ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE
April 6, 2018
1:00 p.m.

MEMBERS PRESENT

Representative Matt Claman, Chair
Representative Jonathan Kreiss-Tomkins, Vice Chair
Representative Louise Stutes
Representative Gabrielle LeDoux
Representative David Eastman
Representative Chuck Kopp
Representative Lora Reinbold

MEMBERS ABSENT

Representative Charisse Millett (alternate)
Representative Tiffany Zulkosky (alternate)

COMMITTEE CALENDAR

HOUSE BILL NO. 351
"An Act relating to care of juveniles and to juvenile justice; relating to employment of juvenile probation officers by the Department of Health and Social Services; relating to terms used in juvenile justice; relating to mandatory reporters of child abuse or neglect; relating to adjudication of minor delinquency and the deoxyribonucleic acid identification registration system; relating to sexual assault in the third degree; relating to sexual assault in the fourth degree; repealing a requirement for administrative revocation of a minor's driver's license, permit, privilege to drive, or privilege to obtain a license for consumption or possession of alcohol or drugs; and providing for an effective date."

- HEARD & HELD

HOUSE JOINT RESOLUTION NO. 38
Relating to certain conveyances to the Alaska Railroad Corporation under the Alaska Railroad Transfer Act of 1982.

- HEARD & HELD

HOUSE BILL NO. 75
"An Act relating to gun violence protective orders; relating to the crime of violating a protective order; relating to a central

registry for protective orders; relating to the powers of district judges and magistrates; requiring physicians, psychologists, psychological associates, social workers, marital and family therapists, and licensed professional counselors to report annually threats of gun violence; and amending Rules 4 and 65, Alaska Rules of Civil Procedure, and Rule 9, Alaska Rules of Administration."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 351
SHORT TITLE: JUVENILES: JUSTICE,FACILITES,TREATMENT
SPONSOR(s): REPRESENTATIVE(s) SPOHNHOLZ

02/16/18	(H)	READ THE FIRST TIME - REFERRALS
02/16/18	(H)	HSS, JUD
03/06/18	(H)	HSS AT 3:00 PM CAPITOL 106
03/06/18	(H)	Heard & Held
03/06/18	(H)	MINUTE(HSS)
03/08/18	(H)	HSS AT 3:00 PM CAPITOL 106
03/08/18	(H)	Moved CSHB 351(HSS) Out of Committee
03/08/18	(H)	MINUTE(HSS)
03/09/18	(H)	HSS RPT CS(HSS) 6DP
03/09/18	(H)	DP: JOHNSTON, CLAMAN, EDGMON, SULLIVAN-LEONARD, KITO, TARR
04/06/18	(H)	JUD AT 1:00 PM GRUENBERG 120

BILL: HJR 38
SHORT TITLE: AK RAILROAD TRANSFER ACT; CONVEYANCES
SPONSOR(s): REPRESENTATIVE(s) KOPP

02/21/18	(H)	READ THE FIRST TIME - REFERRALS
02/21/18	(H)	STA, JUD
02/27/18	(H)	STA AT 3:15 PM GRUENBERG 120
02/27/18	(H)	Heard & Held
02/27/18	(H)	MINUTE(STA)
03/01/18	(H)	STA AT 3:15 PM GRUENBERG 120
03/01/18	(H)	Heard & Held
03/01/18	(H)	MINUTE(STA)
03/08/18	(H)	STA AT 3:15 PM GRUENBERG 120
03/08/18	(H)	Moved HJR 38 Out of Committee
03/08/18	(H)	MINUTE(STA)
03/09/18	(H)	STA RPT 1DP 4NR
03/09/18	(H)	DP: BIRCH

03/09/18	(H)	NR: LEDOUX, WOOL, JOHNSON, KREISS-TOMKINS
04/06/18	(H)	JUD AT 1:00 PM GRUENBERG 120

BILL: HB 75
SHORT TITLE: GUN VIOLENCE PROTECTIVE ORDERS
SPONSOR(s): REPRESENTATIVE(s) TARR

01/23/17	(H)	READ THE FIRST TIME - REFERRALS
01/23/17	(H)	JUD, FIN
02/28/18	(H)	JUD AT 1:00 PM GRUENBERG 120
02/28/18	(H)	Heard & Held
02/28/18	(H)	MINUTE(JUD)
03/12/18	(H)	JUD AT 1:00 PM GRUENBERG 120
03/12/18	(H)	Heard & Held
03/12/18	(H)	MINUTE(JUD)
03/12/18	(H)	JUD AT 7:00 PM GRUENBERG 120
03/12/18	(H)	Heard & Held
03/12/18	(H)	MINUTE(JUD)
03/14/18	(H)	JUD AT 1:00 PM GRUENBERG 120
03/14/18	(H)	Heard & Held
03/14/18	(H)	MINUTE(JUD)
03/16/18	(H)	JUD AT 1:00 PM GRUENBERG 120
03/16/18	(H)	Heard & Held
03/16/18	(H)	MINUTE(JUD)
03/19/18	(H)	JUD AT 1:00 PM GRUENBERG 120
03/19/18	(H)	Scheduled but Not Heard
03/26/18	(H)	JUD AT 1:00 PM GRUENBERG 120
03/26/18	(H)	Scheduled but Not Heard
03/26/18	(H)	JUD AT 7:00 PM GRUENBERG 120
03/26/18	(H)	Heard & Held
03/26/18	(H)	MINUTE(JUD)
03/28/18	(H)	JUD AT 1:00 PM GRUENBERG 120
03/28/18	(H)	Heard & Held
03/28/18	(H)	MINUTE(JUD)
03/28/18	(H)	JUD AT 7:00 PM GRUENBERG 120
03/28/18	(H)	-- MEETING CANCELED --
04/06/18	(H)	JUD AT 1:00 PM GRUENBERG 120

WITNESS REGISTER

JUDY JESSEN, Staff
Representative Ivy Spohnholz
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: During the hearing of HB 351, presented the sponsor statement and sectional analysis, and answered questions.

ERICK CORDERO GIOGANA, Staff
Representative Chuck Kopp
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: During the hearing of HJR 38, testified.

WILLIAM O'LEARY, President/Chief Executive Officer
Alaska Railroad Corporation
Anchorage, Alaska
POSITION STATEMENT: During the hearing of HJR 38, spoke in opposition to the legislation.

ANDY BEHREND, Chief Legal Counsel
Alaska Railroad Corporation
Anchorage, Alaska
POSITION STATEMENT: During the hearing of HJR 38, testified and answered questions.

ERROL CHAMPION, Chairman
Legislative Issues Committee
Alaska Association of Realtors
Juneau, Alaska
POSITION STATEMENT: During the hearing of HJR 38, spoke in support of the resolution.

KATE BLAIR, Manager
Government and Public Affairs
ENDEAVOR fka Tesoro Corporation
Houston, Texas
POSITION STATEMENT: During the hearing of HJR 38, spoke to concerns about the resolution.

BARBARA HUFF-TUCKNESS, Director
Governmental and Legislative Affairs
Teamsters Local 959
Juneau, Alaska
POSITION STATEMENT: During the hearing of HJR 38, spoke in opposition to the resolution.

CHARLES DILLARD, Inspector
Brotherhood Railway Carmen
Anchorage, Alaska

POSITION STATEMENT: During the hearing of HJR 38, spoke in opposition to the resolution.

JAMES ABITZ
Brotherhood Railway Carmen
Anchorage, Alaska
POSITION STATEMENT: During the hearing of HJR 38, spoke in opposition to the resolution.

VERN GILLIS, Conductor
Alaska Railroad Corporation
United Transportation Union Representative
Anchorage & State
POSITION STATEMENT: During the hearing of HJR 38, spoke in opposition to the resolution.

LEE DAVIS, Conductor/Engineer
Alaska Railroad Corporation
United Transportation Union Officer
Anchorage, Alaska
POSITION STATEMENT: During the hearing of HJR 38, spoke in opposition to the resolution.

TOM MEACHAM, Attorney
Anchorage, Alaska
POSITION STATEMENT: During the hearing of HJR 38, spoke in support of the resolution.

JOHN PLETCHER
Anchorage, Alaska
POSITION STATEMENT: During the hearing of HJR 38, spoke to the exclusive use easement issue.

STEPHEN MCALPINE
Anchorage, Alaska
POSITION STATEMENT: During the hearing of HJR 38, spoke to his involvement with the Alaska Railroad Transfer Act (ARTA).

FRED ROSENBERG, Owner
Dimond Capital Company
Anchorage, Alaska
POSITION STATEMENT: During the hearing of HJR 38, testified.

HUGH ASHLOCK, Owner
Dimond Center Mall
Anchorage, Alaska
POSITION STATEMENT: During the hearing of HJR 38, testified.

JODI TAYLOR
Church of Jesus Christ of Latter Day Saints
Anchorage, Alaska
POSITION STATEMENT: During the hearing of HJR 38, spoke in support of the resolution.

ROBERT TIMMINS, Eagle River, Alaska
POSITION STATEMENT: During the hearing of HJR 38, spoke in support of the resolution.

NANCY MEADE, General Counsel
Administrative Staff
Office of the Administrative Director
Alaska Court System
Anchorage, Alaska
POSITION STATEMENT: During the hearing of CSHB 75, answered questions.

ACTION NARRATIVE

1:00:29 PM

CHAIR MATT CLAMAN called the House Judiciary Standing Committee meeting to order at 1:00 p.m. Representatives Claman, Eastman, Reinbold, Kopp, and Stutes were present at the call to order. Representatives LeDoux and Kreiss-Tomkins arrived as the meeting was in progress.

HB 351-JUVENILES: JUSTICE,FACILITES,TREATMENT

1:01:04 PM

CHAIR CLAMAN announced that the first order of business would be HOUSE BILL NO. 351, "An Act relating to care of juveniles and to juvenile justice; relating to employment of juvenile probation officers by the Department of Health and Social Services; relating to terms used in juvenile justice; relating to mandatory reporters of child abuse or neglect; relating to adjudication of minor delinquency and the deoxyribonucleic acid identification registration system; relating to sexual assault in the third degree; relating to sexual assault in the fourth degree; repealing a requirement for administrative revocation of a minor's driver's license, permit, privilege to drive, or privilege to obtain a license for consumption or possession of alcohol or drugs; and providing for an effective date."

[Before the committee was proposed committee substitute (CS), Version 30-LS0304\R, Martin, 3/26/18, adopted by the committee during the 3/26/18, 7:00 p.m. meeting.]

1:01:39 PM

JUDY JESSEN, Staff, Representative Ivy Spohnholz, Alaska State Legislature, paraphrased the sponsor statement as follows [original punctuation provided]:

> HB 351 is a statutory cleanup bill which updates the terms used to describe the facilities operated by the Division of Juvenile Justice and provides updated definitions for those terms. Current statutes contain references to facilities which DJJ does not operate, and facilities that do not exist in the state of Alaska. The bill also makes a clear distinction between the role of juvenile probation officers and adult probation officers in places where the difference is unclear. HB 351 also requires staff of juvenile justice to be added to the list of mandatory reporters of child abuse and neglect. These updates are necessary to provide statutory clarity to ensure the Division can manage its facilities effectively throughout the state.
>
> Currently, Alaska Statutes reference places like work camps and juvenile detention homes, which are not recognized or operating in the state of Alaska. HB 351 adds juvenile treatment facility, juvenile detention facility, and temporary secure juvenile holding area as facilities currently being operated by the division and provides clear definitions for each of these terms. Because references to these facilities occur in many places in statute, this bill also touches upon many sections of statute. These changes are necessary to provide the clearest regulation over facilities in existence and operated by the DJJ.
>
> HB 351 also clarifies the role of juvenile and adult probation officers, first by distinguishing clearly between the two, and second by providing a clear definition for the term juvenile probation officer. These are meaningful changes to provide the best protection for juveniles in the custody of the Division of Juvenile Justice.

Lastly, HB 351 adds DJJ staff to the list of mandatory reporters. It is the Division's objective to engage in the rehabilitation of juvenile offenders. Adding DJJ staff to the list of mandatory reporters provides the best guarantee that when DJJ staff discover cases of child abuse and neglect, those cases are reported, investigated, and resolved for the best interest of the child.

While these technical language updates touch many sections of statute, these language changes do not significantly alter the authority of the Division over juveniles in its care. Rather, these updates protect juveniles by making it clear where juveniles can be placed and clearly defining the authority of DJJ, its staff, and facilities using current and relevant language.

1:04:27 PM

MS. JESSEN paraphrased the sectional analysis as follows [original punctuation provided]:

Section 1. AS 09.65.255(b): Deals with indemnity of civil liability for the actions of minors in state custody. Adds foster home, definition reference for foster home, juvenile treatment facilities, juvenile detention facility, and treatment institution. Adds references for the definitions of juvenile treatment facility and treatment institutions.

Section 2. AS 11.41.425(b)(1): Deals with sexual assault in the third degree. Adds staff who work in juvenile detention facilities and juvenile treatment facilities to definition of sexual assault in the third degree.

Section 3. AS 11.41.425(b)(2): Deals with sexual assault in the third degree. Updates the definition of juvenile probation officer.

1:05:36 PM

Section 4. AS 11.41.427(b)(2): Deals with sexual assault in the 4th degree. Updates definition of juvenile probation officer.

Section 5. AS 11.41.470(3): Deals with crimes by legal guardians. Adds employees of juvenile treatment institutions and
juvenile and adult probation officers to list of legal guardians

Section 6. AS 11.41.470(5): Deals with crimes against persons committed by a person in a position of authority. Adds correctional employee, juvenile facility staff, and staff members of juvenile treatment institutions as people in positions of authority.

Section 7. AS 11.41.470: Deals with crimes against persons committed by a person in a position of authority. Adds definitions for juvenile facility staff and treatment institutions

Section 8. AS 11.56.760(a): Deals with orders to submit to DNA testing. Clarifies that those who have been "adjudicated delinquent" may have to submit DNA samples.

Section 9. AS 11.61.123(e): Deals with Indecent Viewing or Photography. Adds treatment institutions and juvenile treatment facilities to list of included facilities. Provides references to definitions of those terms.

Section 10. AS 14.07.020(a): deals with providing public education services. Includes juvenile detention facilities and juvenile treatment facilities as places where public education must be provided. Provides references to definitions of those terms.

Section 11. AS 14.30.186(a): Deals with providing special education. Includes treatment institutions, juvenile detention facilities, or juvenile treatment facilities as places where special education must be provided. Adds references to definitions for those terms.

1:07:15 PM

Section 12. AS 17.37.070(6): Deals with medical marijuana. Includes juvenile treatment facilities as

facilities operated by the state which are not required to provide medical marijuana.

Section 13. AS 18.20.499(2): Deals with overtime for nurses. Adds "juvenile" treatment facilities and treatment institutions to describe facilities operated by Division of Juvenile Justice.

Section 14. AS 47.10.141(c): Deals with Runaways and Missing Minors. Updates terms used to describe juvenile detention facilities operated by the Division of Juvenile Justice and inappropriate emergency placement for minors.

Section 15. AS 47.10.141(j): Deals with Runaways and Missing Minors. Creates new definition for "temporary secure juvenile holding area" where delinquent minors may be kept while awaiting transportation to a juvenile detention facility or pending a court order in AS 47.10.990.

Section 16. AS 47.10.990(20): Deals with Runaways and Missing Minors. Updates the definition used to describe facilities operated by the Division of Juvenile Justice for the temporary secure detention of minors.

Section 17. AS 47.12.025(c): Arrest procedure for juveniles Clarifies that the described duties apply to juvenile probation officers, not adult probation officer. Updates language used to describe juvenile facilities and other areas where delinquent minor may be held.

Section 18. AS 47.12.120(b): Deals with the placement of minors who have an adjudication order under AS 47.12.120(b)(1). Updates terms of facilities where minors can be placed.

