ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE
January 11, 2006
1:10 p.m.

MEMBERS PRESENT

Representative Lesil McGuire, Chair
Representative Tom Anderson
Representative John Coghill
Representative Pete Kott
Representative Peggy Wilson
Representative Les Gara
Representative Max Gruenberg

MEMBERS ABSENT

All members present

OTHER LEGISLATORS PRESENT

Representative Mike Kelly
Representative Jim Holm
Representative Gabrielle LeDoux

COMMITTEE CALENDAR

HOUSE BILL NO. 318
"An Act limiting the exercise of eminent domain."

- HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 318
SHORT TITLE: LIMITATION ON EMINENT DOMAIN
SPONSOR(S): REPRESENTATIVE(S) MCGUIRE, HOLM, HAWKER

01/09/06	(H)	PREFILE RELEASED 12/30/05
01/09/06	(H)	READ THE FIRST TIME - REFERRALS
01/09/06	(H)	JUD, FIN

WITNESS REGISTER

CRAIG JOHNSON, Staff
to Representative Lesil McGuire
Alaska State Legislature

Juneau, Alaska
POSITION STATEMENT: Presented HB 318 on behalf of Representative McGuire, one of the bill's prime sponsors, described the changes incorporated into the proposed CS for HB 318, Version Y, and responded to questions.

PETER PUTZIER, Senior Assistant Attorney General
Transportation Section
Civil Division (Juneau)
Department of Law (DOL)
POSITION STATEMENT: Responded to questions during discussion of HB 318.

DON BULLOCK, Attorney
Legislative Legal Counsel
Legislative Legal and Research Services
Legislative Affairs Agency (LAA)
Juneau, Alaska
POSITION STATEMENT: Spoke as the drafter of HB 318 and responded to questions.

REPRESENTATIVE PAUL SEATON
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Asked questions and provided comments during discussion of HB 318.

REPRESENTATIVE BOB LYNN
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Provided a comment during discussion of HB 318.

BOB SHAVELSON, Executive Director
Cook Inlet Keeper
Homer, Alaska
POSITION STATEMENT: Provided comments during discussion of HB 318.

PETER ROBERTS
Homer, Alaska
POSITION STATEMENT: Provided comments during discussion of HB 318 and expressed a preference for the original version of the bill.

DANA OLSON
(No address provided)

POSITION STATEMENT: Provided comments during discussion of HB 318 and asked that the bill be held over.

KEVIN C. RITCHIE, Executive Director
Alaska Municipal League (AML)
Juneau, Alaska
POSITION STATEMENT: Provided comments during discussion of HB 318.

GARVIN BUCARIA
Wasilla, Alaska
POSITION STATEMENT: Provided comments during discussion of HB 318.

ACTION NARRATIVE

CHAIR LESIL McGUIRE called the House Judiciary Standing Committee meeting to order at 1:10:32 PM. Representatives McGuire, Wilson, Anderson, and Kott were present at the call to order. Representatives Coghill, Gruenberg, and Gara arrived as the meeting was in progress. Representatives Kelly, Holm, and LeDoux were also in attendance.

HB 318 - LIMITATION ON EMINENT DOMAIN

1:10:43 PM

CHAIR McGUIRE announced that the only order of business would be HOUSE BILL NO. 318, "An Act limiting the exercise of eminent domain."

1:11:20 PM

REPRESENTATIVE WILSON moved to adopt the proposed committee substitute (CS) for HB 318, Version 24-LS1083\Y, Bullock, 1/11/06, as the work draft. There being no objection, Version Y was before the committee.

CHAIR McGUIRE, speaking as one of the bill's prime sponsors, relayed that HB 318 was created in response to the recent U.S. Supreme Court case, Kelo v. City of New London, in which the court said that a local ordinance in Connecticut allowing for eminent domain to be used to take private property could, in fact, be used to take property from one private entity and transfer it into the hands of another private entity for mere economic development purposes. She indicated that she did like the fact that in the Kelo decision, the court upheld the ability

of states and local governments to decide their own rules regarding eminent domain, allowing them to continue controlling their own areas. However, the part of the Kelo decision that was disturbing to the public, she surmised, was the idea that one's own private property could be seized merely for economic development purposes. She characterized this concept as one foreign to Americans, who would not think that such was an appropriate use of eminent domain "taking" by a governmental entity.

