

ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE

January 25, 2006

1:09 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

COMMITTEE CALENDAR

HOUSE BILL NO. 321

"An Act relating to high risk operation of a motor vehicle, aircraft, or watercraft while under the influence of an alcoholic beverage, inhalant, or controlled substance and to refusal to submit to a chemical test."

- HEARD AND HELD

HOUSE BILL NO. 318

"An Act limiting the exercise of eminent domain."

- HEARD AND HELD

SENATE BILL NO. 132(efd fld)

"An Act relating to complaints filed with, investigations, hearings, and orders of, and the interest rate on awards of the State Commission for Human Rights; and making conforming amendments."

- SCHEDULED BUT NOT HEARD

HOUSE BILL NO. 314

"An Act relating to defense of self, other persons, and property."

- SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: HB 321

SHORT TITLE: AGGRAVATED DRUNK DRIVING

SPONSOR(S): REPRESENTATIVE(S) RAMRAS

01/09/06 (H) PREFILE RELEASED 12/30/05
01/09/06 (H) READ THE FIRST TIME - REFERRALS
01/09/06 (H) JUD, FIN
01/18/06 (H) JUD AT 1:00 PM CAPITOL 120
01/18/06 (H) Scheduled But Not Heard
01/25/06 (H) JUD AT 1:00 PM CAPITOL 120

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
01/11/06 (H) JUD AT 1:00 PM CAPITOL 120
01/11/06 (H) Heard & Held
01/11/06 (H) MINUTE(JUD)
01/25/06 (H) JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

REPRESENTATIVE JAY RAMRAS

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Sponsor of HB 321.

JANE PIERSON, Staff

to Representative Jay Ramras

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Assisted with the presentation of HB 321 on behalf of the sponsor, Representative Ramras.

RON TAYLOR, Coordinator

Alcohol Safety Action Program (ASAP)

Prevention and Early Intervention Section

Division of Behavioral Health (DBH)

Department of Health and Social Services (DHSS)

Anchorage, Alaska

POSITION STATEMENT: During discussion of HB 321, provided comments, suggested changes, and responded to questions.

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 L, and responded to questions.

RUTH BLACKWELL
Alaska Association of Realtors (AAR)
Juneau, Alaska

POSITION STATEMENT: Provided comments during discussion of HB 318.

PETER PUTZIER, Senior Assistant Attorney General
Transportation Section
Civil Division (Juneau)
Department of Law (DOL)
Juneau, Alaska

POSITION STATEMENT: Provided comments during discussion of HB 318.

KEVIN C. RITCHIE, Executive Director
Alaska Municipal League (AML)
Juneau, Alaska

POSITION STATEMENT: During discussion of HB 318, provided comments and suggested changes.

CHIP WAGONER, President
Southeast Alaska Board of Realtors
Juneau, Alaska

POSITION STATEMENT: During discussion of HB 318, provided comments on behalf of both the Southeast Alaska Board of Realtors and the Alaska Board of Realtors.

ACTION NARRATIVE

CHAIR LESIL MCGUIRE called the House Judiciary Standing Committee meeting to order at [1:09:39 PM](#). Representatives McGuire, Coghill, Wilson, and Gara were present at the call to order. Representatives Anderson, Kott, and Gruenberg arrived as the meeting was in progress.

HB 321 - AGGRAVATED DRUNK DRIVING

1:11:05 PM

CHAIR MCGUIRE announced that the first order of business would be HOUSE BILL NO. 321, "An Act relating to high risk operation of a motor vehicle, aircraft, or watercraft while under the influence of an alcoholic beverage, inhalant, or controlled substance and to refusal to submit to a chemical test." [Included in committee packets was a proposed committee substitute (CS) for HB 321, Version 24-LS1099\F, Luckhaupt, 1/16/06.]

