economic disincentive to take homes when other types of property are available and compensate the homeowners for some of the personal value they placed in their homes.

These approaches – alone or in concert – would help protect homes while maintaining flexibility for local governments to take other types of property. Common sense tells us that homes are different, and deserve special legal treatment in many contexts. Constituent outrage over *Kelo* is tied in large part to concern about the vulnerability of homes, and it therefore would be appropriate for you to consider including special protection of homes in your legislative response to *Kelo*.

Comments on the Proposed Language

I will now turn to the proposed language of House Bills 1835 and 1836. Because the proposed language of two bills is similar, I will direct my comments to House Bill 1835.

At the outset, I note that the proposed bills apply only to local governments, and do not restrict takings by the State of Pennsylvania. There may be good reasons to apply restrictions on eminent domain on the local level, but not the state level. Many commentators, for example, argue that local governments are more subject to special interest influence than state governments. But to give property owners the maximum amount of protection, it may be worth considering applying the same restrictions to the state. This, of course, would require the input of the state agencies that exercise the power of eminent domain.

Subparagraph (i) of House Bill 1835 prohibits the use of eminent domain to "turn [the taken property] over to a nonpublic interest." My first observation is that while I understand the intent of the language, the litigator in me sees ambiguities in the phrase "nonpublic interest." "Private person or entity" might be preferable language.

More broadly, however, there are many circumstances where the use of eminent domain to transfer property to a private person or entity may be appropriate, and the proposed language therefore may be too restrictive. Using eminent domain to transfer property to a private developer to spur economic development may be objectionable, but what about the use of eminent domain to transfer the property to a privately-owned utility? To a private university to expand its campus? To a not-for-profit museum or symphony? To a privately-owned hospital that is greatly needed by the community? To a sports team for a new stadium? I do not mean to suggest that using eminent domain in all of these contexts would be appropriate – I'm particularly suspicious of sports stadium projects myself – but they are all circumstances that you should consider. In some areas, particularly urban areas, it may not be practical to obtain suitable property for these types of projects without using eminent domain.

You should also consider the use of eminent domain to take blighted property and turn it over to a private developer. This type of taking would be barred by House Bill 1835 as it is currently drafted – it would be impractical to expect local governments to put all blighted property that is taken to public use in the classic sense. That may not be a bad thing. The concept of blight has been abused by local governments to justify what are really economic development takings. Clearing blight was also the justification for urban renewal projects that in hindsight destroyed vibrant, if poor, neighborhoods and

replaced them with what many planners now consider to be sterile redevelopment project. (I should note in this context that when I was talking about giving additional protection to homes, I generally meant homes of all sorts, including rented apartments. Except in the context of compensation for taken homes, people in owned and rented homes have similar interests in avoiding displacement.)

On the other hand, local governments should have the power to take truly blighted property. The difficult task is to come up with a definition that separates blighted property from merely economically depressed property. Blighted housing, for example, could be defined to be unfit for human habitation or defined as housing that violates certain housing code provisions. Blighted commercial property could be defined as property that has been vacant for a certain amount of time and has no real prospect of being occupied in the near future. Care also must be given to the treatment of non-blighted property in an otherwise blighted area. The Supreme Court started down the slippery slope towards *Kelo* in the 1954 case Berman v. Parker, where the Court permitted the taking of a non-blighted department store as part of a larger clearance of a blighted area.

Defining the circumstances where it is permissible for property taken by eminent domain to end up in private hands is a difficult task, but not an insurmountable one. Beyond tightening up the definition of permissible public use, however, there are a number of other steps that you can take to protect private property owners from abusive uses of eminent domain by making the eminent domain process fairer.

The examples I mentioned before of requiring certain findings to be made or certain premiums to be paid would fall in this category. You also could require some

exercises of eminent domain to be put to a vote by the residents of the municipality. Or you could require a municipality to make a bone fide offer (including a price) to purchase the property before using eminent domain. If the property owner later contests the value of the property, and a court finds that the value is higher than the price initially offered by the municipality, you could allow the property owner to recover attorney's fees or a premium above the court-set value from the municipality. Allowing this type of fee shifting would encourage municipalities to show good faith in their initial offer for the property.

You could also require a reverter clause, as proposed in subparagraph (iii) of House Bill 1835. As drafted, however, the reverter clause has two potential problems. First, it does not account for the fact that the condemnee has already been paid fair market value as compensation for the taken property. Second, it is unlimited in duration, which presents the possibility of the reverter being exercised two hundred years after the property is initially taken. Based in part on a bill that is pending in California, language along the following lines may be preferable: "if the property ceases to be used for a public purpose within five years of the property's condemnation, the condemnee or its heirs or assigns shall have the right to reacquire the property for the compensated amount plus interest or its current fair market value, whichever is less."

This concludes my prepared remarks, and I'm happy to take your questions.

Protection of Homes, Small Businesses, and Private Property Act of 2005 (Introduced in Senate)

S 1313 IS

109th CONGRESS

1st Session

S. 1313

To protect homes, small businesses, and other private property rights, by limiting the power of eminent domain.

IN THE SENATE OF THE UNITED STATES

June 27, 2005

Mr. CORNYN introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To protect homes, small businesses, and other private property rights, by limiting the power of eminent domain.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the 'Protection of Homes, Small Businesses, and Private Property Act of 2005'.

SEC. 2. FINDINGS.

Congress finds the following:

(1) The protection of homes, small businesses, and other private property rights against government seizures and other unreasonable government interference is a fundamental principle and core commitment of our Nation's Founders.

(2) As Thomas Jefferson wrote on April 6, 1816, the protection of such rights is `the first principle of association, the guarantee to every one of a free exercise of his industry, and the fruits acquired by it'.

(3) The Fifth Amendment of the United States Constitution specifically provides that `private property' shall not `be taken for public use without just compensation'.

(4) The Fifth Amendment thus provides an essential guarantee of liberty against the abuse of the power of eminent domain, by permitting government to seize private property only `for public use'.

(5) On June 23, 2005, the United States Supreme Court issued its decision in Kelo v. City of New London, No. 04-108.

(6) As the Court acknowledged, `it has long been accepted that the sovereign may not take the property of A for the sole purpose of transferring it to another private party B', and that under the Fifth Amendment, the power of eminent domain may be used only `for public use'.

(7) The Court nevertheless held, by a 5-4 vote, that government may seize the home, small business, or other private property of one owner, and transfer that same property to another private owner, simply by concluding that such a transfer would benefit the community through increased economic development.

(8) The Court's decision in Kelo is alarming because, as Justice O'Connor accurately noted in her dissenting opinion, joined by the Chief Justice and Justices Scalia and Thomas, the Court has `effectively . . . delete[d] the words `for public use' from the Takings Clause of the Fifth Amendment' and thereby `refus[ed] to enforce properly the Federal Constitution'.

(9) Under the Court's decision in Kelo, Justice O'Connor warns, `[t]he specter of condemnation hangs over all property. Nothing is to prevent the State from replacing any Motel 6 with a Ritz-Carlton, any home with a shopping mall, or any farm with a factory'.

(10) Justice O'Connor further warns that, under the Court's decision in Kelo, `[a]ny property may now be taken for the benefit of another private party', and `the fallout from this decision will not be random. The beneficiaries are likely to be those citizens with disproportionate influence and power in the

political process, including large corporations and development firms. As for the victims, the government now has license to transfer property from those with fewer resources to those with more. The Founders cannot have intended this perverse result'.

(11) As an amicus brief filed by the National Association for the Advancement of Colored People, AARP, and other organizations noted, `[a]bsent a true public use requirement the takings power will be employed more frequently. The takings that result will disproportionately affect and harm the economically disadvantaged and, in particular, racial and ethnic minorities and the elderly'.

(12) It is appropriate for Congress to take action, consistent with its limited powers under the Constitution, to restore the vital protections of the Fifth Amendment and to protect homes, small businesses, and other private property rights against unreasonable government use of the power of eminent domain.

(13) It would also be appropriate for States to take action to voluntarily limit their own power of eminent domain. As the Court in Kelo noted, `nothing in our opinion precludes any State from placing further restrictions on its exercise of the takings power'.

SEC. 3. PROTECTION OF HOMES, SMALL BUSINESSES, AND OTHER PRIVATE PROPERTY RIGHTS.

(a) In General- The power of eminent domain shall be available only for public use.

(b) Public Use- In this Act, the term `public use' shall not be construed to include economic development.

(c) Application- This Act shall apply to--

(1) all exercises of eminent domain power by the Federal Government; and

(2) all exercises of eminent domain power by State and local government through the use of Federal funds.

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The Washington Times
www.washingtontimes.com

Alabama limits eminent domain

By Donald Lambro
THE WASHINGTON TIMES
Published August 4, 2005

Alabama yesterday became the first state to enact new protections against local-government seizure of property allowed under a Supreme Court ruling that has triggered an explosive grass-roots counteroffensive across the country.

Republican Gov. Bob Riley signed a bill that was passed unanimously by a special session of the Alabama Legislature, which would prohibit governments from using their eminent-domain authority to take privately owned properties for the purpose of turning them over to retail, industrial, office or residential developers.

Calling the high court's June 23 ruling "misguided" and a "threat to all property owners," Mr. Riley said, "A property rights revolt is sweeping the nation, and Alabama is leading it."

The backlash against the judicial ruling has not received much attention in the national press, although legislative leaders in more than two dozen states have proposed statutes and/or state constitutional amendments to restrict local governments' eminent-domain powers.

Besides Alabama, legislation to ban or restrict the use of eminent domain for private development has been introduced in 16 states: California, Connecticut, Delaware, Florida, Illinois, Kentucky, Massachusetts, Michigan, Minnesota, New Jersey, New York, Oregon, Pennsylvania, Rhode Island, Tennessee and Texas.

Legislators have announced plans to introduce eminent-domain bills in seven more states: Alaska, Louisiana, Oklahoma, Ohio, South Dakota, South Carolina and Wisconsin, and lawmakers in Colorado, Georgia and Virginia plan to act on previously introduced bills.

In addition, public support is being sought for state constitutional prohibitions in several states -- Alabama, California, Florida, Michigan, New Jersey and Texas.

In an elaborate signing ceremony in the State Capitol's historic Old House Chamber, Mr. Riley said, "Alabamians can rest assured that their homes, farms, business and other private property are safe from being seized by government for a shopping center, or a factory, an office building or new residential development."

The signing immediately won praise from leading property rights advocates who had condemned the ruling and have lobbied state legislatures to block such practices.

"Kudos to Alabama political leaders for taking the first step toward protecting their citizens from eminent-domain abuse," said Dana Berliner, a senior attorney at the Institute for Justice, a public policy organization that conducted the first nationwide study of abusive property seizures.

The law came in response to a 5-4 decision by the high court that ruled that the Fifth Amendment's takings clause -- "nor shall private property be taken for public use, without just compensation" -- did not prevent the city of New London, Conn., from taking Susette Kelo's property for the expressed purpose of private development in order to gain higher tax revenue.

Although the Alabama law that the governor signed yesterday would prohibit such

eminent-domain seizures, it contains an exception that would permit takeovers of blighted properties that could be turned over to private interests -- a provision that critics call a loophole for future abuses.

"Alabama's blight law is particularly prone to abuse and must be reformed," Ms. Berliner said. "If legislators close the blight loophole, Alabama will be one of the best states in the country for protecting the rights of home and small business owners."

Jeff Emerson, spokesman for the governor, said yesterday that Mr. Riley would "like to talk to Berliner about this to see how it can be remedied."

The property rights movement, which had been somewhat moribund before the court acted, has spawned what many political strategists expect to be a major issue in the 2006 election cycle.

A number of bills have been introduced in Congress where the issue is winning strong bipartisan support -- from California Rep. Maxine Waters, a liberal Democrat, to Texas Sen. John Cornyn, a conservative Republican.

Polls show unusual unity on strengthening property rights. A Quinnipiac University poll, for example, found that 89 percent of voters in Connecticut want the legislature to limit eminent domain. A University of New Hampshire poll found that 93 percent of state residents were opposed to taking property for private development.

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House bill counters eminent domain ruling

WASHINGTON (AP) -- Contending that the Supreme Court has undermined a pillar of American society -- the sanctity of the home -- the House overwhelmingly approved a bill Thursday to block the court-approved seizure of private property for use by developers.

The bill, passed 376-38, would withhold federal money from state and local governments that use powers of eminent domain to force businesses and homeowners to give up their property for commercial uses.

The Supreme Court, in a 5-4 ruling in June, recognized the power of local governments to seize property needed for private development projects that generate tax revenue. The decision drew criticism from private property, civil rights, farm and religious groups that said it was an abuse of the Fifth Amendment's "takings clause." That language provides for the taking of private property, with fair compensation, for public use.

The court's June decision, said House Judiciary Committee Chairman James Sensenbrenner, R-Wisconsin, changed established constitutional principles by holding that "any property may now be taken for the benefit of another private party."

The ruling in Kelo v. City of New London allowed the Connecticut city to exercise state eminent domain law to require several homeowners to cede their property for commercial use.

With this "infamous" decision, said Rep. Phil Gingrey, R-Georgia, "homes and small businesses across the country have been placed in grave jeopardy and threatened by the government wrecking ball."

The bill, said Chip Mellor, president of the Institute for Justice, which represented the Kelo homeowners before the Supreme Court, "highlights the fact that this nation's eminent domain and urban renewal laws need serious and substantial changes."

But opponents argued that the federal government should not be interceding in what should be a local issue. "We should not change federal law every time members of Congress disagree with the judgment of a locality when it uses eminent domain for the purpose of economic development," said Rep. Bobby Scott, D-Virginia.

The legislation is the latest, and most far-reaching, of several congressional responses to the court ruling. The House previously passed a measure to bar federal transportation money from going for improvements on land seized for private development. The Senate approved an amendment to a transportation spending bill applying similar restrictions. The bill now moves to the Senate, where Sen. John Cornyn, R-Texas, has introduced companion legislation.

