

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

February 9, 2009

2:09 p.m.

MEMBERS PRESENT

Representative Jay Ramras, Chair
Representative Nancy Dahlstrom, Vice Chair
Representative John Coghill
Representative Carl Gatto
Representative Bob Lynn
Representative Max Gruenberg

MEMBERS ABSENT

Representative Lindsey Holmes

COMMITTEE CALENDAR

HOUSE BILL NO. 49

"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."

- MOVED CSHB 49(JUD) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HB 49

SHORT TITLE: EMINENT DOMAIN: RECREATIONAL STRUCTURES

SPONSOR(S): REPRESENTATIVE(S) JOHNSON

01/20/09	(H)	PREFILE RELEASED 1/9/09
01/20/09	(H)	READ THE FIRST TIME - REFERRALS
01/20/09	(H)	JUD
02/09/09	(H)	JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

REPRESENTATIVE CRAIG JOHNSON

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Sponsor of HB 49.

CAROLE WINTON

Alaska Association of Realtors (AAR)

Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 49.

ERROL CHAMPION, Associate Broker

Coldwell Banker Race Realty

Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 49.

DON BULLOCK, Attorney

Legislative Legal Counsel

Legislative Legal and Research Services

Legislative Affairs Agency (LAA)

Juneau, Alaska

POSITION STATEMENT: As the drafter, responded to questions regarding HB 49.

ACTION NARRATIVE

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CHAIR JAY RAMRAS called the House Judiciary Standing Committee meeting to order at 2:09 p.m. Representatives Ramras, Dahlstrom, Coghill, and Gruenberg were present at the call to order. Representatives Gatto and Lynn arrived as the meeting was in progress.

HB 49 - EMINENT DOMAIN: RECREATIONAL STRUCTURES

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CHAIR RAMRAS announced that the only order of business would be HOUSE BILL NO. 49, "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."

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REPRESENTATIVE CRAIG JOHNSON, Alaska State Legislature, sponsor, relayed that legislation similar to HB 49 passed the House last year, and that HB 49 does not contain the language that the Senate disapproved of in that past legislation. He recounted that the provision of Alaska statute prohibiting the taking of someone's personal residence for recreational purposes via the exercise of eminent domain was engendered by [the ruling in the U.S. Supreme Court case, Kelo v. City of New London]. Because many Alaskans build a second home for recreational purposes but

intend to live in that second home full time upon retirement, HB 49 would ensure that that same protection against the exercise of eminent domain applies to an individual landowner's recreational structure. Nothing in HB 49, he assured the committee, would preclude the exercise of eminent domain for "traditional" purposes. He offered his belief that taking someone's home or recreational property for recreational purposes doesn't rise to the level of being in the best public interest.

REPRESENTATIVE JOHNSON, in response to a question, explained that the language the Senate objected to would have allowed the Department of Natural Resources (DNR) to inventory fishing streams and provide replacements, adding that although he'd supported the inclusion of that language at the time, its inclusion resulted in the legislation languishing in the Senate, and so he would, therefore, oppose any future amendment to reinsert it. He indicated that HB 49 defines "recreational structure" to mean a permanent structure that is used by the owner of or beneficiary of a trust holding legal title to the structure as a dwelling for seasonal recreational purposes.

REPRESENTATIVE GATTO asked whether the bill would preclude the exercise of eminent domain by utility companies.

REPRESENTATIVE JOHNSON said it would not; HB 49 would only preclude the taking of a person's recreational structure via the exercise of eminent domain for the purpose of developing a recreational facility or project.

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REPRESENTATIVE COGHILL, in response to a question, too, observed that the bill addresses recreational structures intended as dwellings for seasonal recreational purposes.

REPRESENTATIVE GRUENBERG questioned whether the term, "recreational facility or project" - as currently used in existing AS 09.55.240(e) - is already defined, and, if not, whether it ought to be.

REPRESENTATIVE JOHNSON mentioned that HB 49's proposed limitation on the exercise of eminent domain for the purpose of developing a recreational facility or project also applies to property attached to and within 250 linear feet of an individual landowner's personal residence or recreational structure. In response to questions, he relayed his understanding that a

performing arts center would be considered a recreational facility or project, reiterated the type of taking that would be precluded by HB 49, offered that he is not aware of any such taking have occurred in Alaska, and surmised that the real estate industry in Alaska is in support of HB 49.

REPRESENTATIVE GRUENBERG turned attention to the language on page 1, line 13, that read, "the owner of or beneficiary of", and opined that that language reads strangely. Representative Gruenberg asked Representative Johnson whether he would be amenable to having the first instance of the word, "of" deleted.

REPRESENTATIVE JOHNSON indicated that as long as it wouldn't alter the intent of the bill, he wouldn't have a problem with such a change.

