

HOUSE FINANCE COMMITTEE
February 9, 2006
1:44 P.M.

CALL TO ORDER

Co-Chair Meyer called the House Finance Committee meeting to order at [1:44:39 PM](#).

MEMBERS PRESENT

Representative Kevin Meyer, Co-Chair
Representative Bill Stoltze, Vice-Chair
Representative Richard Foster
Representative Mike Hawker
Representative Jim Holm
Representative Reggie Joule
Representative Mike Kelly
Representative Beth Kerttula
Representative Carl Moses
Representative Bruce Weyhrauch

MEMBERS ABSENT

Representative Mike Chenault, Co-Chair

ALSO PRESENT

Representative Lesil McGuire; Juli Lucky, Staff,
Representative Mike Hawker; Craig Johnson, Staff,
Representative Lesil McGuire; Peter Putzier, Assistant
Attorney General, Department of Law; Sarah Gilbertson,
Legislative Liaison, Department of Fish and Game; Tim
Lamkin, Staff, Representative Jim Holm; Dave Feeken,
Broker, Alaska Association of Realtors, Kenai

PRESENT VIA TELECONFERENCE

Lisa Rogers, Certified Public Accountant (CPA), Alaska
Society of CPA's (ASCPA), Anchorage; Don Rulien, Chairman,
Legislative Committee, ASPCA, Anchorage; Roblyn Weibe,
President, Society of Independent Accountants (ASIA),
Anchorage; John Baker, Attorney, Department of Law,
representing the Department of Fish and Game and the
Department of Natural Resources; Ron Estrada, Property

Owner, Fairbanks; Rod Arno, Director, Alaska Outdoor Council (AOC), Anchorage

SUMMARY

HB 274 An Act relating to the practice of accounting; and providing for an effective date.

CS HB 274 (FIN) was reported out of Committee with a "do pass" recommendation and with a zero note by the Department of Commerce, Community & Economic Development.

HB 318 An Act limiting the exercise of eminent domain.

CS HB 318 (FIN) was reported out of Committee with "individual recommendations" and with zero note #1 by the Department of Commerce, Community & Economic Development, zero note #2 by the Department of Environmental Conservation, indeterminate note #3 by the Department of Law, indeterminate note #4 by the Department of Natural Resources and indeterminate note #5 by the Department of Transportation & Public Facilities.

#HB334

HB 334 An Act relating to an exemption from and deferral of municipal property taxes for certain types of deteriorated property.

HB 334 was SCHEDULED but not HEARD.

#HB274

[1:45:29 PM](#)

HOUSE BILL NO. 274

An Act relating to the practice of accounting; and providing for an effective date.

Vice Chair Stoltze MOVED to ADOPT work draft #24-LS0176\C, Bannister, 2/8/06, as the version of the legislation before the Committee. (Copy on File). Representative Weyhrauch OBJECTED.

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Representative Weyhrauch WITHDREW his OBJECTION in order to hear the proposed changes brought forward by Representative Hawker. There being NO further OBJECTION, the work draft was adopted.

REPRESENTATIVE HAWKER, SPONSOR, explained that the committee substitute resulted from a review by the Division of Occupational Licensing. The Division made technical corrections providing the version currently before the Committee.

Representative Hawker spoke to the basis of the bill, which updates the Alaska statutory framework regulating the professional practices of accounting. The bill moves the statues toward the standardized structure recommended in the model of the National Uniform Accountancy Act developed by the American Institute of Certified Public Accountants (AICPA).

Representative Hawker advised that adoption of the changes would:

- Facilitate the practice of Alaska public accountants in other jurisdictions,
- Ensure that qualifications of non-resident public accountants practicing in Alaska, and
- Aid conduct of interstate commerce.

The changes are important to keep Alaska competitive in the international business environment and provide the greatest possible consumer protection for the public relying upon the work performed by Certified Public Accountants (CPA).