REPRESENTATIVE JAY RAMRAS, Alaska State Legislature, sponsor of HB 321, offered his understanding that a string of fatalities related [to drunk driving] a few years ago in Anchorage was the genesis for House Bill 4 [adopted in 2002], and said the same sort of situation has recently arisen in Fairbanks; after attending several meetings this summer, many of which were sponsored by Mothers Against Drunk Driving (MADD), he said he is now considering various remedies for the problem of traffic fatalities caused by people who have consumed so much alcohol that they can't make a distinction between a moving vehicle and a stationary vehicle, between a stop sign and no stop sign, and between a red light and a green light.

REPRESENTATIVE RAMRAS said that such people drink to such an extent that they become an enormous hazard to others in the community. In researching the issue, he relayed, he's come to understand that 31 states have adopted a policy regarding "high risk operation of a motor vehicle." A government has the authority to discourage certain behavior and punish those who violate the law. He noted that he operates liquor licenses, and said that this has given him insight into the psychology of those who choose to consume alcohol and then operate a motor vehicle regardless of their blood alcohol concentration (BAC).

REPRESENTATIVE RAMRAS went on to describe some of the programs currently in place that are intended to stop "over-serving." He offered his understanding that statistics illustrate that with regard to the aforementioned type of fatality, they are disproportionately caused by those that have consumed an enormous amount of alcohol. House Bill 321 is intended to address this problem. The three deterrents against driving under the influence (DUI) that government currently utilizes include pressing certain criminal charges if another person is killed or seriously injured, levying fines, and imposing jail

time. He acknowledged that when one leaves a drinking establishment, he/she doesn't drive away with the intention of hurting anyone, nor does he/she keep the possible financial ramifications in mind until it is too late. He therefore characterized the possibility of going to jail as the most effective of the aforementioned three deterrents to DUI.

1:18:28 PM

REPRESENTATIVE RAMRAS opined that consuming enough alcohol so as to have a .16 BAC is unacceptable behavior, and the bill proposes to double the amount of jail time for DUI with a BAC of .16. He suggested that public service announcements (PSAs) will go a long way towards informing people that if they drive under the influence with double the legal BAC, they will be subject to double the jail time. He offered his belief that adoption of HB 321 will lead to fewer fatalities and to better behavior on the part of people who drink, and relayed that MADD, Cabaret Hotel Restaurant & Retailer's Association (CHARR), and wholesale distributors [of alcohol] have endorsed [the bill].

REPRESENTATIVE RAMRAS acknowledged that the sponsor of House Bill 4 has expressed concern regarding the fiscal ramifications of HB 321. He opined, however, that [the legislature] must find a way to prevent people with a BAC of .16 from DUI. He explained that under HB 321, for example, the crime of DUI with a BAC of .16 or greater would subject a person to a minimum mandatory sentence of 6 days for a first offense, 40 days for a second offense, [80 days for a third offense], and so on. He offered his understanding that the Transportation Equity Act for the 21st Century, amended Sec. 410, Alcohol-impaired [driving] countermeasure incentive grant may be available to the state. Because people are afraid of going to jail, he remarked, [increasing the amount of jail time a person would be subject to] will result in safer roads.

CHAIR McGUIRE asked whether the sentencing guidelines of the aforementioned other 31 states are the same as what is being proposed via HB 321.

REPRESENTATIVE RAMRAS relayed that a BAC of .15 is considered more of a national standard, but from a marketing standpoint, he said he thought that to provide for, "double the BAC, double the jail time" would be a much simpler concept for people to grasp. The goal of HB 321, he added, is to deter people who are really drunk from getting in their cars. Although the sentencing standards vary in the aforementioned 31 states, they all have a

significantly higher [penalties] for a higher BAC level; he mentioned that members' packets include a summary produced by the National Conference of State Legislatures (NCSL) illustrating what the standards are in those states.

1:23:20 PM

CHAIR McGUIRE said she wants to ensure that the penalties for DUI are appropriate. She asked Representative Ramras whether he can provide the committee with evidence either that the laws adopted over the last six year pertaining to this issue aren't working or that society would be better served by strengthening the penalties yet again. It always sounds great to say, "Let's be tough on drunk drivers," she noted, but they must also ensure that the benefits of having the proposed stiffer penalties will be worth the cost to the state to prosecute and then incarcerate violators.