About half the states are also considering changes in their laws to prevent takings for private use.

The Bush administration, backing the House bill, said in a statement that "private property rights are the bedrock of the nation's economy and enjoy constitutionally protected status. They should also receive an appropriate level of protection by the federal government."

The House bill would cut off for two years all federal economic development funds to states and localities that use economic development as a rationale for property seizures. It also would bar the federal government from using eminent domain powers for economic development.

"By subjecting all projects to penalties, we are removing a loophole that localities can exploit by playing a 'shell game' with projects," said Rep. Henry Bonilla, R-Texas, a chief sponsor.

The House, by a voice vote, approved Gingrey's proposal to bar states or localities in pursuit of more tax money from exercising eminent domain over nonprofit or tax-exempt religious organizations. Churches, he said, "should not have to fear because God does not pay enough in taxes."

Eminent domain, the right of government to take property for public use, is typically used for projects that benefit an entire community, such as highways, airports or schools.

Justice John Paul Stevens, who wrote the majority opinion in Kelo, said in an August speech that while he had concerns about the results, the ruling was legally correct because the high court has "always allowed local policy-makers wide latitude in determining how best to achieve legitimate public goals."

Several lawmakers who opposed the House bill said eminent domain has long been used by local governments for economic development projects such as the Inner Harbor in Baltimore and the cleaning up of Times Square in New York. The District of Columbia is expected to use eminent domain to secure land for a new baseball stadium for the Washington Nationals.

Find this article at:
http://www.cnn.com/2005/POLITICS/11/04/eminent.domain.ap/index.html

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Eminent domain is in the spotlight now

PAULA EASLEY

COMMENT

Here I was, about to submit my hotel proposal to local officials in Weare, N.H., when a wealthy East Coast developer beat me to it. Either project required condemnation of a luxurious home on acreage we needed for hotel parking. The home, unfortunately (for him), belongs to Supreme Court Justice David Souter.

Logan Clements, the other project sponsor, said he needs only three out of five votes for the town's Board of Selectmen to condemn Justice Souter's property using eminent domain powers. Then they'll make him "an offer he can't refuse." If he balks, condemnation proceedings begin. The Clements proposal for The Lost Liberty Hotel includes a fine restaurant, the Just Desserts Cafe. Since he's so politically connected, I don't stand a chance. Oh, well, that's life.

Most news watchers know of the Supreme Court's 5-4 ruling that local governments could seize a person's home or business and use the property for more lucrative purposes — namely jobs and tax revenues. For many Americans, the Kelo v. City of New London eminent domain ruling was a shocker. Even more shocking is the intense negative reaction from both rural and urban property owners.

Just as Oregonians overwhelmingly passed a property rights ballot measure limiting government powers last November, the Kelo decision has motivated citizens from coast to coast to explore legislative options that would restrict government's ability to take their property.

These are not knee-jerk reactions to one unpopular Supreme Court decision. The Institute for Justice, which represented homeowner Susette Kelo in the case, says it has documented more than 10,000 instances over a five-year period involving threatened or actual property condemnations that benefited other private parties. It's sad that so many people have been harmed before the issue struck home.

Readers of Malcolm Gladwell's intriguing book "The Tipping Point" will recognize the eminent domain/property rights cause as one that has long bubbled under the surface but couldn't quite make it to the level of a national movement. Gladwell defines the tipping point as that magic moment when an idea, trend or social behavior crosses a threshold, then tips and spreads like wildfire. In a single decision, five Supreme Court lawyers just vaulted the issue of property ownership threats well over the tipping point.

On June 23, after reporting the court's decision, CNN's Lou Dobbs conducted an electronic poll asking under what circumstances local governments should seize homes and businesses. A minuscule 1 percent of respondents said they would approve such actions for private economic development. Call-ins and e-mails to two Washington, D.C., radio shows reflected unanimous opposition to the Supreme Court's ruling. Not one response in favor. I can't recall a single controversial public policy issue resulting in such an overwhelmingly one-sided response.

The Supreme Court majority opinion suggested language in state constitutions and laws could be enacted to protect citizens from overzealous property takings; if local citizens want to stop the practice, they have the power to do so. If they don't act, government and developers will have free rein to advance projects on any property, not just that of the nonwhite and nonwealthy, as has occurred through urban renewal projects over the last 50 years.

Despite the outcry of home and business owners over the Kelo decision, some local government entities are right in the middle of razing working-class and poor neighborhoods to bring in revenues, create jobs and beautify their communities. They are delighted with the case's outcome.

So, what should communities do if they want to revitalize rundown areas? They can adopt procedures that assure respect for the rights of property owners as was done in redeveloping downtown Seattle and elsewhere. Seattle's strategy can be reviewed in a study, "Condemning Condemnation: Alternatives to Eminent Domain," at www.goldwaterinstitute.org/article.php/454.html.

They can support using condemnations only as a last resort. They can require a two-thirds vote of governing bodies to authorize it. State legislatures can impose restrictions on eminent domain use by local governments, as Arizona's legislature did recently.

Possibly the most common-sense response would be for communities to enact remedial measures that would narrowly confine the use of eminent domain powers to the central functions of local government: public buildings, roads, bridges, etc., and let the private sector spearhead the "nice to haves" and redevelopment projects. If eminent domain powers must be exercised, it should be done at home, where local officials have to look the dispossessed straight in the eye.

■ Paula Easley, an Anchorage public policy consultant, is vice chair, Nationwide Public Projects Coalition; president, Alaska Land Rights Coalition; and board member, Resource Development Council of Alaska and Arctic Power. E-mail, paulaeasley@yahoo.com.

This memorandum describes how state legislatures are responding to the U.S. Supreme Court decision delivered on June 23, 2005, in *Kelo v. New London* (04-108). In that case, the court determined that the "public use" provision of the takings clause of the 5th Amendment to the U.S. Constitution permits eminent domain for economic development purposes that provide a "public benefit" pursuant to a Connecticut statute. At the same time, the court acknowledged that nothing in its decision precludes a state from placing further restrictions on the use of eminent domain. This memorandum will discuss the categories of legislation that the National Conference of State Legislatures (NCSL) has observed, and present summaries and links to bills considered since the decision came down.

Categories of Legislation

NCSL has been tracking five types of legislation that state legislatures have either considered or are still considering since the decision in *Kelo* was reported. Each category restricts the use of eminent domain for economic development purposes to some degree, while providing certain exceptions. The limitations may apply to economic development agencies created by local governments, or to municipalities and counties themselves. A broad range of approaches have been employed, from reiterating that eminent domain may be exercised solely for a public use, to prohibiting it for specified purposes.

Authorization for a Public Use. Stipulates that eminent domain may be used only for a "stated public purpose" or a "recognized public use." The legislation may not define what constitutes such purposes or uses. (Delaware enacted this type of approach at the end of its 2005 regular session; see attached summary of "Post-*Kelo v. New London* State Eminent Domain Legislation.")

Restriction of Use to Blighted Properties. Limits the use of eminent domain for economic development purposes to blighted properties only, or to areas where the majority of properties are blighted and the remaining parcels are necessary to complete a redevelopment plan. This approach establishes additional criteria defining what constitutes blight that a local government must satisfy before condemning private property for economic development purposes.

Enhanced Public Notice, Hearing and Negotiation Criteria. Requires local governments to hold public hearings before condemning property for economic

development purposes; notify affected property owners in advance of a hearing; and negotiate in good faith with property owners before condemning land.

Local Government Approval. Requires a vote of the locally elected legislative body before a redevelopment agency may initiate eminent domain for economic development purposes. The vote may have to meet a super-majority threshold. In some instances, the use of eminent domain by a local government may require approval by the state legislature.

Prohibiting Eminent Domain for Specified Purposes. Prohibits the use of eminent domain for economic development (e.g., residential, retail, commercial or industrial); for the primary purpose of generating additional tax revenue; or to transfer private property to another private use. This legislation normally includes exceptions, most frequently for blighted properties. (Alabama enacted this type of approach during its 2005 special session; Texas enacted this type of approach during its second special session; see attached summary.)

Other approaches designed to provide additional time to assess policy options include placing a moratorium on the use of eminent domain for economic development purposes until a specified date, and establishing special legislative committees or task forces to study the issues and report back to the legislature with findings and recommendations. (Ohio enacted both these approaches during its 2005 session; see attached summary.)

A summary of legislation considered by states that were either in session at the time the *Kelo* decision was delivered or convened a special session after the decision came down is attached to this memorandum.

Post-*Kelo v. New London* State Eminent Domain Legislation

Alabama 2005 Special Session

SB 68

Prohibits the use of eminent domain for retail, commercial, residential or apartment development; for purposes of generating tax revenue; or for the transfer of private property to another private party. Contains a blight exception.
(Enacted.)

HB 14

Prohibits the use of eminent domain for retail, commercial, residential or apartment development; for purposes of generating tax revenue; or for the transfer of private property to another private party.
(Passed House; failed in Senate.)

SB 81, SB 89, SB 92

Prohibits the use of eminent domain for retail, commercial, residential or apartment development.
(Failed in Senate.)

HB 102, SB 91

Prohibits the use of eminent domain for an economic development purpose and stipulates that its application may only be used for a public use.
(HB 102 failed in House. SB 91 failed in Senate.)

California

2005 Session

AB 1162

Places a moratorium on the use of eminent domain to acquire owner-occupied residential property for a private use until January 1, 2008.
(Passed Assembly; in Senate committee.)

SCA 12

Stipulates that public use does not include taking owner-occupied residential property for a private use.
(In Senate committee.)

ACA 22, SCA 15, AB 590

ACA 22 and SCA 15 stipulate that private property may only be taken for a stated public use. AB 590 stipulates that "public use" does not include taking non-blighted

property for another private use.
(ACA 22 introduced. SCA 15 introduced. AB 590 in Assembly committee.)

Delaware

2005 Session

SB 217 (with House Amendment 1)

Restricts the use of eminent domain by the state or a political subdivision to a recognized public use.
(Enacted.)

Illinois

2005 Session

HB 4091

Stipulates that the use of eminent domain may only be for a "qualified public use," meaning for public ownership and control. Prohibits eminent domain for private ownership or control, including economic development, unless approved by the state legislature.
(Introduced.)

Michigan

2005 Session

SB 693

Prohibits the use of eminent domain to transfer private property to another private entity unless the property is blighted or qualifies as a public use; public use does not include taking for general economic development or generating additional tax revenue.
(Passed Senate; in House Committee.)

SJR E

Stipulates that if a person's principal residence is taken for public use, the amount of just compensation shall not be less than 125 percent of the property's fair market value; public use does not include taking for general economic development or generating additional tax revenue.
(Passed Senate; in House Committee.)

HB 5060, HB 5078

Prohibits the use of eminent domain to transfer private property to another private entity for the primary benefit of the private entity.
(HB 5060 in House committee. HB 5078 in House Committee.)

Minnesota

2005 Special Session

HF 117, HF 132

Prohibits the use of eminent domain to transfer private property to another private party.
(HF 117 failed to pass. HF 132 failed to pass.)

HF 123

Prohibits the use of eminent domain for economic development purposes.
(Failed to pass.)

New Jersey

2005 Session

SB 2739, AB 4392

Prohibits the use of eminent domain to condemn legally occupied residential property that meets applicable housing codes as part of a re evelopment project.
(In Senate Committee.)

New York

2005 Session

AB 8865, AB 9051, SB 5949

Requires a local government to vote to approve the proposed use of eminent domain to condemn private property for another private use.
(AB 8865 and AB 9051 in Assembly committee. SB 5949 in Senate committee.)

AB 9043, AB 9050, SB 5946

Requires that an economic development plan approved by a local government be prepared when eminent domain is used for economic development purposes. Requires a public hearing to be held and includes additional public notice requirements. Requires the amount of compensation paid to a property owner when eminent domain is used for economic development purposes be greater than 100 percent of fair market value.
(AB 9043 and AB 9050 in Assembly committee. SB 5946 in Senate Committee.)

SB 5936

Stipulates that eminent domain can be used for economic development purposes only if the area is blighted.
(In Senate committee.)

SB 5938

Stipulates that eminent domain can only be used for specified public projects. Requires approval of the county legislature or city council if an industrial development agency decides to use eminent domain.
(In Senate committee.)

Ohio

2005 Session

SB 167

Places a moratorium on the use of eminent domain for economic development purposes that would ultimately result in the property being transferred to another private party in an area that is not blighted until December 31, 2006. Creates a task

force to study eminent domain issues.
(Enacted.)

SJR 6

Removes from municipalities the constitutional authority to use eminent domain unless the power is specifically granted to them by the state legislature.
(In Senate committee.)

HB 331

Places a moratorium on the use of eminent domain to condemn non-blighted property for economic development purposes where the property would be transferred to another private use. Creates a legislative task force to study eminent domain issues.
(Introduced.)

HJR 10

Prohibits the use of eminent domain for economic development where the primary purpose is to transfer private property to another private use.
(Introduced.)

Oregon

2005 Session

HB 3505

Authorizes a public body to use eminent domain only if the primary purpose is to allow the public to own or use the property; such property may not be transferred to another private entity.
(Passed House; failed in Senate.)

Pennsylvania

2005 Session

HB 2054

Prohibits the use of eminent domain for private commercial enterprise, with certain exceptions (including for blighted areas or those properties that meet the criteria contained in the state's redevelopment law).
(Passed House; in Senate Committee.)

HB 1835, HB 1836

Prohibits the use of eminent domain to turn private property into a nonpublic interest, or for the purpose of increasing the local government's tax base.
(In House committee.)

HB 2029

Prohibits the use of eminent domain to condemn non-blighted property for retail, commercial, residential or apartment development; for purposes of generating tax revenue; or for the transfer of private property to another private party.
(In House Committee.)

