ALASKA STATE LEGISLATURE
SENATE JUDICIARY COMMITTEE
April 8, 2002
2:05 p.m.

MEMBERS PRESENT

Senator Robin Taylor, Chair
Senator Dave Donley, Vice Chair
Senator John Cowdery
Senator Gene Therriault

MEMBERS ABSENT

Senator Johnny Ellis

COMMITTEE CALENDAR

CS FOR HOUSE BILL NO. 418(L&C)
"An Act amending the Alaska Corporations Code as it relates to delivery of annual reports, notice of shareholders' meetings, proxy statements, and other information and items to shareholders, to voting, and to proxies, including electronic proxy voting and proxy signing; and providing for an effective date."
HEARD AND HELD

SENATE BILL NO. 204
"An Act relating to wildfires and other natural disasters."
MOVED SB 204 OUT OF COMMITTEE

SENATE BILL NO. 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."
MOVED CSSB 278(JUD) OUT OF COMMITTEE

SENATE BILL NO. 357
"An Act relating to the disposal of state land and interests in state land; and providing for an effective date."
MOVED CSSB 357(JUD) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

HB 418 – See Labor and Commerce minutes dated 3/21/02.
SB 204 - See Judiciary minutes dated 4/30/01.
SB 278 – See Community and Regional Affairs minutes dated

2/27/02.
SB 357 – No previous action to record.

WITNESS REGISTER

Representative Lisa Murkowski
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Introduced HB 418.

Mr. Joe Nelson
Legal Council
Sealaska Corporation
One Sealaska Plaza, Suite 400
Juneau, AK 99801
POSITION STATEMENT: Testified in support of HB 418.

Ms. Vicki Kindseth
Staff to Senator Lyda Green
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Introduced SB 204.

Mr. Del Smith
Deputy Commissioner
Department of Public Safety
PO Box 111200
Juneau, AK 99811-1200
POSITION STATEMENT: Testified in opposition to SB 204.

Ms. Dean Brown
Deputy Director
Division of Forestry
Department of Natural Resources
400 Willoughby Ave.
Juneau, AK 99801-1724
POSITION STATEMENT: Testified in opposition to SB 204.

Mr. Kevin Saxby
Department of Law
PO Box 110300
Juneau, AK 99811-0300
POSITION STATEMENT: Testified in opposition to SB 204.

Ms. Barbara Leiss
Palmer, AK
POSITION STATEMENT: Testified in support of SB 204.

Ms. Kim Ognisty
Staff to Senator John Torgerson

Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Introduced SB 178.

Mr. Rick Kauzlarich
Right-of-Way Chief
Department of Transportation & Public Facilities
3132 Channel Dr.
Juneau, AK 99801-7898
POSITION STATEMENT: Testified in opposition to SB 178.

Mr. Bill Satterburg
No address given
POSITION STATEMENT: Was online to testify on SB 178 but was not available.

Mr. Bill Cummings
Assistant Attorney General
Transportation Section
Department of Law
PO Box 110300
Juneau, AK 99811-0300
POSITION STATEMENT: Testified in opposition to SB 178.

Mr. Ron Wolfe
Corporate Forester
Sealaska Corporation
One Sealaska Plaza
Juneau, AK 99801
POSITION STATEMENT: Testified in support of SB 178.

Mr. Jon Tillinghast
Independent Legal Council
Sealaska Corporation
One Sealaska Plaza
Juneau, AK 99801
POSITION STATEMENT: Testified in support of SB 178.

Mr. Dick Mylius
Resource Assessment & Development Manager
Division of Mining, Land And Water
Department of Natural Resources
550 W. 7th Ave. Ste. 1050
Anchorage, AK 99501-3579
POSITION STATEMENT: Testified on SB 357.

ACTION NARRATIVE

TAPE 02-13, SIDE A

2:05 p.m.

CHAIRMAN ROBIN TAYLOR called the Senate Judiciary Committee meeting to order at 2:05 p.m. Present were Senators Cowdery and Therriault and Chairman Taylor. Senator Donley arrived at 2:47 p.m.

The first order of business before the committee was HB 418.

#HB 418

HB 418-CORPORATE NOTICES/PROCEDURES/VOTING

REPRESENTATIVE LISA MURKOWSKI, Chair of the House Labor and Commerce Committee, sponsor of HB 418, said HB 418 would help Alaskan corporations with their management and business operations by allowing them to offer electronic proxy voting and deliver materials to shareholders electronically. She said this change would be similar to corporate code changes made by 25 other states. She said it would allow for efficiencies such as householding of shareholder information. She said she and her sons received their annual notices from an out-of-state corporation in which they were shareholders. She was able to vote online for the entire family in about a minute and a half. She was prompted for a personal identification number and her vote. She said a lot of shareholders received their ballots and put them in the pile of things to do and didn't get to them until too late.

SENATOR THERRIAULT asked who would benefit monetarily from the streamlined process.

REPRESENTATIVE MURKOWSKI said any Alaskan corporation would benefit, including Alaska-based banks and Native corporations. She said HB 418 originated from Sealaska because they wanted to provide notices to their shareholders electronically.

CHAIRMAN TAYLOR asked if there were any further questions for Representative Murkowski. There were none.

MR. JOE NELSON, legal counsel, Sealaska Corporation, said HB 418 was not a new idea and there was nothing unique in the language of the bill. He said it was modeled after corporate codes from across the country but came primarily from Delaware and California codes and the Federal Communications Commission guidelines.

CHAIRMAN TAYLOR said HB 418 would provide shareholders with convenience and should lead to increased participation by shareholders. He said Alaska had the highest rate of computer ownership and Internet access in the country.

He said HB 418 would provide for many opportunities to reduce costs. For example Sealaska could save a lot of money by householding information. He attended a national meeting of corporate secretaries that had a discussion panel about householding and electronic voting. He learned that corporations across the country were saving millions of dollars by using the methods outlined in HB 418.

SENATOR THERRIAULT asked if Sealaska paid anything to the State for oversight.

MR. NELSON didn't know.

SENATOR THERRIAULT thought statutes allowed the State to charge Native corporations a fee for the oversight provided by the Division of Banking, Securities & Corporations (DBSC). He did not believe the State had been charging Native corporations. He said HB 418 would be revenue neutral for the State but would provide a savings to corporations. He said perhaps with this savings it would be time for Native corporations to pay for oversight like the rest of the corporations in the state.

MR. NELSON said DBSC had previously been concerned with HB 418 but those concerns related to financial impact to the State rather than fees paid to the State. He said Sealaska and DBSC worked out those concerns. He said DBSC had testified on HB 418 and he didn't think they had any problems with the reworked bill. He said the current fiscal note reflected no cost to the State.

CHAIRMAN TAYLOR asked how long a proxy lasted.

MR. NELSON thought a proxy lasted 11 months unless a new proxy was submitted. He said HB 418 wouldn't impact the length of proxies.

CHAIRMAN TAYLOR thought HB 418 would be beneficial to all parties involved. He said there had been a lot of discussion in the legislature about minority shareholders who were frustrated by the actions of management and wanted to have their views heard. He thought HB 418 would make it easier for them to express their views because of increased ease of communications.

CHAIRMAN TAYLOR asked if there were any further questions for Mr.

Nelson. There were none. He asked if there was anybody else who wished to testify on HB 418. There was nobody. He asked if there were any amendments.

SENATOR COWDERY offered the following Amendment 1.