Representative Hawker highlighted what the bill would accomplish:

- Increases the supervision and regulation of public accountants who provide auditing services;
- Establishes a mechanism to grant temporary practice privileges to public accountants and public accounting firms licensed in other states;
- Expands peer quality review requirements; and
- Ensures that public accountants meet appropriate education and experience standards.

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Representative Hawker noted that there had been a lengthy discussion in the House Labor and Commerce Committee regarding concerns by non-licensed accountants. He pointed out the "do pass" recommendations from that Committee.

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Vice Chair Stoltze inquired if there were "issues" for CPA's regarding license and non-licensure. Representative Hawker addressed the difference between a licensed accountant and a non-licensed one. The key points for obtaining CPA licensing are:

- A minimum education requirements with a degree in accounting,
- Passing the uniform certified public accountant certification, and
- Applying to the Board to practice as a CPA.

To actually perform audits requires further experience; there is an apprenticeship appointment. There are non-licensed record keepers. Currently, there is little regulation of the work product. Representative Hawker pointed out that Alaska has some of the "least stringent regulations" of any state in the Nation, which is of concern to the licensed accounting profession. The bill would not impinge any non-certified accountants.

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Vice Chair Stoltze asked the percentage of people that initially, fail the CPA examine. Representative Hawker thought that those passing the test the first time fell into the 25% range. He acknowledged that it is a difficult test to pass, adding that his class set a national pass record at 67% graduates succeeding.

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Representative Holm inquired whose responsibility it was to regulate the service.

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Representative Hawker responded that was a function of the State's Board of Accountancy. The Governor, as an

independent body, appoints that Board. He added that there are stipulations regarding the composition of the board.

[2:00:21 PM](#)

Representative Weyhrauch inquired if the legislation would affect "bookkeepers". Representative Hawker responded it would not.

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Representative Weyhrauch noted that there are people who advertise themselves as a bookkeeping service. Representative Hawker stated that they would not be able to express or imply that they have special knowledge or competence issuing any report on the books. There is a 100% exclusion on bookkeeping. The substance on the bookkeeping work is where it crosses the professional line.

[2:02:02 PM](#)

LISA ROGERS, (TESTIFIED VIA TELECONFERENCE), CERTIFIED PUBLIC ACCOUNTANT (CPA), ALASKA SOCIETY OF CPA'S (ASCPA), ANCHORAGE, testified that the legislation provides a much-needed update and revision to the statutes governing the practice of public accounting. The National Association of the State Board of Accountancy (NASBA) and the American Institute of Institute of Certified Public Accountants (AICPA) drafted the Uniform Accountancy Act. She stated that both organizations participated in drafting and reviewing the proposed legislation. She urged support of HB 274.

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Representative Hawker applauded Ms. Rogers for the work she provided on the drafting process.

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DON RULIEN, (TESTIFIED VIA TELECONFERENCE), CHAIRMAN, CERTIFIED PUBLIC ACCOUNTANT (CPA), LEGISLATIVE COMMITTEE, ALASKA SOCIETY OF CPA'S (ASPCA), ANCHORAGE, pointed out that the policy by which an accountant becomes a CPA is not being changed. The intent was to address language and make it more uniform so that accountants can practice in other states without a lot of trouble. Mr. Rulien noted

statewide support of the legislation. He requested that the legislation move from Committee as soon as possible.

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ROBLYN WEIBE, (TESTIFIED VIA TELECONFERENCE), PRESIDENT, ALASKA SOCIETY OF INDEPENDENT ACCOUNTANTS (ASIA) - NORTHERN CHAPTER, ANCHORAGE, voiced appreciation for the proposed legislation and urged its' consideration on behalf of ASIA. She noted that ASIA helps to maintain a professional expertise amongst accountants.

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Representative Kerttula noticed that the reciprocity requirement was being changed from five years to four years; she asked if that was the national standard. Representative Hawker stated it was.

Representative Hawker MOVED to ADOPT Amendment #1. Co-Chair Meyer OBJECTED for purposes of discussion.