SB 881

Prohibits the use of eminent domain for private commercial enterprise, with certain exceptions (including for blighted areas or those properties that meet the criteria contained in the state's redevelopment law).
(In Senate Committee.)

Texas

2005 Second Special Session

SB 7

Prohibits the use of eminent domain to confer a private benefit on a private party or for economic development purposes, with certain exceptions.
(Enacted.)

HB 12, HB 16

Prohibits the use of eminent domain to confer a private benefit on a private party or for economic development purposes, with certain exceptions.
(Failed in House.)

HJR 11, SJR 5

Prohibits the use of eminent domain for economic development purposes or to confer a private benefit on a private party, with certain exceptions.
(HJR 11 failed in House. SJR 5 failed in Senate.)

2005 First Special Session

HJR 19, SJR 10, SB 62

Prohibits the use of eminent domain for economic development purposes in most instances.
(HJR 19 passed House; failed in Senate. SJR 10 failed in Senate. SB 62 passed both houses; failed in conference committee.)

Wisconsin

2005 Session

AB 657

Prohibits the use of eminent domain to condemn non-blighted property if the property is to be transferred to another private entity.
(Passed Assembly; in Senate committee.)

CONGRESSMAN
JOEL HEFLEY

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For Immediate Release

Aug. 1, 2005

Hefley authors bill to protect private property rights

(Washington, D.C.) — U.S. Rep. Joel Hefley, R-Colo., introduced legislation last Friday that would work to protect the private property rights of American citizens.

Hefley introduced the Eminent Domain Limitation Act of 2005, which would prohibit a state from receiving federal funds for economic development projects if it has not enacted legislation to limit the use of eminent domain.

States must prohibit the use of eminent domain for economic development, and require an entity engaged in a "taking" to show the necessity of the property in question and that no other reasonable alternatives exist. States must also limit the uses for eminent domain to public health and safety, rights-of-way for public utilities and public highways and parks.

"This legislation is strong medicine, I know, but the Supreme Court's decision is the worst thing I have seen from that court in years. It allows local governments to use the lure of future revenues from private economic development projects to run roughshod over private property rights.

"If the court's decision is allowed to stand nobody's property will be safe.

"This bill is not a cure all. However, a basic constitutional right is at stake, and I believe such a strong threat necessitates a strong response."

In June, the U.S. Supreme Court ruled in 5-4 decision that economic development can be considered a public use, allowing local governments to take private property for the purpose of generating income.

— end —

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NATIONAL CONFERENCE of STATE LEGISLATURES

The Forum for America's Ideas

To: State Legislators Interested in Eminent Domain Issues

From: Larry Morandi, Group Director
Environment, Energy & Transportation

Date: November 30, 2005

Subject: Eminent Domain

This memorandum describes how state legislatures are responding to the U.S. Supreme Court decision delivered on June 23, 2005, in *Kelo v. New London* (04-108). In that case, the court determined that the "public use" provision of the takings clause of the 5th Amendment to the U.S. Constitution permits eminent domain for economic development purposes that provide a "public benefit" pursuant to a Connecticut statute. At the same time, the court acknowledged that nothing in its decision precludes a state from placing further restrictions on the use of eminent domain. This memorandum will discuss the categories of legislation that the National Conference of State Legislatures (NCSL) has observed, and present summaries and links to bills considered since the decision came down.

Categories of Legislation

NCSL has been tracking five types of legislation that state legislatures have either considered or are still considering since the decision in *Kelo* was reported. Each category restricts the use of eminent domain for economic development purposes to some degree, while providing certain exceptions. The limitations may apply to economic development agencies created by local governments, or to municipalities and counties themselves. A broad range of approaches have been employed, from reiterating that eminent domain may be exercised solely for a public use, to prohibiting it for specified purposes.

1. *Authorization for a Public Use.* Stipulates that eminent domain may be used only for a "stated public purpose" or a "recognized public use." The legislation may not define what constitutes such purposes or uses. (Delaware enacted this type of approach at the end of its 2005 regular session; see attached summary of "Post-*Kelo v. New London* State Eminent Domain Legislation.")

2. *Restriction of Use to Blighted Properties.* Limits the use of eminent domain for economic development purposes to blighted properties only, or to areas where the majority of properties are blighted and the remaining parcels are necessary to complete a redevelopment plan. This approach establishes additional criteria defining what constitutes blight that a local government must satisfy before condemning private property for economic development purposes.

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3. *Enhanced Public Notice, Hearing and Negotiation Criteria.* Requires local governments to hold public hearings before condemning property for economic development purposes; notify affected property owners in advance of a hearing; and negotiate in good faith with property owners before condemning land.

4. *Local Government Approval.* Requires a vote of the locally elected legislative body before a redevelopment agency may initiate eminent domain for economic development purposes. The vote may have to meet a super-majority threshold. In some instances, the use of eminent domain by a local government may require approval by the state legislature.

5. *Prohibiting Eminent Domain for Specified Purposes.* Prohibits the use of eminent domain for economic development (e.g., residential, retail, commercial or industrial); for the primary purpose of generating additional tax revenue; or to transfer private property to another private use. This legislation normally includes exceptions, most frequently for blighted properties. (Alabama enacted this type of approach during its 2005 special session; Texas enacted this type of approach during its second special session; see attached summary.)

Other approaches designed to provide additional time to assess policy options include placing a moratorium on the use of eminent domain for economic development purposes until a specified date, and establishing special legislative committees or task forces to study the issues and report back to the legislature with findings and recommendations. (Ohio enacted both these approaches during its 2005 session; see attached summary.)

A summary of legislation considered by states that were either in session at the time the *Kelo* decision was delivered or convened a special session after the decision came down is attached to this memorandum.

POST-*KELO v. NEW LONDON* STATE EMINENT DOMAIN LEGISLATION

Alabama
2005 Special Session
SB 68
Prohibits the use of eminent domain for retail, commercial, residential or apartment development; for purposes of generating tax revenue; or for the transfer of private property to another private party. Contains a blight exception.
(Enacted.)

HB 14
Prohibits the use of eminent domain for retail, commercial, residential or apartment development; for purposes of generating tax revenue; or for the transfer of private property to another private party.
(Passed House; failed in Senate.)

SB 81, SB 89, SB 92
Prohibits the use of eminent domain for retail, commercial, residential or apartment development.
(Failed in Senate.)

HB 102, SB 91
Prohibits the use of eminent domain for an economic development purpose and stipulates that its application may only be used for a public use.
(HB 102 failed in House. SB 91 failed in Senate.)

California
2005 Session
AB 1162
Places a moratorium on the use of eminent domain to acquire owner-occupied residential property for a private use until January 1, 2008.
(Passed Assembly; in Senate committee.)

SCA 12
Stipulates that public use does not include taking owner-occupied residential property for a private use.
(In Senate committee.)

ACA 22, SCA 15, AB 590
ACA 22 and SCA 15 stipulate that private property may only be taken for a stated public use. AB 590 stipulates that "public use" does not include taking non-blighted property for another private use.
(ACA 22 introduced. SCA 15 introduced. AB 590 in Assembly committee.)

Delaware
2005 Session

SB 217 (with House Amendment 1)
Restricts the use of eminent domain by the state or a political subdivision to a recognized public use.
(Enacted.)

Illinois
2005 Session
HB 4091
Stipulates that the use of eminent domain may only be for a "qualified public use," meaning for public ownership and control. Prohibits eminent domain for private ownership or control, including economic development, unless approved by the state legislature.
(Introduced.)

Michigan
2005 Session
SB 693
Prohibits the use of eminent domain to transfer private property to another private entity unless the property is blighted or qualifies as a public use; public use does not include taking for general economic development or generating additional tax revenue.
(Passed Senate; in House Committee.)

SJR E
Stipulates that if a person's principal residence is taken for public use, the amount of just compensation shall not be less than 125 percent of the property's fair market value; public use does not include taking for general economic development or generating additional tax revenue.
(Passed Senate; in House Committee.)

HB 5060, HB 5078
Prohibits the use of eminent domain to transfer private property to another private entity for the primary benefit of the private entity.
(HB 5060 in House committee. HB 5078 in House Committee.)

Minnesota
2005 Special Session
HF 117, HF 132
Prohibits the use of eminent domain to transfer private property to another private party.
(HF 117 failed to pass. HF 132 failed to pass.)

HF 123
Prohibits the use of eminent domain for economic development purposes.
(Failed to pass.)

New Jersey
2005 Session
SB 2739, AB 4392

Prohibits the use of eminent domain to condemn legally occupied residential property that meets applicable housing codes as part of a redevelopment project.
(In Senate Committee.)

New York
2005 Session
AB 8865, AB 9051, SB 5949
Requires a local government to vote to approve the proposed use of eminent domain to condemn private property for another private use.
(AB 8865 and AB 9051 in Assembly committee. SB 5949 in Senate committee.)

AB 9043, AB 9050, SB 5946
Requires that an economic development plan approved by a local government be prepared when eminent domain is used for economic development purposes. Requires a public hearing to be held and includes additional public notice requirements. Requires the amount of compensation paid to a property owner when eminent domain is used for economic development purposes be greater than 100 percent of fair market value.
(AB 9043 and AB 9050 in Assembly committee. SB 5946 in Senate Committee.)

SB 5936
Stipulates that eminent domain can be used for economic development purposes only if the area is blighted.
(In Senate committee.)

SB 5938
Stipulates that eminent domain can only be used for specified public projects. Requires approval of the county legislature or city council if an industrial development agency decides to use eminent domain.
(In Senate committee.)

Ohio
2005 Session
SB 167
Places a moratorium on the use of eminent domain for economic development purposes that would ultimately result in the property being transferred to another private party in an area that is not blighted until December 31, 2006. Creates a task force to study eminent domain issues.
(Enacted.)

SJR 6
Removes from municipalities the constitutional authority to use eminent domain unless the power is specifically granted to them by the state legislature.
(In Senate committee.)

HB 331
Places a moratorium on the use of eminent domain to condemn non-blighted property for economic development purposes where the property would be transferred to another private use. Creates a legislative task force to study eminent domain issues.
(Introduced.)

HJR 10
Prohibits the use of eminent domain for economic development where the primary purpose is to transfer private property to another private use.
(Introduced.)

Oregon
2005 Session
HB 3505
Authorizes a public body to use eminent domain only if the primary purpose is to allow the public to own or use the property; such property may not be transferred to another private entity.
(Passed House; failed in Senate.)

Pennsylvania
2005 Session
HB 2054
Prohibits the use of eminent domain for private commercial enterprise, with certain exceptions (including for blighted areas or those properties that meet the criteria contained in the state's redevelopment law).
(Passed House; in Senate Committee.)

HB 1835, HB 1836
Prohibits the use of eminent domain to turn private property into a nonpublic interest, or for the purpose of increasing the local government's tax base.
(In House committee.)

HB 2029
Prohibits the use of eminent domain to condemn non-blighted property for retail, commercial, residential or apartment development; for purposes of generating tax revenue; or for the transfer of private property to another private party.
(In House Committee.)

SB 881
Prohibits the use of eminent domain for private commercial enterprise, with certain exceptions (including for blighted areas or those properties that meet the criteria contained in the state's redevelopment law).
(In Senate Committee.)

Texas
2005 Second Special Session
SB 7
Prohibits the use of eminent domain to confer a private benefit on a private party or for economic development purposes, with certain exceptions.
(Enacted.)

HB 12, HB 16
Prohibits the use of eminent domain to confer a private benefit on a private party or for economic development purposes, with certain exceptions.
(Failed in House.)

HJR 11, SJR 5
Prohibits the use of eminent domain for economic development purposes or to confer a private benefit on a private party, with certain exceptions.
(HJR 11 failed in House. SJR 5 failed in Senate.)

2005 First Special Session
HJR 19, SJR 10, SB 62
Prohibits the use of eminent domain for economic development purposes in most instances.
(HJR 19 passed House; failed in Senate. SJR 10 failed in Senate. SB 62 passed both houses; failed in conference committee.)

Wisconsin
2005 Session
AB 657
Prohibits the use of eminent domain to condemn non-blighted property if the property is to be transferred to another private entity.
(Passed Assembly; in Senate committee.)

SENATE COMMITTEE REPORT

DATE: 2/22/06

FURTHER: (Finance)

DATE TURNED IN TO OFFICE: 4/12/06

Judiciary Committee considered CS FOR HOUSE BILL NO. 318(FIN) am

HB 318 LIMITATION ON EMINENT DOMAIN

"An Act limiting the exercise of eminent domain."

and recommends:

[✓] be **replaced** with 5 **CS** CSHB 318 (JUD)

[ ] adopt **previous** _____ **CS** _____ (_____)

[ ] attached amendment(s)

[ ] adopt Letter of Intent by _____ Committee

[ ] further referral to _____ Committee

CS Senate Bill:
[ ] Same Title
[ ] New Title

SCS House Bill:
[✓] Same Title
[ ] Technical Title Change
[ ] New Title w/ SCR #_____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#
CED	1/11/06			✓	1
DEC	1/11/06			✓	2
LAW	1/10/06		✓		3
DNR	1/11/06		✓		4
DOT	1/11/06		✓		5

[ ] **APPROPRIATION - no fiscal note**

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
Fravel			X	
Guess				X
Thermault			X	
Huggins				X
Stevens CHAIR:			✓	

HB

321

Representative Jay Ramras
Co-Chair, House Resources
V-Chair, Economic Develop.
Tourism & Trade
House State Affairs
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Alaska State Legislature

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House District 10

House of Representatives

Sectional Summary
HB 321/High Risk DUI
Work Order 24-LS1099\G

"An Act relating to high risk operation of a motor vehicle, aircraft, or watercraft while under the influence of an alcoholic beverage, inhalant, or controlled substance and to refusal to submit to a chemical test."

