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Scam artists dial for dollars on Internet phones
Caller ID spoofing has emerged as a useful tool for fraudsters

News Story by Andy Sullivan

MARCH 21, 2005 (REUTERS) - Internet phone services have drawn millions of users looking for rock-bottom rates. Now they're attracting identity thieves looking to turn stolen credit cards into cash.

Some Internet phone services allow scam artists to make it appear that they are calling from another phone number -- a useful trick that enables them to drain credit accounts and pose as banks or other trusted authorities, according to online fraud experts.

"It's like you've handed people an entire phone network," said Lance James, who as chief technology officer of Secure Science Corp. sees such scams on a daily basis.

The emerging scams underline the lower level of security protecting voice over IP. Traditional phone networks operate over dedicated equipment that is difficult for outsiders to penetrate. But because VoIP calls travel over the Internet, they cost much less -- but are vulnerable to the same security problems that plague e-mail and the Web. Internet worms that snarl online networks can render VoIP lines unusable, and experts at AT&T Corp. say VoIP conversations can be monitored or altered by outsiders.

Federal Trade Commission Chairman Deborah Platt Majoras

recently warned that unscrupulous telemarketers could use VoIP to blast huge numbers of voice messages to consumers, a technique known as SPIT, for "spam over Internet telephony."

All of these threats remain largely in the realm of theory, although Caller ID spoofing has emerged over the past six months as a useful tool for identity thieves and other scam artists, according to fraud experts.

Any reporter would scramble for a ringing phone that reads "White House media line" on its Caller ID display. But it's not the Bush administration on the line -- it's Ralph Echemendia, calling from a mobile phone on a remote Georgia highway. "You can see how this sort of thing could be used in a very malicious way," said Echemendia, a security instructor at the Intense School, a technology training company.

Caller ID spoofing is not prohibited by law, but the Federal Communications Commission requires telemarketers to identify themselves accurately, a spokeswoman said.

Echemendia built his own system to spoof calls, but several free or low-cost services allow even technical novices to falsify Caller ID information as well.

Debt collectors and private investigators use Camophone.com's 5-cents-per-call service to trick people into answering the phone, according to messages posted on a discussion board. Traveling salesmen say the service comes in handy when they want clients to return calls to the main office, rather than to their motel room.

James said criminal uses of Caller-ID spoofing have become more common.

Wire-transfer services like Western Union require customers to call from their home phone when they want to transfer money in an effort to deter fraud -- a barrier easily sidestepped by any identity thief using a Caller-ID spoofing service. Fraud rings can now transfer money directly out of stolen credit card accounts, rather than buying merchandise and reselling it, he said.

Western Union spokeswoman Danielle Periera said the company has no other way to verify that transfer requests are valid. "We try hard to stay one step ahead of them and recognize that scam artists are sophisticated and often change their schemes," she said.

Criminals can use Caller ID spoofing to listen to other people's voice mail, James said, especially when those accounts are not protected by passwords.

They also have begun to use the technology to make it appear that they are calling from a bank or other financial institution, said Dave Jevans, who chairs the Anti-Phishing Working Group, a banking industry task force. That helps them convince consumers to divulge account numbers, passwords and other sensitive information in a scam that echoes the "phishing" e-mails that have become common, he said.

VoIP industry pioneer Jeff Pulver, whose Free World Dialup service can be used to spoof calls, said he couldn't prevent abuse of his system. But the problem will likely recede as companies like VeriSign Inc. and NeuStar Inc. develop ways to verify online identities, he said. "We're not there yet, but we're going to get there," Pulver said.

Internet phones a hacking risk?

Low-cost services may attract identity thieves looking to turn stolen credit cards into cash.

March 18, 2005 3:45 PM EST

WASHINGTON (Reuters) - Internet phone services have drawn millions of users looking for rock-bottom rates. Now they're also attracting identity thieves looking to turn stolen credit cards into cash.

Some Internet phone services allow scam artists to make it appear that they are calling from another phone number -- a useful trick that enables them to drain credit accounts and pose as banks or other trusted authorities, online fraud experts say.

"It's like you've handed people an entire phone network," said Lance James, who as chief technology officer of Secure Science Corp. sees such scams on a daily basis.

The emerging scams underline the lower level of security protecting Voice Over Internet Protocol, or VOIP, the Internet-calling standard that has upended the telecommunications industry over the past several years.

Traditional phone networks operate over dedicated equipment that is difficult for outsiders to penetrate. Because VOIP calls travel over the Internet, they cost much less but are vulnerable to the same security problems that plague e-mail and the Web.

Internet worms that snarl online networks can render VOIP lines unusable, and experts at AT&T ([Research](#)) say VOIP conversations can be monitored or altered by outsiders.

Federal Trade Commission Chairman Deborah Platt Majoras recently warned that unscrupulous telemarketers could use VOIP to blast huge numbers of voice messages to consumers, a technique

known as SPIT, for "spam over Internet telephony."

All of these threats remain largely in the realm of theory. Caller ID spoofing, on the other hand, has emerged over the past six months as a useful tool for identity thieves and other scam artists, according to fraud experts.

President Bush on the line

Any reporter would scramble for a ringing phone that reads "White House media line" on its caller ID display.

But it's not the Bush administration on the line -- it's security instructor Ralph Echemendia, calling from a mobile phone on a remote Georgia highway.

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industry task force.

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The problem will likely recede as companies like VeriSign Inc. (Research) and NeuStar Inc. develop ways to verify online identities, he said: "We're not there yet, but we're going to get there." ■
what's this?

Caller-ID Spoofing: 'Appallingly Bad Idea'

By Erika Morphy
 NewsFactor Network
 September 2, 2004 1:26PM

A new software system that allows users to fool telephone caller-ID into displaying false numbers opens the door to a variety of abuses. "What an appallingly bad idea," says Graham Cluley of security firm Sophos.

[COMPLETE STORY](#)

A startup company has developed a software system that allows users to spoof a caller-ID number in order to trick the telephone-call recipient into answering the phone.

Developed by Star38, the service will be marketed solely to collection agencies, private investigators and the police, according to statements made by the company.

The system itself is said to be easy to use, with the user typing in the recipient's number and the number he or she would like to appear on the caller ID.

Appallingly Bad

Critics of the system -- and there are many, even outside the usual privacy/consumer-advocacy brigade -- find the technology frightening. "What an appallingly bad idea," says Graham Cluley, managing consultant for security and antivirus firm Sophos. "It reminds me of the hacker-driven spam and phishing scams that have taken over the Internet," he told NewsFactor.

In fact, it is a much worse form of deception than Internet fraud, says John Morris, staff counsel for the Center for Democracy & Technology, a Washington-based public-policy organization with a focus on technology.

Reasonable Expectation

"On the Internet, most people understand that the identity of someone who is sending an e-mail may easily be spoofed," Morris told NewsFactor. "But the phone, historically, has had a different set of expectations or assumptions. Most people that have Caller ID assume the number listed is accurate."

In news accounts, Star38 has emphasized its intent to limit the technology to the police, collection agencies and private investigators.

However, "there really isn't anything that will prevent this kind of technology from being used by other firms, such as telemarketers, now that it has been developed," Morris says, adding, "in this age of identity theft, we are skeptical that spoofing other phone numbers on Caller ID is a desirable development."

One scenario, Morris suggests, might be someone purporting to call from a distant relative's house, claiming the person had an accident.

Potential for Abuse

But even assuming that Star38 keeps the technology in the hands of collection agencies, private investigators and the police, there still would be cause for worry.

While the police may well have a legitimate need for the technology in criminal investigations, the potential for abuse by collection agencies and PIs is huge.

For example, there have been cases of stalkers retaining private investigators to find victims who went into hiding.

As for collection agencies, the potential for abuse is even wider. "We don't understand what purpose a legitimate collections agency would have in hiding its identity," Morris says.

The typical example, of course, is an agency that uses the system to get a phone-shy debtor to answer the call and coax him or her into paying the debt.

Collection agencies, though, have not entirely shed their less-than-upstanding practices since the passage of the Fair Debt Collection Practices Act. Recently, one firm was fined for continually contacting and harassing a debtor's neighbors -- a practice clearly illegal under FDCP.

Over the Line

More often, though, when these agencies go over the line, it is a little more discreet.

Recently, a legal journal reported that a court found a collection agency had made false statements as to the time limit of a debt-discount offer; reportedly, the firm told the debtor she had 30 days to make a payment if she wanted to get a percentage taken off her debt. In truth there was no time limit of 30 days -- a deception prohibited by the law.

Which brings us back to Star38's latest contribution to the Internet age. In his first take on the system, Morris says he does not believe the system itself violates the tenets of FDCP. When it gets in the hands of the agencies, though, that may be a different story.

"I do believe we will see some deceptive practices on the part of the agencies that will violate the spirit of FDCP," he says.

Caller ID: Do you really know who's calling?

By [Ben Charny](#) CNET News.com August 30, 2004, 4:37 PM PT

Your Caller ID feature may no longer be telling the truth.

This week, a company is launching technology that will make it possible for someone to choose what appears on phones that have Caller ID, the feature for displaying identifying information about an incoming call.





It could be a different phone number, or even a few words, said Jason Jepson, founder of [Star38](#), which has developed the commercial Caller ID spoofing service. Sales of Star38 will be limited to licensed private investigators and collection agencies, Jepson said. The service will cost \$20 a month plus airtime charges.

The technique for replacing the usual bits of identifying information, such as ph

Caller ID Spoofing Service Debuts Sept. 1, 2004

Star38's service disguises who is making the call but will only be sold to collection agencies, private investigators, and law-enforcement personnel.

By Paul Travis
[InformationWeek](#)

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A service introduced Wednesday can send misleading information to phones that display Caller ID information, which is used to identify who is placing a call before the called party answers the phone.

The service will only be sold to collection agencies, private investigators, and law-enforcement personnel, says Jason Jepson, founder and CEO of Star38. "This is not for public use," he says. "We just opened today and we've gotten 600 inquiries so far."

The service will let collection agencies and others avoid breaking laws that prohibit them from using phony phone numbers when they try to collect money, Jepson says. His service will provide them with a legitimate phone number--but one that can't be associated with the actual caller, he says.

Potential customers must go to the Star38 Web site and download an application. They must provide copies of business licenses and other proof that they are the types of businesses that Jepson wants to serve. Once that information is verified--a process that can take seven to 10 days--a customer is granted access to the Star38 service.

For a collection agency to use the service, it would log on to the Star38 server and telephone-switching system and fill out a form with the target's phone number. The Star38 system places the call and, if answered, automatically routes the call to the collection agency's call center or other specified phone number. If the target isn't home and calls back later, the call will be automatically routed to the collection agency's phone.

Jepson says he has purchased several phone numbers from local telephone companies; one of these is what pops up on the Caller ID screens used by many consumers to see who's calling them.

"We are providing collection agencies with another option," Jepson says. "Our service will completely document each call, including how long it took, when it was made, and data like that." The service costs \$20 per month, plus 7 to 10 cents per minute for phone charges.

one number and name, that accompany inbound calls was discovered a few years ago by hackers. Privacy advocates fear that in the wrong hands, commercial services have the potential to be abused. For instance, telemarketers could use technologies similar to Star38's to trick people into answering a call that looks like a familiar phone number.

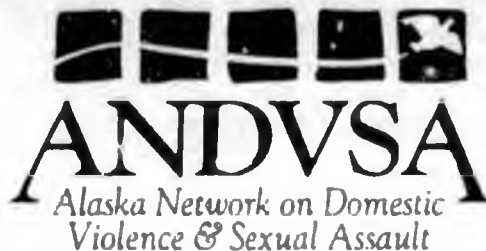
Star38 aims to overcome the stigma created by earlier pranksters and thieves. "Unfortunately, what's happened is some hackers have got to it first and gave it a bad name," Jepson said. "If they step back and see the forest through the trees, they'd realize what they are doing is hard and illegal. What we are doing is neither."