Representative Hawker explained that the amendment was brought forward by Department of Law for a language clean up and does not make substantive changes.

Page 10: Delete (b) and insert (c)
Page 15, Line 6: Delete "required by" and
Insert "under"
Page 17, Line 21: Insert "[or suspension]"

[2:10:25 PM](#)

Co-Chair Meyer WITHDREW his OBJECTION. There being NO further OBJECTION, Amendment #1 was adopted.

[2:10:46 PM](#)

Vice Chair Stoltze MOVED to REPORT CS HB 274 (FIN) out of Committee with individual recommendations and with the accompanying zero note. There being NO OBJECTION, it was so ordered.

CS HB 274 (FIN) was reported out of Committee with a "do pass" recommendation and with a zero note by the Department of Commerce, Community & Economic Development.

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AT EASE: [2:11:36 PM](#)
RECONVENE: [2:17:11 PM](#)

#HB318
HOUSE BILL NO. 318

An Act limiting the exercise of eminent domain.

REPRESENTATIVE LESIL MCGUIRE, SPONSOR, stated that HB 318 asks for two policy decisions.

- The first is whether or not it is appropriate to take a person's private property for economic development;
- The second is whether it is appropriate to take all or part of one's primary residence for recreational opportunities of another.

The legislation is not intended to prohibit the legitimate use of eminent domain; it limits use in those two policy areas.

A recent United States Supreme Court ruling that the eminent domain powers of a government could be used to seize private land for economic development purposes has struck a vital blow to private property rights in the country. Although Kelo versus New London is a Connecticut case, the implications were broad. HB 318 clarifies the property rights of Alaskans and prevents a repeat of what transpired in Connecticut.

Representative McGuire continued, HB 318 prohibits the use of eminent domain for economic gain and clarifies that the government be prohibited from taking all or part of a primary residence through eminent domain so that others may have a recreational opportunity. Alaska has thousands of acres of land and it is unacceptable to seize someone's home for recreational purposes.

Representative McGuire noted that there are amendments that deal with the second half of the bill, indicating that amendments were offered in the House Judiciary Committee proposing elimination of any recreational use.

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Representative Joule noted the choice of words used by the sponsor and asked if "private residents" was different than "private property". Representative McGuire said they are different. She commented there are amendments coming that could change that policy. It was decided to "take the middle ground", which would keep the reference to recreational uses and narrow it to a person's private residence. She acknowledged that she had chosen those words "carefully" to alert members of the public policy decision made in the prior Committee.

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Vice Chair Stoltze mentioned that he had received many phone calls referencing Representative Gruenberg's amendment. He asked for information regarding that amendment and if it had been incorporated.

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Representative McGuire stated that in the end, Representative Gruenberg choose to withdraw his amendment (Amendment #5). It would have allowed for local government bodies to have the governmental power to go "around the bill", which she felt would "gut" it. Representative McGuire had objected to that and emphasized, she wanted clear public policy. She understood there would be arguments to reconsider that decision.

[2:27:39 PM](#)

Vice Chair Stoltze pointed out that another state entity has eminent domain authority - the Alaska Railroad. They have never exercised that right to date. He asked if there had been discussion in the House Judiciary Committee regarding the Alaska Railroad.

Representative McGuire replied that they did not sign up for discussion in that Committee. The bill does not profoundly change eminent domain policy enacted on the books, but rather makes it clear that from private-to-private how it will be. The Committee chose to continue on the same eminent domain powers, currently in Statute and the exemptions follow that pattern.

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Vice Chair Stoltze interjected that he was referring to the Alaska Railroad real estate. He asked if they would be limited in using their eminent domain powers for building something like a hotel.

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PETER PUTZIER, ASSISTANT ATTORNEY GENERAL, DEPARTMENT OF LAW & DEPARTMENT OF TRANSPORTATION & PUBLIC FACILITIES, requested the question be restated.

