

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

March 2, 2006

8:42 a.m.

MEMBERS PRESENT

Senator Ralph Seekins, Chair
Senator Charlie Huggins, Vice Chair
Senator Gene Therriault
Senator Hollis French
Senator Gretchen Guess

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 249

"An Act relating to criminal justice information."

MOVED CSSB 249(JUD) OUT OF COMMITTEE

SENATE BILL NO. 284

"An Act relating to sentencing for the commission of a felony while under the influence of alcohol."

MOVED CSSB 284(JUD) OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 92(JUD)

"An Act relating to the purchase of interests in nonprofit corporations by the University of Alaska."

HEARD AND HELD

SENATE BILL NO. 298

"An Act relating to loans from trust property; relating to a trustee's power to appoint the principal of a trust to another trust; relating to challenges to, claims against, and liabilities of trustees, beneficiaries, and creditors of trusts and of trusts and estates; relating to individual retirement accounts and plans; relating to certain trusts in divorce and dissolutions of marriage situations; and providing for an effective date."

MOVED CSSB 298(JUD) OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 318(FIN) am

"An Act limiting the exercise of eminent domain."

HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 249

SHORT TITLE: REPORTING BAIL AND RELEASE INFORMATION

SPONSOR(s): SENATOR(s) FRENCH

01/23/06	(S)	READ THE FIRST TIME - REFERRALS
01/23/06	(S)	JUD
02/15/06	(S)	JUD AT 8:30 AM BUTROVICH 205
02/15/06	(S)	Heard & Held
02/15/06	(S)	MINUTE(JUD)
03/01/06	(S)	JUD AT 8:30 AM BUTROVICH 205
03/01/06	(S)	Scheduled But Not Heard

BILL: SB 284

SHORT TITLE: SENTENCING FOR ALCOHOL-RELATED CRIMES

SPONSOR(s): SENATOR(s) THERRIAULT

02/13/06	(S)	READ THE FIRST TIME - REFERRALS
02/13/06	(S)	JUD, FIN
02/28/06	(S)	JUD AT 8:30 AM BUTROVICH 205
02/28/06	(S)	Heard & Held
02/28/06	(S)	MINUTE(JUD)
03/01/06	(S)	JUD AT 8:30 AM BUTROVICH 205
03/01/06	(S)	Heard & Held
03/01/06	(S)	MINUTE(JUD)

BILL: HB 92

SHORT TITLE: UNIV. OF ALASKA & NONPROFIT CORP STOCK

SPONSOR(s): REPRESENTATIVE(s) KELLY

01/21/05	(H)	READ THE FIRST TIME - REFERRALS
01/21/05	(H)	EDU, HES
04/05/05	(H)	EDU AT 11:00 AM CAPITOL 106
04/05/05	(H)	Heard & Held
04/05/05	(H)	MINUTE(EDU)
04/06/05	(H)	HES REFERRAL WAIVED
04/06/05	(H)	JUD REFERRAL ADDED AFTER EDU
04/07/05	(H)	EDU AT 11:00 AM CAPITOL 106
04/07/05	(H)	-- Meeting Canceled --
04/12/05	(H)	EDU AT 11:00 AM CAPITOL 106
04/12/05	(H)	Moved CSHB 92(EDU) Out of Committee
04/12/05	(H)	MINUTE(EDU)
04/14/05	(H)	EDU AT 11:00 AM CAPITOL 106
04/14/05	(H)	-- Meeting Canceled --
04/18/05	(H)	EDU RPT CS(EDU) NT 1DP 5NR

04/18/05 (H) DP: LYNN;
 04/18/05 (H) NR: THOMAS, WILSON, GATTO, SALMON,
 NEUMAN
 04/18/05 (H) JUD AT 1:00 PM CAPITOL 120
 04/18/05 (H) Scheduled But Not Heard
 04/19/05 (H) JUD AT 1:00 PM CAPITOL 120
 04/19/05 (H) Heard & Held
 04/19/05 (H) MINUTE(JUD)
 04/22/05 (H) JUD AT 1:00 PM CAPITOL 120
 04/22/05 (H) Moved CSHB 92(JUD) Out of Committee
 04/22/05 (H) MINUTE(JUD)
 04/26/05 (H) JUD RPT CS(JUD) NT 1DP 6NR
 04/26/05 (H) DP: MCGUIRE;
 04/26/05 (H) NR: KOTT, GRUENBERG, ANDERSON,
 DAHLSTROM, COGHILL, GARA
 04/28/05 (H) TRANSMITTED TO (S)
 04/28/05 (H) VERSION: CSHB 92(JUD)
 05/01/05 (S) READ THE FIRST TIME - REFERRALS
 05/01/05 (S) HES
 02/09/06 (S) HES REFERRAL WAIVED
 02/09/06 (S) JUD REFERRAL ADDED
 03/02/06 (S) JUD AT 8:30 AM BUTROVICH 205

