

**ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE**

May 8, 2007

3:36 p.m.

MEMBERS PRESENT

Senator Hollis French, Chair
Senator Bill Wielechowski
Senator Lesil McGuire
Senator Gene Therriault

MEMBERS ABSENT

Senator Charlie Huggins, Vice Chair

COMMITTEE CALENDAR

SENATE BILL NO. 172

"An Act extending the termination date for the Board of Governors of the Alaska Bar Association; and providing for an effective date."

SCHEDULED BUT NOT HEARD

CS FOR HOUSE BILL NO. 121(L&C) am

"An Act relating to release of information in individual workers' compensation records; and providing for an effective date."

MOVED CSHB 121(L&C) am OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 175(JUD) am

"An Act relating to the prohibition of the exercise of the power of eminent domain against a recreational structure for the purposes of developing a recreational facility or project; and relating to access to fishing waterways."

MOVED CSHB 175(JUD) am OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HB 121

SHORT TITLE: WORKERS' COMPENSATION RECORDS

SPONSOR(S): REPRESENTATIVE(S) WILSON

02/07/07	(H)	READ THE FIRST TIME - REFERRALS
02/07/07	(H)	L&C
02/21/07	(H)	L&C AT 3:00 PM CAPITOL 17
02/21/07	(H)	Moved CSHB 121(L&C) Out of Committee

02/21/07 (H) MINUTE(L&C)
 02/22/07 (H) L&C RPT CS(L&C) 4DP 3DNP
 02/22/07 (H) DP: BUCH, NEUMAN, RAMRAS, OLSON
 02/22/07 (H) DNP: GARDNER, LEDOUX, GATTO
 03/21/07 (H) RETURN TO SECOND FAILED Y20 N20
 03/21/07 (H) TRANSMITTED TO (S)
 03/21/07 (H) VERSION: CSHB 121(L&C) AM
 03/23/07 (S) READ THE FIRST TIME - REFERRALS
 03/23/07 (S) L&C, FIN
 04/26/07 (S) L&C AT 1:30 PM BELTZ 211
 04/26/07 (S) Heard & Held
 04/26/07 (S) MINUTE(L&C)
 05/01/07 (S) L&C AT 1:30 PM BELTZ 211
 05/01/07 (S) Moved CSHB 121(L&C)am Out of Committee
 05/01/07 (S) MINUTE(L&C)
 05/02/07 (S) L&C RPT 1NR 3AM
 05/02/07 (S) NR: ELLIS
 05/02/07 (S) AM: BUNDE, DAVIS, STEVENS
 05/03/07 (H) FIN AT 1:30 PM HOUSE FINANCE 519
 05/03/07 (S) Heard & Held
 05/03/07 (S) MINUTE(FIN)
 05/04/07 (S) JUD REFERRAL ADDED BEFORE FINANCE
 05/08/07 (H) FIN AT 1:30 PM HOUSE FINANCE 519
 05/08/07 (S) JUD AT 3:30 PM BUTROVICH 205

BILL: HB 175

SHORT TITLE: EMINENT DOMAIN / FISHING WATERWAYS

SPONSOR(S): REPRESENTATIVE(S) JOHNSON

03/05/07 (H) READ THE FIRST TIME - REFERRALS
 03/05/07 (H) JUD, FIN
 03/14/07 (H) JUD AT 1:00 PM CAPITOL 120
 03/14/07 (H) Heard & Held
 03/14/07 (H) MINUTE(JUD)
 03/16/07 (H) JUD AT 1:00 PM CAPITOL 120
 03/16/07 (H) -- MEETING CANCELED --
 03/26/07 (H) JUD AT 1:00 PM CAPITOL 120
 03/26/07 (H) Moved CSHB 175(JUD) Out of Committee
 03/26/07 (H) MINUTE(JUD)
 03/27/07 (H) JUD RPT CS(JUD) 4DP 3NR
 03/27/07 (H) DP: GRUENBERG, LYNN, SAMUELS, RAMRAS
 03/27/07 (H) NR: COGHILL, DAHLSTROM, HOLMES
 04/10/07 (H) FIN AT 1:30 PM HOUSE FINANCE 519
 04/10/07 (H) Moved CSHB 175(JUD) Out of Committee
 04/10/07 (H) MINUTE(FIN)
 04/11/07 (H) FIN RPT CS(JUD) 4DP 5NR
 04/11/07 (H) DP: FOSTER, HAWKER, KELLY, MEYER

04/11/07 (H) NR: GARA, CRAWFORD, NELSON, STOLTZE,
THOMAS
04/27/07 (H) TRANSMITTED TO (S)
04/27/07 (H) VERSION: CSHB 175(JUD) AM
04/30/07 (S) READ THE FIRST TIME - REFERRALS
04/30/07 (S) STA, JUD, FIN
05/03/07 (S) STA REFERRAL WAIVED
05/08/07 (S) JUD AT 3:30 PM BUTROVICH 205

WITNESS REGISTER

REPRESENTATIVE PEGGY WILSON
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Sponsor of HB 121.