CHAIR McGUIRE relayed that HB 318 is intended to clarify the uses of eminent domain in the state of Alaska. In working on the bill, she remarked, a lot of interesting issues have arisen, such as how to reconcile private property rights with the state's subsurface rights and constitutional mandate to develop Alaska's natural resources for the maximum benefit of all Alaskans, or how to reconcile private property rights with the desire to promote recreational opportunities. She mentioned the coastal trail in her district as one such example of the latter situation, adding that this topic has generated a lot of discussion in her district because it would involve approximately 80 different "takings" of some type - through the use of eminent domain - unless people decide to give up their property voluntarily.

CHAIR McGUIRE said that the bill attempts to address the question of, "if it is inappropriate to take private property for mere economic development purposes, how appropriate is it to take private property for mere recreational purposes." In conclusion, she said she is open to suggestions for improving the bill.

1:16:02 PM

CRAIG JOHNSON, Staff to Representative Lesil McGuire, Alaska State Legislature, indicated that the bill is intended to address two issues. The first being whether it is appropriate to take a person's private property for economic gain, and the second being whether it is appropriate to take a person's private residence for the recreational opportunities of another person. The bill is not intended to either increase or decrease the power of eminent domain, he remarked, acknowledging that eminent domain does have appropriate uses.

MR. JOHNSON said that because of the ruling in the Kelo case, approximately 13 pieces of eminent domain legislation are now before the federal government, ranging from a constitutional

amendment prohibiting the use of eminent domain for economic use, to a House bill that would take economic development funds away from any state or [local] government entity that uses eminent domain for economic gain. He explained that HB 318 precludes the use of eminent domain for economic gain, clarifies that the government is prohibited from using eminent domain to take a person's primary domicile for recreational purposes, and attempts to define the term "primary domicile."

MR. JOHNSON also explained that since the year 2000, 41 states have used eminent domain to take private property for commercial use, ranging from 2,100 cases in Florida to 5 cases in Louisiana. Currently 13 states have 47 pieces of legislation pending regarding eminent domain - ranging from an absolute moratorium on its use for economic development, to instituting "one-year stays" - though Alaska is the only state attempting to address the issue of using eminent domain for recreational use purposes.

MR. JOHNSON opined that Alaska must go on record as addressing this issue or face the loss of federal funds. He relayed that the Anchorage Assembly recently adopted a local law prohibiting the taking of private property for recreational use, but offered his belief that this issue should also be addressed for the rest of the state. He offered his understanding that although Version Y changes the bill substantially, those changes all revolve around the issue of defining what constitutes a primary domicile; the bill still attempts to protect the use of eminent domain in appropriate situations, such as those that involve resource development.

1:22:50 PM

REPRESENTATIVE ANDERSON asked how many other bills have been introduced to address the issue of eminent domain.

MR. JOHNSON said that there are six bills with language similar to HB 318, and offered his belief that by working with the sponsors of those other bills, everyone's concerns could be addressed via one bill that can then be used as the vehicle.

REPRESENTATIVE GARA said his main concern is that HB 318 may have unintended consequences. He said he would like to leave the question of whether to allow the use of eminent domain for recreational use purposes to local officials, and asked whether the Alaska State Constitution allows the taking of private property for private commercial development.

1:26:45 PM

PETER PUTZIER, Senior Assistant Attorney General, Transportation Section, Civil Division (Juneau), Department of Law (DOL), offered his understanding that in the Kelo decision, the U.S. Supreme Court was applying Connecticut state law. Furthermore, [in Alaska], the authority to use eminent domain must exist, property can only be taken for a legitimate public use, and that [public] use must be recognized under statute. Whether or not and how far the concept of public use can be expanded, however, is still an open question, he posited. In response to a further question, he surmised that it would be an open question as to whether the Alaska State Constitution allows "a taking to be transferred to a private person."

1:29:23 PM

DON BULLOCK, Attorney, Legislative Legal Counsel, Legislative Legal and Research Services, Legislative Affairs Agency (LAA), explained that Article I, Section 18, of the Alaska State Constitution says that private property shall not be taken or damaged for public use without just compensation. He, too, noted that in the Kelo decision, it was determined that the situation involved taking property for a reasonable public use as that term was defined in Connecticut. House Bill 318 is attempting to define the parameters of public use in Alaska, he remarked, adding that current statute does contain a list of traditional public uses.