BILL: SB 298

SHORT TITLE: TRUSTS: CHALLENGES; CLAIMS; LIABILITIES
 SPONSOR(S): SENATOR(S) SEEKINS

02/14/06 (S) READ THE FIRST TIME - REFERRALS
 02/14/06 (S) L&C, JUD
 02/23/06 (S) L&C AT 1:30 PM BELTZ 211
 02/23/06 (S) Moved SB 298 Out of Committee
 02/23/06 (S) MINUTE(L&C)
 02/27/06 (S) L&C RPT 3DP
 02/27/06 (S) DP: BUNDE, SEEKINS, STEVENS B
 03/02/06 (S) JUD AT 8:30 AM BUTROVICH 205

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
 02/03/06 (H) Moved CSHB 318(JUD) Out of Committee
 02/03/06 (H) MINUTE(JUD)
 02/06/06 (H) JUD RPT CS(JUD) NT 3DP 1NR 2AM
 02/06/06 (H) DP: WILSON, ANDERSON, MCGUIRE;
 02/06/06 (H) NR: GRUENBERG;
 02/06/06 (H) AM: GARA, KOTT
 02/09/06 (H) FIN AT 1:30 PM HOUSE FINANCE 519
 02/09/06 (H) Moved CSHB 318(FIN) Out of Committee
 02/09/06 (H) MINUTE(FIN)
 02/10/06 (H) FIN RPT CS(FIN) NT 2DP 3NR 3AM
 02/10/06 (H) DP: HAWKER, MEYER;
 02/10/06 (H) NR: KERTTULA, JOULE, WEYHRAUCH;
 02/10/06 (H) AM: STOLTZE, HOLM, FOSTER
 02/21/06 (H) TRANSMITTED TO (S)
 02/21/06 (H) VERSION: CSHB 318(FIN) AM
 02/22/06 (S) READ THE FIRST TIME - REFERRALS
 02/22/06 (S) JUD, FIN
 03/02/06 (S) JUD AT 8:30 AM BUTROVICH 205

WITNESS REGISTER

Senator Hollis French
 Alaska State Capitol
 Juneau, AK 99801-1182
POSITION STATEMENT: Sponsor of SB 249

Senator Gene Therriault
 Alaska State Capitol
 Juneau, AK 99801-1182
POSITION STATEMENT: Sponsor of SB 284

Dave Stancliff, Legislative Aide
 Staff to Senator Therriault
 Alaska State Capitol
 Juneau, AK 99801-1182
POSITION STATEMENT: Answered questions regarding SB 284

Representative Mike Kelly
 Alaska State Capitol
 Juneau, AK 99801-1182
POSITION STATEMENT: Sponsor of HB 92

Dr. Craig Dorman, Vice President of Academic Affairs
University of Alaska Statewide System
PO Box 755000
Fairbanks, AK 99775

POSITION STATEMENT: Testified in support of HB 92

Brian Rogers
Board of Regents
University of Alaska Fairbanks

POSITION STATEMENT: Testified in support of HB 92

Brian Hove, Legislative Aide
Staff to Senator Ralph Seekins
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Introduced SB 298

Beth Chapman, Attorney
Faulkner Banfield
Juneau, Alaska

POSITION STATEMENT: Testified in support of SB 298

Rich Hompesch, Attorney
Hompesch & Evans
Fairbanks, Alaska

POSITION STATEMENT: Testified in support of SB 298

Dick Thwait, Attorney
Chairman of the Board
Alaska Trust Company
Anchorage, Alaska

