

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

February 3, 2006

1:12 p.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

Representative John Coghill

COMMITTEE CALENDAR

CONFIRMATION HEARING(S)

Commission on Judicial Conduct

James J. Fayette - Anchorage

- CONFIRMATION(S) ADVANCED

Violent Crimes Compensation Board

Regina C. Chennault, M.D. - Soldotna

- CONFIRMATION(S) ADVANCED

HOUSE BILL NO. 318

"An Act limiting the exercise of eminent domain."

- MOVED CSHB 318(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 150

"An Act requiring licensure of occupations relating to radiologic technology, radiation therapy, and nuclear medicine technology; and providing for an effective date."

- MOVED CSHB 150(JUD) OUT OF COMMITTEE

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

SENATE BILL NO. 172

"An Act relating to the presentation of initiatives and referenda on the ballot."

- SCHEDULED BUT NOT HEARD

HOUSE BILL NO. 353

"An Act relating to sentences for sexual offenses."

- BILL HEARING CANCELED

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
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
01/25/06	(H)	Heard & Held
01/25/06	(H)	MINUTE(JUD)
02/01/06	(H)	JUD AT 1:00 PM CAPITOL 120
02/01/06	(H)	-- Meeting Canceled --
02/03/06	(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 150

SHORT TITLE: LICENSING RADIOLOGIC TECHNICIANS

SPONSOR(S): REPRESENTATIVE(S) ANDERSON

02/14/05	(H)	READ THE FIRST TIME - REFERRALS
02/14/05	(H)	L&C, JUD, FIN
02/23/05	(H)	L&C AT 3:15 PM CAPITOL 17
02/23/05	(H)	Scheduled But Not Heard
03/02/05	(H)	L&C AT 3:15 PM CAPITOL 17
03/02/05	(H)	Heard & Held

03/02/05	(H)	MINUTE(L&C)
03/18/05	(H)	L&C AT 3:15 PM CAPITOL 17
03/18/05	(H)	Moved CSHB 150(L&C) Out of Committee
03/18/05	(H)	MINUTE(L&C)
03/22/05	(H)	L&C RPT CS(L&C) 2DP 1NR 2AM
03/22/05	(H)	DP: LYNN, ANDERSON;
03/22/05	(H)	NR: CRAWFORD;
03/22/05	(H)	AM: ROKEBERG, KOTT
03/30/05	(H)	JUD AT 1:00 PM CAPITOL 120
03/30/05	(H)	Heard & Held
03/30/05	(H)	MINUTE(JUD)
04/06/05	(H)	JUD AT 1:00 PM CAPITOL 120
04/06/05	(H)	<Bill Hearing Postponed>
04/11/05	(H)	JUD AT 1:00 PM CAPITOL 120
04/11/05	(H)	Heard & Held
04/11/05	(H)	MINUTE(JUD)
01/27/06	(H)	JUD AT 1:00 PM CAPITOL 120
01/27/06	(H)	Scheduled But Not Heard
02/01/06	(H)	JUD AT 1:00 PM CAPITOL 120
02/01/06	(H)	-- Meeting Canceled --
02/03/06	(H)	JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

JAMES J. FAYETTE, Appointee
to the Commission on Judicial Conduct (CJC)
Anchorage, Alaska
POSITION STATEMENT: Testified as appointee to the Commission on
Judicial Conduct (CJC).

REGINA C. CHENNAULT, M.D., Appointee
to the Violent Crimes Compensation Board (VCCB)
Soldotna, Alaska
POSITION STATEMENT: Testified as appointee to the Violent
Crimes Compensation Board (VCCB).

CRAIG JOHNSON, Staff
to Representative Lesil McGuire
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: During discussion of proposed amendments to
Version L of HB 318, responded to questions on behalf of
Representative McGuire, one of the bill's prime sponsors.

PETER PUTZIER, Senior Assistant Attorney General
Transportation Section
Civil Division (Juneau)

Department of Law (DOL)
Juneau, Alaska

POSITION STATEMENT: Assisted with the presentation of proposed Amendments 1a-1e to Version L of HB 318.

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

POSITION STATEMENT: Provided comments during discussion of proposed Amendment 4 to Version L of HB 318, and responded to questions.

LUKE HOPKINS, Member
Assembly
Fairbanks North Star Borough (FNSB)
Fairbanks, Alaska

POSITION STATEMENT: Provided comments during discussion of proposed Amendment 4 to Version L of HB 318.

RANDY FRANK, Member
Assembly
Fairbanks North Star Borough (FNSB)
Fairbanks, Alaska

POSITION STATEMENT: Provided comments during discussion of proposed Amendment 4 to Version L of HB 318.

ED EARNHART
Anchorage, Alaska

POSITION STATEMENT: Testified in support of proposed Amendment 4 to Version L of HB 318.

JEAN WOODS
Palmer, Alaska

POSITION STATEMENT: Provided comments during discussion of proposed Amendment 4 to Version L of HB 318, and said she supports the bill.

NOEL WOODS
Palmer, Alaska

POSITION STATEMENT: Spoke in opposition to proposed Amendment 4 to Version L of HB 318.

LISA VON BARGEN, Director
Community and Economic Development Department
City of Valdez
Valdez, Alaska

POSITION STATEMENT: Provided comments during discussion of proposed Amendment 4 to Version L of HB 318.

HEATH HILYARD, Staff
to Representative Tom Anderson
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: On behalf of the sponsor, Representative Anderson, presented the proposed CS for HB 150, Version R, and responded to questions.

DONNA J. RUFHOLM, R.T., Chair
Licensure Committee
Alaska Society of Radiologic Technologists (AKSRT)
Homer, Alaska

POSITION STATEMENT: During discussion of HB 150, responded to questions and provided comments.

ED HALL, P.A., Legislative Liaison
Alaska Academy of Physician Assistants (AKAPA)
Anchorage, Alaska

POSITION STATEMENT: Provided comments during discussion of HB 150.

CHRIS DEVLIN, Executive Director
Eastern Aleutian Tribes, Inc.
Sand Point, Alaska

POSITION STATEMENT: Provided comments during discussion of HB 150.

CLYDE E. PEARCE, Radiologic Health Specialist II
Radiologic Health
Laboratories

Division of Public Health
Department of Health and Social Services (DHSS)
Anchorage, Alaska

POSITION STATEMENT: During discussion of HB 150, provided comments and responded to questions.

BARBARA HUFF TUCKNESS, Director
Governmental And Legislative Affairs
Teamsters Local 959
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 150.

DONNA M. ELLIOT
Alaska Native Tribal Health Consortium (ANTHC)

Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to HB 150.

DON SMITH, P.A., President

Alaska Academy of Physician Assistants (AKAPA)

(No address provided)

POSITION STATEMENT: During discussion of HB 150, provided comments, suggested a change, and responded to a question.

MARK RESTAD, P.A., Clinical Administrator

Ninilchik Community Clinic

Homer, Alaska

POSITION STATEMENT: Provided comments during discussion of HB 150.

MARILYN KASMAR, Executive Director

Alaska Primary Care Association, Inc. (APCA)

Anchorage, Alaska

POSITION STATEMENT: Provided comments during discussion of HB 150.

KEN G. TRUITT, General Counsel

Southeast Alaska Regional Health Consortium (SEARHC)

Juneau, Alaska

POSITION STATEMENT: Provided comments during discussion of HB 150.

MICHAEL FORD

Alaska Native Health Board (ANHB)

Anchorage, Alaska

POSITION STATEMENT: Provided comments during discussion of HB 150.

RICHARD MANDSAGER, M.D., Director

Central Office

Division of Public Health

Department of Health and Social Services (DHSS)

Juneau, Alaska

POSITION STATEMENT: Provided comments during discussion of HB 150.

LINDA FINK, Vice President

Alaska State Hospital and Nursing Home Association (ASHNHA)

Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 150.

LAURIE HERMAN, Regional Director

Government Affairs
Providence Health System-Alaska;
Member
Legislative Committee
Alaska State Hospital and Nursing Home Association (ASHNHA)
Anchorage, Alaska
POSITION STATEMENT: Testified in support of HB 150 on behalf of
both Providence Health System-Alaska and the ASHNHA.

ACTION NARRATIVE

CHAIR LESIL MCGUIRE called the House Judiciary Standing Committee meeting to order at [1:12:45 PM](#). Representatives McGuire, Wilson, Anderson, Kott, Gruenberg, and Gara were present at the call to order. Representative Coghill was excused.

CONFIRMATION(S)

Commission on Judicial Conduct

[1:13:35 PM](#)

CHAIR MCGUIRE announced that the committee would first consider the appointment of James J. Fayette to the Commission on Judicial Conduct (CJC).

[1:13:51 PM](#)

JAMES J. FAYETTE, Appointee to the Commission on Judicial Conduct (CJC), in response to the question of why he wished to serve on the CJC, relayed that he is a lawyer supervising the Special Prosecutions Unit in the Department of Law (DOL), and that he has been interested in serving on the CJC for a number of years because it provides important oversight of complaints against the state's court judges. After briefly describing the differences between the CJC and the Alaska Judicial Council (AJC), he noted that the complaints the CJC handles range from the mundane to the very serious, adding that he considers himself to be something of a representative of the criminal bar, and has been involved with prosecutions involving sensitive matters. Given that criminal attorneys are not permitted to serve on the AJC, it falls to the CJC to give the criminal bar a voice in matters involving judicial governance. Furthermore, unlike civil attorneys, criminal attorneys - whether they be prosecutors or public defenders - are in court every day and so

it will be more rapidly apparent to them when a judge has a conduct, demeanor, or delay problem.

MR. FAYETTE briefly described his current duties with the DOL and some of the cases he has been involved in, adding that sorting through complaints for merit is something he currently does every day. He offered his belief that he will bring a statewide perspective to the CJC, and will be able to keep in mind the complexity of the job that judges are called upon to perform and the ethics standards they are required to follow.