CLIFF STONE, Staff
to Representative Peggy Wilson
Juneau, Alaska
POSITION STATEMENT: Offered testimony on HB 121.

PAUL LISANKIE, Director
Division of Workers' Compensation
Department of Labor and Workforce Development
POSITION STATEMENT: Offered testimony on HB 121.

REPRESENTATIVE CRAIG JOHNSON
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Sponsor of HB 175.

REPRESENTATIVE LES GARA
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Co-sponsor of HB 175.

RUTH BLACKWELL, Associate Broker
Powell Realty
Alaska Association of Realtors
Juneau, AK
POSITION STATEMENT: Spoke in favor of HB 175.

ACTION NARRATIVE

CHAIR HOLLIS FRENCH called the Senate Judiciary Standing Committee meeting to order at [3:36:36 PM](#). Present at the call to

order were Senator McGuire, Senator Therriault, Senator Wielechowski, and Chair French.

CSHB 121(L&C) am - WORKERS' COMPENSATION RECORDS

[3:36:58 PM](#)

CHAIR FRENCH announced the consideration of HB 121. [Before the committee was CSHB 121 (L&C) am, labeled 25-LS0501\E.A] He explained that the bill affected a court case which is the reason he asked for judiciary referral.

REPRESENTATIVE PEGGY WILSON, sponsor of HB 121, said the bill is an act that releases information in individual worker's compensation records. It was intended to protect personal information from falling into the wrong hands. There has been litigation in this area, and a judge said the language was ambiguous. HB 121 seeks to do away with that ambiguity.

[3:38:40 PM](#)

CLIFF STONE, Staff to Representative Wilson, said the legislation was introduced to clarify statutory ambiguity. SB 169, which was introduced in 2005, prohibited the Division of Workers' Compensation from providing information relating to an individual's records outside the scope of the Workers' Compensation Act. That bill passed unanimously in both the Senate and the House. This bill clarifies that the information is to be kept private and out of the hands of commercial operators that might pass it on to parties unknown. In the case of O'Bryan, Baun, Cohen, Kuebler vs. Lisankie et al., the Alaska Superior Court found the statute to be ambiguous. It also found that the state did not submit solid legislative intent or history. HB 121 seeks to clarify that this private information is not to be freely distributed. There is an opt-in provision in Section 2; the employee may sign an agreement with the Department of Labor to allow distribution of their information.

SENATOR MCGUIRE asked for clarification that an employee who wants their information given out has the ability to make those wishes known.

MR. STONE said that is correct.

[3:42:42 PM](#)

SENATOR THERRIAULT observed that this language is different than SB 169. That language said the employee's name, address, social security number, and telephone number would be withheld. HB 121 says the person's name is public but not the social security

number, electronic address, or telephone number. He asked why the bill allows the person's name and address to be public.

REPRESENTATIVE WILSON said it came about through a floor amendment that she did not support. The argument was that attorneys need access to names and addresses, but if there is litigation, attorneys have access to that information anyway.

SENATOR THERRIAULT suggested it's because attorneys want to know about potential lawsuits. He asked if there is a legal duty to provide that information.

[3:44:20 PM](#)

CHAIR FRENCH summarized the content of the lawsuit referenced above. On page 5 the judge reviewed the public records document. The debate was whether confidentiality trumps disclosure or the reverse. Further along in the decision the court quoted the law passed in 2005, which said "The division may not assemble or provide information respecting individual records for commercial purposes that are outside the scope of the chapter." The lawsuit asked if the disclosure is for commercial purposes. If it is, then it's prohibited, and if it is not, then it's allowed. On page 11 the court found the statute ambiguous. The judge points out that the transmittal letter from the governor says the purpose of the legislation is to "enhance the efficiency of the current system by expanding workers access to legal counsel."

Testimony from Mr. Lisankie was that the division wants to provide information so people can get good health care, so providers can get paid, or so insurance companies can settle and pay claims, but it tries to limit the scope of information that is given out for commercial purposes.

The judge found that because the legislation is aimed at protecting workers injured on the job, the law firm's efforts to give workers information about possible legal rights accomplishes that aim and so the information had to be divulged.