Section 19. AS 47.12.120: Deals with DNA submission for minors. Adds a new subsection to clarify that minors 16 or older may be ordered to submit a DNA sample if adjudicated for certain crimes.

Section 20. AS 47.12.240(a): Deals with placement of minors after court commits them and before they are convicted. Makes conforming and clarifying amendments

to the conditions under which a minor may be held in a facility housing adult prisoners and the language used to describe facilities operated by the Division of Juvenile Justice.

1:09:14 PM

Section 21. AS 47.12.240(b): Deals with temporary holding of minors while awaiting transport. Updates language used to describe conditions under which a minor may be held in a facility housing adult prisoners and the language used to describe facilities operated by the Division of Juvenile Justice.

Section 22. AS 47.12.245(b): Deals with parole officers arresting minors. Clarifies that the authority to arrest a minor rests with juvenile, not adult, probation officers.

Section 23. AS 47.12.250(a): Deals with temporary detention/ detention hearings. Clarifies that the authority to detain a minor rests with "juvenile," not adult, probations offices. Adds "temporary secure juvenile holding areas" to the list of approved placed to hold juveniles.

Section 24. AS 47.12.270: Deals with juvenile probation officers. Updates the title and duties of juvenile probation officers.

Section 25. AS 47.12.310(d): Deals with notifying victims of crimes. Clarifies that the department has a duty to notify victims when a minor is released from any court ordered placement under AS 47.12.120(b)(1).

Section 26. AS 47.12.315(c): Public disclosure of information in department records relating to certain minors. Corrects language authorizing the department to disclose confidential information related to the offense when a minor has received an adjudication, rather than the offense the minor "alleged to have committed."

Section 27. AS 47.12.990(7): Deals with definitions and institutions. Amends the definition of juvenile detention facility.

Section 28. AS 47.12.990(12): Deals with definitions and institutions. Amends the definition of minor.

Section 29. AS 47.12.990: Deals with definitions of institutions. Creates new definitions for juvenile probation officer, juvenile treatment facility, residential child care facility, temporary secure juvenile holding area.

1:11:01 PM

Section 30. AS 47.14.010: Deals with the powers of DHSS over DJJ. Updates language to describe juvenile facilities operated by the department.

Section 31. As 47.14.020: Deals with the duties of the department related to the custody of minors. Updates the language used to describe juvenile facilities operated by the department.

Section 32. AS 47.14.040: Deals with the authority to maintain and operate facilities. Updates the language used to describe places the department can operate juvenile facilities to reflect the diversity of Alaskan communities and entities, such as the need for airports that operate "temporary secure juvenile holding areas."

Section 33. AS 47.14.050(a): Deals with the operation of homes and facilities. Repealed and reenacted to update the language used to describe juvenile facilities.

Section 34. AS 47.14.050(b): Deals with the operation of homes and facilities. Updates language to reflect the diversity of Alaska communities that may be authorized to operate juvenile detention facilities.

Section 35. AS 47.14.990(7): Social Services and Institutions Definitions. Updates the definition of juvenile detention facilities

Section 36. AS 47.14.990(14): Deals with Social Services Institutions and Definitions. Updates the definition of minor.

Section 37. AS 47.14.990: Deals with Social Services Institutions and Definitions. Adds new definitions for juvenile probation officer, juvenile treatment facility, and temporary secure juvenile holding area.

1:12:26 PM

Section 38. AS 47.14.020(a): Deals with mandatory reporting of child abuse and neglect. Adds juvenile probation officer, office staff, and staff of juvenile facilities to the list of mandatory reporters.

Section 39. AS 47.28.15.176: Repealers. Repeals revocation of juvenile driver licenses for offenses involving a controlled substance that were handled informally by the division. Repeals definitions for the terms "juvenile detention home" and "juvenile work camp" and "treatment facility.
"

Section 40. AS 11.41.425(b)(1) Applicability section. Applies to sections of the bill related to criminal offenses.

Section 41. Authorizes the department to adopt regulations to implement the changes of the legislation.

Section 42. Effective date for regulations. Immediately, allows DJJ to begin making changes.

1:13:48 PM

REPRESENTATIVE KOPP noted that he had had the opportunity to go through the bill with its sponsor, a number of his questions were answered at that time and he will study the bill further.

REPRESENTATIVE REINBOLD offered her appreciation to the bill sponsor for meeting with her and answering her questions.

1:14:31 PM

CHAIR CLAMAN opened public testimony on HB 351. After ascertaining no one wished to testify, closed public testimony on HB 351.

[HB 351 was held over.]

HJR 38-AK RAILROAD TRANSFER ACT; CONVEYANCES

1:15:43 PM

CHAIR CLAMAN announced that the next order of business would be HOUSE JOINT RESOLUTION NO. 38, Relating to certain conveyances to the Alaska Railroad Corporation under the Alaska Railroad Transfer Act of 1982.

1:16:34 PM

REPRESENTATIVE KOPP presented PowerPoint, "HJR 38 - Restoring Property Rights," and described HJR 38 as the most important piece of property rights legislation this session. It is within this legislature's purview to weigh in on this matter because the Alaska Railroad Corporation is an instrumentality of the state and properly subject to the legislature's oversight and guidance.

REPRESENTATIVE KOPP turned to slide 2, "Purpose" and explained that this resolution is targeted at recent Alaska Railroad claims to an exclusive use easement conveyed over more than 200 homestead patents. Except, he pointed out, the United States did not conclusively hold that interest in the right-of-way at the time of the transfer from federal to state ownership in 1983. By way of background history, he offered that the Alaska Railroad Act of 1914 put the standard railroad easement across the nearly 500 miles of track in Alaska, and that the railroad easement is for rail, telegraph and telephone, and above-ground co-located utilities. This, he explained, was the initial re-reserved limited interest easement. Today, this limited interest right-of-way easement provides the foundation for approximately 80 percent of all railroad tracks in America because the 1875 United States Congress stopped allowing fee simple interest ownership in rights-of-way for railroads. Initially, he explained, the fee simple interest ownership was to incentivize the East/West route across the United States. Except, he advised, legislative history revealed the many problems with railroads charging outrageous fees, and blocking landowners from accessing a crossing to get to the other side with regard to ranchers and then later with homesteaders as the country expanded West. That denial of shared use of the right-of-way, in any capacity, lead to the United States Congress decision to stop offering fee simple interest ownership. The General Railroad Act of 1875 provided for a surface easement only, an easement across another person's property. He explained that this Act was relied upon by the United States

Interior Board of Land Appeals in 1982 when Alaska was properly making its statehood land claims under the Alaska Statehood Compact [(72 Stat. 339) Public Law 85-508, 85th Congress, H. R. 7999, July 7, 1958]. The State of Alaska made claim to the rights-of-way along the railroad tracks, and the railroad said, "You can't select this, this has already been appropriated or reserved to us, we own it, state, you can't select it."

1:19:50 PM

REPRESENTATIVE KOPP referred to the "House Joint Resolution 38 Meeting Packet" booklet and its yellow tab, and noted that it is the Interior Board of Land Appels 81-426 ruling. He explained that the ruling on this case went directly to the General Railroad Right-of-Way Act of 1875, showing how it was directly connected to the 1914 Alaska Railroad Act. The General Railroad Right-of-Way Act of March 3, 1875, granting a similar right-of-way for railroad across public lands outside of Alaska has been held to convey only an easement and not a fee simple interest in the land. The Interior Board of Land Appeals (IBLA) relied upon the 1875 case telling the railroad that it did not have a fee simple interest; therefore, the state could select the Alaska Railroad right-of-way in its statehood lands selection, and the railroad lost the case. Thereby, Alaska was able to make those statehood land selections because the law was clear that the railroad did not have fee simple interest in the right-of-way, it had surface easement only. He paraphrased the IBLA's decision as follows:

> These cases decided under other railroad right-of-way statutes persuade us that the lands embraced in the appellant's right-of-way should not be considered to be appropriated or reserved at the time of State selection so has to be excluded therefrom. The decision correctly held that a right-of-way for railroad shall be reserved in any State selection patent issued.
>
> Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Tnteiim, 43 CFR 4.1, the decision appealed from is affirmed.

REPRESENTATIVE KOPP advised that the state was able to make those selections of state land and reserve the 1914 standard easement.

1:20:55 PM

REPRESENTATIVE KOPP turned to slide 3, "What's the Harm?" and answered that hundreds of landowners along the Alaska Railroad Corporation's right-of-way have had their property rights confiscated and a cloud put on their title of land through an unlawful "exclusive use" easement claim that the Alaska Railroad makes to the entire right-of-way. On that point, he advised, the entire right-of-way is over 470 miles of track, and hundreds of miles of that right-of-way have gone into private ownership, from 1914 through 1983, when it was transferred to the State of Alaska. Therefore, everyone with a homestead patent during that period of time are the people who had received their 160-acre Homestead Patent from the federal government, and they had a "Federal Patent," a deed to the land where the federal government totally divested themselves of ownership, he explained. (Indisc.) the federal government never claimed or exercised an exclusive use easement on that private property because it was considered (indisc.) right-of-way, and no one disputed that the underlying landowner was still the homesteader.

REPRESENTATIVE KOPP related that that claim to the entire right-of-way brings HJR 38 before this body because some of the issues that drove that claim were highlighted on page 8 of the 4/25/14 letter to John Pletcher from Andy Behrend, Senior Attorney, Alaska Railroad Corporation. He paraphrased the letter as follows: "Regardless of what ... the federal government's interest is in the right-of-way, the obligation exists regardless of what the United States owned at the time, to transfer this exclusive use easement to the entire right-of-way." He said (indisc.). Representative Kopp pointed out that the Alaska Railroad's attorney advised, "We don't care what the federal government owned, they could still transfer this interest to the state even if they didn't own it." Also, the railroad (indisc.) outright ownership to the entire strip of land for all 470 miles of the right-of-way, he offered. This assertion must be squared under Marvin Brandt Revocable Trust v. United States, 572 U.S. ___ (2014), decision when the United State Supreme Court reaffirmed that railroads have surface easements only, and when those easements are no longer being used, they revert to the underlying landowner. When the railroad stopped using that easement, it reverted to the Marvin Brandt Revocable Trust and, he commented, the Alaska Railroad will advise there is no connection.

1:24:46 PM

REPRESENTATIVE KOPP, in response to Chair Claman, advised that the yellow tab was the 1982 IBLA case, and the 4/25/14 letter to John Pletcher from Andy Behrend, Senior Attorney, Alaska Railroad Corporation is contained within the committee packet.

1:25:28 PM

REPRESENTATIVE KOPP advised that the second point on slide 3 is that HJR 38 addresses a violation of state statute such that in 2005 and 2006, the Alaska Railroad circumvented required legislative approval by apply for, and receiving from, the United States Department of the Interior, Bureau of Land Management land patents within a municipality, specifically Anchorage. These land patents overlaid original homestead federal land patents that go all the way through the core of Anchorage, and run all the way up through the Matanuska-Susitna Valley toward Talkeetna, and continuing on, he said. The Alaska Railroad's position is that it did not have to ask the legislature for this because the exclusive use easement was the federal governments to give to the railroad. Except, he pointed out, the Alaska Railroad is accountable to state law, and the state said that the Alaska Railroad is required to ask the legislature before it can accept or receive such a grant. Further, he said, the law is clear that an exclusive use easement was never contemplated in the Alaska Railroad Transfer Act to be considered across all 470 miles of track. He related that it was only in areas where the federal government actually owns such an easement, such as the Denali Borough and in areas where federal land is among contested Native Corporation Land Claims.

1:26:50 PM

REPRESENTATIVE KOPP turned to slides 4-6, titled "What HJR 38 Does," and advised that the resolution provides legislative approval for the Alaska Railroad or the governor to disclaim unlawfully acquired property by the state. Representative Kopp explained as follows:

> Disclaim means, we're not touching that property interest because we consider it a hot interest, a possibly stolen interest. And so, we -- we walk away from that because we do not want to incur liability to the state by making a property interest claim that the state does not lawfully have.

REPRESENTATIVE KOPP explained that HJR 38 directs that a property interest was not available to the Alaska Railroad under federal law and ownership, and it certainly is not available to the Alaska Railroad now.

REPRESENTATIVE KOPP noted that HJR 38 also calls upon Alaska's congressional delegation to help resolve claims to the right-of-way as a result of the misapplication of the Alaska Railroad Transfer Act. He pointed out that Alaska's congressional delegation has been helpful and responsive as a result of this effort.

1:27:54 PM

REPRESENTATIVE KOPP turned to slides 7-9, titled "HJR 38 Does Not," and advised that it does not remove the Alaska Railroad Corporation's ability and duty to police and keep tracks and rights-of-way safe, affect its speeds, as so forth. He advised that the Alaska Railroad "put out a narrative" and encouraged people to say that if HJR 38 passes, it will have to reduce speeds and will possibly not meet schedule commitments. Representative Kopp stressed that nothing could be further from the truth, the Alaska Railroad has operated with a standard railroad easement. Under the Memorandum of Understanding in 1983, Governor Jay Hammond signed that the 1914 Standard Railroad easement would be the easement for all future expansions of the railroad. He offered that the Alaska Railroad has been moving jet fuel and all manner of hazardous materials under that right-of-way easement. Eighty percent of railroad tracks in America operate under the same easement and only pre-1987 railroads have fee simple titles. Almost every operational railroad today does not have an exclusive use easement, "none that I know of." Secondly, HJR 38 does not affect any lawfully obtained property of the Alaska Railroad Corporation, including any right, title, or interest passed from federal to state ownership in 1983. This resolution does not impact the railroad's ability to profit or impact its economic model because he does want the Alaska Railroad to be successful, except it will tell the committee that it must run a train at 20 mph across 100 miles of homestead land due to the possibility that something might happen. Currently, he said, the Alaska Railroad has, and always has had, full authority to stop anything in the right-of-way that is dangerous. This resolution will not affect its ability to obtain an injunction on any interfering or competing use of the right-of-way, as it has always done since 1923 when the Alaska Railroad was completed.

1:30:03 PM

REPRESENTATIVE KOPP turned to slides 10-11, titled "A Brief History," regarding the 1914 Alaska Railroad Act, and advised that the federal government owned and operated the Alaska Railroad and some of the land over which the railroad operated. However, he noted, much railroad right-of-way passed into private hands that was in non-federal ownership because many Alaskans received homestead patents. When those patents included land crossed by the railroad, the federal government still transferred ownership of the land to the citizen, but reserved for itself a specific property interest called the "right-of-way" so it could use 100 feet on either side of the centerline of the railroad to operate the railroad, as well as telegraph and telephone lines. The 1914 Alaska Railroad Act gave the railroad a right to use the land owned by others, as identified in each federal patent, but it did not transfer a right to own and control a property in a manner unrelated to the patent reservation.

1:31:00 PM

REPRESENTATIVE KOPP turned to slide 12, and advised that the federal government cannot transfer a property interest to the State of Alaska if it never owned the property interest in the first place.

REPRESENTATIVE KOPP turned to slides 13-15, and advised that a standard railroad easement is not fee simple ownership of land or necessarily the right to exclusivity, it is an interest in land owned by other people. The standard railroad easement is usually limited in the extent of occupancy and use, and it can involve a general or specific portion of the property. This, he explained, was the limited interest the United States Congress allowed all railroads to have after 1875. The "rail properties" granted to the state include only the "right, title, and interest" which belonged to the United States in 1983. Other than within the Denali Borough, and on a few other federal parcels of land, there was no outright exclusive use in the Alaska Railroad Transfer Act (ARTA) related to other areas, it was only where the federal government actually possessed that interest.