POSITION STATEMENT: Testified in support of SB 298

Douglas Blattmachr, President and CEO
Alaska Trust Company
Anchorage, Alaska

POSITION STATEMENT: Testified in support of SB 298

David Shaftel, Attorney
Anchorage, Alaska

POSITION STATEMENT: Testified in support of SB 298

Steve Greer, Attorney
Anchorage, Alaska

POSITION STATEMENT: Testified in support of SB 298

Jonathon Blattmachr

POSITION STATEMENT: Testified in support of SB 298

Craig Johnson, Legislative Aide
Staff to Representative Lesil McGuire
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Introduced HB 318

Peter Putzier, Senior Assistant Attorney General
Department of Law
PO Box 110300
Juneau, AK 99811-0300

POSITION STATEMENT: Commented on HB 318

ACTION NARRATIVE

CHAIR RALPH SEEKINS called the Senate Judiciary Standing Committee meeting to order at [8:42:58 AM](#). Present were Senators Hollis French, Charlie Huggins, Gene Therriault, Gretchen Guess and Chair Ralph Seekins.

SB 249-REPORTING BAIL AND RELEASE INFORMATION

[8:43:20 AM](#)

CHAIR RALPH SEEKINS announced SB 249 to be up for consideration.

SENATOR HOLLIS FRENCH moved CSSB 249 version G as the working document before the committee.

CHAIR SEEKINS objected for the purpose of explanation.

SENATOR FRENCH explained the difference with the committee substitute (CS) was on page 2. Line 9 added the conditions of parole or probation supervision.

[8:44:34 AM](#)

CHAIR SEEKINS removed his objection and hearing no further objections, version 24-LS1490\G was adopted.

SENATOR FRENCH reported that the Department of Law (DOL) was in support of the bill.

CHAIR SEEKINS closed public testimony.

SENATOR GRETCHEN GUESS moved CSSB 249(JUD) out of committee with individual recommendations and attached fiscal notes. Hearing no objections, the motion carried.

CHAIR SEEKINS announced a brief recess at [8:45:59 AM](#).

SB 284-SENTENCING FOR ALCOHOL-RELATED CRIMES

[8:47:01 AM](#)

CHAIR RALPH SEEKINS announced SB 284 to be up for consideration.

DAVE STANCLIFF, Staff to Senator Gene Therriault, reported that he and Senator Therriault worked with the drafter to create a committee substitute (CS) to address the issues raised in earlier hearings.

SENATOR GENE THERRIAULT moved CSSB 284 version Y as the working document before the committee.

CHAIR SEEKINS objected for the purpose of explanation.

MR. STANCLIFF explained that the CS accommodates the three concepts discussed previously. At the bottom of page 1 "alcoholic beverage" has been changed to "consumption of alcohol." The second change modifies existing DUI statutes to bring the language into conformity with SB 284. The change includes the term "consuming alcohol" instead of "alcoholic beverage" and the concept of "up to the lifetime of the defendant" is added. The last concept is to allow judges a range of up to a lifetime ban, an option to use as they see appropriate.

[8:49:04 AM](#)

SENATOR THERRIAULT asked Mr. Stancliff to clarify everything that was swept in under the DUI statutes.

MR. STANCLIFF explained that after a person is convicted of a third DUI these conditions of sentencing would apply. The sentencing would also apply for a person with one DUI conviction if it involved a death or serious injury.

SENATOR THERRIAULT asked whether the conditions of sentencing would apply for a first time DUI conviction involving a death or serious injury.

MR. STANCLIFF said yes.

CHAIR SEEKINS closed public testimony.

[8:51:16 AM](#)

SENATOR THERRIAULT moved CSSB 284(JUD) out of committee with individual recommendations and attached fiscal notes. Hearing no objections, the motion carried.

CHAIR SEEKINS announced a brief recess at [8:51:56 AM](#).

HB 92-UNIV. OF ALASKA & NONPROFIT CORP STOCK

[8:53:38 AM](#)

CHAIR RALPH SEEKINS announced CSHB 92(JUD) to be up for consideration.

REPRESENTATIVE MIKE KELLY, bill sponsor, advised the committee of a new committee substitute (CS) for the bill. SCS CSHB 92 version X would permit the University of Alaska to invest in corporations who would produce and market inventions coming from the university. The bill that passed the House limited the investment to non-profit organizations but the current CS would allow for investment opportunities in profit corporations as well. The university has seen tremendous growth in money coming in for sponsored research and that has a tremendous multiplier, creating thousands of jobs. That has been instrumental in changing the university's funding from a majority of state funding to tuition and other funds.