A M E N D M E N T

OFFERED IN THE SENATE
TO: CSHB 418(L&C)

Page 5, lines 13 - 14:
Delete "**executed by electronic transmission**"

Page 5, line 18:
Delete "**transmission; and**"
Insert "**proxy;**"

Page 5, line 20:
Delete "**transmission**"
Insert "**proxy, authorized an attorney-in-fact for the shareholder, if applicable, authorized an agent under (1) of this subsection to receive the proxy, if applicable, and authorized an electronic transmission, if applicable; and**

(3) if the corporation is using corporation money to send out the proxy form, include

(A) on the form a line for the shareholder to name an eligible shareholder as the holder of the proxy; and

(B) with the form appropriate instructions on using the line required by (A) of this paragraph, including an instruction that the shareholder may name a person to hold the proxy who is not a part of the current management of the corporation"

SENATOR THERRIAULT asked if the amendment had been discussed with the sponsor of HB 418.

REPRESENTATIVE MURKOWSKI said she had not seen the amendment before.

CHAIRMAN TAYLOR didn't think Amendment 1 would change the intent of HB 418. He said Amendment 1 would require the corporations to provide a form with the appropriate instructions so that a person who wished to could write in a proxy holder. He thought most corporations already did so.

REPRESENTATIVE MURKOWSKI agreed that was probably what Amendment

1 would do. She asked for the source of Amendment 1.

CHAIRMAN TAYLOR understood that every Native corporation already provided a blank line to write in proxies. However, he had heard that Cook Inlet Region, Inc. (CIRI) didn't provide any such space and threw away any proxies that were written in. He said he didn't know whether that was true. He said a CIRI shareholder had asked that shareholders be given the opportunity to name their own proxy.

MR. NELSON thought Sealaska had always provided for write-in proxies. He thought it was already a requirement.

SENATOR THERRIAULT asked if that was a requirement of Sealaska or the State.

MR. NELSON said Sealaska required it. He also thought it was provided for in State regulations.

SENATOR THERRIAULT wondered if Amendment 1 would codify State regulations that CIRI might have been ignoring.

CHAIRMAN TAYLOR said that was his assumption but he couldn't confirm that. He announced that the committee would hear the bill again on Wednesday to allow time for these questions to be answered.

HB 418 was held in committee with Amendment 1 pending.
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The next order of business before the committee was SB 204.

#SB 204

SB 204-WILDFIRES AND NATURAL DISASTERS

MS. VICKI KINDSETH, Staff to Senator Lyda Green, sponsor of SB 204, said SB 204 addressed the concerns of residents during the emergency management of wild fires and other natural disasters. She said SB 204 would give decision-making powers to emergency personnel based on information at hand to allow residents wanting to enter an area under emergency management to do so. She said the residents would be informed of the risks and would enter at their own risk with the responsibility of injury or death taken by the resident. She said the provisions for the decision-making would be authorized by the guidelines adopted by each community.

MS. KINDSETH said the crime of unsworn falsification would be

amended to include anyone making a false statement of residency in order to enter an area under emergency management. Immunity from liability would be provided for state and municipal governments, emergency service workers and organizations for the injury or death of a person entering an area under emergency management.

SENATOR COWDERY said people went to the Big Lake area during the Miller's Reach fire because they were concerned about family members. He asked if SB 204 would still allow them to be in the area.

MS. KINDSETH said the emergency guidelines in the packets addressed some of the questions Senator Cowdery raised. She thought that decision would be made at the scene.

2:25 p.m.

Chairman Taylor left the meeting.

MR. DEL SMITH, Deputy Commissioner, Department of Public Safety (DPS), said Senator Cowdery's concerns were probably the reason SB 204 had been introduced. He said there was a confrontation between troopers and a man who wanted to check on his grandfather during the Lazy Mountain fire near Palmer. He recognized the need to address those issues. He said people came to an area concerned about their parents, children, other family members, pets or house.

He said a committee consisting of the Department of Natural Resources (DNR) and other agencies that responded to wildfires was formed after the Lazy Mountain fire. He was not directly involved with the committee but it was his desire to work out some procedures. He said DPS was working with everyone involved to come up with a plan to address individual emergency situations. He met with Lazy Mountain citizens after the fire to listen to their concerns. He said DPS was working to address those concerns.

MR. SMITH said SB 204 would allow people to enter an area if they were a resident of the threatened or affected area and appeared to be capable of making a reasonable and informed decision. He was concerned about the ability of law enforcement officers to make that determination. He said these situations involved high emotions on the part of both law enforcement officers and citizens, particularly if people were concerned about their families or property. His experience was that people in emergency situations might not remember what they said. He

didn't like putting law enforcement officers in the position of determining whether a person was able to make an informed decision.

He said he had never met an emergency responder who would not try to get someone out of a dangerous situation. He was concerned allowing people into an area would hinder the efforts of responders who wanted to rescue them.

He didn't think putting SB 204 into statute was the proper way to address concerns about emergency management. He understood that many people felt that agencies wouldn't do anything unless they were required to by statute. But he felt that the agencies were involved in making changes and not having anything in statute allowed them flexibility.

He said there was also the problem of letting nonresidents into an area under emergency management. He said SB 204 would allow the State to charge people with making false residency statements in order to get into an area. He noted that when a disaster was large enough and went on long enough some people would try to get into the area to loot unoccupied homes.

SENATOR THERRIAULT said he had the same concerns. He asked if somebody who was let in would be issued a red vest or something to indicate that they wished to remain in the area. He didn't know how SB 204 was supposed to work, especially when things in an emergency situation were moving quickly.

MR. SMITH said there were problems with emergency situations before. He believed substantial work had gone into addressing the problems. He wanted more flexibility in the future for responding law enforcement officers. He said checkpoints should be updated if a fire had moved substantially in another direction and people should be allowed into the safe area. On the other hand, it was dangerous for people to be in an area if a retardant drop was needed or the fire turned and came back. He said SB 204 would create substantial amounts of potential liability for the State.

SENATOR COWDERY said they were discussing people wanting to enter an area. He noted that there would probably be people already in the area before responders arrived. He said these people could be visitors or people driving through as well as residents.

MR. SMITH said that was an issue he had struggled with prior to the Miller's Reach fire. As a law enforcement officer he was uncomfortable saying that a person had to leave their residence.

He said there was a man who died because he wouldn't leave his home in Washington during the Mount St. Helens eruption. He said it was different if someone wanted to go in an area to protect his or her residence. He said those people should be given warning that there was an emergency situation. He said that also created a problem with responders trying to get people out of a dangerous area.

SENATOR COWDERY Asked if there were any further questions for Mr. Smith. There were none.

2:35 p.m.

MS. DEAN BROWN, Deputy Director, Division of Forestry (DOF), DNR, wanted to testify to the steps that had already been taken to address concerns about emergency management. She said this was a complex issue in which the lives of the public and firefighters were in danger. She said Alaska had experienced a number of wildland-urban interface fires and related evacuations. She said the Miller's Reach fire wasn't the first but it was probably the largest and probably received the most publicity. She said the Lazy Mountain fire spurred SB 204. She said the bill addressed a need that was there and was a problem for troopers and fire fighters in responding to all high-risk emergencies. She said safety was DNR's first concern.

She said DNR worked with several organizations, including the Division of Emergency Services, the Alaska State Troopers (AST) and the Red Cross, to develop guidelines for an official working document. She said a field guide was created to test evacuation guidelines. DNR felt the field guide would give them an opportunity to further refine the guidelines. She said dozens of organizations responded to huge fires such as the Miller's Reach fire and those organizations also had valid needs and concerns about how an evacuation was carried out. She said they were concerned about documentation making sure all response organizations knew who was in an area and where they were. DNR felt the guidelines gave them a good flexible document to use as a work in progress because they were going to learn as situations progressed. She said DNR was working with various agencies regarding recommendations suggested after an investigation of a fire. She said the guidelines had been created through a good inter-agency effort and were still being revised. She said the statute was inflexible and changes would be difficult to make as they were needed.

2:39 p.m.

Chairman Taylor returned to the meeting.

MS. BROWN said there might be several entrances into an area under emergency management, each of which would have to be manned by a law enforcement officer in order to control ingress. But people with off-road vehicles could enter an area just about anywhere. She said having unidentified people in an area created a problem because responders needed to document their presence and ensure that they had been informed of the latest changes in the situation.

