11476 HOUSE JUDICIARY

SEC. 103 APPLICATION TO POLITICAL SUBDIVISION OF STATE

(a) This Title is applicable and uniform throughout this state and in all counties, cities, towns and political subdivisions, whether incorporated or unincorporated therein. A county, city or town may not adopt or enforce any ordinance, pertaining to this Title, which prohibits conduct that is not prohibited under this chapter, or defining violations or penalties different from those provided under this chapter. However, this section does not preclude a county, city, town or political subdivision from revoking, canceling, suspending, or otherwise limiting a business or professional license it has issued for conduct that violates any provision of this chapter.

SEC. 104 EFFECTIVE DATE

This Title shall become effective 180 days following enactment.

TITLE II. "METHAMPHETAMINE WATCH" PROGRAM

SEC. 201 METHAMPHETAMINE WATCH

(a) Findings.

(1) ___ State finds that—

i. "Meth Watch" is a voluntary program started in Kansas as a public-private partnership in 2001;

ii. The programs goals are: to engage retailers, law enforcement, state and local agencies, and other key partners to reduce the diversion of precursor products for illicit manufacturing of methamphetamine; to increase community awareness about methamphetamine and to assist local communities in addressing the methamphetamine problem.

iii. Since implementation Kansas has reported the following benefits: reduction in the number of methamphetamine labs; unifying communities while working to reduce drugs in society, safer stores, reduced losses due to theft of precursor products, and better relations between law enforcement and retail entities;

(b) Authorization Meth Watch Program:

(1) The "agency" shall develop and maintain a program to inform retailers about the methamphetamine problem in ___ state____ and devise procedures and forms for retailers to use in reporting to the "agency" suspicious purchases, thefts or other transactions involving any products under the retailer's control which contain a regulated precursor under the provisions of this act including, but not limited to over-the-counter, nonprescription pseudoephedrine products.

(2) Reporting by retailers as required by this section shall be voluntary.

(3) Retailers participating in the Meth Watch program and reporting information to the "agency" in good faith pursuant to this section shall be immune from civil and criminal liability for a violation of this title.

(3) An appropriation of $000.00 is authorized for FY 2005/6 to implement the Meth Watch program.

TITLE III--ENVIRONMENTAL PROTECTION

SEC. 301 RESPONSE TO ENVIRONMENTAL HAZARDS ASSOCIATED WITH ILLEGAL MANUFACTURE OF METHAMPHETAMINE: GUIDELINES

(a) The ___State___ Department of Health/Department of Public Safety shall develop guidelines for the clean-up of former clandestine methamphetamine drug labs by _____, 2005.

(b) The guidelines shall be made available on the ___State___ Department of Health/Department of Public Safety internet web site and shall be available to law enforcement officials and the public upon request.

(c) The guidelines shall be reviewed and updated annually.

SEC. 302 GRANTS TO COUNTIES AND CITIES

(a) The ___State___ Department of Health/Department of Public Safety shall implement a grant program to assist local communities in their efforts to contain and clean-up clandestine methamphetamine laboratories and to preserve evidence for criminal trials.

(b) The commissioner of health/public safety is the fiscal agent for the grant program and is responsible for receiving applications for grants and awarding grants under this section. Priority must be given to applicants with high incidences of clandestine methamphetamine lab operations in the applicant's narcotics task force area relative to the area's population.

(c) Procedures for Grant Application

(1) A city or county may apply for a grant under this section by submitting an application to the commissioner of health/public safety on a form prescribed by the commissioner.

(2) To be eligible for a grant under this section, a city or county must:

(i) have a full-time fire and police service;

(ii) designate a methamphetamine lab containment team consisting of at least one police officer and one fire fighter;

(iii) have on staff at least two police officers trained by the federal Drug Enforcement Agency in methamphetamine lab containment and evidence collection. If a city does not have two officers with the training, it must agree to obtain training for at least two officers;

(iv) submit a plan for use of the grant funds that addresses how the city will evaluate and report on the activities of the methamphetamine lab containment team.

(3) A grant awarded under this section may be used for any methamphetamine lab containment team activities or expenditures including personnel costs, equipment, travel, and training.

SEC. 303 APPROPRIATION

(a) $..... is appropriated in fiscal year 2005/6 from the general fund to the commissioner of health/public safety for grants under section 301 and section 302.

TITLE IV--EDUCATION, PREVENTION, AND TREATMENT

SEC. 401 STUDY REGARDING HEALTH EFFECTS OF EXPOSURE TO PROCESS OF UNLAWFUL MANUFACTURE OF METHAMPHETAMINE.

(a) With respect to the unlawful manufacturing of methamphetamine, the Department of Health/Public Safety shall research and develop a report finding:

(1) to what extent food, water, air, soil, equipment, or other matter becomes contaminated with methamphetamine or other harmful substances as a result of the proximity of the matter to the process of such manufacturing; and

(2) whether any adverse health conditions result from the exposure of individuals to such process or to contaminated matter within the meaning of paragraph (1).

(b) REPORT - Not later than one year after the date of the enactment of this Act, the Commissioner of Health/Public Safety shall complete the report under subsection (a) and submit to the legislature a report containing the findings.

SEC. 402 GRANTS FOR EDUCATIONAL PROGRAMS ON PREVENTION AND TREATMENT OF METHAMPHETAMINE ABUSE.

(a) The Department of Health/Department of Human Services shall implement a grant program to fund programs that educate communities, particularly parents, teachers, and

others who work with youth, concerning the early signs and effects of methamphetamine use, however, as a prerequisite to receiving funding, these programs shall--

(1) prioritize methamphetamine prevention and education;

(2) have past experience in community coalition building and be part of an existing coalition that includes medical and public health officials, educators, youth-serving community organizations, and members of law enforcement,

(3) utilize professional prevention staff to develop research and science-based prevention strategies for the community to be served;

(4) demonstrate the ability to operate a community-based methamphetamine prevention and education program;

(5) establish prevalence of use through a community needs assessment;

(6) establish goals and objectives based on a needs assessment; and

(7) demonstrate measurable outcomes on a yearly basis.;

(b) $..... is appropriated in fiscal year 2005/6 from the general fund to the commissioner of health/human services for grants under section 402.

SEC. 403 METHAMPHETAMINE TREATMENT FUNDING FOR CHILDREN AND ADULTS

(a) The Commissioner of Health/Human Services may make grants to counties and cities and to nonprofit private entities for the purpose of providing treatment for methamphetamine abuse, subject to subsection (b).

(b) In addition to the purpose described in subsection (a), a grant under such subsection may be expended to treat children for any adverse health condition resulting from a qualifying methamphetamine-related exposure.

(c) Definitions- For purposes of this section:

(1) The term 'children' means individuals who are under the age of 18.

(2)(A) The term 'qualifying methamphetamine-related exposure', with respect to children, means exposure to methamphetamine or other harmful substances as a result of the proximity of the children to the process of manufacturing methamphetamine or the proximity of the children to associated contaminated matter.

(B) The term 'associated contaminated matter', with respect to the process of manufacturing methamphetamine, means food, water, air, soil, equipment, or other matter that is contaminated with methamphetamine or other harmful substances as a result of the proximity of the matter to such process.

(d) Appropriations:

(1) For the purpose of carrying out this section, $.....is authorized for fiscal year 2005/6.

(2) Of the amount appropriated under paragraph (1) for a fiscal year, not less than $..... shall be reserved for carrying out this section with respect to children.

