

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

March 9, 2006

8:36 a.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

Senator Gene Therriault

COMMITTEE CALENDAR

Confirmation: William A. Granger, Board of Governors of the
Alaska Bar

CONFIRMATION ADVANCED

CS FOR HOUSE BILL NO. 318(FIN) am
"An Act limiting the exercise of eminent domain."

HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 318

SHORT TITLE: LIMITATION ON EMINENT DOMAIN

SPONSOR(S): REPRESENTATIVE(S) MCGUIRE, HOLM, HAWKER

01/09/06	(H)	PREFILE RELEASED 12/30/05
01/09/06	(H)	READ THE FIRST TIME - REFERRALS
01/09/06	(H)	JUD, FIN
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
 03/02/06 (S) Heard & Held
 03/02/06 (S) MINUTE(JUD)
 03/09/06 (S) JUD AT 8:30 AM BUTROVICH 205

WITNESS REGISTER

William A. Granger, Senior Vice President
 Wells Fargo Bank
 301 West Northern Lights Blvd
 Anchorage, AK 99503

POSITION STATEMENT: Confirmation Candidate

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

POSITION STATEMENT: Answered questions regarding HB 318

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

POSITION STATEMENT: Answered questions regarding HB 318

Wyn Menefee, Chief of Operations
 Department of Natural Resources
 400 Willoughby Ave.
 Juneau, AK 99801-1724

POSITION STATEMENT: Answered questions regarding HB 318

Ruth Blackwell
 Alaska Association of Realtors

Juneau, Alaska

POSITION STATEMENT: Commented on HB 318

Ed Earnhart

Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to HB 318

Kevin Richey

Alaska Municipal League

POSITION STATEMENT: Commented on HB 318

Hope Shermell

Fairbanks, Alaska

POSITION STATEMENT: Testified in opposition to HB 318

ACTION NARRATIVE

CHAIR RALPH SEEKINS called the Senate Judiciary Standing Committee meeting to order at [8:36:05 AM](#). Present were Senators Hollis French, Charlie Huggins, Gretchen Guess, and Chair Ralph Seekins.

Confirmation: William A. Granger - Board of Governors of the Alaska Bar

[8:36:58 AM](#)

CHAIR RALPH SEEKINS asked Mr. Granger to describe the reason he is seeking reappointment to the Board of Governors.

WILLIAM A. GRANGER, Senior Vice President, Wells Fargo Bank, responded that he has found the work to be important to the Alaska Bar and to the Alaska community. The Board of Governors fills an important role in maintaining quality in the judicial system.

SENATOR HOLLIS FRENCH asked Mr. Granger whether the Board of Governors sets the dues for the Alaska Bar.

MR. GRANGER indicated that they do.

SENATOR FRENCH asked where the Alaska Bar dues rank nationally.

MR. GRANGER said they are at the high end.

SENATOR FRENCH asked whether the idea of a two-tiered system to allow for lawyers who work in the public service arena to pay a lower fee has been explored.

MR. GRANGER said bar dues are one of the more hotly discussed topics before the Board of Governors and the Bar has negotiated lower dues for people who offer large amounts of pro bono work.

SENATOR FRENCH voiced a preference for incorporation of a two-tiered system.

SENATOR GRETCHEN GUESS asked Mr. Granger to speak about how the Board handles disciplinary action.

MR. GRANGER responded the current number of cases being investigated is currently less than it has historically been. The Board of Governors has been very active in managing the cases. The nature of the case generally determines how long it takes to resolve. Due to the amount of procedure involved it can sometimes take years to resolve.

[8:46:13 AM](#)

SENATOR CHARLIE HUGGINS asked Mr. Granger the length of time he has served on the Board.

MR. GRANGER responded he has served for six years.

SENATOR HUGGINS asked him to speak about the improvements he has seen in his time with the Board.

MR. GRANGER responded that the Board goes through many changes depending on the people who serve and their personal interests. He described the Board as a "very well managed machine."

SENATOR HUGGINS asked him the kind of value that he adds to the Board.

MR. GRANGER described his involvement as "common, street-commercial sense to what is going on." He said he tries to keep everyone on point and to keep the ball moving in a practical manner.

SENATOR HUGGINS asked him to name three tasks that are critical to perform as a Board.

MR. GRANGER replied discipline, oversight of Association management, and liaison between the public and the Alaska Bar.