1:31:56 PM

REPRESENTATIVE KOPP explained that the exclusive use easement discussion allows the holder to exclude all others, including to

fence and bar off any other user of the land whether or not that use is a safety issue. He reiterated that there is no question the Alaska Railroad did have an exclusive use in Denali National Park and Preserve and in areas subject to unresolved Native claims because the federal government owned that property. Due to a fundamental mis-reading of ARTA, the Alaska Railroad claims that at least an exclusive use easement must be granted to the state in the entire right-of-way "regardless of what the federal interest was in the right-of-way over private property," which was stated in the letter to Mr. Pletcher. Representative Kopp stated that no credible argument can be made that an exclusive use easement belongs to the Alaska Railroad without establishing what the private parties and the federal government actually owned in 1983. He pointed out that in 1996, Phyllis Johnson, legal counsel for the Alaska Railroad said, and he paraphrased as follows: "We, the railroad, might not have owned all we thought we had owned, and that we have to do a parcel-by-parcel search to know what the property interests were before we came along." Except, something took place after 1996, wherein the Alaska Railroad's current legal counsel moved away from that statement because it is easier to claim that a parcel-by-parcel research is not necessary, that an entire exclusive use easement was given to the "right-of-way" even if it cannot be proved through our title recording system. While, he pointed out, it may be easy for the railroad, it is wholly foisted on the state's innocent property owners along the track, and that claim was made without notice or recourse for the property owners to contest otherwise.

1:33:58 PM

REPRESENTATIVE KOPP turned to slides 16-18, which read as follows:

> BE IT RESOLVED that the Alaska State Legislature believes, as it pertains to privately held properties in the state that contain or are required to contain a reservation for the purposes set out in the Alaska Railroad Act, all conveyances to the Alaska Railroad Corporation under the Alaska Railroad Transfer Act of 1982 that purport to convey an "exclusive-use easement" as defined in 45 U.S.C. 1202(6), in which associated rights, titles, or interests were not conclusively owned by the federal government at the time of the transfer, are contrary to law; and be it

FURTHER RESOLVED that the Alaska State Legislature believes that any right, title, or interest not conclusively owned by the federal government at the time of the Alaska Railroad Transfer Act of 1982 that was erroneously conveyed to the Alaska Railroad Corporation, and certain interests in land conveyed to the Alaska Railroad Corporation without the legislative approval required under AS 42.40.285, should be disclaimed as a matter of law; and be it

FURTHER RESOLVED that the Alaska State Legislature urges the Alaska delegation in Congress to recognize the views of the Alaska State Legislature expressed in this resolution and to take appropriate action to encourage the recognition of validly held private property rights that were not conveyed under the Alaska Railroad Transfer Act of 1982.

1:34:52 PM

REPRESENTATIVE KOPP 19 turned to slide 19, and advised that the supporters of this resolution are not limited to the following:

Adventure 60 North, Seward; Municipality of Anchorage; Alaska Association of Realtors; Anchorage Association of Realtors; The Bradley Company Construction; Dimond Center; Flying Crown Homeowners Association; Lynden Air Cargo; National Association of Reversionary Property Owners; Old Seward Oceanview Community Council; South Anchorage Red Robin; Taku Campbell Community Council; Talkeetna Historical Society; Tantikil Unlimited – Land and Resource Management; and countless private property owners along the Railroad Right-of-Way

1:35:23 PM

REPRESENTATIVE KOPP turned to slides 20-22, titled, "Property Owners Speak Out," and advised that the property owners have been denied access to their properties and this issue has put a cloud on their titles. In 2005 and 2006, the United States Department of the Interior land patents were issued "over on top of" federal homestead patents without notification to the landowners. The property owners began to realize that in 2012, the residential right-of-way use permits were being rolled out to bite down on the exclusive use claim. The property owners

further realized that they, in fact, had a land patent overlaid on their homestead patent. He asked the committee to imagine having a land patent for 50-years and suddenly a federal patent is overlaid on your land patent making a claim that was never previously issued.

1:36:35 PM

ERICK CORDERO GIOGANA, Staff, Representative Chuck Kopp, Alaska State Legislature, stated that (indisc.) contains a sample of homestead patents and a current (indisc.) on top of it for review.

1:37:21 PM

REPRESENTATIVE STUTES asked who pays the property taxes on this property.

REPRESENTATIVE KOPP answered that she would have to ask the Alaska Railroad because he was unsure. In South Anchorage, specifically the Ocean View neighborhood, that issue has been a point of contention because the size of the lot includes the right-of-way, he said. Whether that right-of-way should be taxed is a separate issue, but it has been pointed out that the lot size "goes over into the right-of-way," he offered.

1:38:05 PM

REPRESENTATIVE STUTES surmised that currently the (indisc.) property tax on that right-of-way.

REPRESENTATIVE KOPP responded that (indisc.) does go into the right-of-way where they are being assessed value.

1:38:35 PM

CHAIR CLAMAN opened invited testimony on HJR 38.

1:39:16 PM

WILLIAM O'LEARY, President/Chief Executive Officer, Alaska Railroad Corporation, advised that he represents 600 employees, numerous customers, and 500,000 passengers carried every year by the Alaska Railroad. On their behalf, he said that he is speaking in opposition to HJR 38, and that the numerous reasons for this opposition fall into two primary categories, safety, and legal issues. He said he would explain why safety

necessitates that the Alaska Railroad have that exclusivity in the right-of-way, and the impacts to the railroad and its customers should it not have that exclusive use of the right-of-way. He commented that as was noted in past discussion by members of the House Judiciary Standing Committee, House State Affairs Standing Committee, and by several member of the Anchorage Assembly recently, this is an issue that belongs in court. When reasonable people disagree about the nuances of a law, the decision of that law should be made in a court of law. Simply put, he offered, safety is the Alaska Railroad's top priority, (indisc.) safety as seriously as it should, and that the number of fatalities (indisc.) YouTube videos shot on railroad tracks every day and year bears out the safety issue. Each year, almost 500 people are killed in this country while trespassing on railroad property, time and time again people vastly underestimate the danger to themselves and others when trespassing on railroad rights-of-way, drive around gates at crossings, or put structures in the rights-of-way. Fourteen people have been killed trespassing on the Alaska Railroad since its transfer in 1985, including a 23-year old woman (indisc.) since the last hearing on this resolution, and every single death was avoidable.

1:41:58 PM

MR. O'LEARY remarked that loss of exclusive control of the right-of-way could be detrimental to the operation of the railroad, its customers, passengers, business partners, and the people of Alaska who are the ultimate owners of the Alaska Railroad. As it is currently, (indisc.) the railroad can assume control in all areas of its right-of-way and assumes its professionally trained security personnel, track managers, maintenance crews, on-board personnel, to name a few, are making certain the tracks and right-of-way are clear, safe, and operational. The Alaska Railroad has full control and discretion to remove anything and everything that poses a safety hazard to its operations, yet in the event the right-of-way is turned into a checkerboard of control from Seward to Fairbanks, the safety assumption cannot be made and it may become necessary to reduce track speeds in the areas without the railroad's complete control, he related. In the event there is one parcel of land that is not under the control of the railroad along miles of the long stretches of track, the Alaska Railroad may have to reduce speeds along that entire stretch, thereby, making it impossible to meet its commitments, get passengers or freight to wherever they are traveling in a timely and economical manner. This resolution also brings up the question, who can

control what goes in the right-of-way, can the railroad's neighbors store junked cars leaking oil, which has happened, can they plow snow berms so the people approaching or stopped at railroad crossings can't see an oncoming train, can they store hazardous materials on the right-of-way, remove a swing set 30 feet from the tracks, or the railroad remove it if the party refuses, he asked. The Alaska Railroad's train cars are 80 feet long and in a case of derailment, having a 100-foot buffer on each side of the track is critical. He commented that the Alaska Railroad has had to take its neighbors to court when performing something that is unsafe.

1:43:54 PM

MR. O'LEARY posed the question of what is actually allowed in the right-of-way, and offered that the Alaska Railroad's neighbors may disagree with a public trail being in the right-of-way, such as the Coastal Trail. The railroad has been working with the Municipality of Anchorage and Turnagain Community Council regarding the Fish Creek Trail. He asked whether "they can stop" a community from building a trail specifically allowed for in state law, or a gas pipeline, electric line, highway, or street that might use the right-of-way, can they demand outrageous (indisc.) small section of the right-of-way, he asked. This ambiguity could tie up projects for years, decades, or even kill them altogether due to questions of ownership. He related that HJR 38 incorrectly describes the rights held by the federal government and the Alaska Railroad right-of-way; it mis-interprets the property rights that the federal government transferred to the State of Alaska and the court cases regarding railroad rights-of-way. He reiterated that this is an issue for the courts to decide in order to determine the legal answer, and he encouraged the committee to not support HJR 38.

1:45:09 PM

REPRESENTATIVE EASTMAN commented that last year his family traveled on the Alaska Railroad and he could not remember anytime during or after, when the railroad asked them any of their thoughts "on this matter." Customarily, he said, it would be best to either obtain permission or obtain some idea of (indisc.) committee. As someone who does support HJR 38, he asked that Mr. O'Leary not speak on his behalf or that of the other passengers.

1:45:53 PM

REPRESENTATIVE REINBOLD asked Mr. O'Leary to address traditional homestead use, recreation, and why the railroad would not want the legislature's approval when it is a state corporation.

MR. O'LEARY responded that he was unsure he understood Representative Reinbold's question, and offered that the Alaska Railroad's concern is with its ability to operate a safe railroad and have exclusive control of the right-of-way.

1:46:54 PM

REPRESENTATIVE REINBOLD commented that his response is obvious because everyone wants safety. However, she asked, how does the railroad deal with the traditional users that were living there prior to the Alaska Railroad, and to also address why legislators would not want to participate in this issue.

MR. O'LEARY replied that the Alaska Railroad is not opposed to people recreating because it understands and bisects this state to a large degree. The railroad is a large operating entity and its primary concern is safety, and then its concern is about being able to run an economical railroad in this situation. He acknowledged that he does not have a great answer because he is unsure he fully understands the question.

1:48:31 PM

REPRESENTATIVE REINBOLD offered the example that a correctional facility is located in her neighborhood, and male prisoners were recently admitted into that female prison. She related that the community council passed a resolution against that occurrence because [the prison system] was not being a good neighbors in addressing those concerns, which causes a red flag for her as to this issue. She commented that the railroad needs to be a good neighbor, there are historical traditional uses that took place far before the Alaska Railroad, and the churches recrate in the area. As to the 14 incidents since 1982, she asked whether any of those deaths were deemed suicide. As a state, it needs to lead by example and be good collaborative neighbors and not impose rights above the traditional rights of others, she offered.

MR. O'LEARY answered that the Alaska Railroad's desire is to be a good neighbor and there have been situations where the railroad rightly or wrongly has been painted with "not being a good neighbor." It is important to the railroad and its board

that it does work collaboratively and well with the many different organizations, but for the railroad to run a safe operation there are certain things wherein it must draw the line. He commented that that is similar to airports who want to be good neighbors but they are all fenced off and no one can be on the tarmac to recreate.

1:50:24 PM

REPRESENTATIVE REINBOLD referred to his example of the airport and pointed out that an airport is a small area and the railroad runs through traditional use and recreational properties. She reiterated that she would like to know whether the 14 deaths were the railroad's fault where it hit something on the track, or whether the deaths were suicides, and what caused the deaths. She asked whether there are areas with signage, awareness, fees imposed if violated, can be put up to reduce the danger if Mr. O'Leary is claiming that there is danger. Wherein the traditional uses, such as homesteads, recreational areas, and so forth, are still allowed to have their use or even people that are paying property taxes.

MR. O'LEARY responded that it is the Alaska Railroad's position that while he does not have the specifics, the 14 people were trespassing on the railroad when they were killed.

CHAIR CLAMAN offered his understanding that the most recent death was when a woman was asleep on the track at night, and by the time she was spotted it was too late to stop the train.

1:51:50 PM

REPRESENTATIVE REINBOLD commented that 500 miles is a long swath between critical habited areas, and she wants "us to be good respectable neighbors" that honor historic traditions while still maintaining safety. She said she was unsure where she stood regarding this resolution but as legislators with oversight, it appears to be a reasonable resolution. She related that she has worked on trails for many years and for the Alaska Railroad to come forward and say, "this is ours, it's exclusive use," appears harsh.

1:53:10 PM

REPRESENTATIVE KREISS-TOMKINS asked whether Mr. O'Leary had said there have been 14 fatalities since the transfer in 198[5].

MR. O'LEARY replied that there have been 14 fatalities on the Alaska Railroad since the 1985 transfer.

1:53:34 PM

REPRESENTATIVE KREISS-TOMKINS noted that the train cars are 80-90 feet long. He asked whether it was Mr. O'Leary's belief that the railroad must manage the right-of-way for any hypothetical situation. For example, at any point along the right-of-way, a car may derail and travel entirely perpendicular to the tracks and wipe out everything. Therefore, the railroad must prepare for every inch of the right-of-way wherein a train car might be snowplowing along and everything needs to be removed from those margins along the tracks. He related that he is trying to better understand the context of Mr. O'Leary's comments.

MR. O'LEARY responded that from the Alaska Railroad's perspective, it has 100 feet on either side of the centerline of the track as right-of-way. From a purely safety perspective, he said, "yes, I would say that we would like to protect that right-of-way very seriously" because that is something that can happen, and it has happened. When heavy freight trains or railcars derail, they can take up to a mile to stop and can cut quite a swath of damage and destruction. (Audio difficulties.)

1:55:15 PM

REPRESENTATIVE KREISS-TOMKINS related that he is from the Southeast and is not familiar with the railroad's history. He asked, during the history of the Alaska Railroad, whether there has been a derailment and a train car cut a swath of destruction, such as Mr. O'Leary described, wiping out property or causing someone's death.

MR. O'LEARY answered that he was unsure whether anyone has been killed in the right-of-way as a result of a derailment, and his initial response is that it has not occurred but he will research the issue. As with every railroad over the years, there have been serious and horrific derailments in the past and derailment is taken seriously.

1:56:23 PM

REPRESENTATIVE STUTES referred to the 4/5/18 letter from Doug Chapados, CEO/President of Petro Star, Inc., directed to Chair Claman, and noted that the letter was written on behalf of the Alaska Railroad Corporation. She pointed to the following

language, "denying ARRC an exclusive ROW will impede developments to connect Anchorage to the Interior," and asked Mr. O'Leary to speak to that assertion.

MR. O'LEARY responded that from the Alaska Railroad's perspective, it moves freight between Anchorage and Fairbanks and throughout the state, and without having exclusive control of the right-of-way, it needs to know what is around the next corner. He reiterated that it is important to run a safe and economical railroad in control of that right-of-way, and if it is not in control, there could easily be operational impacts and it could impact the economics of the abilities of the Alaska Railroad.

1:58:05 PM

REPRESENTATIVE KOPP referred to Mr. O'Leary's comment about taking property owners to court to resolve differences, and asked the last time the Alaska Railroad went to court to resolve an issue between a property owner and the Alaska Railroad.

MR. O'LEARY deferred to Andy Behrend, attorney for the Alaska Railroad.

1:58:47 PM

ANDY BEHREND, Chief Legal Counsel, Alaska Railroad Corporation, advised that he is unaware of any court action that actually occurred in order to resolve differences between the railroad and property owners. During his tenure of eight years working for the railroad, he recalled at least three situations wherein commercial entities used the right-of-way for their own business without permission and without a permit. During those occasions, the railroad engaged with the commercial entities and discussed removing their business from the right-of-way. He offered that junk cars were leaking oil and the Department of Environmental Conservation (DEC) had to get involved. As to the three cases, he advised, the railroad directed several "cease and desist" types of letters, then drafted complaints and advised that the complaints would be filed within 30-days if the companies did not cooperate, and all three entities left the right-of-way. As to residential property owners, he said that he is not aware of any court actions the Alaska Railroad has taken.