Part of a successful research university is the ability to "spin off" intellectual properties into applied science and to contribute to the economy. Presently the university is prevented from investing in corporations due to fear of liability associated with "piercing the corporate veil." HB 92 would make it possible for the university to invest in corporations but would not allow the university to be liable for the corporation's debts.

When the House stripped away the for-profit corporation ability, it took away a large portion of the potential benefit of the bill. The current CS would add that ability back in.

[8:57:47 AM](#)

SENATOR GENE THERRIAULT moved 24-LS0344\X as the working document before the committee. Hearing no objections, the motion carried.

DR. CRAIG DORMAN, Vice President of Academic Affairs for the University of Alaska Statewide System, explained that the basis of the university's request was based on public law that permits universities to take ownership of inventions that are made with federal funding. To take advantage of the inventions, it

requires that things move into the commercial line of business and would start by encouraging the individual who made the invention to patent or license it.

9:00:28 AM

DR. DORMAN said when a scientist invents a piece of equipment used to further his research it can be useful for other researchers around the world. The form of ownership that it would typically take could include the university putting up it's own portion of the invention rights as outlined in a collective bargaining agreement or have stock rights or partial interest in a corporation.

DR. DORMAN gave an example of using a non-profit last year. Currently the university is involved with the Alaska Ocean Observing System. The university is in the process of establishing rules and governance processes whereby it becomes part of the national federation of regional agencies and thus it could accrue significant federal funding, he noted. Although the university wants to be involved in such ventures, there is concern with regard to the university being seen as a "deep pocket." Therefore, the intent of HB 92 is to avoid losing the university's assets by allowing it to participate in start-up ventures and charitable nonprofits.

9:02:16 AM

SENATOR GRETCHEN GUESS asked Dr. Dorman the amount of public universities that have the same provision.

DR. DORMAN said from his experience it was common practice. Universities have a variety of ways of allowing for this type of thing.

REPRESENTATIVE KELLY explained to the committee that the university legal counsel was unable to be present today but they put the language for the original bill together. There are several states that have similar language as HB 92.

9:03:28 AM

SENATOR GUESS asked Representative Kelly whether the normal practice was for someone to form a corporation but leave the university not liable for losses. She said she did not understand why anyone would enter into an agreement such as that.

REPRESENTATIVE KELLY responded they would be liable within the corporation and so the investment would be at risk. It would not

be any different than the average person in that the corporation couldn't reach into the university.

CHAIR SEEKINS said it was more of a corporate iron curtain than a corporate veil.

SENATOR GUESS posed a hypothetical example. If the university owns forty percent of a corporation and that corporation goes bankrupt and incurs \$100,000 worth of losses, she asked who would pay the liable loss.

REPRESENTATIVE KELLY explained that it would be the same as any investment in a corporation and that the university's investment would be at risk but the corporation could not submit that bill to the Board of Regents. It would be strictly within that profit or non-profit corporation.

SENATOR GENE THERRIAULT commented it was no different than any other corporation. The assets of the business are at risk but the bank could not reach through to confiscate anyone's home.

[9:07:47 AM](#)

REPRESENTATIVE KELLY commented that the bill was timely because currently there is approximately \$150 million dollars a year brought in from the outside into the university system. He said he is very comfortable with the bill and reminded the committee that it involves the Board of Regents and is very tightly controlled.

SENATOR CHARLIE HUGGINS expressed support for the bill.

[9:09:45 AM](#)

SENATOR THERRIAULT asked Representative Kelly the reason the House dropped out the for-profit corporations in the bill.

REPRESENTATIVE KELLY said it happened in the House Economic Development and Tourism Committee out of a "fairness" concern that there be no injury to the public.

SENATOR THERRIAULT said he did not understand why there would be any difference.

REPRESENTATIVE KELLY commented the concern was about tort and fraud but the bill would actually protect the university from those sorts of things.

CHAIR SEEKINS speculated the reason the committee dropped non-profit from the bill was due to a basic misunderstanding of corporate law.

SENATOR HUGGINS asked Representative Kelly whether the House Economic Development and Tourism Committee now understood their mistake.

REPRESENTATIVE KELLY said he couldn't comment. There was another side to the issue, which was that the bill now clarifies that the corporate entity of the university does not enter into liability with the corporation.

[9:13:13 AM](#)

SENATOR HOLLIS FRENCH said he had a question for the university legal counsel and hoped to be able to question someone before the bill left committee. He said he wanted to know the other states that use the same model that the bill proposes.