Section 1. AS 28.35.030(b) States that when the court finds that a defendant had a BAC of 0.16 or greater the court shall impose a minimum sentence of imprisonment as follows:

(i) not less than 144 consecutive hours and a fine of not less than $1,500 if it is a first offense;

(ii) not less than 40 days and a fine of not less than $3,000 if the person has been previously convicted once;

(iii) not less than 80 days and a fine of not less than $4,000 if the person has previously been convicted twice;

(iv) not less than 140 days and a fine of not less than $5,000 if the person has previously been convicted three times and is not subject to felony DUI charges;

(v) not less than 360 days and a fine of not less than $7,000 if the person has been convicted four or more times and is not subject to felony DUI charges.

Section 2. AS 28.35.030(k) Technical amendment.

Section 3. AS 28.35.032(g) Increases minimum sentencing requirements for the crime of refusal to submit to a chemical test to the same as those imposed in section 1, under AS 28.35.030(b).

Representative_Jay_Ramras@legis.state.ak.us

CONCEPTUAL AMENDMENT 1

OFFERED IN THE HOUSE BY REP. KEVIN MEYER
TO: CS HB 321 (JUD)

Add a new section:

AS 33.20.010(a) is amended to read:

(a) Nothwithstanding AS 12.55.125(f)(3) and 12.55.125(g)(3), a prisoner convicted of an offense against the state or a political subdivision of the state and sentenced to a term of imprisonment that exceeds three days is entitled to a deduction of one-third of the term of imprisonment rounded off to the nearest day if the prisoner follows the rules of the correctional facility in which the prisoner is confined. A prisoner is not eligible for a good time deduction if the prisoner has been sentenced

(1) to a mandatory 99-year term of imprisonment under AS 12.55.125(a) after June 27, 1996;

(2) to a definite term under AS 12.55.125(l); [OR]

(3) for a sexual felony under AS 12.55.125(i) and has one or more prior sexual felony convictions determined under AS 12.55.145(a)(4); **or**

(4) to a mandatory term of 144 consecutive hours under AS 28.35.030(b)(1)(B) or 28.35.032(g)(1)(A).

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: HB 321
() Publish Date:

Revision Date/Time (Note if correction):
Dept. Affected: Corrections
Title "An act relating to operation of motor vehicles ... while under the influence of alcoholic beverage,inhalant or..."
RDU Institutional Facilities
Component Institution Director's Office
Sponsor Representative Ramras
Requester Judiciary, Finance
Component No. 524

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services	713.9	713.9	713.9	•	•	•
Travel	13.1	13.1	13.1	•	•	•
Contractual	379.1	379.1	379.1	•	•	•
Supplies	94.5	94.5	94.5	•	•	•
Equipment	0.8	0.8	0.8	•	•	•
Land & Structures				•	•	•
Grants & Claims				•	•	•
Miscellaneous				•	•	•
TOTAL OPERATING	1,201.4	1,201.4	1,201.4	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts				•	•	•
1003 GF Match				•	•	•
1004 GF	1,201.4	1,201.4	1,201.4	•	•	•
1005 GF/Program Receipts				•	•	•
1037 GF/Mental Health				•	•	•
Other (Specify Type--Do not abbreviate)				•	•	•
TOTAL	1,201.4	1,201.4	1,201.4	0.0	0.0	0.0

Estimate of any current year (FY2006) cost. 0.0
Check this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

POSITIONS

Full-time	0	0	0	0	0	0
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: *(Attach a separate page if necessary)*

The legislation proposes a new category of penalties for individuals convicted of misdemeanor driving while under the influence with a BAC of .16 or higher. It also increases the penalties for misdemeanor refusal to submit to a chemical test.

(Please see page two for fiscal detail)

Prepared by Sharleen Griffin, Director
Phone (907) 465-3339
Division Administrative Services
Date/Time 1/31/06 7:38 AM
Approved by Portia C.K. Parker, Deputy Commissioner
Date 1/31/2006
Agency Department of Corrections

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

BILL NO. HB 21

ANALYSIS CONTINUATION

Total Number and Percentage of Misdemeanor DUI Offenders and Refusals for 2005:

First Conviction	2,642	83.13%
Second Conviction	449	14.13%
Third Conviction	78	2.45%
Fourth Conviction	8	0.25%
Fifth Conviction	1	0.03%
Total	**3,178**	**100.00%**

Average Misdemeanor DUI Offenders and Refusals per Year (2002-2005): 3,623
Estimated 55% of Misdemeanor DUI Offenders with a BAC of .16 or higher: 1,993

2006 Estimated Average CRC Bed Rate : $78.23
2006 Institution Bed Rate : $107.42

Distribution Based on Estimated Conviction Percentages:

		Estimated Offenders	Increased Sentenced Days	Increased Mandays	Increased Totals
First Conviction (CRC's)	32.00%	636	3	1,913	$149,649.61
First Conviction	51.13%	1,019	3	3,057	$328,332.01
Second Conviction	14.13%	282	20	5,631	$604,906.61
Third Conviction	2.45%	49	20	978	$105,071.97
Fourth Conviction	0.25%	5	20	100	$ 10,776.61
Fifth Conviction	0.03%	1	40	25	$ 2,694.15
Total	**100.00%**	**1,993**		**11,704**	**$1,201,430.96**

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: CSHB 321(JUD)
(H) Publish Date: 2/10/06

Revision Date/Time (Note if correction):
Dept. Affected: Public Safety

Title: Aggravated drunk driving that increases the amount of time to be served
RDU: Alaska State Troopers
Component: AST Detachments

Sponsor: Representative Ramras
Requester: House Judiciary Committee
Component No.: 2225

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2006) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

If passed, this bill will provide enhanced jail terms for those convicted of refusal to submit to a chemical test as well as Driving Under the Influence (DUI) when their alcohol levels are found to be over .160 while operating a motor vehicle.

With the increased penalties, it can be reasonably expected that the defendant will mount a much more aggressive defense. As a result, there will be an increase in court testimony time. The cost associated with this increased court time is extremely variable and nearly impossible to predict. For now, this cost would be absorbed by utilizing existing resources of the department.

Prepared by: Lieutenant James Helgoe
Phone: 907-269-4532
Division: Alaska State Troopers
Date/Time: 1/17/06 11:44 AM

Approved by: Commissioner William Tandeske
Date: 1/17/2006
Agency: Department of Public Safety

(Revised 9/23/2004 OMB)

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: CSHB 321(JUD)
(H) Publish Date: 2/10/06

Revision Date/Time (Note if correction):
Dept. Affected: LAW
Title "An Act relating to high risk operation of a motor vehicle, aircraft, or watercraft while under the influence..."
RDU CRIMINAL
Component Criminal Justice Litigation
Sponsor Representative Ramras
Requester House Judiciary
Component No.

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services	********	********	********	********	********	********
Travel	********	********	********	********	********	********
Contractual	********	********	********	********	********	********
Supplies	********	********	********	********	********	********
Equipment	********	********	********	********	********	********
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	********	********	********	********	********	********
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	********	********	********	********	********	********
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	********	********	********	********	********	********

Estimate of any current year (FY2006) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

This bill amends AS 28.35.030 (Motor Vehicles- Operating a vehicle, aircraft or watercraft while under the influence...) by doubling the mandatory minimum sentence for drunk driving if the blood alcohol content (or the equivalent as measured by breath) is .16 or more. The mandatory minimum for refusal to be tested would also be doubled.

Passage of this legislation will have an indeterminate fiscal impact on Law because offenders will be less likely to enter a plea with the increased mandatory penalty. Law estimates that at least half the drunk driving cases currently involve a blood alcohol content of .16 and above.

Prepared by: Kathryn Daughhetee, Director
Phone 465-3673
Division Administrative Services Division
Date/Time 1/16/06 11:04 AM
Approved by: Kathryn Daughhetee for David Marquez, Attorney General
Date 1/16/2006
Agency Department of Law

(Revised 9/7/2005 OMB)

Representative Jay Ramras
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House District 10

House of Representatives

Sponsor Statement
HB 321

"An Act relating to high risk operation of a motor vehicle, aircraft, or watercraft while under the influence of an alcoholic beverage, inhalant, or controlled substance and to refusal to submit to a chemical test."

This bill proposes new statutory language, which addresses tougher Driving Under the Influence (DUI) laws. Presently, it is a crime in Alaska to operate a vehicle with a blood alcohol level of .08 or greater. This proposed legislation would not change the current law, but would create an enhanced crime of high risk driving under the influence. A person commits the crime of high risk driving under the influence, if it is determined by a chemical test that a person's blood alcohol concentration (BAC) is .16 or greater. A person who is convicted of high risk DUI would face double the minimum sentences of those convicted of DUI. Under this legislation, sentencing for refusal to submit to a chemical test would also be made tougher, to concur with the high risk DUI sentences.

Current information from the National Highway Traffic Safety Administration (NHTSA) shows that 31 states have already adopted laws dealing with enhanced penalties for high-blood alcohol level driving offenses. The NHTSA also reports that over half of all alcohol-related fatalities involve someone with a .15 BAC or higher. The high-risk driver provision of this bill will take clear aim against the most egregious drunk driving offenders, providing stiffer penalties is a legal remedy to bring their numbers down. As we have seen from the needless and tragic incidents that have occurred in the Interior this summer, now is the time for Alaska to address stricter penalties for higher-risk driving under the influence.

This legislation is part of a full approach to improve alcohol management in Alaska. Earlier legislation introduced, which has been signed into law, involved renewal of alcohol server education cards. This legislation allows professional servers to renew their alcohol server education cards, by demonstrating their knowledge by passing the written test without having to retake the introductory course.

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STATE OF ALASKA

OFFICE OF THE GOVERNOR

BILL ANALYSIS

DEPARTMENT	DIVISION	BILL NUMBER	SPONSOR
Health & Social Services	Finance and Managment Services	HB 321	RAMRAS

SHORT TITLE OF BILL
RELATING TO DRIVING UNDER THE INFLUENCE

DEPARTMENT POSITION
Support with amendments

PREPARED BY	DATE	COMMISSIONER'S SIGNATURE	DATE
Stacy Toner	01/13/2006	Karleen Jackson	01/23/2006

SUMMARY

OTHER AGENCIES AFFECTED BY BILL	CONSTITUENT GROUP(S) AFFECTED BY BILL
Alaska Court System Department of Corrections Division of Motor Vehicles Department of Law	
ORGANIZATIONAL SUPPORT FOR BILL	**ORGANIZATIONAL OPPOSITION TO BILL**
Mothers Against Drunk Drivers	

FISCAL IMPACT ☑ NONE ☐ FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT

The intent of the proposed legislation is to establish a new category of penalties for individuals convicted of .08 to less than.0.16 percent by weight of alcohol in the person's blood. It also proposes to increase the penalties for those convicted of 0.16 or more percent by weight.

It is useful to recognize that clients with higher BAC levels or refuse to submit to a chemical test are quite different than first time or low level offenders, and they pose a greater public safety risk.

ANALYSIS OF BILL/PROGRAM EFFECTS

According to National Traffic Highway Safety Administration (NHTSA) information, they have stated that high-risk drivers are those with BAC at or above .15 level. HB 321 should be changed to reflect this definition, as Highway Safety incentive grant funds will be tied to the effective date.

There does not appear to be a consistent formula applied to the increased penalties. DBH advocates that a number of issues be addressed to combat the high risk driver, such as an increase in fines, jail time, and DMV reinstatement fees. A 1st time DUI offender with BAC below .15 would receive the current sanctions, but a person with an elevated BAC or refusal would receive increased sanctions that would be derived by a percentage or specific dollar amount.

AMENDMENTS PROPOSED

Page 1, line 11 "but less than 0.15 percent"
Page 1, line 12 "but less that 150 milligrams"
Page 1, line 14 "less than .15 grams of alcohol

Page 2, lines 18-21same changes as above

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS

BILL ANALYSIS

STATE OF ALASKA
2006 LEGISLATIVE SESSION
ANALYSIS CONTINUATION

BILL NO. HB 321

Page 2, line 23 through Page 3, line 8
Sanctions:

1st DUI Offender, BAC .149 & below
$1500 minimum fine
72 hours jail time
$200 DMV Reinstatement

1st DUI Offender, BAC .15 & above or refusal (50% increase)

$2250 minimum fine
108 hours jail time
$300 DMV Reinstatement

2nd DUI Offender, BAC .149 & below
$3000 minimum fine
20 days jail time
$500 DMV Reinstatement

2nd DUI Offender, BAC .15 & above or refusal (50% increase)
$4500 minimum fine
30 days jail time
$750 DMV Reinstatement

Utilize a portion of the fines to cover costs of ASAP and/or treatment.

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VIA TELEFAX

January 18, 2006

The Honorable Jay Ramras
State Capitol, Room 104
Juneau, AK 99801-1182

Re: HB 321

Dear Representative Ramras:

I am the lobbyist for State Farm Insurance Companies. As I discussed with your staff earlier this morning, State Farm supports House Bill 321 and encourages the Legislature to pass this worthy bill.

Sincerely,

Sheldon E. Winters

LeRamras01SEW.wpd

National Conference of State Legislatures

National Highway Traffic Safety Administration

State High BAC Laws
December 2004

This chart is based on Appendix A from "Evaluation of Minnesota's High BAC Law," a report issued by the National Highway Traffic Safety Administration showing the status of State High BAC laws as of as of January 1, 2002. The chart was updated through January 10, 2005 using the joint NCSL/NCSL Legislative Tracking Database.

