

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

April 4, 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

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

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."

MOVED SCS CSHB 408(JUD) OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 400(FIN)
"An Act relating to confiscation of firearms during disaster emergencies."
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
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
03/22/06 (S) Heard & Held
03/22/06 (S) MINUTE(JUD)
03/28/06 (S) JUD AT 8:30 AM BUTROVICH 205
03/28/06 (S) Heard & Held
03/28/06 (S) MINUTE(JUD)
03/30/06 (S) JUD AT 8:30 AM BUTROVICH 205
03/30/06 (S) -- Meeting Canceled --
04/04/06 (S) JUD AT 8:30 AM BUTROVICH 205

BILL: HB 408

SHORT TITLE: DEFINITION OF CHILD ABUSE AND NEGLECT

SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

01/30/06 (H) READ THE FIRST TIME - REFERRALS
01/30/06 (H) HES, FIN
02/07/06 (H) HES AT 3:00 PM CAPITOL 106
02/07/06 (H) Heard & Held
02/07/06 (H) MINUTE(HES)
02/09/06 (H) HES AT 3:00 PM CAPITOL 106
02/09/06 (H) Moved CSHB 408(HES) Out of Committee
02/09/06 (H) MINUTE(HES)
02/15/06 (H) HES RPT CS(HES)NT 3DP 2NR
02/15/06 (H) DP: GARDNER, GATTO, WILSON;
02/15/06 (H) NR: ANDERSON, CISSNA
02/22/06 (H) FIN AT 1:30 PM HOUSE FINANCE 519
02/22/06 (H) -- Meeting Canceled --
03/01/06 (H) FIN AT 1:30 PM HOUSE FINANCE 519
03/01/06 (H) Scheduled But Not Heard
03/07/06 (H) FIN AT 1:30 PM HOUSE FINANCE 519
03/07/06 (H) Moved CSHB 408(FIN) Out of Committee
03/07/06 (H) MINUTE(FIN)
03/08/06 (H) FIN RPT CS(FIN) NT 3DP 5NR
03/08/06 (H) DP: KELLY, MEYER, CHENAULT;
03/08/06 (H) NR: HAWKER, STOLTZE, KERTTULA, JOULE,
MOSES
03/20/06 (H) TRANSMITTED TO (S)
03/20/06 (H) VERSION: CSHB 408(FIN) AM
03/22/06 (S) READ THE FIRST TIME - REFERRALS
03/22/06 (S) JUD, FIN
03/22/06 (S) JUD AT 8:30 AM BUTROVICH 205
03/22/06 (S) <Bill Hearing Postponed to 03/23/06>
03/23/06 (S) JUD AT 8:30 AM BUTROVICH 205
03/23/06 (S) -- Meeting Canceled --
03/28/06 (S) JUD AT 8:30 AM BUTROVICH 205
03/28/06 (S) Heard & Held
03/28/06 (S) MINUTE(JUD)
03/30/06 (S) JUD AT 8:30 AM BUTROVICH 205
03/30/06 (S) -- Meeting Canceled --
04/04/06 (S) JUD AT 8:30 AM BUTROVICH 205