BRIAN ROGERS, member, University of Alaska Fairbanks Board of Regents, expressed support for the bill. Testimony last year indicated that the legal protections the bill provides the university are identical to those that are provided to state agencies, such as Alaska Industrial Development and Export Authority (AIDEA). The university has been trying to transfer technology to the private sector for some time. They tried in the early 1990s to set up a technology development corporation but were not successful.

[9:16:12 AM](#)

MR. ROGERS gave an example of an invention that identifies pin bones in a fish and removes them, making for a better product. Without a corporate veil or legal protections the university could become liable if someone were to choke on a pin bone that did not get removed. The standard university stance is to not take risks and so the bill provides a balance so that the only risk to the university would be the investment. HB 92 balances the protections yet allows them to create economic development from the university and in the long run, provides revenues to the university.

CHAIR SEEKINS announced a brief recess at [9:18:07 AM](#).

[9:25:11 AM](#)

CHAIR SEEKINS held the bill in committee.

SB 298-TRUSTS: CHALLENGES; CLAIMS; LIABILITIES

[9:26:25 AM](#)

CHAIR RALPH SEEKINS announced SB 298 to be up for consideration.

BRIAN HOVE, Staff to Senator Seekins, introduced SB 298. The bill revises Titles 13 and 34 pertaining to the administration of trust assets.

Updates incorporated into Title 13 include the addition of clarifying language relating to the various powers conferred upon the trustee; trustee reporting requirements; and claims made against trust assets.

Updates integrated into Title 34 include language pertaining to the exemption from transfer provisions for certain IRA trust assets; technical corrections made to AS 34.40.110(b); and the handling of trust assets in cases of divorce or dissolution.

Since 1997, the Alaska State Legislature has consistently worked to update and improve laws regarding the use and administration of trusts. As a result, Alaska is considered one of the premier trust jurisdictions in the country. The updates proposed in SB 298 are in keeping with revisions made to Alaska's trust laws in 1997 and 2003. They are intended to preserve Alaska's leading position within the universe of products and services offered nationwide.

[9:28:50 AM](#)

The bill clarifies prior trust legislation, makes the administration of trusts in Alaska more efficient and cost effective, and will keep Alaska as the jurisdiction of choice for trust administration. Mr. Hove offered to answer general questions.

[9:29:48 AM](#)

BETH CHAPMAN described herself as a private practice attorney working in estates and trusts. She represents individual families, individuals who service trustees, and beneficiaries of trust. She said she supports the bill because it brings trust business and revenues to Alaska and helps protect families.

The first provision to discuss is in Sections 2 and 3 and is designed to clarify a trustee's powers to appoint trust assets. Simply put, it is designed to improve the administration of trusts so that trustees have flexibility to respond to changing circumstances in the family.

CHAIR SEEKINS interrupted Ms. Chapman to ask the committee to adopt the current version of the bill.

9:30:58 AM

SENATOR CHARLIE HUGGINS moved to adopt 24-LS1113\ Y as the working document before the committee. Hearing no objection, the motion carried.

CHAIR SEEKINS explained the Y version replaces the word "from" on page 2 line 1 with "or" after the word "income."

MS. CHAPMAN continued the bill allows the trustee to respond to changes in circumstances. Many times families establish irrevocable trusts and then circumstances arise with regard to beneficiaries. The provision would allow the trustee to continue the trust under terms that are beneficial to the beneficiary, does not impact their interest in the trust, and yet does so without the need to involve a court proceeding.

9:32:38 AM

MS. CHAPMAN continued the second provision concerns the statute of limitations for claims against a trustee. Currently Alaska law has three different statutes of limitations for claims against a trustee brought by a beneficiary. This leads to confusion and works to the disadvantage of trust beneficiaries. The proposed changes would eliminate the different time periods for interim reports and final reports. It would eliminate the difference so that there would be one statute of limitations for all types of claims relating to a report given by a trustee. It would also impose additional obligations on the trustees to ensure that the beneficiaries are aware of the time limitation.

The statute would require that the trustee use 14-point pitch to clearly communicate the limitation period to the beneficiary.