MR. PUTZIER characterized Version Y as an improvement over the original bill; for example, it includes some exceptions that attempt to protect most of the public uses for eminent domain that are already explicitly recognized by the legislature.

1:32:30 PM

MR. PUTZIER, to highlight some of the changes offered by Version Y, noted that Section 1 now contains legislative intent and findings language, and that Section 2 now attempts to more narrowly target the perceived problem. The legislature does not necessarily want to allow the taking of a private landowner's property for the purpose transferring it to another private entity. The original bill used the term "economic development", but it was determined that such a term might be construed as being overbroad, particularly given that most projects involving eminent domain will have an economic development component.

MR. PUTZIER noted that [Version Y] includes a procedure to deal with situations in which the state does want to transfer property acquired through eminent domain to a private entity. Section 3 of Version Y stipulates that such transfers are allowed, but only if there is written concurrence of the commissioners of the Department of Natural Resources (DNR), the Department of Transportation & Public Facilities (DOT&PF), the Department of Commerce, Community, & Economic Development (DCCED), and the Department of Military & Veterans' Affairs (DMVA). Furthermore, Section 3 of Version Y contains several exceptions to the general rule of "no transfers of private property to a private person," and these exceptions are included in the bill with the intent of maintaining eminent domain practices as they currently exist.

1:36:10 PM

MR. PUTZIER then described the exceptions, which are listed in proposed AS 09.55.240(d)(1)-(6). The first exception involves situations in which the landowner consents, either before or after a condemnation proceeding has been filed, to the taking. The second exception involves situations in which a private person has been expressly authorized via statute to either exercise the power of eminent domain or to receive an interest in land acquired by the exercise of eminent domain. The third exception involves situations in which the transferred property would be used for a private way of necessity to permit essential access for extraction or use of resources, and this exception is actually stated in Article VIII, Section 18, of the Alaska State Constitution.

MR. PUTZIER relayed that the fourth exception involves situations in which the property is transferred to a person available for public hire to transport freight or passengers by motor vehicle, watercraft, aircraft, or railroad car. The fifth exception involves situations in which the acquisition is used, in part, for leasing property to a private person or private business that occupies a portion of public property or a public facility such as an airport, port, or public building; this exception is intended to preclude the argument that eminent domain cannot be exercised for those kinds of facilities. The final exception involves property that is transferred to a person by oil and gas lease under AS 38.05.180.

MR. PUTZIER relayed that subsection (e) of proposed AS 09.55.240 speaks to the aforementioned issue of recreational facilities

and projects, stipulating that the power of eminent domain may not be used to acquire such facilities or projects unless written concurrence of the commissioners of the DNR, the DOT&PF, the DCCED, and the DMVA is obtained; this exception would be available should any unforeseen situations arise in which it is determined that such a taking should occur. Reading from the following provisions, he indicated that proposed AS 09.55.240(e)(1)-(2) attempts to define what a "recreational facility or project" is, and that proposed AS 09.55.240(e)(3)(A)-(H) provides a listing of what it is not.

MR. PUTZIER relayed that proposed AS 09.55.240(f) states that eminent domain would not be allowed in order to acquire a person's abode that is used as a dwelling place, or property within a 1,000 linear feet of such an abode, for the purpose of a recreational facility or project, and then specifies how an abode may qualify for this prohibition. He then noted that proposed AS 09.55.240(g) provides a definition of "private person" for the purpose of proposed AS 09.55.240.

1:44:22 PM

REPRESENTATIVE GARA suggested leaving the "recreational issue" aside in order to consider the question of whether it might be sufficient to simply say, "never to a private person or entity unless it's necessary for a resource development project approved by the state."

CHAIR McGUIRE concurred with the concept of simply stating under what circumstances eminent domain may not be used.

1:48:06 PM

REPRESENTATIVE PAUL SEATON, Alaska State Legislature, asked whether "private person" would include an entity such as the Alaska Railroad Corporation (ARRC).

MR. JOHNSON indicated that the existence of entities such as the ARRC could potentially cause a problem should the bill be simplified to address only resource development projects.