2:00:15 PM

REPRESENTATIVE KOPP pointed out that HJR 38 primarily deals with homestead patent areas that are primarily residential. He asked whether it would be fair to say that it is a "very rare occurrence" when the court has to get involved to resolve an issue.

MR. BEHREND acknowledged that the court getting involved has been rare, and the railroad has worked with residential landowners in an attempt to put together a residential use policy and permit policy. The policy was passed by the Alaska Railroad Board of Directors, except it was controversial and has since been rescinded. Generally speaking, he opined, there have been issues with drainage or erosion in the right-of-way due to over-watering and through discussions have "generally worked it out." He explained that when the Alaska Railroad talks about going to court, if there is a legal dispute about property rights, the courts are the correct venue to answer those questions. As far as residential uses of the right-of-way, he offered that the railroad does its best to work through those issues. He acknowledged the issues of property owners being there before the Alaska Railroad, but in many of those situations the federal railroad mainline has been there since 1919-1923 when the full railroad was completed. Despite that fact, he said the railroad made an attempt to regulate those residential uses, which is something the railroad contends is its right and the exclusive use easement allows. He explained that it is a mechanism where the railroad, at its discretion, regulates what happens with the right-of-way.

2:03:11 PM

REPRESENTATIVE KOPP explained that HJR 38 simply reads that the current understanding is of a standard railroad easement, which the Alaska Railroad has not asserted more than that before 2012 in any widespread manner. He asked whether the railroad's fear is that by continuing a standard railroad easement understanding, the landowners will suddenly rise up with new and unsettling behavior that will threaten the safety and existence of the railroad.

MR. O'LEARY answered that the Alaska Railroad does not know what HJR 38 means, but it can see issues with the resolution.

2:04:12 PM

CHAIR CLAMAN referred to the Anchorage area property owners adjacent to the railroad, and asked whether the railroad pays

any property taxes on those easements and how the easement affects the property evaluation paid to the Municipality of Anchorage.

MR. O'LEARY answered that the Alaska Railroad, as an instrumentality of the State of Alaska, is a tax-exempt entity and is exempt from such taxes. He related that he is unaware of any part of the right-of-way that adjacent homeowners are paying property taxes.

2:05:41 PM

MR. BEHREND advised that the proponents of HJR 38 assert that the federal government transferred exclusive rights to the Alaska Railroad right-of-way that the federal government did not own, and further assert that the Alaska Railroad right-of-way is a non-exclusive easement that adjoining landowners can use in any manner that does not interfere with railroad operations. These assertions are incorrect, he stated, because the Alaska Railroad does have exclusive control of its right-of-way for several reasons. First, he said, as the United States Congress expressly found when considering the Alaska Railroad Transfer Act in 1982, the federal government owned most of the Alaska Railroad right-of-way in fee simple title which it had acquired as a result of the 1914 Congressional Act that created the Alaska Railroad. Second, he stated, specifically guaranteed in the Alaska Railroad Transfer Act (ARTA), the federal government transferred at least an exclusive use easement in all of the Alaska Railroad right-of-way to the state-owned railroad in 1985. Third, even if the Alaska Railroad had not received fee simple title or an exclusive use easement in the right-of-way, railroad easements have consistently been held by the courts for well over 100 years to provide railroads with exclusive rights in the right-of-way.

2:07:22 PM

MR. BEHREND referred to Alaska Railroad Memorandum titled, "Ownership and Exclusive Control of the Alaska Railroad Right-of-Way" [contained in the committee packet] and advised that while he does not have time to explore all of the issues in depth, he would highlight some of the most important issues. Mr. Behrend offered that the origins of the Alaska Railroad exclusive rights in its right-of-way trace back to the Act of March 12, 1914, which authorized and directed the location, construction, and operation of a railroad route in the Territory

of Alaska. He paraphrased the intention of the railroad route of the 1914 Act, as follows:

> To provide transportation of coal for the Army and Navy, transportation of troops, arms, and munitions of war, the mails, and for other governmental and public uses.

MR. BEHREND stated that the 1914 Act also granted rights-of-way through federal lands for that railroad and authorized the federal government to establish rules and regulations for control and operation of the railroad.

2:08:19 PM

MR. BEHREND explained that the Alaska Railroad right-of-way was designated and construction was completed in 1923, and for the next 60-years, the federal government owned and operated the Alaska Railroad using it as both as a railroad and a utility corridor. When the United States Congress began discussing the concept of transferring the railroad to another entity in the early 1980s, Congressional committees determined that most of the Alaska Railroad land, including its right-of-way, was held in fee simple title by the United States. He paraphrased one of the Congressional committees as to the intent of Congress "was that ARTA would convey to the state a fee interest in the 200-foot strip comprising the railroad track right-of-way amounting to roughly 12,000 acres. This fee estate is recognized by the committee to be the current interest of the Alaska Railroad derived from common practice and authorized under Section 1 of the March 12, 1914 Alaska Railroad Act." He said that the committee went on to explain that "conveying the right-of-way in fee was required so that the state can continue to operate the railroad." The United States Congress also recognized, during the process of looking at the Alaska Railroad Transfer Act, that some Alaska Railroad lands could be subject to third-party claims. Therefore, Congress included in ARTA a process for determining such claims, but still providing the state with exclusive control of the right-of-way. Senator Ted Stevens confirmed this on the floor of the United States Congress just a few weeks before ARTA passed the Congress, and he paraphrased Senator Stevens' statement as follows:

> The concept of an exclusive use easement also is introduced in the substitute. This defined interest represents the minimal interest the state is to

> receive in the Alaska Railroad right-of-way following completion of the expeditated adjudication process.

MR. BEHREND advised that Senator Stevens went to describe the purpose of this exclusive use easement being proposed in ARTA, as follows:

> Essentially, the exclusive use easement is defined to ensure that the state-owned railroad will receive exclusive and complete control over lands traversed by the right-of-way.

2:10:44 PM

MR. BEHREND offered that within the enacted version of ARTA, its plain language confirms that the state-owned railroad was to receive exclusive control of the entire right-of-way. He paraphrased a provision of ARTA, as follows:

> Congress finds that exclusive control over the right-of-way by the Alaska Railroad, has been and continues to be necessary to afford sufficient protection for safe and economic operation of the railroad.

MR. BEHREND explained that this exclusive control provision specifically applied to any areas of the right-of-way that left federal ownership prior to the enactment date of ARTA. He pointed out that this gets to the discussion of the homestead patents, and paraphrased a provision of ARTA, as follows:

> Where lands within the right-of-way or any interest in such lands have been conveyed from federal ownership prior to January 14, 1983, or is subject to a claim of valid existing rights by a party other than a village corporation, the conveyance to the state of the federal interest in such properties pursuant to Section 1203(b)(1) or (2) of this title, shall grant not less than an exclusive use easement of such properties.

MR. BEHREND advised that consistent with the above language from ARTA, the transfers, the conveyances, were made of Alaska Railroad land to the state-owned newly formed Alaska Railroad Corporation. He said that consistent with the above language, the interim conveyances issued in January 1985, conveyed the right-of-way to the state-owned railroad and also the final patents that followed later, and they all expressly conveyed an

exclusive use easement as that defined in the Alaska Railroad Transfer Act (ARTA).

2:12:48 PM

MR. BEHREND related that his third point is that the Alaska Railroad right-of-way would be held exclusively by the railroad even if ARTA had not guaranteed this minimal interest of an exclusive use easement as defined in that statute. He explained that his statement is true because courts have consistently held for over 100 years, that railroads have exclusive rights to their right-of-way. He referred to the memorandum, pages 9-11, and advised that some of those authorities are discussed in both court cases, legal treatise, commentators, and so forth. He said that he would quote from a couple of the cases that explain what the courts have done with these railroad right-of-way easements, as follows:

> Midland Valley R. Co. v. Sutter, et al. 28 F.2d at 167-68 (1928)
>
> The decisions of the national courts and a majority of the state jurisdictions however, are to the effect that the railroad company is entitled to the exclusive use and possession of its right-of-way and that the owner of the servient estate has no right to occupy the surface of the land conveyed for right-of-way, in any mode, or for any purpose, without the railroad company's consent.

MR. BEHREND advised that the court went on to talk about the reasons for that rule, as follows:

> The basic reason for the majority rule is that the exclusive possession is necessary to enable the railroad company to safe conduct its business and meet the duty of exercising that high degree of care which the general law and administrative rules enjoin upon it. ... These duties require it to have the exclusive possession of its right-of-way.

2:15:03 PM

MR. BEHREND acknowledged that some of the cases are old and the memorandum provided cases up through recent date. The proponents of HJR 38 talk a lot about the 1875 Act, and a 2014

case talks about this question as to whether the right-of-way was exclusive under the 1875 Act.

> Union Pacific R.R. v. Santa Fe Pacific Pipelines 231 Cal.App 4th 134, 163 (Cal. Ct. App. 2014
>
> As to rights-of-way granted by Congress in 1875 and beyond, the railroad has exclusive rights to the surface and in addition, broad and extensive rights of sub-lateral and subjacent support to prohibit interference with railroad operations and maintenance.

2:16:02 PM

REPRESENTATIVE KOPP referred to Mr. Behrend's statement that ARTA's plain language requires transfer of the federal interest in the right-of-way, and asked where in ARTA does it read that something the federal government does not own must be transferred.

MR. BEHREND opined that there is no language to that effect in ARTA, but there is language that says the federal government must transfer at least an exclusive use easement as defined in ARTA. He stressed that that is clear, that interest must be conveyed and it does not talk about interest being conveyed that is not owned. Clearly, he said, from the legislative history, Congress appears to believe that the federal railroad had these exclusive rights to transfer. Therefore, the real point is that Congress found that exclusive control was necessary to run a safe and economic railroad, and Congress determined that that minimum interest must be transferred, and those interests were transferred. He pointed out that it does not say that interests that (indisc.) owned have to be transferred. From the legislative history, it is clear that the statute was premised on the fact that the federal railroad actually did own those rights. He added that the Alaska folks negotiating for the transfer of the railroad were clear that exclusive rights to the right-of-way were necessary for them to take the step of purchasing a railroad which had dated infrastructure, had been losing money under the management of the federal government, and that they clearly believed that Congress had found that exclusive control of the right-of-way was necessary to have "this going concern railroad." All of those issues come together to where there is not only the direction to convey an exclusive use easement to the state-owned railroad, but also the federal government saying that if any party brings an action challenging the railroad's title to its property, the federal

government will step in and defend that title. He commented that it is an unusual provision, but it shows the importance of that issue.

2:19:11 PM

REPRESENTATIVE KOPP asked whether Mr. Behrend was confident that the federal government possessed an interest strong enough to pass an exclusive use easement of the entire right-of-way to the state.

MR. BEHREND answered that the Alaska Railroad believes it has a strong argument to that effect and it does not question the sincerity of those folks arguing on the other side of the argument. Except, he remarked, the Alaska Railroad disagrees that the 1914 Act provided the same title as, for instance, the 1875 Act. One reason it is much different, he offered, is that the 1875 Act, as Representative Kopp correctly pointed out, was an Act which basically went from granting what is almost basically fee interest to an Act which granted a railroad easement. In the case of the 1914 Act that created the Alaska Railroad, the federal government was not directing a grant to private railroad companies. The real problem before 1875 was that private railroad companies tied up large swaths of land and blocked people from its use, he reiterated. The Alaska Railroad Act of 1914 directed the president to create up to a 1,000-mile-long Alaska Railroad. The Act also directed "them to bring in resources from the Panama Canal Project" to help get the Alaska Railroad built, it did so as a way of opening up and developing the State of Alaska, and this was to be a federally owned, federally operated, railroad. It was not a grant of federal land to a private company, he explained, it was the federal government designating land to be used for a railroad, which is a much different (indisc.). In further response to Representative Kopp's question of comfort, he advised that these cases which show that railroad rights-of-way, even where there is an 1875 Act easement, it does provide exclusive rights to the railroad. There is no question that the federal government ran the Alaska Railroad for 60 years, it moved trains and utility uses were made of the right-of-way, he advised. It is the Alaska Railroad's belief that that argument is more of a backup argument, but it is an additional argument that shows there were exclusive rights of the right-of-way that could be conveyed, he further explained.

2:22:13 PM

CHAIR CLAMAN noted that lawyers are good at speaking a long time and they are also good at following time limits, he would be putting time limits on Mr. Behrend's answers.

2:22:24 PM

REPRESENTATIVE KOPP offered that HJR 38 simply read that the federal government cannot transfer an interest to the state that the federal government does not own. He related that if Mr. Behrend is confident that that did not happen, why would the Alaska Railroad be in opposition to this resolution.

MR. BEHREND replied that the Alaska Railroad does feel comfortable with its position, and that is the position it depends upon every day to operate the railroad. The Alaska Railroad believes there have been examples from his testimony where it disagreed with some of the premises of HJR 38. The other piece to the railroad's confidence is that it appears HJR 38 is seeking to ask Congress to take some sort of action, but there is no specification as to the description of that action. He reiterated that while the Alaska Railroad strongly believes it is correct on the law, the constituents supporting this legislation believe they are correct on the law. Therefore, he pointed out, the court is the correct venue for review because these are complex legal issues.

2:23:52 PM

REPRESENTATIVE REINBOLD commented that if the railroad must run, for example, five minutes longer, that is not a huge amount of delay to lock up the whole area for exclusive easement rights forever. She requested a ball park figure of the total amount of public funds that the Alaska Railroad has used for the corporation since 1985.

MR. O'LEARY answered that as a matter of course, the Alaska Railroad does not request state funds. In the 1990s, there was approximately a $10 million appropriation related to the purchase of railcars for the Wishbone Hill Project, which did not quite materialize. He opined that approximately $80 million was related to the bridge over the Tanana River as part of the Northern Rail Extension, and approximately $34 million related to the unfunded federal mandate of positive train control. (Indisc.) over large projects that are not necessarily a matter of daily business for the railroad has state money been requested or received.

2:26:16 PM

REPRESENTATIVE REINBOLD commented that she thought the Alaska Railroad should have gone to the federal government for an unfunded federal mandate, and she was upset that the railroad "made us use state funds" when the state was facing a crisis. She asked how profitable the Alaska Railroad is as a corporation and whether any money ever come back to the general fund.

MR. O'LEARY said (indisc.) our financials look more like a private enterprise, it measures net income and on an average of 10 years is somewhere in the $12-$14 million range. (Indisc.) capital intensive. The Alaska Railroad believes it is necessary to put upwards of $40 million per year into its existing infrastructure, without any type of expansion, to keep the wheels on the wagon. He stated that the Alaska Railroad does not pay any money into the general fund.

2:27:49 PM

REPRESENTATIVE REINBOLD requested a description of the entities with oversight over the Alaska Railroad.

MR. O'LEARY responded (indisc.) oversees at this point as well as all of the regulatory agencies; the Federal Transit Administration; a seven-member board of directors appointed by the governor with specific statutory requirements for those board members; the Alaska Railroad reports to the legislature and is required to go to the legislature for specific activities; and two members of the board are commissioners of the governor's cabinet. He commented, "We serve many masters."

2:28:58 PM

REPRESENTATIVE EASTMAN asked whether Mr. O'Leary is aware of any other United States property law where a property owner is paying taxes on their property, but someone else has exclusive use to a portion of that property and is not paying taxes.