Representative McGuire interjected that the Alaska Railroad would be prohibited from taking private property or residence for building a hotel or further real estate projects.

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Vice Chair Stoltze thought it would be "one government entity to another". Representative McGuire interjected that the bill only changes policy with respect to a governmental authorities ability to transfer private property to another private entity through eminent domain. That being said, in that particular project, there is a mix of land. In the case of the private property taken for development of the hotel, the bill clearly prohibits that, however, public land is different. She admitted that it is complex because of the existing law and statute.

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Representative Kerttula asked about the exceptions listed in Section 3 and referenced Page 4, Sub-section (3), which allows an exemption for private-to-private extraction use of resources. She asked if that language existed in current law and about the "private way of necessity".

Mr. Putzier advised that the intent was to address a specific issue, Article 8, Section 18, of the Alaska Constitution. The language in that was quoted, as it was consistent with the bill's sponsor's intent. They did not intend to imply that they were attempting to change Article 8.

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Representative Kerttula asked if Section 8 was dealing with private-to-private, while condemning land development. Mr. Putzier understood that was correct.

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Representative Kerttula asked for an example on how Subsection 3 would work. Mr. Putzier explained that situation could address natural resource development. The provision could be used as a mechanism to access oil.

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Representative Kerttula discussed that if the State already has the language indicated in Section 8 of the Constitution, it might not need to be restated in the legislation. Mr. Putzier responded that the legislation was not intended to create any ambiguity regarding the impact of Article 8, Section 8. The opinion was that it would be better to address it specifically than to leave any ambiguity.

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Representative Weyhrauch referenced Page 4, Section E, which describes that the power of eminent domain should not be exercised within 250 linear feet of a landowner's personal residence. He questioned if the language should be further clarified, as it currently appears to be a blanket prohibition. Mr. Putzier stated it had been addressed on Page 3, D(1).

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Representative Weyhrauch pointed out that it was a separate section and that it should be clarified. Representative McGuire agreed.

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Representative Weyhrauch asked if the bill prevents a public entity taking private property for developing a public recreational facility. Representative McGuire stated that the bill does prohibit a public entity taking private property to develop a public recreational facility if it involves taking someone's private residence.

Representative Weyhrauch thought a situation could happen like in some cartoon, with proposing a development of shops, etc., amongst a personal and dilapidated residence. He worried about that.

Representative McGuire stated that was "precisely" what the bill was addressing. She felt strongly that one of the fundamental rights of an American and an Alaskan was the right to own private property.

- To determine a better use of land, should the amendment pass, there could be a provision in the recreational and economic development area to negotiate with the landowner.
- Secondly, there is another "out" on Page 4 Line 9, which allows the Legislature by law to transfer property.

She indicated she was compelled to add that language to provide an escape valve and thought it could occur in an extreme circumstance.

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Representative Weyhrauch understood that in the Kelo case, a private nonprofit corporation was established to develop an area that was deemed to have economic plight. Property was transferred for the development of a shopping mall. That private property was taken for purposes beyond a shopping mall. Mr. Putzier replied that the Connecticut Legislature authorized the entity to study and make recommendations for development projects, which involved the doctrine of economic plight.

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Representative Hawker pointed out that the House Finance Committee has traditionally stripped legislative intent language from bills.

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CRAIG JOHNSON, STAFF, REPRESENTATIVE LESIL MCGUIRE, explained that eminent domain is a little difference than most statutes passed. Eminent domain is designed to be a Court issue and is a Court proceeding. The intent language

was added in order to indicate that the policy will be determined by the Legislature. It should not be the policy of the judge or the Court. The language clearly spells out that intent and is why it was included. The bill will not live or die by its' intent but it does clarify what is meant. He recommended that the language remain in the bill.

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Representative Hawker concurred. He asked if the sponsor thought the intent language went far enough. Representative McGuire said she was satisfied as the language summarizes the most important points.