BILL: HB 400

SHORT TITLE: CONFISCATION OF FIREARMS

SPONSOR(s): REPRESENTATIVE(s) COGHILL

01/27/06 (H) READ THE FIRST TIME - REFERRALS

01/27/06 (H) JUD, FIN
 02/13/06 (H) JUD AT 1:00 PM CAPITOL 120
 02/13/06 (H) Heard & Held
 02/13/06 (H) MINUTE(JUD)
 02/17/06 (H) JUD AT 1:00 PM CAPITOL 120
 02/17/06 (H) Moved CSHB 400(JUD) Out of Committee
 02/17/06 (H) MINUTE(JUD)
 02/21/06 (H) JUD RPT CS(JUD) 4DP 1NR 1AM
 02/21/06 (H) DP: COGHILL, ANDERSON, KOTT, MCGUIRE;
 02/21/06 (H) NR: GARA;
 02/21/06 (H) AM: GRUENBERG
 03/07/06 (H) FIN AT 9:00 AM HOUSE FINANCE 519
 03/07/06 (H) Moved CSHB 400(FIN) Out of Committee
 03/07/06 (H) MINUTE(FIN)
 03/09/06 (H) FIN RPT CS(FIN) NT 7DP 1NR
 03/09/06 (H) DP: KELLY, STOLTZE, JOULE, HAWKER,
 WEYHRAUCH, MEYER, CHENAULT;
 03/09/06 (H) NR: KERTTULA
 03/24/06 (H) TRANSMITTED TO (S)
 03/24/06 (H) VERSION: CSHB 400(FIN)
 03/27/06 (S) READ THE FIRST TIME - REFERRALS
 03/27/06 (S) JUD, FIN
 04/04/06 (S) JUD AT 8:30 AM BUTROVICH 205

WITNESS REGISTER

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: Answered questions regarding HB 318

John Baker, Assistant Attorney General
 Natural Resources Section
 Department of Law
 PO Box 110300
 Juneau, AK 99811-0300
POSITION STATEMENT: Answered questions regarding HB 318

Luke Hopkins, Assembly member

Fairbanks North Star Borough
Fairbanks, Alaska

POSITION STATEMENT: Posed a question regarding how HB 318 would affect the 100-mile trail in Fairbanks.

Michael Nelson
Glennallen, Alaska

POSITION STATEMENT: Testified in opposition to HB 318

Kevin Richey, Realtor
No address provided

POSITION STATEMENT: Testified in support of HB 318

Tammy Sandoval, Deputy Commissioner
Office of Children's Services
Department of Health & Social Services
PO Box 110601
Juneau, AK 99801-0601

POSITION STATEMENT: Responded to questions regarding HB 408

Rynniva Moss, Legislative Aide
Staff to Representative John Coghill
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Responded to questions regarding HB 408

Representative John Coghill
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Introduced HB 400

Dean Guaneli, Chief Assistant Attorney General
Department of Law
PO Box 110300
Juneau, AK 99811-0300

POSITION STATEMENT: Answered questions regarding HB 400

Brian Judy
National Rifleman's Association

POSITION STATEMENT: Testified in support of HB 400

Michael Nelson
Glennallen, Alaska

POSITION STATEMENT: Testified in opposition to HB 400

Austin Mahaulkey
Glenallen, Alaska

POSITION STATEMENT: Testified in opposition to HB 400

ACTION NARRATIVE

CHAIR RALPH SEEKINS called the Senate Judiciary Standing Committee meeting to order at [8:42:27 AM](#). Present were Senators Hollis French, Gretchen Guess, Charlie Huggins, and Chair Ralph Seekins.

HB 318-LIMITATION ON EMINENT DOMAIN

[8:43:30 AM](#)

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

PETER PUTZIER, Senior Assistant Attorney General, Department of Law (DOL), and CRAIG JOHNSON, Staff to Representative Lesil McGuire, introduced themselves for the record.

CHAIR SEEKINS asked the witnesses who has the power of eminent domain under current law.

MR. JOHNSON submitted a list to the committee members.

CHAIR SEEKINS speculated that many people were not aware of all the entities that have power of eminent domain. He referred to page 2 of the bill and asked Mr. Putzier to comment on who would exercise eminent domain for all the items listed under Section 2, paragraph 3.

MR. PUTZIER responded it would be in part the Department of Transportation and Public Facilities (DOTPF) under AS 09.55.240(a)(3) or possibly a housing finance company, depending on the particular project.

CHAIR SEEKINS asked Mr. Putzier to describe an organized borough.

MR. PUTZIER said that was under Title 9 but did not have the statute with him.

[8:47:43 AM](#)

CHAIR SEEKINS asked Mr. Putzier whether an unincorporated community in the State of Alaska could utilize the powers of eminent domain to build a public building.

MR. PUTZIER responded the bill wouldn't authorize the entities to utilize those powers. Title 35 gives broad authority to build public buildings and public works if the demand is there and the DOTPF generally gives the authority to build.