The company plans to explore other markets as well. For example, Jepson said he's begun talks with Musicphone, a San Francisco-based service that lets people send songs, along with personalized messages, to any kind of phone--cellular or standard.

Musicphone wants to use Star38's software to send even more information about certain artists, he said. A Musicphone representative could not immediately be reached.

WHITEPAPERS & WEBCASTS

Juneau Office
130 Seward St #209
Juneau, Alaska 99801
Phone: (907) 586-3650
Fax: (907) 463-4493
www.andvsa.org



Sitka Office
PO Box 6631
Sitka, Alaska 99835
Phone: (907) 747-7545
Fax: (907) 747-7547

April 10, 2006

The Honorable Bob Lynn
State House of Representatives
Alaska State Capitol
Juneau, AK 99801-1182

Dear Representative Lynn:

The Alaska Network on Domestic Violence & Sexual Assault is a statewide coalition of member shelter and community based programs that provide direct services and advocacy for victims of domestic violence and sexual assault. We would like to thank you for introducing House Bill 308, "An Act relating to false caller identification", and offer our support.

Victims of interpersonal violence are often harassed and stalked through the phone system by perpetrators. One very important protection that victims use is caller ID to prevent unknown numbers from reaching them. This is a key safety feature for victims because when perpetrators reach them to threaten, cajole, "guilt trip", or even beg forgiveness, the emotional effects can be devastating.

One easy query on the internet finds the ad: "*Free Voice Changer & Call Recording: Call anyone and Fake your Caller ID.*" It is chilling to know that perpetrators have such easy access to these threatening tools and that they currently face no consequence for using it.

The Network strongly supports this legislation to make use of this software illegal and we thank you for your leadership in addressing this issue.

Please let me know if I can offer other support for this legislation.

Sincerely,

Peggy Brown
Executive Director

Member Programs

Anchorage AWAIC, AWRC, STAR Barrow AWIC Bethel TWC Cordova CFRC Dillingham SAFE Fairbanks IAC
Homer SPHH Juneau AWARE Kenai LeeShore Center Ketchikan WISH Kodiak KWRCC Kotzebue MFCC
Nome BSWG Palmer AFS Seward SCS Sitka SAFV Unalaska USAFV Valdez AVV



CONGRESSMAN

Tim Murphy

Working For The 18th District Of Pennsylvania


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Biography

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At a young age, Tim Murphy learned that hard work is the key to success. He was one of eleven children, born to working class parents who stressed the importance of family, education and self-reliance.

He worked his way through college and graduate school, eventually earning a PhD in psychology. He started a family of his own, opened a small business, went to work at hospitals across Western Pennsylvania, consulted for schools and Head Start, and taught at the University of Pittsburgh. He authored several publications, including two books: the award-winning "The Angry Child," and "Overcoming Passive-Aggression." During this time, he became widely known as "Dr. Tim" through regular appearances on local and national radio and television.

From 1997-2002 he served in the Pennsylvania State Senate. As an elected official, and one of very few with a health care background, he found that he could help more families. He penned the state's historic Patient Bill of Rights and increased funding for medical research, while consistently supporting responsible fiscal management government to promote job creation and reduce the tax burden on families.

He took this commitment to Congress when he began representing the people of the 18th district of Pennsylvania in 2003.

He got to work immediately in Washington. In just his second term, Congressman Murphy was named a member of the Energy and Commerce Committee. He has three subcommittee assignments: Commerce, Trade, and Consumer Protection; Energy and Air Quality, and Environment and Hazardous Materials. Tim quickly emerged as a leader among his peers and was elected by his colleagues to serve as President of the 2003 class. He also is recognized as a leader in Congress on mental health issues, and serves as Co-chair of both the Congressional Mental Health Caucus, and the 21st Century Healthcare Caucus.

During his tenure in the state Senate, he served as chair of the Pennsylvania Committee on Aging and Youth. He utilized this unique experience to ensure the recent Medicare Prescription Drug Act would work in conjunction with Pennsylvania's PACE program. As a result, it is estimated that PACE will save up to \$150 million over the next two years.

Tim Murphy makes it a priority to bring together business and community leaders to focus on new and innovative ways to retrain our job force to better position Western Pennsylvania to face the challenges of the new world economy. Representing a district with a large number of veterans – and a member of the Sons of American Legion himself, he firmly supports our armed services and shows commitment to our veterans by working to expand benefits and improve services to veterans' health care.

Nan and Tim Murphy reside in Upper St. Clair with their daughter, Bevin who is currently attending college. They attend St. Thomas More Catholic Church in Bethel Park.

He earned a bachelors degree from Wheeling Jesuit University, a master's degree from Cleveland State University, and a his PhD from the University of Pittsburgh.

A fierce proponent of community involvement, he is a strong advocate of the Rails to Trails programs, an active participant in events for Habitat to Humanity and member of several Rotary Clubs and Chambers of Commerce.



CONGRESSMAN Tim Murphy

Working For The 18th District Of Pennsylvania



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Veterans' Affairs

Rep. Murphy attends a hearing at the House Committee on Veteran's Affairs.

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CONGRESSMAN

Tim Murphy

Working For The 18th District Of Pennsylvania



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Email Congressman Murphy

D.C. Office

Phone: (202) 225-2301
 Fax: (202) 225-1844
 322 Cannon House Office Building
 Washington, DC 20515

Chief of Staff: Susan Mosychuk

Legislative Director: Michael Layman

Communications Director: Mark Carpenter

Scheduler: Morgan Jones

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Legislative Assistant (Energy): Gregory Lovejoy

Legislative Correspondent: Brandon Fisher

Staff Assistant: Kishore Thota

Main District Office

Phone: (412) 344-5583
 Fax: (412) 429-5092
 504 Washington Rd
 Pittsburgh, PA 15228

District Director: Nick Redondo

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Westmoreland District Office

Phone: (724) 850-7312
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Capitol Mail is Delayed

Due to the various screening procedures set in place since the anthrax incidents our Washington office is receiving mail 2-3 weeks late.


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SpoofCard calling cards offers you the ability to change what someone see in their caller ID display when they receive a phone call.

Key Benefits: Make calls truly private, Ability to record calls, Change your voice, Fun and inexpensive, Easy to use and fast to set up!
Instant Access!

SPOOF CARD FEATURES:

- Caller ID Spoofing
- Voice Changer
- Call Recording
- Web Control Panel

No computer needed! Simply dial the toll free number from the calling card you purchase.

1. Enter your pin number.
3. Enter Destination number.
2. Enter Any Caller ID Number you wish to display.
4. Choose the voice you would like to use.
5. Your call is connected using the specified Caller ID Number.

As an added bonus, we offer you the option to record your conversation for **FREE** which you can later retrieve by logging-in to your control panel or calling our 800 number from anywhere.

In addition, we also offer the ability to change your voice to sound like a man, a women or yourself for **FREE**.



Become a Distributor
Great Commissions.
Make money.
Sells Itself.



Control Panel Login

Calling Card Pin:

[Lost/Forgot PIN](#)

- BUY INSTANT CALLING MINUTES**
- ADD MONEY TO EXISTING CARD**
- FREQUENTLY ASKED QUESTIONS**
- INTERNATIONAL RATES**
- CUSTOMER SERVICE**
- PRIVACY POLICY**

Purchase \$10 Calling Card

- 60 Minutes USA Talk Time
- Caller ID Spoofing
- Free Call Recording
- Customer Service Support



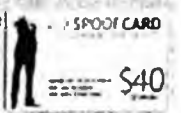
Purchase \$20 Calling Card

- 120 Minutes USA Talk Time
- Caller ID Spoofing
- Free Call Recording
- Customer Service Support



Purchase \$40 Calling Card

- 240 Minutes USA Talk Time
- Caller ID Spoofing
- Free Call Recording
- Customer Service Support





Frequently Asked Questions

How does SpoofCard work?

SpoofCard is a regular calling card. SpoofCard can be accessed through our dedicated toll free number where a user enters their pin number, desired Caller ID and the number they would like to call. The call is then placed instantly without the need to ever be online or at a computer.

Does SpoofCard offer call recording?

Yes, SpoofCard offers FREE call recording with instant access via your online control panel or by calling the toll free number.

How can I change my voice?

SpoofCard offers the ability to select a Male or Female voice when making a call. The feature works in real-time and allows the caller to speak in a normal tone while the person on the other end will hear the changed voice.

Are there any restrictions with using SpoofCard?

To ensure SpoofCard is used within our User Agreement, we have implemented several security measures which includes the inability to dial toll free numbers or 911. Federal Regulations prohibit the use of our technology by telemarketers or debt collectors to hide or falsify the telephone number from which they are calling. You must agree that you will not use the SpoofCard in violation of this or any other applicable law or regulation.

What are the advantages of Caller ID spoofing?

Caller ID spoofing gives business professionals the ability to manipulate their identity to their choosing and stay anonymous. Caller ID spoofing is also valuable in defeating popular telephone services such as "*57 Call Trace", "*69 Last Call Return", "Anonymous Call Rejection" and "Detailed Billing". Private Investigators will find Caller ID spoofing valuable for pretext calls.

Who may sign up for your service?

Our target market consists of, but is not limited to, businesses such as. Private Investigators, Law Enforcement, Skip Tracers, Insurance Agencies and Lawyers.

Does SpoofCard store my credit card information?

No, SpoofCard never receives your credit card information from our payment processors, keeping your information secure.

Can I call internationally?

Currently we only support the option to call within the United States and Canada

Control Panel Login

Calling Card Pin:

ENTER Lost/Forgot PIN

- BUY INSTANT CALLING MINUTES**
- ADD MONEY TO EXISTING CARD**
- FREQUENTLY ASKED QUESTIONS**
- INTERNATIONAL RATES**
- CUSTOMER SERVICE**
- PRIVACY POLICY**

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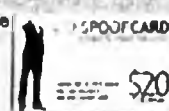
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BUY NOW

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BUY NOW

Purchase \$40 Calling Card

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MORE INFO

Can we send any number as the Caller ID and does it have to be 10 digits long?

You may send any number as the Caller ID. Within the U.S. the number should be 10 digits long (NXX-XXX-XXXX) to guarantee proper delivery, but you may pass numbers of variable length such as "0", "411" or "12345". Results may vary based on location and the receiving ends telephone provider.



How do we sign up?

To sign up please visit the Buy Now Page.

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LEGISLATIVE RESEARCH REPORT

MARCH 10, 2005



REPORT NUMBER 05.220

LEGISLATION IN OTHER STATES: CALLER ID FALSIFICATION, OR "SPOOFING"

PREPARED FOR REPRESENTATIVE BOB LYNN

BY CHUCK BURNHAM, LEGISLATIVE ANALYST

You asked about caller ID falsification, or "spoofing." Specifically, you asked if any states have considered legislation that would make illegal "spoofing"—that is, using electronic means to cause caller ID systems to display false information. Further, you asked how a law making this practice illegal in Alaska might be crafted.

In mid-2004, a flurry of media interest surrounding caller ID systems was generated when hackers discovered that the systems could be manipulated, through fairly simple means, to display incorrect information on a receiving party's caller ID display. Concern over the systems' vulnerability intensified later in the year when a company announced plans to offer a commercial product that would enable purchasers to spoof caller ID systems at will. Although the vendor eventually opted to offer the product only to law enforcement agencies, which can use the tool as an incognito means to contact and locate wanted individuals, privacy advocates and consumer groups voiced concern that the misuse of such technology could be instrumental in identity theft schemes and other inappropriate or illegal actions.

Our research identified only one state, New York, that has thus far considered legislation specifically related to caller ID spoofing.¹ We include, as Attachment A, copies of two bills currently under consideration in New York.