State High-BAC Standards and Penalties

State	High BAC	Illegal Per Se BAC	Enhanced Penalty for High-BAC Offenses
Arizona	.15	.08	If high BAC, mandatory jail 30 consecutive days; all but 10 consecutive days may be suspended if screening/treatment p gram completed. Mandatory 10 consecutive days for standard 1st offense; all but 24 consecutive hours may be suspended if complete screening/treatment. Jurisdictions may provide work release program after 48 consecutive hours in jail for high-BAC offenders vs. 24 consecutive hours for other offenders. Jurisdictions also may provide home monitoring program after 15 consecutive days in jail for high-BAC vs. 24 consecutive hours. Maximum 6 months (with 30 consecutive days) vs. 6 months (10 consecutive days). Mandatory minimum fine $250 and $250 assessment vs. $250. Upon conviction, 12-month administrative ignition interlock required (or court may require) for high-BAC offenders after license suspension ends or conviction, whichever is later vs. no requirement.
Arkansas	.15	.08	For administrative license suspension, high-BAC offenders receive 180 days suspension or 30 days suspension followed by 150 days restricted driving privileges vs. 120 days suspension with restricted license. Restricted license can be available to all 1st offenders. Court can order ignition interlock.
California	.20	.08	Court may consider BAC = .20 as a special factor in imposing enhanced sanctions and determining whether to grant probation and may give high BAC "heightened consideration" in ordering an ignition interlock up to 3 years. In counties with licensed alcohol education/ counseling program, offenders placed on probation with high BAC must participate in program for at least 6 months vs. 3 months.
Colorado	.15 .20	.08	For state's mandatory treatment/screening program for all offenders, assessment tool recommends Level I if BAC ≥ .15; judge, however, has discretion. If BAC = .20: mandatory 90 days jail (10 days if participate in alcohol education/treatment program) vs. 5 days unless participate in program. $500-1500 fine vs. $300-1,000. 60-120 days (mandatory 60) community service vs. 48-96 hours (mandatory 48). Administrative licensing action for BAC > .20: completion of alcohol education or treatment program required for license reinstatement. If driving under the influence (DWI)

			charge is reduced to the lesser charge of driving while impaired, and if BAC = .20, then "because of such aggravating factor," sanctions imposed must be for (greater) DWI offense.
Connecticut	.16	.08	120 days administrative driver license suspension vs. 90 days, but all offenders may obtain restricted license after 30 days. Under state's diversion program, completion of pre-trial rehabilitation/alcohol education results in dismissal. If BAC = .16, offender attends more sessions at higher cost than other offenders.
Delaware	.16 .20	.08	BAC = .16: not automatically eligible, but can apply, for "First Offense Election Process" (dismissal of criminal charges upon completion of education/treatment program). BAC = .20: DMV conducts "character review" (references and interview) prior to reinstating license.
Florida	.20	.08	Fine $500- $1,000 vs. $250 -$500. Maximum 9 months jail vs. 6 months. Judge cannot accept guilty plea to lesser offense.
Georgia	.15	.08	Court cannot accept nolo contendere plea if violate illegal per se law and BAC = .15.
Idaho	.20	.08	Mandatory minimum 10 days jail (beginning with 48 consecutive hours) vs. no mandatory minimum; maximum 1 year vs. 6 months. Fine up to $2,000 vs. $1,000. Mandatory minimum 1 year driver license court suspension after release from confinement vs. mandatory minimum 30 days suspension followed by restricted license for 60-150 days.
Illinois	.15 .20	.08	BAC one of several criteria for assignment to "risk category" for completion of treatment program for license reinstatement: BAC < .15 = minimal risk (10 hours education); .15-.19 BAC = moderate risk (10 hours education and 12 hours early intervention); BAC = .20 = significant risk (10 hours education and 20 hours treatment). High risk multiple offenders must receive = 75 hours of treatment for reinstatement.
Indiana	.15	.08	BAC = .15 is a Class B felony. Maximum fine $5000 vs. $500. Maximum jail 1 year vs. 60 days.
Iowa	.15	.08	High-BAC offenders excluded from deferred judgment or sentence generally available to 1st offenders. Mandatory minimum 48 hours jail vs. no mandatory jail. Mandatory minimum $500 fine. For other offenders, minimum is $500, or $1,000 if personal injury or property damage crash. However, court may order unpaid community service in lieu of fine.
Kentucky	.18	.08	BAC = .18 is one of several "aggravating circumstances"; enhanced penalty is mandatory minimum 4 days jail, which "shall not be suspended, probated, conditionally discharged, or subject to any other form of early release." Must also be detained 4 hours after arrest. Other 1st offenders must receive one of the following: $200-$500 fine, 48 hours-30 days jail or community labor, or 48 hours-30 days community service.
Louisiana	.15	.08	Mandatory 48 hours jail prior to probation. For other 1st offenders, in lieu of minimum 10 days jail, may participate in substance abuse/driver improvement program and 1) serve 2 days jail, or 2) perform 4 days community service.
Maine	.15	.08	Mandatory minimum 48 hours jail prior to probation alternatives vs. no mandatory jail.
Minnesota	.20	.08	Effective 1/1/2001, DWI offenses are categorized into three degrees based on the number of aggravating factors present, which include a prior DWI offense, BAC > .20, and driving with passenger < 16 years old and > 36 months

			younger than driver. Criminal penalties if high BAC only aggravating factor, i.e., second degree DWI, include maximum jail 1 year vs. 90 days, mandatory minimum fine $900 vs. $210, maximum fine $3,000 vs. $700. If BAC > .20 court also may impose additional penalty assessment of $1,000. In addition, court may stay sentence except license revocation if offender submits to level of care recommended in required chemical use assessment report. Court must order high-BAC offenders person to submit to recommended level of care. Mandatory "hold for court": unless maximum bail is imposed after arrest, high-BAC offender released from jail only if agree to abstain from alcohol with daily electronic alcohol monitoring. Mandatory administrative pre-conviction license revocation 180 days (30 days hard revocation) vs. 90 days (15 days hard); mandatory post-conviction license revocation 60 days (30 days hard revocation) vs. 30 days (15 days hard). Administrative plate impoundment equal to license revocation period if BAC = .20.
Missouri	.15	.08	Upon conviction, the court must order offender to complete substance abuse program. For persons with administrative per se violations, driving privileges cannot be restored until successfully complete program. For cause, court may modify but may not waive this requirement if BAC > .15
Montana	.18	.08	Court may restrict driving to vehicle with ignition interlock device, if device is reasonably available, for BAC = .18.
Nevada	.18	.08	Offenders with BAC = .18 must be evaluated for alcohol/drug abuse prior to sentencing, with $100 fee. Also serve minimum 2 days jail or 48 hours community service. Other 1st offenders may receive suspended sentence if participate in treatment program but must serve 1 day jail or 48 hours community service.
New Hampshire	.16	.08	Class A misdemeanor vs. violation. Up to 1 year jail vs. no jail. Mandatory minimum fine $500 vs. $350; maximum $2,000 vs. $1,000. Mandatory minimum 1 year license revocation vs. 90 days. Administrative revocation of registration of vehicle registered to offender revoked for same period as license revocation; hardship registration available vs. no revocation. May receive conditional discharge, which may include up to 50 hours community service.
New Mexico	.16	.08	Mandatory minimum 48 consecutive hours jail vs. no mandatory jail.
North Carolina	.15 .16	.08	Person convicted with BAC = .15 must complete substance abuse assessment and treatment program, if indicated, to reinstate license. BAC = .16 considered gross impairment and an aggravating factor in sentencing; level of punishment is determined by weighting aggravating and mitigating factors. Also, to obtain restricted license after hard suspension, ignition interlock must be installed for one year, and driving with BAC = .04 prohibited.
Ohio	.17	08	Mandatory jail time doubled from 3 consecutive days (may attend 3 consecutive days driver's intervention program in lieu of jail) to 6 days (may attend program for 3 days in lieu of 3 days jail but must serve 3 days jail).
Oklahoma	.15	.08	In addition to other penalties for all offenders, offenders convicted of driving with BAC = .15 receive mandatory minimum 28 days inpatient treatment, followed by minimum 1 year of supervision, periodic testing, and aftercare at defendant's expense, 480 hours of community service following aftercare, and minimum 30 days ignition interlock device. This shall not "preclude the defendant being charged or punished under other DWI statutes." Note: For any type of DWI offense, probation before judgment available. Deferred judgment also available upon guilty plea if complete alcohol/drug program.

Rhode Island	.15	.08	In contrast to .10 = BAC <.15, offenders with BAC = .15 receive $500 fine vs. $100-$300 fine, 20-60 hours public community restitution and/or imprisonment for up to 1 year vs. 10-60 hours public community restitution and/or imprisonment for up to 1 year. Note: .08 < BAC < .10 is a civil offense.
South Dakota	.17	.08	Courts must require pre-sentencing alcohol evaluations vs. no such requirement
Tennessee	.20	.08	Mandatory minimum 7 consecutive days of jail vs. 48 consecutive hours. It appears that in certain counties with more than 100,000 residents, court may allow 200 hours community service in lieu of jail term.
Utah	.16	.08	As an alternative to imprisonment or community service, an offender may be allowed to participate in home confinement electronic monitoring program; alcohol testing may be part of program. Court also may order alcohol or drug treatment and may require ignition interlock as condition of probation. For each of these sanctions court must give reasons on record if not imposed/ordered if offender had BAC > .16.
Virginia	.15	.08	Mandatory minimum jail: 5 days if BAC .15 - .20; 10 days if BAC > .20; no mandatory minimum if BAC < .15. Ignition interlock required for any high BAC offense. First offender may attend Virginia Alcohol Safety Action Program (VASAP) to obtain restricted license. BAC = .20 is one of several criteria used to indicate longer and more intensive education.
Washington	.15	.08	Mandatory minimum 2 days jail or 30 days electronic home monitoring vs. 24 hours or 15 days for standard offense. Ignition interlock device (after license suspension or revocation period) not less than 1 year vs. court discretion. Mandatory minimum fine $925 vs. $685. Mandatory court driver license suspension/revocation 1 year vs. 90 days. Deferred prosecution program for all 1st offenders results in issuance of 5-year probationary license and dismissal of charge upon completion of 2-year treatment program. Court must order ignition interlock if BAC = .15.
Wisconsin	.17 .20 .26	.08	Fine penalties for persons convicted of 3rd, 4th, and 5th DWI are doubled if BAC .17-.199, tripled if BAC .20-.249, and quadrupled if BAC = .25. The law does not include enhanced penalties for high-BAC 1st offenders. Wisconsin law also provides that if BAC is known (for first or subsequent offenses), the "court shall consider that level as a factor in sentencing."

Sources: Appendix A from "Evaluation of Minnesota's High BAC Law," issued by the National Highway Traffic Safety Administration; 50-state bill searches for 2002, 2003 and 2004 via joint NCSL/NHTSA bill tracking database; Westlaw searches; Lexis searches.

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Washington Office: Tel: 202-624-5400 | Fax: 202-737-1069 | 444 North Capitol Street, N.W., Suite 515 | Washington, D.C. 20001

TRAFFIC TECH
NHTSA Technology Transfer Series

Number 248 May 2001

Enhanced Sanctions For Higher Bacs A Summary Of States' Laws

Enhanced sanctions for drivers convicted a second or third time for Driving Under the Influence (DUI) have been in place for many years. Recently, many states have considered *hard core* offenders as those drivers who are arrested with high blood alcohol concentration (BACs). Twenty-nine states have a statute, regulation, or rule that provides for differential treatment for DUI offenders with higher BACs (than the state's standard illegal limit) such as .15 or .20 BACs, even for drivers who are first time offenders.

The National Highway Traffic Safety Administration (NHTSA) sponsored a study by Preusser Research Group to examine whether these higher sanctions for higher BACs are effective in reducing DUI recidivism and alcohol-related crashes in selected states. The study will document how the law is being enforced and any problems the states are having in implementing or enforcing the law. The first step in this project is to summarize the high BAC systems in the 29 states.

Enactment of Systems

Most of the 29 states enacted their high BAC statutes since 1990. Ten states have implemented laws since 1998, and five more states recently have strengthened their existing high BAC sanctions. Some states noted widespread public support for the legislation and most states reported little opposition.

States with more extensive or more recent sanctions reported higher levels of publicity about the sanctions. Jail or vehicle-based sanctions, in particular, received considerable press attention in some states.

States define *high* BAC in various ways and the threshold ranges from .15 to .20 BAC. Some states selected the average BAC of offenders as the threshold. Other states set the threshold at double the legal BAC limit.

Types of Sanctions for First Offenders

The types of sanctions for high BAC first offenders include the following:

- Longer or more intensive education or treatment
- Additional or enhanced driver sanctions such as jail, license sanctions, or fines
- Use of vehicle sanctions such as ignition interlocks and vehicle plate impoundment

Implementation Concerns

Most states reported few problems with implementing high BAC sanctions. Several noted concerns that include:

- High BAC sanctions may further complicate an already complicated DUI system
- Higher sanctions may increase the number of BAC test refusals at time of arrest
- Courts and/or prosecutors may allow high BAC offenders to plead down to a lower charge
- Courts may view the high BAC penalties as burdensome and thus fail to impose the penalties
- Concerns about jail overcrowding and limited availability of treatment facilities may limit the effectiveness of these jail sanctions.

29 States with Enhanced Sanctions for Higher BACs

State	High BAC	Standard BAC	State	High BAC	Standard BAC
Arkansas	.18	.10	Maine	.15	.08
Arizona	.18	.10	Minnesota	.20	.10
California	.20	.08	Nevada	.18	.10
Colorado	.15/.20	.10	New Hampshire	.16	.08
Connecticut	.16	.10	New Mexico	.16	.08
Delaware	.16/.20	.10	North Carolina	.15/.16	.08
Florida	.20	.08	Ohio	.17	.10
Georgia	.15	.10	Oklahoma	.15	.10
Idaho	.20	.08	Rhode Island	.15	.08
Illinois	.15/.20	.08	South Dakota	.17	.10
Indiana	.15	.10	Tennessee	.20	.10
Iowa	.15	.10	Virginia	.20	.08
Kansas	.15	.08	Washington	.15	.08
Kentucky	.18	.08	Wisconsin	.17/.20/.25	.10
Louisiana	.15	.10			

HOW TO ORDER

For a copy of *Evaluation of Enhanced Sanctions for Higher BACs: Summary of States' Laws*(26 pages plus appendices), write to the Office of Research and Traffic Records, NHTSA, NTS-31, 400 Seventh Street, S.W., Washington, D.C. 20590, fax (202) 366-7096, or download from *http://www.nhtsa.dot.gov* Amy Berning was the contract manager for this project.