REPRESENTATIVE RAMRAS said he is not interested in hearing public testimony from victims regarding this issue because it will merely underline his point, though he mentioned that he has requested further information from the Department of Public Safety (DPS) and the Department of Corrections (DOC). He reiterated his view that jail time is the single most effective deterrent to DUI. He opined that although Minnesota has a [high risk] BAC threshold of .20, strong sanctions have made it effective and have lowered recidivism and refusal rates among "high BAC first time offenders." He characterized HB 321 as the correct policy to pursue, and offered his belief that they need to further dissuade people who are already problem drinkers from DUI.

1:28:02 PM

REPRESENTATIVE GARA offered his belief that having a BAC of .15, .14, or even .13 is unacceptable. Why, therefore, does the bill propose a threshold of .16 BAC?

REPRESENTATIVE RAMRAS noted that the "local chapter" of MADD initially opposed the bill because it felt that establishing a threshold of .16 was too high since one couldn't draw a distinction between legally drunk and really drunk, but was persuaded to support the bill because of input and statistics received from other MADD chapters nationwide. He reiterated that he'd selected a .16 threshold because it will be easy for people to understand a PSA that says, "double the blood alcohol [concentration], double the jail time." He said he thinks that

Alaska has one of the toughest, strongest, and best set of DUI laws, and that HB 321 will further strengthen those laws and make the community safer. There is a segment of the population that already drinks to excess, and something needs to be put in place that will make those people think harder about their behavior, he offered.

[1:32:24 PM](#)

REPRESENTATIVE GARA said he is concerned about the proposed advertisement campaign because there might be a tendency for people to think its okay to drive drunk at a BAC lower than .16. "I want them to focus on [.14 BAC], I want them to focus on [.12 BAC]; I don't want to take out an ad campaign, saying, 'Don't worry about it 'til you're at [.16 BAC],'" he remarked. He surmised that a first time offense could be construed as merely an inconvenience because currently it only subjects a person to 3 days in jail, and suggested that an alternative to the language currently being proposed via the bill would be to instead establish a longer mandatory sentence for a first time offense unless the defendant can prove with substantial evidence that he/she only deserves to spend 3 days in jail.

REPRESENTATIVE RAMRAS said he is attempting to reach those who are the worst offenders, the repeat offenders who despite all the penalties, fines, and jail time, continue to drive under the influence. When people chose to drink beyond the current .08 BAC limit, it wrecks a lot of lives, he remarked, and again reiterated his belief that an effective deterrent for those who have already surrendered their rational thought processes will be more jail time.

REPRESENTATIVE WILSON said she is pleased with the bill, particularly with the provisions regarding fines. Alaska has the [dubious] honor of being number one with regard to alcohol abuse, and [alcoholism] is costing the state huge amounts of money; therefore, she opined, the legislature must do something about this issue, both from a safety standpoint and from a financial standpoint.

[1:38:52 PM](#)

REPRESENTATIVE GRUENBERG asked for clarification regarding the last [sentence] in the sponsor statement: "This legislation allows professional servers to renew their alcohol server education cards, by demonstrating their knowledge by passing the written test without having to retake the introductory course".

JANE PIERSON, Staff to Representative Jay Ramras, Alaska State Legislature, sponsor, indicated on behalf of Representative Ramras that that sentence was not meant to apply to HB 321.

REPRESENTATIVE RAMRAS concurred.

REPRESENTATIVE GRUENBERG referred to the fiscal notes and characterized the one provided by the Department of Law (DOL) as being much more honest than the one provided by the DPS, which he further characterized as being inaccurate; he asked the sponsor to discuss this issue with the DPS and seek out a corrected fiscal note. He then said it appears that the main difference in the proposed committee substitute (CS) included in committee packets is that the maximum that can be charged to cover the cost of imprisonment is being raised from \$2,000 to \$4,000; this language is located [in Sections 2 and 4].

MS. PIERSON concurred with the latter point.