[3:49:05 PM](#)

SENATOR WIELECHOWSKI said he understands the desire for privacy but to some extent filing a workers' compensation case gives that up.

REPRESENTATIVE WILSON highlighted that the judge said a statute is to be interpreted by its plain meaning. If it's ambiguous, the court looks at legislative intent. We want to clarify that the intent of the legislature is not to allow private

information to be given out indiscriminately. She cited a letter from a constituent regarding unwelcome solicitations.

3:51:23 PM

SENATOR THERRIAULT wondered if making sure that workers know their legal rights isn't covered in Section 2. An employee wanting solicitations can sign a release, but the default is that employees get protection. He asked when an employee is able to sign the release.

MR. STONE said he assumes it's early in the process.

SENATOR THERRIAULT said he'd like an answer to that because knowing you have the right to hire an attorney is different than knowing you can sign a release so attorneys will contact you.

MR. STONE said he understands. He referred to SB 130, the omnibus workers' compensation bill that was the topic of a special session, and said this bill clarifies the legislative intent that information is not to be released. The bill was amended on the House floor to allow release of names and addresses. Releasing that information makes him question having the bill. "The sponsor feels that this bill is here to protect the privacy rights of those individuals...If they want to opt in and release that information, they can do so," he said.

3:55:08 PM

CHAIR FRENCH said that is the debate, but these are government documents that are public records. The issue is if those are commercial purposes and if one of the purposes of the bill was to help workers get compensation for their injuries.

SENATOR McGUIRE submitted that the current draft does not accomplish the sponsor's goal. First, she agrees employees should have access to information about how to recover damages for their injuries. Second, she does not believe the government has an obligation to weigh employee privacy interests less so someone else can earn a living. The bill should give workers a method and a timeframe for making an informed decision about whether or not they want their personal information to be public. When opting to have information made public, it should include everything. "It's their right, if they would like, to have the ability for that to be released and potentially go into litigation that we're talking about. It should not be the law firm's right," she stated. Commercial rights don't supersede the privacy rights of individual health information.

[3:57:43 PM](#)

CHAIR FRENCH said he partially agrees and partially disagrees. Private health information, absolutely, but not name and address because there's no health information there. He said most people don't know their rights, and they settle for less than they might get if they had some help. That's an unfair disadvantage.

SENATOR McGUIRE argued in this context a name and address does carry health information because by definition the person is an injured worker in workers' compensation. It's not the same as a name and address from any data bank. She agrees with the second point. There's a fine line between giving up rights and a person actually knowing what they're giving up. That should be the focal point of the bill. In a neutral setting the worker ought to get the information needed to make a decision about whether they want their private information to be available or not.

CHAIR FRENCH said the question is whether or not a letter from a lawyer is so invasive as to be an exception to the broad public policy of government records being open for inspection.

SENATOR WIELECHOWSKI suggested the analysis should be if the information should be a public record or not, and for a lot of reasons it should. Examples of public records include: court cases, property ownership, property tax exemptions, and the longevity bonus. These are all part of open and transparent government. One reason to make a name and address public is so people who file fraudulent claims can be more readily identified. The injured worker is going before a public tribunal. Other information, such as social security numbers and health records, obviously should not be public. "But names and addresses, in my book, I think the balance tips in the favor of making it public," he stated.

[4:01:29 PM](#)

CHAIR FRENCH said he asked to hear this bill and promised he wouldn't hold it. From his perspective, the bill strikes a fair balance. He realizes it doesn't comport with the desires of the sponsor, but he doesn't know that there's any will to change it in this committee. The next referral is finance, and he believes there will be a strong effort to change it in that committee.

SENATOR McGUIRE asked if the sponsor is comfortable with that.

REPRESENTATIVE WILSON stated the following:

We're living in a different time now than we even did 10 years ago. And we have changed other statutes in this state to protect people's privacy. And it used to be that anybody could get on and find out who applied for a permanent fund dividend. They can't do that anymore. ...because of what else is going on in the world and identity theft and things like that, we are slowly ratcheting it down. ...not only is that information available to other attorneys, but to anybody and so you need to realize that it might not just be somebody that wants to make some money. It might be somebody that if they have somebody's name and address they could do something else. It's identity theft. So ... we're protecting the public.

SENATOR THERRIAULT asked to hear from the department.

4:03:49 PM

PAUL LISANKIE, Director, Division of Workers' Compensation, Department of Labor and Workforce Development (DOLWD), Juneau, offered two points of clarification. First, the information stream begins with a report of an injury or illness incident at work. The division strongly encourages workers to report incidents even if there is no intention to do any more than slap on a band aid. The other point is that although the discussion has centered on the lawsuit, in his three-year tenure there's never been a request from law firms wanting to represent people in an Alaska workers' compensation matter consistent with the chapter. "By and large, there are not lawsuits with every workers' compensation claim. By and large, it's designed not to have a lawsuit claim," he said. "But there are gray areas where you could argue about whether someone has a right that's in addition to a workers' compensation benefits claim," he added.