SEC. 404 CHILD ENDANGERMENT

(a) A person who knowingly allows a child to be present within a structure where methamphetamine is being manufactured, is presumed to have neglected the child so as to adversely affect the child's health and welfare.
(b) A violation of subdivision (a) is a Class __ felony if the child is over six (6) years of age.
(c) A violation of subdivision (a) is a Class ___ felony if the child is six (6) years of age or less.

TITLE V: CONDITIONS OF RELEASE

Section 501: Denial of bail for person arrested for manufacture of controlled substance

SEC. 501 DENIAL OF BAIL

A. No police officer or sheriff may release a person arrested for any violation of [insert proper code section relating to manufacturer of controlled substance], without the violator appearing before a magistrate, judge, or court. In determining bond, bail and other conditions of release, the magistrate, judge, or court shall consider any evidence that the person is in any manner dependent upon a controlled dangerous substance or has a pattern of regular, illegal use of any controlled dangerous substance. A rebuttable presumption that no condition(s) of release on bond would assure the safety of the community or any person therein shall arise if the state shows by a preponderance of the evidence:

1. The person was arrested for a violation of [insert section from A], relating to manufacturing or attempting to manufacture a controlled dangerous substance, or possessing any of the substances listed in [insert code section listing precursors of controlled substances] with the intent to manufacture a controlled dangerous substance; and
2. The person is in any manner dependent upon a controlled dangerous substance or has a pattern of regular illegal use of a controlled dangerous substance, and the violation referred to in paragraph 1 of this subsection was committed or attempted in order to maintain or facilitate the dependence or pattern of illegal use in any manner.

Vanessa Tondini

From: Dannenberg, Libby [LDannenberg@chpa-info.org]
Sent: Monday, March 07, 2005 10:55 AM
To: Vanessa Tondini
Subject: CHPA Testimony on HB 149

Dear Ms. Tondini,

Thanks very much for your assistance with participating in today's hearing on HB 149. As we discussed, I am attaching a copy of our testimony. Although we are neutral on some aspects of the bill, we have concerns with the restriction placing pseudoephedrine products behind a counter and will testify in opposition today.

We look forward to working with the committee on this bill. Please don't hesitate to contact me if you have any questions or if I can provide more information.

Sincerely,
Libby

++++++++++++++++++++++++++++++++++
Libby Dannenberg
State Relations Counsel
Consumer Healthcare Products Association
900 19th Street, NW, Suite 900
Washington, DC 20006
(202) 429-9260
(202) 223-6835 (fax)
ldannenberg@chpa-info.org

Consumer Healthcare Products Association

A Comprehensive Approach to Stem Methamphetamine Production and Abuse is the Right Solution

Scope of the Problem

Methamphetamine abuse is a serious law enforcement and public health problem that affects entire communities. While the Drug Enforcement Administration (DEA) states that a majority of the meth used in this country is produced in "super labs" in Mexico and California, about 20 percent is produced in small, toxic labs across the country. Although these labs generally yield only enough meth for the "cook's" own personal use, the hazardous and costly environmental impact can be devastating.

Meth can be made using a variety of household products that can be purchased from any retail outlet. The ingredients include pseudoephedrine (PSE), a safe and effective decongestant found in many over-the-counter (OTC) cough/cold/allergy medications. These products, used by millions of consumers and found in virtually every medicine cabinet in America, are a convenient and cost-effective aspect of the healthcare system. Researchers at Northwestern University recently concluded that OTC cough/cold/allergy medicines save the economy and the health care system nearly $5 billion dollars a year. Instead of sitting in a doctor's waiting room for hours, in minutes a parent can visit a drugstore or grocery store and purchase a trusted and safe nonprescription medicine that has been available without a prescription for decades.

A Comprehensive Approach is the Solution

CHPA understands the scope and complexity of the methamphetamine problem and supports the need for a comprehensive, multi-disciplinary solution, including an increase in funding for law enforcement, tough restrictions on the sale and distribution of precursor chemicals, strict penalties for criminals using, producing and distributing meth, and programs focusing on demand reduction, education, and treatment. Effective anti-meth legislation should include the following:

- A retail sales limit of 6 grams for products that contain pseudoephedrine
- Elimination of the federal "blister pack" exemption
- In-store placement options for retailers to monitor and sell PSE drug products
- "Notice of Intent" to sell PSE requirement for any retailer
- Increased criminal penalties for meth traffickers
- Authorization and funding for community Meth Watch programs
- Funding for environmental cleanup, law enforcement, education, and training
- Community demand reduction programs
- Strong laws protecting drug endangered children
- Enhanced tracking and monitoring of precursor chemical imports
- Denial of bail for meth lab operators

Placing Pseudoephedrine Behind the Counter is Not the Only Answer

There are effective means of preventing criminals from obtaining pseudoephedrine products without limiting access to consumers and their families. Putting medication behind the counter will decrease consumer access to these important medicines. If the product is placed behind a counter, consumers are prevented from reading and comparing package labels for dosing instructions, ingredients, and warnings. Additionally, shelf space behind the counter may be quite limited. Therefore, retailers will not be able to stock the wide variety of cold and allergy medicines that consumers need and expect.

Other states have taken less restrictive measures and have seen similar successes.

California: California has experienced a significant decline in the number of meth lab incidents over the past three years. According to the U.S. Drug Enforcement Administration (DEA), in 2002 California law enforcement reported 1769 meth lab incidents. That number declined to 1300 in 2003, a drop of 27%. In 2004 meth lab incidents decreased even more: preliminary data obtained from the DEA on January 6, 2005, shows that number declining to 639 meth lab incidents in 2004, a reduction of more than 50%.

California statute places a 3 package/9 gram limit on each retail transaction of pseudoephedrine and ephedrine (exemption for pediatric products). The statute preempts all local ordinances so there is only one state-wide framework for retailers to apply to their stores in different communities across the state.

California also has taken significant steps toward tracking the supply-chain of pseudoephedrine and ephedrine sales. There are extensive requirements for both the registration and reporting by those individuals or companies that distribute pseudoephedrine and ephedrine products. California also requires recordkeeping and reporting of transactions involving sales of threshold amounts of pseudoephedrine and ephedrine. These requirements provide legitimate business the opportunity to continue to supply the public with needed medication while allowing law enforcement to track and eliminate less than legitimate distributors of these products.

Washington: Since adopting anti-meth legislation in 2001, Washington has seen a similar reduction in the number of meth lab incidents. In 2002 Washington recorded 1409 meth lab incidents and that number decreased to 1032 in 2003, a decline of 27%. Furthermore, between 2003 and 2004 meth lab incidents declined by an additional 34%, to 687 incidents in 2004.

The Washington statute restricts pseudoephedrine and ephedrine sales to 3 package/9 grams per retail transaction and prohibits an individual from purchasing more than 9 grams in a 24 hour period. Washington also exempts pediatric products and preempts local ordinances regulating the sale of pseudoephedrine and ephedrine products.

Furthermore, Washington has been proactive in tracing the path pseudoephedrine and ephedrine products take in the state. Reports must be submitted to the state Board of Pharmacy by manufacturers, wholesalers and retailers on pseudoephedrine and ephedrine sales and transfers and the receipt of same from out-of-state sources. Proper identification is also required for the wholesale purchase of these substances.