[1:41:46 PM](#)

REPRESENTATIVE GRUENBERG made a motion to adopt the proposed CS for HB 321, Version 24-LS1099\F, Luckhaupt, 1/16/06, as the work draft. There being no objection, Version F was before the committee.

REPRESENTATIVE GRUENBERG characterized the aforementioned change as being entirely reasonable. He mentioned that he is concerned, however, that the repeal of AS 28.35.032(i) - via Section 5 of the bill - is a mistake.

[Ms. Pierson's answer was inaudible.]

REPRESENTATIVE RAMRAS, referring to Representative Wilson's comment, relayed that the current fine schedule is not being changed via HB 321; rather, it is only the amount of jail time that is being increased, the thought being that jail time is just as inconvenient for affluent offenders as for those with more modest incomes.

[1:45:06 PM](#)

RON TAYLOR, Coordinator, Alcohol Safety Action Program (ASAP), Prevention and Early Intervention Section, Division of Behavioral Health (DBH), Department of Health and Social Services (DHSS), said he is pleased to see HB 321 come forward.

The DHSS has long viewed "high risk" drivers as posing a greater public safety risk and using up enormous amounts of resources. Referring to earlier stated concerns, he said that according to statistics gathered by the Division of Motor Vehicles (DMV) for 2004 through 2005, the number of DUI [arrests] dropped from 5,107 to 4,312; therefore, he surmised, [current] DUI laws are having a very positive effect.

MR. TAYLOR, referring to another earlier stated concern, offered his understanding that a comprehensive look has not yet been taken at all the DUI laws; instead, changes have been made on a continuing basis. Alaska is one of the top states in terms of having uniform DUI laws; for example, a first time DUI offense is considered a first time DUI offense all across the state. He said he has statistics illustrating that over 60 percent of DUI offenders have BAC levels in excess of .15, and suggested that the state has been remiss in addressing this particular type of offender. He said it is important for these types of offenders to be held accountable, particularly given the enormous cost to public safety, to the criminal justice system, and to health and social services entities that their behavior results in.

MR. TAYLOR said one of the recommendations the [DHSS] made in its fiscal analysis of the bill was to "increase everything"; a very clear message needs to be sent that the behavior of high risk drivers must be deterred. He suggested that the committee change the BAC threshold in the bill so that it mirrors the national high risk BAC threshold of .15; this would conform Alaska's law to the National Highway Traffic Safety Administration's (NHTSA's) definition of a high risk driver. He also suggested that the committee proportionally increase the jail time, fines, and DMV reinstatement fees. The [extra] money could then be used to offset the bill's fiscal note.

MR. TAYLOR opined that [the bill] should also clarify who qualifies as a high risk driver. For example, he remarked, if he were a third time DUI offender and had a BAC above .15 only on that third offense, would he be subject to the aggravated penalty at that point, or would he have to have had a BAC level above .15 for the prior two DUI convictions. He relayed that the DHSS recommends that a portion of the [fines and fees] go back to the ASAP, the Prevention and Early Intervention Section of the DBH, and various traffic safety programs. He indicated that this latter point merely mirrors sentiments that the department has heard the legislature expressing. In conclusion, he said that the department thinks that the benefits of passing HB 321 [with the suggested changes] will allow it to be in

compliance with the NHTSA's programmatic criteria - which include, for example, passing a "high risk" bill that stipulates a BAC level of .15 - and thereby qualify for highway safety traffic incentive grants.

1:52:06 PM

CHAIR McGUIRE asked whether Alaska would qualify for those grants if the bill states a BAC of .16.

MR. TAYLOR offered his understanding that the programmatic criteria says that a state must adopt a law that imposes stronger sanctions or additional penalties for high risk drivers who's BAC is .15 or more.

REPRESENTATIVE GRUENBERG asked Mr. Taylor to provide his comments, statistics, and any suggested changes to the committee in writing.

MR. TAYLOR agreed to do so.

CHAIR McGUIRE asked that those items also be sent to the bill's sponsor.

