

**ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE**

March 22, 2006

8:39 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

CS FOR HOUSE BILL NO. 379(JUD)

"An Act relating to scheduling as a Schedule IA controlled substance gamma-hydroxybutyric acid and certain similar substances."

MOVED CSHB 379(JUD) OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 408(FIN) am

"An Act relating to the standard of proof required to terminate parental rights in child- in-need-of-aid proceedings; relating to a healing arts practitioner's duty to report a child adversely affected by or withdrawing from exposure to a controlled substance or alcohol; relating to disclosure of confidential or privileged information about certain children by the Departments of Health and Social Services and Administration; relating to permanent fund dividends paid to foster children and adopted children; amending Rule 18, Alaska Child in Need of Aid Rules of Procedure; and providing for an effective date."

BILL HEARING POSTPONED TO 3/23/06

CS FOR HOUSE BILL NO. 318(FIN) am

"An Act limiting the exercise of eminent domain."

HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 379

SHORT TITLE: CONTROLLED SUBSTANCES, INCL. ANALOGS

SPONSOR(s): REPRESENTATIVE(s) MEYER

01/18/06 (H) READ THE FIRST TIME - REFERRALS
 01/18/06 (H) JUD, FIN
 01/27/06 (H) JUD AT 1:00 PM CAPITOL 120
 01/27/06 (H) Heard & Held
 01/27/06 (H) MINUTE(JUD)
 02/06/06 (H) JUD AT 1:00 PM CAPITOL 120
 02/06/06 (H) Moved CSHB 379(JUD) Out of Committee
 02/06/06 (H) MINUTE(JUD)
 02/08/06 (H) JUD RPT CS(JUD) NT 3DP 1NR
 02/08/06 (H) DP: WILSON, KOTT, MCGUIRE;
 02/08/06 (H) NR: COGHILL
 02/14/06 (H) FIN AT 1:30 PM HOUSE FINANCE 519
 02/14/06 (H) Moved CSHB 379(JUD) Out of Committee
 02/14/06 (H) MINUTE(FIN)
 02/15/06 (H) FIN RPT CS(JUD) NT 9DP 1NR
 02/15/06 (H) DP: STOLTZE, KERTTULA, JOULE, HAWKER,
 WEYHRAUCH, MOSES, HOLM, FOSTER, MEYER;
 02/15/06 (H) NR: KELLY
 02/24/06 (H) TRANSMITTED TO (S)
 02/24/06 (H) VERSION: CSHB 379(JUD)
 02/27/06 (S) READ THE FIRST TIME - REFERRALS
 02/27/06 (S) HES, JUD
 03/13/06 (S) HES AT 1:30 PM BUTROVICH 205
 03/13/06 (S) Moved CSHB 379(JUD) Out of Committee
 03/13/06 (S) MINUTE(HES)
 03/15/06 (S) HES RPT 5DP
 03/15/06 (S) DP: DYSON, ELTON, WILKEN, GREEN, OLSON
 03/22/06 (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
 03/02/06 (S) Heard & Held
 03/02/06 (S) MINUTE(JUD)
 03/09/06 (S) JUD AT 8:30 AM BUTROVICH 205
 03/09/06 (S) Heard & Held
 03/09/06 (S) MINUTE(JUD)
 03/21/06 (S) JUD AT 8:30 AM BUTROVICH 205
 03/21/06 (S) Scheduled But Not Heard
 03/22/06 (S) JUD AT 8:30 AM BUTROVICH 205

WITNESS REGISTER

Michael Pawlowski, Legislative Aide
 Staff to Representative Kevin Meyer
 Alaska State Capitol
 Juneau, AK 99801-1182
POSITION STATEMENT: Introduced HB 379

Annie Carpeneti, Assistant Attorney General
 Department of Law
 PO Box 110300
 Juneau, AK 99811-0300
POSITION STATEMENT: Answered questions regarding HB 379

Craig Johnson, Legislative Aide
 Staff to Representative Lesil McGuire
 Alaska State Capitol
 Juneau, AK 99801-1182
POSITION STATEMENT: Introduced HB 318

ACTION NARRATIVE

CHAIR RALPH SEEKINS called the Senate Judiciary Standing Committee meeting to order at [8:39:27 AM](#). Present were Senators Hollis French, Charlie Huggins, Gretchen Guess, and Chair Ralph Seekins.

HB 379-CONTROLLED SUBSTANCES, INCL. ANALOGS

[8:39:52 AM](#)

CHAIR RALPH SEEKINS announced CSHB 379(JUD) to be up for consideration.

MICHAEL PAWLOWSKI, Staff to Representative Kevin Meyer introduced the bill. Gamma-hydroxybutyric acid, otherwise known as GHB, is a drug that, when ingested, elicits feelings similar to intense intoxication. It is easily added to a drink, difficult to detect, and leaves the system quickly. GHB has become a popular "date rape" drug and has been recently elevated at the federal level to a schedule 1 narcotic. The bill would add the drug to Alaska's list of schedule 1A narcotics.

[8:43:29 AM](#)

CHAIR SEEKINS asked whether the Department of Law supports the bill.

ANNE CARPENETI, Assistant Attorney General, Department of Law (DOL) said yes.

CHAIR SEEKINS noted there were no questions and no one signed up to testify and so he closed public testimony.

[8:45:14 AM](#)

SENATOR HUGGINS moved CSHB 379(JUD) from committee with individual recommendations and attached fiscal notes. Hearing no objections, the motion carried.