[8:50:08 AM](#)

CHAIR SEEKINS asked the number of members in the Alaska Bar Association.

MR. GRANGER indicated there were a couple thousand but not all were active.

CHAIR SEEKINS asked the amount of gross revenue that the Association pulls in.

MR. GRANGER speculated it was over \$1 million dollars in dues and continuing education fees.

CHAIR SEEKINS asked what the Association does with the dues.

MR. GRANGER explained dues money is spent on administration, discipline investigation, continuing education and administering the admittance.

CHAIR SEEKINS asked how often the Board of Governors meets.

MR. GRANGER responded every other month. Meetings are two days long and are generally held in Anchorage.

CHAIR SEEKINS asked whether there was pay for being on the Board.

MR. GRANGER said no.

[8:53:01 AM](#)

SENATOR FRENCH noted that continuing education classes are offered for a fee. He asked whether they were also subsidized through the dues.

MR. GRANGER advised the committee that some are under funded and some are over funded. It depends on many factors, such as attendance.

[8:55:32 AM](#)

SENATOR FRENCH moved to forward Mr. Granger's name to the President of the Senate for consideration. This does not reflect intent by any of the members to vote for or against the individual during any further session. Hearing no objections, the motion carried.

CHAIR SEEKINS announced a brief recess at [8:55:54 AM](#).

HB 318-LIMITATION ON EMINENT DOMAIN

[8:59:34 AM](#)

VICE CHAIR CHARLIE HUGGINS informed the committee that Chair Seekins was in another meeting and then announced HB 318 to be up for consideration.

PETER PUTZIER, Senior Assistant Attorney General, Department of Law (DOL), offered to answer questions.

ED EARNHART identified himself as an activist in local government and politics. He testified against HB 318 and said it usurps the authority of local governments by preventing them from using eminent domain related to economic and quality of life developments. He noted eminent domain has been inappropriately and illegally applied but the abuses of power have been exaggerated and yet have positively served countless communities. The people in New London, Connecticut whose houses were taken were not poor, he claimed. Scare tactics are being used to push this type of legislation all over the nation.

[9:03:22 AM](#)

MR. EARNHART continued the State of Connecticut allowed the exercise of eminent domain to improve its economy with planned development. He summarized by saying HB 318 is misguided and claimed that the legislation was unnecessary.

[9:06:18 AM](#)

CHAIR HUGGINS asked for clarification whether he did not want limits on eminent domain.

MR. EARNHART clarified his opposition was to the limits that the bill sets up.

SENATOR HOLLIS FRENCH asked Mr. Earnhart whether his objection was more toward prohibiting the taking of property for recreational use or toward private-to-private transfer.

MR. EARNHART said both, and that he would prefer the bill use the words "quality of life" instead of "recreation." Much of what is in the bill constitutes more than sheer recreation, he said.

[9:08:45 AM](#)

HOPE SHERMELL, Fairbanks, testified in opposition to HB 318. She said each city and municipality should have their own rules and regulations regarding eminent domain and that the state should never enter into affairs of eminent domain.

CHAIR HUGGINS asked Ms. Shermell whether there was a specific provision in the bill that she objected to.

MS. SHERMELL asserted it should be the city, municipalities, and/or boroughs to handle such matters. It is a power that should be limited to local government.

[9:10:55 AM](#)

RUTH BLACKWELL, representing the Alaska Association of Realtors, said the realtors were about 95 percent happy with the bill. HB 318 would correct the *Kelo versus New London* case and would ensure that people are more secure in their personal residences. The Association would prefer to see a "no net loss" provision in the bill. One percent of the landmass in Alaska is in private ownership and taxed and they would like to see the recreational land provision taken out.

[9:12:53 AM](#)

SENATOR GUESS asked Ms. Blackwell whether she thought that anytime the state or municipality takes property off tax rolls there should be a "no net loss" provision.

MS. BLACKWELL said that would be great but it is not reality. The Association's main focus is on personal residences, home ownership, and businesses. That is the foundation of the industry and people should be secure in their homes.

[9:15:30 AM](#)

KEVIN RICHEY, Alaska Municipal League, advised the committee that the League does not have a stance on eminent domain. They promote the betterment of communities. Three of the largest communities in Alaska have already adopted ordinances similar to HB 318. He said there is no need under the Alaska State Constitution to include municipalities in the bill because the bill states that the "Legislature intends by this Act not to provide an absolute bar on transfer of lands to private entities but to place restrictions on such transfers when they occur." He said adding municipalities would not be fulfilling the intent of the bill. He offered to work with the sponsor to strengthen the bill.