MR. BEHREND answered that he had not participated in the response to the taxation issue, and was not aware of the issue regarding the Flying Crown. Although, he said, he has looked at the tax lot situation in most of the Potter Hill area in South Anchorage, consistent with the platting of those subdivisions which show the lots only going up to but not across the boundary of the right-of-way, and he is only aware of one situation where a property owner is being taxed on a lot in that area. As to

the remainder of the whole Potter Hill area, the residents are not paying taxes on the right-of-way. He offered the example of a taxpayer who showed the Alaska Railroad that she was being taxed on the right-of-way; the railroad advised that it could not directly assist her. The railroad offered to write a letter on her behalf to the Municipality of Anchorage advising of its belief that this person should not be taxed because the property belongs to the Alaska Railroad, and she declined the railroad's assistance. He commented that he is not aware of any similar situations, and that the railroad believes the property owners along the right-of-way are not paying those types of property taxes, but the Alaska Railroad would be happy to write a letter on behalf of any taxpayer paying property tax on part of the railroad's right-of-way.

2:31:49 PM

REPRESENTATIVE EASTMAN asked, other than the cases Mr. Behrend referred, whether he was aware of any other examples in United States property law of such situations.

MR. BEHREND responded that his answers are based on whether property owners are paying taxes on right-of-way property subject to the exclusive use easements. Outside of Alaska, he said that he does not know what typically takes place and he is not aware of anything in other jurisdictions, but he has not researched the issue.

2:33:15 PM

ERROL CHAMPION, Chairman, Legislative Issues Committee, Alaska Association of Realtors, advised that the Alaska Association of Realtors believes benefit will come if the resolution is passed and put into place.

2:34:01 PM

KATE BLAIR, Manager, Government and Public Affairs, ENDEAVOR fka Tesoro Corporation, advised that ENDEAVOR, fka Tesoro Corporation, is an integrated refining logistics and marketing company with assets across the United States; it operates ten refineries and owns a series of pipelines, tank farms, marine, rail; and a network of fuel stations. This is its 49th year of operating in Alaska, refining Alaska's crude oil, and transporting fuels and home heating fuels for Alaskans. In 2016, ENDEAVOR purchased assets in Anchorage and Fairbanks from Flint Hills Resources and a main driver for that investment was

the rail facilities at either end. The Alaska Railroad also moved ENDEAVOR's products into the Interior of Alaska in a safe, reliable, and economic manner. She expressed the ENDEAVOR'S concern with the resolution is the impact it could potentially have on the railroad's commercial operations and its ability to run the train at higher speeds. As the Alaska Railroad has asserted, the unrestricted use of the right-of-way by adjoining residents and the public would require lower train speeds of 20 mph or 16 mph in some areas. She offered that that a slowdown would mean a significant change in the current travel time to Fairbanks, and would change the schedule and economics of deliveries into the Interior. While it is not ENDEAVOR's place to weigh in on the property or landownership issues of the right-of-way; however, if changes are made in the manner in which the railroad has to operate, it is important to recognize that those changes would in turn affect ENDEAVOR's fuel delivery and make transportation into the Interior more expensive.

2:35:52 PM

REPRESENTATIVE EASTMAN asked Ms. Blair to distinguish what would legally require the operator to travel at those slower speeds so he can explain to his constituents that it is not politically motivated.

MS. BLAIR pointed out that ENDEAVOR is not the operator of the Alaska Railroad, it works with the railroad and is ENDEAVOR's operator. In the event the railroad tells ENDEAVOR that due to safety through the right-of-way, it must travel at slower speeds then ENDEAVOR must trust the Alaska Railroad's decision because safety is ENDEAVOR's number one core value.

2:37:35 PM

BARBARA HUFF-TUCKNESS, Director, Governmental and Legislative Affairs, Teamsters Local 959, advised that the Teamsters Union is opposed to HJR 38 because legal arguments should be left with the attorneys. There should be concern regarding the safety of not only the Teamster memberships working for the railroad, but also for the public. This resolution, as written, threatens and undermines the protections offered by an exclusive use right-of-way, and it could create uncertainty as well as potential financial liability for the railroad. The Alaska Railroad's full control of its access to the right-of-way and the particular buffer, is important to the successful operation of the trains when traveling at higher speeds when transporting passengers and freight through the state. She advised that

reducing the effectiveness of the trains by reducing speeds would have a huge negative impact on the railroad's ability to meet delivery times and force many people to look at other means of transportation, she pointed out. Alaska does not have a lot of roads and there has always been a working relationship between the truckers and the railroad as to how the different goods and services are transported around the state. Additionally, she said, the elimination of exclusive control of the right-of-way reduces revenues for the railroad and also creates an unsafe situation.

2:40:15 PM

REPRESENTATIVE EASTMAN asked whether her concern was based on her own legal analysis, or was she simply taking the perspective of the Alaska Railroad as far as the requirement for reduced speeds and so forth.

MS. HUFF-TUCKNESS answered that it is not a legal perspective and that she is not an attorney. She advised that the perspective of the Teamsters is due to its discussions with members that actually work on the railroad, and it is her understanding that the reduced speeds would be throughout all of the miles of the track itself. She advised that she took a train ride this summer and it took eight hours to travel from Anchorage to Denali, and there were areas where the train did slow down which was possibly to view wildlife.

2:41:32 PM

REPRESENTATIVE REINBOLD commented that she heard testimony that slowing the train down to 20 mph would increase safety and possibly slowdown delivery times, but she could not see how arriving five minutes later was a huge crisis and prevented the railroad from working with the property owners and being a good neighbor. She asked how slowing a train down could impact safety.

MS. HUFF-TUCKNESS opined that the Teamster's counsel read this resolution and noted that it asks Alaska's congressional delegation to actually re-interpret the law. In the event the law was to be re-interpreted and one side did not like the decision, the parties would ultimately end up in court. The safety part would be a requirement and a concern that if the railroad did not have any control over those areas of right-of-way any longer, to make certain children were not running out into the middle of the track or cars traveling through, if there

were not any crossings or any protections for that right-of-way area. From her perspective, she said, the slowdown would be for protection because the railroad no longer had control of the right-of-way.

2:43:35 PM

REPRESENTATIVE KOPP asked whether she could imagine why a property owner would opt for conduct that would cause a spill on their property or a disaster on their property that would get them hurt or killed.

MS. HUFF-TUCKNESS replied that she was unsure how to answer that question, she knows that individuals have been killed wherein a child was killed the Municipality of Anchorage where fences had been constructed.

2:45:03 PM

CHARLES DILLARD, Inspector, Brotherhood Railway Carmen, advised that he is a 50-year employee of the Alaska Railroad, and has worked on railcars almost his entire life. He noted that he represents the 40 members of the Brotherhood Railway Carmen Division of the Transportation Communications International Union (TCU) at the Alaska Railroad, of which he is member. On behalf of the members of TCU, he asked the committee to oppose HJR 38 because it is an incredibly important issue for those working at the Alaska Railroad, he described. For the 50-years he has worked at this job, he pointed out that safety has been its highest priority, and making safety a priority is what has allowed him to arrive home every night. This resolution greatly reduces the ability to operate a safe railroad, it asks Congress to remove the Alaska Railroad's exclusive control of the right-of-way, and after working for 50-years the railroad has always had exclusive use. This resolution poses a safety risk to all of the Alaska Railroad employees who work on the tracks because they would not have a say in what happens in the right-of-way. The resolution also poses a threat to their jobs because the railroad would have to significantly reduce speeds in areas without its exclusive control. This could make it nearly impossible to move passengers and freight in a timely manner and it would cause the railroad to lose business. (Indisc.) encouraged the committee to vote no on HJR 38.

2:47:44 PM

JAMES ABITZ, Brotherhood Railway Carmen, advised that he represents the 40 members of the Brotherhood Railway Carmen Division of the Transportation Communications International Union (TCU) and asked the committee to oppose HJR 38. He said that this is an incredibly important issue for those working at the Alaska Railroad and this resolution asks Congress to remove the Alaska Railroad's exclusive control of the right-of-way of which it has always possessed. This resolution poses a safety risk to all of the Alaska Railroad employees who work on the tracks because they would not have a say as to what happens in the right-of-way. It also poses a threat to their jobs because the railroad would have to significantly reduce speeds in areas without its exclusive control. This could make it almost impossible to move passengers and freight in a timely manner and would cause the railroad to lose business and it could cause many members to lose their jobs. He asked the committee to recognize that the disagreement over who owns the land should take place in the courts to legally determine who is right and who is wrong. He said that it is not something that should take place politically by going back and changing the law to suit the desires of some people.

2:49:35 PM

VERN GILLIS, Conductor, Alaska Railroad Corporation, United Transportation Union Representative, advised that he has worked in the transportation industry for 28 years, he is a conductor with the Alaska Railroad, and it is his responsibility to move passengers and freight safely and efficiently. He said he represents 150 members who strongly oppose HJR 38 due to concerns that opening up the right-of-way will only increase the dangers to the public and the railroad. As a conductor, he said that one of the worst feelings he has experienced is coming around a curve and looking into the eyes of trespasser who has no idea whether they should move to the left or to the right to escape the train. In most cases, he said, people freeze and are unable to move, parents teach with instincts, and one of the most important things parents teach their children is not to play in the road, and to not play in the right-of-way of which he is trying to work.

2:50:53 PM

LEE DAVIS, Conductor/Engineer, Alaska Railroad Corporation, United Transportation Union Officer, advised that he has been an engineer for 25 years (indisc.) interactions. He then offered one of his most frightening experience as an engineer working in

Girdwoood wherein a man was walking with his two young daughters, one five years and one younger, and when they heard the whistle, the man stepped off the tracks on one side and his daughter stepped on the other side. The few seconds between when they started blowing the horn, the older daughter made a few steps to the tracks and cut across in front of the train to get back her father while he was telling her to stay. On March 13, 2018, 23-year old Skyler Luke was struck and killed by an Alaska Railroad train between "C" Street and Arctic Boulevard. Immediately, the engineer blew the horn, rang the bell, applied the brakes, and he was that engineer, he related. (Indisc.) fatalities (indisc.) nationwide (indisc.) employees volunteer for training to assist crew members involved in serious accidents, and they have that support at the Alaska Railroad. Each time a train makes an emergency stop, there is a risk that the train will break apart and cause derailment. (Indisc.) involve (indisc.). There are many more examples of people on the tracks who are killed or injured, it is certainly a more dangerous place than it appears. He asked the committee to leave control of the right-of-way in the hands of the Alaska Railroad in order to provide a safe environment for himself, his co-workers, and the citizens living along the tracks.

2:53:33 PM

TOM MEACHAM, Attorney, advised that he does not represent any party involved in the HJR 38 issue, but he is familiar with the statute that transferred the railroad from the federal government to the state. He related that Mr. Behrend, perhaps conveniently, ignored the fact that the only two areas of substantive operative law in the Alaska Railroad Transfer Act in which exclusive use easements are imposed, are the federal lands in the Denali National Park and Preserve and the unresolved Native Land Claims. He opined that Representative Kopp accurately outlined the situation here and explained why HJR 38 is necessary. He pointed out that during 70 years of the operation of the Federal Alaska Railroad, without it asserting an explicit exclusive use easement, was successful. In fact, the portion of the exclusive use easement that upset most people is the fact that the railroad (indisc.) can fence the land and prevent any other use, even use that is compatible with railroad operations. Another point, he emphasized, is that under a specific provision in ARTA, any unresolved issues regarding the rights of the railroad and other properties, owners, or claimants, are to be resolved by the Secretary of the Interior. He commented that Representative Kopp asked the Alaska Railroad for a list of all conflicting claims resolved through this

provision, and he has not yet received the list. Mr. Meacham related that he ventures to say that none of the 200-private homesteader-type landowners along the railroad were involved in any such adjudications because they did not take place.

2:55:54 PM

JOHN PLETCHER advised that he is a resident of Anchorage, a member of the Old Seward/Oceanview Community Council Railroad Committee, and his website is www.railroadedAlaska.com regarding the background of the exclusive use easement issue. He referred to the mention of trespassers, and stated that trespassers do not get on the tracks over private property, they get on the track via road crossings, of which is a public area, and somewhat via parks. Several years ago, he recalled, a woman got out of her car in the Potter area, walked up onto the railroad tracks, took a picture, and was run over by a train. He related that "all of this" has nothing to do with HJR 38 because the resolution only goes to the issue of how the federal government managed to convey property rights that the federal government did not own. The property rights owned by the federal government across homestead land is the reservation for railroad, telegraph, and telephone found in every federal land patent along the tracks. While thoroughly researching this issue, he said he found that (indisc.) railroad telegraph and telephone easement was what Governor Jay Hammond called the "Standard Easement in Alaska" for railroads. Governor Hammond explained that it was a national standard created under the General Railroad Act of 1875. In a letter of March (indisc.) to the United States Congress, during the time the "Fence Act" was pending, "He said that he hoped" it would be the easement even for rail extensions, such as going into Canada. There is no way that Governor Hammond would have gone along with changing it, he stressed, and offered that during his interview with United States Representative Don Young, he confirmed that there was no intention to change this "vested property rights and homestead patents."

2:58:24 PM

STEPHEN MCALPINE advised that he is with the Regulatory Commission of Alaska; however, he was speaking as a private individual. He related that he was the Lieutenant Governor at the time the Alaska Railroad Transfer Act (ARTA) had been finalized and the state was securing the actual transfer. He said that he could assure the members of the House Judiciary Standing Committee, the Alaska Legislature, and the Alaska

public that an overriding concern, one of the most important concerns they experienced, was that the Alaska Railroad would have an exclusive easement. When pondering the issue, he related, Alaska is one of the few states with an easement that runs "clear across the state" from Prudhoe Bay to Fairbanks, travels on to Valdez with the Trans-Alaska Pipeline System, and down to Seward with the Alaska Railroad. This resolution is actually a license to trespass, he stressed, and one could say it almost rises to the level of advocating larceny. The court is the venue where "these people should go" if they believe ARTA is contrary to law because in every other circumstance, the court is where legal disputes are settled. He expressed that the intent of this resolution is for the Alaska Legislature to adopt a resolution in support of the proponents' position so they can take it to the United States Congress and parade it before the federal body saying that they have the support of the State of Alaska and to go back and amend ARTA.

3:00:10 PM

FRED ROSENBERG, Owner, Dimond Capital Company, advised that he owns the Dimond Capital Company on Dimond Boulevard in Anchorage where the Red Robin Gourmet Burgers is currently located. Everyone wants safety, he commented, but the Alaska Railroad says that it needs the exclusive right-of-way to be safe. Except, he pointed out, this is not a question of its need, it actually is a question of property ownership and property rights. This resolution is simple because property owners have a fee simple ownership dating back to the lineage and real estate title from a patent. The federal and state governments apparently tried to transfer certain rights, "or did it unclearly," but [the federal government] didn't have the right to transfer. It is like a person owning their home and having someone else transfer rights to the person's property without their knowledge or proper authority. Simply put, he remarked, the conveyances being discussed infringe on private property rights, they are not valid, and the titles to these properties in question and the railroad's claim should not be considered. Those claims should be expunged to not impair the property rights of private property owners. The railroad refers to "other issues or other railroads" around the Lower-48, except the properties in Alaska have fee simple ownership due to the manner in which it came about and are not the same as the properties in the Lower-48. Alaskans have fee simple ownership dating back to an original federal patent and no one has the right to abridge that right of the property owner, he stated.

3:02:11 PM

HUGH ASHLOCK, Owner, Dimond Center Mall, advised that on behalf of (indisc.) annual customers and his family (indisc.) over 40 years, they are concerned about the cloud this creates on his family's title because his father purchased the property (indisc.) homesteader. Through the Alaska Homestead Act he has rights that are (indisc.) worth in excess of $100 million, and they recently invested an additional $40 million into the shopping center so they have a large economic concern.

