

**ALASKA STATE LEGISLATURE**  
**HOUSE TRANSPORTATION STANDING COMMITTEE**

April 25, 2002

1:40 p.m.

**MEMBERS PRESENT**

Representative Vic Kohring, Chair  
Representative Beverly Masek, Vice Chair  
Representative Drew Scalzi  
Representative Peggy Wilson  
Representative Albert Kookesh

**MEMBERS ABSENT**

Representative Scott Ogan  
Representative Mary Kapsner

**COMMITTEE CALENDAR**

HOUSE BILL NO. 500

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

- MOVED CSHB 500(TRA) OUT OF COMMITTEE

**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 -<br>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         |
| 04/11/02 |          | (H) | Heard & Held                       |
| 04/11/02 |          | (H) | MINUTE(CRA)                        |
| 04/16/02 |          | (H) | CRA AT 8:00 AM CAPITOL 124         |
| 04/16/02 |          | (H) | <Bill Postponed to 4/23/02>        |
| 04/16/02 |          | (H) | TRA AT 1:00 PM CAPITOL 17          |
| 04/16/02 |          | (H) | <Bill Canceled>                    |
| 04/23/02 |          | (H) | CRA AT 8:00 AM CAPITOL 124         |
| 04/23/02 |          | (H) | Moved CSHB 500(CRA) Out of         |

|          |      |     |                                    |
|----------|------|-----|------------------------------------|
|          |      |     | Committee                          |
|          |      |     | MINUTE(CRA)                        |
| 04/23/02 | 3100 | (H) | CRA RPT CS(CRA) 2DP 1DNP 3NR       |
| 04/23/02 | 3100 | (H) | DP: SCALZI, MEYER; DNP:<br>HALCRO; |
| 04/23/02 | 3100 | (H) | NR: KERTTULA, MURKOWSKI,<br>MORGAN |
| 04/23/02 | 3101 | (H) | FN1: ZERO(DOT)                     |
| 04/23/02 |      | (H) | TRA AT 1:00 PM CAPITOL 17          |
| 04/23/02 |      | (H) | Heard & Held                       |
| 04/23/02 |      | (H) | MINUTE(TRA)                        |
| 04/25/02 |      | (H) | TRA AT 1:30 PM CAPITOL 17          |

#### **WITNESS REGISTER**

MIKE KRIEBER, Staff  
to Representative Vic Kohring  
Alaska State Legislature  
Capitol Building, Room 24  
Juneau, Alaska 99801

POSITION STATEMENT: Provided information on HB 500 on behalf of the House Transportation Standing Committee, sponsor, and answered questions.

DENNIS POSHARD, Legislative Liaison  
Office of the Commissioner  
Department of Transportation & Public Facilities  
3132 Channel Drive  
Juneau, Alaska 99801-7898

POSITION STATEMENT: Proposed an amendment to HB 500.

#### **ACTION NARRATIVE**

TAPE 02-12, SIDE A  
Number 0001

CHAIR VIC KOHRING called the House Transportation Standing Committee meeting to order at 1:40 p.m. Members present at the call to order were Representatives Wilson, Masek, Kookesh, and Kohring. Representative Scalzi arrived as the meeting was in progress.

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

CHAIR KOHRING announced that before the committee was HOUSE BILL NO. 500, "An Act relating to the advance acquisition of real

property for public purposes." [Before the committee was CSHB 500(CRA).]

Number 0117

MIKE KRIEBER, Staff to Representative Vic Kohring, Alaska State Legislature, testified on behalf of the House Transportation Standing Committee, sponsor of HB 500. He reminded members that the bill concerns the advance acquisition of right-of-way through the [use of] "eminent domain." The bill would still require all eminent domain cases to be heard through the court process. It doesn't provide any "declaration of takings authority" for any of the entities. The only thing the bill changes is to provide for advance acquisition further in advance of what is typically viewed as authority under eminent domain. He told the committee that eight other states have similar authority.

MR. KRIEBER informed members that the bill was closely scrutinized in the [House Community and Regional Affairs Standing Committee], where changes were made to provide for a hold-harmless clause. This hold-harmless clause would require the purchasing entity to sell the property back to its original owner at the price for which it was acquired, if it had not been used for the stated purpose within 20 years. This would prevent a purchasing entity from speculating on land, and would provide some compensation for the original owner's lost opportunity to develop the property.

Number 0285

REPRESENTATIVE KOOKESH asked if the heirs of the original property owner would have the same opportunity to purchase the land at the original price [in the event of the original owner's death].

MR. KRIEBER answered that the option would be made available to heirs as well.