1:19:52 PM

MR. FAYETTE, in response to a question, said he was and is active in the [Alaska State Prosecutors' Association (APSA)], which had circulated a candidate questionnaire in the 2002 election.

REPRESENTATIVE GARA offered his recollection that the tenor of that questionnaire advocated for more legislative or voter involvement in the choosing of judges.

MR. FAYETTE said he wouldn't agree with that summation because he doesn't recall that that questionnaire addressed the issue of the judicial appointment process, though he, himself, does have an opinion on that matter. He characterized the current process of screening and appointing judges as being a good one, one that serves the state well, though in his opinion it could be a bit more public; for example, currently the AJC's interview with an applicant is private unless the applicant requests that it be made public, whereas he thinks that the AJC's interview ought to be public unless the applicant requests that it be kept private.

REPRESENTATIVE GARA sought assurance from Mr. Fayette that he could put any animus he may have about a judge to the side and review claims against that judge solely on whether the conduct rules have been violated.

MR. FAYETTE gave Representative Gara his assurance that he could do so, and pledged to go where the facts of a case and the law lead him.

1:24:21 PM

MR. FAYETTE, in response to comments and questions, relayed that the complaints handled by the CJC are confidential until a probable cause finding is arrived at; at that point the

complaint goes through a formal disciplinary process, and the CJC makes formal recommendations regarding censure, suspension, retirement, or discipline to the [Alaska] Supreme Court, which has the authority to take adverse action against a judge based on those recommendations. He explained that the CJC's formal advisory opinions are posted on the CJC's web site and publicized "amongst the bar"; these advisory opinions are couched in anonymous terms that simply state what a judge may not do or what a judge should do. Once a case goes through a formal public hearing and is reported to the [Alaska] Supreme Court, it, as a reported case, becomes public.

MR. FAYETTE said he credits the fact that this has only happened a handful times to the high caliber of lawyer that serve as state court judges, and relayed that one could look in the Pacific Reporter to find the reported cases where the Alaska Supreme Court has either agreed or disagreed with the CJC's recommendations. In response to comments, he noted that the CJC has a very experienced executive director who has made it her practice to informally orient newly appointed judges and provide informal ethics opinions to judges asking simple, routine, conduct- and appearance-type questions. In response to a question, he said that he has served on the CJC since August 2005; that he has been through two quarterly meetings; and that his term, pending legislative confirmation, will run through 3/1/09.

REPRESENTATIVE GRUENBERG asked Mr. Fayette whether he thinks the CJC is adequately funded at present.

MR. FAYETTE said he thinks the answer to that question is yes, given that the CJC is modestly staffed, but suggested that the CJC's executive director could better respond to that question.

[1:30:59 PM](#)

REPRESENTATIVE GRUENBERG, remarking on the six opinions that Mr. Fayette has written, asked Mr. Fayette whether he has any experience with judges as a civil attorney.

MR. FAYETTE said he has limited civil [case] experience, gave a brief description of the civil cases he's been involved with, and indicated that he preferred working in the criminal law context because it involves more "jury work." He noted that in addition to the aforementioned six reported cases that he provided opinions on, he has also written an [Alaska] Supreme Court brief for a medical malpractice case, but it has not yet

been published because a decision on that case has not yet been issued. He mentioned that he's also [written] about a dozen unpublished opinions that are not listed on his resume.

REPRESENTATIVE GRUENBERG expressed his belief that Mr. Fayette is very qualified [to serve on the CJC].

REPRESENTATIVE KOTT, reminding members that signing the reports regarding appointments to boards and commissions in no way reflects individual members' approval or disapproval of the appointees, and that the nominations are merely forwarded to the full legislature for confirmation or rejection, made a motion to advance from committee the nomination of James J. Fayette to the Commission on Judicial Conduct (CJC). There being no objection, the confirmation was advanced from the House Judiciary Standing Committee.

Violent Crimes Compensation Board

[1:35:48 PM](#)

CHAIR McGUIRE announced that the committee would next consider the appointment of Regina C. Chennault, M.D., to the Violent Crimes Compensation Board (VCCB).

REGINA C. CHENNAULT, M.D., Appointee to the Violent Crimes Compensation Board (VCCB), in response to the question of why she wished to serve on the VCCB, relayed that she is a trauma surgeon in Soldotna and so cares for a lot of victims of violent crime when they are transferred to the hospital in which she works, and therefore she wants to be more involved in the community and provide more assistance at the state level [to victims of violent crime].

CHAIR McGUIRE said the committee applauds Dr. Chennault's willingness to offer her perspective on the VCCB.

REPRESENTATIVE GARA said he appreciates Dr. Chennault's willingness to serve, and asked that she [take to the VCCB his desire that the VCCB] keep in mind that insurance companies sometimes drag out resolutions for victims of DUI crimes.

DR. CHENNAULT said she is aware of that fact and will keep it in mind.

[1:39:00 PM](#)

REPRESENTATIVE KOTT, reminding members that signing the reports regarding appointments to boards and commissions in no way reflects individual members' approval or disapproval of the appointees, and that the nominations are merely forwarded to the full legislature for confirmation or rejection, made a motion to advance from committee the nomination of Regina C. Chennault, M.D., to the Violent Crimes Compensation Board. There being no objection, the confirmation was advanced from the House Judiciary Standing Committee.

HB 318 - LIMITATION ON EMINENT DOMAIN

[1:39:46 PM](#)

CHAIR McGUIRE announced that the next 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\L, Bullock, 1/24/06, which was adopted as a work draft on 1/25/06.]

CHAIR McGUIRE, speaking as one of the bill's prime sponsors, relayed that staff was available to assist with explanations regarding the proposed amendments to [Version L].

CRAIG JOHNSON, Staff to Representative Lesil McGuire, Alaska State Legislature, one of the prime sponsors of HB 318, on behalf of Representative McGuire, indicated that a representative from the Department of Law was also available to assist with explanations of proposed amendments.

CHAIR McGUIRE referred to Amendment 1, which read [original punctuation provided]:

Page 2, line 8:
Delete "(1)"

Page 2, line 10:
Delete ";"
Insert "."

Page 2, lines 11 - 12:
Delete all material.

Page 3, line 24:
Delete "or entity"

Page 4, lines 11 - 14:

Delete all material and insert:
"(7) the legislature has approved by law
the transfer of private property."

Page 5, lines 8 - 9:
Delete all material.

Page 5, line 10:
Delete "(6)"
Insert "(5)"

Page 5, line 19, following "(i)":
Insert "a highway, or"

Page 6, line 2:
Delete "the purpose for"

REPRESENTATIVE GRUENBERG suggested that Amendment 1 be divided to facilitate explanation and discussion; he began dividing Amendment 1.

PETER PUTZIER, Senior Assistant Attorney General, Transportation Section, Civil Division (Juneau), Department of Law (DOL), began assisting with the explanation of the division of Amendment 1.

The committee took an at-ease from 1:45 p.m. to 1:46 p.m.

[1:46:32 PM](#)

REPRESENTATIVE GRUENBERG relayed that the portion of Amendment 1 altering page 2, lines 8, 10, and 11-12, and page 5, lines 8-9, of Version L would be referred to as Amendment 1a; the portion of Amendment 1 altering page 3, line 24, of Version L would be referred to as Amendment 1b; the portion of Amendment 1 altering page 4, lines 11-14, of Version L would be referred to as Amendment 1c; the portion of Amendment 1 altering page 5, lines 10 and 19, of Version L would be referred to as Amendment 1d; and the portion of Amendment 1 altering page 6, line 2, of Version L would be referred to as Amendment 1e.

MR. PUTZIER, remarking that most of the changes proposed via Amendment 1 are technical changes, explained that Amendment 1a deletes the definition of "public use" from the legislative intent section and [Section 3, subsection (f)]; he offered his understanding that this same definition is already contained [in existing statute]. He explained that Amendment 1b deletes the phrase "or entity" because AS 01.10.060 already defines

"person". Amendment 1c provides that transfers of property from one private person to another private person are not allowed unless the legislature has approved, by law, transfers of such property - this is essentially a legislative authorization clause. Amendment 1d clarifies that highways are not recreational facilities or projects regardless of whether they have a scenic component. Amendment 1e corrects clerical error.

[1:50:52 PM](#)

REPRESENTATIVE GRUENBERG made a motion to adopt Amendments 1a-1e [en bloc]. There being no objection, Amendments 1a-1e were adopted [en bloc].

REPRESENTATIVE GARA made a motion to adopt Conceptual Amendment 2, which read [original punctuation provided]:

Page 4, line 19 after "individual landowner's personal residence"

Insert:

"however, the power of eminent domain may be exercised for trails used for foot or wheeled travel if the land is necessary to make construction or expansion of the trail economically feasible, and no reasonable alternative exists that allows for a trail of similar public benefit; or where necessary for access to an area for hunting purposes; or where necessary for access to or along segments of a waterway or lake used for fishing, boating or other recreational uses."

CHAIR MCGUIRE objected for the purpose of discussion.

REPRESENTATIVE GARA explained that Conceptual Amendment 2 pertains to whether eminent domain may be used to obtain recreational lands. Under Conceptual Amendment 2, eminent domain may be used only when it is necessary to acquire lands for a recreational trail that is wanted by a community, and to acquire lands to allow access to fishing streams, hunting areas, and similar recreational lands. He said he is worried that as time goes on there will be less and less access to fishing streams and hunting areas, and so he doesn't want to preclude the state from ever using eminent domain to provide public access [to those areas]. He noted that the state currently has the power to use eminent domain [for these purposes] but it is rarely used, and that he's not heard of any instances in which

it has been abused. Under Conceptual Amendment 2, the state will have to show that there is no reasonable alternative to taking a particular piece of private property.

[1:54:39 PM](#)

REPRESENTATIVE WILSON noted that the definition of the phrase, "only when necessary", could be different for different people. She asked Representative Gara what he means when using the phrase, "access to".