U.S. Department

of Transportation
National Highway
Traffic Safety
Administration
400 Seventh Street, S.W. NTS-31
Washington, DC 20590

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Linda Cosgrove, Ph.D., Editor, Evaluation Staff
Traffic Safety Programs
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HB 324

HOUSE COMMITTEE REPO

(11)

Date Referred to Committee: February 17, 2006 — FURTHER REFERRALS:

Date of Committee Action: 3/7/06

The FINANCE Committee considered: HB 324

HOUSE BILL NO. 324 — BAN ORANGE HAWKWEED/PURPLE LOOSESTRIFE

"An Act banning the importation, transfer, and cultivation of orange hawkweed and purple loosestrife."

Recommends it be replaced with [ ] HCS *or* [✓] CS for HB 324 (Res)
For Senate Bills with new title: [ ] *Technical Title* [ ] *New Title: HCR*_____ [✓] Same Title [ ] New Title

[ ] attach amendments
[ ] add new referral to _____Committee
[ ] Letter of Intent_____Committee

List of Abbrev for Depts.:
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CED
COR
CRT
EED
DEC
DFG
GOV
HSS
LWF
LAW
LEG
MVA
DNR
DPS
REV
DOT
UA

NEW FISCAL NOTES *Assigned by Chief Clerk's Office				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero

PREVIOUS FISCAL NOTES				
List by Dept(s):	FN#	Fiscal	Indet.	Zero
DNR	# 1			✓

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
Betty Kertula	Kertula	✓			
	Foulke			x	
	STOLTZE			✓	
	Hawker		x		
	Holm		x		
	Kelly		x		
Chair:				✓	
Chair:	Chenault			✓	

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: CSHB 324(RES)
(H) Publish Date: 2/17/06

Revision Date/Time (Note if correction):
Dept. Affected: Natural Resources
Title: Ban Orange Hawkweed/Purple Loosestrife
RDU: Resource Development
Component: Agriculture Development
Sponsor: LEDOUX, Cissna, Rokeberg
Requester: (H)RES
Component No.: 455

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Rece						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2006) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

POSITIONS

Full-time	0	0	0	0	0	0
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: *(Attach a separate page if necessary)*

No fiscal impact expected as a result of this proposed legislation regarding orange hawkweed (Hieracium aurantiacum) and purple loosestrife (Lythrum salicaria).

Prepared by: Larry DeVilbiss, Director
Phone: 907 761-3667
Division: Agriculture
Date/Time: 2/1/2006
Approved by: Michael Menge, Commissioner
Date: 2/1/2006
Agency: Natural Resources

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Alaska State Legislature

Please enter into the record my testimony to the House Finance
committee name

Committee on HB 324 Ban Orange Hawkweed, dated 3-7-06
bill # / subject public hearing date

Thank you for taking my testimony, my name is Janice Chumley and I live on the Kenai Peninsula.

I am asking you to support HB 324 because I have seen what can happen when plants and particularly the Hieracium (Hawkweeds) run unchecked. We have a noxious weed law in Alaska and it has not been updated in many years, since 1987 I believe. During that time many plant species have been introduced and most without concern but at this time we need to take action to stop importation of plants we already know are damaging to habitat and cause economic loss.

If you cannot find it as a legislative body to pass this bill, which I believe you should, then please encourage and finance the Division of Agriculture to update our Noxious Weed Laws and include these plants and others that will change the beauty and wilderness of Alaska. It is long overdue. We have seen the economic cost in all other 49 states when nothing is done, let's not let that happen here.

Thank you.

Signed: Janice Chumley
Testifier

Self (Kenai Peninsula Master Gardeners)
Representing (optional)

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Representative Gabrielle LeDoux

SPONSOR STATEMENT FOR CS For HB 324 (RES)
24-LS1218\F

"An Act banning the importation, transfer, and cultivation of orange hawkweed and purple loosestrife."

The act prohibits the importation of orange hawkweed and purple loosestrife. It also prohibits the sale, gift, or otherwise transfer of those plants except for disposal. A person under this act is prohibited from knowingly planting or cultivating these plants.

These two plants are creating problems in Alaska. Non-native invasive species significantly threaten the ecological integrity of our state's natural systems. These species invade natural communities, farmland, forestland, wetlands, waterways and pastures.

They displace native plants and animals, disrupt ecological processes, upset the stability of our ecosystems, and can permanently change our natural landscapes. What today are fields of our State Flower, the Forget-Me-Not, can become a field of orange hawkweed.

Chester Creek had purple loosestrife growing wild along its banks. This is a horrific wetland invader found pretty much across North America.

It is estimated that invasive plants cost the United State's economy at least 137 billion dollars each year.

Even though many invasive species are not regulated or controlled federally, states have passed a wide array of laws designed to address invasive species problems. States are also beginning to adopt non-agricultural weed prohibitions to protect natural systems, especially aquatic or wetland areas.

Representative_Gabrielle_LeDoux@legis.state.ak.us

For the record, I am Suzanne Hancock, staff to Representative Gabrielle LeDoux. The Representative thanks the Chair and Committee for hearing this bill. Representative LeDoux's intention with filing HB 324 was to respond to concerns from her constituents. Scientists as well as gardeners are concerned about new strains of noxious weeds that are taking hold in Alaska. These invasive plants crowd out native plants and cultivated plants and are devastating to the environment and people's gardens.

Orange hawkweed and purple loosestrife were chosen because they have been the ones in the spotlight. Purple loosestrife is a threat to wetlands and waterfowl. In my community of Kodiak groups have been pulling up, bagging and disposing of orange hawkweed. The State agency that has oversight in this area is the Department of Natural Resources. The language in this bill has the Commissioner adopting regulations providing for the disposal of orange hawkweed and purple loosestrife and plant parts to prevent the further propagation of the species in the state.

Statute currently lists many noxious weeds but has not kept up with new species, including these two. This bill only applies to those who **knowingly** plant or cultivate an orange hawkweed or purple loosestrife plant. This offense is a class A misdemeanor but the intent is not to have weed police, but to educate the public about the menace these and other invasive species present to our environment, agricultural crops, streams, and gardens. As a legislator, Representative LeDoux sponsors the bill because she considers it good public policy. There will be members of the scientific community, gardeners and others testifying in their areas of expertise.

27 February 2006 HB 324 House Finance committee hearing

My name is Blythe Brown. I am the Noxious and Invasive Plants Coordinator for Kodiak Soil and Water Conservation District. I also volunteer for Kodiak National Wildlife Refuge. In July 2002 the Kodiak National Wildlife Refuge manager asked me about a little orange flower she had seen on Camp Island in Karluk Lake. The Karluk Lake area is one of Kodiak's most productive salmon and brown bear habitats, and that little orange flower was orange hawkweed.

Kodiak has done very well with voluntary weed control. They have come a long way in the last three years since the orange hawkweed control project was started on Camp Island. The problem was pointed out and Kodiak has freely shared information, started eradication of infestations, stopped sharing certain plants between gardeners, and quit planting troublemakers in public gardens! Unfortunately, the problem is larger than Kodiak... sometimes it takes more than a small community volunteer effort to fix a problem.

This bill is just a start – it calls attention to two very aggressive and showy plants that have invaded valuable habitats in our state. It also highlights a major method of spread for these and other invasive plants: people!

Many other species need to be covered too, what about Japanese knotweed or spotted knapweed? Rather than just add species to this bill my personal feeling is that we need to tie it to a species list that can be changed without having to change a whole law or regulation. This is a good start but we have lots of work ahead of us.

As I understand it, current weed laws in this state are actually agricultural seed laws. Our agricultural areas are jeopardized by invasive plants but so too are our wildlands and valuable fish, wildlife, and subsistence habitats. The agricultural community is taking responsibility for their weeds but now the rest of Alaska needs to realize that they too are part of the problem and can be part of the solution.

Pertaining to the request during the House Resource committee hearing to amend a line to address the use of the "least toxic methods of control" ... All the agencies I work with are already using Integrated Pest Management (IPM) or similar comprehensive plans to determine their management practices. My understanding of "Integrated" is that you look at the whole picture. We don't just reach for the closest bottle on the shelf - we look at all of the options and choose what will work best for each situation.

Orange hawkweed and purple loosestrife do invade undisturbed habitats, they are not just common garden weeds.

Thank-you.

27 Feb 2006

Alaska Community Action on Toxics
505 West Northern Lights Boulevard, Suite 205
Anchorage, Alaska 99503
(907) 222-7714 (Phone); (907) 222-7715 (Fax)
varsha@akaction.net; www.akaction.org

Statement of Varsha Mathrani, MPH, Env. Health Coordinator, AK Community Action on Toxics
HB 324- Ban Orange Hawkweed/Purple Loosestrife (Sponsored by Rep. LeDoux)

Hearing of the House Resources Committee
February 15, 2006

Re: Comments on HB 324: "An Act banning the importation, transfer, and cultivation of orange hawkweed and purple loosestrife."

Co-Chairs Ramras and Samuels, thank you for allowing public testimony concerning HB 324. My name is Varsha Mathrani, Environmental Health Coordinator and a public health scientist representing Alaska Community Action on Toxics (ACAT). ACAT is a statewide non-profit environmental health and justice organization that conducts research and provides educational programs, technical assistance, and training. I am preparing these comments on behalf of our statewide membership.

Alaska Community Action on Toxics approves of HB 324 as a measure to prevent invasive species from taking root and disrupting diverse native ecosystems of Alaska. We believe it is a good first step to addressing invasive species in Alaska. Thank you to Rep. LeDoux for sponsoring this bill. Prevention is key to this issue. However, the regulations providing for the disposal of the invasive species in question, purple loosestrife and orange hawkweed are unclear/not specified. ACAT approves of preventive measures. Prevention is the best tool, using mechanical and biological control of these plants first, such as weeding/uprooting and bagging and burning of the plant and its parts, or through insect species, preferably native, as forms of control). We advocate the use of assessments of alternatives to herbicides (through mechanical removal, biological controls, etc.) before even considering the use of herbicides, then selection of the least-toxic alternative. Use of herbicides adds another problem to an already existing one, and does not get at the "root" of the problem. Many herbicides are persistent and affect more than just the invasive species in question, as they are nonspecific. People in Alaska have been overwhelmingly opposed to the use of herbicides in vegetation management for forestry, transportation rights-of-way, and for invasive species.

In Alaska, more than in any other place in the country, people rely on the safe harvest of traditional subsistence foods and medicinal plants, including mushrooms, greens, berries, roots, fish, caribou, moose, waterfowl and terrestrial birds, and other wildlife. Subsistence foods comprise a significant, and in some communities, almost the entire diets of many Alaska Native and rural non-Native people. Thus, people are at much greater risk of exposure in areas treated with herbicides and it is especially important to use non-chemical alternatives rather than herbicides. People also rely on surface waters and individual wells to a great extent in rural Alaska. Commercial fisheries and the livelihood of fishing families are also dependent on good water quality and fish habitat—herbicide use would pose a serious hazard to the health of the commercial fisheries, the marketing and economic viability of our commercial fisheries. These important factors are often neglected in "quick fix" short term solutions.

The ecotoxicological and health effects on humans and other species should be considered. As UAA Professor of Biological Sciences, Frank von Hippel states, "Control of exotic plants should be achieved with mechanical removal or other non-chemical methods, rather than with herbicides. Many herbicides are known carcinogens and/or disruptors of the hormone systems of animals, including humans. The very fact that herbicides and other pesticides are designed to kill cells means that they are toxic, and time and time again pesticides that were supposedly safe were later banned due to their toxicity. We should not solve a problem of exotic species by creating a toxic environment for ourselves and our wildlife. Many good alternatives are available for weed control."

In a systematic review of the peer-reviewed scientific literature concerning health effects of pesticides, a team of physicians from the Ontario College of Family Physicians concluded: "The literature does not support the concept that some pesticides [including herbicides] are safer than others; it simply points to different health effects with different latency periods for the different classes...Some more surprising positive associations were found for pesticides that are considered less toxic in acute poisoning settings...[For example] the herbicides glyphosate [an herbicide used to control purple loosestrife] and glufosinate had associations with congenital malformations. Parental preconception exposure to glyphosate was associated with late abortion." Although glyphosate is touted as a "safe" herbicide, the latest science demonstrates that it is associated with serious adverse environmental and health effects.

The state must implement vegetation management strategies with the following guidelines:

- Least disruptive of natural controls.
- Least hazardous to human health.
- Minimize negative impacts to non-target organisms, including other plants (especially native/indigenous), insects, aquatic invertebrates, fish, and wildlife.
- Least damaging to ecological systems, including water quality, nutrient cycling, soil microbes, mycorhyziae, plant-animal interdependencies.
- Most likely to produce long-term solutions in vegetation control requirements.

The vegetation management program must provide regular monitoring to determine if and when treatments are needed. Educational, physical, mechanical, and biological measures of prevention and control will be given priority over chemical measures. Education regarding prevention is the most important measure as it gets to the root of the basic problem. In a conversation with a student in a gardening class, I observed that until people know that a plant is invasive, they may just plant it in their garden/yard "because it is pretty." Therefore, a precautionary approach should be taken. These plants should be banned from sale in Alaska. It is important to get people involved through coordination, education and awareness raising, participation in inventory and monitoring, research, and management through effective preventive and acceptable management, such as weeding.