Washington further requires that manufacturers and wholesalers must report suspicious transactions in writing to the Board of Pharmacy and are required to maintain records of pseudoephedrine and ephedrine sales. In 2003 Washington adopted legislation which requires retailers to register with the state Department of Health and retailers may only purchase pseudoephedrine and ephedrine from wholesalers or manufacturers licensed by the Department of Health. If the retailer violates this provision then it will receive a warning from the Board of Pharmacy and if that retailer commits a subsequent violation, the Board of Pharmacy may suspend or revoke their registration. If a retailer purchases from an unlicensed wholesaler then that retailer will be subject to percentage-of-sales and record-keeping requirements.

In addition to their comprehensive legislation, Washington has a successful Meth Watch program in place. Started in 2001 in Spokane County, Meth Watch is now available in over 90% of the counties in Washington. In Spokane County, meth lab busts dropped from almost 250 in 2001 to less than 10 in 2004. It is evident that education and awareness programs along with comprehensive legislation can help reduce methamphetamine production.

Kansas: While multi-faceted legislation is the key, education is a proven tool in reducing methamphetamine production. Kansas is the home of the nationally recognized Meth Watch program. Developed in 2001 with federal grant money, Meth Watch was started as a public-private partnership between the Kansas Department of Health and Environment, the Kansas Bureau of Investigation, the Kansas Methamphetamine Prevention Project (part of the non-profit statewide drug prevention system), and Kansas retailers. To date, over thirteen states have or are in the process of developing Meth Watch programs. Since 2001, meth lab busts in Kansas have dropped from 846 to 561, an almost 40% decline.

Demand Reduction and Education Are Essential to Reducing Meth Abuse

With 80 percent of meth coming from super labs or imported in bulk form, meth is cheap and readily available on the streets. Experts report that reducing the demand for this addictive drug is the most important element to any anti-meth effort. To assist in demand-reduction efforts, CHPA currently is engaged in the second year of an innovative program with the Partnership for a Drug-Free America, the American Academy of Pediatrics, and Drug Enforcement Administration. The initiative seeks to use pediatricians and the media to help communicate to young people the health consequences of meth use, thereby reducing its demand. The campaign targets parents and teens in two test markets, Phoenix, Arizona, and St. Louis, Missouri, and features

both public relations and public service advertising. The first year of the campaign was successfully devoted to increasing the perception of risk about meth and Ecstasy among parents and teens. This second year of the campaign is focused on prompting parents to talk to their children about the dangers of meth.

Finding the Balance

CHPA believes that Congress and state legislatures should balance the need to restrict access to meth precursor chemicals and a family caregiver's need to purchase cost-effective OTC cold and allergy medicines. There is no quick fix to the meth problem. Legislators should pass comprehensive measures that keep meth cooks off the streets and provide support for law enforcement, lab cleanup, demand reduction, education, and treatment.

For additional information on federal legislation, contact Kevin J. Kraushaar, Vice President, Government Relations, or Mike Becker, Legislative Assistant. For state legislation, contact Jennifer Hawks Bland, Director, State Government Relations, or Libby Dannenberg, State Relations Counsel.

Consumer Healthcare Products Association
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www.chpa-info.org

HB 150

HOUSE COMMITTEE REPORT

(7)
Date Referred to Committee: March 22, 2005 **FURTHER REFERRALS: Finance**

Date of Committee Action: 02/03/06

The JUDICIARY Committee considered: **HB 150**

HOUSE BILL NO. 150 **LICENSING RADIOLOGIC TECHNICIANS**

"An Act requiring licensure of occupations relating to radiologic technology, radiation therapy, and nuclear medicine technology; and providing for an effective date."

Recommends it be replaced with [ ] HCS *or* [X] CS *for* HB 150 (JUD)
For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR_____ **[X] Same Title [ ] 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

***PREVIOUS* FISCAL NOTES**

List by Dept(s):	FN#	Fiscal	Indet.	Zero
CED	1	X		

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
	GARA			✓	
Peggy Wilson	WILSON		✓		
	ANDERSON	X			[redacted]
	[illegible]				
	GRUENBERG			✓	[redacted]
	KOTT				✓
Chair:	McGUIRE	X			
Chair:					

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: CSHB 150(L&C)
(H) Publish Date: 3/22/05

Revision Date/Time (Note if correction):
Dept. Affected: Commerce
Title: Licensing Radiologic Technicians
RDU: Occupational Licensing (117)
Component: Occupational Licensing
Sponsor: Anderson
Requester: House Lab & Commerce
Component No.: 2360

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services	25.2	25.2	25.2	25.2	25.2	25.2
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	6.0	6.0	6.0	6.0	6.0	6.0
Supplies	1.0	1.0	1.0	1.0	1.0	1.0
Equipment	6.0	0.0	0.0	0.0	0.0	0.0
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	**38.2**	**32.2**	**32.2**	**32.2**	**32.2**	**32.2**
CAPITAL EXPENDITURES						
CHANGE IN REVENUES (1156)	**70.4**	**0.0**	**64.4**	**0.0**	**64.4**	**0.0**

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other 1156 - Receipt Supported Services	38.2	32.2	32.2	32.2	32.2	32.2
TOTAL	**38.2**	**32.2**	**32.2**	**32.2**	**32.2**	**32.2**

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	1	1	1	1	1	1
Temporary						

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

HB 150 establishes licensure for occupations relating to radiologic technology. The division was advised that approximately 380 to 400 individuals will seek licensure under this bill. This fiscal note is based on the assumption there will be at least 400 licensees.

An explanation of the costs shown above are attached.

Prepared by: Jennifer Strickler, Administrative Manager
Phone: (907) 465-2144
Division: Occupational Licensing
Date/Time: 2/23/05 2:02 PM
Approved by: Edgar Blatchford, Commissioner
Date: 2/23/2005
Agency: Commerce, Community, and Economic Development

FISCAL NOTE #1

STATE OF ALASKA **BILL NO.** CSHB 150(L&C)
2005 LEGISLATIVE SESSION

ANALYSIS CONTINUATION

HB 150: Licensing Radiologic Technicians

Total PERSONAL SERVICES: $25.2

- Occupational Licensing Examiner I position, FPT, Range 13

This fiscal note provides funding for half of an Occupational Licensing Examiner I position to provide support to this licensing program. Last year, the division had a half time position in support of another licensing program that could have been made to full-time with this funding to support this program as well; however, that option is no longer available since that position has been assigned to support other new licensing programs. Therefore, this fiscal note identifies funding for half of a position and a corresponding position count.

Total TRAVEL: $0

Total CONTRACTUAL SERVICES: $6.0

- Printing, postage, communication, and advertising costs, $3.0
- Regulations-related costs to establish education criteria and standards, and other requirements; including AAG time, $3.0

Information has been received that licensure examinations are available from The American Registry of Radiologic Technologists. The division will seek to make arrangements with this organization for use of the licensing examinations.

Total SUPPLIES: $1.0

To fund daily operating supplies of the program.

Total EQUIPMENT (one-time costs): $6.0

TOTAL FISCAL NOTE: $38.2

REVENUE: Revenue will be generated by individuals who seek license under this bill. Based on 400 licensees, each licensee can be expected to pay approximately $176.00 biennially ($70.4 divided by 400) in direct costs; in addition to indirect costs of approximately $100.00 per person, for an approximate initial licensing fee of $276.00 biennially. Licensing fees will be adjusted at the first renewal based on actual costs and numbers of licensees.