REPRESENTATIVE GARA noted that current law regarding eminent domain sometimes uses the term "necessary", and surmised that determining whether taking a particular piece of property via eminent domain is "necessary" will be determined on a case-by-case basis. Conceptual Amendment 2, he offered, is saying that if it is really necessary to use eminent domain to gain access to an area, then [the state] will retain that option. Phrases such as, "where necessary" are meant to be limiting language and are used under current law; for example, such language has been used in the past to preclude the state from just taking land when doing so is not necessary. With regard to securing public access to fishing streams, he acknowledged that that is different than securing public access to hunting areas, because it involves the taking of specific land; for securing public access to hunting areas and for creating hiking trails, he suggested that Conceptual Amendment 2 is saying that the state shouldn't even think about using eminent domain unless there are no other reasonable options.

CHAIR McGUIRE said she would be maintaining her objection to Conceptual Amendment 2. She noted that the Alaska Department of Fish & Game (ADF&G) is in the process of working on an amendment to deal with the issue of using eminent domain to obtain public access to fishing streams in those very narrow circumstances where no other access is available. On the issue of Conceptual Amendment 2 as whole, she characterized it as a public policy issue, and said her perspective is that in a state wherein there is so little private property, the alternatives of using state land, federal land, and municipal land ought to be sufficient for Alaskans to enjoy their recreational activities.

CHAIR McGUIRE opined that eminent domain should only be used in true cases of legitimate emergency - not for economic development and not for recreational purposes. She stated that she would continue to support recreational trails and the use of public funds and public lands for them. She noted that the bill

proposes to preclude the taking of a person's private residence but no such exemption is proposed for private cabins or other private recreational property. She added that she is not willing to make an exception for the latter types of property.

CHAIR McGUIRE remarked that she is troubled a bit by the wording in Conceptual Amendment 2 that says land may be acquired via eminent domain in order to "make construction or expansion of the trail economically feasible". For example, there may be another alternative for a trail on public land, but if that alternative is costly to pursue, then Conceptual Amendment 2 might be used to take a person's residence [or the land within 1,000 linear feet of that residence]. A homeowner who is facing having his/her land seized by eminent domain could question whether his/her particular land is really necessary for a particular trail or whether the state simply views his/her land as easier and less costly to acquire than going through the process of proving that building a trail through a wildlife refuge, for example, is acceptable.

CHAIR McGUIRE opined that the language in Conceptual Amendment 2 moves away from her goal in offering HB 318, that being to say that private property and the place where one has a residence ought to be protected at the highest level. The law shouldn't provide for the transfer of private property for recreational use simply because doing so is more economically feasible than having to go through an exhaustive environmental impact study, for example.

[2:01:42 PM](#)

CHAIR McGUIRE said she can see the benefits of things like the coastal trail up in her district, but it brings up a good example of a situation in which people have built their homes on land that others would like to use for a trail even though there are alternatives; the question then becomes how does one approach the issue of balancing a community's need for recreation and an individual's desire to keep his/her private residence. She opined that the bill currently strikes a healthy balance on that issue. Even though there are those who don't want to see the prohibition against eminent domain limited to private residences, she remarked, she is not willing to expand it. She said she would be disappointed if [Conceptual Amendment 2] passes because it goes to the heart of the bill's intention.

REPRESENTATIVE GRUENBERG suggested replacing the words, "economically feasible", with the word, "possible", and removing the words, "or expansion".

REPRESENTATIVE GARA said that in using the words, "economically feasible", he'd meant to even further limit the government's ability to take someone's private residence, and that in using the words, "or expansion" he'd meant to say that eminent domain could be used to expand a recreational trail.

REPRESENTATIVE GRUENBERG suggested at least removing the word, "economic".

REPRESENTATIVE GARA said "Sure."

CHAIR MCGUIRE said she doesn't necessarily know what is meant by the phrase, "no reasonable alternative", particularly when viewed in light of wildlife refuges and all the things that must be done in order to demonstrate that acquiring such land is appropriate.

REPRESENTATIVE GRUENBERG suggested that alternative language could be arrived at.

CHAIR MCGUIRE said that if Conceptual Amendment 2 does not pass, she is willing to address this issue further as the bill moves through the process. She asked members to keep in mind that there is so much public land in Alaska that a community ought to be able to easily acquire the land it needs for recreational purposes without resorting to using eminent domain to take an individual's private land. She indicated that at this point she is not comfortable with merely amending Conceptual Amendment 2 in an attempt to address her concern.

[2:08:21 PM](#)

REPRESENTATIVE GARA made a motion to amend Conceptual Amendment 2 by replacing, "economically feasible" with, "possible". There being no objection, the amendment to Conceptual Amendment 2 was adopted.

REPRESENTATIVE WILSON opined that taking someone's home simply for recreational purposes would be the wrong thing to do, particularly when people can simply drive a little distance [and make use of public lands].

REPRESENTATIVE ANDERSON concurred with the remarks made by Chair McGuire and Representative Wilson. He characterized Conceptual Amendment 2, as amended, as too broad.

REPRESENTATIVE GARA remarked that although there is a lot of public land in Alaska, most of it is not accessible and most people will never see it. And so the problem that he is trying to address is that in the future the amount of accessible public land will diminish. He offered examples of land that in the future will not be accessible and will therefore be lost to the public for the purpose of recreational fishing.

REPRESENTATIVE GARA offered his belief that Conceptual Amendment 2, as amended, addresses the issue of acquiring land for recreational fishing and hunting purposes; the state has this authority currently and it is almost never used, but he doesn't want to give away this tool. He remarked that many fishing streams in the Lower 48 have been lost to the public because steps weren't taken to ensure public access to them. He suggested that had legislation like HB 318 been adopted 30 years ago, the aforementioned coastal trail could not exist because the threat of eminent domain could not have been used to convince some people to sell their property for fair market value.

[2:14:53 PM](#)

CHAIR MCGUIRE suggested that if there is a fear that land currently held by a Native corporation, for example, will someday be turned into a housing development and that that might in turn preclude the public from having access to fishing streams, then the solution is to start planning and looking at the needs of particular communities [at the local level] now. She said she is amenable to an amendment that will address the issue of gaining public access to fishing streams, and indicated that she is more swayed by the argument that the state has an obligation to maintain control over its natural resources than by the argument that the public has the right to recreation or economic development; as long as the focus of such an amendment remains narrow and only applies in instances where there is literally no other way to access the state's resources - even if for hunting, fishing, and hiking purposes - she would support it.

REPRESENTATIVE GRUENBERG noted that in large part he represents a "poor part of town," and opined that those Alaskans have as much right under the Alaska State Constitution to access things

like the coastal trail; it is essential that people have access to things that maintain their quality of life, and that people accommodate each other in a reasonable manner, notwithstanding the rights of landowners to their land. As the country becomes more civilized, there is a duty to try to work together. He said he supports private property, but he also supports the right of people to live their lives and have an opportunity to enjoy something like the coastal trail.

CHAIR McGUIRE remarked that [the issues raised by this bill] cut to the core of philosophies.

2:21:29 PM

A roll call vote was taken. Representatives Gruenberg and Gara voted in favor of Conceptual Amendment 2, as amended. Representatives McGuire, Wilson, Anderson, and Kott voted against it. Therefore, Conceptual Amendment 2, as amended, failed by a vote of 2-4.

2:21:56 PM

REPRESENTATIVE GARA made a motion to adopt Conceptual Amendment 3, which, with handwritten corrections, read [original punctuation provided]:

Page 4, line 19 after "individual landowner's personal residence"

Insert:

"however, the power of eminent domain may be exercised for trails used for foot or wheeled travel where necessary for access to an area for hunting purposes; or where necessary for access to or along segments of a waterway or lake used for fishing, boating or other recreational uses."

CHAIR McGUIRE objected for the purpose of discussion. She said that although she doesn't object to the fundamental goal behind Conceptual Amendment 3, her concern is that it has not yet been thoroughly vetted.

REPRESENTATIVE GARA explained that Conceptual Amendment 3 would keep the power of eminent domain for gaining access to hunting and fishing areas, and acknowledged that the next committee of referral might entertain changes to this proposed language. He noted that merely having access to a fishing stream is not good

enough - one must also have the right to walk along the fishing stream.

CHAIR MCGUIRE said she would maintain her objection but would commit to working with Representative Gara on the issue of having access to fishing streams. She noted that Conceptual Amendment 3 also contains the language, "or other recreational uses", and said this language is a little broader than what she'd be willing to support.

REPRESENTATIVE GARA remarked, "Typo."

CHAIR MCGUIRE said she would work to try to craft an alternative.

REPRESENTATIVE GARA made a motion to amend Conceptual Amendment 3 such that the last line ends with, "fishing or boating." and no longer includes the words, "or other recreational uses". He opined that they should retain the right to acquire land for the purpose public access to fishing streams and boating and hunting areas. [No objection was stated and Conceptual Amendment 3 was treated as amended.]

[2:26:11 PM](#)

A roll call vote was taken. Representatives Gruenberg and Gara voted in favor of Conceptual Amendment 3, as amended. Representatives McGuire, Wilson, Anderson, and Kott voted against it. Therefore, Conceptual Amendment 3, as amended, failed by a vote of 2-4.

[2:26:55 PM](#)

REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 4, labeled 24-LS1083\L.5, Bullock, 2/1/06, which read:

Page 6, lines 7 - 15:
Delete all material.

Renumber the following bill sections accordingly.

Page 6, lines 17 - 21:
Delete all material and insert:
"(c) A borough or a home rule or first class city may exercise the power of eminent domain to acquire property owned by a private person for the purpose of transferring title to the property to

another private person for economic development purposes or to acquire a landowner's primary personal residence for the purpose of developing a recreational facility or project if the municipality

(1) has not delegated the power of eminent domain;

(2) provides for the taking by ordinance;

(3) makes every good faith effort to involve each potentially affected landowner in the planning of the project for which the exercise of the power is being considered, including providing written notice by mail to each landowner at the address of record at least 14 days before a planning meeting or public hearing;

(4) appraises the property the municipality seeks to acquire before beginning negotiations to purchase the property, permits the owner of the property to be present during the appraisal, and makes every reasonable effort to negotiate the purchase of the property through open negotiations with the owner of the property; and

(5) offers the property owner the opportunity to testify at a public hearing before the assembly or council that is considering the enactment of an ordinance to acquire the property through the exercise of the power of eminent domain."