Number 0327

REPRESENTATIVE MASEK moved to adopt Amendment 1, 22-LS0610\J.1, Utermohle, 4/24/02, which read:

Page 1, line 1, following "**purposes**":

Insert "**; and authorizing pipeline carriers to exercise the power of eminent domain for pipeline**

**purposes "**

Page 6, line 17, following "future public":  
Insert "utility"

Page 6, line 19, following "public":  
Insert "utility"

Page 6, line 23, following "public":  
Insert "utility"

Page 6, following line 27:

Insert a new bill section to read:

**"\* Sec. 12.** AS 42.06 is amended by adding a new section to article 7 to read:

**Sec. 42.06.601. Eminent domain.** (a) A pipeline carrier may exercise the power of eminent domain for pipeline uses including present pipeline uses or for advance acquisition for reasonably foreseeable future pipeline uses. This section does not authorize the use of a declaration of taking.

(b) If a pipeline carrier does not use all or a portion of land acquired for advance acquisition for a future pipeline use as authorized under (a) of this section for pipeline purposes within 20 years following the acquisition of the land or if the pipeline carrier sells all or a portion of land acquired for advance acquisition for a future pipeline use as authorized under (a) of this section, the pipeline carrier shall offer the land to the person, or the person's successor in interest, from whom the land was acquired at the same price that the pipeline carrier paid the person when the land was acquired. If only a portion of the land acquired for advance acquisition for a future pipeline use is available to the former owner of the land under this subsection, the pipeline carrier shall prorate the price of the land to be sold based on the original price of the land and the proportion that the amount of land available for sale bears to the total amount of land originally acquired."

Renumber the following bill sections accordingly.

Number 0335

REPRESENTATIVE KOOKESH objected for purposes of discussion.

REPRESENTATIVE MASEK explained that Amendment 1 would specify which entities have the power of eminent domain; it would make pipeline carriers and public utilities equal with respect to their ability to carry out eminent domain in the acquisition of properties for the public good. She noted that oversight of the pipeline carriers is done by the Regulatory Commission of Alaska (RCA). A judge would still have to rule on whether the acquisition of property was in the public's interest in each specific case. Representative Masek suggested that with the prospect of a natural-gas pipeline running through the state, and increased interest in natural-gas extraction by small, independent companies around the state, this amendment would be in the best interest of the state and the public. She asked for unanimous consent.

Number 0420

REPRESENTATIVE KOOKESH posited that the power of eminent domain resides in the state. He asked what would happen if the pipeline were built by a private company; how could a private company be given the power of eminent domain?

Number 0432

MR. KRIEBER replied that AS 09[.55.240] gives authority to various types of utilities, whether privately or publicly owned.

REPRESENTATIVE KOOKESH said he appreciated that, but pointed out the current discussion in Alaska about whether a private company or the state would build and own the [proposed gas] pipeline.

MR. KRIEBER cited AS 09[.55.240, paragraph (12)] as identifying the purposes of eminent domain. He told the committee AS 42.05[.631] deals with eminent domain for utilities, and AS 42.06 deals with eminent domain for pipelines. Both are regulated by the RCA. Both share the same requirement of a certificate of public convenience and need. The amendment would modify the wording concerning eminent domain for both public utilities and pipelines, so that they are identical.

Number 0589

REPRESENTATIVE SCALZI offered his understanding that [eminent domain] authority is given by a municipality or the state to a public utility.

MR. KRIEBER pointed out that a "public utility" can be privately owned. The authorization of a monopoly is given in exchange for regulation by the RCA. Mr. Kriebler cited examples.

REPRESENTATIVE SCALZI remarked, "We're only speaking of right-of-ways in terms of public utilities."

MR. KRIEBER agreed and said eminent domain authority is given to utilities.

REPRESENTATIVE SCALZI interjected, "Through those right-of-way easements."

MR. KRIEBER disagreed, saying that is a separate section of law. He pointed to the existing law in AS 42.05.631.

REPRESENTATIVE SCALZI read in part from AS 42.05.631, "for public utility uses". He said, "'for public utility uses' are in the corridors and in the right-of-ways."

MR. KRIEBER noted that the bill is for advance acquisition of right-of-way through eminent domain. He called it a "cart and horse issue."

REPRESENTATIVE SCALZI said it may be, but eminent domain for pipeline purposes may be outside of corridors or rights-of-way.

Number 0710

MR. KRIEBER said the act of eminent domain is to condemn private property for public use, to create a public use easement or right-of-way. If the right-of-way already exists, then eminent domain doesn't come into play.

REPRESENTATIVE SCALZI said he hoped the language in the bill would mirror what is done with regard to public utilities.

MR. KRIEBER said that is the case, and mentioned modifications for future use.

REPRESENTATIVE SCALZI asked what modifications Mr. Kriebler was speaking of.

MR. KRIEBER referred to Section 10 of the bill and its underlined wording. He said that would be the new language added to public utility authority for advance acquisition through eminent domain.

REPRESENTATIVE SCALZI asked where the [amendment] came from.

Number 792

REPRESENTATIVE MASEK said Chair Kohring was the sponsor of the bill [although the House Transportation Standing Committee officially sponsored it], and the amendment was hers.