3:03:32 PM

JODI TAYLOR, Church of Jesus Christ of Latter Day Saints, advised that the Church of Jesus Christ of Latter Day Saints owns 80 acres of property located in Willow, Alaska, and the church has approximately 34,000 members in Alaska, and several youth camps, salmon camps, young adult camps use that property. The Alaska Railroad runs through part of its property and in early 2000, the railroad mandated that the church install a 6-foot high fence 500 feet on either side of the railroad, and the church would receive one mandate on either side of the property to let people come in and travel out with one vehicle gate. The Alaska Railroad, in 2005, asked the church to rip down that fence and put in another fence. She explained that the first mandate from the railroad was that the fence was to be 50-feet off the center of the tracks, and the second mandate was that the fence was to be 100-feet off the center of the tracks. Both of these mandates were at the church's expense, the church put a padlock on the vehicle gate, and the railroad cut the church's padlock off and put its own padlock on the gate. Thereby, preventing the church from access to the lakefront portion of the property it owns. (Indisc.) with youth, young adults, and families, and if a problem were to arise at the lakefront, the church could not provide access for the first responders, or otherwise, to get through to the lakefront property to assist. She said the church supports the right for the railroad to have safety, but it also believes that this resolution provides a common-sense solution to letting property owners manage their property.

3:05:25 PM

ROBERT TIMMINS advised that he echoed everything Jody Taylor had to say about HJR 38, and that he is in full support of the resolution. He said he is also a member of the Church of Jesus Christ of Latter Day Saints, has been to the camp, and he

realizes the injustice this resolution will resolve. He encouraged the committee to understand the veracity of Ms. Taylor's testimony.

3:06:20 PM

CHAIR CLAMAN, after ascertaining no one wished to testify, closed public testimony on HJR 38.

3:06:48 PM

REPRESENTATIVE LEDOUX referred to HJR 38, page 3, lines 28-31 and page 4, line 1, and commented that the entire intent of this resolution is to encourage Congress to recognize "validly held private property rights that were not conveyed under the Alaska Railroad Transfer Act of 1982." Except, she related, whether or not there were validly held private property rights that were not conveyed under the Alaska Railroad Transfer Act (ARTA) does not actually seem to be something Congress can do because Congress is not a court that makes legal decisions about what is validly held and what was not conveyed. Representative LeDoux acknowledged that she is a lawyer but not a property lawyer, and described that the discussions sound like a bunch of "legal gobbledy goop" about rights-of-way. She related that she doubts, other than the property attorneys listening to this hearing, that anyone actually knows whether the railroad is correct or Representative Kopp is correct. She related that she will not try to keep this resolution from moving forward, but she is unsure what the resolution actually does because it appears that this issue should be decided in the courts.

3:09:06 PM

REPRESENTATIVE REINBOLD advised (indisc.) knows the Timmons and Taylor families who have been outstanding neighbors, and to think, see, and hear, what the railroad is doing, and when these "big bullies" cut the padlock off the fence, is the type of actions that cause her to lean closer to supporting this resolution.

3:10:02 PM

REPRESENTATIVE KOPP said (indisc.) contention is that while the Alaska Railroad Transfer Act (ARTA) directed that the federal interest be transferred to the state, it was the United States Department of Interior that inexplicably and indefensibly transferred more than what the federal government owned in these

2005 and 2006 land patents without any notice to the affected landowners. That, he explained, is where the misapplication of a federal agency became involved and Congress is necessary to resolve that issue.

[HJR 38 was held over.]

3:11:34 PM

CHAIR CLAMAN recessed the committee to a call of the chair at 3:11 p.m.

7:46:49 PM

CHAIR CLAMAN called the House Judiciary Standing Committee back to order at 7:46 p.m. Representatives Eastman, Kopp, Reinbold, Stutes, Kreiss-Tomkins, and Claman were present at the call back to order. Representative LeDoux arrived as the meeting was in progress.

HB 75-GUN VIOLENCE PROTECTIVE ORDERS

7:47:22 PM

CHAIR CLAMAN announced that the final order of business would be HOUSE BILL NO. 75, "An Act relating to gun violence protective orders; relating to the crime of violating a protective order; relating to a central registry for protective orders; relating to the powers of district judges and magistrates; requiring physicians, psychologists, psychological associates, social workers, marital and family therapists, and licensed professional counselors to report annually threats of gun violence; and amending Rules 4 and 65, Alaska Rules of Civil Procedure, and Rule 9, Alaska Rules of Administration."

[Before the committee was the proposed committee substitute for HB 75, labeled 30-LS0304\R, Martin, 3/26/18, and Version R was adopted as the working document on 3/26/18.]

CHAIR CLAMAN passed the gavel to Vice Chair Kreiss-Tomkins.

7:48:10 PM

REPRESENTATIVE CLAMAN moved to adopt Amendment 1, labeled 30-LS0304\R.1, Martin, 3/27/18, which read as follows:

Page 10, lines 16 - 18:
Delete all material and insert:
"*** Sec. 9.** AS 22.35.030 is amended to read:
Sec. 22.35.030. Publication of Records [RECORDS CONCERNING CRIMINAL CASES RESULTING IN ACQUITTAL OR DISMISSAL]. The Alaska Court System may not publish a court record of a
(1) criminal case on a publicly available website if 60 days have elapsed from the date of acquittal or dismissal and
(A) [(1)] the defendant was acquitted of all charges filed in the case;
(B) [(2)] all criminal charges against the defendant in the case have been dismissed and were not dismissed as part of a plea agreement in another criminal case under Rule 11, Alaska Rules of Criminal Procedure;
(C) [(3)] the defendant was acquitted of some of the criminal charges in the case and the remaining charges were dismissed; or
(D) [(4)] all criminal charges against the defendant in the case have been dismissed after a suspended entry of judgment under AS 12.55.078**; or**
(2) gun violence protective order under AS 18.65.815 or 18.65.820, unless the court grants a petition under AS 18.65.815; if a court grants the petition, the Alaska Court System shall publish the court record of the proceeding within 10 days after the date the protective order is issued."

REPRESENTATIVE STUTES objected for purposes of discussion.

7:48:12 PM

REPRESENTATIVE REINBOLD declared a point of order. She said that she wants her amendments to be timely and asked when amendments 1-7 were submitted.

VICE CHAIR KREISS-TOMKINS ruled that Representative Reinbold could speak with Chair Claman after the meeting.

7:48:47 PM

CHAIR CLAMAN explained that Amendment 1 is a response to a clarification brought forward by the Alaska Court System (ACS) to be certain the language read that a publication on CourtView

would only occur if there was a "contested order," which meant that the individual had a right to be heard. In the event an ex parte order hearing took place and a gun violence protective order was issued, it would not be listed on CourtView [because the respondent was not present at that hearing.] The only time a CourtView record of this proceeding would occur would be when the individual had a chance to be heard and the court had made a ruling.

7:49:33 PM

REPRESENTATIVE EASTMAN asked what language is deleted.

REPRESENTATIVE KOPP asked that Nancy Meade come forward to respond to committee questions.

7:50:01 PM

NANCY MEADE, General Counsel, Administrative Staff, Office of the Administrative Director, Alaska Court System, advised that a Version R sentence read that the Alaska court System (ACS) may not publish a court record of a protective order on a publicly available website. She related that she was seeking clarity in order for the ACS to perform exactly what the committee desired. Therefore, Amendment 1 clarifies that what the ACS will do (indisc.) only if (indisc.) when the long-term protective order is issued. In the event there is a petition for a short-term order, ACS would handle the case in the normal course but nothing would be posted to CourtView because the proceeding was ex parte. She pointed out that until and if, a long-term order was issued, which only occurs after the respondent has had a chance to appear in court and receive full due process. Amendment 1 clarifies that that is the process the ACS would perform, which she believed was the intent of the "less clear" wording in the original version of the bill.

7:51:24 PM

REPRESENTATIVE EASTMAN referred to Amendment 1, page 1, line 22, which read: "**proceeding within 10 days after the date the protective order is issued.**"

REPRESENTATIVE EASTMAN asked how the 10-day language compares or contrasts to "other things" posted on CourtView.

MS. MEADE answered that this language is a bit different because, typically, (indisc.) CourtView with few exceptions.

The exceptions, she explained, are located in the existing language of AS 22.35.030, above the newly inserted wording at the bottom of page 1 of the amendment. She explained that ACS does remove criminal cases, but the default is always to (indisc.) if they are public records, 60 days after an acquittal or dismissal of all charges if that is what occurs. Typically, she said, protective orders are posted on CourtView, even the ex parte, and it was the intent of the sponsor and the committee that these could implicate some sensitive matters. At the ex parte stage, in particular, it may not be fully appropriate to publicize that this was occurring without full due process for the respondent. After the full due process, she pointed out, the ACS would post it on the website, and the 10-days simply gives ACS a chance to get the record together to post.

7:52:46 PM

REPRESENTATIVE EASTMAN asked that when the ACS deals with a domestic violence protective order, whether the deadline is 10-days or whether it carries a different deadline.

MS. MEADE responded that the ACS posts everything about domestic violence protective orders the minute they are filed. Amendment 1 reflects what she believed was the committee's intent to be more protective in these protective order proceedings because they do implicate a bit more of a privacy interest of the respondent. Therefore, the ACS would delay and perhaps never post these proceedings unless and until that whole due process hearing had taken place.

7:53:39 PM

REPRESENTATIVE KOPP asked the standard the court uses to make the finding on the 6-month protective order.

MS. MEADE answered that that is what she had been referring to as the longer-term order, covered under HB 75, Section 7, AS 18.65.815(a). The long-term protective order proceeding is not ex parte; the respondent has notice of the hearing and can be present. She then referred to page 4, lines 13-15, subsection (b) which read as follows:

> If the court finds by clear and convincing evidence that the respondent is a dangerous individual, regardless of whether the respondent appears at the hearing, the court may order relief available under (c) of this section.

7:54:26 PM

REPRESENTATIVE KOPP surmised that with this amendment it is only after the long-term protective order is issued, and at that point the protective order would be available for publication.

MS. MEADE answered that 10-days after the issuance of that protective order, it would be posted within those 10-days.

7:54:54 PM

REPRESENTATIVE STUTES withdrew her objection to Amendment 1.

REPRESENTATIVE EASTMAN objected to the adoption of Amendment 1.

7:55:17 PM

REPRESENTATIVE LEDOUX surmised that this still allows this to go up on CourtView, there is not a (indisc.).

MS. MEADE reiterated that, if and when, the six-month protective order is granted by the court, it would then be posted on CourtView. She explained that up until that time, Amendment 1 would advise the court to not post the protective order, which is an exception to the normal rule of generally posting everything.

REPRESENTATIVE LEDOUX commented that it would be appropriate to post a long-term protective order on CourtView if the protective order is because Person A stated they would blow up Person B. Except, possibly Person A is severely depressed and is thinking about killing themselves. That posting process strikes her as wrong and she said she did not know whether there was a manner in which to "separate things."

MS. MEADE responded that there is truly no way of separating them from the case; however, the information posted on CourtView is not the content of the order or the petition listing the allegations, or any facts about the case. CourtView is not a screen shot of anything filed in the case, she explained, it is a docket sheet and contains the date of the petition for the long-term gun violence protective order, and the date order issued. It would not disclose any of the facts in which Representative LeDoux was concerned, she explained.

7:57:43 PM

REPRESENTATIVE LEDOUX agreed, and she argued that anyone who is curious enough to look on CourtView might find someone with a gun violence protective order and lead the person to the courthouse [to review the court file]. Whereas, she pointed out, if it was not posted on CourtView, the person may not have been led to the courthouse.

MS. MEADE replied that that would be a policy call for the legislature to advise the court of the process it desired. The default for the Alaska Court System (ACS) is that everything is published unless there is a specific guidance not to post something. For example, divorce cases can oftentimes contain "interesting or even salacious" information and people can always come to the courthouse and review the record. The ACS views the records as public records, which is the price of a democracy wherein people are allowed to review records and hold the court accountable by looking, and so forth. She said she recognizes there is another side to this issue.

7:58:48 PM

REPRESENTATIVE LEDOUX acknowledged Ms. Meade's explanation, except the concern is that the committee is currently struggling with whether to allow the gun violence protective order in the first place. She stated that she wants to make certain that a person who is thinking of causing harm to self, and not to others, is not posted, and she asked how to reach that goal.

MS. MEADE responded that that would be "extremely difficult and problematic for the court," as it has no precedence for deciding what to post or not post depending upon the actual facts of the case. The problem, she explained, is there could be a discrepancy depending upon someone's view of the case, and the court system does not prefer the possible direction that, "if it would be X, then posted it, and if it wouldn't be, don't post it." In other words, she offered, the court system can perform the black and white line of full acquittal cases being taken off CourtView. Except, if the posting requires discretion and analyzing the facts of the case, that becomes a problem.

8:00:38 PM

REPRESENTATIVE LEDOUX commented that the legislature could also remove suicides from CourtView as a policy call.

MS. MEADE answered that the legislature could make that policy call.

8:00:54 PM

REPRESENTATIVE KOPP said that he had been considering the number of tragic suicides he has worked, and how difficult it is for families to accept "suicide" on the Death Certificate. Suicide, he described, is an awful scourge in Alaska. He offered that when considering the merits of this discussion, if the risk, as Representative LeDoux pointed out, is strictly toward oneself, and a loved one wants to remove a temptation and possibly bide more time to find help for the individual, it all comes down to the definition of "dangerous individual" and under what circumstance a case would be posted on CourtView. He referred to Amendment 1, page 1, lines 20-22, and suggested inserting "in cases of immediate risk of injury to others," between "**the petition**" and "**the Alaska Court System**", thereby "making it clear that if the only sense of harm, and it can be immediate where the court would issue it, but in those cases for possible mental health reasons." He opined that the mental health professional treatment community would probably be supportive of not having those cases posted because it might help people to not be singled out for what may be a temporary traumatic event. He commented that he is empathic with Representative LeDoux's position on this issue.

8:03:12 PM

CHAIR CLAMAN asked Ms. Meade whether Title 47 involuntary commitments are posted on CourtView currently.

MS. MEADE responded that they are not posted.

8:03:29 PM

REPRESENTATIVE EASTMAN offered a scenario of an individual who was known to be depressed and suicidal at certain times of the year due to losing a loved one at that time. He asked that if it is known that someone will be "in a bad way" for a specific period of time, how would the court respond to that type of situation. He asked whether that scenario would be under AS 18.65.815 or 18.65.820, and if it is under AS 18.65.820 and the person is known to be dangerous "but not yet," whether the court would entertain an AS 18.65.820.820 in that type of situation, or would it determine that it must go the AS 18.65.815 route.

MS. MEADE pointed out that the person files whatever protective order they desire, they can check a box and ask for an ex parte, they can solely ask for the six-month long-term protective order, or ask for both protective orders. At least in the domestic violence protective order situation, it is not uncommon for the court to advise that they would not grant the ex parte because "I don't think you need it within the next 20 days; however, I'll hold it over for the hearing on the long-term and in two weeks, or 19 days. We'll have the long-term hearing; the respondent will be there and it will be a full due process hearing and we can work out whether you need it for the next six months." She reiterated her previous testimony wherein ex parte hearings are looked at with the knowledge that being ex parte and one party is not present, the judicial officer must think of all of the consequences and ramifications of granting a protective order in the absence of one of the parties. In the event someone comes in in October requesting the short-term protective order because the person may have a problem in December, she imagined the court would determine that the ex parte proceeding was not necessary and would set a long-term proceeding, she reiterated.

8:06:08 PM

REPRESENTATIVE EASTMAN offered another scenario regarding AS 18.65.815 where it was known that during the week of Christmas it would be "very bad" and possibly this individual crosses the threshold and becomes a dangerous individual. He asked the discretion the court holds in that type of situation, under this bill, if the court wants to make it only for a particular week, and whether the court has the discretion to set solely for that period of time.

MS. MEADE answered that this bill reads that the protective order expires six months after its issuance unless dismissed earlier by the court at the request of the peace officer or the respondent via a hearing. In that sort of situation, she said that she feels certain a judicial officer would say that they have concerns about this week, and to look at this order again on January 6th to determine whether it was necessary that the protective order stay in effect.