8:49:44 AM

CHAIR SEEKINS admitted he had a problem with that if the committee were trying to limit the number of entities that have power of eminent domain. A city or a village is really a private entity. He said anyone could form a community and claim that a public use facility was needed.

MR. PUTZIER responded that the bill does not allow any entity to transfer authority of eminent domain to private entities. Any project is subject to review and there are very stringent standards and protections. He said the concerns that the Chair was raising were already addressed in Alaska Statutes and under Civil Rule.

8:51:45 AM

CHAIR SEEKINS referred to Section 2 (a)(5) and asked whether that didn't refer to a private-to-private transfer.

8:53:06 AM

Senator Gene Therriault joined the meeting.

MR. PUTZIER clarified that the Chair was speaking about present law. He said what is reflected is "value judgments" of past legislative sessions. He admitted that it was potentially possible under paragraph (5) that a private transfer could be done.

CHAIR SEEKINS asked whether paragraph 6 contemplated a private transfer.

MR. PUTZIER said yes, potentially. It seems to be a provision set up to provide access to farms. He suggested that past legislators considered access to farms a high priority at the time.

CHAIR SEEKINS opined telephone, telegraph, and fiber optic lines could be privately owned as well as sewerage for not less than ten families.

MR. PUTZIER responded that telephone lines remained under state authority so there could be a taking and the take could remain in public ownership with a right given to somebody to use that

land. He conceded there was an element of private takings in many of the current statute provisions.

CHAIR SEEKINS asked Mr. Putzier whether there is a conflict in Section 3, subsection (d).

MR. PUTZIER said that the DOL tried to address that in the following sections where it forbids a private-to-private transfer.

8:56:20 AM

CHAIR SEEKINS asked Mr. Putzier the effect if the committee were to amend subsection (d) to say, "the power of eminent domain may not be exercised to acquire private property for the purpose for transferring title to the property to a private person except for the purposes set forth in this chapter."

MR. PUTZIER responded AS 09.55 is quite broad. He asked the committee to allow him to examine that statute before committing to an opinion.

CHAIR SEEKINS said the committee could narrow it down to say "except as provided in .240(a)."

SENATOR THERRIAULT said he saw the potential conflict that the Chairman was trying to avoid and that he was attempting to clarify legislative intent. The language he suggested was a good attempt to address it, he noted.

SENATOR HOLLIS FRENCH agreed with Senator Therriault. He suggested the limitations on pages 3 and 4 of the bill would still apply to the list laid out in the CS.

CHAIR SEEKINS said:

Constitutionally we've provided for transfer of property used for a private way of necessity. Some of the things that we've put farther down in the statute have already been provided for in the earlier part of the statute. I try to read the whole thing from (a) down and I get confused and I'd like to eliminate that.

MR. PUTZIER said the concern over his suggested amendment is that anything under AS 09.55.240(a) would be open to some kind of a private-to-private transfer and that could be over broad because (a) lists a very broad smattering of potential public uses. He said he didn't know if the Department wanted to open

the door to say that private transfers are allowed on each and every one of those circumstances. As presently written there is no explicit authority to allow a private-to-private transfer.

[9:00:01 AM](#)

CHAIR SEEKINS countered AS 09.55.240(a)(6) specifically states "private roads leading from highways to residences, mines, or farms" and so that indicates the state is gaining title through eminent domain.

MR. PUTZIER suggested that if there were certain private-to-private transfers that the Legislature wanted to protect then that should be listed as an exception.

[9:01:06 AM](#)

SENATOR GRETCHEN GUESS asked for clarification whether the current statute allows for private-to-private transfer for public use.

MR. PUTZIER said yes, theoretically but it hasn't been tested in Alaska and it would be subject to challenge. He said there is a specific statute in Title 38 where the Legislature has allowed for the delegation of eminent domain power to certain entities to acquire right of way in association with pipelines.

[9:03:18 AM](#)

CHAIR SEEKINS stated the statute confers to grant eminent domain powers to certain entities. He said he wanted to clarify in statute the entities that have clear power of eminent domain and the situations for which they can exercise that power. He cited an "Alyeska Pipeline case" and said it appeared that the pipeline company could, upon delegation from the state, exercise the power of eminent domain.