1:55:19 PM

REPRESENTATIVE GRUENBERG again asked the sponsor to deal with the issue of the fiscal notes.

REPRESENTATIVE RAMRAS agreed to do so. With regard to the portion of statute being repealed by Section 5 of the bill, he explained that AS 28.35.032(i) applies to the crime of refusing to submit to a chemical test, and said he would further research the issue of why they should repeal that provision. He also offered his belief that federal monies would still be available to states as long as they have a BAC threshold between .15 and .20.

REPRESENTATIVE GARA asked Mr. Taylor to provide the committee with statistics that encompass more than the last two years.

MR. TAYLOR agreed to do so.

CHAIR McGUIRE, after ascertaining that no one else wished to testify, closed public testimony on HB 321. She relayed that HB 321 [Version F] would be held over.

HB 318 - LIMITATION ON EMINENT DOMAIN

1:57:38 PM

CHAIR MCGUIRE announced that the final order of business would be HOUSE BILL NO. 318, "An Act limiting the exercise of eminent domain." [Before the committee was the proposed committee substitute (CS) for HB 318, Version 24-LS1083\Y, Bullock, 1/11/06, which was adopted as a work draft on 1/11/06; also in committee packets was a proposed CS for HB 318, Version 24-LS1083\L, Bullock, 1/24/06.]

1:58:19 PM

CRAIG JOHNSON, Staff to Representative Lesil McGuire, Alaska State Legislature, one of the prime sponsors of HB 318, relayed on behalf of Representative McGuire that the two main policies being addressed by HB 318 are whether taking a person's private property for economic development is justified and whether it is appropriate to take a person's personal property - a home - for recreational purposes. He then referred to the proposed CS, Version L, and explained that Section 1 of the bill now defines "economic development" and "public use".

MR. JOHNSON also explained that Section 3 now defines "economic development" and "personal residence"; no longer has a provision authorizing 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) to approve the use of eminent domain in certain situations; now provides an exception for property transferred to a common carrier instead of an exception for property transferred to a person available for public hire to transport freight or passengers - this change was prompted by the fact that "common carrier" is already defined in statute; and now contains a paragraph (7) that provides an exception for property which is found by the governor to be necessary for a public use not specifically already authorized by other provisions of statute, though use of this exception must also be approved by the legislature.

MR. JOHNSON remarked that this paragraph (7) somewhat replaces the provision regarding the commissioners and is intended to cover unforeseen circumstances in which the use of eminent domain would be necessary. He then indicated that the remainder of the changes in Version L are [technical changes].

2:01:22 PM

CHAIR MCGUIRE noted that with regard to paragraph (7) of Section 3, because one legislature cannot bind another, any future legislature has the ability to repeal or amend this proposed provision should it so desire. Remarking that she is not completely [wedded] to the idea of retaining that exception, she, too, mentioned that it would allow the administration flexibility should any as yet unforeseen circumstance arise wherein it thinks that the use of eminent domain is necessary, and that an official request for approval must be made to the legislature regarding such use.

2:02:17 PM

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

MR. JOHNSON, in response to a question, relayed that paragraph (7) might be used, for example, in a situation involving a very popular proposal to create a bike trail in an organized borough but not all property owners are willing to turn over their property. He suggested that including this exception will give the administration a certain level of comfort.

2:04:29 PM

REPRESENTATIVE GRUENBERG indicated that he was expecting to see a provision allowing local governments to institute a similar exception.

MR. JOHNSON said he'd not been comfortable asking the drafters to include something of that nature into the bill because that would be a policy call for the legislature to make.

REPRESENTATIVE GRUENBERG indicated that he would like to address that issue further.

CHAIR MCGUIRE said she has concerns with granting local governments the ability to say that state law doesn't apply; if the law, and the legislature's intent, is that private property cannot be taken from one individual and given to another for economic development purposes or that a private residence cannot be taken away for recreational purposes, then there probably shouldn't be a huge loophole for local governments to take

advantage of, notwithstanding her stance as a proponent of local control. She characterized this as a policy call for the legislature to make.