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REPRESENTATIVE GRUENBERG, in response to his own earlier question, observed that AS 09.55.240(h)(5) provides the following definition:

- (5) "recreational facility or project"
 - (A) means a facility or project, the primary purpose of which is recreational;
 - (B) includes a park, trail or pedestrian pathway, greenbelt, amusement park, fresh water boat harbor, sports facility, playground, infrastructure, or other facility related to or in support of an indoor or outdoor recreational facility or project;
 - (C) does not include
 - (i) a highway, sidewalk, or path within the right-of-way of a highway;
 - (ii) a path, trail, or lane used as a safe route to a school program;
 - (iii) a wayside or rest stop;
 - (iv) a development, the primary purpose of which is not recreational, such as a path, trail, or lane developed to reduce congestion, or to encourage use of an alternate, gas-saving mode of transportation;
 - (v) a path or trail to or between villages or from a village to a facility or resource;
 - (vi) a stormwater retention or treatment facility or wetland, habitat, or other acquisition required to obtain a permit for a highway, airport, or other public project;

(vii) a taking under AS 19.05.110, 19.05.120, AS 19.22.020, AS 27.21.300, AS 35.20.040, 35.20.050, or AS 41.35.060;

(viii) a taking not prohibited by law before January 1, 2007, under AS 41.21; and

(ix) a path, trail, road, or site for which no reasonable alternative exists and which is necessary to preserve or establish public access to or along publicly owned land or water, if the use of the path, trail, road, or site itself is for transportation to or to facilitate use of publicly owned land or water.

REPRESENTATIVE GRUENBERG characterized this definition as circular and imprecise.

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CAROLE WINTON, Alaska Association of Realtors (AAR), relayed that the AAR was in support of House Bill 318 that passed the legislature in 2006, and is now in support of HB 49. It is very important that Alaskans who own cabins or homes which they ultimately wish to retire to don't have those homes or cabins taken for the purpose of a recreational facility or project.

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ERROL CHAMPION, Associate Broker, Coldwell Banker Race Realty, characterized HB 49 as a great bill, and expressed support for it.

REPRESENTATIVE GRUENBERG disclosed a possible conflict of interest in that Ms. Winton is his realtor.

MR. CHAMPION, in response to a question, said that how a person intends to use his/her private property is up to him/her, and so a person could leave [some] of his/her property undeveloped [and still be afforded the protection offered by HB 49].

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[Following was a brief discussion on a topic unrelated to the bill before the committee.]

REPRESENTATIVE GRUENBERG asked whether a project "like the performing arts center" or the Morris Thompson Cultural and Visitors Center would clearly be considered a recreational facility or project as defined under AS 09.55.240(h)(5).

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DON BULLOCK, Attorney, Legislative Legal Counsel, Legislative Legal and Research Services, Legislative Affairs Agency (LAA), said he is not familiar with those projects but noted that sometimes one sees the phrase "cultural or recreational project", which could include a museum, for example. There was quite a bit of work that went into crafting the statutory definition of "recreational facility or project" he explained, and the definition contains both a list of what is a recreational facility or project and a list of what isn't; inclusion of both lists was necessary because of the difficulty in identifying exactly what a recreational facility or project is. He also pointed out that the word, "recreational" as used in the bill's phrase, "seasonal recreational purposes" might have a broader meaning than it does when used in the phrase, "recreational facility or project".

MR. BULLOCK, in response to questions, said that in determining whether the protection afforded by the bill applies, two points need to be considered: whether the taking of the structure is for the purpose of developing a recreational facility or project - if it is not, then the protection afforded by the bill doesn't apply; and whether the structure being taken is either a personal residence or a recreational structure - if it is either type of structure and the taking is for the purpose of developing a recreational facility or project, then the protection afforded by the bill does apply. In response to a further question, he offered his understanding that AS 09.55.240(h)(5) defines the term, "recreational facility or project" as a unit.

REPRESENTATIVE GRUENBERG added his understanding that "recreational facility or project" is considered a term of art, and that the courts would rely on the aforementioned statutory definition. He remarked that it is still unclear whether the performing arts center or the Morris Thompson Cultural and Visitors Center would be considered a recreational facility or project as defined under AS 09.55.240(h)(5).

CHAIR RAMRAS, after ascertaining that no one else wished to testify, closed public testimony on HB 49.

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REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 1, to delete the word "of" from page 1, line 13, after the word "owner". There being no objection, Amendment 1 was adopted.

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REPRESENTATIVE DAHLSTROM moved to report HB 49, as amended, out of committee with individual recommendations and the accompanying zero fiscal note. There being no objection, CSHB 49(JUD) was reported from the House Judiciary Standing Committee.

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ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:47 p.m.