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Representative Hawker asked if the language could possibly create too narrow of an interpretation. Representative McGuire replied that a Court would look at the plain language of the Statute. She reiterated that the bill had been through many drafts and that she thought it currently has the right balance.

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Representative Weyhrauch asked if the sponsor would support the amendment discussed on Section (e). Mr. Johnson thought it would be appropriate and would strengthen the bill.

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DAVE FEEKEN, BROKER, ALASKA ASSOCIATION OF REALTORS, KENAI, testified that the legislation is a big issue and part of the national association's agenda. He noted that currently, the Association of Realtors are in the process of helping thirty-eight states review their eminent domain laws. He noted the three primary issues:

- Concrete definition of public use;
- Concrete definition of eminent domain; and
- Move any issue of eminent domain to the level of elected officials

Mr. Feeken pointed out that in national surveys, 97% indicated they are opposed to what happened in Connecticut.

Currently, there are approximately 10,000 eminent domain cases in the United States at this time.

Mr. Feeken testified that the Alaska Realtors support approximately 90% of HB 318. One of the major issues is that of recreational property. He pointed out that less than 1% of Alaska is in private hands. The issue is that 25%-35% of the real estate industry is second homes. He referenced Page 4, Subsection ©, recommending that the concern of the realtors could be solved by deleting that Section. He estimated that 40% of the 1% is probably recreational property in Alaska. Alaska is a growing State and there are many people with second homes.

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Mr. Feeken discussed property on the Kenai River and cautioned legislators to be careful when dealing with public recreation access. That addresses a person's quality of life and the ability to use their private property; it could dramatically decrease the value of their properties. He emphasized that the word "recreation" means something different throughout the State and for each person.

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Co-Chair Meyer inquired if the issue arose in the House Judiciary Committee. Mr. Feeken did not know as he was out of town at that time.

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RON ESTRADA, (TESTIFIED VIA TELECONFERENCE), PROPERTY OWNER, FAIRBANKS, explained a situation that threatened his property in Fairbanks. He related financial concerns as the City of Fairbanks had offered him only one-quarter of what he had invested in his home and property. He testified in favor of HB 318.

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Representative Holm thanked Mr. Estrada for testifying. He inquired if there was an appeals process available. Mr. Estrada did not know of one.

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ROD ARNO, (TESTIFIED VIA TELECONFERENCE), EXECUTIVE DIRECTOR, ALASKA OUTDOOR COUNCIL (AOC), ANCHORAGE, addressed concerns in accessing public lands prior to statehood. AOC is worried with areas such as in the Mat-Su Borough, where developed management plans have the authority to restrict access to public waters. He spoke in support of Amendment #1 and HB 318.

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Representative Joule asked if there was an example of an individual trying to get access to public waters. He noted concern if it would relate to Native Corporation or Native allotment land.

SARAH GILBERTSON, LEGISLATIVE LIAISON, DEPARTMENT OF FISH AND GAME, JUNEAU, believed that Mr. Arno was referencing private lands and some borough management plans, both of which are prohibiting public access to lakes in the Mat-Su. She acknowledged that there have been problems with O'Brien Creek at Chitna.

Representative Joule thought that would have a "general application", however, would be intended for a specific area. Ms. Gilbertson said yes.

[3:05:17 PM](#)

Representative Holm MOVED to ADOPT the New New Amendment #1. Representative Kerttula OBJECTED for discussion purposes.

NEW NEW AMENDMENT #1

Page 5, Line 6: Delete "natural resources area,"

Page 5, Line 7: Delete "access to a wilderness area,"

Page 5, Line 8: Delete "facility, personal use fishery"
Insert "harbor"

Page 5, Line 28: Delete "and"

Page 5, Line 30, following "AS 41.21": Insert
"; and (ix) a path, trail, road, or site for
which no reasonable alternative exists and, which

is necessary to preserve or establish public access to publicly owned land or water, if the use of the path, trail, road, or site itself is for transportation to or to facilitate use of publicly owned land or water rather than primarily for recreation."