NFIB
The Voice of Small Business®

ALASKA

National Federation of Independent Business

Statement of Support for HB 318

Private Property Rights – Eminent Domain

January 10, 2006

The Alaska Chapter of the National Federation of Independent Business has 2,500 members, making it the largest small-business advocacy group in the state. The legislative agenda of NFIB is determined by ballot. Following are the ballot results for the question regarding the government's power of eminent domain.

Should the government's power of eminent domain be restricted to prevent private property from being seized for private commercial enterprises for the purposes of economic development?

90 % YES **4% NO** **6% Undecided**

The use of eminent domain to take private property for public purposes can be a valuable tool for public uses such as transportation and utility corridors. However, the courts have steadily expanded the definition of "public purpose" to include economic development projects where private developers and large businesses benefit from eminent domain, in exchange for which the government expects higher tax revenues. Using eminent domain in this way gives rise to abuse and is generally unfair to those who lose their property. Small businesses and small property owners are disproportionately affected, and the benefits only go to a few people. If government can seize property because another owner could generate more taxes, then nobody's property is safe.

Vote YES on House Bill 318

Submitted by Thyes Shaub on behalf of NFIB/Alaska.

National Federation of Independent Business - ALASKA
217 Second St., Suite 206 • Juneau, AK 99801 • 907-463-5118 • Fax 907-463-5128 • www.NFIB.com

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.

THIS SEARCH *THIS DOCUMENT* *GO TO*
Next Hit Forward New Bills Search
Prev Hit Back HomePage
Hit List Best Sections Help
Contents Display

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 212 (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.)

Widener University

D. Benjamin Barros
Associate Professor of Law

Testimony of D. Benjamin Barros Before the House of Representatives State Government Committee

Hearing on House Bills 1835 and 1836 Concerning Eminent Domain

August 31, 2005

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attempt to use the power of eminent domain to transfer private property, including people's homes, to a private developer. New London's justification for taking the property was to spur economic development, and the Court concluded that this type of "economic development taking" satisfied the public use requirement of the Constitution's Just Compensation Clause.

Unsurprisingly, the legislative response around the country to *Kelo* has focused on preventing economic development takings by restricting the scope of the type of public use sufficient to justify an exercise of eminent domain. House Bills 1835 and 1836 fit this mold.

I want to suggest that this broad approach misses a key component of the public's outrage over *Kelo*. My sense from reading reactions to *Kelo* and from talking with many people about the issue is that most people are not particularly worked up about economic development takings in a generic sense. Rather, what seems to be at the core of most people's concern is the possibility that their local governments might take their *homes* to clear land for a private developer, as the town of New London did in the project that gave rise to the *Kelo* litigation.

Focusing on homes would be consistent with the common-sense notion that homes are different from other types of property. People become personally attached to their homes. Homes tie people to their communities. Displacement of people from their homes can separate them from family, friends, schools and jobs.

I therefore suggest that you consider giving additional protection to homes in the eminent domain context. While restricting economic development takings is at the forefront of people's minds after *Kelo*, you also should consider protecting homes from

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Widener University

D. Benjamin Barros
Associate Professor of Law

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August 31, 2005

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Mr. Chairman, members of the Committee, thank you for the opportunity to be here today. My name is Ben Barros, and I am an Associate Professor of Law at Widener Law School in Harrisburg. I both teach and write on eminent domain issues. I am familiar with the issues raised in the Supreme Court's decision in *Kelo v. New London* and with the response to that decision in legislatures around the country.

Kelo sparked a tremendous amount of public outrage over the potential for government abuse of the power of eminent domain. I believe that the legislature should respond to this public outrage and enact measures to protect private property from eminent domain abuse. House Bills 1835 and 1836 are an encouraging step in the right direction. Eminent domain, however, is an important tool for local governments, and the legislature must be careful not to overly restrict local governments' ability to take property for legitimate reasons. Your very difficult task is to determine where to strike the right balance.

My testimony today has two parts. First, I will suggest that you consider giving homes additional protection from being taken by eminent domain. Second, I will address some issues raised by the language of House Bills 1835 and 1836 about striking the right balance between protecting private property owners and maintaining local governments' ability to act in the legitimate public interest.

Protecting Homes

Like most of the bills proposed around the country in response to *Kelo*, House Bills 1835 and 1836 apply equally to all kinds of property. *Kelo* involved New London's

attempt to use the power of eminent domain to transfer private property, including people's homes, to a private developer. New London's justification for taking the property was to spur economic development, and the Court concluded that this type of "economic development taking" satisfied the public use requirement of the Constitution's Just Compensation Clause.

Unsurprisingly, the legislative response around the country to *Kelo* has focused on preventing economic development takings by restricting the scope of the type of public use sufficient to justify an exercise of eminent domain. House Bills 1835 and 1836 fit this mold.

I want to suggest that this broad approach misses a key component of the public's outrage over *Kelo*. My sense from reading reactions to *Kelo* and from talking with many people about the issue is that most people are not particularly worked up about economic development takings in a generic sense. Rather, what seems to be at the core of most people's concern is the possibility that their local governments might take their *homes* to clear land for a private developer, as the town of New London did in the project that gave rise to the *Kelo* litigation.

Focusing on homes would be consistent with the common-sense notion that homes are different from other types of property. People become personally attached to their homes. Homes tie people to their communities. Displacement of people from their homes can separate them from family, friends, schools and jobs.

I therefore suggest that you consider giving additional protection to homes in the eminent domain context. While restricting economic development takings is at the forefront of people's minds after *Kelo*, you also should consider protecting homes from

more traditional exercises of eminent domain. People unhappy about their homes being taken for a shopping mall are likely to be only marginally less unhappy if their homes are taken for something that fits the classic picture of a public use, like a highway.

Many other areas of law treat homes differently than other types of property. Most relevant here, the legal system already gives special protection to people's possession of their homes in a number of contexts, such as making it harder for a lender to foreclose on a home than to repossess another type of property. The law also gives special treatment to homes when interests other than possession are at stake. For example, the government is held to a higher standard when it searches a home than when it searches other types of property, like cars or undeveloped land.

Recognizing that homes are special does not mean that local governments should be prohibited in all circumstances from taking homes. There are times when taking homes is vital to the public interest. But there are a number of approaches that you could take to give homes additional protection and encourage government entities to take homes only as a last resort. For example:

- Responding directly to *Kelo*, you could prohibit the taking of homes for economic development, but allow economic development taking of some other types of property.
- You could permit the taking of a home for *any* type of public use only after a finding, reviewable by a court, that there is no alternative course of action that would serve the same public goal at a reasonable cost.
- You could require governments to pay a premium (say 10% or 15%) over fair market value for a taken home, which would both provide an

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.

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 Democra., 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.

Return to the article

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CONGRESSMAN
JOEL HEFLEY

For Immediate Release

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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 —

Back to Press Releases

Home | News Room

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.

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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.

SB

155

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM March 3, 2005

SUBJECT: CSHB 155(JUD) including amendments
(Work Order No. 24-LS0614\F)

TO: Representative Lesil McGuire
Attn: Vanessa Tondini

FROM: Donald M. Bullock Jr.
Legislative Counsel

Enclosed is CSHB 155(JUD). This version includes two changes made in committee.

First, the title has been shortened to cover the funding for youth courts in sec. 2 and the accounting for fines imposed and collected under AS 12.55.035.

Second, in addition to the language deleted by Representative Gruenberg's amendment #1, additional language is deleted through the end of the sentence. The additional language was deleted to conform to the amendment that deleted the reference to the United Youth Courts of Alaska.

If I may be of further assistance, please advise.