She thought this was a serious issue and commended the sponsor of SB 204 for putting it forth and trying to resolve it. She said DNR worked closely with the Lazy Mountain homeowners' association on the guidelines. She said a number of very good things that were incorporated into the guidelines came from their discussions.

She said there were concerns from DNR and AST about the need to protect life in wildland-urban interface fires. She said that was a concern even when a person consented and understood the risks of staying in an area.

She said the issue was handled considerably differently in other states. Some states simply determined that if a person entered an area they had been told not to enter, they were completely on their own. She said that created an entirely different level of liability and created serious concerns. She said DNR wanted to protect life and then property and their responders were extremely dedicated.

She said the guidelines used in evacuations were a work in progress and improvements would be made. She said trying to determine who was already there, who was passing through, and trying to limit who could enter would create a problem for fire fighters who should be focused on fire suppression and protecting life and property. She said DNR would be happy to continue to work on the guidelines but they needed the flexibility to improve the guidelines.

SENATOR COWDERY asked what concerns had been expressed by people who were not supportive of the guidelines.

MS. BROWN thought some people felt there shouldn't be any restriction on who could enter an area under emergency management. She said nonresidents might want to check on a family member in the area. She said a resident who was out of the area might also call a friend or family member and ask them to check on pets or children. She said those situations were addressed in the guidelines but not in SB 204. She said some areas were very difficult to get into and out of, such as East End Road in Homer. She said it was difficult to get emergency vehicles into and out of the area and additional traffic into the

area could affect response efforts.

SENATOR COWDERY said during the Miller's Reach fire there were people who wanted to go in and retrieve personal effects such as pictures and family treasures with the knowledge that the building might burn. He said someone could have been outside and called their children to go get some things.

CHAIRMAN TAYLOR asked Mr. Kevin Saxby to provide testimony.

MR. KEVIN SAXBY, Assistant Attorney General, Department of Law (DOL), said there were two legal problems with SB 204. He said SB 204 would create a legal right for members of the public to be present in areas under emergency management. He said these were areas that public safety officials would have determined evacuation necessary. He said this would override the public safety tool of evacuation and interfere with emergency responders.

He said SB 204 would also create a legal duty for emergency responders to ensure informed consent by residents entering an area. He said DOL believed this would lead to increased litigation and litigation risks.

He said Section 1 would make false statements by members of the public regarding residency illegal. He said SB 204 presumed that emergency responders would be able to make that determination. He said DNR firefighters and public safety officers were relatively ill equipped to make those kinds of decisions on the spur of the moment in the field. He said a written consent form could be developed but that would require a higher level of record keeping in order to ensure and later prove that the determinations were properly made.

MR. SAXBY said Sec. 2 would create the new rights. He said these rights would be subject to a number of conditions including residency determination. He said residency determination would be very important for the State to address and prove in litigation. He noted that SB 204 didn't provide for the rights of nonresidents or family members to be in the area. It only provided for the rights of the residents of the area.

2:47 p.m.

He said SB 204 wouldn't immunize the State from property damage occurring as a result of letting the wrong people into an area. He said property damage often occurred through theft or looting. He said the State would have to undergo a new burden in order to ensure that proper determinations about residency and competency were made.

He said requiring informed consent before allowing residents to enter an area would carry public policy implications similar to Miranda warnings. He said Miranda warnings were often videotaped in order to undercut as many legal arguments as possible. He said there could be dozens of people wanting to get into an area during a large emergency situation. He said proving that informed consent was given would be difficult. He said there would be people arguing that the warning wasn't given in enough detail or wasn't understood or people were incapable of making a reasoned and informed decision because they were afraid, confused or lacked mental capacity.

He said SB 204 would also allow people who wouldn't be interfering with the responders' efforts into an area. He noted that the non-interference would only apply to access. He said SB 204 didn't address people interfering with a backfire or a retardant drop. He said there would be costly litigation about the level of non-interference needed to override the rights created in SB 204. He noted that the legislature could create the rights but the courts would have to interpret the rights.

He said the immunity clause for the State would only cover the injury or death of a person entering an area. It wouldn't immunize the State or the responders against property damage. He said property damage was the most common damage that occurred in emergency situations. He said people would be able to tie property damage to an evacuation decision or a faulty residency determination.

SENATOR COWDERY said there was a nonresident in the Miller's Reach fire who had rented a generator and went to the property to wet the generator down and run the pump so water would be available. He asked if SB 204 would allow that. He acknowledged that the person's right to be there would be difficult to prove on the spot.

TAPE 02-13, SIDE B

1:50 p.m.

MR. SAXBY said it would be difficult to make the determination. He noted that SB 204 didn't address the right of nonresidents to enter the area. He said it was presumed that the legislature had looked at all possibilities and alternatives for State action when they addressed a concern. He said SB 204 would give a right to a certain class of people. He said it would be presumed that the legislature didn't intend for other people to have the same right. He said there would be litigation and a lot of argument that statute had been violated if emergency responders allowed nonresidents into an area.

SENATOR THERRIAULT said Mr. Saxby mentioned that the informed consent could be given in a written statement. He said he had to sign a waiver before he went rafting at McKinley. He said the waiver was nothing more than a speed bump in the road of litigation. He said people would say they were distraught because they thought there was a family member, pet or heirloom in the area. He said Mr. Saxby had done a good job explaining that there was no good way to limit the liability of the State and a statute wasn't necessarily enough protection.

He asked if Mr. Saxby was directly involved in putting together the fiscal note.

MR. SAXBY said he was. He noted that it was an indeterminate fiscal note.

SENATOR THERRIAULT said it would cost the State money but there was no way of determining how much.

MR. SAXBY said that was correct.

CHAIRMAN TAYLOR asked if the State had been sued over any of the recent fires.

MR. SAXBY said the State was still involved in very heavy litigation regarding the Miller's Reach fire.

CHAIRMAN TAYLOR asked what that litigation alleged.

MR. SAXBY said the main point of the allegation was that negligent decision-making on the part of State personnel during the first day or so of the response caused or exacerbated the property damage that ensued.

CHAIRMAN TAYLOR asked if any of that litigation had been lost.

MR. SAXBY said they had lost some initial motion practice. He said that was before the Supreme Court but the case had not gone to trial.

CHAIRMAN TAYLOR asked for suggestions from Mr. Saxby on how the legislature might enact a law that would provide that people use a level of common sense.

MR. SAXBY asked if he was speaking of responders or the public.

CHAIRMAN TAYLOR said he was speaking of both. He said existing laws implied that responders would use some level of common sense in determining who they allowed into an area and in the way they dealt with wildland-urban interface fires. He said there were obviously people who felt they had not done so. He said since

the responders didn't seem to do a very good job deciding who should enter an area, SB 204 was filed to leave those determinations up to the people who lived in the area and had some interest in saving their own property.

He said fires weren't the only concern. He noted that there were areas in the state that were subjected to flood, earthquake and tsunami. He said a flood could happen in the Knik River area and a Fish & Game officer who happened to be the only law enforcement officer with a boat would be deciding who could go back to their farm and try to save their cows or who could go back to their house to save their dog.

He asked for suggestions on how to better tailor SB 204 so that it would end up with at least some form of standard by which a reviewing body such as the court or the legislature might address natural disasters in the future.

MR. SAXBY was sorry that he didn't have any suggestions. He cautioned that any guidelines that were adopted should be very general and broad. He said once a statute was adopted and a legal standard was set people would only need to prove that the State had violated the statute to prove their negligence case. He said that was called negligence pro se doctrine. Then they would just have to prove damages. He said there was a big difference between guidelines that were internal policy adopted by an agency and guidelines set into statute by the legislature. He said it upped the ante when the legislature put them into statute.