8:07:16 PM

REPRESENTATIVE EASTMAN surmised that if the court decided at the end of Christmas week that there was not a need for any additional time, but that person did receive an AS 18.65.815 and

it lasted 7 days. He said he assumed from this amendment that that person's name would be posted on CourtView.

MS. MEADE agreed, and she pointed out that Amendment 1 tells the court system to post it once the order is issued, that would be a long-term order and it would be posted.

8:07:54 PM

REPRESENTATIVE EASTMAN maintained his objection to Amendment 1.

8:08:00 PM

REPRESENTATIVE LEDOUX offered that she was considering a conceptual amendment to Amendment 1 in line with the language suggested by Representative Kopp.

REPRESENTATIVE KOPP referred to Amendment 1, page 1, line 21, and recommended adding one more situation where the court may not publish a court record," Sec. 22.35.030(2), which would read as follows:

> The Alaska Court System may not publish a court record of a gun violence protective order under AS 18.65.815 or 18.65.820 unless the court grants a petition under AS 18.65.815 or a respondent who is determined to be dangerous to others; if a court grants the petition, the Alaska Court System shall publish the court record of the proceeding within 10 days after the date the protective order is issue.

REPRESENTATIVE KOPP explained that in the above manner, it could not be misread that the language is not talking about harm to self. The reason for the language "dangerous to others" is due to the definition for "dangerous individual," and he paraphrased as follows:

> An individual is considered dangerous if the individual represents an immediate risk of personal injury to self or others.

REPRESENTATIVE KOPP opined that in those few words it would direct the court that if the gun violence protective order was issued due to a self-harm threat, it would not be posted on CourtView.

8:09:43 PM

VICE CHAIR KREISS-TOMKINS asked Chair Claman whether he preferred to continue down the conceptual amendment path or to hold Amendment 1 in order to redraft the amendment.

CHAIR CLAMAN asked Ms. Meade whether an amendment such as is being proposed is even manageable for the Alaska Court System (ACS) because it sounded like ACS is not accustomed to digging into the details of any particular order prior to deciding what is and is not posted on CourtView.

MS. MEADE answered that Chair Claman was correct because the decision of posting on CourtView is determined by an IS clerical person who simply looks at a case number and knows that it is posted 10 days later. The proposed conceptual amendment would cause someone to have to open the file and that is not something the court system could do, and she did not know whether it would take money, and how many of these cases there would be, but it is not something the court system has ever performed previously and it would cause a bit of a problem.

8:10:52 PM

REPRESENTATIVE STUTES surmised that the proposed conceptual amendment would require someone reading almost every case, and it could bring on a huge fiscal note.

MS. MEADE responded that she was afraid that may be the case and she would have to seriously consider how that might be accomplished.

8:11:35 PM

REPRESENTATIVE STUTES surmised that basically the cases are posted through Anchorage and the clerks have no way of telling, by the information they receive, how to perform the posting.

MS. MEADE answered that Representative Stutes was correct, there could be some type of solution such as indicating that an AS 18.65.815 protective order was for suicide. To possibly add "a new thing" so the administrative clerks know that only if it is an AS 18.65.815 is it posted. She suggested that the suicide cases are separate -- a whole separate proceeding from "the danger to other ones." In the event it was depicted in that manner, she said that she could see the administrative clerks having just the check box for which protective orders are posted, i.e., AS 18.65.815 protective orders are posted and AS

18.65.17 are never posted, or something along that manner. She stressed that she has only given thought to this issue during these last few minutes.

8:12:26 PM

REPRESENTATIVE LEDOUX agreed, and she suggested depicting directly on the form "danger to self is not posted, and danger to others is posted."

MS. MEADE expressed that that is indeed on the form; however, there is not a picture or anything on Court View.

REPRESENTATIVE LEDOUX expressed that she understands that fact, but when the administrative clerk is deciding what to post on CourtView, what is so difficult about looking at this form that could be created that read "danger to self is not posted" in large bold letters, and "danger to others is posted."

MS. MEADE related that she did not want to sound like she was putting up roadblocks because she truly was not, the risk of problems with that suggestion is that there are 42 different court locations and hundreds of people inputting information on CourtView. The court system wants to keep it mechanized to minimize the potential for errors as the court system does not have an audit function in CourtView and if something can be written into a computer script and make it work, then the court system has confidence in what is being posted. In the event the Barrow administrative clerk, for instance, must go in and determine which box to check and somehow get that factual matter as opposed to just a statute directed to the IS department in Anchorage who takes information off of CourtView, and so forth, there could be problems.

8:14:16 PM

REPRESENTATIVE KOPP referred to domestic violence protective orders and offered the following:

> You know how it's just a check the box for the judges, and they make their findings, and there's only like one little paragraph where there is extra stuff they -- they write in there as far as, you'll also take this and this or help the victim with that.

MS. MEADE acknowledged that she is familiar with that form.

REPRESENTATIVE KOPP noted that there are domestic violence protective orders forms, and suggested making a form for a gun violence protective order and the findings would be "first check boxes, immediate risk of serious injury to self, immediate risk of serious injury to others." It would be user friendly and readily ascertainable for a court to know whether or not that should be posted on CourtView, he offered.

MS. MEADE answered that the court system absolutely intends to make such a form should this bill pass, and it will create forms that are similar and on the same simple reading level as the domestic violence protective orders because those pieces of paper are taken by law enforcement and served on the respondent. The issue, she explained, is how that fact is input into CourtView because it does not have fields for typing facts, it would require a modification to CourtView because it is not similar to an Excel spreadsheet where a person can type in different factors or different considerations. CourtView does have a field for a statute and the court system would be able to make AS 18.65.820 orders issued. Again, she offered, if there was an AS 18.65.817 protective order that was different, a danger to self order or a suicide danger order then it could be done. However, she related, it would take a rewriting of the bill, because with one order covering two different possible scenarios, the CourtView database cannot distinguish between the two scenarios.

8:16:37 PM

CHAIR CLAMAN referred to CSHB 75, Version R, [Sec. 9, AS 22.35.030(b)] page 10, lines 16-18, which read as follows:

> (b) The Alaska Court System may not publish a court record of a protective order issued under AS 18.65.820 on a publicly available website.

CHAIR CLAMAN explained that this amendment came about due to the section which read that the court may not publish under AS 18.65.820 ex parte order. The court system approached him and raised questions because it believed this particular language was ambiguous and required clarity. Therefore, the question this amendment raises is not the grand issues of CourtView. He reminded the committee that the issues of CourtView have periodically been debated in the House Judiciary Standing Committee and each time the committee travels down that rabbit hole, it discovers that CourtView is complicated, many people are unhappy with some of the information posted, and CourtView

does not provide the depth that some people would like to believe. The more the committee tries to direct the clerks in how to post in CourtView, the committee is actually inviting errors and inviting people to be incredibly unhappy because an administrative clerk in the courthouse made a mistake. The only question before the committee, he stressed, is whether the committee prefers Sec. 9, AS 22.35.030(b) giving the court direction, or would the committee rather have the increased clarity that comes with Amendment 1. In the event the committee wants to spend more time on the CourtView issue, this amendment should be not be finished, but if the committee wants to decide which of the two wordings to use, it should vote now and move on to the next amendment.

8:18:19 PM

REPRESENTATIVE LEDOUX pointed out that this issue is important and she is not willing to pass a bill that will post the names of people with a "suicide" protective order.

VICE CHAIR KREISS-TOMKINS suggested that there probably are not the votes to pursue Amendment 1 as written, and he set Amendment 1 aside.

CHAIR CLAMAN commented that if there are not the votes to then vote Amendment 1 down.

VICE CHAIR KREISS-TOMKINS ruled that Amendment 1 would be set aside and the committee would proceed to Amendment 2.

8:19:22 PM

CHAIR CLAMAN moved to adopt Amendment 2, labeled 30-LS304\R.15, Martin, 3/28/18, which read as follows:

> Page 6, line 19, following "(a)":
> Insert "When a court issues an ex parte gun violence protective order under AS 18.65.820, if the respondent's firearms have not already been seized, a peace officer may seize any firearms in the possession, custody, or control of the respondent when the peace officer delivers the ex parte protective order to the respondent.
> (b)"
>
> Releter the following subsections accordingly.

Page 6, line 20:
Delete "AS 18.65.815 - 18.65.825"
Insert "AS 18.65.815 or 18.65.825"

Page 6, lines 24 - 27:
Delete "If the respondent's firearms have not already been seized, a peace officer may seize any firearms in the possession, custody, or control of the respondent when the peace officer delivers an ex parte protective order issued under AS 18.65.820 to the respondent."

VICE CHAIR KREISS-TOMKINS objected for purposes of discussion.

8:19:29 PM

CHAIR CLAMAN explained that Amendment 2 is in response to concerns raised by the Alaska Department of Public Safety, Alaska State Troopers, and the distinction between an officer serving an ex parte order to seize a weapon, the respondent refusing to turn over their firearms, and the 48 hours language. The Alaska State Troopers were concerned that the language may actually lead to peace officers thinking they had to wait 48-hours after serving notice that the firearm would be seized, and then they had to return at a later time. The Department of Public Safety advised that this language would create significant increased risk to peace officers and it asked that the language be made clear that if peace officers serve an ex parte order and the respondent refuses to turn over their firearms, that their response would be in the same manner as when serving a domestic violence protective order. In the event the respondent refused to leave the house, they could be arrested for failure to follow the domestic violence protective order. In the same sense here, he offered, if the respondent refused to turn over their firearms, that refusal would be a basis for arresting that respondent. Amendment 2 is focused on law enforcement's safety and it does not change the intent of the bill language, rather it makes it abundantly clear that the officer has authority to take the firearm and for the respondent to comply with the provisions of the ex parte order.

8:21:06 PM

REPRESENTATIVE LEDOUX asked that when the ex parte protective order is issued, whether the court would set forth exactly which guns are to be seized, or would the peace officer search the house for guns. Otherwise, she further asked, how would law

enforcement know if someone had five guns and only turned over four guns.

REPRESENTATIVE KOPP explained that Amendment 2 deals solely with the long-term protective order wherein the person has been given a 10-day notice of the hearing, to come to court and present their case, and the judge makes a ruling on the clear and convincing evidence standard, which is when the 48-hours comes into play. Obviously, he noted, there was not the extreme urgency in these cases because no one was arrested and brought to court. The reality is that most of these cases will be ex parte orders and the case will not start with a six-month order. He explained that the court starts with an ex parte proceeding and it makes a finding based on probable cause that a person is dangerous to self or others by possessing a firearm. The Department of Public Safety's concern is that, in those ex parte circumstances, the peace officers do not want to have to return 48-hours later because if the situation is truly an emergency, they may return to a very high-risk situation in order to make certain the firearms were sold, given to an authorized third party, or whatever provisions were listed in the order. It becomes riskier for the public and law enforcement when law enforcement must return a second time when the person had not complied with the order and is waiting for law enforcement's return, he pointed out. The Department of Public Safety, when serving an ex parte order, prefers to take the firearms at the time of service to prevent a second trip, and during the service of the order to give notice to the respondent that their hearing is in 10 days and the judge will decide whether law enforcement is to return the guns right back to the respondent.

8:24:33 PM

CHAIR CLAMAN, in response to Representative LeDoux's question as to what guns must be surrendered, referred to Version R, Section 7, Sec. 18.65.830(a), page 4, lines 2-5, which read as follows:

> The petition shall describe the number, types, and locations of any firearms or ammunition the peace officer believes are owned or possessed by the respondent and the basis for the petition.

CHAIR CLAMAN then referred to Version R, Section 7, Sec. 18.65.815(a)] page 6, lines 19-24, which read as follows:

> the court shall order the respondent to surrender to the appropriate law enforcement agency, to sell to a

firearms dealer, or to deliver to a court-approved third party all firearms and ammunition that the respondent possesses

CHAIR CLAMAN explained that the order would require a surrender of all firearms, and that the above language is not the issue Amendment 2 addresses.

8:25:30 PM

REPRESENTATIVE LEDOUX requested confirmation that ex parte orders can only be obtained by a peace officer.

CHAIR CLAMAN responded that both ex parte orders and contested orders can only be obtained by law enforcement, private individuals cannot apply.

8:25:54 PM

REPRESENTATIVE LEDOUX offered a scenario of someone posting threatening comments and "nutsy things" on Facebook and the person appears dangerous. Unless the person has itemized his firearm inventory on Facebook, how would law enforcement know which firearms are in the respondent's possession, she asked.

CHAIR CLAMAN answered that to some extent, law enforcement may not know and it may be that law enforcement uses its best efforts while serving an ex parte order. They may not actually collect every firearm in the person's possession, as it is not possible to legislate people to be honest. Amendment 2 is specifically making it clear under Sec. 18.65.830, that the procedures that would occur when law enforcement serves an ex parte order and what happens if the person does not comply with the officer's instructions.

8:27:42 PM

REPRESENTATIVE KOPP explained that as to the gun violence protective orders if the firearms had not already been seized, based on this ex parte finding, law enforcement would have a search warrant. He referred to [CSHB 75, Sec. 18.65.820(b)] page 5, lines 18-23, which read as follows:

(b) If the peace officers has not seized the firearms of the respondent before filing an ex parte gun violence protective order under this section, the peace officer shall also request a search warrant to

search for and seize any firearms in the possession of the respondent. The court shall grant the request for a search warrant if the judicial officer determines that there is probable cause to believe that the respondent is a dangerous individual and in possession of a firearm.

REPRESENTATIVE KOPP pointed out that law enforcement does not want to go into a house without a search warrant, and it must convince the court that it actually believes there are firearms in the house and a search warrant is necessary. Also, he said, prior to receiving the search warrant, law enforcement must convince the court that less restrictive alternatives had been tried and were ineffective, on page 5, lines 4-5.

8:29:29 PM

REPRESENTATIVE EASTMAN noted that it is the responsibility of law enforcement to confiscate firearms, "the court shall grant the request for a search warrant" and asked whether there are any sidebars on that language. He offered that if law enforcement obtains this protective order and requests a search warrant, normally it would be up to the judge to determine whether the request was too vague and that the person's 1,000 acres could not be search, for example. Yet, this language read that whatever the peace officer writes down, basically the court is supposed to approve the search warrant.

CHAIR CLAMAN disagreed that the court is simply supposed to approve the search warrant request, he reiterated that the court must make specific findings that there is probable cause to believe the person is a dangerous individual and they possess firearms.

CHAIR CLAMAN pointed out to Vice Chair Kreiss-Tomkins that these functions are far beyond the scope of Amendment 2 because the amendment is limited to creating clarity about what happens when an officer serves a protective order. He reminded the committee that the substance of the orders had been extensively discussed in prior hearings and these questions do not pertain to Amendment 2.

VICE CHAIR KREISS-TOMKINS ruled that Chair Claman's point was well taken.

8:31:21 PM

REPRESENTATIVE EASTMAN surmised that if the firearms had not already been confiscated, they could be seized. Except, he said, that appears to be different than law enforcement proactively seizing firearms when someone is wearing a firearm on their hip, for instance. In the event the firearm is not visible, and law enforcement serves the protective order on the respondent, who advises law enforcement that he cannot even remember owning any firearms and does not surrender any weapons, what is the responsibility of law enforcement at that point under Amendment 2.

CHAIR CLAMAN directed that Representative Eastman "is actually pretty far afield from the topic of this particular amendment." He referred to Sec. 18.65.830(a), page 6, lines 24-26, which read as follows:

> If the respondent's firearms have not already been seized, a peace officer may seize any firearms in the possession, custody, or control of the respondent when the peace officer delivers an ex parte protective order issued under AS 18.65.820 to the respondent.