REPRESENTATIVE SCALZI asked what prompted the amendment, because the issue was heard in the House Community and Regional Affairs Standing Committee. He asked why it hadn't come up in that committee.

MR. KRIEBER said when the original bill was drafted, all of the eminent domain issues in statute were "pulled up." He apologized for not recognizing that eminent domain wasn't specified under the Pipeline Act [AS 42.06].

REPRESENTATIVE SCALZI asked if it was an oversight.

MR. KRIEBER said it hadn't popped up in the original drafter's review of existing statutes in order to make the modifications.

Number 0902

CHAIR KOHRING said the purpose of the amendment is to help in the building of a pipeline.

MR. KRIEBER agreed, adding that a potential pipeline-owner entity would still have to be certificated by the RCA, which would have to make a finding to issue a certificate of public convenience and need. Not just any privately owned company can come forward and [carry out an act of eminent domain]. Rather, legal findings of fitness, willingness, ability, and public interest must be made.

Number 0948

REPRESENTATIVE WILSON asked if anyone was against the bill.

Number 0995

REPRESENTATIVE KOOKESH said he was comfortable with transferring the powers of eminent domain within Alaska statutes and law, but didn't want to find out later that [the legislature] didn't have authority to make that transfer.

REPRESENTATIVE KOOKESH withdrew his objection to Amendment 1.

Number 1031

CHAIR KOHRING announced that Amendment 1 was adopted. He clarified that before the committee was CSHB 500(CRA), as amended.

Number 1059

DENNIS POSHARD, Legislative Liaison, Office of the Commissioner, Department of Transportation & Public Facilities (DOT&PF), testified before the committee. He said he'd understood the committee's message from the previous meeting, that it wished the department to consider the concerns of private property owners. Therefore, the department had come up with language that might strike a better balance between the state and property owners on the issue of who receives a benefit from the increase in property value [in cases of eminent domain]. Sometimes an increase in property value is a mitigating factor in the department's taking on a large project with a question as to whether or not it will be completed, he noted.

Number 1130

MR. POSHARD agreed with the notion - when property taken by eminent domain isn't used in a project - that the property owner should have the right to reacquire the property. He said the department didn't like the idea of the original owner's receiving all of the benefit for the increase in property value, however, because the state would be losing money. The fair market value paid by the state could be invested and the interest realized, in addition to the increase in property value.

MR. POSHARD therefore suggested changing the language to say, "the lesser of the fair market value of the land at the time of the reconveyance, or the amount paid when the property was acquired, plus simple interest at the rate of 2.5 percent per year." Under this change, the state could retain some benefit and invest those funds into other projects, or the previous owner could be paid fair market value if the land went down in value. This would strike a balance between the interests of property owners and the state.

Number 1232

REPRESENTATIVE KOOKESH responded that he wouldn't move or support the amendment because eminent domain takes property against the wishes of the owner. He asked, "If the state does not realize the appreciation of the property, ... so what?" He told the committee that the original [owner] might have been able to do other things [with the property] besides let it sit for 20 years. If the state takes property against the wishes of the owner, the only entity that should get a benefit is the owner. He said it would be different if the owner sold the property of free will. But eminent domain doesn't leave the owner any choice.

Number 1290

REPRESENTATIVE SCALZI asked Representative Kookesh if his concern was about the eminent domain itself.

REPRESENTATIVE KOOKESH answered that he was concerned about the state's wanting to benefit from property 20 years later, when it has to sell it back to the individual.

REPRESENTATIVE SCALZI pointed out that the property would be sold back at the original price.

REPRESENTATIVE KOOKESH agreed, but said the owner would also have to pay interest to the state. "The state condemns at their peril, and the individual has property taken away from him against his will," he added.

Number 1333

CHAIR KOHRING asked Mr. Poshard whether there would be a choice for an original owner to either purchase at original value plus 2.5 percent per year, or at the current fair market value, under the department's proposed amendment.

MR. POSHARD answered that it would be the lesser of the two. If the property decreased in value, the department wouldn't require the original owner to pay more than fair market value.

Number 1387

MR. KRIEBER suggested the committee may wish to consider adding language which specifies that [the price for the land should be] the lesser of the price the land was acquired for, or fair market value, in case the land were to decrease in value. He

mentioned the concern in the House Community and Regional Affairs Standing Committee about property owners' being harmed.

REPRESENTATIVE SCALZI agreed with Representative Kookesh's earlier statement against the amendment.

CHAIR KOHRING announced that because of lack of support, the department's amendment would not be offered at the time.

Number 1567

REPRESENTATIVE MASEK moved to report CSHB 500(CRA), as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 500(TRA) was moved out of the House Transportation Standing Committee.

#### **ADJOURNMENT**

There being no further business before the committee, the House Transportation Standing Committee meeting was adjourned at 2:10 p.m.