

Representative Croft questioned if there had been good case effort and if there was any difference between "reasonable, diligent and good faith effort" in case law.

Mr. Tillinghast commented that some states do use the language "good faith" and some use "reasonable and diligent". He claimed that "good faith" was the most subjective of the standards on the menu. "Reasonable and diligent" are more objective standards. He pointed out that did reflect the Department's second concern and which made it to the House Judiciary Committee. They were concerned that "reasonable and diligent" was too subjective. To address that, Section 2 was created. Defining "reasonable and diligent" removed the subjectivity from the bill.

Representative Foster commented that his district was mostly Native land and some of those lands are joined to State land. He asked how Sealaska felt about that.

Mr. Tillinghast responded that would depend on how they define the problem. A State agency should focus on land exchanges as opposed to condemnation. A statute is a safer cure than an unenforceable and formal promise from an administrative agency. The concern is not just that Sealaska wants to focus on land exchanges rather than through eminent domain. Sealaska as a private landowner is interested in leveling the playing field between the government and the private sector.

Representative Foster referenced back up material found in his packet. He asked an estimate of the amount received versus a fair amount for the land.

Mr. Wolfe interjected that Sealaska has never sold the Alaska Native Claims Settlement Act (ANCSA) land. A transaction that occurred in the last ten years was a land exchange. From a practical standpoint, the provision for a land exchange is not one that the Department of Transportation & Public Facilities officials readily embrace because they are complex and complicated. The preference of bureaucrats is to go to a fair marketplace. It took effort to convince the Department to go to a land exchange process in the Klawok Airport. Sealaska believes that the provision to a state land exchange as an alternative would level the playing field. The corporate lands were fought long and hard for by the Native people and they do not want them taken away. The condemning agency is the Department of Transportation & Public Facilities. The land owning agency is the Department of Natural Resources. He acknowledged that these are complex and difficult issues.

Representative Croft asked to hear from the Department of Law on the delay issue. He noted that they were on line.

In response to a question by Representative Foster, Mr. Wolfe explained that through the highway realignment and upgrade, additional property was purchased and deeded to Sealaska through an exchange.

Representative Foster pointed out that a lot of the Native lands have airports. The only lands to extend an airport would be the Native Corporation. He thought that there was a gray area.

Mr. Tillinghast responded that the only effect that the proposed legislation would have on that situation would be if the Department went to the Native Corporation and did not behave reasonably with them.

DENNIS WHEELER, (TESTIFIED VIA TELECONFERENCE), DEPUTY MUNICIPAL ATTORNEY, MUNICIPALITY OF ANCHORAGE, explained that his primary work rests with eminent domain proceedings. He testified against passage of the proposed legislation. He noted that there could be considerations for municipalities that had not yet been brought before the Committee. Primarily, the Municipality of Anchorage already has codes on the books that indicate how to pay and gauge an eminent domain. He noted that they are required to make a good faith effort to follow federal guidelines in respect to appraising public property and the use of fair market value. That is important in the proposed situation, given the previous testimony by Sealaska that there are two different standards used in the State to determine what is the proper method or efforts for acquiring property. The Municipality of Anchorage uses the good faith subjective standard. There seems to be testimony that reasonable and diligent effort is more objective by State statute. That would mean that they would face fine and municipal codes and be in violation of State law. It would give property owners two bites and would create extra layers of work and documentation for the staff.

Mr. Wheeler pointed out that the bill makes for an "invitation for litigation". The current civil role regarding eminent domain requires payment for successful council hired by property owners. There is no disincentive and every attorney would attempt to get the 10% fee. In addition, it is the position that the litigation would occur at the front end. Unless there is a fantastic legislative record, which clearly indicates across the board that everyone agrees, the property owners cannot come back and raise the issue of reasonableness. The attorneys would have to raise that issue.

Mr. Wheeler addressed another issue with respect to appraisals. The current bill suggests that if the property is worth more than \$15 thousand dollars, then the property owner can get their own appraisal. That is not done in all cases and that would drive up the costs and make for further delays. He commented that there needs to be some sort of limitation to avoid costs associated with appraisals.

Mr. Wheeler added that the process itself punishes bad faith because the attorneys that represent the property owners bring it to the Courts attention. At every level, those bodies are not shy about punishing the municipalities for acting in "bad faith".