REPRESENTATIVE SEATON said his concern is that the current version of the bill doesn't appear to make a distinction between quasi-governmental agencies, such as the ARRC or the Alaska Industrial Development and Export Authority (AIDEA), and "private person."

MR. PUTZIER clarified that proposed AS 09.55.240(d)(2) does provide an exception for certain private persons to whom the power of eminent domain has already been given, and is intended to address situations involving the ARRC or the AIDEA, for example.

CHAIR McGUIRE noted that proposed AS 09.55.240(g) - located on page 5, lines 23-24 - says: "In this section, 'private person' means a person that is not a public corporation as defined in AS 45.77.020 or a government as defined in AS 11.81.900." She also noted that proposed AS 29.35.030(d) - located on page 6, line 9 - says: "In this section, 'private person' has the meaning given in AS 09.55.240." Thus, she surmised, the bill does attempt to provide a distinction between "private person" and entities such as the ARRC and the AIDEA.

REPRESENTATIVE SEATON referred to the language on page 3, lines 30-31, and page 4, line 1, - which says, "the private person has been expressly authorized by statute either to exercise the power of eminent domain, or to receive an interest in land acquired by the exercise of eminent domain" - and said he is trying to figure out who such a "private person" would be other than the aforementioned entities.

1:52:50 PM

CHAIR McGUIRE explained that in including such language, the thought was that in the future there may be an as yet unknown private entity or private person that should be allowed to obtain private property via eminent domain. She acknowledged that her initial concern with such language is that it appears to be a catchall phrase that could be used to get around the intent of the bill, but she mentioned that in speaking with the drafter, he made the point that including escape valves in the legislation might be appropriate. She also pointed out that the commissioners referred to in proposed AS 09.55.240 are not immediately accountable to the public.

REPRESENTATIVE SEATON offered his understanding that [some] local municipalities have an absolute prohibition against the use of eminent domain to convey property from one private person to another. He asked whether the aforementioned state commissioners have "veto power" over a municipality's eminent domain rules.

CHAIR McGUIRE indicated that the difference in standards being proposed, via Version Y, for the State and municipalities is a concern of hers, and should be addressed.

REPRESENTATIVE GARA noted that the aforementioned commissioners take direction from the governor and, thus, one governor could direct the commissioners to view eminent domain issues differently than another governor would so direct. He reiterated that he would like to simplify the bill, again suggesting that they limit the transfer of private property to private individuals via eminent domain to resource development projects. He remarked that he can't think of any other circumstance in which the legislature would want to give a private entity the ability to take private property away from another private entity.

MR. PUTZIER suggested that another such circumstance might involve the use of eminent domain by utilities, but acknowledged that utilities already have the power to exercise eminent domain, and that this power is statutorily granted.

REPRESENTATIVE GARA pointed out that the current law on that issue would not have to be changed via the bill.

MR. PUTZIER maintained his point that those who would be, or who currently are, exempted from the prohibitions proposed via the bill should be expressly included in the bill as being exempted.

1:59:04 PM

MR. BULLOCK, referring to Representative Seaton's question, noted that in Kelo, the land was being transferred to a "private non-profit entity" that was established prior to the case. So even though the property being transferred was not considered to be "blighted" - a traditional reason for using eminent domain - the local government had already considered New London to be economically blighted and so formed a "development corporation" to see how the economy of the area could be turned around. This corporation developed a plan, presented it to the local government, which then transferred the power of eminent domain to the corporation, which was defined as a "private non-profit entity". The corporation then went about purchasing property in conjunction with the plan it had developed.

MR. BULLOCK added, "The situation in New London had been jumpstarted by [Pfizer, Inc.,] deciding to build a research facility there, and so they looked at ... that as the trigger to

start this development project." Most of the people in the New London situation voluntarily sold their land, but the Kelo case arose when some people did not want to give up the property on which they'd grown up. To recap, in the Kelo case, the authority to exercise eminent domain had been delegated to a private corporation; he remarked that in Alaska, the Alaska Housing Finance Corporation (AHFC) is a similar entity that has been granted similar powers.