CHAIRMAN TAYLOR said there could be a situation where somebody called to ask responders to check on their family and nobody bothered to do so for two days. He said in that situation the State could be sued. He asked if that was the kind of guideline he was talking about. He asked if there should be a statute mandating that such a call should be responded to within 12 hours or the department would be held liable.

MR. SAXBY said any specific deadline put into statute would inevitably lead to greater litigation risk for the State.

CHAIRMAN TAYLOR understood his concerns. He said at some point the legislature had to consider whether it was a risk of litigation to the State or a risk of loss to the people of the state. He said that was a very delicate balance. He appreciated Mr. Saxby's advocacy for the State and the work he had done on SB 204. He said the committee would appreciate suggestions on how to make it a better piece of legislation.

He asked Ms. Barbara Leiss to provide testimony.

MS. BARBARA LEISS said she and her husband, Mr. Hilary Leiss, supported SB 204. She said it had been three years since the Lazy Mountain fire, which started the process.

She was disturbed listening to the testimony saying law enforcement officers needed more flexibility. She felt they had all the flexibility in the world during the Lazy Mountain fire and they abused it and misused it.

She said another testifier said SB 204 would create a new right. She said it was a legal right that had been taken away from the people. She said SB 204 was needed to protect the people. She said law-abiding citizens wanted to make the legislators understand that they were supposed to enact laws that were for the people and not against the people. She said without SB 204, Alaska would be nothing more than a police state with all the authority and control of lives in the hands of public servants hired and paid for by the people. She said SB 204 would place constitutional rights and control over their own lives back into the hands of the people. She said they didn't wish to be threatened or coerced by the police like they were during the Lazy Mountain fire. She said they were honest citizens who merely wished to protect their homes and families. She said the existing law went against human nature and the desire to save loved ones and prevent destruction to their homes. She said no one should prevent them from performing that natural act. She said power over others should never be given to the police or any other public servants without also demanding accountability for their actions and punishment for inappropriate actions.

MS. LEISS said there was a young man who was running home to protect his new wife and grandfather and save his farm. She said the police brought him to his knees, put a gun to his head, handcuffed him and dragged him off to jail. She said he had to spend a lot of money to defend himself and his natural born rights.

She said Alaskans were survivors who were used to helping themselves and neighbors. She said Alaskans didn't need to be coddled. She said this wasn't a communist regime. She wanted elected and hired public servants to understand and accept their individual independence. She said they were capable of exercising common sense during a natural disaster.

She said the Lazy Mountain community worked with DPS, AST and DOF regarding the guidelines. She said the guidelines were very well written and the community had accepted them. She said the guidelines had also been presented to and accepted by surrounding communities. She said SB 204 would merely back up those accepted guidelines.

She said SB 204 needed to become law because there could be a change in the different heads of the agencies. She said two of the individuals who helped to draw up the guidelines weren't with the agencies anymore. She said they needed to make sure that if there were a change in personnel the guidelines wouldn't be changed and would remain the way the communities had accepted them.

She noted that the guidelines accounted for several possible situations. She said there was a young man who had been born and raised in Lazy Mountain who was house sitting his father's house. He lived in Dutch Harbor so he had no other place to go. She said he was prevented from going back to the house he was watching for his father.

She said Alaska drivers' licenses didn't have a physical address on them. She said anybody looking in their wallet would have a hard time finding anything with their physical address on it. She said the guidelines addressed that as well.

MS. LEISS said the communities had accepted the guidelines. She wondered why the officials were so worried about SB 204 becoming law. She said people would litigate against the State for everything and anything. She said the officials in charge of forestry, fire and law enforcement had fallen down on the job during the Miller's Reach and Lazy Mountain fires. She said that was why the people had risen up and wanted SB 204 to protect them. She expected the Judiciary Committee to pass SB 204 and give them back their rights.

CHAIRMAN TAYLOR asked if there was anybody else who wished to testify on SB 204. There was nobody.

SENATOR THERRIAULT asked why was there a problem with putting the guidelines in SB 204 into law if they would just back up the guidelines that had been developed. He asked if the bill went further than the guidelines.

CHAIRMAN TAYLOR said SB 204 would put into statute many of the guidelines found in the field guide. He said the field guide was an evolving process that had been developed while working with agencies and citizens. He said the State felt it should not be put into law too quickly because changes might be needed.

He said it was his intention to move SB 204 out of committee. He said the next committee of referral was the Senate Resources Committee, which had a broader panel than the Senate Judiciary Committee. He hoped that before SB 204 left Resources, there would be some finalization of the guidelines that might be sufficient and incorporated into regulations. He said if that didn't happen, the Legislature would continue to work on and move

SB 204.

3:10 p.m.

SENATOR COWDERY moved SB 204 out of committee with attached fiscal note and individual recommendations.

There being no objection, SB 204 moved out of committee with attached fiscal note and individual recommendations.
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The next order of business before the committee was SB 278.

#SB 278

SB 278-TAKING PROPERTY BY EMINENT DOMAIN

MS. KIM OGNISTY, Staff to Senator John Torgerson, sponsor of SB 278, said SB 278 was concerned with eminent domain and declaration to taking proceedings. She said the bill would introduce a reasonable and diligent effort clause that attempted to place the condemnor of the land and the private landholder in an equal negotiating position. She said the bill did not try to remove the authority of the State to take land by eminent domain or complicate existing proceedings. She said current law did not require the State to engage in a good-faith effort to negotiate with private property owners and the State was free to make an unreasonable offer or no offer at all. She said striving to initiate communication from a more equitable bargaining position would promote more productive negotiations, facilitate dialogue over reasonable concerns and encourage suggestions from all parties involved. She said similar statutes had been adopted in at least 23 other states. She said the intent of SB 278 was to reduce litigation by encouraging more cases to be settled up front, promoting expediency in government actions.

She said Senator Torgerson yielded to the wisdom of the Chairman regarding any amendments.

SENATOR THERRIAULT asked for the source of the proposed amendment in the bill packet.

MS. OGNISTY said Sealaska suggested the amendment.

CHAIRMAN TAYLOR asked Mr. Rick Kauzlarich to provide testimony.

MR. RICK KAUZLARICH, State Right-of-Way Chief, Department of Transportation & Public Facilities (DOTPF), said he had worked for DOTPF for over 22 years as a right-of-way agent. He said DOTPF acted in good faith to purchase property before proceeding into condemnation. He said SB 278 would introduce additional

steps into an already complicated process.

He said DOTPF followed a strict set of guidelines when acquiring property. He said the guidelines were based on Article 1, Section 18 of the Constitution of the State of Alaska, which said, "Private property shall not be taken or damaged for public use without just compensation." He said that mirrored the Constitution of the United States of America. He said DOTPF also followed Title 3 of the Uniform Relocation Assistance and Real Property Acquisition Act (URARPA) of 1970, which required that real property must be appraised before initiation of negotiations.

He said DOTPF required documentation in each acquisition file that the owner of the property or the owner's representative was given opportunity to accompany the appraiser during the inspection of the property. If the appraiser was unable to contact the owner or the owner refused to sign a form acknowledging that opportunity that was documented in the file as well.

MR. KAUZLARICH said the 1987 amendment to URARPA and DOTPF defined an appraisal as, "A written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date supported by presentation and analysis of relevant market information." He said DOTPF's staff was required to conduct an appraisal review and establish an amount for just compensation for each parcel to be acquired before an offer was made to purchase property. This was called a reviewer's determination. He said the determination could be no less than the market value as outlined in the approved appraisal.

CHAIRMAN TAYLOR said he understood that a property could be condemned and the owner could pay for an appraisal to be brought to DOTPF. He asked if Mr. Kauzlarich was talking about DOTPF contracting with someone to appraise the land and that person giving the appraisal to DOTPF for review.