Mr. Johnson stated that the sponsor had no problems with the amendment.

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Ms. Gilbertson related a story about the Alaska National Interest Lands Conservation Act (ANILCA), which goes to great lengths to maintain access to lands and waters in Alaska. The amendment is about maintaining, preserving and establishing the necessary access to public land and waters. The amendment would maintain the State's current ability to use eminent domain under narrow circumstances.

Representative Kerttula questioned if "we are out of the area of private, private" and if the legislation would expand the State's authority of eminent domain. Ms. Gilbertson related that the purpose of the amendment clarifies that the State's authority of eminent domain cannot be used for recreational trails.

JOHN BAKER, (TESTIFIED VIA TELECONFERENCE), ATTORNEY, DEPARTMENT OF LAW, REPRESENTING THE DEPARTMENT OF FISH AND GAME, & THE DEPARTMENT OF NATURAL RESOURCES, spoke to Representative Kerttula's question noting that the amendment does not speak to a "private - private transfer". When there is literally no reasonable alternative, the State was attempting to preserve access for the public, the land taken could not be used for recreational purposes.

Representative Kerttula questioned if Amendment #1 adds language not in current law. Mr. Baker advised that the amendment is designed to provide a narrow exception to the new restriction on the use of eminent domain affected by Section E, Page 4, Line 10. Representative Kerttula reiterated, if the change would take the State back to what we currently have. Mr. Baker clarified that it will narrow the restriction and added that the amendment does not extend any powers of eminent domain.

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Mr. Johnson interjected that the bill would narrow what is currently in place. It is not the intent of the bill to restrict any existing policy on eminent domain.

Representative Kerttula summarized her understanding of the bill, which takes away the right-of-access and then attempts to place the access back in through Amendment #1. She questioned whether the bill reaches further than what is currently in statute. Mr. Baker agreed it does.

Representative Kerttula referred to a dip-net case and asked if the proposed bill would have changed that outcome. Mr. Baker brought up another aspect of eminent domain, stating that it would still remain the burden of the State to make a finding that is necessary to take the land. The bill would not change the burden of the State regarding eminent domain.

Representative Kerttula commented that was because they would have to prove the public use & purpose. Mr. Baker agreed.

Representative Kerttula WITHDREW her OBJECTION to the New, New Amendment #1. There being NO further OBJECTION, it was adopted.

[3:16:12 PM](#)

Representative Holm MOVED to ADOPT Amendment #2, #24-LS1083\S.3, Bullock, 2/9/06. (Copy on File). Co-Chair Meyer OBJECTED for discussion purposes.

Representative Holm explained that Amendment #2 provides technical corrections.

AMENDMENT #2

Page 1, Line 14: Delete "primary"
Insert "personal"

Page 2, Line 11: Delete "(d), (e), and (f)"
Insert (d) and (e)

Page 4, Line 12: Delete "primary"

Co-Chair Meyer WITHDREW his OBJECTION. Representative Kerttula OBJECTED and asked if the language would affect any personal property.

Mr. Johnson referred Representative Kerttula to the definition section where it is defined as "personal dwelling".

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Representative Hawker asked Mr. Johnson to address the realtor's desire to include definition of personal property. Mr. Johnson responded that the sponsor's policy decision was that a persons land was their home. The legislation was primarily written to protect someone's home. He said that the bill has become a compromise. Representative Hawker concurred with the sponsor's attempt.

Representative Kerttula WITHDREW her OBJECTION. There being NO further OBJECTION, Amendment #2 was adopted.

[3:20:58 PM](#)

Representative Holm MOVED to ADOPT Amendment #3, #24-LS1083\S.1, Bullock, 2/9/06. (Copy on File). Co-Chair Meyer OBJECTED.

Representative Holm explained Amendment #3 would change the word "law" and replace it with "statute" in Section #4.