Page 6, line 24, following "AS 09.55.240":

Insert ";

(3) "personal residence" has the meaning given in AS 09.55.240;

(4) "recreational facility or project" has the meaning given in AS 09.55.240"

[2:27:54 PM](#)

KEVIN C. RITCHIE, Executive Director, Alaska Municipal League (AML), explained that the sole purpose of Amendment 4 is to preserve existing local control, and offered his understanding that Article X of the Alaska State Constitution, in using the term "maximum local self-government", is providing a constitutional mandate allowing citizens and communities to make their own choices as much as possible. The will and ability of communities to responsibly deal with eminent domain have already been proven; a number of communities have already had extensive discussions on the issue of eminent domain and have passed local laws similar to what is being proposed [via HB 318]. "Allowing

communities the ability to make choices that impact their own citizens is an important constitutional principle," he opined.

MR. RITCHIE posited that in addition to allowing communities to continue to make their own laws regarding eminent domain, Amendment 4 sets out reasonable sideboards to ensure that citizens and property owners are always heard. Therefore, he ventured, members could vote in favor of Amendment 4 without impacting their feelings about eminent domain. He offered his understanding that [Amendment 1c offers the state] a way of dealing with unforeseen situations, and that Amendment 4 would provide a similar mechanism for local communities. He concluded by saying that the AML supports [the committee's] efforts to deal with "this issue" on behalf of state government and its agencies, and asks [the committee] to continue to give communities - which have elected bodies accountable to the public - the ability to deal with local eminent domain issues within their jurisdictions.

[2:31:34 PM](#)

LUKE HOPKINS, Member, Assembly, Fairbanks North Star Borough (FNSB), with regard to Amendment 4, asked that the committee consider allowing local governments the ability to make the decisions locally regarding eminent domain. He noted that Anchorage recently amended its ordinance on limiting the use of eminent domain, and that the FNSB passed an ordinance limiting the taking of one's property for private economic development. He asked the committee to consider amending HB 318 to ensure that local municipalities have the ability to act on the issue of eminent domain on a case-by-case basis.

[2:33:44 PM](#)

RANDY FRANK, Member, Assembly, Fairbanks North Star Borough (FNSB), relayed that he, too, is concerned about local control, adding, "I think that the elected bodies in each municipality or city should have the right to be involved in this process and not be hamstrung by a state law, which would supersede [local law]. Although eminent domain is necessary, it can and has been used to the detriment of landowners, he remarked, and offered examples of the latter. He surmised that both the recent U.S. Supreme Court case, Kelo v. City of New London, and the extension of the aforementioned coastal trail in Anchorage have engendered in the public a lot of distrust of the process of using eminent domain to seize land. Local control is a most important issue, and it is easy for the term, "for the good of

the public" to be abused; there are always alternatives [to seizing private property], he opined, and they should be explored.

[2:36:03 PM](#)

ED EARNHART said he would be testifying in support of [Amendment 4]. Local governments have already been acting on their own in the direction of what HB 318 proposes to restrict, but they also need the latitude in the future to handle issues regarding quality of life as suggested by Representative Gruenberg, Mr. Earnhart remarked, and relayed that he'd initially been opposed to HB 318, but has since changed his mind after becoming more aware of some of the issues involved. He indicated that it is easy to find examples of abuses of eminent domain, but in taking care of the needs of a community as a whole there is no guarantee that individuals won't get hurt in the process. He offered his hope that [Amendment 4] will be adopted and that [the committee] will more fully consider the issues involved; it is much easier to access a local government with regard to the issue of eminent domain. He concluded by making brief comments regarding the Kelo decision.

CHAIR MCGUIRE acknowledged Mr. Earnhart's points.

[2:41:23 PM](#)

JEAN WOODS relayed that she and many of her friends are opposed to the concept of taking away private property for the purpose of economic development, adding, though, that she agrees with Representative Gara on the issue of access for fishing, boating, and hunting. She went on to say:

I cannot see a local municipality exercising the right of eminent domain for economic development unless its for the stated reasons that are covered by federal and state law, and for those of you that are not aware of it, the House of Representatives [in Congress] voted 378 to 38 opposing the Supreme Court ruling [in Kelo], and they're talking about withholding funding to states that go along with ... [it]. Thank you for the opportunity to testify.

REPRESENTATIVE GARA offered his belief that all the members present agree with Ms. Woods's point regarding taking land from private individuals for economic development purposes.

CHAIR McGUIRE opined that Amendment 4 essentially guts HB 318 because it would allow local municipalities to ignore the proposed state law.

MS. WOODS said she completely supports the bill.

REPRESENTATIVE ANDERSON agreed with Chair McGuire regarding the effect of Amendment 4 on HB 318. He indicated that he's received correspondence from the president of the Russian Jack Community Counsel in opposition to Amendment 4.

[2:45:38 PM](#)

NOEL WOODS thanked the sponsor for the bill as currently written and said he opposes Amendment 4 and is incensed by the concept of taking private residences; if the committee is going to consider allowing such, there should be a substantial penalty added to any approved price for the property involved.

[2:46:43 PM](#)

LISA VON BARGEN, Director, Community and Economic Development Department, City of Valdez, relayed that the City of Valdez has no formal opinion regarding HB 318, but urged the committee to consider providing control at the local level, adding her belief that there is no better way of knowing whether the right decision is being made about eminent domain than to have to face a group of one's peers that one sees every day while going about one's daily business.

[2:47:43 PM](#)

REPRESENTATIVE WILSON asked Mr. Ritchie whether anything in HB 318 would require municipalities to change their current ordinances.

MR. RITCHIE said that as currently written, HB 318 would override current local ordinances, though he noted it is similar to the current Anchorage ordinance.

REPRESENTATIVE WILSON asked whether HB 318 would preclude a local government from utilizing its ordinances regarding eminent domain, and whether local ordinances are different than what is currently provided for in the bill.

MR. RITCHIE said he doesn't have copies of all the local ordinances regarding eminent domain but would get them for the

committee, and reiterated that HB 318 would supersede existing local ordinances.

REPRESENTATIVE WILSON relayed that she would not want anybody taking her home away from her for any reason.

REPRESENTATIVE GARA asked whether there is an alternative version of Amendment 4 that would still protect a local government's control over the issue of eminent domain; perhaps something specifically addressing a local government's ability to acquire land for recreational purposes.

REPRESENTATIVE GRUENBERG said no, though he would be willing to entertain an amendment to Amendment 4 to that effect as it may currently be too broad. His intention, he relayed, was to simply say that a municipality as set forth in Amendment 4 could do the same thing that the legislature could now do as a result of the adoption of Amendment 1c, and he did not mean to broaden the power of local governments.

[2:52:52 PM](#)

REPRESENTATIVE GRUENBERG made a motion to conceptually amend Amendment 4, to delete from Amendment 4's proposed subsection (c) the words, "for economic development purposes or to acquire a landowner's primary personal residence for the purpose of developing a recreational facility or project"; and inserting, "for the purposes and as set out in the remainder of this act"; and allow the drafter to "make this absolutely congruent."

REPRESENTATIVE GARA suggested instead that they simply change page 4, line 15, [of Version L] to say in part, "The power of eminent domain may not be exercised by the state for the purpose ...". He indicated that he would be amenable to language that gives local governments control over the issue of recreational access.

REPRESENTATIVE GRUENBERG instead suggested altering Amendment 4 by deleting the text, inserting language from Amendment 1c, and altering that language so that it says in part, "the legislature or a municipality within its jurisdiction ...".

REPRESENTATIVE GRUENBERG, in response to a comment, withdrew Amendment 4.

REPRESENTATIVE GRUENBERG then made a motion to adopt Conceptual Amendment 5, which would amend Amendment 1c by adding "or a municipality within its jurisdiction and as permitted by law" after the phrase, "the legislature". He clarified that with the adoption of Conceptual Amendment 5, which is altering Amendment 1c, [proposed subsection (d)(7) on page 4 of Version L] would then read, "(7) the legislature or a municipality within its jurisdiction and as permitted by law has approved by the law the transfer of private property." He then added, "It would have to be by law or ... municipal ordinance."

REPRESENTATIVE WILSON sought clarification.

REPRESENTATIVE GRUENBERG offered his belief that if Conceptual Amendment 5 is adopted, municipalities will have the same authority as is being granted to the legislature.

CHAIR MCGUIRE concurred, and characterized Conceptual Amendment 5 as gutting the bill and as being more dangerous than Amendment 4 because if the votes are there at a local level, a local government can simply ignore state law. In response to comments, she pointed out that the adoption of [Amendment 1c] grants to the legislature the authority to [approve the transfer of private property between private entities for economic development purposes].

REPRESENTATIVE GRUENBERG concurred, and said he is now troubled by Conceptual Amendment 5.

CHAIR MCGUIRE suggested to members that they allow this issue to be addressed in the next committee of referral.

REPRESENTATIVE GRUENBERG withdrew Conceptual Amendment 5.

[3:04:16 PM](#)

CHAIR MCGUIRE made a motion to adopt Amendment 6, which read [original punctuation provided]:

Page 3, line 19:

At the end of (7) Insert: ,fiber optic lines;

REPRESENTATIVE GARA objected for the purpose of discussion. He asked whether "cable" would be included.

REPRESENTATIVE KOTT offered his belief that fiber optic [lines] would be construed as cable [lines].

MR. JOHNSON offered his understanding that most cable in the future will be fiber optic.

CHAIR MCGUIRE asked whether the language ought to be changed to say, "cable lines".

MR. JOHNSON remarked that not all fiber optic lines are cable lines and so a reference to both would be needed.