9:33:51 AM

The other amendment to the statute of limitations corrects the time periods for notices when a trustee decides to use the court to approve a report. Currently there is an inconsistency regarding when those notices must be provided. The probate and trust codes are designed to protect beneficiaries by ensuring that claims are handled in an expeditious manner so that assets can be distributed to beneficiaries free of potential claims. The amendment balances expeditious resolution of claims with the rights of beneficiaries to adequate disclosure regarding trust assets and the right to bring claims arising from a trust

report. The limitation periods proposed in SB 298 are longer than the limitation periods currently in the probate code that apply to estates but they are fair and provide a good balance between the needs for administration of a trust in an expeditious manner yet protect beneficiaries rights, she said.

[9:35:11 AM](#)

SENATOR HOLLIS FRENCH asked Ms. Chapman what the statute of limitations would be if the bill were to pass.

MS. CHAPMAN responded the bill would reduce the process to two statutes of limitations. The first would be an ultimate limitation of three years. That would be from any report that a trustee provides to a beneficiary. The second limitation period would be six months. That applies to final reports and proposes to eliminate a longer statute of limitations that applies to interim reports, which is two years.

SENATOR FRENCH asked Ms. Chapman to describe under which circumstances when, in the life of a trust, a final report is issued.

MS. CHAPMAN said a final report is issued when the trust relationship is going to be terminated either because the trust is to be terminated and the assets distributed or a new trustee will be taking over the duties of administration.

SENATOR FRENCH clarified in the notice of the final report there would be delivery of notice to the beneficiary that they have six months to act should there be any dispute.

MS. CHAPMAN agreed.

[9:37:29 AM](#)

RICH HOMPECH, described himself as an attorney in private practice who does estate planning, probate, and trust administration. He testified in support of the bill and agreed with the testimony of Ms. Chapman.

DICK THWAITTS, Attorney and Chairman of the Board of Alaska Trust Company, testified in support of the bill and agreed with the testimony of Ms. Chapman. He said often times a trustee can anticipate when a trust terminates and can start in motion the six-month statute and make the distribution immediately.

[9:39:40 AM](#)

SENATOR FRENCH asked him to restate his point regarding the distribution to beneficiaries and the issuance of report.

MR. THWAITTS said:

Oftentimes as a trust comes to its termination, that is, the children are reaching the age at which the trust can be distributed to them, it is advantageous to then issue a preliminary report as to what assets are there, what has been done with the assets, and how the assets are going to distribute. Each beneficiary would then have a six-month period with which to respond or reply.

[9:41:09 AM](#)

MR. BLATTMACHR, President and CEO of Alaska Trust Company, expressed strong support for SB 298.

DAVID SHAFTEL identified himself as an attorney who works in the estate and trust arena and a member of attorneys and trust officers who have worked to improve estate statutes since 1997. He testified in support of SB 298.

STEVE GREER identified himself as an attorney whose practice was limited to estate and trust work. He testified in support of SB 298.

[9:43:39 AM](#)

JONATHON BLATTMACHR, Attorney, said although he is a member of the Alaska Bar, he practices primarily in New York. He was involved in the development of the Alaska trust legislation and said it was a pro-consumer bill. He testified in support of SB 298.

CHAIR SEEKINS closed public testimony.

SENATOR GRETCHEN GUESS asked Ms. Chapman to walk the committee through how Section 11 would work.

MS. CHAPMAN said Section 11 was designed to parallel the claims procedure reviews for probates when there is an estate involved. An irrevocable trust doesn't go through the court probate process and there has been uncertainty regarding how creditors can assert claims against the revocable trusts.

When the settlor dies, the trustee can publish notice similar to the notice published for an estate. That notice has a four month statute of limitations and it adopts the probate procedures that

are contained in AS 13.16.450-525. They also can file a petition with the superior court for the determination of claims if there are any issues regarding those claims.

She said:

So what happens is you file a public notice in the newspaper. Claims come in from creditors. The trustee can either allow them or deny them pursuant to the probate code. If a claim is disallowed then we have to give them additional notice and allow them the right to petition the court for determination and validity of the claim. If there are no claims or if we've resolved all claims within four months, then no further claims can be asserted against the assets of a revocable trust just as that happens with an estate, and then the assets can be distributed to the beneficiaries knowing that all claims of the deceased have been satisfied.

[9:47:41 AM](#)

SENATOR CHARLIE HUGGINS related an anecdote about a probate judge in Georgia who used his position to accumulate a lot of land. He asked her whether there was a liability in Alaska for that scenario to happen.