DMB:jad
05-135.jad

Enclosure

HOUSE COMMITTEE REPC T

(7)
Date Referred to Committee: February 16, 2005 **FURTHER REFERRALS: Finance**

Date of Committee Action: March 2, 2005

The JUDICIARY Committee considered: **HB 155**

HOUSE BILL NO. 155 **USE CRIMINAL FINES FOR YOUTH COURTS**

"An Act relating to youth courts and to the recommended use of criminal fines o fund the activities of youth courts; and relating to accounting for criminal fines."

Recommends it be replaced with [ ] HCS *or* [X] CS *for* HB 155 (JUD)
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				✓
HESS		✓		

PREVIOUS FISCAL NOTES

List by Dept(s):	FN#	Fiscal	Indet.	Zero

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
Tom Anderson	ANDERSON	X			
[illegible]	Dahlstrom	X			
[illegible]	[illegible]	X			
[illegible]	[illegible]				
Chair: [illegible]	McGuire	✓			
Chair:					

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: HB155-LAW-CDCP-3-1-(
() Publish Date:

Revision Date/Time (Note if correction):
Dept. Affected: LAW
Title "An Act relating to youth courts and to the recommended use of criminal fines to fund activities..."
RDU CRIMINAL
Component Criminal Justice Litigation
Sponsor Representative Samuels
Requester House Judiciary
Component No.

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
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 (FY2005) 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)*

This bill amends AS 12.55.035 in the Code of Criminal Procedure by adding a requirement that fines collected shall be separately accounted for as general fund program receipts. The Department of Law already accounts for the receipts this way. Additionally, the bill allows the legislature to appropriate 25% of the criminal fines collected to fund youth courts in Alaska. The Department of Law also relies on these funds to help pay for its Collections unit in the Civil Division. The FY 2005 level of that appropriation is $306,800 and our FY 2006 funding request is $324,800. Based on FY 2004 actuals, approximately $1.2 million in fines was collected by the unit, so at least for now, sufficient funds appear to be available to satisfy a 25% appropriation without jeopardizing the Department of Law's funding. We therefore do not anticipate a fiscal impact from passage of this legislation.

Prepared by: Kathryn Daughhetee, Director
Phone 465-3673
Division Administrative Services Division
Date/Time 3/1/05 1:48 PM
Approved by: K. Daughhetee for Scott Nordstrand, Acting Attorney General
Date 3/1/2005
Agency Department of Law

(Revised 9/23/2004 OMB)

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: HB155-DHSS-DJJ1-03-02-05
( ) Publish Date:

Revision Date/Time (Note if correction): 3/1/05 5:30 p.m.
Dept. Affected: Health & Social Services

Title: RELATING TO YOUTH COURTS AND CRIMINAL FINES
RDU: Juvenile Justice
Component: Probation Services

Sponsor: SAMUELS
Requester: HOUSE (JUD)
Component No.: 2134

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services	36.8	36.8	36.8	36.8	36.8	36.8
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	36.8	36.8	36.8	36.8	36.8	36.8
CAPITAL EXPENDITURES						
CHANGE IN REVENUES (0)						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	36.8	36.8	36.8	36.8	36.8	36.8
1037 GF/Mental Health						
Other(Specify Type-do not abbreviate)						
Other(Specify Type-do not abbreviate)						
TOTAL	36.8	36.8	36.8	36.8	36.8	36.8

Estimate of any current year (FY2006) cost:
Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

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

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

This fiscal note is based on the assumption that the Legislature wants to appropriate 25% of the fines collected from the Alaska Court System to help fund youth courts in Alaska as this legislation would allow.

Currently, an Associate Coordinator position within the Director's Office of the Division of Juvenile Justice manages the youth court grants that currently exist. On this fiscal note, the Division is reflecting the proposed appropriation of a .5 FTE at this same level. Based on the estimated 35 additional grants that would be incurred for this Division, it has been determined that an additional part-time position would need to be established to absorb the additional workload.

Prepared by: Patty Ware — Phone 465-2112
Division: Juvenile Justice — Date/Time 03/01/2005
Approved by: Joel S. Gilbertson, Commissioner — Date 03/02/2005
Agency: Department of Health and Social Services

Amendment #1 by Rep. Gruenberg

PASSED

CSHB 155 (JUD)

Page 1, lines 11-12

Delete ", or (2) the United Youth Courts of Alaska"

Conceptual Amendment #2 by Rep. Gruenberg
PASSED

CSHB 155 (JUD)

Appropriately Narrow the title to cover only those things covered in the bill.
(especially referring to second part of title "and relating to accounting for criminal fines")

24-LS0614\G
Bullock
2/28/05

CS FOR HOUSE BILL NO. 155(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVES SAMUELS, Wilson, McGuire, Holm, LeDoux, Hawker, Harris, Anderson, Croft

A BILL

FOR AN ACT ENTITLED

"An Act relating to youth courts and to the recommended use of criminal fines to fund the activities of youth courts; and relating to accounting for criminal fines."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

*** Section 1.** AS 12.55.035 is amended by adding a new subsection to read:

(g) Fines imposed and collected under this section shall be separately accounted for under AS 37.05.142.

*** Sec. 2.** AS 47.12 is amended by adding a new section to article 3 to read:

Sec. 47.12.410. Funding for youth courts. The legislature may appropriate 25 percent of the fines imposed under AS 12.55.035 and collected and separately accounted for by the state under AS 37.05.142 to the department for distribution to (1) youth courts established and operating under AS 47.12.400, or (2) the United Youth Courts of Alaska for distribution by that organization to youth courts established and operating under AS 47.12.400. Nothing in this section creates a dedicated fund.

*** Sec. 3.** The uncodified law of the State of Alaska is amended by adding a new section to

read:

TRANSITION. Notwithstanding the requirements of AS 12.55.035(g), enacted by sec. 1 of this Act. and AS 47.12.410, enacted by sec. 2 of this Act, that fines collected under AS 12.55.035 be accounted for separately, the Alaska Court System shall deposit money collected under AS 12.55.035 in the general fund and shall, by February 1 of each year, provide to the Department of Administration, to the Legislative Budget and Audit Committee, and to each house of the legislature an estimate of the money collected under AS 12.55.035 for that fiscal year.

*** Sec. 4.** Section 3 of this Act is repealed on the date that the Alaska Court System has the capability to separately track and account electronically for money collected under AS 12.55.035. The executive director of the Alaska Court System shall notify the lieutenant governor and the revisor of statutes when the electronic capability described in this section has been obtained.

Vanessa Tondini

To: Doug Wooliver
Subject: RE: HB 155

From: Doug Wooliver [mailto:dwooliver@courts.state.ak.us]
Sent: Friday, February 25, 2005 11:41 AM
To: Vanessa Tondini; Sara Nielsen
Subject: HB 155

Hello, Vanessa and Sara. This is just to put in writing what I tried to explain to Vanessa earlier this morning. I doubt that I was very clear.

The court system can track criminal fines as a separate category in those locations where our new computer system is operational. So far that means Palmer, Anchorage and Fairbanks. The bill poses no problems for us in those locations. The problem is in the other areas that have yet to get the new system. In those locations our old computer system tracks fines along with forfeitures. We cannot separate the two. This means that we cannot separately account for fines in those locations, as required under HB 155. We have a similar problem with tracking surcharges.