REPRESENTATIVE GRUENBERG, remarking that he'd like more time and input from concerned parties in order to draft a possible amendment on this issue, said that the question for him is, "Who decides?" Should the legislature decide the issue for local governments, or should municipalities decide the issue? Does the legislature want to start down the path of deciding zoning issues? He mentioned that he would not want the federal government or the state legislature deciding issues involving his own neighborhood or his house.

[2:09:06 PM](#)

REPRESENTATIVE GARA opined that the bill should prevent one private individual from convincing the government to use the power of eminent domain to take private property from another private individual. He suggested that using eminent domain to take private property for economic development purposes should only be allowed when absolutely necessary for a particular project, and any provisions allowing exceptions to the prohibition against using eminent domain should be limited to just those circumstances.

MR. JOHNSON noted that according to conversations he's had with the Department of Law (DOL), a demonstration of necessity is already required in order to take property via eminent domain.

REPRESENTATIVE COGHILL indicated that he would like to make sure that the state's process of exercising eminent domain doesn't conflict with how municipalities exercise it. The legislature has already made a policy statement that local governments have the right to exercise eminent domain, he remarked, and there is a legitimate state interest in this issue.

[2:12:41 PM](#)

CHAIR MCGUIRE ventured her belief that the Alaska Municipal League's (AML's) position is that it would prefer to leave decisions regarding eminent domain to local governments. One policy question to resolve is whether it is appropriate for the legislature to take a stance on the issue of when and for what purposes eminent domain shall be exercised in the state, whether by state government or municipal government, to take private property from one private entity and transfer it to another

private entity for economic development purposes; this was the issue raised as a result of the decision in the U.S. Supreme Court case, Kelo v. City of New London. If the answer to that policy question is yes, then they must be careful to not create loopholes in the bill.

CHAIR McGUIRE noted that AS 09.55.240 already spells out the existing authorized uses for eminent domain, and that the bill is not trying to take away a municipality's right to exercise eminent domain over its public lands or over federal public lands; instead, the issue is whether private land can be taken from one private entity and given to another private entity for economic development purposes as was done in the Kelo situation. She indicated that she disagrees with the policy [espoused] by the court in Kelo and would like to make a bold statement to that effect.

REPRESENTATIVE COGHILL said he is merely concerned about the impact of the proposed exceptions, and offered his belief that in both AS 09.55.240 and AS 09.55.260, the legislature has clearly said that the right of eminent domain exists under the circumstances listed therein.

[2:17:20 PM](#)

REPRESENTATIVE GRUENBERG said he doesn't want either the federal government or local governments making a decision regarding what the state does with its land. With regard to local governments, if the voters in a municipality don't like its decisions regarding the use of eminent domain, they can seek remedy at the local level. He remarked, "I think the municipalities should decide municipal seizures, Feds should decide federal seizures, and we should decide state seizures"; it's not just who decides, but who decides for what kind of seizure. Referring to page 4, lines 11-14, he noted that this language is giving the governor some authority on this issue, and so it could be that a governor could do something or refuse to do something in conflict with the legislature's wishes. Does the legislature want to tie up its authority with the governor's in such instances, he pondered.

CHAIR McGUIRE referred to paragraph (7) of Section 3 and remarked that the more she thinks about it the more she considers that provision to be unnecessary and distracting, particularly given that at any point in time the legislature can enact legislation that would completely overturn this proposed

legislation. She indicated that she is considering making an amendment to remove [paragraph (7)].

REPRESENTATIVE GARA said he agrees with Chair McGuire's comments, and suggested that subsection (e) of Section 3 will engender debate; that language reads:

The power of eminent domain may not be exercised for the purpose of developing a recreational facility or project if the property to be acquired includes an individual landowner's primary personal residence or that portion of an individual's property attached to and within 1,000 linear feet of an individual landowner's personal residence.

REPRESENTATIVE GARA said he would like for government to have the ability to assist [individuals and groups] in gaining public access to fishing and boating streams, hunting trails, and perhaps even trails.