REPRESENTATIVE GARA noted that Amendment 6 proposes to change existing statutory language and so he assumes that cable is covered somewhere, though he is not sure where.

CHAIR MCGUIRE suggested adopting Amendment 6 as is, and then she would research whether cable is already covered and whether "telegraph lines" should still be included in statute.

REPRESENTATIVE GARA suggested that perhaps the language should be changed to say, "fiber optic and other communications lines".

MR. JOHNSON offered his understanding that "that" would be covered as a "utility".

REPRESENTATIVE ANDERSON concurred.

REPRESENTATIVE GARA said he doesn't know that cable is a utility.

CHAIR MCGUIRE asked whether there were any objections to Amendment 6. There being none, Amendment 6 was adopted. In response to a question, she confirmed that [if necessary] the remainder of bill would be renumbered accordingly.

[3:08:06 PM](#)

REPRESENTATIVE GRUENBERG [made a motion to adopt] Amendment 7, which, with a handwritten insertion of text, read [original punctuation provided, though with a change in formatting]:

Page 4, line 18:

Delete 1000 linear feet and insert:
250 linear feet

CHAIR MCGUIRE asked whether there were any objections to Amendment 7. There being none, Amendment 7 was adopted.

REPRESENTATIVE GARA made a motion to adopt Amendment 8, to insert after the word, "exercised" on page 4, line 15, the words, "by the state".

REPRESENTATIVE WILSON sought clarification.

REPRESENTATIVE GARA opined that adoption of Amendment 8 would provide local governments with the authority to use eminent domain in order to gain recreational access for the public.

REPRESENTATIVE ANDERSON objected.

REPRESENTATIVE GARA offered his understanding that local governments would be in favor of such a change. In response to comments, he clarified that Amendment 8 would provide a municipality with the authority to gain recreational access for a trail that is owned by the municipality.

REPRESENTATIVE ANDERSON asked whether Amendment 8 would apply in situations similar to the one involving the aforementioned coastal trail.

REPRESENTATIVE GARA indicated it would.

[3:11:39 PM](#)

A roll call vote was taken. Representatives Gruenberg and Gara voted in favor of Amendment 8. Representatives McGuire, Wilson, Anderson, and Kott voted against it. Therefore, Amendment 8 failed by a vote of 2-4.

[3:12:26 PM](#)

REPRESENTATIVE ANDERSON moved to report the proposed CS for HB 318, Version 24-LS1083\L, Bullock, 1/24/06, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 318(JUD) was reported from the House Judiciary Standing Committee.

HB 150 - LICENSING RADIOLOGIC TECHNICIANS

[3:13:16 PM](#)

CHAIR MCGUIRE announced that the final order of business would be HOUSE BILL NO. 150, "An Act requiring licensure of occupations relating to radiologic technology, radiation therapy, and nuclear medicine technology; and providing for an

effective date." [Before the committee was the proposed committee substitute (CS) for HB 150, Version 24-LS0470\S, Mischel, 4/11/05, which had been adopted as the work draft on 4/11/05.]

HEATH HILYARD, Staff to Representative Tom Anderson, Alaska State Legislature, sponsor, relayed on behalf of Representative Anderson that committee packets contain a new proposed committee substitute (CS) for HB 150, Version 24-LS0470\R, Mischel, 1/12/06.

REPRESENTATIVE ANDERSON, speaking as the sponsor, moved to adopt the proposed CS for HB 150, Version 24-LS0470\R, Mischel, 1/12/06, as the work draft. There being no objection, Version R was before the committee.

MR. HILYARD remarked on some of the language in Section 2 of Version R that is identical to language in Section 2 of Version S: proposed AS 08.89.100(b)(1)-(4); and proposed AS 08.89.150(a)(3), which he suggested may allow those in rural areas to substitute sufficient experience for an approved program when seeking to be licensed as a limited radiologic imager - all persons seeking such licensure will still have to pass an examination as set forth in the bill.

REPRESENTATIVE ANDERSON concurred.

[3:19:05 PM](#)

REPRESENTATIVE WILSON opined that some of the older x-ray machines in rural areas are not going to be familiar to those currently taking classes in this field; conversely, those who know how to use such machines competently might not be able to pass the proposed exam.

MR. HILYARD surmised that such older technology would require an even higher level of proficiency. He suggested that others could better address Representative Wilson's concerns.

[3:21:06 PM](#)

CHAIR McGUIRE noted that the reason the bill was given a referral to the House Judiciary Standing Committee was because it includes prohibition, penalty, and disciplinary provisions, which start on page 7, line 28. She asked the committee to focus on the issues of whether the penalties, both criminal and civil, are appropriate, and whether violations warrant a jury

trial. She suggested that those who have been giving radiologic exams without any formal education in this field will not like the idea of having to go to school, take an exam, and get licensed.

MR. HILYARD, in response to a question, said that the presumption is that those being exempted from the licensing requirements - those listed in proposed AS 08.89.100(b) - already have a minimum level of training in medicine and human physiology and anatomy, and so even though that training may not specifically pertain to radiologic issues, it was felt that that training is sufficient to mitigate concerns [regarding the risk of subjecting someone to] radiation overexposure.

[Chair McGuire turned the gavel over to Representative Anderson.]

REPRESENTATIVE GARA expressed dissatisfaction with that reasoning.

REPRESENTATIVE ANDERSON, referring to the students being exempted via proposed AS 08.89.100(b)(4), posited that an [instructor or] physician will be monitoring their work in the schools listed; a student shouldn't have to first be licensed in order to learn how to operate the equipment that the license pertains to.

REPRESENTATIVE GARA opined that at least a competency test ought to be required.

MR. HILYARD noted that the list of those being exempted has not been changed in Version R, and reiterated his argument that those being exempted will be assumed to have a minimum level of training in medicine and human physiology and anatomy.

[3:31:20 PM](#)

DONNA J. RUFHOLM, R.T., Chair, Licensure Committee, Alaska Society of Radiologic Technologists (AKSRT), confirmed that those students being exempted via proposed AS 08.89.100(b)(4) would be working under the direct supervision of a licensed practitioner or a licensed radiologic technologist and would not be working independently while going through the training process. As long as a person is enrolled in a program, she relayed, the AKSRT doesn't feel that limited scope licensure would be necessary at the time the person is attending the program, though it certainly would be necessary once he/she has

finished the program if he/she is not specifically exempted from licensure via other provisions in the bill.

[Representative Anderson returned the gavel to Chair McGuire.]

REPRESENTATIVE GARA opined that dental assistants and students should not be exempted from licensure unless the radiologic exams they are conducting are occurring under the direct supervision of [a licensed radiologic technologist].

MS. RUFSHOLM said she didn't have a problem with adding language to that effect.

REPRESENTATIVE WILSON indicated that it is disconcerting to see that licensed practitioners are being exempted since they often don't always have any knowledge of radiologic equipment, and to see that students under the supervision of such licensed practitioner would be exempt.

CHAIR MCGUIRE suggested that to require a physician to be licensed in every little "subset" of medicine would be too cumbersome.

MR. HILYARD in response to a question, pointed out that currently there is no standard of competency, for anyone, with regard to conducting radiologic exams.

REPRESENTATIVE ANDERSON noted that receiving either too much radiation or too little radiation poses a danger to the public, recounted several of the other groups of people who are required by the state to be licensed in their field of practice, and opined that the state should move ahead with some sort of licensure requirements for performing radiologic exams regardless of the [continuing] reluctance of certain groups to comply with the proposed standards.

[3:39:37 PM](#)

ED HALL, P.A., Legislative Liaison, Alaska Academy of Physician Assistants (AKAPA), characterized the bill as confusing, and remarked that in general, physician assistants do not agree that basic radiology has presented a problem because no one has presented any such data. The AKAPA can't support HB 150 because it is being presented that providers in clinics are shooting x-rays without any training; however, the AKAPA has questioned its members and found that every clinic it has discussed this bill with has some form of training program in place. He suggested

that those who perform computed tomography (CT) imaging, magnetic resonance imaging (MRI), and other more invasive radiography procedures ought to receive formalized training and be subject to licensure, but the bill should be changed such that those who "shoot x-rays" needn't receive training beyond what they are receiving on the job and needn't be subject to licensure - such requirements could prove onerous particularly for those practicing in rural areas of the state.

CHAIR MCGUIRE said her concern revolves around the fact that currently, anyone can operate x-ray machines without any training, regulation, or licensure even though overexposure to radiation can have severe consequences.

MR. HALL noted that most physician assistant (PA) programs train PAs how to read x-rays but not how to operate x-ray equipment. He concluded by saying that the AKAPA is happy that PAs are exempt from the licensure requirements of HB 150, but there is the perception that the bill could be improved.

[3:44:50 PM](#)

CHRIS DEVLIN, Executive Director, Eastern Aleutian Tribes, Inc., relayed that his organization has nine clinics, four of which have x-ray [equipment], out in the Aleutian Islands, and that most x-rays are being performed by people who would be exempt under the bill. He said the penalties proposed by HB 150 seem a little steep and he is not in favor of the bill moving forward as currently written. He asked whether, if the bill passes, there would be additional penalties such as not qualifying for "federal tort coverage." He relayed that his organization does eventually send its employees out for training and meanwhile people are shown at the work site how to operate the equipment, and so he is not sure that there is a great need for this [legislation]. He opined that although the bill has been improved, it will have a negative impact on rural clinics, which will be faced with the question of whether to provide x-ray service at all.

[3:47:39 PM](#)

CLYDE E. PEARCE, Radiologic Health Specialist II, Radiologic Health, Laboratories, Division of Public Health, Department of Health and Social Services (DHSS), relayed that he conducts inspections of radiology equipment for the state. During his inspections, he said he has observed many instances of alarmingly high exposure to radiation, one in which the person

was trained by someone with absolutely no background in radiology and told the person to do exactly the opposite of what was correct. He relayed that the DHSS favors protecting the public from exposure to excessive radiation, and offered his belief that training is important and that it is also important for that training to be conducted by those who know what they are doing. In conclusion, he characterized the penalties proposed by the bill as appropriate.