MR. KAUZLARICH said DOTPF contracted with a fee appraiser or a staff member to do an appraisal that went through a review process. A negotiator then contacted the property owner. He said the property owner could also submit an appraisal for consideration. That appraisal was reviewed and could become part of the negotiations. He said the federal government would reimburse all costs associated with the acquisition if an agreement were reached between DOTPF and the property owner.

CHAIRMAN TAYLOR asked if the owner's appraisal would be paid for.

MR. KAUZLARICH said the appraisal would be paid for if it was a

legitimate cost in the negotiations.

SENATOR COWDERY asked what types of resistance DOTPF received from property owners. He also asked how many times the property owner's appraisal was included in negotiations.

MR. KAUZLARICH said condemnation appraising was a very specific and involved process. He said a bank appraiser who did home appraisals might not have the expertise necessary to do a condemnation appraisal. He said condemnation appraisal involved looking at the value of the part to be acquired as part of the whole. He said some appraisers didn't understand that concept. He said many times the property owners' appraisals didn't fall within DOTPF's published guidelines. He said the review appraisers worked with the appraisal and the negotiator and points in that appraisal that were pertinent were considered. He didn't think there had ever been a case where the negotiator rejected an appraisal outright. He noted that the negotiator was concerned with doing what was fair for the property owner in accordance with the Constitution of the State of Alaska.

SENATOR COWDERY said there was a downturn in property values during the 1980s. He asked how DOTPF dealt with appraisals that were less than the mortgage.

MR. KAUZLARICH said a lot of single-family homes were acquired for the Eagle River Highland Bridge project. He said a lot of the appraisals were less than the mortgages. He said DOTPF worked with the Federal Highway Administration and the banks and was able to buy the properties and put the people into homes as good as or better than their previous homes without losing any money. He said DOTPF recognized those situations and worked with property owners to resolve them.

He said property owners could submit appraisals to DOTPF for consideration. He said in cases where the property owner's submittal didn't adequately reflect the value of the part acquired the review appraiser could outline the shortcomings of the appraisal for the negotiator and the property owner. He said the appraisal had to meet the same requirements as DOTPF's appraisal in order to be reimbursed by the federal government. Otherwise the costs would come out of State monies.

He said right-of-way acquisition was critical in the timeline of a project. He said part of the timeline for a project accounted for contracting the necessary appraisal reports. He said SB 278 had the potential to delay projects while DOTPF waited for the property owners' appraisals. He said the property owner could already have their expert review DOTPF's appraisal and come back to DOTPF with any questions or problems with the appraisal as well as submitting their own appraisal.

He said SB 278 would introduce additional steps to the process rather than enhancing and streamlining the process. He believed it had the potential to increase costs to DOTPF in additional appraisal expenditures and costs associated with the review and administration of processing the property owners' appraisals. He said DOTPF staff was aware that all reasonable costs incurred by the property owner should be considered in a settlement.

SENATOR COWDERY asked if the appraisers were licensed. He asked if those licenses had to be renewed.

MR. KAUZLARICH said there were two levels of appraisal licensing. The first was residential licensing. The second was commercial licensing. He said condemnation appraisal would be included in commercial licensing. He said the licenses went through periodic review and continuing education was required to maintain licenses. He said DOTPF only contracted with licensed appraisers.

SENATOR COWDERY said Mr. Kauzlarich mentioned he had done appraisal work for the State. He asked if he was licensed.

MR. KAUZLARICH said he was not. He said at the time he was doing appraisal work, there was no license.

SENATOR COWDERY asked if review appraisers were picked randomly or if the same few were used.

MR. KAUZLARICH said there were two review appraisers on staff. He said there were situations where it was necessary to hire an independent appraiser to do a review or an analysis of an appraisal that had been submitted to DOTPF.

SENATOR COWDERY said he had worked with the Municipality of Anchorage and there were arbitrators hired by the Municipality. He said there was some concern that the same arbitrators were hired over and over again and were conscious of who paid them and might not be completely fair.

MR. KAUZLARICH said the appraisers used by DOTPF were independent. He said the review appraisers and the independent appraisers didn't always agree.

SENATOR THERRIAULT said there were two different types of acquisitions. He said DOTPF could be putting in a new road and need to acquire a strip of houses. He thought most of the time DOTPF was widening the right-of-way and taking a strip of land from each property. He wondered how much of the negotiations involved taking a strip of land and what taking that strip of land would do to the rest of the property.

He said constituents had contacted him during some big projects in the North Pole area. He found DOTPF to be very reasonable. He said in one instance an elderly couple was concerned because the driveway in front of their house would no longer be usable. He said there was a driveway behind the house that the couple couldn't use because they couldn't negotiate the steps. He said DOTPF purchased the entire property and resold it.

MR. KAUZLARICH said that was one of the reasons he was concerned with SB 278. He said the majority of the approximately 500 takings each year were strip-takings. He said the appraiser had to determine whether the taking would damage the rest of the property or make it unusable for the owner. He said DOTPF would offer to purchase the property in that situation. He didn't think that most bank appraisers understood how to determine that sort of loss in value and that was why a condemnation appraiser was so important.

He said the property owner might not want the project to go forth. He saw SB 278 as a way for these people to stop or delay projects. He said property values could increase if a project was delayed long enough. He said that made the cost of the entire project increase.

CHAIRMAN TAYLOR asked Mr. Bill Satterburg to provide testimony over the telephone. Mr. Satterburg was unavailable to testify but had sent notes regarding SB 278.

He asked Mr. Bill Cummings to provide testimony.

MR. BILL CUMMINGS, Assistant Attorney General, Transportation Section, DOL, said the State went through the steps Mr. Kauzlarich outlined whether the project came from State or federal monies. He said the federal government paid for the majority of condemnation cases. He said the procedures laid out in SB 278 would be inconsistent with AS 34.60.120, which set out a very thorough acquisition policy for federally funded land acquisitions.

He said SB 278 would add a lot of things that would have to be proved in court proceedings. He said the State would have to prove they had been diligent and reasonable in their negotiations. The State already had to prove they had the authority to take the land and the necessity to use the land in a public project and the taking had been done in a manner consistent with the greatest public good and the least private injury. SB 278 would add another step in that litigation process by requiring the State to prove that the manner in which they treated the property owner was fair. If they hadn't done a reasonable and diligent effort in their negotiations the taking

would be denied and they would have to start all over again.

MR. CUMMINGS said SB 278 didn't have an appreciation for the process the State followed as mandated under AS 34.60.120. He said having a licensed appraiser come in and do an appraisal wouldn't necessarily fix the situation because that appraisal could be unacceptable.

He said there was a case in Ketchikan in which a licensed appraiser did an appraisal of a piece of property for DOTPF. The negotiations using that appraisal weren't successful. DOTPF had another appraiser with designation from the American Institute of Real Estate Appraisers appraise the property and that appraisal value was higher. He said the property owner had a licensed appraiser appraise the property but that appraiser used a legally incorrect method to come up with an estimate of just compensation and that appraisal was thrown out. The property owner then got a second appraisal. He said they went to court and the jury didn't believe either appraisal but the award was closer to DOTPF's number than the property owner's number. He said appraisers were always going to differ on numbers. In that case four different licensed appraisers came up with four different numbers.

He said it could take up to six months for the court to rule on a motion. He said it might not take six months to rule on whether DOTPF had been reasonable and diligent but it would cause a delay nonetheless. He noted that time was money.