[9:05:23 AM](#)

MR. PUTZIER responded that was a rare instance where the Legislature has specifically delegated that power, acting as an agent for the State of Alaska.

SENATOR FRENCH asked whether the state delegates the power of eminent domain in a blanket delegation or whether the delegation was narrow to the specific purposes to the entity.

MR. PUTZIER said eminent domain statutes are construed very narrowly.

SENATOR FRENCH asked for clarity whether the natural gas authority was a private entity.

CHAIR SEEKINS said it is not a public corporation nor is it a state entity so it would be a private person.

MR. PUTZIER said AS 09.55.240(d)(2) was placed in the bill with the recognition that the Legislature has previously made certain judgments about the entities to which the power of eminent domain was given. Utilities are the most common example. The intent of the bill was narrowly focused and didn't mean to revisit the 12 entities that currently have the power of eminent domain.

[9:09:17 AM](#)

SENATOR GUESS clarified that anyone on the current list can continue to use eminent domain.

MR. PUTZIER said that was the intent of the bill. The DOL is trying to place parameters on the circumstances under which they can do a private-to-private transfer.

CHAIR SEEKINS asked whether the Knik Arm Bridge and Toll Authority could still exercise power in the Anchorage and Mat-Su boroughs.

MR. PUTZIER said yes as long as it is for public use.

[9:10:25 AM](#)

SENATOR CHARLIE HUGGINS asked the process for how a private mining company finds a place to put in a tailings area.

MR. PUTZIER said the company wouldn't have the ability to exercise eminent domain.

SENATOR HUGGINS argued that as he reads the statute, the company would be allowed to take property to do so.

MR. PUTZIER countered a private entity did not have the power to do that but a state entity, such as the Department of Natural Resources, could exercise eminent domain in the company's behalf, although it would have to be approved by the Legislature.

CHAIR SEEKINS noted that (d) under Section 3 prohibits that action from happening.

MR. PUTZIER said that raises a good point and the Legislature is working to restrict situations exactly such as the one that Senator Huggins posed.

CHAIR SEEKINS said he thought the focus was on situations such as the taking of someone's home to give it to a condominium project for the purpose of increasing the tax base.

MR. PUTZIER replied that was taken into account and the intent was to protect all of those existing uses and not to curtail the power of the existing entities that are in statutes.

[9:13:39 AM](#)

CHAIR SEEKINS said he was confused.

SENATOR HUGGINS expressed concern that as the bill is written a private company, such as a Wal-Mart could take a person's home in order to build a store.

MR. JOHNSON countered that would not qualify for public use.

SENATOR FRENCH commented that once the bill is passed it would be a lot harder for a private company to ask a state entity to use their eminent domain powers to help them in a development.

[9:15:46 AM](#)

CHAIR SEEKINS said long ago the courts redefined the term "public use" to include "for the public welfare." He said the committee should carefully define the term "public use" if they are going to use it.

MR. JOHNSON recognized that there are legitimate uses for eminent domain and that the bill sponsor tried to keep existing law as it stands with the exception of the private-to-private transfer and the recreational aspect. Those are the only two areas that HB 318 is trying to affect, although they are open to making the bill stronger, if the committee sees fit.

[9:18:19 AM](#)

SENATOR HUGGINS expressed concern that the bill could shut down resource development.

MR. JOHNSON responded that issue is specifically addressed in the bill. In addition, the bill also provides that if a large mine comes into existence, it would be a relatively simple process to enact legislation to allow for development to happen.

CHAIR SEEKINS noted that the State of Alaska hasn't seen a major problem yet but the potential exists. Referring to the Kelo case, he said he leans more toward Justice Thomas's decision than with how the majority of the court ruled on the case. He expressed concern that the bill was convoluted, unclear, and hard to understand. He said he would prefer to sit down and make the entire statute fit together more clearly and concisely.

[9:23:16 AM](#)

CHAIR SEEKINS continued there is still the question of what the effect would be if the committee wanted to allow political subdivisions to have power to be able to have the power of eminent domain within their jurisdiction but with a super majority.