Although legislation has not yet been widely considered specifically with regard to spoofing Caller ID systems, under certain circumstances such chicanery may be illegal in a number of states under laws intended to address other issues. In 2002-2003, for example, a number of states enacted legislation creating "do not call lists." Generally, these laws require telemarketers to remove from their databases the telephone numbers of people appearing on the list, thereby

¹ Our research included Lexis database searches of the current laws of the fifty states and of all state legislation introduced in the years 2003-2005 using the terms "caller ID" and "caller identification." There may be states with laws of similar practical application, but worded such that our Lexis queries did not identify them.

allowing consumers to "opt out" of receiving soliciting phone calls. Some such laws included other restrictions on the business practices of telemarketers with regard to caller ID systems. Michigan, for instance, passed Act 612 (2002), which included the following section:

A telephone solicitor shall not intentionally block or otherwise interfere with the caller ID function on the telephone of a residential telephone subscriber to whom a telephone solicitation is made so that the telephone number of the caller is not displayed on the telephone of the residential telephone subscriber.

The Michigan law defines "telephone solicitation" as using "any voice communication over a telephone for the purpose of encouraging the recipient of the call to purchase, rent, or invest in goods or services during that telephone call . . ." It is unclear, therefore, to what degree spoofing caller ID systems for purposes other than solicitation may be covered by this law. We include, as Attachment B, a copy of Michigan Public Act 612 (2002).

We are unable to identify a model law as a basis for drafting such legislation in Alaska perhaps because no direct precedent yet exists for making illegal the falsification of caller ID systems. You may want to contact Legal Services for more information on this matter.

I hope you find this information to be useful. Please do not hesitate to contact us if you have questions or need additional information.

Attachment A

New York Assembly Bill 1603 (2005)

New York Senate Bill 1075 (2005)

2005 NY A.B. 1603

NEW YORK 228TH ANNUAL LEGISLATIVE SESSION

ASSEMBLY BILL 1603
2005-2006 REGULAR SESSIONS
JANUARY 21, 2005

INTRODUCED BY M. OF A. SWEENEY, WEISENBERG, CLARK, A. COHEN, SEDDIO, BRADLEY,
HOOPER, AUBERTINE, PHEFFER -- MULTI-SPONSORED BY -- M. OF A. AUBRY, M. COHEN,
COLTON, L. DIAZ, GALEF, GORDON, GRANNIS, HIKIND, JOHN, KOON, LAFAYETTE,
MAGEE, MAYERSOHN, PEOPLES, PERRY, P. RIVERA, ROBINSON, SCHIMMINGER, STRINGER,
TOWNS -- READ ONCE AND REFERRED TO THE COMMITTEE ON CORPORATIONS, AUTHORITIES
AND COMMISSIONS

2005 Bill Text NY A.B. 1603

VERSION-DATE: January 21, 2005

SYNOPSIS: AN ACT to amend the public service law, in relation to defining and prohibiting caller ID scamming

NOTICE: [A> UPPERCASE TEXT WITHIN THESE SYMBOLS IS ADDED <A]

TEXT: THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The public service law is amended by adding a new section 92-g to read as follows:

[A> SECTION 92-G. CALLER ID SCAMMING. 1. DEFINITIONS. AS USED IN THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS. <A]

[A> (A) "CALLER ID EQUIPMENT" SHALL MEAN ANY DEVICE THAT IS PART OF OR ATTACHED TO A TELEPHONE RECEIVER THE PURPOSE OF WHICH IS TO DISPLAY OR OTHERWISE INDICATE THE TELEPHONE NUMBER OR OTHER IDENTIFIER OF THE PERSON OR TELEPHONE INITIATING THE CALL; <A]

[A> (B) "CALLER ID SCAM" SHALL MEAN ANY SCHEME, PLAN, SUBTERFUGE OR DEVICE INTENDED TO CAUSE THE CALLER ID EQUIPMENT USED BY ANY PERSON RECEIVING A TELEPHONE COMMUNICATION TO INDICATE THAT SUCH TELEPHONE COMMUNICATION WAS INITIATED AT A TELEPHONE NUMBER OTHER THAN THE NUMBER OF THE TELEPHONE BEING USED BY THE CALLER; AND <A]

[A> (C) "TELEPHONE COMMUNICATION" SHALL MEAN "TELECOMMUNICATION SERVICES" AS DEFINED IN PARAGRAPH (G) OF SUBDIVISION ONE OF SECTION ONE HUNDRED EIGHTY-SIX-E OF THE TAX LAW. <A]

[A> 2. IT SHALL BE UNLAWFUL FOR A PERSON INITIATING A TELEPHONE COMMUNICATION TO ENGAGE IN OR USE ANY CALLER ID SCAM WITH THE INTENT TO DEFRAUD A PERSON RECEIVING SUCH TELEPHONE COMMUNICATION. <A]

[A> 3. IT SHALL BE UNLAWFUL FOR A TELEPHONE SOLICITOR IN MAKING OR CAUSING TO BE MADE A CONSUMER TELEPHONE CALL TO USE ANY CALLER ID SCAM WITH THE INTENT TO DEFRAUD A CONSUMER RECEIVING SUCH CONSUMER TELEPHONE CALL. FOR THE PURPOSES OF THIS SUBDIVISION THE TERMS "TELEPHONE SOLICITOR" AND "CONSUMER TELEPHONE CALL" SHALL HAVE THE MEANINGS ASSIGNED TO SUCH TERMS IN SUBDIVISION ONE OF SECTION THREE HUNDRED NINETY-NINE-P OF THE GENERAL BUSINESS LAW. <A]

[A] 4. THE COMMISSION UNDER THE DIRECTION OF THE CHAIRMAN IS HEREBY EMPOWERED TO ESTABLISH AND ADOPT RULES AND REGULATIONS TO EFFECTUATE THE PROVISIONS OF THIS SECTION. <A]

[A] 5. ANY VIOLATION OF THIS SECTION IS PUNISHABLE BY A CIVIL PENALTY OF NOT MORE THAN ONE THOUSAND FIVE HUNDRED DOLLARS. <A]

Section 2. This act shall take effect on the one hundred eightieth day after it shall have become a law; provided, however that effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized and directed to be made and completed on or before such effective date.

SPONSOR: Swleney

SUBJECT: TELEMARKETING (90%); RESIDENTIAL TELEPHONE SERVICE (90%); FRAUD & FINANCIAL CRIME (90%); LEGISLATION (78%); LEGISLATORS (78%); TAX LAW (73%); TAXES & TAXATION (73%); FINES & PENALTIES (73%); TELECOMMUNICATIONS (55%);

LOAD-DATE: January 26, 2005

2005 NY S.B. 1075

JANUARY 24, 2005

INTRODUCED BY SENS. ALESÌ, LITTLE, MALTESE, TRUZZO -- READ TWICE AND ORDERED
PRINTED, AND WHEN PRINTED TO BE COMMITTED TO THE COMMITTEE ON CONSUMER
PROTECTION

2005 Bill Text NY S.B. 1075

VERSION: Introduced

VERSION-DATE: January 24, 2005

SYNOPSIS: AN ACT to amend the general business law, in relation to preventing certain persons from fraudulently impersonating others on caller ID

NOTICE: [A] UPPERCASE TEXT WITHIN THESE SYMBOLS IS ADDED [A]

TEXT: THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The general business law is amended by adding a new section 399-cc to read as follows:

[A] SECTION 399-CC. FRAUDULENT IMPERSONATION BY CALLER ID. 1. AS USED IN THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS: [A]

[A] A. "BOARD" SHALL MEAN THE CONSUMER PROTECTION BOARD; AND [A]

[A] B. "PERSON" MEANS ANY NATURAL PERSON, ASSOCIATION, PARTNERSHIP, FIRM, CORPORATION, LIMITED LIABILITY COMPANY AND ITS AFFILIATES OR SUBSIDIARIES OR OTHER BUSINESS ENTITY. [A]

[A] 2. IT SHALL BE UNLAWFUL FOR ANY PERSON TO FRAUDULENTLY USE STAR #38 OR ANY OTHER SUCH METHOD OR FUNCTION TO CHOOSE THE NAME AND NUMBER, OTHER THAN SUCH PERSON'S ORIGINAL NAME AND NUMBER, WHICH WOULD APPEAR ON THE CALLER ID BOX OF THE PERSON CALLED. [A]

[A] 3. ANY COMPANY THAT PROVIDES LOCAL TELEPHONE DIRECTORIES TO CUSTOMERS IN THIS STATE SHALL INFORM ITS CUSTOMERS OF THE PROVISIONS OF THIS SECTION BY MEANS OF PUBLISHING A NOTICE IN SUCH LOCAL TELEPHONE DIRECTORIES. [A]

[A] 4. THE BOARD SHALL PRESCRIBE RULES AND REGULATIONS TO ADMINISTER THIS SECTION. [A]

Section 2. This act shall take effect on the one hundred eightieth day after it shall have become a law.

SPONSOR: Alesi

SUBJECT: IMPERSONATION (93%); CONSUMER PROTECTION (90%); LEGISLATORS (90%),
LEGISLATION (78%);

LOAD-DATE: January 27, 2005

Attachment B

Michigan Public Act 612 of 2003 (introduced as House Bill 4042)

MICHIGAN 91ST LEGISLATURE -- 2002 REGULAR SESSION

HOUSE BILL 4042
(Act 612, Public Acts of 2002)

2002 Mi. ALS 612; 2002 Mi. P.A. 612; 2001 Mi. HB 4042

The People of the State of Michigan enact:

TITLE

An act to prescribe the rights and duties of parties to home solicitation sales; to regulate certain telephone solicitation; to provide for the powers and duties of certain state officers and entities; and to prescribe penalties and remedies.

Sec. 1. As used in this act:

(a) "Home solicitation sale" means a sale of goods or services of more than \$ 25.00 in which the seller or a person acting for the seller engages in a personal, telephonic, or written solicitation of the sale, the solicitation is received by the buyer at a residence of the buyer, and the buyer's agreement or offer to purchase is there given to the seller or a person acting for the seller. Home solicitation sale does not include any of the following:

- (i) A sale made pursuant to a preexisting revolving charge account.
- (ii) A sale made pursuant to prior negotiations between the parties at a business establishment at a fixed location where goods or services are offered or exhibited for sale.
- (iii) A sale or solicitation of insurance by an insurance agent licensed by the commissioner of insurance.
- (iv) A sale made at a fixed location of a business establishment where goods or services are offered or exhibited for sale.
- (v) A sale made pursuant to a printed advertisement in a publication of general circulation.
- (vi) A sale of services by a real estate broker or salesperson licensed by the department of consumer and industry services.
- (vii) A sale of agricultural or horticultural equipment and machinery that is demonstrated to the consumer by the vendor at the request of either or both of the parties.

(b) "Fixed location" means a place of business where the seller or an agent, servant, employee, or solicitor of that seller primarily engages in the sale of goods or services of the same kind as would be sold at the residence of a buyer.

(c) "Business day" means Monday through Friday and does not include Saturday, Sunday, or the following business holidays: New Year's day, Martin Luther King's birthday, Washington's birthday, Memorial day, Independence day, Labor day, Columbus day, Veterans' day, Thanksgiving day, and Christmas day.

(d) "Federally insured depository institution" means a state or national bank, state or federal savings bank, state or federal savings and loan association, or state or federal credit union that holds deposits insured by an agency of the United States.

(e) As used in only the definition of home solicitation sales, "goods or services" does not include any of the following:

- (i) A loan, deposit account, or trust account lawfully offered or provided by a federally insured depository institution or a subsidiary or affiliate of a federally insured depository institution.
- (ii) An extension of credit that is subject to any of the following acts:

2002 Mi. ALS 612; 2002 Mi. P.A. 612; 2001 Mi. HB 4042

(A) The mortgage brokers, lenders, and servicers licensing act, 1987 PA 173, MCL 445.1651 to 445.1684.

(B) The secondary mortgage loan act, 1981 PA 125, MCL 493.51 to 493.81.

(C) The regulatory loan act, 1939 PA 21, MCL 493.1 to 493.24.

(D) The consumer financial services act, 1988 PA 161, MCL 487.2051 to 487.2072.