He then addressed the following proposed amendment in the bill packet labeled 22-LS139\A.1:

A M E N D M E N T

OFFERED IN THE SENATE

TO: SB 278

Page 1, line 14, following "**negotiation**":

Insert "**as provided in (b) and (c) of this section**"

Page 1, line 14, through page 2, line 5:

Delete "**; for purposes of this paragraph, "reasonable and diligent effort" includes inviting the property owner to secure an appraisal from a real estate appraiser certified under AS 08.87, and either offering to purchase the property for its**

full appraised value as determined by the property owner's appraiser plus the cost of the appraisal, or explaining to the property owner why full appraised value is not being offered"

Page 2, following line 5:

Insert a new bill section to read:

"*** Sec. 2.** AS 09.55.270 is amended by adding new subsections to read:

(b) Before taking property, a condemnor shall invite the property owner to, within a reasonable period of time set by the condemnor,

(1) obtain an appraisal from a real estate appraiser certified under AS 08.87 and offer to sell the property to the condemnor for the appraised value plus the cost of appraisal; or

(2) offer any alternative means of satisfying the public purpose for which the property is sought.

(c) If a property owner offers to sell the property under (b)(1) of this section within the reasonable period of time set by the condemnor, the condemnor must either accept the offer, or reject the offer and provide a reasonable explanation of the reasons for the rejection along with a reasonable counter offer. If a condemnor invites the property owner to make an offer to sell the property as described in (b) of this section and the property owner fails to respond within a reasonable period of time, or if the property owner rejects a reasonable counter offer made under this subsection, the property owner may commence eminent domain proceedings under AS 09.55.290."

Renumber the following bill section accordingly.

Page 2, lines 23 - 24

Delete "**made a reasonable and diligent effort to acquire the**

property by negotiation"

Insert "**complied with AS 09.55.270(b) and (c)**"

Page 2, line 30, through page 3, line 2:

Delete all material and insert:

"**(2) the plaintiff was required to make a reasonable and diligent effort to acquire the property by negotiation under AS 09.55.270(b) and (c) and the plaintiff failed to comply with AS 09.55.270(b) and (c)**."

MR. CUMMINGS said the amendment would remove some of the more burdensome language but the replacement language wasn't much better. He said subsection (c) in Sec. 2 would require the State to accept a counter-offer or come up with another reasonable counter-offer. He said those changes would make it a gentler condemnation code but would increase the amount of possible litigation. He said litigation on whether the State had been reasonable could go on for days. He said modern pre-trial discovery allowed for the disclosure of documents going back to the beginning of time and depositions of everyone. He said that would use a lot of valuable resources.

He thought SB 278 addressed a problem that didn't exist. He said the State had a very fair and reasonable process under the guidance of AS 34.60.120. He thought the public was well served by existing laws.

CHAIRMAN TAYLOR said Mr. Satterburg suggested a provision requiring DOTPF to prepay condemnation costs and fees.

MR. CUMMINGS said that was a bizarre suggestion. He said that suggestion came from a case Mr. Satterburg lost in Supreme Court in which he wanted to do a drilling program on some gravel land he thought held gold. DOTPF would have paid for gold-bearing land if he had found gold. He said Mr. Satterburg filed a petition for review that was turned down and he had been trying to get that provision into law every time he saw a chance.

TAPE 02-14, SIDE A

3:40 p.m.

CHAIRMAN TAYLOR asked what a property owner had to do to protect their interests against a condemnation.

MR. CUMMINGS said the property owner had a number of responsibilities and assumptions made about their abilities. He said the property owner could say there were other things that

could have been done rather than take their land. He said the State had to consider viable options during the process leading up to the filing of the condemnation.

CHAIRMAN TAYLOR asked if the property owner had to hire an expert to do that.

MR. CUMMINGS said that was correct. He said the property owner would be reimbursed for reasonable costs if they were right. They would have to bear the costs if they were wrong.

CHAIRMAN TAYLOR said the property owner would only be reimbursed for a percentage of the costs.

MR. CUMMINGS said Civil Rule 72 provided for reimbursement of actual and reasonable costs for expenses that were reasonably necessary to prove the property owner's case including appraisers, engineering experts, lawyers and paralegals.

CHAIRMAN TAYLOR said the state would have to pay for gold-bearing land if a property owner were willing to go out and spend $75,000 to $100,000 to get their land drilled to determine whether or not it was gold-bearing land and did find gold. He asked if the State would also have to pay for the drilling and attorney's fees.

MR. CUMMINGS said that depended on the nature of the drilling program. They would be reimbursed for at least the prorated portion of those drilling costs that were in the area affected by the taking.

CHAIRMAN TAYLOR said Mr. Satterburg also suggested that the decision to appeal a master's decision should be left solely to the property owner. He said if a master's award had been given, the State should pay it and not appeal the award. He asked if existing law allowed both parties to appeal a master's award.

MR. CUMMINGS said the State had 10 days to appeal while the property owner had 15 days to appeal. He said the State not being able to appeal would stand everything on its head. He said there could be situations in which the master did a bad job. He gave an example in which a master had gone off on a tangent and a awarded approximately $200,000, which was a lot more than the State thought the taking was worth. The State appealed and the case went to a jury trial and the jury agreed with the State. He said each side should have the ability to appeal because the ultimate arbiter was the jury, which was the voice of the community and the people.

CHAIRMAN TAYLOR thought the State had to deposit the value of the land into the registry of the court.

MR. CUMMINGS said that was correct. He said that despoit would be available to the claimants of interest such as the property owner, the city for the prorated portion of taxes and the mortgage holder.

CHAIRMAN TAYLOR asked if that money could be withdrawn if there was an appeal.

MR. CUMMINGS said it could always be withdrawn.

CHAIRMAN TAYLOR asked if the property owner could withdraw that money and still bring suit for a higher value.

MR. CUMMINGS said yes.

CHAIRMAN TAYLOR asked if the State was required to make a deposit for the master's award.

MR. CUMMINGS said the State was not required to do so if they appealed the master's award. He said the property owner would be entitled interest from the time the case was filed on the extra amount of compensation if the master's award was appealed and a higher amount was awarded. He said that was an inducement to get as much money on deposit as possible.

CHAIRMAN TAYLOR asked if the property owner was only entitled interest if the decision wasn't appealed to the Superior Court.

MR. CUMMINGS said the interest was charged on the amount that was greater than the amount of the deposit from the date the State filed until compensation was finally rendered.

CHAIRMAN TAYLOR said the State could go through the process and deposit $100,000. Then the case could go to a master. He said the master could say the property was worth $125,000. He asked if the State would have to deposit another $25,000.

MR. CUMMINGS said no.

CHAIRMAN TAYLOR said the State could then appeal within 10 days. He said the case could then go to Superior Court for a jury trial.

MR. CUMMINGS said that was correct.

CHAIRMAN TAYLOR said the jury could award $200,000. He asked if the State had the right to appeal that decision.

MR. CUMMINGS said yes.

CHAIRMAN TAYLOR said his point was that it could take a long time for the final decision to be made on the value. He said the State would owe interest from the date the master's award was appealed.

MR. CUMMINGS said the interest would be owed from the date the deposit was made, not from the date the master's award was appealed.

CHAIRMAN TAYLOR said the interest was accrued on the money that was awarded above and beyond the amount made in the deposit.

MR. CUMMINGS said that was correct. He said condemnation cases were major interferences with peoples' lives and the State didn't really want to condemn property if it wasn't necessary. He said the State tried to resolve issues without extensive proceedings. He said only exceptional cases went to jury trial. He said comments and concerns like Mr. Satterburg's were very broad and went far beyond what SB 278 was trying to do to the eminent domain code.

CHAIRMAN TAYLOR asked if Mr. Cummings had any further testimony to provide. He did not.

MR. RON WOLFE, Corporate Forester, Sealaska Corporation, said SB 278 would require the State to make a reasonable and diligent effort to negotiate the purchase of real property from a private property owner before condemning the property. He said Sealaska had gone through the land acquisition process twice when the State required Sealaska land for an airport expansion and a highway realignment and upgrade. He said Sealaska and the State were able to negotiate equitable land exchanges in a manner that prevented a hostile eminent domain process. He said the process was awkward both times because the State had no requirement to negotiate with the property owner and the rules for negotiation were not clear.

