

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

April 15, 2009

6:15 p.m.

MEMBERS PRESENT

Senator Hollis French, Chair
Senator Bill Wielechowski, Vice Chair
Senator Lesil McGuire

MEMBERS ABSENT

Senator Gene Therriault

COMMITTEE CALENDAR

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 152(JUD)

"An Act making corrective amendments to the Alaska Statutes as recommended by the revisor of statutes; providing for an effective date by repealing the effective date of sec. 33, ch. 122, SLA 1977; and providing for an effective date."

MOVED CSHB 152(JUD) OUT OF COMMITTEE

SENATE BILL NO. 68

"An Act relating to the voting rights of felons."

MOVED SB 68 OUT OF COMMITTEE

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 49(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."

MOVED CSHB 49(JUD)am OUT OF COMMITTEE

HOUSE BILL NO. 170

"An Act repealing the authority for day fines."

MOVED HB 170 OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HB 152

SHORT TITLE: 2009 REVISOR'S BILL

SPONSOR(s): RULES BY REQUEST OF LEGISLATIVE COUNCIL

02/25/09	(H)	READ THE FIRST TIME - REFERRALS
02/25/09	(H)	JUD
03/16/09	(H)	JUD AT 8:00 AM CAPITOL 120

03/16/09 (H) Heard & Held
03/16/09 (H) MINUTE(JUD)
03/19/09 (H) JUD AT 1:00 PM CAPITOL 120
03/19/09 (H) Moved CSHB 152(JUD) Out of Committee
03/19/09 (H) MINUTE(JUD)
03/23/09 (H) JUD RPT CS(JUD) 2DP 4NR
03/23/09 (H) DP: COGHILL, RAMRAS
03/23/09 (H) NR: LYNN, DAHLSTROM, GATTO, HOLMES
03/27/09 (H) TRANSMITTED TO (S)
03/27/09 (H) VERSION: CSHB 152(JUD)
03/30/09 (S) READ THE FIRST TIME - REFERRALS
03/30/09 (S) JUD
04/15/09 (S) JUD AT 1:30 PM BELTZ 211

BILL: SB 68

SHORT TITLE: FELONS' RIGHT TO VOTE
SPONSOR(s): SENATOR(s) DAVIS

01/21/09 (S) READ THE FIRST TIME - REFERRALS
01/21/09 (S) STA, JUD, FIN
03/31/09 (S) STA AT 9:00 AM BELTZ 211
03/31/09 (S) Moved SB 68 Out of Committee
03/31/09 (S) MINUTE(STA)
04/01/09 (S) STA RPT 3DP 1NR
04/01/09 (S) DP: MENARD, MEYER, PASKVAN
04/01/09 (S) NR: FRENCH
04/10/09 (S) JUD AT 1:30 PM BELTZ 211
04/10/09 (S) Heard & Held
04/10/09 (S) MINUTE(JUD)
04/15/09 (S) JUD AT 1:30 PM BELTZ 211

BILL: HB 49

SHORT TITLE: EMINENT DOMAIN: RECREATIONAL STRUCTURES
SPONSOR(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
02/09/09 (H) Moved CSHB 49(JUD) Out of Committee
02/09/09 (H) MINUTE(JUD)
02/11/09 (H) JUD RPT CS(JUD) 6DP
02/11/09 (H) DP: LYNN, GRUENBERG, COGHILL,
DAHLSTROM, GATTO, RAMRAS
03/02/09 (H) TRANSMITTED TO (S)
03/02/09 (H) VERSION: CSHB 49(JUD) AM
03/09/09 (S) READ THE FIRST TIME - REFERRALS

03/09/09 (S) JUD
 04/03/09 (S) JUD AT 1:30 PM BELTZ 211
 04/03/09 (S) -- MEETING CANCELED --
 04/13/09 (S) JUD AT 1:30 PM BUTROVICH 205
 04/13/09 (S) Scheduled But Not Heard
 04/15/09 (S) JUD AT 1:30 PM BELTZ 211