(E) 1984 PA 379, MCL 493.101 to 493.114.

(F) The motor vehicle sales finance act, 1950 (Ex Sess) PA 27, MCL 492.101 to 492.141.

(iii) A sale of a security or interest in a security that is subject to the uniform securities act, 1964 PA 265, MCL 451.501 to 451.818.

(f) "Written solicitation" means a postcard or other written notice delivered to a buyer's residence that requests that the buyer contact the seller or seller's agent by telephone to inquire about a good or service, unless the postcard or other written notice concerns a previous purchase or order or specifies the price of the good or service and accurately describes the good or service.

(g) "ADAD" or "automatic dialing and announcing device" means any device or system of devices that is used, whether alone or in conjunction with other equipment, for the purpose of automatically selecting or dialing telephone numbers.

(h) "Commission" means the public service commission.

(i) "Do-not-call list" means a do-not-call list of consumers and their residential telephone numbers maintained by the commission, by a vendor designated by the commission, or by an agency of the federal government, under section 1a.

(j) "Existing customer" means an individual who has purchased goods or services from a person, who is the recipient of a voice communication from that person, and who either paid for the goods or services within the 12 months preceding the voice communication or has not paid for the goods and services at the time of the voice communication because of a prior agreement between the person and the individual.

(k) "Person" means an individual, partnership, corporation, limited liability company, association, governmental entity, or other legal entity.

(l) "Residential telephone subscriber" or "subscriber" means a person residing in this state who has residential telephone service.

(m) "Telephone solicitation" means any voice communication over a telephone for the purpose of encouraging the recipient of the call to purchase, rent, or invest in goods or services during that telephone call. Telephone solicitation does not include any of the following:

(i) A voice communication to a residential telephone subscriber with that subscriber's express invitation or permission prior to the voice communication.

(ii) A voice communication to an existing customer of the person on whose behalf the voice communication is made, unless the existing customer is a consumer who has requested that he or she not receive calls from or on behalf of that person under section 1c(1)(g).

(iii) A voice communication to a residential telephone subscriber in which the caller requests a face-to-face meeting with the residential telephone subscriber to discuss a purchase, sale, or rental of, or investment in, goods or services but does not urge the residential telephone subscriber to make a decision to purchase, sell, rent, invest, or make a deposit on that good or service during the voice communication.

(n) "Telephone solicitor" means any person doing business in this state who makes or causes to be made a telephone solicitation from within or outside of this state, including, but not limited to, calls made by use of automated dialing and announcing devices or by a live person.

(o) "Vendor" means a person designated by the commission to maintain a do-not-call list under section 1a. The term may include a governmental entity.

Sec. 1a. (1) A home solicitation sale shall not be made by telephonic solicitation using in whole or in part a recorded message. A person shall not make a telephone solicitation that consists in whole or in part of a recorded message.

(2) Within 120 days after the effective date of the amendatory act that added this subsection, the commission shall do 1 of the following:

(a) Establish a state do-not-call list. All of the following apply if the commission establishes a do-not-call list under this subdivision:

(i) The commission shall publish the do-not-call list quarterly for use by telephone solicitors.

(ii) The do-not-call list fund is created in the state treasury. Money received from fees under subparagraph (iii) shall be credited to the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments. Money remaining in the fund at the end of a fiscal year shall be carried over in the fund to the next and succeeding fiscal years. Money in the fund may be appropriated to the commission to cover the costs of administering the do-not-call list, but may not be appropriated to compensate or reimburse a vendor designated under subdivision (b) to maintain a do-not-call list under that subdivision.

(iii) The commission shall establish and collect 1 or both of the following fees to cover the costs to the commission for administering the do-not-call list:

(A) Fees charged to telephone solicitors for access to the do-not-call list.

(B) Fees charged to residential telephone subscribers for inclusion on the do-not-call list. The commission shall not charge a residential telephone subscriber a fee of more than \$ 5.00 for a 3-year period.

(iv) The commission shall maintain the do-not-call list for at least 1 year. After 1 year, the commission may at any time elect to designate a vendor to maintain a do-not-call list under subdivision (b), in which case subdivision (b) shall apply.

(b) Designate a vendor to maintain a do-not-call list. All of the following apply to a vendor designated to maintain a do-not-call list under this subdivision:

(i) The commission shall establish a procedure or follow existing procedure for the submission of bids by vendors to maintain a do-not-call list under this subdivision.

(ii) The commission shall establish a procedure or follow existing procedure for the selection of the vendor to maintain the do-not-call list. In selecting the vendor, the commission shall consider at least all of the following factors:

(A) The cost of obtaining and the accessibility and frequency of publication of the do-not-call list to telephone solicitors.

(B) The cost and ease of registration on the do-not-call list to consumers who are seeking inclusion on the do-not-call list.

(iii) The commission may review its designation and make a different designation under this subdivision if the commission determines that another person would be better than the designated vendor in meeting the selection factors established under subparagraph (ii) or if the designated vendor engages in activities the commission considers contrary to the public interest.

(iv) If the commission does not establish a state do-not-call list under subdivision (a), the commission shall comply with the designation requirements of this subdivision for at least 1 year. After 1 year, the commission may at any time elect to establish and maintain a do-not-call list under subdivision (a), in which case subdivision (a) shall apply.

(v) Unless the vendor is a governmental entity, a vendor designated by the commission under this subdivision is not a governmental agency and is not an agent of the commission in maintaining a do-not-call list.

(vi) The commission and a vendor designated under this subdivision shall execute a written contract. The contract shall include the vendor's agreement to the requirements of this section and any additional requirements established by the commission.

(vii) The commission shall not use state funds to compensate or reimburse a vendor designated under this subdivision. The vendor may receive compensation or reimbursement for maintaining a designated do-not-call list under this subdivision only from 1 or both of the following:

(A) Fees charged by the vendor to telephone solicitors for access to the do-not-call list.

(B) Fees charged by the vendor to residential telephone subscribers for inclusion on the do-not-call list. A designated vendor shall not charge a residential telephone subscriber a fee of more than \$ 5.00 for a 3-year period.

(viii) The designee do-not-call list fund is created in the state treasury. If the vendor is a department or agency of this state, money received from fees under subparagraph (vii) by that vendor shall be credited to the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments. Money remaining in the fund at the end of a fiscal year shall be carried over in the fund to the next and succeeding fiscal years. Money in the fund may be appropriated to that vendor to cover the costs of administering the do-not-call list.

(3) In determining whether to establish a state do-not-call list under subsection (2)(a) or designate a vendor under subsection (2)(b), and in designating a vendor under subsection (2)(b), the commission shall consider comments submitted to the commission from consumers, telephone solicitors, or any other person.

(4) Beginning 90 days after the commission establishes a do-not-call list under subsection (2)(a) or designates a vendor to maintain a do-not-call list under subsection (2)(b), a telephone solicitor shall not make a telephone solicitation to a residential telephone subscriber whose name and residential telephone number is on the then-current version of that do-not-call list.

(5) Notwithstanding any other provision of this section, if an agency of the federal government establishes a federal do-not-call list, within 120 days after the establishment of the federal do-not-call list, the commission shall designate the federal list as the state do-not-call list. The federal list shall remain the state do-not-call list as long as the federal list is maintained. A telephone solicitor shall not make a telephone solicitation to a residential telephone subscriber whose name and residential telephone number is on the then-current version of the federal list.

(6) A telephone solicitor shall not use a do-not-call list for any purpose other than meeting the requirements of subsection (4) or (5).

(7) The commission or a vendor shall not sell or transfer the do-not-call list to any person for any purpose unrelated to this section.

Sec. 1b. (1) At the beginning of a telephone solicitation, a person making a telephone solicitation to a residential telephone subscriber shall state his or her name and the full name of the organization or other person on whose behalf the call was initiated and provide a telephone number of the organization or other person on request. A natural person must be available to answer the telephone number at any time when telephone solicitations are being made.

(2) The person answering the telephone number required under subsection (1) shall provide a residential telephone subscriber calling the telephone number with information describing the organization or other person on whose behalf the telephone solicitation was made to the residential telephone subscriber and describing the telephone solicitation.

(3) A telephone solicitor shall not intentionally block or otherwise interfere with the caller ID function on the telephone of a residential telephone subscriber to whom a telephone solicitation is made so that the telephone number of the caller is not displayed on the telephone of the residential telephone subscriber.

Sec. 1c. (1) It is an unfair or deceptive act or practice and a violation of this act for a telephone solicitor to do any of the following:

(a) Misrepresent or fail to disclose, in a clear, conspicuous, and intelligible manner and before payment is received from the consumer, all of the following information:

(i) Total purchase price to the consumer of the goods or services to be received.

(ii) Any restrictions, limitations, or conditions to purchase or to use the goods or services that are the subject of an offer to sell goods or services.

(iii) Any material term or condition of the seller's refund, cancellation, or exchange policy, including a consumer's right to cancel a home solicitation sale under section 2 and, if applicable, that the seller does not have a refund, cancellation, or exchange policy.

(iv) Any material costs or conditions related to receiving a prize, including the odds of winning the prize, and if the odds are not calculable in advance, the factors used in calculating the odds, the nature and value of a prize, that no purchase is necessary to win the prize, and the "no purchase required" method of entering the contest.

(v) Any material aspect of an investment opportunity the seller is offering, including, but not limited to, risk, liquidity, earnings potential, market value, and profitability.

(vi) The quantity and any material aspect of the quality or basic characteristics of any goods or services offered.

(vii) The right to cancel a sale under this act, if any.

(b) Misrepresent any material aspect of the quality or basic characteristics of any goods or services offered.

(c) Make a false or misleading statement with the purpose of inducing a consumer to pay for goods or services.

(d) Request or accept payment from a consumer or make or submit any charge to the consumer's credit or bank account before the telephone solicitor or seller receives from the consumer an express verifiable authorization. As used in this subdivision, "verifiable authorization" means a written authorization or confirmation, an oral authorization recorded by the telephone solicitor, or confirmation through an independent third party.

(e) Offer to a consumer in this state a prize promotion in which a purchase or payment is necessary to obtain the prize.

(f) Fail to comply with the requirements of section 1a or 1b.

(g) Make a telephone solicitation to a consumer in this state who has requested that he or she not receive calls from the organization or other person on whose behalf the telephone solicitation is made.

(2) Except as provided in this subsection, beginning 210 days after the effective date of the amendatory act that added this section, a person who knowingly or intentionally violates this section is guilty of a misdemeanor punishable by imprisonment for not more than 6 months or a fine of not more than \$ 500.00, or both. This subsection does not prohibit a person from being charged with, convicted of, or punished for any other crime including any other violation of law arising out of the same transaction as the violation of this section. This subsection does not apply if the violation of this section is a failure to comply with the requirements of section 1a(1), (4), or (5) or section 1b.

(3) A person who suffers loss as a result of violation of this section may bring an action to recover actual damages or \$ 250.00, whichever is greater, together with reasonable attorney fees. This subsection does not prevent the consumer from asserting his or her rights under this act if the telephone solicitation results in a home solicitation sale, or asserting any other rights or claims the consumer may have under applicable state or federal law.

Sec. 1d. (1) Beginning 210 days after the effective date of the amendatory act that added this section, if a telephone directory includes residential telephone numbers, a person that publishes a new telephone directory shall include in the telephone directory a notice describing the do-not-call list and how to enroll on the do-not-call list.

(2) Beginning 210 days after the effective date of the amendatory act that added this section, each telecommunication provider that provides residential telephone service shall include a notice describing the do-not-call list and how to enroll on the do-not-call list with 1 of that telecommunication provider's bills for telecommunication services to a residential telephone subscriber each year. If the federal communication commission or any other federal agency establishes a federal "do not call" list, the notice shall also describe that list and how to enroll on that list. As used in this subsection, "telecommunication provider" means that term as defined in section 102 of the Michigan telecommunications act, 1991 PA 179, MCL 484.2102.