Vice-Chair Bunde understood that the proposed legislation would only affect the State condemning property by eminent domain. He asked how it would affect the Municipality of Anchorage.

Mr. Wheeler advised that the Municipality does condemn land and does that through complying with State Statutes and through Title 9.

JIM CANTOR, (TESTIFIED VIA TELECONFERENCE), ASSISTANT ATTORNEY GENERAL, DEPARTMENT OF LAW, testified against the proposed legislation. He noted that he had testified against the previous versions of the bill in the House Judiciary Committee. He reiterated comments on the project delay. The problem deals with the prerequisite in Section 1, "before property can be taken". The former version suffered from the same problem. The version is ripe for extended litigation. He observed that litigation occurs over high priced property.

TAPE HFC 02 - 106, Side B

Mr. Cantor noted that when dealing with the higher priced property, counsel has incentive to litigate. He discussed the process. For the higher value parcel (over \$200 thousand dollars), the State must get two appraisals and there is a third Department review. The Department of Transportation and Public Facilities offers the highest appraisal. Other appraisal updates occur just before litigation. The amount of money offered is deposited into the court. The landowners can withdraw that money and have full access to those funds. Following that, the case moves to a master appointed by the court and a recommendation is then made. If the parties are not satisfied, they can go to Court.

Mr. Cantor summarized three areas of concern with the legislation. He asked what a "reasonable" reason would be to turn down the landowner's offer with a 10% penalty at the end. He added what could be a comparable parcel to the developed one. He noted that if the Department of Transportation and Public Facilities condemns someone else's land that too would have legal problems. Whose lands would the State be dealing with since the Department of Natural Resources holds the land not the Department of Transportation. Additionally, what would be classified as a reasonable period of time. He recommended that the legislation get further clarification.

Mr. Downing clarified that it was the Department's preference that the legislation not pass. He noted that if the bill does pass, they would like the opportunity to discuss these amendments.

Mr. Downing submitted documentation from the Right of Way Manual. In that text, the Department provides guidance to

the staff in how to proceed on those properties. He added that threats of condemnation are not allowed.

DICK MYLIUS, (TESTIFIED VIA TELECONFERENCE), DIVISION OF MINING, LAND AND WATER, DEPARTMENT OF NATURAL RESOURCES, ANCHORAGE, commented that the Department of Natural Resources is also concerned with Section 2(b). He observed that the provision would draw the Department of Natural Resources (DNR) into the Department of Transportation's (DOT) land discussions. Most property landowners seeking exchanges would be looking at land managed by the Department of Natural Resources and not the Department of Transportation and Public Facilities.

He added that if DNR land were involved, DNR would need to conduct the exchange, as DOT has no statutory authority to do that with State land. Mr. Mylius concluded that exchanges for State land under, State law, are designed for large-scale parcels and would not be efficient for smaller scale parcels. He noted that the Department of Natural Resources has recently completed several small land exchanges. Each of those exchanges took over two years to accomplish and the staff costs were between \$40,000 and \$60,000 dollars for each exchange.

MICHAEL LOHMAN, (TESTIFIED VIA TELECONFERENCE), WASILLA, spoke to concerns with his personal property located in Wasilla. He explained that the entrance of his building is 25 feet from the property line on the road. The State has declared that they want to take 10 feet for an easement, which would leave 15 feet. That would land lock the 15 feet of parking. Mr. Lohman stressed that landowners need to have someplace to go to negotiate other than through an attorney.

WENDY LINDSKOOG, ALASKA RAILROAD CORPORATION (ARRC) testified that the Alaska Railroad currently, has condemnation powers. To exercise that power, the Railroad must first seek approval from the Governor. She felt that the legislation would add costs to future projects and shared concerns voiced by the Department of Transportation.

Representative Foster MOVED to report HCS CS SB 278 (JUD) out of Committee with individual recommendations and with the accompanying fiscal notes. There being NO OBJECTION, it was so ordered.

HCS CS SB 278 (JUD) was reported out of Committee with "individual" recommendations and with fiscal notes #1 by the Alaska Court System and #4 by Department of Transportation & Public Facilities.

ADJOURNMENT

The meeting was adjourned at 5:05 P.M.