BILL: HB 170

SHORT TITLE: REPEAL AUTHORITY FOR DAY FINES

SPONSOR(s): CHENAULT

03/09/09 (H) READ THE FIRST TIME - REFERRALS
 03/09/09 (H) JUD
 03/25/09 (H) JUD AT 1:00 PM CAPITOL 120
 03/25/09 (H) Moved Out of Committee
 03/25/09 (H) MINUTE(JUD)
 03/27/09 (H) JUD RPT 2DP 3NR
 03/27/09 (H) DP: LYNN, RAMRAS
 03/27/09 (H) NR: GRUENBERG, COGHILL, DAHLSTROM
 04/02/09 (H) TRANSMITTED TO (S)
 04/02/09 (H) VERSION: HB 170
 04/03/09 (S) READ THE FIRST TIME - REFERRALS
 04/03/09 (S) STA, JUD
 04/09/09 (S) STA RPT 5DP
 04/09/09 (S) DP: MENARD, FRENCH, MEYER, KOOKESH,
 PASKVAN
 04/09/09 (S) STA AT 9:00 AM BELTZ 211
 04/09/09 (S) Moved HB 170 Out of Committee
 04/09/09 (S) MINUTE(STA)
 04/15/09 (S) JUD AT 1:30 PM BELTZ 211

WITNESS REGISTER

KATHRYN KURTZ, Assistant Revisor of Statutes
 Legislative Legal and Research Services Division
 Legislative Affairs Agency
 Juneau AK

POSITION STATEMENT: Presented HB 52.

REPRESENTATIVE CRAIG JOHNSON
 Alaska State Legislature
 Juneau AK

POSITION STATEMENT: Sponsor of HB 49.

ERROL CHAMPION, Associate Broker
 Coldwell Banker Race Realty
 Juneau AK

POSITION STATEMENT: Stated support for HB 49.

TOM WRIGHT, Staff
to Representative Mike Chenault
Alaska Capitol Building
Juneau AK

POSITION STATEMENT: Presented HB 170 on behalf of the sponsor.

DOUG WOOLIVER, Administrative Attorney
Alaska Court System
Juneau AK

POSITION STATEMENT: Commented on HB 170.

ACTION NARRATIVE

[6:15:00 PM](#)

CHAIR HOLLIS FRENCH called the Senate Judiciary Standing Committee meeting to order at 6:15 p.m. Present at the call to order were Senators Wielechowski, McGuire and French.

HB 152-2009 REVISOR'S BILL

[6:15:21 PM](#)

CHAIR FRENCH announced the consideration of CS for HB 152. [CSHB 152(JUD).]

KATHRYN KURTZ, Assistant Revisor of Statutes, Legislative Legal and Research Services Division, Legislative Affairs Agency, said the revisors are statutorily required every two years to review Alaska statutes and prepare legislation to correct deficiencies, remove obsolete provisions, and fix errors in the statutes. This bill does that; it improves the statutes. The Department of Law (DOL) has reviewed the changes and discussed the relevant provisions with the different departments. A letter of support from DOL should be included in the bill packet, she said.

CHAIR FRENCH acknowledged that the letter is in the packet.

MS. KURTZ said there is an explanation of each change in each sectional summary.

CHAIR FRENCH said he usually reviews a revisor bill by stress-testing it in a place or two. He targeted bill section 82 and asked why this part of law requires so much revising.

MS. KURTZ replied that section is full of repealers. The sectional summary has the text of each section that is being repealed as well as the explanations.

[6:17:04 PM](#)

AS 08.362.46(a)(4)(B) is a reference to the specialty examinations given by the Central Regional Examining Board, but that board doesn't offer specialty examinations so it makes no sense. The solution is to take it out.

AS 31.05.080(b) was impliedly repealed by the enactment of AS 22.10.020(d).

CHAIR FRENCH said this appears to have come to your attention in the course of some litigation.

MS. KURTZ replied it did indeed. It is referred to in Allen v. Alaska Oil and Gas Conservation Commission. This makes express that repeal so it's not in the statutes where it could cause confusion.

[6:18:04 PM](#)

CHAIR FRENCH observed that this collection of repealers isn't related to any particular part of the statutes. There is no thematic link.

MS. KURTZ replied that's correct and there's a special constitutional provision for that. The single subject rule applies to everything but appropriation bills and bills revising the statutes. That provision enables the revisors to solve a lot of small technical issues at once.