MS. CHAPMAN said she did not believe Alaska runs that risk. Other than Anchorage, the state does not have probate judges. The courts do not oversee the administration of the estates; they are there only as needed for resolving disputes.

[9:49:47 AM](#)

SENATOR HUGGINS moved CSSB 298(JUD) from committee with individual recommendations and attached fiscal notes. Hearing no objections, the motion carried.

[9:50:10 AM](#)

HB 318-LIMITATION ON EMINENT DOMAIN

[9:54:28 AM](#)

CHAIR RALPH SEEKINS announced CSHB 318(FIN) am to be up for consideration.

CRAIG JOHNSON, Staff to Representative Lesil McGuire, introduced the bill and said it resolved around a policy call of whether the state should allow private property to be transferred to a private individual for economic gain. Also, should eminent

domain be allowed to take someone's private home so that others might recreate, he asked. He referred to *Kelo versus City of New London* where the city captured forty homes and transferred them to an economical development project and the property ended up being a parking lot. This created outrage across the country and to date more than forty pieces of legislation has entered the federal system regarding eminent domain. The bill that has the most support says that any state or municipality that uses eminent domain to take private property for private gain will lose their economic development money for a period of two years.

More than thirty states are in the process of addressing the issue through legislation and the sponsor of the bill would like to ensure the same thing could not happen in Alaska.

[9:57:02 AM](#)

MR. JOHNSON said he has discovered through research that some of the properties taken through eminent domain were second-generation homes that were in a viable neighborhood. The bill creates a definition for the word "home." The sponsor of HB 318 intends to protect Alaskan's homes as much as possible. He prepared the committee that the testimony they would hear would not be totally supportive and he conceded that it was not a "perfect bill."

[9:59:34 AM](#)

MR. JOHNSON stated that many attorneys have looked at the bill as well as state departments, the Realtors Association, utility companies, the railroads, and some oil companies. The current version represents a balance from the suggestions and concerns of many different entities.

[10:02:26 AM](#)

SENATOR CHARLIE HUGGINS asked Mr. Johnson the type of feedback they are receiving regarding the trail system in Anchorage.

MR. JOHNSON said they have heard a lot of support regarding the trail system, mainly from the city assembly who passed an ordinance against the taking of personal property. The basic premise of the bill is that a person's home is their castle and that the least the government can do is protect it.

[10:05:56 AM](#)

SENATOR HUGGINS asked for clarification whether the bill would impact traditional trails.

MR. JOHNSON said access to hunting and fishing trails is specifically protected in the bill.

SENATOR HOLLIS FRENCH said most projects have many aspects and as an example, someday there will be a large development on the south side of Mount McKinley to allow people more access to Denali National Park. That will have a huge economic impact on the area. He asked Mr. Johnson how he proposes to separate the recreational aspect of a new hotel and road from the economic development aspects. He said property could be taken to build a railroad because that would fall into economic development but some projects are large-scale and are mixed.

MR. JOHNSON said that example wouldn't come under consideration because that is federal land and the bill only addresses private property.

SENATOR FRENCH countered there was a lot of private land on the south side of Denali off of the Petersville Road that would fall under the restriction if the bill were too tightly crafted.

MR. JOHNSON said the bill allows for access to trails and roads and does not affect a developed road system. If a borough or municipality wants to take private land and sell it to another private individual it would be prohibited. If they want to keep it for their own use, such as infrastructure, then it would not be protected under the bill. If they want to sell private land to a developer of a lodge, they would have trouble doing so under the bill.

[10:09:52 AM](#)

SENATOR FRENCH said ultimately the judge would make the call of whether the eminent domain taking of someone's private land was for economic development or not. He felt that it would be a difficult process and subject to interpretation.

MR. JOHNSON agreed that the judge would make the determination because by definition, eminent domain is a court action. He noted that only one percent of the land in Alaska is held in private hands.

SENATOR GUESS asked Mr. Johnson to explain the instances where local government could impose local control. She questioned the reason he said that the bill would not affect the Municipality of Anchorage.

[10:12:22 AM](#)

MR. JOHNSON responded ordinances that are more restrictive tend to trump state laws.

SENATOR GUESS asked the reason for adding "fiber optic lines" on page 3 line 8.