Herbicides should be used only as a last resort. If herbicides are used, the state will use the smallest amount of the least toxic formulation with the least potential for contamination of subsistence resources, wildlife, or human exposure. Further, no chemical is permitted for use if it is acutely toxic or proven to cause cancer, hormone disruption, reproductive damage, immune system damage or nervous system toxicity. The state will apply the precautionary approach in all pest management decisions to prevent harm to human health and the environment from the use of toxic pesticides that have not been fully tested. The public process should be open and inclusive if herbicides are being considered in a particular area. If herbicides are used as a last resort, people that may use the area should be properly notified well in advance with publication in local newspapers and signage around the perimeter. Signage should be posted at least 72 hours in advance and left up at least 72 hours following herbicide applications. The notification and signage should include information about the environmental and health effects of the herbicides. This

protects the public's right to know about pesticides sprayed in their backyards (or someone else's backyard- it ultimately is someone's backyard).

Herbicides pose risks to workers, the public, water quality, subsistence resources, and human health. They are inherently harmful and should be replaced with safe non-chemical alternatives. Since glyphosate is a nonselective herbicide affecting non-target organisms, such as fish and plants, it may present a danger to native plant and animal species, as well as humans.

Again, we strongly urge the state to replace the use of herbicides with effective preventive measures as well as mechanical and biological controls of invasive plants through ecological methods/approaches of least-toxic pest/weed management, and prevention (education, banning sales, etc.).

Thank you for your careful consideration of our comments regarding this bill. Please assure that these comments are entered into the official public record.

Sincerely,

Varsha Mathrani, MPH, Environmental Health Coordinator
Alaska Community Action on Toxics (ACAT)

Mission: We believe that everyone has a right to clean air, clean water, and toxic-free foods. Please join as a member ($30/year), volunteer, or consider an additional financial contribution to support our work. Thank you.

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Anchorage Daily News

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'Horrific' weed poised to invade Southcentral

LOOSESTRIFE: Plant of European origin has been found growing wild in city.

By DOUG O'HARRA
Anchorage Daily News

(Published: October 13, 2005)

An invasive plant that clogs creeks and wetlands across the Lower 48 and Canada has been found growing wild in Anchorage for the first time, along Chester Creek.

Purple loosestrife is a hardy flowering perennial native to Europe that can develop dense thickets almost impossible to eliminate. It's growing along a mucky island about 100 yards upstream from Spenard Road, said Jamie Snyder, invasive plant specialist with the University of Alaska Fairbanks Cooperative Extension Service, in Anchorage.

"This is a really horrific wetland invader, pretty much across North America," Snyder said.

Its tiny seeds are carried on feathers and fur, she said, "so it's just one hop away from Potter Marsh, and then it's just one hop away from the Kenai Peninsula, where fishing industry is huge."

"This plant, if it were to get established in Potter Marsh, would absolutely cover the marsh," said Michael Shephard, plant ecologist with the state and private forestry office of the U.S. Forest Service. "There would be no more geese, no ducks, no terns, no swans."

Purple loosestrife has been found growing wild along Chester Creek. The invasive species, originally from Europe, poses a threat to the local environment and could even lead to the destruction of Southcentral fisheries. *(Photo by MICHAEL SHEPHARD / U.S. Forest Service)*

Long planted by local gardeners who thought it could not spread, the fireweedlike purple flower has become a nightmare in many Outside communities and is now listed as a noxious plant in several states and Canadian provinces. It drives out native plants such as cattails, overgrows wetlands, ruins fish passage, even blocks access from the bank for recreation.

"They start as little herbaceous plants, but over the years, they begin to form this dense woody root crown a half a meter in diameter with 30 to 50 stems," Snyder said. "Once loosestrife gets well established, the wildlife as we know it, and the plant community as we know them, and the ecosystem as we know it, will not function any more."

They can take root from cuttings or spread in place through the ground. Once they go to seed, watch out.

"Each plant can produce over 2 million seeds, and the seeds are the size of ground pepper," Snyder said.

"This one is like the Top Gun as far as prolific seeders go," said Michael Rasy, a pest control specialist with the extension service.

Snyder and Shephard will show the infestation to plant specialists, land managers and park officials this afternoon in an effort to start a loosestrife awareness campaign. Then they will carefully dig out the offending plants and their roots.

"That will be of course double bagged in heavy-duty plastic," Synder said. "You can't compost this type of plant because it would propagate. It's a form of biological pollution."

The plant could be growing wild elsewhere in the city, she said. Anyone who spots it should notify the cooperative extension service.

The outbreak of purple loosestrife in the greenbelt marks another local example of a worldwide problem: invasive plants that take root far from their original environments and begin to spread without natural predators, competition or pests.

Alaska already has more than 20 invasive weeds spreading along roads and trails, several originally planted as garden plants or flowers. One new example is the European bird cherry, or May Day tree, which has been taking over the understory in city greenbelts.

Purple loosestrife first appeared on the East Coast in the early 1800s and slowly spread. By the 1930s, it began taking over wetlands and creek bottoms.

But the varieties sold in nurseries were supposed to be sterile, or the Anchorage growing season was thought too short to allow it to seed and spread, said Julie Riley, horticultural agent with the extension service.

In 1997, Riley challenged that view, called a meeting and argued that it should no longer be planted in Anchorage. But the consensus was that no one had ever seen it outside a tended bed.

"Because it hadn't had a history of escaping at that time, it was just kind of on everybody's watch list," Riley said.

The plant has been growing at the Alaska Botanical Garden since 1996, she said, but has never grown well and often was nibbled back by moose.

"I really didn't expect that it was going to escape (from a garden), but things are really changing," Riley said. "I think we're lucky we're spotting it, because I have this vision of Westchester Lagoon being covered with purple loosestrife."

Now Riley and other gardening experts say the time has come to give up the purple plant and root it from local beds.

"We didn't think we had a problem, but we do," said Jeff Lowenfels, an Anchorage businessman and gardening columnist. "My first recommendation would be not to buy any more of these. If you have any growing in your garden, pull it up and throw it away.

"In gardening," Lowenfels added, "the first rule is do no harm."

Daily News reporter Doug O'Harra can be reached at do'harra@adn.com.

INVASIVE WEED: Learn more about purple loosestrife at

so I can't read his motivation.

However, now that you both have cooled down, it's time to explain to Arnold again how worried you were when he didn't show up or call, and ask him why he reacted the way he did. Suggest that, in e future, he give you a call when he's going to be more than an hour late.

DEAR ABBY: I'm 13 and just finished the seventh grade. I recently got my belly button pierced, and everything was fine until about a week ago. This sounds weird, but a red bump showed up at the top of my piercing, and it seems to keep swelling. I've had my belly button pierced for only a month, so I'm sure I started changing my jewelry too soon. I'm worried this bump will stay on my navel forever.

Do you have any idea what it is, and how I can get rid of it? I love my piercing and don't want to take it out. Any information would help.

— PIERCED IN MONTANA

DEAR PIERCED: You may have an infection at the site of your piercing, or be allergic to the metal in some of your navel jewelry. My advice is to ask your mother to schedule a doctor's appointment for you so the problem can be diagnosed and treated. The doctor can determine whether or not you will have to "take it out." Keep your fingers crossed and hold a good thought.

DEAR ABBY: You have asked readers to share their pet peeves with you. Well, here's mine. Please help me get the message out. When an elevator door opens, please allow the passengers who are getting off to get out of the elevator before you get on! I don't understand why people must push their way into an levator while folks are trying to get off.

— ELIZABETH IN MEDFORD, ORE.

DEAR ELIZABETH: Neither do I, unless they are so determined to be first on the elevator that they have forgotten their manners. It's only common sense that the elevator be allowed to empty before passengers begin to enter — otherwise they're jostling each other at the door.

STATE TROOPER REPORT

Thursday, July 21

• At 9:15 a.m. Kodiak troopers cited a 49-year-old Kodiak man for possessing undersize Dungeness crab. He was contacted in Middle Bay after he was observed subsistence fishing.

Saturday, July 23

• At 11 p.m. troopers responded to a report from the Kodiak Fairgrounds about an assault that had occurred with injuries. An investigation showed that a 21-year-old man from South Dakota assaulted a person during an argument. The man was arrested and remanded to the Kodiak Jail.

The injured person had a dislocated shoulder and was struck in the face. Medics were able to reset the shoulder and treat the other injuries.

Sunday, July 24

• At 12:05 a.m. troopers responded to assist the U.S.Coast Guard Military Police with an intoxicated driver. An investigation showed that a 26-year-old Kodiak woman was operating her vehicle while under the influence of alcohol. She was transported to the Kodiak Police Department for a breath test. She was then given a summons and released.

Residents kill weeds

DAILY MIRROR STAFF

Kodiak residents plucked, picked and pulled up invasive orange hawkweed plants July 16 along the bike path that parallels Benny Benson Avenue.

The effort, organized by Woody Island Tribal Council's Environmental and Natural Resources office and the Kodiak Soil and Water Conservation District, was to help reduce the spread of the aggressive plant and to increase awareness about invasive plants, according to a press release from the Kodiak Soil and Water Conversation District.

Surveys have discovered orange hawkweed taking over local lawns, native wildflower meadows and popular trails around Kodiak, the press release said. Other invasive plants in Kodiak include: Japanese knotweed, Canada thistle, bull thistle, oxeye daisy and yellow toadflax.

Fifteen bags of hawkweed were collected during the weed pull by 17 children and adults.

adn.com
Anchorage Daily News

Jeff Lowenfels: Get mad, Alaska -- declare war on invasive plants

JEFF LOWENFELS
GARDENING
(Published: August 25, 2005)

I'm turning into my dad, who happened to be the world's greatest poison-ivy hunter. Wherever we drove, no matter where we were going, how late we might be or what neighborhood we were in, he would stop the car and inform the homeowner whose yard happened to contain this dermatologically irritating vine of its dangers and how to eradicate it.

Sometimes he would just stop the car, get out and take the vines down. No matter that his sons were hiding in the back seat, afraid some homeowner believed that what he grew in his yard was no one else's business or, worse, someone we knew might recognize us.

How could it be that today I found myself knocking on the door of one of your neighbors to tell them they have the worst collection of butter and eggs (Linaria vulgaris) I've ever seen. Thousands of plants, pretty as a picture to be sure, but each in full bloom, displaying snapdragon-like yellow and orange flowers that, I know, will soon convert into thousands of seeds that can germinate instantly. Dad would be proud, and the only fear or shame I felt was that these awful invasives have proliferated and spread into virtually every yard and alley in Southcentral, and if we as a society don't do something about them, they will soon start to choke out every perennial around.

In fact, it felt so good that I may just do more of it. Lord knows it's a job that must be done. The wonderful people at the Cooperative Extension Service, the Alaska Committee on Noxious Weeds, the U.S. Geological Survey, the Bureau of Land Management and other agencies and volunteer groups need help.

There is every likelihood that your yard will be my next stop. If it isn't butter and eggs, it is oxeye daisies (Leucanthemum vulgare), bellflowers (Campanula rapunculoides), ornamental jewelweed or poor man's orchid (Impatiens glandulifera), creeping charlie or garlic mustard (Alliaria petiolata) dragon ribbon grass or reed canary grass (Phalaris arundinacae) common tansy (Tanacetum vulgare), orange or red hawkweed (Hieracium aurantiacum) or one of the dozen or so other weeds that should never be allowed to see the light of day in our fair state.

I know the cause of the problem. It's you. Most Alaskans will put anything in their yard if it's sure to flower, and these plants sure do flower. In fact, I can hear some of you declaring, "Well, mine look great in the yard and aren't causing any problems even though I have had them for years," while others will defend their decision to grow any or all of these by noting the old saw "One gardener's weed is another's passion." Both of these sentiments, however, are way off the mark.

First, it doesn't matter if a plant has pretty flowers if it turns out to be a monster that chokes out everything else in the yard or radically changes the local environment. And this is exactly what will happen. Trust me. Just look at all the butter and eggs. Ever wonder what grew in their place before? They get so thick only butter and eggs grow. This isn't just a pretty flower. It's a pretty deadly flower. All of the invasive plants are, and they destroy the beauty that is Alaska and turn it into the bad parts of New Jersey. You owe it to yourself to learn to identify and then destroy these plants. Sound harsh and cruel? Sorry. It's what must be done. No argument can overcome the

necessity.

And it doesn't make a difference that the plant is well-behaved in your yard if its seeds get loose and take off. You have no right to cause that to happen. I don't know, for example, who in Anchorage is selling poor man's orchids, but they need to stop. They are a lovely plant and, in a dry garden surrounded by grass, can be contained for years.

However, I recently tried unsuccessfully to dissuade a friend from planting two in a garden on the bank of a river. They are, after all, beautiful, big flowers on stately looking plants and usually stay put in a lawned yard. I guess I'm going to have to take another page out of my dad's book and go back one night and do my friend -- and the river they live on -- a big favor. It may sound nutty, but this flowering pest could change the fish habitat and has been known to do so.

Of all the things I have asked you to do in the almost 30 years I have written this column, this should be among those you actually do: Go to www.uaf. edu/ces/ipm/plants/plantlinks.html and check out the links. We have a problem, Alaska, and we better start taking these plants seriously, or suffer we will.

Jeff Lowenfels is a member of the Garden Writers Hall of Fame. You can reach him at www.gardener jeff.com or by joining the "Garden Party" radio show from 10 a.m. to noon Saturdays on KBYR 700 AM.

Garden calendar

• HARVEST: Take extra fresh harvest to Bean's Cafe or a food bank.

• LAWNS: Fall is a great time to aerate lawns and apply microbe foods.

• MULCHING: Grass clippings belong on annual beds even as they go through the winter. Collect some now and apply them.