Sec. 1e. Sections 1a, 1b, 1c, and 1d do not apply to a person subject to any of the following:

(a) The charitable organizations and solicitations act, 1975 PA 169, MCL 400.271 to 400.294.

(b) The public safety solicitation act, 1992 PA 298, MCL 14.301 to 14.327.

(c) Section 527 of the internal revenue code of 1986.

Sec. 3. (1) In a home solicitation sale, unless the buyer requests the seller to provide goods or services without delay in an emergency, the seller shall present to the buyer and obtain the buyer's signature to a written agreement or offer to purchase that designates as the date of the transaction the date on which the buyer actually signs. The agreement or offer to purchase shall contain a statement substantially as follows in immediate proximity to the space reserved in the agreement or offer to purchase for the signature of the buyer:

"You, the buyer, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right. Additionally, the seller is prohibited from having an independent courier service or other third party pick up your payment at your residence before the end of the 3-business-day period in which you can cancel the transaction."

(2) The seller shall attach to the copy or cause to be printed on the reverse side of the written agreement or offer to purchase retained by the buyer a notice of cancellation in duplicate that shall appear as follows:
 "notice of cancellation (enter date of transaction) (date) You may cancel this transaction, without any penalty or obligation, within 3 business days from the above date. If you cancel, any property traded in, any payments made by you under the contract or sale, and any negotiable instrument executed by you will be returned within 10 business days following receipt by the seller of your cancellation notice, and any security interest arising out of the transaction will be canceled. If you cancel, you must make available to the seller at your residence, in substantially as good condition as when received, any goods delivered to you under this contract or sale; or you may if you wish, comply with the instructions of the seller regarding the return shipment of the goods at the seller's expense and risk. If you do make the goods available to the seller and the seller does not pick them up within 20 days of the date of your notice of cancellation, you may retain or dispose of the goods without any further obligation. If you fail to make the goods available to the seller or if you agree to return the goods to the seller and fail to do so, then you remain liable for performance of all obligations under the contract. To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice or any other written notice, or send a telegram to (name of seller), at (address of seller's place of business) not later than midnight on _____ (date) I hereby cancel this transaction. _____ (date) _____
 (buyer's signature) "

(3) The notices required by this section shall be in not less than 10-point bold type and shall be 2 points larger than the text of the contract. A written agreement or offer to purchase and the notice of cancellation attached to the agreement or offer shall be written in the same language as that used in any oral presentation that was given to facilitate sale of the goods or services. The seller shall enter on the blanks in the notice of cancellation the date of transaction, which is the date the buyer signs the written agreement, and the date for mailing the notice of cancellation. An error in entering this information shall not diminish the buyer's rights under this act.

(4) Until the seller has complied with this section, the buyer may cancel the home solicitation sale by notifying the seller in any manner and by any means of his or her intention to cancel.

(5) This section does not apply to a home solicitation sale where the seller engaged in a telephone solicitation of the sale if sections 505 to 507 of the Michigan telecommunications act, 1991 PA 179, MCL 484.2505 to 484.2507, apply to the solicitation or sale.

Sec. 6. In connection with a home solicitation sale, refunds or penalties to which the debtor is entitled pursuant to this act may be set off against the debtor's obligation, and may be raised as a defense to an action on the obligation without regard to the time limitations prescribed by this act.

HISTORY:

Approved by the Governor on December 20, 2002

SPONSOR: Faunce

HB

316

SENATE COMMITTEE REPORT

DATE: 5/7/06

FURTHER:

DATE TURNED
IN TO OFFICE: _____

Judiciary Committee considered CS FOR HOUSE BILL NO. 316(JUD)

HB 316 EXTEND BOARD OF GOVERNORS ABA

"An Act extending the termination date for the Board of Governors of the Alaska Bar Association; and providing for an effective date."

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

CS Senate Bill:
 Same Title
 New Title

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

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>Woods</i>	X			
<i>Arthur J. Hayes</i>			X	
<i>Gene Kerriault</i>		X		
<i>[Signature]</i>		X		
CHAIR: <i>Ralph DeBarnis</i>	✓			

ALASKA STATE LEGISLATURE

Vice Chair:
House Finance Committee

Chair:
House Finance Subcommittees for,
Department of Public Safety
Department of Law



Session:
Alaska State Capitol
Juneau, AK 99801-1182
Phone: (907) 465-4958
Fax: (907) 465-4928

Interim:
PO Box 464
Chugiak, AK 99567

BILL STOLTZE STATE REPRESENTATIVE

Representative_Bill_Stoltze@legis.state.ak.us

House Bill 316

Extend the Termination Date for the Board of Governors ABA

"An act extending the termination date for the Board of Governors of the Alaska Bar Association; and providing for an effective date."

House Bill 316 extends the sunset date of the Board of Governors of the Alaska Bar Association until June 30, 2009.

The Board of Governors for the Alaska Bar Association is comprised of 12 members. Nine members are elected by active members of the Alaska Bar Association: two from the 1st judicial district, four from the 3rd judicial district, two from the 2nd/4th judicial districts, and one at-large member. There are also three non-attorney members appointed by the Governor and confirmed by the Legislature. The Board governs the Bar Association, administers exams, approves and recommends rules concerning practice of law to the State Supreme Court, and provides continuing legal education and member services.

It is the opinion of the Legislative Budget and Audit Committee that the Board of Governors of the Alaska Bar Association should be extended. I ask your support in extended its sunset date to June 30, 2009.

DISTRICT 16

BIRCHWOOD • BUTTE • CHUGIAK • EKLUTNA • FAIRVIEW LOOP
KNIK RIVER ROAD • LAZY MOUNTAIN • PALMER • PETERS CREEK

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: CSHB 316(JUD)
 (H) Publish Date: 5/6/06

Revision Date/Time (Note if correction): _____ Dept. Affected: _____
 Title "An Act extending the termination date for the RDU _____
Board of Governors of the Alaska Bar..." Component _____
 Sponsor Stoltze _____
 Requester House Judiciary Committee Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

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

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

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The Board of Governors of the Alaska Bar Association is not allocated to a Department and considers itself exempt from the appropriation powers of the Legislature.

Prepared by: Kevin Jardell, Legislative Director Phone 465-4021
 Division: Governor's Legislative Office Date/Time 4/26/06 7:00 AM
 Approved by: Kevin Jardell, Legislative Director Date 4/26/2006
 Agency: Governor's Legislative Office

HB

318

SENATE COMMITTEE REPORT

DATE: 2/22/06

FURTHER: Finance

DATE TURNED
IN TO OFFICE: _____

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

HB 318 LIMITATION ON EMINENT DOMAIN

"An Act limiting the exercise of eminent domain."

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

CS Senate Bill:
 Same Title
 New Title

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

NEW FISCAL NC E(S):

Department	Date	Fiscal	Indet.	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	Do PASS	Do NOT PASS	NO REC	AMEND
<i>[Signature]</i>			X	
<i>[Signature]</i>				X
<i>[Signature]</i>			X	
<i>[Signature]</i>				X
<i>[Signature]</i>				
CHAIR: <i>[Signature]</i>			✓	

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DIVISION OF LEGAL AND RESEARCH SERVICES
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STATE OF ALASKA

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

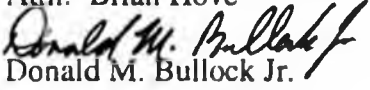
State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

April 7, 2006

SUBJECT: Amendment nos. 1 and 6 (SCS CSHB 318(JUD), Work Order No. 24-LS1083\C)

TO: Senator Ralph Seekins
Chair of the Senate Judiciary Committee
Attn: Brian Hove

FROM: 
Donald M. Bullock Jr.
Legislative Counsel

Enclosed is a draft version of SCS CSHB 318(JUD) that includes the amendments you submitted with your request. Please review this draft carefully to ensure that it is consistent with the committee's intent.

Please look at amendments #1 and #6. Amendment #1 changed the language on page 4, line 9, of CSHB 318(FIN) am, and amendment #6 deleted page 4, line 9.

The enclosed draft of the bill includes amendment #6 and not amendment #1 because amendment #6 was adopted subsequent to amendment #1. Both amendments relate to legislative action providing for additional exceptions to the limitations on the power of eminent domain. The amendments differ in that amendment #1 only provides an additional exception to the six exceptions in AS 09.55.240(d) and amendment #6 allows for a legislative exception to AS 09.55.240(d) and AS 09.55.240(e).

Also, be aware that an Act providing for the transfer of property under AS 09.55.240(f) as added by amendment #6 may be subject to challenge as a local or special act prohibited under art. II, sec. 19, Constitution of the State of Alaska. An Act pursuant to AS 09.55.240(d)(7) in sec. 3 of CSHB 318(FIN) am, if enacted, may be subject to a similar challenge.

If I may be of further assistance, please advise.

DMB:med
06-287.med

Enclosure

24-LS1083C
Bullock
4/6/06

SENATE CS FOR CS FOR HOUSE BILL NO. 318(JUD)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVES MCGUIRE, HOLM AND HAWKER, Stoltze, Gatto, Wilson, Kohring, LeDoux, Dahlsrom, Kelly, Anderson, Olson, Lynn, Elkins, Foster, Kapsner, Samuels, Ramras, Meyer, Seaton, Rokeberg

A BILL

FOR AN ACT ENTITLED

1 **"An Act limiting the exercise of eminent domain."**

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

3 *** Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
4 to read:

5 **LEGISLATIVE INTENT AND FINDINGS.** (a) The legislature finds that

6 (1) the United States Supreme Court decision in *Kelo v. City of New London*,
7 545 U.S. ___, 125 S.Ct. 2655, 162 L. Ed. 2d 439 (2005) demonstrates that an overly
8 expansive application of eminent domain powers can be a threat to the property rights of all
9 private property owners;

10 (2) it is necessary to provide clarification regarding the exercise of eminent
11 domain in the following two situations:

12 (A) the taking of private property if the purpose is to transfer the
13 property to another private person for economic development;

14 (B) the taking of a landowner's personal residence to develop an indoor
15 or outdoor recreational facility or project.

1 (b) In recognizing that many public projects will have economic effects, the
2 legislature intends by this Act not to

3 (1) restrict those public uses already recognized in state law merely because
4 the project may have an associated economic effect; or

5 (2) provide an absolute bar on transfers of land to private entities, but to place
6 restrictions on when such transfers occur.

7 (c) In this section, "economic development" means development of property for a
8 commercial enterprise carried on for profit or to increase tax revenue, tax base, or
9 employment.

10 * Sec. 2. AS 09.55.240(a) is amended to read:

11 (a) Except as provided in (d) and (e) of this section, the [THE] right of
12 eminent domain may be exercised for the following public uses:

13 (1) all public uses authorized by the government of the United States;

14 (2) public buildings and grounds for the use of the state and all other
15 public uses authorized by the legislature of the state;

16 (3) public buildings and grounds for the use of an organized or
17 unorganized borough, city, town, village, school district, or other municipal division,
18 whether incorporated or unincorporated; canals, aqueducts, flumes, ditches, or pipes
19 conducting water, heat, or gas for the use of the inhabitants of an organized or
20 unorganized borough, city, town, or other municipal division, whether incorporated or
21 unincorporated; raising the banks of streams, removing obstructions from them, and
22 widening, deepening, or straightening their channels; and roads, streets, and alleys,
23 and all other public uses for the benefit of an organized or unorganized borough, city,
24 town, or other municipal division whether incorporated or unincorporated, or its
25 inhabitants, which may be authorized by the legislature;

26 (4) wharves, docks, piers, chutes, booms, ferries, bridges of all kinds,
27 private roads, plant and turnpike roads, railroads, canals, ditches, flumes, aqueducts,
28 and pipes for public transportation, supplying mines and farming neighborhoods with
29 water, and draining and reclaiming land, and for floating logs and lumber on streams
30 not navigable, and sites for reservoirs necessary for collecting and storing water;

31 (5) roads, tunnels, ditches, flumes, pipes, and dumping places for

1 working mines; also outlets, natural or otherwise, for the flow, deposit, or conduct of
 2 tailings or refuse matter from mines; also an occupancy in common by the owners or
 3 possessors of different mines of any place for the flow, deposit, or conduct of tailings
 4 or refuse matter from their several mines, and sites for reservoirs necessary for
 5 collecting and storing water;

6 (6) private roads leading from highways to residences, mines, or farms;

7 (7) telephone lines;

8 (8) fiberoptic lines;

9 (9) [(8)] telegraph lines;

10 (10) [(9)] sewerage of an organized or unorganized borough, city,
 11 town, village, or other municipal division, whether incorporated or unincorporated, or
 12 a subdivision of it, or of a settlement consisting of not less than 10 families, or of
 13 public buildings belonging to the state or to a college or university;

14 (11) [(10)] tramway lines;

15 (12) [(11)] electric power lines;

16 (13) [(12)] for the location of pipelines for gathering, transmitting,
 17 transporting, storing, or delivering natural or artificial gas or oil or any liquid or
 18 gaseous hydrocarbons, including, but not limited to, pumping stations, terminals,
 19 storage tanks, or reservoirs, and related installations.