CHAIR FRENCH expressed satisfaction and asked Senator McGuire if she had any test questions on the revisor's bill.

SENATOR MCGUIRE said no, but the changes can be comical. For example, bill section 9 corrects an apparent error by changing "adopted parent" to "adoptive parent" because Alaska law does not provide for the adoption of parents by children.

CHAIR FRENCH noted that bill section 39 replaces "newsboys" and "salesman" to avoid the use of gender specific terms. That same bill section deletes a grammatically incorrect use of the word "some," which appeals to the grammarian in him. Similarly, bill section 41 substitutes "that" for "which" and semi-colons for commas to conform to the current drafting style. Senator French

said he will bring that to the attention of a staffer with whom he has a long-standing running debate.

[6:20:21 PM](#)

SENATOR MCGUIRE referenced bill section 1 and asked what a generic reference to the division of agriculture would look like.

MS. KURTZ explained that the generic reference would be to the division that has responsibility for agriculture. Within a department names can be changed administratively and things can be rearranged such that a specific reference would be out of style and wouldn't make sense in the statute. "We're anticipating that in some places, and in some places things have already been rearranged and we're playing catch up," she said.

CHAIR FRENCH found no further questions, no amendments and no public testimony. He thanked Ms. Kurtz for doing this exacting difficult work and added, "We could not do it without people with rigorous minds." He asked for a motion.

SENATOR MCGUIRE moved to report CS for HB 152 from committee with individual recommendations and attached fiscal note(s). There being no objection, CSHB 152(JUD) was reported from the Senate Judiciary Standing Committee.

At ease at 6:22:34 pm.

SB 68-FELONS' RIGHT TO VOTE

[6:23:18 PM](#)

CHAIR FRENCH announced the consideration of SB 68 and explained that during the last hearing the ACLU suggested that there was a technical issue they wanted to explore. His office subsequently contacted the ACLU and was told that changes are not necessary. Acknowledging that he goes back and forth on this policy call, he said the bill is nevertheless ready to move to the next committee.

[6:24:04 PM](#)

SENATOR MCGUIRE moved to report SB 68 from committee with individual recommendations and attached fiscal note(s). There being no objection, SB 68 was reported from the Senate Judiciary Standing Committee.

At ease 6:24 pm.

HB 49-EMINENT DOMAIN: RECREATIONAL STRUCTURES

[6:25:00 PM](#)

CHAIR FRENCH announced the consideration of CSHB 49(JUD)am, and stated that it is his great pleasure to welcome Representative Craig Johnson to the committee. Representative Johnson has been very patient and understanding of the difficulty the committee has had in getting a quorum since the committee lost Senator Elton, he said. Several times his bill has been scheduled and not heard. Senator French apologized on behalf of the committee.

REPRESENTATIVE CRAIG JOHNSON, sponsor, said legislation similar to HB 49 was brought forth last year and died in the Senate as a result of an amendment that is not contained in this bill. 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 came about as a result of a case in Connecticut when a city determined it was okay to condemn certain real estate for the purpose of increasing its tax roles. [U.S. Supreme Court case, Kelo v. City of New London].

REPRESENTATIVE JOHNSON stated 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. That is the essence of the bill. However, nothing in HB 49 would preclude the exercise of eminent domain for "traditional" purposes. The bill protects an individual's property that is within 250 feet of their personal residence or recreational structure. That translates into about 5 acres, he said. The impetus for the bill comes from people in Juneau, Fairbanks, Kenai, and Big Lake who are currently building recreational homes that will become their primary residence when they retire.

[6:28:37 PM](#)

SENATOR WIELECHOWSKI asked how many other states have similar legislation.

REPRESENTATIVE JOHNSON offered his personal opinion that Alaska is unique.

CHAIR FRENCH asked if this committee amended the previous bill.

REPRESENTATIVE JOHNSON replied the bill was amended in the Senate Finance Committee.

SENATOR WIELECHOWSKI said his only concern with the bill is that the public is continually losing access to fishing streams and hunting areas. He highlighted the Kenai River as an example and asked what can be done to ensure that Alaskans continue to have access.