Mr. Putzier addressed Amendment #3. The Department of Law has not had an opportunity to examine the amendment. He asked to have a little time to verify that the amendment would not restrict the practice of eminent domain. He stated that the Administration could not take a position at present time.

Representative Hawker asked if the language would exclude ordinances and if that would be of consequence. Representative Holm replied that he could not answer that.

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Mr. Baker agreed with Mr. Putzier, since he had not had an opportunity to look at the amendment.

TIM LAMKIN, STAFF, REPRESENTATIVE JIM HOLM, noted that the amendment was offered in light of potential ambiguity of the Legislative Branch determining the definition for public use as opposed to a public agency or regulation and in the absence of a statute to make that definition.

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Representative Hawker agreed, stating that he did not like law imposed by regulation. He worried that the change could override the Constitution or other legitimate law bodies. He recommended that the amendment be further clarified.

Representative Holm agreed and indicated his intent was to make the language a more narrow application. If the language does create possible ambiguity or remove any capabilities, then he would not move it.

Co-Chair Meyer asked if the Department of Law could provide an answer by Monday.

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Representative Weyhrauch suggested it be discussed in the context of statute and how it would affect case law. He thought it could be legislative action and that the "statute" was clear that a Legislative passed bill and "regulation" indicates administrative action.

Representative Holm clarified it was his intent for it to be statute and not regulation. He did not know if the language of the amendment was the correct way to present it.

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Representative Weyhrauch asked if Representative Holm meant "statute" passed by Legislature not the Executive Branch. Representative Holm said he did. Co-Chair Meyer inquired if that could be accomplished by a minor change made to the amendment. Representative Weyhrauch did not think so.

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Representative Holm inquired if the intent was to pass the legislation from Committee at this time. Co-Chair Meyer replied it was.

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Representative Weyhrauch stated that he could adjust the amendment conceptually. Co-Chair Meyer voiced concern with the ambiguity of Amendment #3. He wanted to guarantee that it was clear.

Representative Holm WITHDREW Amendment #3 and said it could be offered on the House Floor. Mr. Johnson noted that the sponsor would support that.

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Representative Holm MOVED to ADOPT Amendment #4, #24-LS1083\S.4, Bullock, 2/9/06. (Copy on File). Co-Chair Meyer OBJECTED.

AMENTMENT #4

Page 1, line 14, following "residence":

Insert "or a landowner's small business"

Page 4, line 12, following "residence":

Insert ", the landowner's small business, "

Page 4, line 14, following "residence":

Insert "or a landowner's small business"

Page 5, line 30, following "AS 41.21":

Insert "; (6) "small business" means a structure that is the primary location of a business that

(A) employs fewer than 26 individuals;

(B) has been located on the land that is the subject of the eminent domain proceeding for not less than one year; and

(C) may not have been constructed, placed, or occupied for the purpose of avoiding eminent domain proceedings"

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Representative Hawker asked about the definition of small business and the "structure". He asked if it should be

primary or only the general location. Representative Holm did not know if primary would be the correct word.

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Vice Chair Stoltze commented that small business in his area were agricultural entities. He asked the intent of the amendment. Representative Holm replied that the intent was that when dealing with a person's business, the number of people employed should not define it.

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Vice Chair Stoltze was confused by the use of "structure". He did not want to exclude something. Representative Holm thought that depriving a person of a structure would be one thing, whereas, depriving a person of land takes the value. By taking the structure away, there is an on-going value destroyed. Land does not fit into that category. Vice Chair Stoltze commented on the push of development in the Mat-Su Valley and said he would be remiss if that was not addressed.

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Mr. Lamkin pointed out that a structure measures 250' with a line is drawn. The intent behind the amendment was to protect the spirit of the small mom & pop business and their livelihood.

Mr. Johnson noted that the sponsor had viewed Amendment #4. The policy call of the House Judiciary Committee was to deal with only the home. He recognized that the proposed was a valid point in the section addressing recreation. The typical fix or requirement is eminent domain. There is a structure to be taken for recreational purposes. He added that Representative McGuire would not oppose the amendment, however, it is not the legislation's intent.