What we can do is provide the legislature with an estimate of the amount of fines we collect each year. That estimate will be fairly accurate as we have a pretty good idea as to the percentage of the "fines and forfeitures" grouping that represent fines. Additionally, slightly over 50% of the fines will come from Palmer, Anchorage and Fairbanks. That means that we only have to estimate half of the fines. By the end of next year we will have more courts on the new system and our estimate will be even more accurate. Each year will get better until all of our courts are on the new system.

In 1998 the legislature passed HB 261, which dealt with surcharges. Section 10 of that bill allows us to come up with an annual estimate as to the amount of surcharges we will collect and we report that each year to the legislature. That system works well and we could do the same for fines. That is what I asked the drafter to do for the CS.

I hope that this all makes sense and that the sponsors are OK with this option. I think that it will still get you what you presumably want, which is a dollar figure for fines collected.

There is one other option that comes to mind. You could simply refer to a set percentage of the fines and forfeitures collected (our accounting category) and we could give you an exact amount each year.

Please let me know if you have any questions or concerns. I am on my way to the airport now but I will be in Anchorage on Monday (264-8265) and back in Juneau Monday night.

Doug

January 24, 2005

Senate President
Alaska State Legislature
State Capitol, Room 107
Juneau, AK 99801-1182

The 1998 session surcharge bill, SCS CSHB 261, required the court system to estimate the money collected each fiscal year from this legislation. Court system fiscal staff estimates that $XXXX of surcharges will be collected during fiscal year 2005.

If you have any questions on this information, please contact Rhonda McLeod at 264-8215.

Very truly yours,

Stephanie J. Cole
Administrative Director

cc: _____, Alaska Police Standards Council
C. S. Christensen III, Alaska Court System

REPRESENTATIVE RALPH SAMUELS

HOUSE DISTRICT 29

Memorandum

Date: February 17, 2005

To: Representative Lesil McGuire, Chair
House Judiciary Committee

From: Representative Ralph Samuels

RE: Hearing Request for HB 155

Please schedule a hearing for HB 155 at your earliest convenience. The bill simply would allow the Legislature to annually allocate funds to support the youth courts of Alaska.

Attached you will find:

1. **HB 155**
2. **Sponsor Statement**

Email: Representative_Ralph_Samuels@legis.state.ak.us
Session: Alaska State Capitol, Juneau, Alaska 99801-1182 • Phone: (907) 465-2095 Fax: (907) 465-3810
Interim: 716 W. 4th Ave., Anchorage, Alaska 99501-2133 • Phone: (907) 269-0240 Fax: (907) 269-0242

REPRESENTATIVE RALPH SAMUELS

HOUSE DISTRICT 29

HB 155

SPONSOR STATEMENT

"An Act relating to youth courts and to the recommended use of criminal finds to fund the activities of youth courts; and relating to account for criminal fines."

HB 155 would create a separate accounting mechanism for fines collected by the Alaska Court system in criminal judgments and would authorize the legislature to appropriate up to 25% of those collected fines either directly to local youth courts or to the United Youth Courts of Alaska for distribution to local youth courts.

Currently youth courts operate in fourteen communities throughout Alaska: Anchorage, Delta Junction, Fairbanks, Homer, Juneau, Kake, Kenai, Ketchikan, Kodiak, Kotzebue, Mat-Su, Nome, Sitka and Wrangell. The Anchorage Youth Court, established in 1989, is the oldest of the programs. In the first two quarters of the current fiscal year, there have been 471 youth offenders referred to these programs, 397 adjudications, and 8,833 hours of community service and $7,502.00 in restitution ordered.

Since 1989, 4,049 cases have been referred to the Anchorage Youth Court alone. These youth offenders have completed a total of 85,576 community work service hours and paid $68,300.00 in restitution to victims. These programs, while unique in their own ways, are working. A 2002 Urban Institute study found that only 6% of offenders going through the Anchorage Youth Court re-offend -- by far the best percentage of any court in the study.

Most of the youth offenses prosecuted by local youth courts would otherwise go unpunished because of limited resources of the traditional court system. Failure to intervene and hold first time offenders accountable for their illegal acts results in more frequent and serious juvenile crimes in the future. Youth courts provide an effective avenue to intervene early with young offenders and set them on the right track or so they do not become adult offenders.

HB 155 will provide a way for the legislature to annually allocate funds to support this effective, worthwhile, and cost efficient program.

Email: Representative_Ralph_Samuels@legis.state.ak.us

Session: Alaska State Capitol, Juneau, Alaska 99801-1182 • **Phone:** (907) 465-2095 **Fax** (907) 465-3810

Interim: 716 W. 4th Ave., Anchorage, Alaska 99501-2133 • **Phone:** (907) 269-0240 **Fax:** (907) 269-0242

HB

175

HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: February 24, 2005 **FURTHER REFERRALS:** Finance

Date of Committee Action: March 4, 2005

The JUDICIARY Committee considered: **HB 175**

HOUSE BILL NO. 175 **CIVIL LEGAL SERVICES FUND**

"An Act relating to the creation of a civil legal services fund."

Recommends it be replaced with [ ] HCS *or* [X] CS *for HB 175 (JUD)

***For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR_____** [X] Same Title [ ] 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				✓
GOV				✓

PREVIOUS FISCAL NOTES

List by Dept(s):	FN#	Fiscal	Indet.	Zero

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
	Kott	—			
	Gruenberg	-			
	Dahlstrom	X			
	Coghill			✓	
	Cole	✓			
Chair:	McGuire	✓			
Chair:					

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: HB175-LAW-L&SA-1-18-
() Publish Date:

Revision Date/Time (Note if correction):
Dept. Affected: LAW
Title "An Act relating to the creation of a civil legal services fund."
RDU Civil
Component Labor & State Affairs
Sponsor Representative McGuire
Requester House Judiciary
Component No.

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
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 (FY2005) 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)*

This bill amends AS 37.05.146 to add a new subsection under c creating a civil legal services fund funded with punitive damages collected by the state under AS 09.17.020(j).The legislature may make appropriations from the fund to organizations that provide civil legal services to low-income individuals. Passage of this legislation will have no foreseeable impact on the Department of Law.

Prepared by: Kathryn Daughhetee, Director
Phone 465-3673
Division Administrative Services Division
Date/Time 3/2/05 4:17 PM
Approved by: K. Daughhetee for Scott Nordstrand, Acting Attorney General
Date 3/2/2005
Agency Department of Law

(Revised 9/23/2004 OMB)

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: HB 175
() Publish Date:

Revision Date/Time (Note if correction):
Dept. Affected: OMB
Title: An Act relating to the civil legal service
RDU
Component
Sponsor: McGuire
Requester
Component No.

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
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 (FY2005) 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)*

Prepared by: Brad Pierce
Phone
Division: OMB
Date/Time: 3/2/05 11:05 AM
Approved by:
Date: 3/2/2005
Agency

(Revised 9/23/2004 OMB)

ALASKA STATE LEGISLATURE

Rep. Lesil McGuire, Chair
Rep. Tom Anderson, Vice-Chair
Rep. John Coghill
Rep. Nancy Dahlstrom
Rep. Pete Kott
Rep. Les Gara
Rep. Max Gruenberg

State Capitol, Room 120
Juneau, AK 99801-1182
(907) 465-4990
Fax (907) 465-6592

House Judiciary Committee

Memorandum

To: Don Bullock, Leg. Legal

From: Vanessa Tondini, Committee Aide
House Judiciary Committee

Date: March 7, 2005

Re: CS Request

Please create a final draft House Judiciary Committee Substitute for work order # 24-LS0656\G, HB 175, incorporating the attached conceptual amendment. The bill was passed out of committee last Friday.