REPRESENTATIVE JOHNSON explained that the bill does not restrict access and the exclusion is limited to 250 feet from a property owner's physical structure. If, for example, an individual were to buy 1,000 feet along a river and build a house in the middle, just the narrow strip in the center could not be taken. Traditional access is not restricted just as it is not restricted for a primary residence. "You can't restrict access to waters because that's a constitutionally guaranteed right," he emphasized.

6:30:59 PM

SENATOR WIELECHOWSKI mentioned a series of lots and asked if the intention is that a trail could come no closer than 250 feet on either side of the structure.

REPRESENTATIVE JOHNSON explained that the right-of-way could be for bought or sold but the landowner could not go through a very specific eminent domain process and sue to get the right-of-way back. Also, if a landowner has a series of lots this only applies to the lot upon which the structure is built.

6:31:59 PM

ERROL CHAMPION, Associate Broker, Coldwell Banker Race Realty, and member of the Alaska Board of Realtors, stated support for HB 49.

CHAIR FRENCH commented that he appreciates that the real estate industry has been quite staunch in its support of these bills.

MR. CHAMPION described the bill as good protection for any investor.

CHAIR FRENCH closed public testimony and asked the will of the committee.

6:33:00 PM

SENATOR MCGUIRE moved to report CS for HB 49 from committee with individual recommendations and attached fiscal note(s). There being no objection, CSHB 49(JUD)am was reported from the Senate Judiciary Standing Committee.

At ease 6:33 pm.

HB 170-REPEAL AUTHORITY FOR DAY FINES

[6:37:59 PM](#)

CHAIR FRENCH announced the consideration of HB 170.

TOM WRIGHT, staff to Representative Mike Chenault, said HB 170 repeals the authority for courts to impose day fines for certain misdemeanor offenses. The original legislation, House Bill 119, was passed in 1994 and required the Alaska Supreme Court to create a committee to establish a fine schedule and implement the day fine process. The committee found several problems in adopting the day fine plan and recommended that the Legislature solve the problem. Legislation was introduced in 1995 but it did not pass so the court system could not implement the day fine schedule. He explained that day fines were established to fine a person based on their gross daily income.

[6:39:13 PM](#)

CHAIR FRENCH commented that when he came across the idea of day fines as a prosecutor he scratched his head.

MR. WRIGHT said he understands that a Scandinavian country has adopted a day fine plan and they seem to like it. HB 170 simply asks to repeal the law because it is not being utilized.

CHAIR FRENCH commented that criminal defendants in Scandinavia must have more money than they do here because it's his impression that fines are the least enforced and least utilized aspect of the criminal justice system. Typically, by the time a person has been convicted of crimes once or twice they are out of money. If there is any left it usually goes to restitution, not a fine.

[6:40:38 PM](#)

SENATOR WIELECHOWSKI asked the intent of the original legislation.

MR. WRIGHT explained that it was to reduce the prison population by implementing a substantive fine system.

SENATOR WIELECHOWSKI asked what specific crimes were the focus.

MR. WRIGHT said that was one of the problems. The court had concerns over which misdemeanors were included and which were

excluded. Thus the request for the 1995 clarifying legislation, he said.

CHAIR FRENCH mentioned the 4/26/1995 letter from the court system and said the frustration of the committee is apparent. He summarized that they wanted to make it work but they couldn't, so they tossed it back to the Legislature and it hasn't moved.

[6:41:44 PM](#)

DOUG WOOLIVER, Administrative Attorney, Alaska Court System, said he is available for questions. He added that the court usually takes a neutral position on bills, but this is something that has never been implemented. "Statutes are confusing enough without having provisions that are paragraphs long and don't mean anything," he said.

CHAIR FRENCH asked Mr. Wright if anyone has testified in opposition to the bill.

MR. WRIGHT said no, but there was one no vote on House Floor. In response to a question, he said Representative Crawford voted no.

[6:42:55 PM](#)

CHAIR FRENCH closed public testimony and asked the will of the committee.

SENATOR WIELECHOWSKI moved to report HB 170 from committee with individual recommendations and attached fiscal note(s). There being no objection, HB 170 was reported from the Senate Judiciary Standing Committee.

[6:43:23 PM](#)

There being no further business to come before the committee, Chair French adjourned the Senate Judiciary Standing Committee meeting at 6:43 pm.