SENATOR FRENCH offered to explain his amendment titled 24-LS1083\XA.14. He said it would encapsulate the instances under which a municipality could exercise power of eminent domain.

MR. JOHNSON noted the original intent of the bill was to severely curtail the ability of municipalities and other entities to use eminent domain. There was a similar amendment in the House Judiciary Committee but it was not as complete. The sponsor would support the amendment but it might not pass the House floor session.

[9:27:17 AM](#)

CHAIR SEEKINS asked Senator French if he could add the word "public" before hearing on line 12.

[9:29:47 AM](#)

SENATOR FRENCH did so and then moved Amendment 4.

24-LS1083\XA.14
Bullock

A M E N D M E N T 4

OFFERED IN THE SENATE by Senator French

TO: CSHB 318(FIN) am

Page 6, line 19, following "AS 09.55.240(e).":

Insert "However, a municipality may exercise the power of eminent domain to acquire private property from a private person for the purpose of transferring title to the property to another private person for economic development and for the purposes expressed in AS 09.55.240(e) if

(1) the municipality does not delegate the power of eminent domain to another person;

(2) before issuing the notice in (3) of this subsection, the municipality makes a good faith effort to negotiate the purchase of the property;

(3) written notice is provided at least 90 days before the hearing to each owner of land that may be affected by the exercise of eminent domain;

(4) the municipality holds a hearing on the exercise of eminent domain after adequate public notice;

(5) the governing body of the municipality approves the exercise of eminent domain by a two-thirds majority vote; and

(6) in the case of a second class city, an ordinance is adopted, the ordinance is submitted to the voters for approval at the next general election or at a special election called for that purpose, and the exercise of eminent domain is approved by a majority of the votes on the question."

SENATOR HUGGINS objected and asked whether Senator French wanted to specify a two-thirds vote on line 16.

CHAIR SEEKINS asked the reason someone would request a public ballot on a second-class city.

MR. JOHNSON responded second-class cities don't have a city assembly or an organized governmental body.

CHAIR SEEKINS asked then who writes the ordinance.

MR. JOHNSON advised it would be a city manager. He said he would support Senator Huggins' suggestion.

CHAIR SEEKINS called a brief recess at [9:32:59 AM](#).

[9:36:55 AM](#)

CHAIR SEEKINS called the meeting back to order.

SENATOR FRENCH suggested an amendment to Amendment 4 by inserting language on line 16 to require that the government or elected body of a second-class city adopt that ordinance by a two-thirds majority. Hearing no objections the amendment to Amendment 4 was adopted.

SENATOR HUGGINS removed his objection to Amendment 4. Hearing no further objections, Amendment 4 was adopted.

SENATOR FRENCH moved Amendment 5.

24-LS1083\XA.13
Bullock

A M E N D M E N T 5

OFFERED IN THE SENATE by Senator French
TO: CSHB 318(FIN) am

Page 4, following line 15:

Insert a new subsection to read:

"(f) Only the state may delegate the power of eminent domain."

Reletter the following subsection accordingly.

CHAIR SEEKINS objected for the purpose of explanation.

SENATOR FRENCH explained Amendment 5 would add new language to clarify that only the state may delegate the power of eminent domain. The only entity in the State of Alaska that can delegate the power of eminent domain is the State itself and not any of its political subdivisions.

CHAIR SEEKINS removed his objection. Hearing no further objections, Amendment 5 was adopted.

SENATOR FRENCH moved Amendment 6.

24-LS1083\XA.12
Bullock

A M E N D M E N T 6

OFFERED IN THE SENATE by Senator French
TO: CSHB 318(FIN) am

Page 4, line 8:

Delete ";"

Insert "."

Page 4, line 9:

Delete all material.

Page 4, following line 15:

Insert a new subsection to read:

"(f) Notwithstanding the limitations on the power of eminent domain in (d) and (e) of this section, the legislature may approve the exercise of eminent domain against private property in an Act, the subject of which is limited to the transfer of the property for a purpose otherwise restricted under (d) or (e) of this section."