MR. JOHNSON clarified that the term "1,000 linear feet" was put in as "a holding point," but added that he is not sure that 1,000 feet is the correct number; he suggested that perhaps it should instead be "100 linear feet", "250 linear feet", or "300 linear feet". It ought to be possible, he remarked, to gain access for the aforementioned recreational purposes without taking someone's home; with only 1 percent of Alaska's lands being in private hands, taking someone's home is an egregious step. Lowering the amount of land listed on page 4, line 18, could be a good first step towards alleviating the concerns of those opposed to that provision, while still allowing Alaskans access to things like fishing and boating streams, hunting [areas], and trails.

[2:27:19 PM](#)

REPRESENTATIVE GARA pointed out, though, that in addition to having access to a fishing stream, one still needs to be able to walk along the bank of a fishing stream.

MR. JOHNSON offered his understanding that the state already owns "those lands," and so the public would have access to them. In response to a comment, he explained that a recreational cabin would not be considered a "residence" for purposes of the bill.

CHAIR MCGUIRE clarified that she is setting slightly different thresholds for the two main aspects of the bill. In the case of

economic development, the bill seeks to preclude the transfer of private land from one private entity to another private entity; in the case of recreational use, the bill seeks to preclude the transfer of private land if that private land is land upon which one has a residence as defined in the bill. She said she doesn't feel that it's appropriate to simply say that economic development is an inappropriate purpose for which to take away private property while also saying that recreational use is an [appropriate] purpose.

2:30:10 PM

RUTH BLACKWELL, Alaska Association of Realtors (AAR), relayed that since the Kelo decision, both the AAR and the National Association of Realtors (NAR) have been working to ensure that private property rights are upheld, and have come up with three general policy decisions: use of eminent domain only when necessary to materially advance real or substantial public use - for example, roads, airports, power lines, public buildings; government should provide persuasive, objective evidence that the project and the resulting use will in fact be reached; and just compensation should include not only the value of the condemned property but also the other reasonable and necessary costs engendered by the condemnation.

MS. BLACKWELL said that the AAR is in favor of the portion of the bill pertaining to the transfer of property [for economic development purposes] and is happy with the definitions of "economic development" and "public use". However, the AAR is concerned about the provision that precludes the transfer of land for recreational use purposes only when that land contains a primary personal residence. The AAR would hate to see those that have put their heart and soul into the building of a cabin or campsite lose their land through the use of eminent domain just to provide public access to others. She suggested that [the language in subsection (e) be changed] so that it doesn't pertain to just residences.

REPRESENTATIVE GARA remarked that the question becomes one of whether, 20 years from now, as the population increases, the public will be able to access fishing streams.

REPRESENTATIVE COGHILL expressed a preference for leaving property owners alone while still attempting to ensure that the public has access to [fishing streams, hunting areas, and trails].

REPRESENTATIVE GRUENBERG remarked that the issue of ensuring public access is quite different in rural areas than it is in urban areas, and again suggested that each local area should be allowed decide this issue for itself.

[2:42:22 PM](#)

PETER PUTZIER, Senior Assistant Attorney General, Transportation Section, Civil Division (Juneau), Department of Law (DOL), offered his belief that subsection (d)(7) will not work as currently drafted, and opined that the bill should contain language authorizing the transfer of private property from one private entity to another under certain circumstances. He then offered examples of situations in which the state might wish to allow the transfer of private property from one private entity to another for economic development purposes.

REPRESENTATIVE GARA said of those examples that they involve exactly the types of situations for which he wouldn't want to allow the use of eminent domain and are the very reason for introducing the bill.

REPRESENTATIVE GRUENBERG asked Mr. Putzier to provide written suggestions for change to the committee.

MR. PUTZIER agreed to do so.

REPRESENTATIVE GRUENBERG referred to page 3, line 24, and suggested that perhaps the term, "private person or entity" should be changed to "private person or private entity". However, doing so would imply that "private person" and "private entity" are different terms. He noted that "private entity" is not yet defined in the bill, and questioned whether it ought to be if it is not the same as "private person".