MR. PEARCE, in response to a question, explained that the DHSS registers radiologic equipment and he then inspects that equipment. He noted that some facilities in Alaska operate under the purview of the federal government and so the radiology equipment at those facilities is inspected by a federal inspector, though he also conducts federal inspections of certain equipment through a program administered by the DHSS.

REPRESENTATIVE ANDERSON surmised, then, that currently no one monitors the operation of radiology equipment.

MR. PEARCE concurred.

REPRESENTATIVE ANDERSON asked how many states currently license radiologic technicians.

MR. PEARCE said 39 according to his understanding. In response to another question, he acknowledged that such licensure appears to be the trend.

REPRESENTATIVE GARA indicated that he is no longer concerned that the training requirements of the bill are too onerous, but said he is not thrilled with a complete exemption for certain groups of people.

MR. PEARCE, on that first point, acknowledged that there are a number of online sources for training and thus people will be able to obtain the required training without having to leave the community.

[3:53:20 PM](#)

BARBARA HUFF TUCKNESS, Director, Governmental and Legislative Affairs, Teamsters Local 959, relayed that her organization supports the original version of HB 150, and that her organization is fortunate to represent radiologists in hospital facilities who are already under collective bargaining agreements to be certified. She said her organization supports

certification, and noted that nurses' aides are required to be certified as nurses' aides in both urban and rural settings; in other words, there is no exemption from certification for nurses' aides in rural settings. Notwithstanding support of the original bill, her organization is willing to accept the fact that adoption of the proposed CS will be a step in the right direction. She concluded by asking that HB 150 be moved from committee.

[3:55:16 PM](#)

CHAIR McGUIRE referred to Amendment 1, which, with handwritten corrections and some formatting changes, read [original punctuation provided]:

Insert at p.2 line 21

(d) "under the supervision" and "under the direct supervision" in this subsection shall include, but not be limited to, under supervision needed to ensure a radiological examination is performed safely and appropriately.

CHAIR McGUIRE [although no formal motion to adopt Amendment 1 had been made] objected for the purpose of discussion.

REPRESENTATIVE GARA, speaking as the author of Amendment 1, indicated that Amendment 1 would provide some guidelines for those exempted from the training requirements of the bill.

[3:56:51 PM](#)

DONNA M. ELLIOT, Alaska Native Tribal Health Consortium (ANTHC), said she would be speaking in opposition to HB 150 for reasons similar to those expressed by Mr. Hall and Mr. Devlin. She said the ANTHC believes that the bill is poorly written and contains room for changes so as not to place an unnecessary burden on existing radiological technicians who are employed throughout the Alaska tribal health system. It's already a complex and costly network of delivery of care, and additional criteria for technicians would require a lot of time and money. The ANTHC trusts that staff are capable of training and overseeing necessary training so that imagery services are performed with competence, and feels that [HB 150] does not fit the scope of providing care in the rural healthcare model, she concluded.

[3:58:09 PM](#)

DON SMITH, P.A., President, Alaska Academy of Physician Assistants (AKAPA), after relaying that he co-owns two medical clinics, said that he agrees with Mr. Hall's comments. If the bill is really intended to address a safety issue, he remarked, then he is not sure how exempting "licensed practitioner" furthers that goal. Just because one has advanced training in the field of medicine doesn't mean that he/she is competent in the operation of radiologic equipment. He asked that the bill be changed to separate out "in-office" or "in-clinic" and especially "rural clinic" x-rays from the requirement of licensure. "I highly agree that persons taking nuclear medicine studies, CT scans, high radiation studies ... should be regulated and licensed, but I do not see the safety issue nor has anybody offered any safety data that in-office in-clinic x-rays are a huge harm to the public," he concluded.

CHAIR McGUIRE asked whether Mr. Smith is suggesting that licensed practitioners, and licensed PAs, should not be exempted from the bill's licensure requirement.

MR. SMITH said he is simply suggesting that the committee be careful with the concept of exempting "licensed practitioner" because such a person may not be competent to take x-rays.

REPRESENTATIVE ANDERSON remarked that PAs were exempted at the request of the AKAPA.

CHAIR McGUIRE said the committee would consider removing "licensed practitioner" from the list of those who would be exempt from the licensure requirements of the bill.

[4:00:59 PM](#)

MARK RESTAD, P.A., Clinical Administrator, Ninilchik Community Clinic, noted that he has practiced in Tok, Healy, Delta [Junction], Ninilchik, Fairbanks, Kotzebue, and Kenai. He opined that there should be a distinction between basic radiography and advanced radiologic studies, mammography, and advanced nuclear studies. He said that from his perspective, he is concerned about access to care, unneeded medevacs, not having access to emergency medevacs for those that really need it, putting [fishing] crews at risk of needing medevacs for shoulder dislocations - because such cannot be treated without a basic x-ray - and an inability to have a person on site when there is a small staff serving a large geographic region.

MR. RESTAD opined that "a dichotomy of basic radiology studies needs to be done." He noted that his clinic currently has a physicist [funded] through the federal system that does look at exposure rates in the clinic to ensure that they are within a safe range; the clinic's equipment is registered and the clinic has used due diligence to ensure the safety of the public. In conclusion he asked that the proposed fines be reviewed with the perspective of ensuring access to healthcare services by all Alaskans.

[4:03:13 PM](#)

MARILYN KASMAR, Executive Director, Alaska Primary Care Association, Inc. (APCA), relayed that the APCA represents 150 community health centers in Alaska and other "safety net providers," and that health centers are private not-for-profit clinics that operate on very slim margins, typically, and of which the great majority are in remote and rural areas of the state. She said that the APCA appreciates that HB 150 now contains the alternative of demonstrated experience in lieu of graduating from a program, and pointed out that there has not yet been an adverse case or lawsuit attributed to poor radiography practices in community health centers.

MS. KASMAR said that health centers have always had to answer to federal program expectations, which helps to ensure that they consistently practice safe radiography. She said that the APCA agrees with the comments of Mr. Devlin, Mr. Hall, and Ms. Elliot with regard to the potential hardship and negative impacts the bill could cause. She requested that "bullets" 3 and 4 of the letter provided by the APCA be considered as possible changes to HB 150:

Extensions to temporary permits be granted to [community health center] CHC staff when necessary so that sites will not be forced to transport patients to larger cities for radiography services; Temporary permits be granted to CHC staff that do not have two years of prior experience if the lack of said temporary permit would translate into CHCs having to transport patients into larger cities

MS. KASMAR noted that there would be an increased cost to state Medicaid if people have to be transported out for radiological services.

[4:05:51 PM](#)

MS. RUFSHOLM, adding to her previous testimony, said:

As a radiologic technologist, I know that radiation is a carcinogen and that the operators of medical x-ray equipment deliver the largest portion of manmade radiation to the general public. (Indisc.) the average patient doesn't know this; they aren't aware of the facts, and they just have confidence in the fact that the healthcare worker who's performing the procedure knows what they're doing. Passage of [HB 150] will establish the standards for individuals performing x-ray exams, standards that don't exist in some clinical sites as shown by the examples of misuse of radiation, documented by the State of Alaska, [office] of Radiological Health.

There's a copy of this list included in [committee packets] ...; it's quite an extensive list and it does show that there are incidents happening in the state, today, where the operators of x-ray equipment do not know what they are doing. We can't blame the operators - they're uneducated - we can't blame them for the errors that they've made; they've not been required to get the education that they need to do the job correctly, nor have they been given the opportunity.

Opponents of [HB 150] state that it is a financial burden, [but] \$229, the cost for one individual to take an extensive online limited scope program, is equal to the reimbursement for one x-ray procedure - a small amount to pay to [ensure] ... patient safety. House Bill 150 will not change the way that small businesses and rural clinics operate. The committee recognizes the fact that the rural areas of the state have different needs than the urban areas, and we've worked with groups around the state to address those needs. We understand the importance of being able to provide radiology services for patient care, especially in the rural areas.

MS. RUFSHOLM continued:

We've made provisions in the bill to ensure that the individuals who currently perform x-ray procedures at those sites will (indisc. - coughing) do so, the

clinics will have no interruption in services while their staff receives training, [and] there'll be no loss of services in the rural areas or a reduction in patient access to quality and complete point of care. Given that requiring operators to be trained and tested does not increase costs, does not restrict access (indisc. - coughing), will not increase salaries, will not force clinics to close, will not cause staffing shortages, will not create burdensome financial obligations to facilities, and [that] training can be completed at a place and time convenient to the operators, there should be no reason for any of us not to be the patient advocate and establish standards ... for persons (indisc. - coughing) radiology procedures. Thank you for giving me the opportunity to testify.

[4:08:42 PM](#)

REPRESENTATIVE ANDERSON asked what would be required of someone who has already been operating radiological equipment.

MS. RUFSHOLM said that such a person would have two options. If he/she has the basic concept of radiology positioning and radiation, and patient and operator safety, and can pass the aforementioned proposed exam, then he/she will be able to get a limited radiological imager license. If he/she is either not able to pass the exam or doesn't have enough experience, he/she can enroll in one of the courses available - one through the University of Alaska Anchorage (UAA) or another online course that has been identified as being available to anyone at anytime and that consists of approximately 240 online hours - pass the exam for that program, get a certificate, and then be eligible for a limited scope license. She reiterated that the course programs cost \$229.

REPRESENTATIVE WILSON asked what would happen in "hard to serve" areas when a clinic must fill an open position. She then opined that the bill will make it harder to fill such positions.

MS. RUFSHOLM noted that most people employed in clinics aren't just performing x-ray procedures, and so anyone newly hired would be performing those other tasks and would be expected to immediately enroll in the required program, get a temporary permit, and also start performing x-ray procedures; patients in those areas would not be denied radiology services in any way. Perhaps that is not the best way to go about it, she

acknowledged, but it is not the intent of the legislation to impact care in rural areas; there is simply still a need for education. She suggested that adoption of the standards proposed in HB 150 will create a new career path for people in rural areas and is thus providing them with an incentive to stay in the village.