MR. JOHNSON said it was done at the request of a House Judiciary Standing Committee member as an attempt to plan for the future. If a cable company has a right-of-way and they need to use the land for fiber optics infrastructure, they wanted to make sure that scenario was covered.

SENATOR GUESS asked Mr. Johnson to explain the third exemption on page 4.

MR. JOHNSON said that is directly out of the Alaska State Constitution that guarantees the right to access of resources. He asked to have a representative from the Department of Law explain the reason.

PETER PUTZIER, Senior Assistant Attorney General, Department of Law (DOL), said the language comes from Article 8, Section 18 of the Alaska State Constitution. The reason for the exception is to avoid any argument that the bill in some way conflicts with the Constitution.

[10:14:43 AM](#)

SENATOR GUESS asked whether she reads it correctly that a private home could be taken to access resources.

MR. PUTZIER explained the way the Constitution reads is proceedings in eminent domain may be undertaken for private ways of necessity to permit essential access for extraction or utilization of resources. The bill uses the exact same language.

SENATOR THERRIAULT asked Mr. Putzier to speak about the fifth exemption.

MR. JOHNSON said it was brought as a concern that in a case such as an oil lease, the state could take back the lease if absolutely necessary. That was put in as a request from the Department of Natural Resources.

SENATOR GENE THERRIAULT asked whether the state, through eminent domain would actually take back the lease or whether the state would take the resource under the lease and pay fair market value for it.

CHAIR SEEKINS said it would appear that the state would take back the surface use of the land.

MR. PUTZIER said he understood the idea was to preserve the right to take back the property. There would be interplay with existing lease rights and, he said, it would be an interesting exercise of eminent domain. It is theoretically possible that the property could be taken back if the consensus was that the property wasn't used productively.

[10:18:47 AM](#)

CHAIR SEEKINS asked whether the property would include a subsurface estate.

MR. PUTZIER said that was his understanding.

SENATOR THERRIAULT asked whether the definition of "property" was the acreage or the resource. He also asked whether anyone could potentially take the resource without taking the acreage.

MR. PUTZIER said he did not think the state could take the resource without paying for the value of the resource.

SENATOR GUESS referred to page 4 line 8 and asked the reason for the phrase "common carrier."

[10:20:31 AM](#)

MR. PUTZIER said the language was in response to similar federal legislation so that Alaska would be in conformity. The intent is to cover something like public bus systems, for example.

SENATOR GUESS clarified that under the definition of economic development, it means "for profit."

[10:21:48 AM](#)

SENATOR FRENCH observed there was nothing in the bill prohibiting the state from offering large amounts of money to entice landowners to sell.

MR. PUTZIER said that is absolutely correct.

MR. JOHNSON added there was also an escape clause in the case of a "hold out" that would allow the Legislature to step in and determine whether a situation was an appropriate use of eminent domain.

SENATOR FRENCH referred to page 5 and the definition of "recreational facility or project." He posed a hypothetical situation of a small community where thousands of people use the small boat harbor and the city determined the harbor must expand. He asked how that situation would be handled if the harbor expansion would be within 250 feet of a residence.

[10:24:17 AM](#)

MR. JOHNSON said the city would probably offer the resident owner additional money for the property although if it were identified to be a large economic project, a judge could justify the taking of the property.

SENATOR FRENCH asked Mr. Johnson the reason for not identifying "boat launch" in the bill. He speculated there would be more incidences of that occurring than any issue with small boat harbors.

MR. JOHNSON said there was no reason. The language came from the Department of Natural Resources (DNR) and the Department of Fish and Game (DFG).

[10:28:46 AM](#)

CHAIR SEEKINS asked Mr. Putzier the reason the bill uses the words "personal property" instead of "private property."

MR. PUTZIER said "personal property" is generally considered an automobile or something like a swing set. "Private property" restricts the language to "real property" that could be taken with eminent domain.

CHAIR SEEKINS asked the reason for using the word "personal residence" versus "private residence."

MR. PUTZIER responded either phrase could be used. The definition of residence is difficult and there is no model even in other states.

CHAIR SEEKINS asked how the residence is considered in the case of someone owning a home in a family trust.

MR. PUTZIER said it would depend on how it flows through the definitions in Section 3 subparagraphs (A-C).

[10:31:30 AM](#)

CHAIR SEEKINS held the bill in committee.

There being no further business to come before the committee,
Chair Seekins adjourned the meeting at [10:34:19 AM](#).