HB 318-LIMITATION ON EMINENT DOMAIN

[8:49:21 AM](#)

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

SENATOR HOLLIS FRENCH commented that he read the Kelo case [*Kelo versus City of New London*] and that the case centered on an urban redevelopment plan in a downtrodden area of New London, Connecticut. The upshot was that people who lived there for a

long time were going to lose their property. Pfizer was planning on building a company there. The woman in the case lived in her house since birth in 1918. The US Supreme Court 5-4 decision upheld the taking and Justice O'Conner, who was opposed, wrote, "Under the banner of economic development, all private property is now vulnerable to being taken and transferred to another private owner so long as it might be upgraded."

SENATOR FRENCH continued the decision that Alaska must make is "what does public use mean?" Justice Thomas said that he would revisit the public use clause and consider returning to the original meaning of the public use clause - that the government would take property only if it actually uses or gives the public a legal right to use the property.

[8:52:27 AM](#)

SENATOR FRENCH stated the transfer of property simply for upgrade is too great of power to put into the hands of government and so he is behind that part of the bill.

[8:53:48 AM](#)

CRAIG JOHNSON, Staff to Representative Lesil McGuire, said the overriding concern across the country is the taking of people's homes. The home takes a little higher priority than perhaps a back lot and there are provisions built into the bill that are meant to protect the home.

[8:57:26 AM](#)

SENATOR GRETCHEN GUESS stated she had difficulty with the lack of definition for "recreation."

MR. JOHNSON admitted that was a problematic thing to define.

[9:01:19 AM](#)

CHAIR SEEKINS said the intent of the committee was not to end up with a 200-page document for the courts to have to deal with.

SENATOR FRENCH said the problem was with the intersection between public use and recreational use. Justice O'Connor made categories of what public use is. She said there are two easy categories and there is a third hard one and that is where the Kelo case came down. The two easy ones are controversial. First the sovereign may transfer property to public ownership, such as for a road, hospital or military base. Also the sovereign may transfer private property to private parties who make the property available to public use, such as a public utility or railroad.

The conflict exists in a situation of a canoe launch at a river and that splits the argument of whether that use was recreational or not. He cited the example of the Seahawks Stadium in Seattle where they tore down the stadium and built another and that one could argue both ways of whether or not that was recreational use or economical.

[9:03:48 AM](#)

SENATOR CHARLIE HUGGINS suggested they were witnessing a scenario where the system went too far and so the bill seems to swing too far the other way. He said he was uncomfortable with the bill but supportive of the idea.

[9:06:03 AM](#)

SENATOR GUESS said the difficulty of the exemption on page 6, line 4 was the phrase "rather than primarily for recreation," and the example that Senator French said could not be argued under that provision because a road to a canoe launch could be arguable.

MR. JOHNSON said the Department of Natural Resources (DNR) drafted the language and the intent was to allow access to an inaccessible trail.

SENATOR GUESS asked whether a for-profit hospital would be excluded.

SENATOR FRENCH said yes, if it were defined as a private person.

CHAIR SEEKINS speculated that all committee members were in favor of the concept of the bill but they want to make sure there are no unacceptable unintended consequences. The Alaska Municipal League (AML) approached him and asked the committee to allow a city council, through public process, to be able to override the provision.

[9:09:45 AM](#)

SENATOR FRENCH said the way the bill is phrased, the Legislature can approve an economic taking of private-to-private transfer but the Legislature cannot approve a recreational facility. The exemption is listed in subsection (e). The local authority would only extend to a private-to-private transfer and never to a recreational facility.

MR. JOHNSON reported it was not the intent to have an absolute moratorium on recreational facilities. He said he would have an

attorney look closer at that point and would accept a clause to allow an out for that. As far as the municipality having an overriding ability, that has been an item of discussion to date and if they established a high level of standard to meet that protects the intent of the bill then it could be acceptable.

[9:14:18 AM](#)

CHAIR SEEKINS asserted that a decision of that magnitude should be made fully in the open with the people being able to comment and vote on it. Because of the complex legal situations of the day many things should be considered when considering the taking of property.

SENATOR FRENCH reminded the committee that, in the Kelo case, the city council had delegated the responsibility of the taking of private land for economic development to a non-profit entity. There was a lack of accountability and that could happen again.

[9:16:33 AM](#)

CHAIR SEEKINS said he saw an article where a New York mayor proposed to use eminent domain to take a privately owned golf course and give it to the area homeowners in order to increase their property value.

SENATOR GUESS said people could easily get around the bill by creating a non-profit entity. Also amendments can be put into a bill at the final hour without going through a public hearing.

[9:19:01 AM](#)

MR. JOHNSON replied a non-profit by definition is considered a private person so that would be private-to-private transfer.

[9:23:13 AM](#)

CHAIR SEEKINS said he has never seen a city take someone's backyard for a municipal baseball field. The 250 linear feet continues to be an object of discussion and some people would prefer well over 1,000 feet. He asked whether the 250 feet came about because of the coastal trail.

MR. JOHNSON responded that was not entirely correct. The bill came about to protect private homes from municipalities. The 250 feet was an arbitrary number and ensures a certain amount of privacy if someone were to take part of another's private rural property.

[9:28:31 AM](#)

CHAIR SEEKINS said the committee would look at some of the concerns and continue to hear the bill.

9:30:45 AM

CHAIR SEEKINS held the bill in committee.

There being no further business to come before the committee, Chair Seekins adjourned the meeting at 9:31:23 AM.