CHAIR McGUIRE surmised, then, that as long as one is enrolled in an approved course, then one can begin taking x-rays.

MS. RUFSHOLM concurred with that summation, reiterating that although that is not the ideal, it will allow those in rural areas to continue to provide radiologic services; currently people are performing radiologic procedures without any education. House Bill 150 will ensure that such people will have the education needed to perform radiologic procedures while also protecting both themselves and the patient - radiation safety for both the patient and the operator is one of the first components of the aforementioned course.

MS. RUFSHOLM, in response to a question, clarified that before a person could start performing radiologic procedures, he/she would have to have temporary license which in turn requires proof that he/she is enrolled in a program and begun it - that temporary license would then be good for a year.

[4:15:45 PM](#)

KEN G. TRUITT, General Counsel, Southeast Alaska Regional Health Consortium (SEARHC), said he's came to offer testimony in opposition to the "existing" version of HB 150, and relayed that SEARHC appreciates the recognition of work experience towards meeting the qualification requirements. He went on to say:

We share the concerns that this is really going to reduce access to care. And so if ... patient ... health and safety [is what's] ... driving this, this bill ... - in the adopted version that you had before the work draft - would reduce access to care and would reduce patient safety instead, and so we agree with the other rural providers that testified on that. ... In a previous life I would have been one of the assistant attorney generals advising the medical board ... [and] the division that would be implementing this law.

In general, there was a passing reference earlier in the hearing to, "There's always going to be opposition to this," and I think that it's hard ... for folks that are opposing [the bill] ... when that's made light of, because you've got two very strong competing interests, here, whenever you talk about regulating a profession - specifically, the constitutional right to liberty. You're impacting somebody's liberty by doing this; you're taking a profession that before this has not had regulation or state oversight ..., and you're taking that liberty away. That's juxtaposed against the reserved power for the states, under police power, to watch out and safeguard the public health. So those are [two very] strong competing interests, and it is difficult to hear ... the opposing interests made light of. ...

Professor Freidman (ph), in his seminal work on the history of American law, ... when he chronicles the history of the regulation of professions, he characterizes it, and its whole treatment of it, [as] a holdover from the guild era, from the guild age, where the primary responsibility of the guilds was to protect the economic interests of those members of the profession, and those members of the profession have a very vested interest in reducing the number of people in their profession, to keep their services in demand and the prices for those services high. And what we have here on the legislative record is that this bill has been drafted by the members of this profession that want to be regulated. ...

Again, it's hard to hear that made light of, the opposition to that, when it looks like this is the "guild" trying to "circle the wagons," reduce the number of providers that are competent and licensed to perform this service, thereby driving up the costs of those services and reducing the access to those services. And that is our fear, in general, with this, ... [though] we appreciate the work draft - we think that goes a long way towards helping those of us who are going to be subject to it find alternative ways to meet those regulations - and we look forward to continuing to work on that.

[4:19:32 PM](#)

CHAIR McGUIRE said her motivation is public safety, and she views the issue as being one of public health rather than economics [for industry members]. She said she is satisfied that the sponsor has worked to a reasonable point to reduce the barriers to obtaining training and licensure. She indicated that it is not her intent to raise healthcare costs.

MR. TRUITT, on the issue of "licensed practitioners", said that perhaps [someone from the Department of Law] should speak to that issue, particularly with regard to the definition of the practice of medicine as that term applies to portions of the bill. "By removing 'licensed practitioner' from this bill you might have to ... then say that this particular activity is exempted from the definition of the practice of medicine not regulated by the medical board," he added. He said that the SEARHC would support keeping "licensed practitioner" in, but then the committee must face the conundrum that some doctors may not even know how to turn on the radiologic equipment in their office.

REPRESENTATIVE GARA said he wants to ensure that the proposed standards are achievable and that rural and small clinics are able to provide needed services on the budgets they have.

REPRESENTATIVE GRUENBERG asked Representative Wilson whether nurses are trained to use radiologic equipment.

[Representative Wilson shook her head.]

REPRESENTATIVE GRUENBERG remarked, "So it's assumed that you'll have somebody else do them?"

REPRESENTATIVE WILSON replied, "Or else that if you go to work in a clinic ..., there's someone there that will train you and show you what to do"

CHAIR McGUIRE remarked, "Boy, that's scary."

MR. TRUITT offered to continue working [with the sponsor] on the issue of experience requirements.

[4:25:18 PM](#)

MICHAEL FORD, Alaska Native Health Board (ANHB), relayed information about the ANHB, and noted that he has seen a lot of bills similar to HB 150. He relayed that the ANHB is very committed to providing the best and safest medical assistance

possible, but does have serious concerns with a bill like HB 150 in terms of cost, particularly in rural areas. He offered his opinion that the fact that the costs and benefits of regulating this industry are hard to identify is one of the primary reasons for this legislation not having become law for the last 10 years. He added that he appreciates the sponsor's work and would be willing to assist him in coming up with language that would alleviate the ANHB's concerns.

MR. FORD then referred to the penalty provisions of HB 150 and noted that it will be a class A misdemeanor for unlicensed practice, whereas it will be a class B misdemeanor for fraudulent practice. He suggested that one who uses fraud to obtain a license should receive a harsher penalty than one who simply practices without a license. He then characterized the exemption provisions of HB 150 as critical, adding, "You have, in a sense, excluded certain areas of practice." For example, under Version R, dentists won't have to change their current practice; a prior version required dentists to be in the same room with the person performing the x-ray procedure. He said he doesn't necessarily know why performing x-ray procedures under the supervision of a licensed practitioner should be exempted, particularly given that it does not necessarily follow that licensed practitioners have experience in the operation of radiological equipment.

MR. FORD said he would like to put together a work group that would formulate language addressing everyone's concerns.

REPRESENTATIVE ANDERSON noted that the bill still has other committee referrals.

[4:31:27 PM](#)

RICHARD MANDSAGER, M.D., Director, Central Office, Division of Public Health, Department of Health and Social Services (DHSS), commented that access and safety are both important issues and therefore a balance between the two must be found, and that he is encouraged by Version R. He noted that at one of his jobs, all of the doctors got on-the-spot training in how to use radiological equipment, and he thinks that they all probably performed x-rays safely, but what was safe 25 years ago may no longer be considered safe, particularly considering the cumulative effects of radiation exposure.

DR. MANDSAGER, in response to comments, noted that dental x-rays expose a person to only a fraction of the radiation that other

types of x-ray procedures expose a person to, and that those who perform CT scans, for example, receive a lot of training. The argument, he surmised, is all about how much training is necessary for what type of radiologic procedures. "I think the safety argument is still really important, and as we get online training and so on available to improve the safety but maintain access, we can strike a balance point that will be good for the state," he remarked.

CHAIR MCGUIRE asked Dr. Mandsager whether the Division of Public Health could play an instrumental role with regard to outreach and assembling online courses.

DR. MANDSAGER indicated that that issue is one that ought to be considered by the division, and noted that with regard to licensure of radiological technicians, the state is on a journey. He concluded by remarking that the penalties in the bill seem fairly high.

LINDA FINK, Vice President, Alaska State Hospital and Nursing Home Association (ASHNHA), stated simply that the ASHNHA supports HB 150.

[4:36:43 PM](#)

LAURIE HERMAN, Regional Director, Government Affairs, Providence Health System-Alaska; Member, Legislative Committee, Alaska State Hospital and Nursing Home Association (ASHNHA), stated that both Providence Health System-Alaska and ASHNHA continues to support HB 150.

MS. HERMAN, in response to a question, said she doesn't know whether licensed nurse practitioners receive training in performing radiological procedures as a matter of course.

REPRESENTATIVE GARA said he is concerned that the bill would exempt certain people, such as licensed practitioners, even when they don't have sufficient training.

REPRESENTATIVE ANDERSON noted that the definition of "licensed practitioner" can be found on page 10, lines 26-19; HB 150 is proposing to exempt licensed practitioners from the training and licensing requirements contained therein.

[4:40:43 PM](#)

REPRESENTATIVE WILSON cautioned against requiring licensed practitioners to have training in performing radiological procedures because it could negatively impact access to care.

REPRESENTATIVE GRUENBERG, referring to a letter from B.J. Anderson, Radiology Manager, Anchorage Neighborhood Health Center (ANHC), he read:

Dear House Judiciary Committee, I am writing in regard to HB 150, which relates to the licensing of radiologic technicians in the state of Alaska. This bill continues to be flawed in that it does not allow organizations to begin training radiologic technicians on the job at the time of hire. This flexibility is absolutely necessary for: one, Alaska health centers who cross-train personnel for several job tasks; and, two, Alaska health centers that have to draw personnel from their communities because there is a lack of certified personnel available or willing to live in rural Alaska.

I would propose that the limited temporary permit be written to include on-the-job training that can begin immediately upon hire with the stipulation that the person must be enrolled in an approved radiologic training program as soon as possible. The temporary [permit] ... could be written to give organizations up to six months ... - or whatever the committee deems reasonable - ... to enroll employees in an approved program.

... It is imperative that the bill allow the flexibility, and recognize the value and reasonableness, of on-the-job training. ...

[4:44:08 PM](#)

REPRESENTATIVE GRUENBERG asked Ms. Rufsholm whether she would be amenable to a conceptual amendment that would allow the department to issue a nonrenewable temporary permit, valid for up to 90 days for an employee of a nonprofit neighborhood health center, to an applicant who pays a fee determined by the department if the applicant enrolls in an approved training program as a radiological technician within that period of time and is training on the job under a person licensed or permitted under [proposed] AS 08.89.110(a)(a).