Reletter the following subsection accordingly.

CHAIR SEEKINS objected for the purpose of explanation.

[9:39:42 AM](#)

SENATOR FRENCH said he subtitled it the "Guess Amendment" and explained that it was meant to capture her suggestion to make the exercise of eminent domain as public as possible.

CHAIR SEEKINS removed his objection. Hearing no further objections, Amendment 6 was adopted.

SENATOR THERRIAULT said he didn't have an objection to Amendment 6 but said if the Legislature chose to ignore that statute and insert something into another bill at the last minute they probably could.

[9:41:46 AM](#)

MR. JOHNSON expressed support for the integrity and strength of the bill.

CHAIR SEEKINS commented that Senator Therriault was correct in that the bill would bind the 24th Legislature but no future Legislatures because it is a subject covered under the Uniform Rules. He referred to page 4, line 25 and asked Mr. Putzier whether a person has to live in a home for 91 days before it's protected.

MR. JOHNSON answered the question and said they wrestled with trying to define the home. They wanted to prevent someone from throwing up a house simply for the purpose to prevent the taking by eminent domain.

CHAIR SEEKINS said a person could rent the house for 90 days and then buy it and eminent domain couldn't touch it since the bill merely states, "inhabited for 90 days."

MR. JOHNSON suspected that situation might not pass the test.

[9:46:27 AM](#)

CHAIR SEEKINS disagreed. He said the bill would allow a new homeowner a 90-day window for someone to exercise private transfer of his home for eminent domain purposes.

MR. JOHNSON suggested that situation would be part of the disclosure in the real estate acquisition.

[9:48:11 AM](#)

MR. JOHNSON admitted that the sponsor struggled with writing the bill.

SENATOR FRENCH suggested the committee could take out the lines "by the owner" on page 4, line 25.

MR. JOHNSON said he was handed a note from a realtor that says the title insurance company would identify any kind of notice recorded against a property and it would raise a red flag.

CHAIR SEEKINS clarified that there is still a window of opportunity within the 90 days for an instance of eminent domain to begin.

[9:51:25 AM](#)

CHAIR SEEKINS reiterated that the committee was trying to protect the private home.

MR. JOHNSON said during construction of the bill they looked at making someone qualify for a permanent fund dividend (PFD) at that address.

CHAIR SEEKINS asked Mr. Putzier to clarify whether Page 5 line 31 was establishing the right to provide for a "to and along" provision, which would allow a pathway or trail along a body of water.

MR. PUTZIER deferred the question to John Baker.

[9:53:53 AM](#)

JOHN BAKER, Assistant Attorney General, Department of Law (DOL), Natural Resources Section, responded to Senator Seekins' question and said it would allow that but it would have to occur in the circumstance that the route was necessary in order to reach the public land or waterway.

CHAIR SEEKINS expressed concern that the provision was establishing a "tooling along" concept rather than the most direct route.

MR. BAKER responded it would have to be shown that there was no other reasonable access.

CHAIR SEEKINS clarified that it was not the intent to establish a private action for "tooling along" pathways that are not necessary. He informed Mr. Johnson that he had no further questions today. He asked Mr. Putzier to help draft an amendment for the definition of a "privately owned residence" that would include a residence that was held in a trust.

MR. PUTZIER acknowledged that was a valid concern.

[9:57:37 AM](#)

CHAIR SEEKINS referred to page 1, line 14 and asked whether it would be a better idea to use the words "privately owned residence" rather than "personal residence."

MR. JOHNSON agreed to the change.

SENATOR GUESS asked Mr. Johnson whether they have defined small boat harbor.

MR. JOHNSON said they have that on the radar and will discuss it the next meeting.

CHAIR SEEKINS asked Mr. Luke Hopkins whether the committee has addressed his concerns.

[10:01:16 AM](#)

LUKE HOPKINS, Assembly Member, Fairbanks North Star Borough, referred to page 5, line 31 and said he was confused about whether or not the Fairbanks North Star Borough would be able to continue work on a 100-mile loop trail that would be used to gain access out of the populated area to public lands. He asked for someone to get back to him on that subject.