REPRESENTATIVE SEATON asked, then, whether the bill is really accomplishing anything, particularly given that the bill is stipulating that eminent domain can be used in the same type of circumstances as occurred in the Kelo case. He suggested that it might be better if the legislature were to simply pass a resolution saying that the legislature would look unkindly upon the taking of private property for private development.

MR. BULLOCK offered his understanding that the questions being addressed via HB 318 are, "what constitutes public use," and "who is going to define it." The bill currently takes the approach of saying what isn't public use, and if such guidelines are not provided by the legislatures, he warned, then individual guidelines as to what constitutes public use will be created by whichever organization or local government is looking to exercise the power of eminent domain. In response to a question, he relayed that existing law addresses the issue of utilities exercising the power of eminent domain.

REPRESENTATIVE GARA suggested, then, that the bill be altered to simply provide a new subsection to current law that says, "And except where otherwise provided by statute, eminent domain may not [be used] ... to transfer private land from one private person to another private person."

MR. PUTZIER offered his belief that Version Y does just that, and then read portions of the bill. He acknowledged, though, that the bill is a work in progress.

2:05:51 PM

REPRESENTATIVE COGHILL said it would be interesting to find out the rationale used regarding the language currently in AS 29.35.030, which addresses the use of eminent domain by municipalities and second class cities, particularly the language pertaining to citizens voting on the issue of whether [a second class city] can exercise the power of eminent domain. He indicated that he wants to ensure that the power of using

eminent domain to take property is not abused by a government entity, and that he is not sure that placing that decision with the aforementioned commissioners is necessarily the best way of preventing such abuse. He relayed that he does tend to agree with the exceptions in the bill, but pointed out that exceptions tend to multiply and therefore may not actually keep the scope narrow.

REPRESENTATIVE WILSON opined that the bill should contain solid [parameters/guidelines], but because commissioners change from administration to administration, leaving certain decisions up to a group of commissioners may not accomplish this goal; similar circumstances could end up being treated differently based on what a given group of commissioners decides.

REPRESENTATIVE COGHILL remarked on the large amount of power Alaska's executive branch wields, and referred to the governor's ability to appoint department commissioners as an example.

2:08:55 PM

MR. BULLOCK suggested that the committee consider the question of what effect allowing commissioners to make a decision regarding eminent domain would have on the Administrative Procedure Act (APA).

REPRESENTATIVE BOB LYNN, Alaska State Legislature, referred to what he termed "the coal bed methane [CBM] situation," and noted that the topic of eminent domain has raised a lot interest, and opined that this topic should be addressed at this time.

MR. BULLOCK said that the comment regarding CBM raises the issue of access to state resources, which the state owns subsurface rights to. Under the Alaska State Constitution, owning the subsurface rights gives the state the right to access the property; furthermore, there are specific statutes that provide for the compensation of the owner. Thus the CBM situation is not an eminent domain issue, he explained. "There's still some private subsurface ownership on the Kenai Peninsula, and there's also the issue of the subsurface ownership by the regional Native corporations," he added, but noted that generally, under common law and the right to subsurface rights, whoever owns the subsurface rights has the right to enter for development purposes.

REPRESENTATIVE GRUENBERG opined that it is very important for all the terms used in the bill to be carefully defined. He

characterized the bill as being designed to engender litigation, and warned that if the legislature doesn't define the terms used in the bill, then the courts will.

2:12:33 PM

BOB SHAVELSON, Executive Director, Cook Inlet Keeper, after relaying that his organization is a citizen-based nonprofit group dedicated to protecting the Cook Inlet watershed and the life it sustains, said that much of what he'd intended to say to the committee pertained to the original version of HB 318. He opined that a lot of the controversy arising from the Kelo decision stems from what he indicated was U.S. Supreme Court Justice Clarence Thomas's characterization that the court, in the Kelo decision, was replacing the Fifth Amendment and unseating public use limitations and replacing them with a broader, more permissive public purpose test for eminent domain. Mr. Shavelson said agrees with what he believes to be Justice Thomas's opinion that the Fifth Amendment should be strictly construed to allow eminent domain only when a legitimate public use would be effectuated and that the Kelo decision went too far.