SENATOR THERRIAULT asked at what point the employee has the right to sign a release and get solicitations.

MR. LISANKIE replied he isn't sure, but it would have to be early on. "I don't know if we would have enough room to include it with the original injury report ... or if we would have to design a stand-alone form, which most likely would be communicated back to someone who had filed an injury report."

SENATOR THERRIAULT noted that names and addresses are public under the current draft, and he questioned why an employee would take the extra step to make their social security number public.

MR. LISANKIE replied he can't imagine why anyone would want to give out their social security number. The division does not routinely mention or print them in their decisions. However, social security numbers are on the vast majority of the workers' compensation forms, he added.

SENATOR WIELECHOWSKI asked how many requests about employees the division gets in any given year.

MR. LISANKIE said informal sampling indicates somewhere between eight and twelve requests per day, which is different than the request in the lawsuit. The typical request is from a service asking if a particular person has reported any workers' compensation injuries in the last seven years.

SENATOR WIELECHOWSKI said of the eight to twelve, how many of those are from companies trying to get information.

MR. LISANKIE said it may be about fifty percent.

SENATOR WIELECHOWSKI asked if the division currently releases social security numbers, e-mail addresses, and telephone numbers.

MR. LISANKIE said yes if someone were to ask for a hard copy and that information happened to be on the piece of paper.

SENATOR MCGUIRE observed that initially the debate centered on a desire to prevent litigation, but Mr. Lisankie reported never having received a request from a law firm asking for information about injured workers relating to injured worker lawsuits. Now her concern has shifted to insurance companies and other employers. Those entities might want that information to document pre-existing injuries to deny medical treatment, or to assess large premiums, or simply to find out if a person is inclined to file a workers' compensation claim.

SENATOR WIELECHOWSKI responded that's why this is such an interesting bill. But you need to put all that aside and focus on whether this should be a public record. You could say the same thing about property tax records, senior records and others. Probably a lot of devious things can be done with that information, but that might not be the right focus. Bad things can happen on both sides, he said.

SENATOR MCGUIRE expressed the view that health records rise above property records.

CHAIR FRENCH pointed out that the report could be anything from a cut on a finger to a missing limb, and there's no way to find out which end of the spectrum it is based on a name and address.

SENATOR THERRIAULT said an employer could use this information to screen employees. He wondered if that potential danger outweighs the issue of whether an injured person knows how to get adequate legal advice. The individual employee can control whether or not they look for an attorney, but they have no control over a bad actor that screens them out because they had the audacity to exercise their rights with a previous employer.

CHAIR FRENCH called an at-ease at [4:14:22 PM](#).

[4:15:13 PM](#).

CHAIR FRENCH found no further discussion or debate and asked for a motion.

SENATOR WIELECHOWSKI moved to report CSHB 121(L&C)am from committee with individual recommendations and attached fiscal note(s). There being no objection, it was so ordered.

HB 175 - EMINENT DOMAIN/FISHING WATERWAYS

[4:17:50 PM](#)

CHAIR FRENCH announced the consideration of HB 175. [Before the committee was CSHB 175(JUD) am.]

[4:17:57 PM](#)

REPRESENTATIVE CRAIG JOHNSON, sponsor of HB 175, said last year's eminent domain bill was a direct response to an egregious case in Connecticut where some homes were taken to increase the tax rolls of a city. He said 75 homes were actually taken, and the same thing could have happen in Alaska. The legislation has become a model for real estate communities. "We protected a person's primary residence from being confiscated ... through eminent domain within a radius of 250 feet." This bill doesn't change that but extends the two-hundred fifty foot protection to permanent recreational structures. The bill still allows for the legitimate use of eminent domains for projects such as roads, hospitals, schools, public buildings, gas pipelines, and other legitimate undertakings of the government. He said the greatest use of property is "to be in a private person's hands." The bill prohibits taking recreational property for a recreational purpose. He said the bill has been amended to allow the Department of Fish and Game (ADF&G) to inventory streams and

determine if there is land that can be purchased to provide access. But there is no use of eminent domain for that.

[4:21:41 PM](#)

CHAIR FRENCH said he thinks the bill is well balanced with the two provisions.

SENATOR THERRIAULT asked for clarification that the bill just adds recreational structures.