MICHAEL NELSON, Glennallen, testified in opposition to the subject of eminent domain. He said HB 318 doesn't do enough for private property owners.

KEVIN RICHEY, Realtor, complimented the committee for their work on the bill.

CHAIR SEEKINS held the bill in committee at [10:06:37 AM](#).

HB 408-DEFINITION OF CHILD ABUSE AND NEGLECT

[10:07:28 AM](#)

CHAIR RALPH SEEKINS announced CSHB 408(FIN) AM to be up for consideration.

RYNNIEVA MOSS, Staff to Representative John Coghill, and TAMMY SANDOVAL, Deputy Commissioner, Office of Children's Services, introduced themselves for the record.

CHAIR SEEKINS moved Amendment 1. Page 6, line 10, after the words "healing arts" insert ", as defined in AS 47.17.290(13).

Hearing no objections, the committee adopted Amendment 1.

CHAIR SEEKINS moved Amendment 2.

24-GH2021\L.1
Mischel

A M E N D M E N T 2

OFFERED IN THE SENATE

TO: SCS CSHB 408(), Draft Version "L"

Page 5, lines 3 - 18:

Delete all material and insert:

"* **Sec. 6.** AS 47.10.093(j) is repealed and reenacted to read:

(j) The department may publicly disclose information pertaining to a child or an alleged perpetrator named in a report of harm described under (i) of this section, or pertaining to a household member of the child or the alleged perpetrator, if the information relates to a determination, if any, made by the department regarding the nature and validity of a report of harm under AS 47.17 or to the department's activities arising from the department's investigation of the report. The commissioner or the commissioner's designee

(1) shall withhold disclosure of the child's name, picture, or other information that would readily lead to the identification of the child if the department determines that the disclosure would be contrary to the best interests of the child, the child's siblings, or other children in the child's household; or

(2) after consultation with a prosecuting attorney, shall withhold disclosure of information that would reasonably be expected to interfere with a criminal investigation or proceeding or a criminal defendant's right to a fair trial in a criminal proceeding."

[10:09:13 AM](#)

SENATOR GRETCHEN GUESS objected for the opportunity to read Amendment 2.

CHAIR SEEKINS announced a brief recess at [10:09:35 AM](#).

[10:11:02 AM](#)

SENATOR HOLLIS FRENCH questioned the witness regarding the instances under which the Department of Health and Social Services (DHSS) could make a public disclosure.

MS. SANDOVAL said in a nutshell they have the occasion to respond to the media with regard to fatality or near fatality. They realized that HB 53 was only about that particular incident. There have been requests for information about what DHSS had been doing with the family and the law would not allow them to disclose that information but part of the story would already be in the media. The amendment would allow the Department to disclose information with regard to what they have done in serious circumstances.

CHAIR SEEKINS clarified that it would only allow them to disclose information for instances such as near fatalities or fatalities.

MS. SANDOVAL said correct.

MS. MOSS added that the amendment would allow DHSS to go back to past reports of harm and disclose other information as well.

SENATOR FRENCH noted that it was a balancing act to do the disclosures so as to let the public know they are doing their job while not revealing whom the family is.

[10:14:02 AM](#)

MS. SANDOVAL said that is something that they have to consider. The assessment of the family involves concern for the children and their safety. The Department would only share information as to the reason they made certain determinations.

SENATOR FRENCH stated that it allows the Department to defend itself against charges of inaction and negligence.

MS. SANDOVAL agreed.

SENATOR FRENCH asked whether healthcare practitioners have reviewed the bill.

MS. MOSS said she has worked closely with the Public Defender's Office and with the Office of Public Advocacy.

SENATOR GUESS withdrew her objection and the committee adopted Amendment 2.

SENATOR GUESS moved to report SCS CSHB 408(JUD) from committee with individual recommendations and attached fiscal notes. Hearing no objections, the motion carried.

CHAIR SEEKINS moved to adopt the State Concurrent Resolution on the title change. Hearing no objections, the motion carried. Chair Seekins announced a brief recess at [10:17:25 AM](#).