20 * Sec. 3. AS 09.55.240 is amended by adding new subsections to read:

21 (d) The power of eminent domain may not be exercised to acquire private
 22 property from a private person for the purpose of transferring title to the property to
 23 another private person for economic development purposes. This subsection does not
 24 apply to transfers of private property to another private person if one or more of the
 25 following apply:

26 (1) the landowner consents, either before or after a condemnation
 27 proceeding has been filed, to the use of the property for a private commercial
 28 enterprise or other economic development;

29 (2) the private person has been expressly authorized by statute either to
 30 exercise the power of eminent domain, or to receive an interest in land acquired by the
 31 exercise of eminent domain;

1 (3) the transferred property is used for a private way of necessity to
2 permit essential access for extraction or use of resources;

3 (4) the acquisition is used, in part, for leasing property to a private
4 person that occupies a portion of public property or a public facility, including a
5 private business that occupies a portion of an airport, port, or public building;

6 (5) the property is transferred to a person by oil and gas lease under
7 AS 38.05.180;

8 (6) the property is transferred to a common carrier.

9 (e) The power of eminent domain may not be exercised for the purpose of
10 developing a recreational facility or project if the property to be acquired includes an
11 individual landowner's personal residence or that portion of an individual's property
12 attached to and within 250 linear feet of an individual landowner's personal residence
13 unless the landowner consents either before or after a condemnation proceeding has
14 been filed.

15 (f) Notwithstanding the limitations on the power of eminent domain in (d) and
16 (e) of this section, the legislature may approve the exercise of eminent domain against
17 private property in an Act, the subject of which is limited to the transfer of the
18 property for a purpose otherwise restricted under (d) or (e) of this section.

19 (g) The power of eminent domain may only be delegated by statute.

20 (h) In this section,

21 (1) "common carrier" has the meaning given in AS 04.16.125;

22 (2) "economic development" means development of property for a
23 commercial enterprise carried on for profit or to increase tax revenue, tax base, or
24 employment;

25 (3) "personal residence" means a structure that is the dwelling place of
26 an individual that

27 (A) must be used by the owner, prior owner, or beneficiary of a
28 trust holding legal title to the structure as a dwelling unit, as opposed to a
29 rental, storage, or other commercial space;

30 (B) must be inhabited by the owner, prior owner, or beneficiary
31 of a trust holding legal title to the structure for at least 90 days during the 12-

1 month period immediately before the date an action for the exercise of the
2 power of eminent domain is filed;

3 (C) must constitute an ordinary home for general living
4 purposes, as opposed to a dwelling used only for seasonal recreational or
5 temporary purposes; and

6 (D) may not have been constructed, placed, or occupied for the
7 purpose of avoiding eminent domain proceedings;

8 (4) "private person" means a person that is not a public corporation as
9 defined in AS 45.77.020 or a government as defined in AS 11.81.900;

10 (5) "recreational facility or project"

11 (A) means a facility or project, the primary purpose of which is
12 recreational;

13 (B) includes a park, trail or pedestrian pathway, greenbelt,
14 amusement park, fresh water boat harbor, sports facility, playground,
15 infrastructure, or other facility related to or in support of an indoor or outdoor
16 recreational facility or project;

17 (C) does not include

18 (i) a highway, sidewalk, or path within the right-of-way
19 of a highway;

20 (ii) a path, trail, or lane used as a safe route to a school
21 program;

22 (iii) a wayside or rest stop;

23 (iv) a development, the primary purpose of which is not
24 recreational, such as a path, trail, or lane developed to reduce
25 congestion, or to encourage use of an alternate, gas-saving mode of
26 transportation;

27 (v) a path or trail to or between villages or from a
28 village to a facility or resource;

29 (vi) a stormwater retention or treatment facility or
30 wetland, habitat, or other acquisition required to obtain a permit for a
31 highway, airport, or other public project;

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

4 (viii) a taking not prohibited by law before January 1,
5 2007, under AS 41.21; and

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

11 * Sec. 4. AS 29.35.030(a) is amended to read:

12 (a) Except as provided in (c) of this section, a [A] municipality may, only
13 within its boundaries, exercise the powers of eminent domain and declaration of taking
14 in the performance of a power or function of the municipality under the procedures set
15 out in AS 09.55.250 - 09.55.460. In the case of a second class city, the exercise of the
16 power of eminent domain or declaration of taking must be by ordinance that is
17 submitted to the voters at the next general election or at a special election called for
18 that purpose. A majority of the votes on the question is required for approval of the
19 ordinance.

20 * Sec. 5. AS 29.35.030 is amended by adding new subsections to read:

21 (c) The power of eminent domain may not be exercised to acquire private
22 property from a private person for the purpose of transferring title to the property to
23 another private person for economic development, except as provided by
24 AS 09.55.240(d)(1) - (6), and may not be exercised for purposes expressed in
25 AS 09.55.240(e). However, a municipality may exercise the power of eminent domain
26 to acquire private property from a private person for the purpose of transferring title to
27 the property to another private person for economic development if

28 (1) the municipality does not delegate the power of eminent domain to
29 another person;

30 (2) before issuing the notice in (3) of this subsection, the municipality
31 makes a good faith effort to negotiate the purchase of the property;

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(3) written notice is provided at least 90 days before the public hearing to each owner of land that may be affected by the exercise of eminent domain;

(4) the municipality holds a public hearing on the exercise of eminent domain after adequate public notice;

(5) the governing body of the municipality approves the exercise of eminent domain by a two-thirds majority vote; and

(6) in the case of a second class city, the governing body of the city adopts an ordinance by a two-thirds majority vote, the ordinance is submitted to the voters for approval at the next general election or at a special election called for that purpose, and the exercise of eminent domain is approved by a majority of the votes on the question.

(d) In this section,

(1) "economic development" has the meaning given in AS 09.55.240;

(2) "private person" has the meaning given in AS 09.55.240.

* Sec. 6. The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. This Act applies only to condemnation actions filed on or after the effective date of this Act.

AMENDMENT #1

OFFERED IN THE HOUSE

TO: CS HB 318(FIN) am

1 Page 4, line 9:

2 Delete "by law"

3 Following "transfer":

4 Insert "in an Act, the subject of which is limited to the transfer"

AMENDMENT #2

OFFERED IN THE SENATE

TO: CSHB 318(FIN) am

W.D.

- 1 Page 5, line 8:
- 2 Delete "small boat harbor,"

AMENDMENT

#3

ADOPT

OFFERED IN THE SENATE

TO: CSHB 318(FIN) am

- 1 Page 6, line 4:
- 2 Delete "rather than primarily for recreation"

AMENDMENT #4

ADOPT

Resubmitted

OFFERED IN THE SENATE
TO: CSHB 318(FIN) am

1 Page 6, line 19, following "AS 09.55.240(e).":

2 Insert "However, a municipality may exercise the power of eminent domain to acquire
3 private property from a private person for the purpose of transferring title to the property to
4 another private person for economic development and for the purposes expressed in
5 AS 09.55.240(e) if

6 (1) the municipality does not ~~delegate~~ ^{delegate} the power of eminent domain to
7 another person;

8 (2) before issuing the notice in (3) of this subsection, the municipality
9 makes a good faith effort to negotiate the purchase of the property;

10 (3) written notice is provided at least 90 days before the hearing to
11 each owner of land that may be affected by the exercise of eminent domain;

12 (4) the municipality holds a hearing on the exercise of eminent domain
13 after adequate public notice;

14 (5) the governing body of the municipality approves the exercise of
15 eminent domain by a two-thirds majority vote; and

16 (6) in the case of a second class city, an ordinance is adopted, ~~the~~
17 ordinance is submitted to the voters for approval at the next general election or at a
18 special election called for that purpose, and the exercise of eminent domain is
19 approved by a majority of the votes on the question."

in a 2/3 vote

Bethel

AMENDMENT

#5

OFFERED IN THE SENATE

TO: CSHB 318(FIN) am

- 1 Page 4, following line 15:
- 2 Insert a new subsection to read:
- 3 "(f) Only the state may delegate the power of eminent domain."
- 4
- 5 Reletter the following subsection accordingly.

ADOPT

Rescind

AMENDMENT

#6

OFFERED IN THE SENATE

TO: CSHB 318(FIN) am

ADOPTED

- 1 Page 4, line 8:
- 2 Delete ";"
- 3 Insert "."
- 4
- 5 Page 4, line 9:
- 6 Delete all material.
- 7
- 8 Page 4, following line 15:
- 9 Insert a new subsection to read:
- 10 "(f) Notwithstanding the limitations on the power of eminent domain in (d)
- 11 and (e) of this section, the legislature may approve the exercise of eminent domain
- 12 against private property in an Act, the subject of which is limited to the transfer of the
- 13 property for a purpose otherwise restricted under (d) or (e) of this section."
- 14
- 15 Reletter the following subsection accordingly.

AMENDMENT

7
ADDED

OFFERED IN THE SENATE

TO: CSHB 318(FIN) am

- 1 Page 3, line 8:
- 2 Delete "fiberoptic lines;"
- 3 Insert "fiberoptic lines;"

AMENDMENT #8

OFFERED IN THE SENATE

TO: CSHB 318(FIN) am

1 Page 4, line 23, following "owner":

2 Insert ", or by the beneficiary of a trust holding legal title to the structure,"

3

4 Page 4, line 25, following "owner":

5 Insert ", prior owner, or beneficiary of a trust holding legal title to the structure"

AMENDMENT

#9

OFFERED IN THE SENATE
TO: CSHB 318(FIN) am

- 1 Page 5, line 8:
- 2 Delete "small"
- 3 Insert "fresh water"

LEGAL SERVICES

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

(907) 465-3887 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

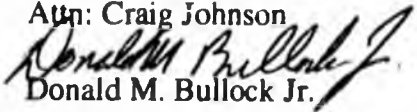
State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

April 5, 2006

SUBJECT: Replacement amendment for amendments 4, 5, and 6
(CSHB 318(FIN) am, Work Order No. 24-LS1083\XA.21)

TO: Representative Lesil McGuire
Attn: Craig Johnson

FROM: 
Donald M. Bullock Jr.
Legislative Counsel

Enclosed is an amendment that makes changes to amendments 4, 5, and 6 that were adopted by the Senate Judiciary Committee on April 4, 2006.

You should discuss the possibility of the committee rescinding its action on the adoption of amendments 4, 5, and 6 and then consider the adoption of the enclosed amendment that incorporates those three amendments with the changes you submitted to me today.

If I may be of further assistance, please advise.