MR. PUTZIER acknowledged that that is another issue the DOL would like to see addressed.

[2:49:40 PM](#)

KEVIN C. RITCHIE, Executive Director, Alaska Municipal League (AML), said the AML would support the state taking a stand on this issue as long as that stand works for communities as well as it works for the state, and appreciates the narrowing of the bill so that it addresses only the issues raised by the Kelo decision with regard to economic development. Jobs are really important in Alaska, and probably not enough economic

development is being done. With regard to subsection (d)(7), he offered his understanding that although it might provide a municipality the ability to transfer land for a project that the majority of the residents support, the process would be cumbersome.

MR. RITCHIE recommended that the statute be altered so that it is no longer silent on the issue of delegating eminent domain authority to a private nonprofit corporation, specifically that the authority remain with the local government; for example, add a simple statement that eminent domain [authority] may not be transferred or delegated. Furthermore, the statute could be changed to specify that if the legislature passes a law to override the aforementioned proposed statement, then a local government would also have to pass a similar law. Historically, he relayed, municipalities have been very protective of property rights. In conclusion, he offered to help committee staff draft these suggested changes.

REPRESENTATIVE GRUENBERG asked Mr. Ritchie for written suggestions and comments.

MR. RITCHIE agreed to provide them.

REPRESENTATIVE GRUENBERG noted that Article II, Section 19, of the Alaska State Constitution prohibits the legislature from passing local or special acts if a general act can be made applicable, and that Article X of the Alaska State Constitution provides for maximum local self-government. He pondered whether [adding certain provisions to statute] might run afoul of Article X. He asked Mr. Ritchie to research these issues further.

REPRESENTATIVE GARA asked for examples of municipalities using eminent domain.

MR. RITCHIE said that the AML did query a number of communities with regard to whether they've had problems with eminent domain, but has not received any indication that there have been any problems. He agreed to research that issue further.

[2:57:00 PM](#)

CHIP WAGONER, President, Southeast Alaska Board of Realtors, relayed that he is also speaking at the request of the chairman of the Alaska Board of Realtors' Legislative Committee. He said he supports Ms. Blackwell's comments and appreciates the

introduction of the bill. The question, he posited, is whether [the legislature] wishes to address more than just the issues raised by the Kelo decision, particularly given that there are some sections of the eminent domain statutes that have not been altered since the '60s. He noted that he also owns a remote piece of property in Southeast Alaska - an island - and that he would hate to see the government take a portion of that. People who own remote properties, particularly when they have a cabin on them, feel more emotional about those properties than they do about their own personal residences, he opined.

MR. WAGONER suggested that another way of approaching the issue would be to consider instituting higher standards when the government wants to use eminent domain for different purposes. He offered his understanding, for example, that AS 09.55.270 speaks to the standards that the government must use when it wants to go after property. However, one of the problems is that the standard of "necessity" is currently undefined, and so the courts define it [on a case-by-case basis]. He surmised that as time goes on, the courts will tend to be more and more liberal in defining this term such that instead of being defined as "absolute necessity" for the public use, it will be defined as "requisite necessity".

MR. WAGONER indicated that AS 09.55.270 could be altered such that if the government is going to go after certain kinds of property for less of a public use than say a school or a needed sewer line or something of that nature, the government would have to have a higher standard. He said that realtors are very concerned about private property because there is so little of it in Alaska. He concluded by saying:

The government, when we were a territory in the '50s, actually took, by court action, a lot of the private properties in Southeast Alaska, because back in the ['10s], '20s, and '30s, a lot of ... private property ... [was] abandoned. ... And the government, by court action, took those properties, including the island I now own. ...

REPRESENTATIVE GRUENBERG asked for suggested changes in writing.

CHAIR McGUIRE concurred that it would be helpful to have suggestions for change in writing. She indicated that HB 318 [Version L] would be held over.

ADJOURNMENT

3:04:15 PM

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:04 p.m.