SENATOR GUESS asked Mr. Richey whether he was saying the bill does not need Sections 4 and 5.

MR. RICHEY said yes.

CHAIR HUGGINS asked Mr. Richey whether he had anything further to add.

MR. RICHEY advised the committee that the Alaska Municipal League meets once a year. Revenue sharing and PERS are two top issues but local control is very important to all municipalities.

[9:23:22 AM](#)

CRAIG JOHNSON, Staff to Representative Lesil McGuire, said he does not disagree with any of the previous testimony but that the bill is an ongoing process and will most likely see some modifications. As long as the basic premise of protecting people's homes remains, Representative McGuire will not have any problem with strengthening the bill.

SENATOR GUESS asked whether it was Representative McGuire's contention that the Legislature should decide whether eminent domain is a state or a municipality issue.

MR. JOHNSON said both. Certain issues should be made locally in a zoning manner yet the private-to-private transfer and the protecting of people's homes should be a policy of the state.

SENATOR GUESS noted the state could decide whether or not it was a local issue.

MR. JOHNSON agreed.

SENATOR GUESS asked Mr. Johnson to explain how the 250 linear feet was determined.

MR. JOHNSON explained the original draft of the bill had 1,000 feet. After much research they realized that area was bigger than most city lots and so they tailored the area down so that it would not block projects yet would be able to protect a rural lifestyle.

[9:28:49 AM](#)

SENATOR GUESS asked him to respond to the Alaska Municipal League's concern that Sections 4 and 5 do not belong in the bill.

MR. JOHNSON responded it is from the policy that eminent domain is the responsibility of the state.

[9:30:53 AM](#)

SENATOR FRENCH posed a hypothetical example of two property owners, one that has an area of land taken for eminent domain purposes to create a trail and the other who has no property taken. He asked Mr. Johnson whether the latter property owner would have any claim for complaint.

MR. JOHNSON indicated he would not.

SENATOR FRENCH asked whether the bill takes into account the lay of the land around the property. For example, he asked, if the latter property owner's view would be dampened by the trail, would he have any claim to complain.

[9:33:59 AM](#)

MR. JOHNSON said he believes everything has been considered but on a practical matter they don't want to "sacrifice the good for the perfect."

SENATOR FRENCH referred to page 5, lines 7-10 and said he would be irritated if the state were to take part of his backyard to develop a bike trail. He said small boat harbors and sports facilities don't seem to fit in with the list of others in that section and expressed concern that the bill would prevent a hockey rink or something of the like to be built in an urban area.

[9:37:10 AM](#)

MR. JOHNSON agreed that was a future concern and the reason for paragraph (7). However, a project such as that should take an extraordinary effort and have to go through the extenuating process.

SENATOR FRENCH asked whether something like that would require a piece of legislation.

MR. JOHNSON said yes and that was the intent.

SENATOR GUESS asked Mr. Johnson whether the process of expanding a small boat harbor would had been clearly discussed on the record.

MR. JOHNSON noted there were not many small boat harbors adjacent to homes and that people who build a home next to a small boat harbor should be aware of the possible development expansion.

[9:39:52 AM](#)

PETER PUTZIER, Senior Assistant Attorney General, Department of Law (DOL), testified that the primary purpose of building or expanding the small boat harbor would have to be recreation before it would be barred. Secondly, it would have to be for public use. He agreed with Mr. Johnson's observation that there were not a lot of homes adjacent to any small boat harbors in Alaska.

SENATOR GUESS asked Mr. Putzier the statutory definition of "recreational."

MR. PUTZIER said there isn't one.

SENATOR GUESS suggested Auke Bay Harbor [Statter Harbor] in Juneau where people live on their boats and store their pleasure boats could be classified as a small, recreational boat harbor.

MR. JOHNSON countered that Statter Harbor is a commercial harbor.

[9:43:19 AM](#)

SENATOR GUESS noted that line 8 references a playground. She asked whether a playground associated with a school would be excluded.

MR. JOHNSON said there would be nothing precluding the taking of a private home to a build a playground for a school.

SENATOR GUESS referred to lines 14 and 15 and asked for the statutory definition of "school program."

MR. JOHNSON responded that was part of a federal law requiring safe trails to and from school.