DMB:lmb
06-129.lmb

Enclosure

LEGAL SERVICES

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STATE OF ALASKA

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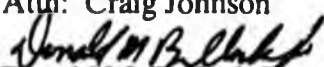
State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

April 5, 2006

SUBJECT: Changing "personal residence" to "privately owned residence"
(CSHB 318(FIN) am, Work Order No. 24-LS1083XA.16)

TO: Representative Lesil McGuire
Attn: Craig Johnson

FROM: 
Donald M. Bullock Jr.
Legislative Counsel

Enclosed is an amendment to change "personal residence" to "privately owned residence" in sec. 1 of the above referenced bill.

Please note that "personal residence" appears three times on page 4 of the bill, on lines 12, 13, and 21. If you want an amendment to change "personal residence" to "privately owned residence" to match the term used in the legislative intent and findings section of the bill, please let me know. Also, if you wish to make the changes on page 4, please provide the definition you would like for "privately owned residence" to replace the definition of "personal residence" on page 4, line 21, through page 5, line 1.

DMB:med
06-280.med

Enclosure

Brian Hove

From: Cindy Smith
Sent: Wednesday, April 05, 2006 5:42 PM
To: Brian Hove
Subject: amendment XA.21

Just FYI, amendment XA.21 has dropped two provisions from the language of amendments as they were adopted; first, the separate statute language that Senator Guess had moved; second, the amendment has deleted the reference to the "recreation" provisions as it applies to the municipal processes.

Cindy Smith
Office of Senator Hollis French
(907)465-3892
www.akdemocrats.org

AMENDMENT

OFFERED IN THE SENATE

TO: CSHB 318(FIN) am

1 Page 4, line 8:

2 Delete ";

3 Insert ".

4

5 Page 4, line 9:

6 Delete all material.

7

8 Page 4, following line 15:

9 Insert new subsections to read:

10 "(f) Notwithstanding the limitations on the power of eminent domain in (d)
11 and (e) of this section, the legislature may approve the exercise of eminent domain by
12 law.

13 (g) The power of eminent domain may only be delegated by statute."
14

15 Reletter the following subsections accordingly.

16

17 Page 6, line 19, following "AS 09.55.240(e).":

18 Insert "However, a municipality may exercise the power of eminent domain to acquire
19 private property from a private person for the purpose of transferring title to the property to
20 another private person for economic development if

21 (1) the municipality does not delegate the power of eminent domain to
22 another person;

23 (2) before issuing the notice in (3) of this subsection, the municipality



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makes a good faith effort to negotiate the purchase of the property;

Public

(3) written notice is provided at least 90 days before ~~the~~ hearing to each owner of land that may be affected by the exercise of eminent domain;

(4) the municipality holds a public hearing on the exercise of eminent domain after adequate public notice;

(5) the governing body of the municipality approves the exercise of eminent domain by a two-thirds majority vote; and

(6) in the case of a second class city, the governing body of the city adopts an ordinance by a two-thirds majority vote, the ordinance is submitted to the voters for approval at the next general election or at a special election called for that purpose, and the exercise of eminent domain is approved by a majority of the votes on the question."

Summary of Entities With Eminent Domain Power

The following entities have been granted the power of eminent domain:

(1) Electrical or Telephone Cooperatives (AS 10.25.010); (2) Alaska Housing Finance Corporation (AS 18.55.100; AS 18.55.440; AS 18.55.520; AS 18.55.550); (3) regional electrical authorities (AS 18.57.040); (4) Department of Transportation and Public Facilities (AS 02.15.070; AS 19.05.040; AS 19.05.080; AS 19.05.110; AS 19.20.040; AS 19.22.020; AS 19.25.140; AS 19.27.050; AS 35.05.040; AS 35.20.010; AS 35.20.040; AS 44.42.020); (5) Knik Arm Bridge and Toll Authority (AS 19.75.111); (6) Municipalities (AS 29.35.030); (7) Department of Natural Resources (AS 27.21.300; AS 38.05.035(a)(2); AS 38.35.015; AS 38.35.130; AS 41.35.060); (8) Port Authorities (AS 29.35.620); (9) Alaska Natural Gas Development Authority (AS 41.41.200); (10) public utilities (AS 42.05.631); (11) the Alaska Railroad Corporation (AS 42.40.385); (12) Joint Action Agencies (AS 42.45.310); (13) Governor's Office Emergency Powers (AS 26.20.040).

1 (3) the transferred property is used for a private way of necessity to
2 permit essential access for extraction or use of resources;

3 (4) the acquisition is used, in part, for leasing property to a private
4 person that occupies a portion of public property or a public facility, including a
5 private business that occupies a portion of an airport, port, or public building;

6 (5) the property is transferred to a person by oil and gas lease under
7 AS 38.05.180;

8 (6) the property is transferred to a common carrier;

9 (7) the legislature has approved by law the transfer of the property.

10 (e) The power of eminent domain may not be exercised for the purpose of
11 developing a recreational facility or project if the property to be acquired includes an
12 individual landowner's personal residence or that portion of an individual's property
13 attached to and within 250 linear feet of an individual landowner's personal residence
14 unless the landowner consents either before or after a condemnation proceeding has
15 been filed.

16 (f) In this section,

17 (1) "common carrier" has the meaning given in AS 04.16.125;

18 (2) "economic development" means development of property for a
19 commercial enterprise carried on for profit or to increase tax revenue, tax base, or
20 employment;

21 (3) "personal residence" means a structure that is the dwelling place of
22 an individual that

23 (A) must be used by the owner as a dwelling unit, as opposed
24 to a rental, storage, or other commercial space;

25 (B) must be inhabited by the owner for at least 90 days during
26 the 12-month period immediately before the date an action for the exercise of
27 the power of eminent domain is filed;

28 (C) must constitute an ordinary home for general living
29 purposes, as opposed to a dwelling used only for seasonal recreational or
30 temporary purposes; and

31 (D) may not have been constructed, placed, or occupied for the

1 purpose of avoiding eminent domain proceedings;

2 (4) "private person" means a person that is not a public corporation as
3 defined in AS 45.77.020 or a government as defined in AS 11.81.900;

4 (5) "recreational facility or project"

5 (A) means a facility or project, the primary purpose of which is
6 recreational;

7 (B) includes a park, trail or pedestrian pathway, greenbelt,
8 amusement park, small boat harbor, sports facility, playground, infrastructure,
9 or other facility related to or in support of an indoor or outdoor recreational
10 facility or project;

11 (C) does not include

12 (i) a highway, sidewalk, or path within the right-of-way
13 of a highway;

14 (ii) a path, trail, or lane used as a safe route to a school
15 program;

16 (iii) a wayside or rest stop;

17 (iv) a development, the primary purpose of which is not
18 recreational, such as a path, trail, or lane developed to reduce
19 congestion, or to encourage use of an alternate, gas-saving mode of
20 transportation;

21 (v) a path or trail to or between villages or from a
22 village to a facility or resource;

23 (vi) a stormwater retention or treatment facility or
24 wetland, habitat, or other acquisition required to obtain a permit for a
25 highway, airport, or other public project;

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

29 (viii) a taking not prohibited by law before January 1,
30 2007, under AS 41.21; and

31 (ix) a path, trail, road, or site for which no reasonable

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alternative exists and which is necessary to preserve or establish public access to or along publicly owned land or water, if the use of the path, trail, road, or site itself is for transportation to or to facilitate use of publicly owned land or water rather than primarily for recreation.

* Sec. 4. AS 29.35.030(a) is amended to read:

(a) Except as provided in (c) of this section, a [A] municipality may, only within its boundaries, exercise the powers of eminent domain and declaration of taking in the performance of a power or function of the municipality under the procedures set out in AS 09.55.250 - 09.55.460. In the case of a second class city, the exercise of the power of eminent domain or declaration of taking must be by ordinance that is submitted to the voters at the next general election or at a special election called for that purpose. A majority of the votes on the question is required for approval of the ordinance.

* Sec. 5. AS 29.35.030 is amended by adding new subsections to read:

(c) The power of eminent domain may not be exercised to acquire private property from a private person for the purpose of transferring title to the property to another private person for economic development, except as provided by AS 09.55.240(d)(1) - (6), and may not be exercised for purposes expressed in AS 09.55.240(c).

(d) In this section,

- (1) "economic development" has the meaning given in AS 09.55.240;
- (2) "private person" has the meaning given in AS 09.55.240.

* Sec. 6. The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. This Act applies only to condemnation actions filed on or after the effective date of this Act.

AMENDMENT

#3

OFFERED IN THE SENATE

TO: CSHB 318(FIN) am

- 1 Page 1, line 14:
- 2 Delete "personal"
- 3 Insert "privately owned"

AMENDMENT

OFFERED IN THE SENATE

TO: CSHB 318 (FIN) am

- 1 Page 6, line 18:
- 2 Delete "AS 09.55.240(d)(1) - (6)"
- 3 Insert "AS 09.55.240(d)(1) - (7)"

Brian Hove

From: Cindy Smith
Sent: Wednesday, March 29, 2006 2:02 PM
To: Brian Hove
Subject: HB318

Craig came by: the state lawyers he works with want to change the word "taking" everywhere it appears to "exercise of eminent domain", which is fine. They also suggested a notice of not less than 90 days by municipalities to affected property owners, which also seems fine.

He said the lawyers were concerned with the language prohibiting delegation by municipalities (something to do with the fact the state does this between departments...) and they suggested it be deleted. I think the committee wanted something, so will work with the drafter to be sure that the muni language doesn't foreclose state options (though I don't really think it does)--

that's pretty much it! So we should have this ready to go tomorrow.

Cindy Smith
Office of Senator Hollis French
(907)465-3892
www.akdemocrats.org

47.17.290(13)

French

local govt following ^{motion and} public hearing

✓

*
Public use w/ just compensation

RS economic development ≠ Public use

home is castle -

Tammy Sandovall

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 22, 2006

SUBJECT: Local and special legislation (CSHB 318(FIN) am,
Work Order No. 24-LS1083\XA.3)

TO: Senator Hollis French
Attn: Cindy Smith

FROM: 
Donald M. Bullock Jr.
Legislative Counsel

Enclosed is the amendment you requested to require a separate bill for approving the use of eminent domain for the transfer of private property to a private person for a reason not explicitly recognized elsewhere.

A bill considered under either the amendment or the existing language in the bill provision it amends may be subject to a challenge under the prohibition against local or special acts in art. II, sec. 19, Constitution of the State of Alaska.¹ Whereas the exceptions to the use of eminent domain for a transfer of property to a private person in AS 09.55.240(d)(1) - (6) in bill sec. 3 are general in nature, the existing language in the bill and the amendment will require the legislature to pass what may be a local or special act speaking to a specific piece of property. An alternative to avoid a challenge under art. II, sec. 19 would be for the legislature to enact an additional general basis for the use of eminent domain similar to those already listed in paragraphs (1) - (6).

If I may be of further assistance, please advise.

DMB:lmb
06-111.lmb

Enclosure

¹ **Local or Special Acts.** The legislature shall pass no local or special act if a general act can be made applicable. Whether a general act can be made applicable shall be subject to judicial determination. Local acts necessitating appropriations by a political subdivision may not become effective unless approved by a majority of the qualified voters voting thereon in the subdivision affected.

Brian Hove

From: Emily Doherty [emily@akcenter.org]
Sent: Thursday, March 23, 2006 4:51 PM
To: Sen. Ralph Seekins
Cc: Brian Hove
Subject: *****SPAM***** HB 318
Attachments: Mr. Dave Norton Testimony.doc

March 23, 2006

Senator Ralph Seekins
 Alaska State Legislature
 State Capitol
 Juneau, AK 99801-1182

Dear Senator Seekins,

House Bill 318, Eminent Domain, is a pretty good bill. However, I have serious concerns regarding the restriction on using eminent domain for recreational projects.

The bill's first component is a response to the highly-publicized Kelo Supreme Court decision. I agree: homes are sacred. However, the bill goes on to prohibit the use of eminent domain to take a primary residence and the surrounding 4 acres or so for recreational facilities. This would create a state statutory prohibition on using Eminent Domain for legitimate public use projects that center on recreation.