CHAIR CLAMAN reiterated that subsection (b) talks about "within 48 hours" and the law enforcement agencies believed this language was confusing and requested clarity. Therefore, in Amendment 2, the first five lines are basically creating new subsection (a) which is based on the language in that last sentence of the existing subsection (a) in the bill. It clarifies that if the firearms have not yet been seized, law enforcement may seize any firearms in the possession, custody, or control of the respondent when the ex parte protective order is served. He pointed out that it gives the peace officer a basis within which to advise the respondent to turn over their firearms, and if the respondent refuses, that would be a basis upon which to arrest the respondent. The remainder of "what was now subsection (a), and the first sentence will become subsection (b), and that becomes the circumstance under which they serve the order after a contested hearing, there is not the situation of officer safety involved," he explained. He added that this is a specific situation where a peace officer is serving an order consistent with what Representative Kopp described on subsection (b), page 5, lines 18-23, [previously typed], peace officers will have a search warrant to seize any firearms in the possession of the respondent. This, he reiterated, is to clarify that the failure to comply with that order gives the peace officer a basis within which to arrest

someone for non-compliance, and if it is not an ex parte situation then more time is allowed to surrender the firearms.

8:35:13 PM

REPRESENTATIVE KOPP referred to Amendment 2, page 1, lines 3-5, which read as follows:

> a peace officer may seize any firearms in the possession, custody, or control of the respondent when the peace officer delivers the ex parte protective order to the respondent.

REPRESENTATIVE KOPP pointed out that "may seize" is in the permissive form rather than "shall seize," and the provision makes clear that there is legal authority, should the context of that service indicate that "seizure of firearms should occur" based upon the service of an ex parte protective order.

8:36:34 PM

REPRESENTATIVE EASTMAN referred to [CSHB 75, Sec. 18.65.830(a), page 6,] line 24, and commented that the 48-hour language is moot because when a peace officer serves notice on a person, they have 48 hours "to do what they're going to do. But we're going to bring a search warrant and if they don't turn over their guns, we're going to arrest that person."

CHAIR CLAMAN referred to Amendment 2, page 1, lines 10-12, and pointed out that the section applying to 48 hours is under AS 18.65.815 the contested protective orders, and under AS 18.65.825 are modification of the order. He explained that the section with the 48 hours does not apply to the ex parte orders, which as amended, would only apply to subsection (a). Subsection (a) of this section would relate to ex parte orders and subsection (b) would relate to the contested orders and the modification of the orders in the 48 hours, and what would become subsection (c) would only relate to the orders issued under the contested situation or modifications thereof.

8:38:07 PM

REPRESENTATIVE KREISS-TOMKINS withdrew his objection to the motion to adopt Amendment 2.

REPRESENTATIVE REINBOLD objected to the motion to adopt Amendment 2.

8:38:11 PM

REPRESENTATIVE REINBOLD referred to Amendment 2, [page 1, lines 2-5], and she paraphrased as follows:

> When a court issues an ex parte, so that's without due process for the people listening, gun violence protective order under AS 18.65.820 if the respondent's firearms have not already been seized a peace officer may seize any firearm in the possession, custody, or control of the respondent when the peace officer delivers the ex parte protective order to the respondent.

REPRESENTATIVE REINBOLD paraphrased the language "if it has not already" and asked when the opportunity to confiscate happened in the first place because it sounds as though there are two different opportunities to confiscate.

CHAIR CLAMAN commented that he thought the committee was debating Amendment 2, and referred to [CSHB 75, Sec. 3] page 2, lines 17-21, which provides that when a peace officer faces a dangerous individual and believes there is an immediate danger that requires immediate action, they have authority both under this statute and under existing common law, to seize the weapons and prevent a dangerous situation from becoming a problem where someone is severely injured or killed. He explained that the bill provides that when an officer performs a warrantless seizure such as this, then the officer has a duty within 72 hours to actually file the paperwork to explain the reasons for the warrantless seizure, which is a way of providing more for an individual who has their firearms than they would have today under existing authority to seize weapons in a variety of circumstances.

8:40:11 PM

REPRESENTATIVE REINBOLD argued that it read "seize any firearm in the possession, custody, or control" and asked whether it could mean a parent's house, at work, a cabin, a house in the Lower-48. She described the language as broad because if they are already seizing firearms without due process under an ex parte order, she paraphrased "now it says anything in their possession, custody, or control" whether it allows a peace officer to go anyplace this person owns.

CHAIR CLAMAN reiterated to Vice Chair Kreiss-Tomkins that these questions are well beyond the scope of Amendment 2. (Indisc. - Representative Reinbold speaking over Chair Claman) referring to subsection (b) on page 5, [lines 18-23] regarding the search warrant the peace officer would offer for the search and seizure of any firearms in the possession of the respondent. He reiterated that it is well established under search and seizure law that the warrant would have to identify the places to be searched and the items to be seized, and it would not give any peace officer broad authority to wander the streets and look for anything anywhere because they would actually have a very specific place. A warrant that didn't provide that degree of specification would be subject to a significant court challenge and he could not imagine any judge in this state or any other state that would issue such a warrant. As to out-of-state properties, the jurisdiction of this state court does not extend to other states, he further explained.

8:41:49 PM

REPRESENTATIVE LEDOUX surmised that if the peace officer recognizes that there is a dangerous individual, that peace officer can, without the judge giving the peace officer to do so, seize the firearm.

CHAIR CLAMAN noted that Representative LeDoux was correct as it has previously been discussed, and that action can take place under a variety of circumstances.

REPRESENTATIVE LEDOUX surmised that the peace officer goes to the court after seizing the firearm.

CHAIR CLAMAN explained that the peace officer goes to the court afterwards, but in terms of Amendment 2, it is regarding the situation when the firearms have not already been seized. There is a gun violence protective order and this gives the peace officer the authority to seize the firearms if they had not already been seized.

8:43:04 PM

REPRESENTATIVE LEDOUX asked how Amendment 2 changes the language that is "on page 6 already?"

CHAIR CLAMAN explained that the difference between Amendment 2 and the language on page 6 is not changing the substance, it is clarifying the language. He reiterated that the Department of

Public Safety (DPS) was concerned that the way it was drafted on page 6, and the placement of the second sentence of subsection (a) on page 6 in the same paragraph "as the portions in sub -- the first para -- sentence of subsection (a)."

CHAIR CLAMAN referred Representative LeDoux to page 6 [lines 24-27], and the second sentence, which read as follows:

> If the respondent's firearms have not already been seized, a peace officer may seize any firearms in the possession, custody, or control of the respondent when the peace officer delivers an ex parte protective order issued under AS 18.65.820 to the respondent.

CHAIR CLAMAN explained that this is the ex parte provision, and when comparing that language to what will become subsection (a) on Amendment 2, that becomes subsection (a) and that relates to what happens when peace officers serve an ex parte order. The DPS indicated that by combining the first sentence of subsection (a) on page 6, which merged in together AS 18.65.815, 18.65.820, and 18.65.825 in one sentence, DPS believed that the combination was confusing and raised issues as to whether or not they could immediately seize the firearms. At the request of DPS, Amendment 2 is simply intended to clarify the language that is already in CSHB 75, page 6, so law enforcement is not confused, and the person reading the statute after it is amended will understand the sequence, he reiterated, and this is changing nothing of the substance of the bill.

8:44:49 PM

REPRESENTATIVE LEDOUX suggested that law enforcement is not confused, but she is confused.

8:45:10 PM

VICE CHAIR KREISS-TOMKINS summarized that for purposes of clarity, Amendment 2 takes the second sentence [CSHB 75, page 6, lines 24-27] of the current section AS 18.65.830(a) and breaks it off as its own subsection.

CHAIR CLAMAN answered in the affirmative.

8:45:37 PM

REPRESENTATIVE KOPP clarified that this is a complicated legal process for lay legislators who do not normally deal with

domestic violence protective orders and how they are tiered, and questions should be expected. In response to Representative Reinbold's question about warrantless seizure of firearms, he offered a classic example as follows:

> You get a call 11:00, 12:00 at night, 1:00 in the morning from a concerned family member that says, 'My adult son is very depressed, hasn't come out of his room, he's talking about killing himself. Can you come help talk to him?' This happens regularly, situations like this. So, you show up at the house and you knock on the door and, you know, 'Police. I'm here cause your mom called or your dad called.' And, they may not answer the door so you're talking through a closed door hoping they are not armed, and hoping they are not mad that you're there. And, you get a dialogue going, 'Are you going to hurt yourself?' 'Well, I'm think about it.' 'Do you have a gun?' 'Yes.' And, after a dialogue, you -- the goal is to talk them not into hurting themselves or you, and that you talk him into turning over the gun that night until they feel better the next day. And, that would be a warrantless seizure. And, that's a classic example of how law enforcement goes home. Right now, there is no process for that person to get the gun back unless -- the officer is required to make a report of it right away because he is dealing with a mental health situation and that would have to be logged into evidence and all that. But, right now there is no process other than maybe the D.A. or the police chief saying the person is probably fine to get their gun back.

8:47:29 PM

REPRESENTATIVE KOPP described that this bill actually reads that within 72 hours the peace officer must have prepared their affidavit to the court, and the court has to rule on whether the peace officer was correct to remove the firearm or to give it back. Currently, while it does happen that law enforcement will take guns for safekeeping, under those circumstances where people are at risk to harm themselves, there really is not a process in the law for helping the gun owner actually receive their firearm back again, and for judicial oversight in those situations. He explained that that is in response to the warrantless situation. As to the ex parte protective order, he offered a scenario of a peace officer receiving a call that a

someone's son is going to "shoot up the neighbor's house" and they are concerned. For various reasons, the peace officer goes to the courthouse and advises the judge that they just received this call and they provide a statement from the mother, requests an ex parte protective order and a search warrant to try to prevent this person from shooting up the neighbor's house, the mother advised that her son owns a .22 long rifle, he has made these threats before, and she believes he is serious this time. The judge agrees and issues the ex parte order and search warrant, the peace officer serves the documents on the son and advises the son that in 10 days he would have a hearing on this issue, and the judge will determine whether the firearm would be returned. That standard is clear and convincing evidence as to whether it should be retained, if the judge decides at the hearing that the son is still a danger, the case will go to a six-month protective order or the court can terminate the order earlier if it so chooses on petition of the officer or the respondent and the request for hearing is filed, he explained.

8:50:22 PM

VICE CHAIR KREISS-TOMKINS determined that because Amendment 2 is simply re-ordering sentences in the bill and its scope is fairly limited, he moved to committee discussion.

8:51:13 PM

REPRESENTATIVE EASTMAN commented that the substance of Amendment 2 is on page 1, lines 11-12, "we're making a switch, which is page 6, line 20 of the bill, and we are pulling out the ex parte from that, and that is a substantive change. It not a re-ordering or rephrasing. We're making it clear for purposes of the bill that the ex parte protective order is not going to fall under this same provision here on line 20."

8:52:06 PM

REPRESENTATIVE REINBOLD commented that before she makes her wrap up comments, she would talk about the Second Amendment, regarding the right of the people to keep and bear arms.

VICE CHAIR KREISS-TOMKINS advised Representative Reinbold that he had not yet recognized her, and the committee members have a two-minute timeline for Amendment 2.

8:52:30 PM

[VICE CHAIR KREISS-TOMKINS and Representative Reinbold discussed the scope of Amendment 2.]

REPRESENTATIVE REINBOLD commented that "it read that the right of the people to keep and bear arms shall not be infringed, and legislators swore to uphold and defend the constitution, as you did." (Indisc.) so when reviewing the other amendments, "you're not allowed to do this." She remarked that the committee is rushing something that is in complete violation, "if you swore to uphold and defend the constitution." She said that she did not know what it says, it says to seize any (indisc.) know if that means "your office, I don't know if that means your mother's house, I don't know what it means when you can search and seize warrantlessly as long as it is in their possession, custody, or control." She described "this" as extremely broad and it is wrong to rush something that is critical to what holds this nation together.

8:54:19 PM

REPRESENTATIVE KOPP noted that he agrees with Representative Reinbold's words of caution in protecting the Second Amendment, but this is not about warrantless searches. This discussion is about warrantless seizures and those can only take place when the nature of the circumstance demands an immediate response based on the danger the peace officer immediately observes, such as the circumstance of someone saying they are thinking of killing themselves and are holding a gun, and the peace officer is able to talk them out of killing themselves and allows the peace officer to seize the gun. He stressed that this is not about a warrantless search, a search always requires a warrant and if making a search without a warrant, the courts frown on that action.

8:56:08 PM

REPRESENTATIVE LEDOUX related that she understands Representative Reinbold's point of view and concurs with her comments regarding the Second Amendment. Except, she expressed, even if the committee does not adopt Amendment 2, the bill in itself uses the phrase "possession, custody, or control" and she will probably vote in favor of the amendment, but she still has some concerns about the bill with or without Amendment 2. She offered understanding as to the concerns of the DPS officers.

8:57:19 PM

REPRESENTATIVE REINBOLD maintained her objection.

[VICE CHAIR KREISS-TOMKINS and Representative Eastman discussed the fact that he had previously offered his comments.]

8:57:45 PM

REPRESENTATIVE REINBOLD declared a point of order. She said, there are two points of order, "it says, when you rush there is often unfairness, and two, you have to have equality for members and he's being denied. He had a point of clarity which is much different than discussion."

VICE CHAIR KREISS-TOMKINS ruled that he opened the committee discussion by offering each member two minutes of comments and Representative Eastman was recognized first, before any other member. In the spirit of equality, he will offer Representative Claman two minutes to speak to any questions raised by other members.

8:58:18 PM

REPRESENTATIVE EASTMAN declared a point of order. He said that his hand had been raised for quite some time and he was passed over several times before Vice Chair Kreiss-Tomkins determined that his next statement would be his two-minute wrap-up, and he thought that was inappropriate.

VICE CHAIR KREISS-TOMKINS ruled, "Noted."

8:58:38 PM

CHAIR CLAMAN, in response to Representative Eastman's comments and questions about clarity, advised that Representative Eastman was actually mistaken when reading the amendment and the bill. The bill does not remove the ex parte provisions, the amendment on lines 10-12 simply removes the second sentence of the bill in subsection (a) and makes it a separate subsection. Therefore, the ex parte provisions are retained and put in a separate subsection, and then subsection (b) addresses the non-ex parte situation. The whole purpose of Amendment 2 is not to debate the merits of ex parte orders, but rather to make the language of the bill clear and more easily understood so there is no confusion. He stressed that it does not change the substance of the language at all, and he commented that Representative LeDoux was "right on target," the question for this amendment is not whether a member supports the bill, the question one should ask

is whether this amendment, by changing the language on page 6, beginning line 19, offers a clarity for peace officers and court officers. Chair Claman opined that it does. For those reasons, he urged the committee to vote in favor of Amendment 2.

CHAIR CLAMAN, in response to Representative Reinbold, advised that he agrees with her comments about being very careful about protecting Second Amendment rights, but he never heard her ask a question.

9:00:09 PM

REPRESENTATIVE REINBOLD declared a point of order. She referred to "Section 85 says that we have the fundamental right to know the intended and unintended consequences before we vote." She asked whether the intention is that peace officers do not search lodges, businesses, homes, and so forth, that it is only where that person resides at that time.

VICE CHAIR KREISS-TOMKINS ruled that Chair Claman made clear what he sees as the intended consequences of Amendment 2, and the committee would proceed to a vote.

9:00:42 PM

A roll call vote was taken. Representatives Kreiss-Tomkins, Kopp, Stutes, LeDoux, and Claman voted in favor of the adoption of Amendment 2. Representatives Reinbold and Eastman voted against it. Therefore, Amendment 2 was adopted by a vote of 5-2.

9:01:17 PM

VICE CHAIR KREISS-TOMKINS passed the gavel back to Chair Claman.

[HB 75 was held over.]

9:02:08 PM

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 9:02 p.m.