HB 400-CONFISCATION OF FIREARMS

[10:20:34 AM](#)

CHAIR RALPH SEEKINS announced CSHB 400(FIN) to be up for consideration.

REPRESENTATIVE JOHN COGHILL, Sponsor, introduced the bill. He said it was in response to Hurricane Katrina where the community had a tough time getting control of the area. The bill addresses a situation where there is near anarchy. It proposes to add a new section to AS 26.23.200 that states that there is no authority granted or implied under the Alaska Disaster Act that authorizes the confiscation of a firearm lawfully owned, possessed, or carried by law-abiding citizens.

[10:24:04 AM](#)

SENATOR CHARLIE HUGGINS posed a hypothetical situation of martial law. He asked whether that would change the ability to confiscate privately owned weapons.

REPRESENTATIVE COGHILL did not know.

SENATOR HUGGINS asked Representative Coghill to describe the circumstances that happened during Hurricane Katrina that ultimately brought forth HB 400.

REPRESENTATIVE COGHILL advised that the National Guard and local sheriff's department were involved in confiscating weapons from citizens. The National Rifle Association sued the local law enforcement over the issue but he didn't know how the suit turned out.

DEAN GUANELI, Chief Assistant Attorney General, Department of Law (DOL), responded to Senator Huggins' question of martial law and advised that the governor has the authority to make certain declarations such as martial law. HB 400 addresses a disaster situation, which is carefully defined in Alaska law. In a situation where the governor declares martial law, it probably does not remove anybody's constitutional rights.

[10:29:28 AM](#)

SENATOR HOLLIS FRENCH said for the record there was nothing in the bill to stop legitimate law enforcement efforts to prevent looters, thieves and rioters.

REPRESENTATIVE COGHILL agreed.

[10:31:49 AM](#)

AUSTIN MAHAULKEY, Glennallen, testified that he agreed with the original bill but since then it has been amended. He took exception to line 11 and said if a peace officer can't take weapons how can he designate someone else to do it. He suggested the committee delete the entire section.

MICHAEL NELSON, Glennallen, testified against the bill. He said the US Constitution allows citizens the right to bear arms. The United States military is mainly over seas, while Russia and China are next door. Who is to say during martial law that citizens don't have the right to protect themselves, he asked. He said he preferred the original version of the bill.

BRIAN JUDY, National Rifleman's Association, testified in support of the bill. He referred to Hurricane Katrina of 2005 and advised the committee that after the disaster law-abiding citizens were stripped of their firearms by local law enforcement. The bill clarifies that during a state of emergency, law-abiding citizens will be assured of their right to bear arms and protect themselves against looters and thieves.

[10:35:58 AM](#)

CHAIR SEEKINS closed public testimony.

SENATOR HUGGINS asked Representative Coghill whether he was concerned over the amount of non-support the bill was getting from Glennallen.

REPRESENTATIVE COGHILL responded he wanted to craft the bill in such a way so that people could help the authorities gain control over a disaster situation. He indicated he was happy with the bill as it stood.

CHAIR SEEKINS referred to line 8 and asked whether the person could be considered eligible for rehire.

REPRESENTATIVE COGHILL said he'd be open to suggestions and be willing to discuss that option.

SENATOR GRETCHEN GUESS asked for clarification whether the statute could force an elected official to forfeit their position.

MR. GUANELI advised that the Legislature could set parameters that govern the holding of public office. To the extent that the Legislature could pose those kinds of requirements, then it is within their authority to say that a person convicted of certain offenses they would forfeit the constitutional right to bear arms. The Legislature could also force an elected official to forfeit a position of public office, he stated.

CHAIR SEEKINS said he understood that the official would have to resign.

[10:43:09 AM](#)

SENATOR GUESS said she would like to know where else in statute it states that an elected official must forfeit their position.

REPRESENTATIVE COGHILL noted that any forfeiture would have to go through due process.

CHAIR SEEKINS held the bill in committee.

There being no further business to come before the committee, Chair Seekins adjourned the meeting at [10:46:41 AM](#).