MR. PUTZIER agreed that there is a federal program in place and that language was intended to track that program.

SENATOR FRENCH asked for an explanation of the statutes listed on Page 5, lines 26-28.

MR. PUTZIER explained they are in association with road projects, landscaping, scenic enhancement adjacent to highways, abandoned mine reclamation, public works, and historic, prehistoric and archeological sites.

SENATOR FRENCH asked Mr. Putzier for an explanation of lines 29 and 30.

MR. PUTZIER advised that they refer to the parks function and are intended to create consistency with Title 41.

[9:47:16 AM](#)

SENATOR FRENCH asked for clarification whether he was saying that anything Title 41 leaves open that the bill also leaves open.

MR. PUTZIER said that is correct. There is an open question as to what authority does exist under those circumstances but to his knowledge the state has never exercised eminent domain.

SENATOR FRENCH announced that he would confirm with the Legislative Legal department.

[Senator Seekins rejoined the meeting and resumed as committee chair.]

SENATOR HUGGINS asked Mr. Johnson to advise the committee about previous discussions concerning eminent domain regarding establishing traditional trails.

MR. JOHNSON said existing trails would not be subject to eminent domain so there has not been any discussion to date. They have protected access to and from state-owned right of ways to hunting and fishing.

[9:52:04 AM](#)

SENATOR GUESS asked Mr. Johnson whether Section 1 was necessary.

MR. JOHNSON said the House Finance Committee left the findings in to establish clear guidelines because the issue will definitely end up in court. The sponsors do not want the courts to have to speculate about the intent.

CHAIR SEEKINS asked for an example of "the taking of a landowner's personal residence to develop an indoor or outdoor recreational facility or project."

MR. JOHNSON pointed to the Anchorage Coastal Trail. He said the original coastal trail took some property and some people were not happy about it.

[9:55:56 AM](#)

SENATOR FRENCH said he was unaware of anyone's home being taken for the Anchorage Coastal Trail.

MR. JOHNSON conceded that was not a good example.

[9:59:52 AM](#)

MR. JOHNSON added that the 250 feet line was open for discussion.

CHAIR SEEKINS posed a hypothetical situation of a lake surrounded by houses. He said nobody would be able to build a bike path around the lake unless all of the houses were at least 250 feet back from the surface of the lake.

MR. JOHNSON agreed.

CHAIR SEEKINS noted access to navigable streams would be allowed even if it were purely for recreational purposes. He asserted that it was a right of the people of the State of Alaska to have access to every navigable water and fishing stream and yet the bill does not necessarily allow for a boat ramp.

[10:03:21 AM](#)

MR. JOHNSON said he conceded that past administrations have made mistakes in selling state land along navigable waterways to private owners. He suggested in the future Alaska must look hard at any land transferred to private individuals.

CHAIR SEEKINS explained, as he understands current Alaska State law, when the state disposes of state land they must provide easement for access but he questioned the distance in feet.

MR. JOHNSON did not know and deferred to Mr. Putzier.

MR. PUTZIER deferred to the Department of Natural Resources.

WYN MENEFEY, Chief of Operations, Department of Natural Resources (DNR), said when the state does sell or dispose of land adjacent to a body of water they look at navigable access and put a 50-foot access easement along the water body.

[10:07:23 AM](#)

CHAIR SEEKINS asked whether a person could assume there would be at least one access method to a lake.

MR. MENEFEY said yes. He advised that there were past instances where the state disposed of land without the 50-foot easement established.

CHAIR SEEKINS noted if there were a lake or stream that did not have a reserved easement, the riparian landowner might not have an existing easement.

MR. MENEFEE said correct.

CHAIR SEEKINS asked whether the 50-foot easement specified in current statute was sufficient for providing access to a navigable waterway.

MR. MENEFEE said yes although it would not allow for a two-lane road.

[10:11:02 AM](#)

CHAIR SEEKINS expressed concern over the definition of "recreation." He asserted it was a fundamental right of the people to have reasonable access to their property.

MR. JOHNSON reiterated the goal of the sponsor was not to affect private-to-private transfer and was to promote protection of a person's home.

CHAIR SEEKINS asked whether trust property had been discussed.

MR. JOHNSON said the short answer is that it is not protected. Control is one of the things given up in a trust situation.

CHAIR SEEKINS held the bill in committee. There being no further business to come before the committee, he adjourned the meeting at [10:15:54 AM](#).