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Alaska State Legislature

Please enter into the record my testimony to the House Finance
committee name

Committee on HB 324 Ban Orange Hawkweed, dated 3-7-06
bill # / subject public hearing date

Thank you for taking my testimony, my name is Janice Chumley and I live on the Kenai Peninsula.

I am asking you to support HB 324 because I have seen what can happen when plants and particularly the Hieracium (Hawkweeds) run unchecked. We have a noxious weed law in Alaska and it has not been updated in many years, since 1987 I believe. During that time many plant species have been introduced and most without concern but at this time we need to take action to stop importation of plants we already know are damaging to habitat and cause economic loss.

If you cannot find it as a legislative body to pass this bill, which I believe you should, then please encourage and finance the Division of Agriculture to update our Noxious Weed Laws and include these plants and others that will change the beauty and wilderness of Alaska. It is long overdue. We have seen the economic cost in all other 49 states when nothing is done, let's not let that happen here.

Thank you.

Signed: Janice Chumley
Testifier

Self (Kenai Peninsula Master Gardeners)
Representing (optional)

PO Box 7001 Nikiski, AK 99635
Address

(907) 776-5277
Phone number

HB

325

HOUSE COMMITTEE REPC r

(11)
Date Referred to Committee: April 12, 2006 **FURTHER REFERRALS:**

Date of Committee Action: april 19, 2006

The FINANCE Committee considered: HB 325

HOUSE BILL NO. 325 **POST-CONVICTION DNA TESTING**

"An Act relating to post-conviction DNA testing; and amending Rule 35.1, Alaska Rules of Criminal Procedure."

Recommends it be replaced with [ ] HCS *or* [X] CS *for* HB 325 (FIN)
For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR_____ **[ ] Same Title [X] New Title**

[ ] attach amendments
[ ] add new referral to _____Committee
[ ] Letter of Intent_____Committee

List of Abbrev for Depts.:
ADM
CED
COR
CRT
EED
DEC
DFG
GOV
HSS
LEG
LAW
LWF
MVA
DNR
DPS
REV
DOT
UA

NEW FISCAL NOTES *Assigned by Chief Clerk's Office				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero
LAW		X		
DPS			X	
ADM				X
ADM				X

PREVIOUS FISCAL NOTES				
List by Dept(s):	FN#	Fiscal	Indet.	Zero
COR	1			X

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
	Hawker				X
	FOSTER	X			
	Seabrook			X	
	Wagoner			X	
	Kelly			X	
	MOSES			X	
	Joule			X	
					X
Chair:	Meyer			X	
Chair:	Chenault			X	

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: CSHB 325(JUD)
() Publish Date:

Revision Date/Time (Note if correction): 4/18/06 6:53 p.m.
Dept. Affected: Administration
Title: An Act relating to post-conviction DNA testing
RDU: Legal and Advocacy Services
Component: Office of Public Advocacy
Sponsor: Representative LeDoux
Requester: (H) Finance
Component No.: 43

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2006) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

This bill clarifies procedures and sets standards for obtaining post-conviction DNA testing under the statutory provisions for post-conviction relief when a convicted individual shows by clear and convincing evidence, that the results of the DNA testing could establish a reasonable doubt as to the applicant's guilt of the crime.

Although this bill grants the petitioner the right to counsel and DNA testing at the expense of OPA, it is not possible to determine whether the number of cases qualifying under the standard set out by the statute will be significant enough to impact OPA's fiscal operations. Therefore, OPA submits a zero fiscal note.

Prepared by: Joshua P. Fink
Phone (907) 269-3500
Division: Office of Public Advocacy
Date/Time 4/18/06 6:53 p.m.
Approved by: Mike Tibbles, Deputy Commissioner
Date 4/19/2006
Agency: Administration

(Revised 1/2005 OMB)

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: HB325CS(JUD)-DPS-AST-4-14-06
() Publish Date:

Revision Date/Time (Note if correction):
Dept. Affected: Public Safety
Title "An Act relating to post-conviction DNA testi testing and amending Rule 35.1..."
RDU Alaska State Troopers
Component AST Detachments
Sponsor Representative LeDoux
Requester House Finance Committee
Component No. 2325

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	****	****	****	****	****	****
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	****	****	****	****	****	****

Estimate of any current year (FY2005) cost: 0.0
Check this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

This bill provides for court-ordered post-conviction deoxyribonucleic acid (DNA) testing of biological evidence upon application by an incarcerated person.

As proposed, AS 12.72.220 establishes the preservation of biological evidence. Subsection (d) mandates that the law enforcement agency shall preserve any biological material identified during a crime investigation. It further states that this biological material has to be preserved for the entire time the person is incarcerated in connection with that crime.

This will have a significant, but indeterminate fiscal impact on the Department of Public Safety (DPS). In addition, every law enforcement agency in the state will be severely impacted by this requirement.

Prepared by: Special Assistant Cliff Stone
Phone 907-465-2649
Division Office of the Commissioner
Date/Time 4/14/06 3:3[illegible] PM
Approved by: Commissioner William Tandeske
Date 4/14/2006
Agency Department of Public Safety

ANALYSIS CONTINUATION

Even if the word (any) is removed from the sentence containing (any biological evidence), the biological evidence has to be preserved as long as the convicted individual is incarcerated. To understand this more fully, a brief explanation is in order surrounding biological evidence. Biological can refer to any blood, saliva, semen, tissue and other cells that have been dispersed onto a variety of objects. This includes, but not limited to the following; clothing, shoes, bedding, walls, floors, ceilings, vehicles, roadways, dirt, candy wrappers, pop or beer cans, drinking glasses or coffee cups, tobacco products, straws, contents of vacuum bags and hoses, handguns, rifles, and shotguns, knives and other utensils. The preservation of evidence might also include animal samples, because pets and other animals that are retrieved, commonly come into contact with the victim or the convicted individual at some point during the crime or afterwards. Biological can also be recovered from the individual's blood, saliva, bones, hair, skin and other tissues by taking samples through a variety of methods.

Sometimes this biological evidence is contained on a swab and doesn't take up anymore room than a small envelope. Often though this evidence is a swatch of clothing or complete jackets, sweaters and pants, a section of wallboard, a pair of shoes or several pairs, a slab of concrete, a significant piece of carpeting, weapons, a box of dirt and leaves, bedding, cigarette butts, and even a tree stump. All of the above material could be connected to one case and involve 10-15 good size boxes. The evidence inside of these boxes have to be properly labeled and sealed to specifications as set forth in statute and regulations.

As you can see, the mandate of preserving this biological evidence for all individuals in prison for the life of their incarceration will quickly out grow current evidence lockers around the state. Besides additional personnel and materials needed to manage such evidence, new facilities will also be required statewide to warehouse this evidence.

This new section also contradicts the intent of the incarcerated person applying for DNA testing in that it states that any person may file an application for DNA testing.

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: CSHB325-LAW-CASL-4-11-2006
() Publish Date:

Revision Date/Time (Note if correction):
Dept. Affected: LAW
Title: "An Act relating to post-conviction DNA testing; and amending Rule 35.1, Alaska Rules of Criminal Procedure."
RDU: CRIMINAL
Component: Criminal Justice Litigation
Sponsor: Representative LeDoux
Requester: House Judiciary
Component No.:

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services	75.7	75.7	75.7	75.7	75.7	75.7
Travel	0.2	0.2	0.2	0.2	0.2	0.2
Contractual	7.4	7.4	7.4	7.4	7.4	7.4
Supplies	1.3	1.3	1.3	1.3	1.3	1.3
Equipment	6.9	0.4	0.4	0.4	0.4	0.4
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	91.5	85.0	85.0	85.0	85.0	85.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	91.5	85.0	85.0	85.0	85.0	85.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	91.5	85.0	85.0	85.0	85.0	85.0

Estimate of any current year (FY2006) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

POSITIONS

Full-time	1	1	1	1	1	1
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

This bill adds a new article to AS 12.72 allowing an incarcerated person to apply to the court for post-conviction DNA testing. This committee substitute of the original bill makes some changes that will cost the State money. Proposed AS 12.72.210 (1) allows DNA testing if the results "could" establish a reasonable doubt as to the applicant's guilt. This language is very broad in that just about anything "could" do that. The bill does not require than an applicant show due diligence in pursuing requests for DNA testing. The Department of Law is currently litigating a case in court that is 15 years old from the original trial date, and is very difficult to handle as a result, and makes a due diligence standard important. An additional provision is needed that would allow an appointed attorney to file a certificate saying that the applicant's claim has no merit - as a deterent to frivolous claims. Also, the original bill allowed the court to deny a successive application under this section. This committee substitute

Prepared by: Kathryn Daughhetee, Director
Phone: 465-3573
Division: Administrative Services Division
Date/Time: 4/12/06 1:14 PM
Approved by: Kathryn Daughhetee for David Marquez, Attorney General
Date: 4/12/2006
Agency: Department of Law

ANALYSIS CONTINUATION

does not include that language, allowing inmates to bring these lawsuits time and time again. Related to that, the CS also added language that requires police agencies to preserve any biological material collected, for the entire time that the person is in prison. Again, the broadness of this language would require that investigators save anything that is animal, vegetable or liquid, because it all could be "biological." Litigious inmates will inundate the courts with requests to test, and re-test, and re-re-test all that stored biological material every time science indicates a new testing method.

All of these considerations taken together will increase the workload of Law's Special Prosecution and Appeals section if this committee substitute is passed as written. It is anticipated that an additional 1/2 full time attorney will be needed to handle these cases. The cost of the position is in keeping with the Department of Law's FY 2007 timekeeping and billing rate. One time costs of $6,500 are added for the first year of the funding, and removed thereafter.
A full-time position is requested to allow for a full-time attorney if the workload and funds should be available. The criminal division does not employ part-time attorneys as a rule.

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: CSHB 325(JUD)
(H) Publish Date: 4/12/06

Revision Date/Time (Note if correction):
Dept. Affected: Corrections
Title " An Act relating to post-conviction DNA testing; and amending Rule 35.1, Alaska Rules of Criminal Procedure."
RDU Institutional Facilities
Component Institution Director's Office
Sponsor Representative Ledoux
Requester (H) Judicial
Component No. 1381

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE	(Thousands of Dollars)					
1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
Other (Specify Type--Do not abbreviate)	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2006) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

POSITIONS

Full-time	0	0	0	0	0	0
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: *(Attach a separate page if necessary)*

The legislation provides for court-ordered post-conviction DNA testing upon application by an incarcerated offender. As the cost of DNA sampling and analysis shall be borne by the petitioner, the fiscal impact to the Department of Corrections should be negligible. The department does not anticipate a significant fiscal impact due to the passage of the legislation.

Prepared by: Sharleen Griffin, Director
Phone (907) 465-3339
Division: Administrative Services
Date/Time 3/27/06 12:41 PM
Approved by: Portia C K. Parker, Deputy Commissioner
Date 3/27/2006
Agency: Department of Corrections

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: CSHB 325 (JUD)
() Publish Date:

Revision Date/Time (Note if correction): 4/18/06 5:51 p.m.
Dept. Affected: Administration
Title: An Act relating to post-conviction DNA testing...
RDU: Legal and Advocacy Services
Component: Public Defender Agency
Sponsor: Representative LeDoux
Requester: (H) Finance
Component No.: 1631

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	**0.0**	**0.0**	**0.0**		**0.0**	**0.0**
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2006) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

This bill clarifies procedures and sets standards for obtaining post-conviction DNA testing under the statutory provisions for post-conviction relief when a convicted individual shows by clear and convincing evidence, that the results of the DNA testing could establish a reasonable doubt as to the applicant's guilt of the crime.

Although this bill grants the petitioner the right to counsel and DNA testing at the expense of the Agency, it is not possible to determine whether the number of cases qualifying under the standard set out by the statute will be significant enough to impact the Agency's fiscal operations. Therefore, the Agency submits a zero fiscal note.

Prepared by: Quinlan Steiner, Director — Phone (907) 334-4414
Division: Public Defender Agency — Date/Time 4/18/06 5:51 p.m.
Approved by: Mike Tibbles, Deputy Commissioner — Date 4/19/2006
Agency: Administration

(Revised 9/7/05 OMB)

AMENDMENT 2

OFFERED IN THE HOUSE

TO: CSHB 325(JUD)

fails 5-5

Page 2, lines 30 - 31 and Page 3, line 1: 2A

Delete all material and insert:

"(1) by clear and convincing evidence, that if the DNA testing requested produces the results claimed by the applicant and had been admitted at trial, no reasonable trier of fact would have convicted the applicant;"

Page 4, lines 9 – 10: 2B

Delete the following:

"Notwithstanding any law or rule of procedure that bars an application for post-conviction relief as untimely, an"

Insert:

"An"

fails 3-1

HOUSE FINANCE COMMITTEE ROLL CALL

fails

DATE: 4-19-06

Amendment: Amend. 2 - HB 325
2-A

MEMBER	Favor	Oppose
MOSES	✓	
STOLTZE	—	
WEYHRAUCH	✓	
FOSTER		✓
HAWKER	✓	
HOLM	✓	
JOULE		✓
KELLY		✓
KERTTULA		✓
MEYER	✓	
CHENAULT		✓

5 5

HOUSE FINANCE COMMITTEE ROLL CALL

fails

DATE: 4-19-06

Amendment: 2B

MEMBER	Favor	Oppose
STOLTZE	—	
WEYHRAUCH		✓
FOSTER		✓
HAWKER	✓	
HOLM		✓
JOULE		✓
KELLY		✓
KERTTULA		✓
MOSES		✓
CHENAULT	✓	
MEYER	✓	

3 7

AMENDMENT 3 - adopted

OFFERED IN THE HOUSE BY REPRESENTATIVE HAWKER

TO: CS HB 325 (JUD)

Page 3, line 21, following "preserve"

Delete "any"

Page 3, line 22, following "which"

Delete "any person"

Insert "the applicant"