REPRESENTATIVE JOHNSON said yes, but structures must be permanent such as fishing or hunting cabins, and there must be clear title. It wouldn't be a tent that moves around on a lot.

CHAIR FRENCH said the 250-foot limit doesn't give carte blanche protection. If a government agency decided to build a recreational facility on someone's 10-acre plot, it would have to be 250 feet away from a cabin.

REPRESENTATIVE JOHNSON said that's correct. The radius provides for about three acres.

CHAIR FRENCH said this bill wouldn't stop a gas pipeline.

REPRESENTATIVE JOHNSON said it would not; he has been very careful to protect the legitimate uses of eminent domain while honoring private property.

[4:24:20 PM](#)

SENATOR THERRIAULT asked for more information on Section 4, page 3, line 21, referring to "at least two and not more than five meander miles along a fishing waterway."

[4:24:48 PM](#)

REPRESENTATIVE JOHNSON asked Representative Gara to speak to his amendment and noted his support for the amendment.

REPRESENTATIVE LES GARA said "meander mile" is a linear distance along a fishing stream. The goal is to see how much public access might be lost in the most important access spots, and not to inventory every piece of private property around the state. He noted Montana Creek, north of Anchorage, where there is over a mile of private land that will impede public access. He gave other examples. He wants the agencies to see how much public access might be lost in the most important areas. "We don't want them to put together a list of 50 miles worth of stuff that they'll never buy, so we cap it at 5 miles for the list. We

don't want them to ignore the bill and not do anything, so we say the minimum should about 2 miles."

SENATOR THERRIAULT asked if all river access would be included by this bill. He noted the cabins on the Salcha River and said, "I don't know if right now that people feel like access to the Salcha River is getting close to being cut off."

REPRESENTATIVE GARA said the reason for the five-mile cap is to give ADF&G and DNR the ability to identify the most important places where public access may be lost. Access is pretty good now, and people aren't kicking anyone off their property. He spoke of undeveloped CIRI lands along some rivers. The point is to buy easements from landowners who want to sell while the land is undeveloped rather than waiting for the conflicts and when land is too expensive to buy.

SENATOR THERRIAULT asked if purchased property or easements must be at least five miles.

REPRESENTATIVE GARA replied no; the two to five miles don't have to be on a single river. It could be 100 yards on one river and 800 yards on another. "You want them to total somewhere, at least around two miles, and we know that there's at least two miles." He said all of Gibraltar Creek by Lake Iliamna is barred to the public, and there are others.

[4:28:46 PM](#)

SENATOR WIELECHOWSKI asked if this is a problem in the Lower 48, and if the intent is to purchase small segments here and there to ensure the public has an easement or access to a particular stream or river.

REPRESENTATIVE GARA said it depends on the stream. If he could he would take an important stream and try to buy an access corridor for the two miles that the public uses everyday now, but won't be able to use twenty years from now. Some rivers may be so deep that only one access point is needed. Now, in the Lower 48, a person may need a lot of money to be able to fish.

SENATOR McGUIRE said she supports Representative Gara's part of the bill. Families that may not have the means for a recreational cabin should have the same ability to enjoy Alaska. This is a forward thinking approach to how the public can enjoy recreational opportunities in the state.

[4:31:58 PM](#)

CHAIR FRENCH asked what the public is allowed do along the riverfront of a private property.

REPRESENTATIVE GARA said current state law allows access up to the high water mark, even if there is no easement. When the state gives away lands, it retains public access along the rivers. Many lands that are in private hands don't have that access, and the stream bank is private. If it were an area of important public access the state may offer to buy a strip along the river. But an owner would not be obliged to sell.

SENATOR THERRIAULT noted that mean high water is often above the river, so a person may be able to walk on a bank.

REPRESENTATIVE GARA said that is the current law, but no one really knows where mean high water is. But you would want more than that narrow strip. The agencies will likely target the undeveloped land—it will be cheaper and have fewer conflicts.

[4:35:00 PM](#)

REPRESENTATIVE JOHNSON said once a property owner declines to sell, the property is taken off the list.

REPRESENTATIVE GARA said that was from a former bill, but the reality is that a person will not be frequently contacted.

RUTH BLACKWELL, Associate Broker, Powell Realty, Juneau, said she is representing the Alaska Association of Realtors, and she is pleased with last year's bill and wants passage of HB 175. She is neutral on the second part of the bill, however.

[4:37:17 PM](#)

SENATOR WIELECHOWSKI motioned to report CSHB 175(JUD) am from committee with individual recommendations and attached fiscal note(s). There being no objections, it was so ordered.

There being no further business to come before the committee, Chair French adjourned the meeting at [4:37:37 PM](#).