MR. SHAVELSON offered his belief that both the original version of HB 318 and Version Y carve out two sweeping exceptions to the eminent domain power which go far beyond a simple fix to the Kelo decision and will pose serious concerns for business and recreational interests in Alaska. He offered his belief that simply fortifying the current statutory and constitutional public use test will address the problems created in the Kelo decision. With regard to the bill's recreational use exception, he remarked that such use satisfies the public use limitations of the Fifth Amendment and would add to the quality of life that Alaskans have come to enjoy and expect, but he sees no need to include such a provision in statute, particularly given that the aforementioned coastal trail issue has already been addressed at the local level.

MR. SHAVELSON ventured that one of the issues raised by the bill's recreational use exception is that it promotes unequal treatment when compared to other legislatively permissible uses. For example, proposed AS 09.55.240(a)(6) would adopt a public policy that places private property in jeopardy of condemnation for an open pit mine but refuses to grant a similar consideration for "snow machines, sled dog, or similar trial access." Such an inconsistency will undermine private property rights and legislatively assert that takings of private property

for mining corporations is sound policy while similar actions for access to trails by Alaskans is not. He suggested that if the legislature really wants to address this important and contentious property rights issue, then the solution would be to split estate issues whereby lessees of mineral resources have an absolute legal right to access the surface estate of private property owners, adding that this issue recently came to a head in the Matanuska-Susitna [valley] and the CBM debates.

REPRESENTATIVE GRUENBERG offered his understanding that the only types of commercial enterprises that the bill covers would be "for profit" commercial enterprises, and thus Mr. Shavelson's organization would not be affected by the bill.

MR. SHAVELSON offered his belief, however, that the bill addresses the transfer of private land from a private entity, regardless of that entity's profit or nonprofit status.

REPRESENTATIVE GRUENBERG asked to Mr. Shavelson review Version Y further.

2:18:12 PM

PETER ROBERTS relayed that he'd headed up the fight against the Homer annexation, and remarked that the issue of eminent domain is similar to the annexation issue in that a group of politicians can get together and decide the fate of someone's private land and in that such actions can be very hard to stop. He said he realizes that eminent domain is necessary for various reasons, but he is very much against the use of eminent domain in situations such as occurred in [New London] because the only "public good" that will come from such a transfer is the accumulation of tax revenue and is not, therefore, justifiable. On the issue of exercising eminent domain for recreational use purposes, he suggested that if a road is a reasonable thing to build [for the public good], then so too is an access strip. He pointed out that in an urban area, a trail might be labeled recreational, but in a rural area, a similar trail might be necessary for public access.

MR. ROBERTS said he believes that access is a valid reason to consider using eminent domain, and suggested that the bill should undergo further consideration before it is allowed to limit the use of eminent domain for access purposes. Referring to Mr. Shavelson's example regarding a private road to a private mine, Mr. Roberts offered his belief that such usage of eminent domain is less justifiable as being for the public benefit than

would an access strip for the purpose of hunting and fishing. He also posited that the issue of "land in two estates," such as those involving mineral rights, should not be addressed via HB 318, and indicated that the original bill's simpler nature was more acceptable to him. "Land shouldn't be taken so that somebody can make a profit on it," he remarked, nor should land be taken simply so that a government entity can receive taxes from it.

MR. ROBERTS, in conclusion, opined that compensation for land taken via [eminent] domain should be handled by two local private land appraisers; if that price is not acceptable to the entity attempting to acquire the land, then the entity should be precluded from proceeding with eminent domain proceedings. He referred to the provisions regarding the four commissioners determining whether certain land in certain situations should be taken via eminent domain, and said he is very much against those provisions because forthcoming decisions will change from administration to administration. Instead, for those types of situations, it should be the legislature that makes the decision.

2:23:20 PM

DANA OLSON said she'd sent a 12-page petition to the commissioner of the DNR regarding recreational use, and offered her belief that the "mineral entry" exception in Alaska law is [used rarely], adding that she does own her own mineral entry. She said she feels that HB 318 will substantially change the Alaska Statehood Act, and referred to the right of privacy as guaranteed by the Alaska State Constitution in Article I, Section 22, saying that she would like to see the "denials for the right to revise the ... state land use plans in writing before ... passage," adding that she has requested this change.