Already, we have seen the committees' concerns over small boat harbors, boat ramps, navigable waters, logging and mining projects, and who knows what else will come up which will benefit the public good but be road blocked. Snow machine trails? Sled dog trails? Outdoor recreational facilities in cities and small towns? RS 2477 roads? I'm concerned about the "kitchen sink" approach to this bill.

We have talked with a legal advisor, and she had this to say: "Eminent domain is a power that the government has in the situation where it acquires the land for a public use. To me, recreational use is one of the premier "public uses" to take property for, if there is a plan for the recreational activity or greenbelt/open space aspect of it. *The factors developed in Supreme Court precedent protect an abuse of this use of eminent domain.* The abuse in the Kelo case was that a private developer gained from the use of eminent domain to "revitalize" an area of the city. The factors of the Kelo case should be the only restriction on the use of eminent domain. *By adding everything in—the kitchen sink approach—the Legislature is significantly hampering its ability to use eminent domain in a future case where it is warranted.*"

Supreme Court precedent has already developed strong protections against abuse in taking private property for recreational projects. Why does Alaska need to replicate that, and in doing so, tie the hands of the state and local government in creating future recreational projects that will benefit thousands of Alaskans, and attract tourists? I'd like to see the Committee look at the unintended consequences of this bill on recreation in this state. For now, we are trying to cover all our bases to ensure we have access to public waters and lands, etc. But, we cannot possibly know what the local concerns are regarding this bill. Every single community would want to add several amendments to this bill, should they weigh in. It's likely there will be many projects which benefit ALL Alaskans which will be severely hampered in moving forward, thanks to the recreational restrictions in this bill. Eminent

3/23/2006

Domain is already difficult enough to apply, as it should be.

Finally, Rep. McGuire writes in her sponsor statement, "One of the most appealing aspects of living in Alaska has been the ability to own a part of the Last Frontier. This ownership right is to be protected at the highest level." I agree. I also would add, however, that another of the most appealing aspects of living in Alaska is the ability to recreate-to fish our lakes and streams, to hike, ride our ATVs, bike, dog sled, snow machine or to ski our amazing trail systems, to take off from any one of the hundreds of boat harbors and countless other recreational activities. Recreation is so important to Alaskans. Restricting the use of eminent domain for recreation is a mistake in a state where recreation is the number one reason most of us are here in the first place, especially in light of the fact that the recreational application of eminent domain has never been abused in Alaska.

Thank you for all your time. I hope to hear back from you regarding your position on House Bill 318 at this juncture. I'm also sending a letter which you have already received from Mr. Dave Norton which reflects our position. A shorter version of this letter appeared in the Anchorage Daily News. It's been a very interesting and productive series of hearings and I look forward to the next one. Thank you for your time on this issue.

Sincerely,

Emily Doherty
Alaska Center for the Environment
Legislative Coordinator
(907)274-3674

Chairman Seekins and Members of the Committee:

Please accept this written testimony on HB 318 dealing with eminent domain. I attended your committee's meeting last week via LIO in Anchorage hoping to provide my input. However, the committee ran out of time before I could speak and unfortunately I cannot make the meeting this week due to business commitments.

My name is Dave Norton and I am a partner in a project management consulting business that primarily services the oil and gas industry. I live in Senator French's district at 1208 S Street.

In the '80s I was the Municipal Engineer for the Municipality of Anchorage and dealt with eminent domain issues in the planning and building of roads, parks, and public infrastructure. I support the intent of the bill to curtail the inappropriate use of eminent domain for private development.

However, I do not support the bill's intent to restrict use of eminent domain to develop public facilities, including parks, trails, and sports facilities. Eminent domain has been a traditional and important government planning tool throughout the nation's history of urban development and to curtail its use will hamper the urban areas of Alaska in providing a full range of public amenities expected by the people of Alaska.

Moreover, the bill is technically awkward and potentially flawed. It provides 13 uses of eminent domain, including mine tailings dumps, and 9 exceptions to what is a recreational facility. All the complicated "what's in/what's out" language will make this bill a nightmare to administer.

I also find it difficult to understand the 250 foot set-back provision. What is the basis for this determination? Sound impacts, visual impacts and other environmental conditions are all situational and different case-by-case. Why is not the set-back 500 feet, or 50 feet? The set back limit is arbitrary and not useful for actual project impact planning. It should be replaced with something that focuses on the residence itself and the urban setting of the dwelling. Not many people in urban settings have a 250 foot zone of influence around their residences; this amounts to about 4 acres of land use influence and seems excessive in a city with typical neighborhood development patterns.

I recommend that the committee delete the portion of the bill prohibiting use of eminent domain for recreational purposes and stick to the laudable goal of prohibiting use of eminent domain for private development. The law of unintended consequences will trump this bill and the Legislature will end up dealing with case-by-case situations that will be a waste of lawmakers limited time and should be best left to local authorities.

Thank you for your attention.

Dave Norton
276 2530

Public use now means
public \$

public = right to use
the property.....

Craig Johnson 10

Alaska State Legislature

Session:
State Capitol
Juneau, AK 99801
Phone: (907) 465-2995
Fax: (907) 465-6592



Interim:
716 W 4th Avenue, Suite 430
Anchorage, AK 99501-2133
Phone: (907) 269-0250
Fax: (907) 269-0249

Representative Lesil McGuire
Chair, Judiciary Committee

Craig Johnson

Sponsor Statement HB 318

"An Act limiting the exercise of eminent domain."

HB 318 calls for two very clear policy decisions. The first is whether or not it is appropriate to take a person's private property for economic development and the second is whether it is appropriate to take all or part of one's primary residence for recreational opportunities of another. This legislation is not intended to prohibit the legitimate use of eminent domain; it merely limits its use in these two narrow policy areas.

A recent United States Supreme Court ruling that the eminent domain powers of a government could be used to seize private land for economic development purposes has struck a vital blow to private property rights in this country. Although *Kelo v. New London* is a Connecticut case, its implications are broad. HB 318 will clarify the property rights of Alaskans and prevent a repeat of what transpired in Connecticut.

It is important to note the Supreme Court recognized the right of a state to set their own guidelines for defining eminent domain. I find very little fault with that approach. While I believe the Alaska Constitution protects Alaskans from such an egregious attack on personal property. I fully intend to ensure that our state statutes afford the same protection of property.

HB 318 will prohibit the use of eminent domain for economic gain and clarify that the government be prohibited from taking all or part of a primary residence through eminent domain so that others may have a recreational opportunity. Alaska has thousands of acres of land and it is unacceptable to seize someone's home for recreational purposes.

Eminent domain has a legitimate place in land development, but its use must be controlled within a narrow definition to protect private property rights. If it becomes necessary to seize someone's property, the standards applied should be very high.

The power of eminent domain is inherent in the government and does not depend upon the constitution.

The constitution only acts as limitation on power.

Section 1

Page 1 Line 14

following "(B) the taking of a"
remove "landowner's personal"
add "person's privately owned"

The line would then read:

"(B) the taking of a person's privately owned residence to develop an indoor or outdoor recreational facility or project."

(define that privately owned residence includes a residence the title to which is held in trust that is occupied by the owner or beneficiary of that trust)

Page 2 - Line 16 - 25

Delete all the material on lines 16 - 25 and replace with the following:

(3) public buildings and grounds for the use of the state or a political subdivision of the state; canals, aqueducts, flumes, ditches, or pipes conducting water, heat, or gas for the use of the inhabitants of the state; raising the banks of streams, removing obstructions from them, and widening, deepening, or straightening their channels; and roads, streets, and alleys, and all other public uses which may be authorized by the legislature.

Page 3 - line 10 - 13

Delete all the material on lines 1- 13 and replace with the following:

(10) [(9)] sewerage of a community of 10 or more families, or of public buildings belonging to the state or to a college or university;

Page

(d) The power of eminent domain may not be exercised to acquire private property for the purpose of transferring title to the property to a private person except for the purposes set forth in this chapter.

(e) The power of eminent domain may not be exercised for the purpose of developing a recreational facility or project if the property to be acquired includes an individual landowner's personal residence or that portion of an individual's property attached to and within 250 linear feet of an individual landowner's personal residence unless the landowner consents either before or after a condemnation proceeding has been filed.

Reason for 90 day occupancy?

Must a new buyer live in limbo for 90 days?

CSHB 318 (FIN)

"may be used by the owner or beneficiary of a trust holding legal title to the structure as a dwelling unit" and "must be inhabited by the owner or beneficiary of a trust holding legal title to the structure for at least 90 days."

Craig dropped this
off.

If lay legal drafts
this into
Sec. 3 (F)(3) (A & B)
it would address
Sen. Seeking concerns

Joe

Sec 3 (F)(3) (A & B)

is there any reason
for the 90 day stint?

CS FOR HOUSE BILL NO. 318(FIN) am
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

Amended: 2/17/06

Offered: 2/10/06

Sponsor(s): REPRESENTATIVES MCGUIRE, HOLM AND HAWKER, Stoltze, Gatto, Wilson, Kohring, LeDoux, Dahlstrom, Kelly, Anderson, Olson, Lynn, Elkins, Foster, Kapsner, Samuels, Ramras, Meyer, Seaton, Rokeberg

A BILL
FOR AN ACT ENTITLED

1 "An Act limiting the exercise of eminent domain."

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

3 * **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
4 to read:

5 **LEGISLATIVE INTENT AND FINDINGS.** (a) The legislature finds that

6 (1) the United States Supreme Court decision in *Kelo v. City of New London*,
7 545 U.S. ___, 125 S.Ct. 2655, 162 L. Ed. 2d 439 (2005) demonstrates that an overly
8 expansive application of eminent domain powers can be a threat to the property rights of all
9 private property owners;

10 (2) it is necessary to provide clarification regarding the exercise of eminent
11 domain in the following two situations:

12 (A) the taking of private property if the purpose is to transfer the
13 property to another private person for economic development;

14 (B) the taking of a landowner's personal residence to develop an indoor
15 or outdoor recreational facility or project.

1 (b) In recognizing that many public projects will have economic effects, the
2 legislature intends by this Act not to

3 (1) restrict those public uses already recognized in state law merely because
4 the project may have an associated economic effect; or

5 (2) provide an absolute bar on transfers of land to private entities, but to place
6 restrictions on when such transfers occur.

7 (c) In this section, "economic development" means development of property for a
8 commercial enterprise carried on for profit or to increase tax revenue, tax base, or
9 employment.

10 * Sec. 2. AS 09.55.240(a) is amended to read:

11 (a) Except as provided in (d) and (e) of this section, the [THE] right of
12 eminent domain may be exercised for the following public uses:

13 (1) all public uses authorized by the government of the United States;

14 (2) public buildings and grounds for the use of the state and all other
15 public uses authorized by the legislature of the state;

16 (3) public buildings and grounds for the use of an organized or
17 unorganized borough, city, town, village, school district, or other municipal division,
18 whether incorporated or unincorporated; canals, aqueducts, flumes, ditches, or pipes
19 conducting water, heat, or gas for the use of the inhabitants of an organized or
20 unorganized borough, city, town, or other municipal division, whether incorporated or
21 unincorporated; raising the banks of streams, removing obstructions from them, and
22 widening, deepening, or straightening their channels; and roads, streets, and alleys,
23 and all other public uses for the benefit of an organized or unorganized borough, city,
24 town, or other municipal division whether incorporated or unincorporated, or its
25 inhabitants, which may be authorized by the legislature;

26 (4) wharves, docks, piers, chutes, booms, ferries, bridges of all kinds,
27 private roads, plant and turnpike roads, railroads, canals, ditches, flumes, aqueducts,
28 and pipes for public transportation, supplying mines and farming neighborhoods with
29 water, and draining and reclaiming land, and for floating logs and lumber on streams
30 not navigable, and sites for reservoirs necessary for collecting and storing water;

31 (5) roads, tunnels, ditches, flumes, pipes, and dumping places for