MR. WOLFE said SB 278 would correct the situation. He said the bill would require fair and equitable treatment while carrying out the eminent domain process. He said the result would be that the property owner would feel they had been treated fairly and openly by the State and would be less likely to bring forth

litigation. He said the court would also be less likely to find that a property owner was not treated fairly. He said Sealaska thought these changes would be positive for the State as well as property owners.

CHAIRMAN TAYLOR asked if there were any questions for Mr. Wolfe. There were none.

MR. JON TILLINGHAST, independent legal counsel, Sealaska Corporation, said at least 23 other states had adopted laws similar to SB 278. He said the bill was based on a provision of the model eminent domain code by the Commission on Model State Laws, which was put together by state legislators to reflect their judgment on the best public policy in issues like eminent domain.

He said the scholars on eminent domain such as the author of *Nichols on Eminent Domain* felt the provisions deterred litigation. He said SB 278 would give the property owner a bargaining chip to use at the table because the State would have a legal requirement to be reasonable with them. He said this would make the property owner join the process as more of an equal rather than a victim.

He said AS 34.60.120 was basically a re-codification of federal policy, which required the State to make every reasonable effort to acquire property by negotiation before condemning it when using federal monies. He said SB 278 would make that requirement enforceable because the property owner could use that as a defense to the condemnation.

He then addressed the proposed amendment. He said most states with similar eminent domain laws didn't define what the State had to do to be reasonable and diligent in trying to negotiate a purchase. He said early in the drafting of SB 278, an example of what might entail reasonable and diligent effort was suggested and placed in the bill as a safe harbor. This was not intended to be the only way the State could be reasonable and diligent, but one of the many things the State could do. He said the problem with using an example was that people would begin to focus on the example. He said they struggled to come up with a better example. He said they had come to the conclusion that the majority of states had done the right thing by not providing an example. Sealaska suggested the committee do the same thing.

MR. TILLINGHAST proposed a different amendment to end paragraph (4) on page 1 at line 14 with the word "negotiation" and deleting the text after that up through and including line 5 on page 2.

He said SB 278 would then read virtually identical to the model eminent domain code.

3:58 p.m.

MR. TILLINGHAST said the proposed amendment (marked 22-LS1399\A.1) would remove the existing example from SB 278 and insert a new example. He was concerned that this example would have the same problems. He said the example in the proposed amendment was probably better than the example in the existing bill. He said the example in the proposed amendment was worded in such a way that it would no longer be an example but something the State would be required to do in every case.

CHAIRMAN TAYLOR asked if the language regarding incapacity cleared up difficulties that had been encountered.

MR. TILLINGHAST said that clause, which would release the State from the requirement to negotiate with a property owner if they couldn't be found or were not legally capable of negotiating, was similar to almost all other states' eminent domain code.

CHAIRMAN TAYLOR asked if there were any further questions for Mr. Tillinghast. There were none. He asked if there was anyone else who wished to testify on SB 278. There was nobody.

He moved Amendment 1 to place a period after the word "negotiation" on page 1 line 14 and delete the following language through line 5 on page 2.

There being no objection, Amendment 1 was adopted.

CHAIRMAN TAYLOR shared Mr. Cummings' and Mr. Tillinghast's concerns about placing an example in statute because the example would become a mandated opportunity for litigation. He asked if Mr. Cummings wished to provide further testimony.

MR. CUMMINGS said the difficulty with putting SB 278 in statute was that there would still be litigation whether or not the State was reasonable and diligent in its negotiations. He said SB 278 would simply provide a mechanism to delay projects, which would cost the State money. He said it wouldn't result in changing the way the State did business.

MR. CUMMINGS thought many people wanted the State to be in the business of trading land. He said SB 278 wouldn't compel the State to trade land with property owners. He said DOTPF already had the ability to purchase land for the purposes of exchange.

He said there would need to be provisions regarding what would trigger a land trade or how land trades should work if the State were going to do more land trades.

He said the main argument for SB 278 was that it would give property owners a way to defend themselves. He said the process DOTPF used was imminently fair. He felt SB 278 would only delay projects.

CHAIRMAN TAYLOR asked if it was correct that 23 other states had similar statutes.

MR. CUMMINGS said he wouldn't be surprised. He said most states' eminent domain codes weren't as liberal as Alaska's because of the way interest was paid and costs and fees were reimbursed.

CHAIRMAN TAYLOR asked what percentage of property takings each year ended up in some form of litigation.

MR. CUMMINGS said between 2% and 5%.

CHAIRMAN TAYLOR said 95% to 98% of the time DOTPF and the property owner were able to come to some sort of reasonable agreement.

MR. CUMMINGS said that was correct. He said the biggest problem the State faced was the lack of time available to pull everything together.

SENATOR THERRIAULT asked if SB 278 would change the process in which DOTPF appraised the land and went to the property owners with proposals.

MR. CUMMINGS said the State would still appraise everything and make offers to the property owners. He said the State hired someone who was competent to do the work and had familiarity with the engineering principles involved. He said the appraiser needed to be able to predict the impact of the project on the physical features of the property. The State then invited the property owner to make a counter offer.

SENATOR THERRIAULT said perhaps there were situations that he was not aware of but he felt that the existing process worked well for the most part. He wondered what would be modified in the process if SB 278 passed that would cause automatic delay.

MR. CUMMINGS said SB 278 would allow people to answer a condemnation complaint by saying they didn't think the State was

reasonable and diligent in its negotiations. He said they could already question the authority and necessity for the taking and whether it was accomplished consistent with the greatest public good and the least private injury. He said these things were only tangentially related to the process and could delay projects. He said all of those things would have to be proved before construction got started. He said the State currently condemned the property and did a quick-take. He said if the property owner was entitled to extra money, that would be resolved after construction had been started. He said SB 278 would require everything to be settled before construction was started.

SENATOR COWDERY asked what happened when a property owner had agreed to a strip taking and later discovered that their driveway was at a 16% grade.

MR. CUMMINGS said that depended on how the change in grade occurred. The State would give them more money if the change was not part of the original design when they signed the agreement. However, the property owner would be stuck with it if the change had been explained during the negotiations.

SENATOR COWDERY thought most property owners weren't aware of what a 16% grade meant in their driveway until after they saw it because they weren't engineers.

MR. CUMMINGS said the State brought the right-of-way plans and design plans with them when they negotiated a settlement. He said right-of-way plans showed each taking in the project and the property owner's taking. The design plans showed the grade of the centerlines and what the slopes would be like.

SENATOR COWDERY asked if they showed the grade of the driveway before and after the project.

MR. CUMMINGS said they did.

SENATOR COWDERY said he didn't think so.

MR. KAUZLARICH said Senator Cowdery had mentioned working with the Municipality of Anchorage on some projects. He said DOTPF participated in a project in Anchorage by overseeing the relocation efforts and the review appraisal efforts. He said the Municipality of Anchorage employees were perhaps not as sophisticated as DOTPF employees in doing the negotiations and there were some communication problems.

He said the property owner was presented with a set of cross-sections that showed the existing grade of the land as well as the resultant grade. He said the right-of-way agent and the property owner discussed what would happen to the property.

SENATOR COWDERY asked how many property owners would recognize and understand what a change of grade would do to their property.

MR. KAUZLARICH said not very many. He said part of the right-of-way agent's job was to ensure that the property owner understood. He said if the property owner came back after the fact and said they had no idea this would happen to their property, DOTPF would take another look at it.

CHAIRMAN TAYLOR asked if there was anybody else who wished to testify on SB 278. There was nobody.

SENATOR COWDERY moved CSSB 278(JUD) out of committee with attached fiscal note and individual recommendations.

There being no objection, CSSB 278(JUD) moved out of committee with attached fiscal note and individual recommendations.
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The final order of business before the committee was SB 357.