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Representative Holm stated that a number of years ago, trail groups took land for recreation; he admitted he was sensitive to that.

Representative Kerttula asked if the amendment only applied to the recreation section and would not affect something like Wal-Mart. Representative Holm agreed.

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Co-Chair Meyer hoped that small business as defined in the amendment was the correct legal language. Mr. Johnson advised that there had been equal protection concerns voiced.

Mr. Putzier reiterated that Amendment #4 did arrive shortly before the hearing. He recommended the issue, which that should be further discussed is the equal protection component.

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Mr. Baker echoed the advice of Mr. Putzier, noting that they had identified equal protection as an argument someone might make in the future.

Representative Kerttula asked if that language was potentially opening the door to larger businesses. Mr. Putzier replied it would. Representative Kerttula said that was worrisome.

Representative Holm was not worried. He noted that in essence, it is about equal protection for a person that owns a business and a house. The amendment would protect both.

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Representative Hawker recommended a change to the real property and the primary location of that business. He proposed new language, Amendment #4, Page 1, Line 12: "means real property that is the primary location of a business". Representative Hawker thought that change could address the ideas of Vice Chair Stoltze.

[3:43:24 PM](#)

Mr. Johnson reiterated that it was not the intent of the original legislation. He pointed out that the sponsor has

indicated she would not oppose anything that does not damage the original intent of the bill.

Mr. Johnson responded to Representative Hawker's comments. He provided a possible scenario. He worried that a careful balance is maintained.

[3:45:28 PM](#)

Co-Chair Meyer recommended that the amendment be withdrawn to be considered by Legal Services and Department of Law. Representative Holm stated that HB 318 is one of the most important bills that the Legislature will pass this year; he stated that the amendment is important and should be considered along with the bill.

Co-Chair Meyer believed that equal protection is a huge concern. Mr. Johnson agreed. He noted that he did not oppose the amendment, however, there are pitfalls associated with it. He noted that the attorneys and the sponsor would be willing to work on that language. He added that it is the desire of the sponsor to move the bill as soon as possible.

[3:47:52 PM](#)

Representative Holm WITHDREW Amendment #4. There being NO OBJECTION, it was WITHDRAWN.

[3:48:04 PM](#)

Representative Weyhrauch MOVED a conceptual change, Amendment #5, Page 4, following Line 14, "unless the person otherwise agrees". He stated that the purpose of that language would be no blanket prohibition on eminent domain or private property.

[3:48:55 PM](#)

Co-Chair Meyer OBJECTED for discussion purposes.

Mr. Johnson interjected that the sponsor agrees with Amendment #5.

Co-Chair Meyer WITHDREW his OBJECTION. There being NO further OBJECTION, conceptual Amendment #5 was adopted.

[3:49:31 PM](#)

Co-Chair Meyer requested that Representative Holm follow up with Legislative Legal Services on Amendments #3 and #4.

Representative Foster MOVED to REPORT CS HB 318 (FIN) out of Committee with individual recommendations and with the accompanying fiscal notes.

Vice Chair Stoltze OBJECTED for comment. He acknowledged that it is an important bill and stated that the public record is very important on the issue. He WITHDREW his OBJECTION.

[3:50:19 PM](#)

Co-Chair Meyer agreed and acknowledged that the subject needs to be discussed with legal counsel.

There being NO further OBJECTION, it was so ordered.

CS HB 318 (FIN) was reported out of Committee with "individual recommendations" and with zero note #1 by the Department of Commerce, Community & Economic Development, zero note #2 by the Department of Environmental Conservation, and indeterminate note #3 by the Department of Law, indeterminate note #4 by the Department of Natural Resources and indeterminate note #5 by the Department of Transportation & Public Facilities.

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[3:50:59 PM](#)

ADJOURNMENT

The meeting was adjourned at 3:51 P.M.