MS. RUFSHOLM pointed out that the language on page 5 [lines 18-24] of Version R already provides for such a limited permit though it would be valid for up to one year rather than just 90 days as Representative Gruenberg is proposing; furthermore, a person can enroll immediately into the aforementioned online course and begin that course without going through any waiting period. She relayed that Mr. Pearce knows of an instance in which a person was given 64 times the amount of radiation needed because the person doing the procedure had been trained incorrectly on the job; not all on-the-job training is the same, and this example illustrates a real need for standardized training. It will not be a burden to enroll in a training program and at least start it before doing any radiologic procedures, she opined; furthermore, not all facilities have registered technologists that could supervise a trainee as would be required under Representative Gruenberg's suggested change, and although she knows that the standards set by the ANHC for performing radiologic procedures are very high, those standards are not being followed statewide.

REPRESENTATIVE ANDERSON relayed that he has already discussed this issue with the executive director of the ANHC, and offered to discuss it further.

REPRESENTATIVE WILSON said she doesn't know why they would not want Representative Gruenberg's suggested change to also apply to for-profit clinics.

[4:49:50 PM](#)

REPRESENTATIVE GRUENBERG indicated a willingness to work with the sponsor on the issues raised.

REPRESENTATIVE GARA withdrew Amendment 1 [text provided previously].

REPRESENTATIVE GARA made a motion to adopt Amendment 2, which, with handwritten corrections, read [original punctuation provided]:

Insert at p.2 line 21

"(d) In this subsection "under the supervision" and "under the direct supervision" in this subsection shall include, but not be limited to, under supervision needed to ensure an exam or test under this section is performed safely and appropriately.

(e) a licensed practitioner shall be allowed to perform an exam or test under this section if otherwise performed in compliance with law, and if the practitioner has obtained education or training to ensure the exam or test is performed safely & appropriately."

REPRESENTATIVE GARA explained that Amendment 2 would insert new subsections (d) and (e) into proposed AS 08.89.100, and would say that if one is exempted from any of the bill's training or testing requirements, then one must either be trained to or have the knowledge to, or be supervised by someone specifically trained to or have the knowledge to, ensure that the procedure is performed safely and appropriately.

[4:51:24 PM](#)

REPRESENTATIVE ANDERSON indicated that he has no objections to Amendment 2.

REPRESENTATIVE WILSON objected, and expressed concern that Amendment 2 will negatively impact rural areas, adding that she's not heard from anyone that there is a problem. She opined that those who are currently performing radiological procedures in rural areas have received sufficient on-the-job training and don't need certification or licensure.

CHAIR McGUIRE offered her understanding that Amendment 2 will make allowances for just that sort of on-the-job training. "The concern is that if you just simply say ..., 'Well you're a licensed practitioner, therefore you can perform it', we're really kind of going against the grain of the bill, which is to say, 'We want you to have some training ... in this area'," she added. Under [Amendment 2], she posited, the folks that Representative Wilson is referring to would qualify.

REPRESENTATIVE ANDERSON reiterated his support of Amendment 2, but expressed discomfort with the concept of allowing someone who had a little bit of training 25 years ago to qualify for performing or supervising the performance of radiological exams.

REPRESENTATIVE WILSON reiterated that she is concerned about rural areas.

CHAIR McGUIRE noted that times are changing and people have to realize that radiation is a carcinogenic. Those that are

performing radiologic exams currently and those who have obtained some kind of training will be allowed to continue, but those that aren't currently performing such exams or haven't received some form of training will have to fulfill the educational requirements of the bill. She acknowledged that perhaps some clinics operating in rural areas will come to the state and ask for the money to cover the costs of that training. Radiation is serious stuff, she remarked, and suggested that the reason Representative Wilson hasn't seen any evidence of harm is that the effects of over-radiation cannot often be seen immediately.

REPRESENTATIVE WILSON said she doesn't know what the long-term ramifications of Amendment 2 will be, again expressed concern that access to care in rural areas will decrease, and suggested that simple x-rays are not harmful.

CHAIR MCGUIRE noted that the proposed temporary licenses last one year, and so a future legislature could address any issues that arise as a result of the proposed educational and licensure requirements.

[4:58:31 PM](#)

REPRESENTATIVE ANDERSON called the question.

CHAIR MCGUIRE instead offered members another opportunity to speak.

REPRESENTATIVE GARA noted that Amendment 2 pertains to the exemption provisions of the bill, and suggested that without it, licensed practitioners will be allowed to perform radiologic procedures even if they don't know how to do them safely.

REPRESENTATIVE WILSON argued that this will result in a cost to rural clinics.

REPRESENTATIVE GARA countered that under Amendment 2, only those licensed practitioners that have had no training whatsoever will be precluded from performing radiologic exams.

REPRESENTATIVE WILSON opined that licensed practitioners have never had any such training; furthermore, they don't perform radiologic exams.

REPRESENTATIVE GARA pointed out, then, that Amendment 2 won't change current practice and therefore it won't result in

increased costs; Amendment 2 only applies to those that are performing radiologic exams.

REPRESENTATIVE KOTT noted that dental assistants are not included in the definition of "licensed practitioner".

MR. HILYARD pointed out, though, that via language on page 2, lines 6-7, of Version R, dental assistants under the supervision of licensed practitioners are being exempted from the licensure provisions of the bill.

[5:01:53 PM](#)

REPRESENTATIVE GRUENBERG pondered whether language could be added to the bill that would provide for educational grants.

REPRESENTATIVE ANDERSON agreed to consider the addition of such language as the bill continues through the process.

MR. HILYARD pointed out that [proposed AS 08.89.100] has a delayed effective date of two years. On the issue of whether radiological procedures have been demonstrated to be harmful, he relayed that members' packets include an article from the University of California, Berkeley, that says a noted expert on the health effects of radiation has concluded that a large proportion of deaths today from cancer and heart disease are due in part to past exposure to medical radiation. The expert was quoted in that article as saying in part: "There is the assumption that, at these doses, radiation doesn't make a significant contribution ... but x-rays are very potent mutagens, even at low doses. It's a disaster that people still believe the 'safe dose myth,' that low doses are harmless."

CHAIR McGUIRE noted that the standards for what amount of radiation exposure is safe for pregnant women has changed over the years.

MR. HILYARD concurred.

[5:04:21 PM](#)

A roll call vote was taken. Representatives McGuire Anderson, Gruenberg, and Gara voted in favor of Amendment 2. Representatives Wilson and Kott voted against it. Therefore, Amendment 2 was adopted by a vote of 4-2.

REPRESENTATIVE WILSON made a motion to adopt Conceptual Amendment 3, which read:

Pg 2

after line 19 insert

(5) from a hard to serve areas [sic]

REPRESENTATIVE WILSON explained that Conceptual Amendment 3 will address her concern regarding access to care by exempting people in hard to serve areas from the licensure requirements of the bill.

5:05:49 PM

REPRESENTATIVE GRUENBERG expressed favor towards such an exemption, but pointed out that the term, "hard to serve area" would have to be carefully defined because, as is, such a provision would be impossible to enforce. He suggested that Representative Wilson and the sponsor work together on this issue.

REPRESENTATIVE ANDERSON objected to Amendment 3, said it would gut the bill, and concurred that "hard to server area" would have to be defined. He agreed to discuss the issue further as the bill continues through the process.

REPRESENTATIVE WILSON offered her understanding that the Department of Labor & Workforce Development (DLWD) knows what a "hard to serve area" is.

REPRESENTATIVE KOTT indicated agreement with Representative Anderson, and opined that defining the term, "hard to serve area" will be cumbersome and difficult. He said it would be helpful to see documentation from the DLWD referencing what constitutes a hard to serve area.

REPRESENTATIVE GRUENBERG suggested crafting a letter of intent stating that the committee wants this issue addressed at some point.

REPRESENTATIVE ANDERSON said he would prefer to simply make a commitment to research this issue further before the bill is heard in its next committee of referral.

REPRESENTATIVE GRUENBERG said he would be satisfied with such a commitment by the sponsor.

CHAIR McGUIRE noted that Representative Gara has suggested that institution of a "staggered" effective date for a definable hard to serve area might be a way of addressing this issue.

REPRESENTATIVE WILSON withdrew Amendment 3.

REPRESENTATIVE KOTT suggested the committee consider Mr. Ford's point regarding misdemeanors, and opined that the proposed penalties should be similar in nature.

[5:10:06 PM](#)

CHAIR McGUIRE asked Representative Kott to describe how he wished to change the bill to that effect.

REPRESENTATIVE GRUENBERG suggested allowing the sponsor to research this issue further as the bill continues through the process.

MR. HILYARD, in response to a question, said he didn't know why the proposed penalties are not consistent with each other.

MS. RUFSHOLM offered her understanding that the drafter chose the language pertaining to penalties, and said her organization is amenable to changing that language.

REPRESENTATIVE GRUENBERG noted that under Version R, violation of proposed AS 08.89.100 will be a class A misdemeanor.

REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 4, to change "class B misdemeanor" to "class A misdemeanor" on page 8, line 12.

REPRESENTATIVE WILSON said she would rather have any violation be a class B misdemeanor.

REPRESENTATIVE GRUENBERG asked Mr. Ford whether the crimes of "unauthorized practice" are class A misdemeanors or class B misdemeanors.

MR. FORD said he did not know.

REPRESENTATIVE GARA noted that fraud is usually a felony, and said he would be comfortable allowing the sponsor to work on this issue before the bill is heard on the House floor.

CHAIR McGUIRE noted that sometimes if something is a "lesser included" crime, it will result in a lower penalty, and so perhaps that was the intent behind having different penalties for different behaviors. She said she would not want to undo the balance that the current statutes regarding penalties provide. She, too, expressed satisfaction with allowing the sponsor to research this issue further as the bill continues through the process.

REPRESENTATIVE ANDERSON said he would work with members and other interested parties regarding the concerns raised, though he cautioned that he may not be able to alleviate the concern regarding the "rural dynamic."

[5:15:34 PM](#)

REPRESENTATIVE GRUENBERG moved to report the proposed CS for HB 150, Version 24-LS0470\R, Mischel, 1/12/06, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 150(JUD) was reported from the House Judiciary Standing Committee.

ADJOURNMENT

[5:15:57 PM](#)

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 5:15 p.m.