If you have any questions, please call me at 4990.
Thank you!

conceptual

AMENDMENT #1 - PASSED

OFFERED IN THE HOUSE JUDICIARY BY COGHILL

TO: HB 175

Page 1, line 14

Delete: "determined under 45 C.F.R. Part 1611"

Insert "that do not exceed one hundred and twenty-five percent (125 percent) of the current official Federal Poverty Income Guidelines "

[Code of Federal Regulations]
[Title 45, Volume 4, Parts 1200 to End]
[Revised as of October 1, 1999]
From the U.S. Government Printing Office via GPO Access
[CITE: 45CFR1611.3]

[Page 414]

TITLE 45--PUBLIC WELFARE

CHAPTER XVI--LEGAL SERVICES CORPORATION

PART 1611--ELIGIBILITY--Table of Contents

Sec. 1611.3 Maximum income level.

(a) Every recipient shall establish a maximum annual income level for persons to be eligible to receive legal assistance under the Act.

(b) Unless specifically authorized by the Corporation, a recipient shall not establish a maximum annual income level that exceeds one hundred and twenty-five percent (125 percent) of the current official Federal Poverty Income Guidelines. The maximum annual income levels are set forth in Appendix A.

(c) Before establishing its maximum income level, a recipient shall consider relevant factors including:

(1) Cost-of-living in the locality;

(2) The number of clients who can be served by the resources of the recipient;

(3) The population who would be eligible at and below alternative income levels; and

(4) The availability and cost of legal services provided by the private bar in the area.

(d) Unless authorized by Sec. 1611.4, no person whose income exceeds the maximum annual income level established by a recipient shall be eligible for legal assistance under the Act.

(e) This part does not prohibit a recipient from providing legal assistance to a client whose annual income exceeds the maximum income level established here, if the assistance provided the client is supported by funds from a source other than the Corporation.

24-LS0656\G
Bullock
3/3/05

CS FOR HOUSE BILL NO. 175(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVE MCGUIRE

A BILL

FOR AN ACT ENTITLED

"An Act relating to the creation of a civil legal services fund."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

*** Section 1.** AS 37.05.146(c) is amended by adding a new paragraph to read:

(78) civil legal services fund under AS 37.05.590.

*** Sec. 2.** AS 37.05 is amended by adding a new section to read:

Sec. 37.05.590. Civil legal services fund. The civil legal services fund is established as a special account in the general fund. The fund consists of appropriations to it. Annually, the legislature may appropriate to the fund the amount deposited into the general fund of the state under AS 09.17.020(j), less the costs of collection, if any, incurred by the state. The legislature may make appropriations from the fund to organizations that provide civil legal services to low-income individuals. Nothing in this section creates a dedicated fund. In this section, "low-income individual" means an individual with an income equal to or less than the maximum income levels for Alaska determined under 45 C.F.R. Part 1611.

Vanessa Tondini

From: Andy Harrington [aharrington@alsc-law.org]
Sent: Thursday, March 03, 2005 11:51 AM
To: Brian Hove; Vanessa Tondini
Cc: Vance Sanders; Art Peterson
Subject: SB 19 & HB 175

Dear Brian and Vanessa,

First, thanks again for your work on the civil legal services fund!

Vanessa, thanks also for yesterday's phone message about the hearing; I left a message for you this morning, but thought I'd email as well. I'm home today with a head cold, but feel free to call me at 479-3990. I'll be at the Fairbanks LIO tomorrow afternoon for the hearing - I can make a brief statement, and be available for any questions. I think Art Peterson will be there in person in Juneau.

There were two minor changes suggested by the Department of Law in conversations subsequent to the Senate Judiciary hearing in January.

The first was a phone call I had from former Dept of Law attorney (soon to be District Court Judge) Keith Levy, calling to ask if it would create any problems for ALSC if the reference to "maximum income levels for Alaska determined by the Legal Services Corporation" were changed to "maximum income levels for Alaska determined under 45 CFR Part 1611 or successor provisions." I told him I didn't think it would create any problems from my perspective. I think his thought behind that change was that it was better to cross-reference a duly enacted federal regulation.

The second arose during a discussion which ALSC President Vance Sanders and I had last week with Acting Attorney General Scott Nordstrand about the bill, at the suggestion of Chief of Staff Jim Clark. Mr. Nordstrand's only concern was that any costs of collection the State might incur with respect to the punitive damage assignments should come out of the proceeds before they were put into the civil legal services fund. He didn't think these had been major, but he thought that, although he wouldn't mind the money going into the civil legal services fund, he didn't want the bill to create a disincentive for the Dept of Law to collect the funds. We talked a bit about whether this should be done as a percentage of the proceeds, or whether the Department of Law would want to keep track of those costs and report them annually, and he indicated a preference for the latter approach, to avoid over- or under-estimating those costs. He said it would address his concern if there was language in the bill making reference to the costs of collection. We also talked about ALSC helping with a public information campaign to make sure the bar was informed about the requirement, and working with the court system to see if judgment forms could be amended to specifically reference the statute, as ways of minimizing the effort the Dept of Law would need to put into collection efforts.

Brian, as you suggested this morning, I'm attaching a draft that includes language addressing these Dept of Law concerns.

And, again, thanks for your help!

Sincerely,

Andy Harrington
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1648 South Cushman, Suite 300
Fairbanks AK 99701
907-452-5181
Fax 907-456-6359

Alaska State Legislature

Session
State Capitol Building, Room 118
Juneau, Alaska 99801-1182
Phone (907) 465-2995
Fax (907) 465-6592

Interim
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Fax 9907) 269-0249

Chair, Judiciary Committee

Vice-Chair, House Committee on
Economic Development,
Trade and Tourism

Member
Oil & Gas Committee

Representative Lesil McGuire

House District 28

Sponsor Statement
HB 175
"An Act relating to the creation of a civil legal services fund."

HB 175 is designed to provide a financial mechanism whereby the legislature may make appropriations to organizations that provide civil legal services to low-income Alaskans. This would be accomplished through the creation of a civil legal services account funded by provisions required under AS 09.17.020(j). This section of Alaska law requires that 50% of all punitive damage awards be turned over to the state and deposited into the general fund.

The civil legal needs of economically disadvantaged Alaskans are generally no different than anyone else's. Family law, health, will and probate issues know no socio-economic boundaries. Yet when these needs arise, self-represented litigants quite often find themselves unable to effectively represent their interests. Furthermore, these situations often place the judge in the inappropriate position of offering legal advice or even mediating between parties.

Since 1966, the Alaska Legal Services Corporation (ALSC) has assisted low-income Alaskans with their civil legal needs. The ALSC is not a state agency but rather a non-profit entity. The ALSC has been funded by a combination of state, federal and private sources. However, over the last several years these funds have been on the decline.

The inherent logic of HB 175 lies in the fact that the funds utilized to assist the disadvantaged in civil legal matters flow out of the civil legal system itself. So, high-stakes civil cases provide the funding mechanism for smaller, but no less important cases impacting low-income Alaskans. Furthermore, necessary efficiencies are achieved throughout the entire process by working these cases through a non-profit entity such as ALSC.

HB 175 identifies an ongoing source of funding designed to aid the ALSC in its efforts to provide civil legal assistance to low-income Alaskans. This is accomplished through use of the state's 50% share of civil damage awards deposited to the general fund. It is important to note that HB 175 does not create a mandatory expenditure. Each legislature possesses an option to appropriate these monies to a civil legal services fund.