#SB 357

SB 357-STATE LAND SALE REQUIREMENTS

4:13 p.m.

CHAIRMAN TAYLOR said SB 357 was an act relating to the disposal of State land and interest in State land and providing for an effective date. He said the State of Alaska received 105 million acres of land through the statehood act. He said SB 357 would require DNR to make State land available for sale. The land would be available in adequate parts and available for over-the-counter sales. He said SB 357 would also provide for open entry lands, agricultural lands and purchase by installments.

CHAIRMAN TAYLOR said SB 357 would provide for the utilization of municipal zoning surveys to be paid for by the person who was acquiring the property. He said DNR would be required to place a monument at least every five miles for each parcel.

He noted the ideas behind SB 357 had been around for some time and had been discussed significantly during the two previous

sessions of the legislature.

SENATOR COWDERY said there had always been the argument that if the land were opened up to the people it would cost the State a lot of money. He said there was some discussion earlier about waivers. He asked if waivers were legal.

CHAIRMAN TAYLOR said waivers could be put in the law so that the State wouldn't be required to provide school services. He said that would burden the land with that process. He said SB 357 was fairly comprehensive in trying to remove as many of the State's obligations as possible.

He asked Mr. Dick Mylius to provide testimony.

MR. DICK MYLIUS, Resource Assessment & Development Manager, Division of Mining, Land And Water, DNR, said DNR recognized that getting land into private ownership was one of the fundamental responsibilities of DNR as set out in Article 8 of the Constitution of the State of Alaska. He said SB 357 would modify some of the existing land disposal statutes and establish two new land disposal programs. He said the first new program would include a short-term offering of 50,000 acres of subdivisions that would be offered through three different first-come first-serve disposals during the first year and a half of the program. The second program would be a long-term open entry program offering 200,000 acres per year. He said that new program would be a more aggressive land-offering program than the State had ever offered and would require a significant increase in the land sales budget.

He said DNR supported some of the proposed changes to existing programs. He said Sec. 3 of SB 357 would change existing law so that when a person defaulted on a lottery land-sale contract the parcel could be immediately offered for sale over-the-counter. He said DNR supported that change. Sec. 4 would change existing law so that when a purchaser in an auction failed to sign a contract of sale or defaulted on a contract of sale DNR could offer that parcel for sale over-the-counter. DNR also supported that change. He said DNR also supported Sec. 5, which would allow DNR to require the purchaser to appraise and survey the parcel and pay for those costs. He said DNR had been able to do this through existing regulations but the statute would clarify their authority.

MR. MYLIUS said DNR did not support Sec. 6, which would create two new land disposal programs. He said this was partly because DNR had existing statutes that provided adequate and progressive programs for the sale of State land into private ownership. He said DNR's existing programs included the subdivision sales

program, the remote recreational cabin program and re-offering of agricultural tracts. He said DNR offered nearly 50,000 acres for sale in FY 02 and FY 03 under the existing programs. He said DNR's existing budget allowed them to offer between 2,500 and 5,000 acres of new land per year. He said DNR was also transferring over 20,000 acres per year to municipalities, many of which also had land sale programs.

He said new land sale programs were not needed to increase land sales. DNR suggested that the most efficient way to increase the amount of State land being offered would be to increase funding for existing programs.

He said DNR had several concerns with the new programs. DNR felt the programs would not be workable because they would have unrealistic deadlines and contained unmanageable and potentially unconstitutional procedures for awarding land. He said the new programs would fail to provide for the public interest.

He said SB 357 contained conflicting provisions regarding surveys in compliance with municipal platting requirements. He said the provisions that would allow individual appraisals and surveys for parcels of land would result in hundreds of appraisals and surveys that would overwhelm borough platting boards and staff and DNR's appraisal and survey staff. He said the existing programs allowed DNR to consolidate the reviews with the boroughs internally, which was a much more efficient way of doing business.

He said the proposed AS 38.14.010 would allow DNR to sell land that was unclassified or classified as forestry, agricultural, settlement and recreational. Existing programs allowed DNR to sell agricultural and settlement lands. He said DNR didn't feel that forest or recreational lands should be considered for sale because the public supported retaining these types of land in State ownership. He said past experience had shown that sale of timber lands would automatically create a large number of people opposed to timber harvest in their area. He said subsection (c) of the proposed AS 38.14.010 on page 4 of SB 357 would exempt land sales from the provisions of AS 38.04 and AS 38.05, which protected public access, public resources of the land and access to subsurface resources and had requirements dealing with retaining State ownership of minerals.

MR. MYLIUS said the proposed 38.14.040, beginning on page 5, would require purchasers to appear in person in order to acquire a parcel. He said this was similar to a previous requirement that had been found unconstitutional by the courts.

He said the budget and revenue projections reflected in the fiscal note were very rough and would need to be refined as SB

357 moved through the process and into the Senate Finance Committee. He said the cost, revenues and general summary were those that were used in 2000 when the existing land disposal programs were being considered in SB 283.

SENATOR COWDERY asked how much land DNR had sold to the public in the previous eight years.

MR. MYLIUS said there wasn't really a land disposal program until the previous two years. He said over the previous two years, DNR offered approximately 25,000 acres. He said DNR was proposing to offer another 20,000 acres, which were mostly parcels that were previously subdivided and came back to DNR or were never sold. He said approximately 2,400 parcels had been offered that fiscal year and 350 of those had been sold.

SENATOR COWDERY asked how much defaulted property had been resold to the public.

MR. MYLIUS said it was difficult to say because land that had been defaulted on was lumped in with other types of offerings.

SENATOR THERRIAULT asked for the location of the language requiring personal appearance in order to purchase land.

MR. MYLIUS said that was in the proposed Sec. 38.14.040 beginning on page 5. The actual language was in lines 1-3 on page 6. He said that provision was very similar to a previous requirement that intended to give local residents a preference in land sales. He said some people who couldn't attend a land sale because it was held during the week filed suit and it was determined that land had to be sold with equal access to all Alaskans.

SENATOR COWDERY said that same subsection said, "The sale price of the land shall be the fair market value of the land as determined by an appraiser selected from a list of appraisers approved by the department under AS 38.14.160." He asked who those appraisers would be.

MR. MYLIUS said DNR had a list of appraisers who were licensed and certified to appraise State lands and wanted to do so.

SENATOR COWDERY asked if the appraisers looked at property values in the vicinity when they did their appraisals.

MR. MYLIUS said they did.

CHAIRMAN TAYLOR asked how to modify Sec. 38.14.040 to bring it into compliance with the court's determination regarding appearing in person in order to purchase land.

MR. MYLIUS said he would delete the language regarding appearing in person.

CHAIRMAN TAYLOR asked if he would place a period after “chapter” on page 6, line 1.

MR. MYLIUS said he would. He said there were several ways to do land sales without requiring the personal appearance of the purchaser. The first was to do sealed bid options. He said there were also lotteries if more than one person wanted a parcel. He said there was also the option of an outcry auction, in which people could have an agent present. He said outcry auctions were inefficient because each parcel needed an individual auction.

TAPE 02-14, SIDE B

CHAIRMAN TAYLOR moved Amendment 1 placing a period after the word “chapter” on page 6, line 1 and deleting “who appears in person to purchase the land at the site or sites designated by the department for the sale of land” in lines 1 through 3. He said that would hopefully bring that into compliance with the constitutional concerns raised by Mr. Mylius.

There being no objection, Amendment 1 was adopted.

CHAIRMAN TAYLOR asked if there was anybody else who wished to testify on SB 357. There was nobody.

SENATOR COWDERY moved CSSB 357(JUD) out of committee with attached fiscal note and individual recommendations.

There being no objection, CSSB 357(JUD) moved out of committee with attached fiscal note and individual recommendations.
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ADJOURNMENT

There being no further business before the committee, the Senate Judiciary Committee meeting was adjourned at 4:30 p.m.