MS. OLSON offered her understanding that Senate Bill 196, passed in 1987 [as Chapter 75 SLA 87], specifically says that right of ways shall be in land use plans, and that HB 318 potentially addresses corridors. She said that since Alaska Survival v. State Department of Natural Resources was used as a standard for a pipeline, she would be affected by the legislature's action in this matter. "For a person to have their property having one standard, and having a legal standard of something else, there has to be a way to read law consistently," she remarked. In conclusion, she suggested that the committee has more work to do on the bill, and asked that the bill be held over.

2:26:07 PM

KEVIN C. RITCHIE, Executive Director, Alaska Municipal League (AML), said he appreciates the committee's willingness to work with local municipalities regarding the bill. He remarked that one can't really define good and bad public takings, adding that there are different situations wherein the public good may far outweigh [the negative effects of] the taking, and there are procedures to make sure the taking is done well. While the federal government is working on an eminent domain policy, state governments may well feel that the federal government is not best suited to determine policy for the states; likewise, in certain situations, local governments may feel that state government is not best suited to determine policy at the local level. Whoever is the arbiter on these types of issues should be held accountable to the public; for example, city assemblies are accountable to the public. Mr. Ritchie said that according to his research, the power of eminent domain in Alaska has not been abused as occurred in New London; the system currently in place in Alaska is a good one, and people can readily access the decision-making group in any given eminent domain issue.

2:28:30 PM

REPRESENTATIVE GRUENBERG said he would like to know whether the issue is one of stopping "taking" or one of paying private owners more. He noted that U.S. Supreme Court Justice Stephen G. Breyer has indicated that when he and similarly-minded jurists analyze issues, they look at the practical implications of their actions. Representative Gruenberg suggested that the committee should do the same on this issue.

MR. RITCHIE posited that "that issue" is probably in the hearts of the people bringing the actions; in the case of the Kelo situation, it appeared that a person really, really wanted to stay in [her] home.

REPRESENTATIVE GRUENBERG remarked that tough cases make bad law, and suggested that perhaps the Kelo case could be just such a case.

MR. RITCHIE relayed that at least three municipalities have adopted fairly substantial eminent domain ordinances and were able to do so quickly, adding that one of the advantages at the local level is that errors can be rectified in a fairly timely manner. He also noted that currently, in second class cities, it is the voters who determine issues of eminent domain.

2:31:43 PM

GARVIN BUCARIA, relayed that he would be personally impacted by a proposed "2004/2005 Main Street study," described some of the details of that project, noting that he has been subjected to the stress of the possible ramifications of this proposed study. He went on to describe some of the steps he has taken thus far and some of the possible ramifications for him. He suggested that there should be a mechanism in place that would allow the parties subject to a taking to negotiate with the Department of Transportation & Public Facilities (DOT&PF) prior to the routing of roads, and asked the committee to reconsider the language in proposed AS 09.55.240(a)(4) and (5) because he finds it very hard to accept that the dumping of mine tailings is benign. He indicated that according to his understanding of the [Alaska State] Constitution, public health is a major priority for the state, adding that there are numerous proposed mining ventures that may take priority over the health and welfare of the citizens.

MR. BUCARIA suggested that the long-term health effects of dumping places for working mines and tailings need to be considered. He also mentioned that the coalmining areas in the Alaska Range are being subjected to "acid mine drainage," adding that he fears that mining operations will have a severe effect on the state's fish and wildlife sustained yield capabilities. Thus, he opined, allowing access for both public recreation and for factors that ameliorate the stresses of development is important. He said he would support the committee's reconsideration of language pertaining to recreational use and public access for fishing, hunting, and travel.

2:36:17 PM

REPRESENTATIVE GARA posed the question of why they would want to allow for the taking of property from someone in order to give it to a mine that would not provide revenue to the state.

MR. BUCARIA, in response to another question, read portions of proposed AS 09.55.240(a)(4) and (5) as those paragraphs pertain to mining operations, and reiterated that he has public health concerns and quality of life concerns, and that the Alaska State Constitution mandates the state to protect the various values of and the quality of life of its citizens.

CHAIR McGUIRE noted that the language in proposed AS 09.55.240(a)(4) and (5) is part of existing law.

MR. BUCARIA acknowledged that point, but suggested that this issue should still be addressed by the committee, as it is of particular significance to the citizens in the "Iliamna area."

[HB 318, Version Y, was held over.]

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:39 p.m.