AARP Alaska

March 3, 2005

Honorable Lesil McGuire, Chair
House Judiciary Committee
Alaska State Capitol, Room 118
Juneau, Alaska 99801-1182

Dear Chair McGuire: RE: HB 175 (McGuire) – Support

On behalf of the AARP members in Alaska, we encourage your colleagues on the House Judiciary Committee to support your bill to create a civil legal services fund.

HB 175 would provide a mechanism to provide some financial support for legal assistance programs that benefit low-income Alaskans. Many older Alaskans and their families need legal support for civil issues but, due to recent funding declines, such assistance is limited. HB 175 would not draw on General Funds but would be funded through punitive damage awards that are turned over to the state. Many states have worked creatively to continue low-income legal assistance programs. HB 175 is another example of good, positive creative public policy.

AARP recommends an "AYE" vote on HB 175.

Should you have any questions about our position, please feel free to contact me (586-3637) or Patrick Luby, AARP Advocacy Director (907-762-3314).

Thank you for your consideration.

Sincerely,

Marie Darlin

Marie Darlin, Coordinator
AARP Capital City Task Force
415 Willoughby Avenue, Apt. 506
Juneau, AK 99801
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463-3580 (fax)

CC: Representative Tom Anderson
Representative John Coghill
Representative Nancy Dahlstrom
Representative Pete Kott
Representative Les Gara
Representative Max Gruenberg

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48

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OPINION

OUR VIEW

Legal aid

Small veto is big mistake

Gov. Frank Murkowski went easy with his veto pen this year, trimming only $5 million in spending. Thanks to record-high oil prices, he didn't need huge cuts to balance the budget. And he didn't need to make huge cuts to right-size the government. Fifteen years of shrinking oil revenues have enforced sufficient austerity. Alaska's challenge is finding new, recurring revenue to sustain essential services without gambling on high oil prices or eating up rainy-day reserves.

Though Gov. Murkowski's reductions were small, one in particular was a big mistake. The $62,500 he cut from legal aid to the poor is a serious hit to a shoestring operation that tries to fulfill the nation's promise of equal justice for all.

Alaska Legal Services handles civil cases, such as divorces, child custody, child support, evictions and domestic violence restraining orders. A 2002 study by the Justice Center at UAA found that the agency is "short-staffed, with stretched budgets" and relies heavily on recruiting volunteer lawyers, which eats up significant staff time.

Getting volunteers for the Bush is especially difficult. Private lawyers there are few, and it costs a lot to fly out volunteers from urban areas. In fact, Legal Services "is still almost the only source of civil legal assistance for the majority of the population" in the Bush, according to the Justice Center.

Gov. Murkowski is wrong when he says that funding legal aid to the poor "is not a basic responsibility of state government." Justice is not a commodity to be bought and sold in the free market. Funding legal aid for the poor levels the playing field and upholds the American ideal of equality under the law. While the governor's cut is small in total dollars, it has a big impact on a struggling agency doing an important job for vulnerable members of society.

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My Turn: Veto of legal service funds hurts little guy

Sunday, July 25, 2004

By Janell Hafner

L ast Tuesday, in what can only be deemed an attempt to further refine his message of lack of concern for the little guy, Gov. Frank Murkowski vetoed $62,500 from the state budget earmarked for of the Alaska Legal Services Corp.

ALSC is a nonprofit with the singular purpose of reducing the legal consequences of poverty and providing legal assistance and equal access to the court system for individuals who would otherwise be unable to afford counsel.

The governor's position on his cuts to a program aimed at helping low-income Alaskans navigate the legal system was to state that the "state's support to this nonprofit organization has declined over the years." That sort of nonsensical reasoning is indicative of Murkowski's term in office; yet as an individual potently aware of the legal inequality in our state I remain dismayed at his cavalier attitude.

Murkowski asserts that "providing a grant to an organization that provides legal assistance to individuals is not a basic responsibility of state government." I would argue otherwise. Alaska courts are bound to provide an impartial and accessible forum for all persons, and our government is charged with protecting and ensuring due process and equality for all Alaskans.

For a government official to provide lip service on working for a better Alaska while simultaneously engaging in practices that erode the ability of everyday Alaskans to educate themselves and properly navigate the laws of our state is not only dishonest, it's downright immoral. It is the sort of behavior we've grown accustomed to in politics of late but something that many of us, in moving here from the Lower 48, thought we might escape.

Alexander Hamilton once said that "justice is the end of government. It is the end of civil society. It ever has been and ever will be pursued until it be obtained, or until liberty be lost in the pursuit." The sum of $62,500 might mean only a little "belt-tightening" to the D.C. expats now

circulating in Juneau and Anchorage, but it sure sends a potent message about the priority this administration places on the rights of working poor. It might well mean ALSC loses a branch office, or a couple of staff attorneys, or both, but it certainly means that deserving Alaskans who desperately need legal assistance will be met with a sign reading "closed due to budget cuts."

Low-income Alaskans aren't usually kicking out big campaign contributions, and so the groups that cater to their constitutional needs aren't generally first on the list to receive the administration's praise. If the governor's Web site is accurate, and he believes the opportunity and responsibility to make a better Alaska lies with all of us, perhaps he could set the example by leading. Perhaps he could "tighten another belt," or be a little more honest with himself and his staff about impact of legal services in peoples lives, even if it isn't popular and even if it isn't cost-effective. Our constitution might not always come cheap, but $62,500 isn't much.

• Janell Hafner is a lawyer employed at Reges & Boone, LLC, in Juneau.

Click here to return to the original story

ALSC is important, needs its funding

Letter to the editor

Tuesday, July 27, 2004

Janell Hafner's "My Turn" article in Sunday's Empire, criticizing Gov. Frank Murkowski's veto of the legislature's appropriation to the Alaska Legal Services Corp., is excellent. Her analysis of its effect on "the little guy" is right on the mark. We have to hope that the governor's veto will be overridden.

ALSC has been helping low-income Alaskans since 1967. Organized under Alaska law, it is part of a nationwide program that provides free civil-law assistance - legal advice as well as representation in court. It helps assure that people without much money can have their rights and interests protected, whether in matters of domestic violence, housing, subsistence, improper governmental action, and a range of other issues. It helps protect basic human dignity and traditional American values. Clearly, this activity is to the benefit of all Alaskans.

Attorneys in Alaska - those in private as well as those in public practice - support one of the best pro bono publico programs in the country by donating their time and effort to cases for which the litigants cannot afford to pay. Alaska Legal Services , as an organization, along with a couple of other organizations, serves as a structural foundation for this kind of work, and it needs to pay its employees - the lawyers, the paralegals, the secretaries, and other staff - who have their own families to support.

The great cost-efficiency of the legal-aid program, represented by ALSC in Alaska, is astounding. The lawyers work for a fraction of the salary they could receive in the private sector, and typically they put in huge amounts of uncompensated overtime, simply because they are dedicated to the principle of equal access to the legal system. It's a program that provides the biggest "bang for the buck." Apparently, Murkowski believes in neither this principle nor this degree of efficiency.

Hafner is to be praised for her efforts, the ALSC staff is to be thanked for its continued work on behalf of low-income Alaskans, and the governor's veto of the ALSC appropriation needs to be overridden.

Art Peterson

Juneau

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B-6 Friday, July 23, 2004 Anchorage Daily News

Anchorage Daily News

OPINION

OUR VIEW

Legal aid

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