

This public transcript covers the dialog and debate of HB 381 by the House Judiciary Committee March 29<sup>th</sup>, 2010. Specifically at transcript point 1:46:23 p.m. Dialog between the Members of the Committee and the Dept. of Law are on the Subject of HB 381, not HB 24, the current legislation before the 28<sup>th</sup> Alaska Legislature. HB 381 is provided at the end of this document for comparison to the current HB 24 before the House Finance Committee

Joe Michel-House Finance Aide  
2/25/13

ALASKA STATE LEGISLATURE  
 HOUSE JUDICIARY STANDING COMMITTEE  
 March 29, 2010  
 1:09 p.m.

**MEMBERS PRESENT**

Representative Jay Ramras, Chair  
 Representative Carl Gatto  
 Representative Bob Herron  
 Representative Bob Lynn  
 Representative Max Gruenberg  
 Representative Lindsey Holmes

**MEMBERS ABSENT**

Representative Nancy Dahlstrom, Vice Chair

**COMMITTEE CALENDAR**

HOUSE BILL NO. 381  
 "An Act relating to self defense."

- MOVED CSHB 381(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 348  
 "An Act relating to the membership of the state personnel board."

- MOVED CSHB 348(JUD) OUT OF COMMITTEE

**PREVIOUS COMMITTEE ACTION**BILL: HB 381

SHORT TITLE: SELF DEFENSE  
 SPONSOR(S): REPRESENTATIVE(S) NEUMAN

02/23/10	(H)	READ THE FIRST TIME - REFERRALS
02/23/10	(H)	JUD, FIN
03/15/10	(H)	JUD AT 1:00 PM CAPITOL 120
03/15/10	(H)	Heard & Held
03/15/10	(H)	MINUTE(JUD)
03/29/10	(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 348

SHORT TITLE: PERSONNEL BOARD MEMBERSHIP  
 SPONSOR(S): REPRESENTATIVE(S) LYNN

02/17/10	(H)	READ THE FIRST TIME - REFERRALS
02/17/10	(H)	STA, JUD
03/11/10	(H)	STA AT 8:00 AM CAPITOL 106
03/11/10	(H)	Heard & Held
03/11/10	(H)	MINUTE(STA)
03/16/10	(H)	STA AT 8:00 AM CAPITOL 106
03/16/10	(H)	Moved CSHB 348(STA) Out of Committee
03/16/10	(H)	MINUTE(STA)
03/17/10	(H)	STA RPT CS(STA) 3DP 1NR 2AM
03/17/10	(H)	DP: PETERSEN, SEATON, LYNN
03/17/10	(H)	NR: GATTO
03/17/10	(H)	AM: GRUENBERG, P.WILSON
03/29/10	(H)	JUD AT 1:00 PM CAPITOL 120

**WITNESS REGISTER**

JIM ELLIS, Staff  
 to Representative Mark Neuman  
 Alaska State Legislature  
 Juneau, Alaska

**POSITION STATEMENT:** Presented HB 381, Version E, for the bill sponsor, Representative Neuman.

REPRESENTATIVE MARK NEUMAN  
 Alaska State Legislature  
 Juneau, Alaska

**POSITION STATEMENT:** Testified and answered questions, as the sponsor of HB 381.

ANNE CARFENETI, Assistant Attorney General

*Distributed by Rep. Les Gara*

Legal Services Section  
Criminal Division  
Department of Law (DOL)  
Juneau, Alaska  
**POSITION STATEMENT:** Testified and answered questions during discussion of HB 381.

BRIAN JUDY, Senior State Liaison  
National Rifle Association - Institute for Legislative Action  
(NRA-ILA)  
Sacramento, California  
**POSITION STATEMENT:** Testified during discussion of HB 381.

MIKE SICA, Staff  
to Representative Bob Lynn  
Alaska State Legislature  
Juneau, Alaska  
**POSITION STATEMENT:** Presented HB 348 on behalf of the bill sponsor, Representative Lynn, and responded to questions.

JUDY BOCKMON, Assistant Attorney General, State Ethics Attorney  
Opinions, Appeals, & Ethics  
Civil Division (Anchorage)  
Department of Law (DOL)  
**POSITION STATEMENT:** Testified and answered questions during discussion of HB 348.

DOUG WOOLIVER, Administrative Attorney  
Administrative Staff  
Central Office  
Office of the Administrative Director  
Alaska Court System (ACS)  
Anchorage, Alaska  
**POSITION STATEMENT:** Testified and answered questions during testimony on HB 348.

MIKE FORD, Assistant Attorney General & Legislative Liaison  
Legislation & Regulations Section  
Civil Division (Juneau)  
Department of Law (DOL)  
Juneau, Alaska  
**POSITION STATEMENT:** Testified and answered questions during discussion of HB 348.

#### **ACTION NARRATIVE**

1:09:38 PM

CHAIR JAY RAMRAS called the House Judiciary Standing Committee meeting to order at 1:09 p.m. Representatives Ramras, Herron, Gatto, and Lynn were present at the call to order. Representatives Gruenberg and Holmes arrived as the meeting was in progress.

#### **HB 381 - SELF DEFENSE**

1:09:45 PM

CHAIR RAMRAS announced that the first order of business would be HOUSE BILL NO. 381, "An Act relating to self defense."

1:10:10 PM

REPRESENTATIVE GATTO moved to adopt the proposed committee substitute (CS) for HB 381, 26-LS1534\E, Luckhaupt, 3/23/10, as the working document.

There being no objection, Version E was before the committee.

CHAIR RAMRAS pointed out that Version E was a truncated version of the original bill, but it will still benefit from discussion.

1:10:55 PM

JIM ELLIS, Staff to Representative Mark Neuman, Alaska State Legislature, explained that Version E addresses the concerns which arose for the original bill. He noted that Version E is limited to one topic.

1:11:39 PM

REPRESENTATIVE HERRON questioned whether the term, "complete safety" as used on page 1, line 5, will be statutorily defined.

MR. ELLIS, in response to a question, explained that the original bill contained a section for a proposed addition to AS 11.81, which discussed prima facie evidence. He pointed out that this proposed section is removed from Version E.

REPRESENTATIVE GATTO, pointing to Version E, page 2, line 3, asked if paragraphs (1), (2), (3), and (4) were necessary in light of (5).

MR. ELLIS replied that he was not sure, and that there could be some duplication. He explained that it was easier to add paragraph (5).

CHAIR RAMRAS, expressing his fascination with the meaning of different words, asked for the meaning of "or in any place where the person has a right to be."

MR. ELLIS offered his belief that this is any place where someone is not trespassing.

1:16:52 PM

CHAIR RAMRAS, reading Section 1, echoed Representative Gatto's question for the need of paragraphs (1)-(4).

MR. ELLIS agreed that paragraph (5) would include the other paragraphs.

1:19:58 PM

REPRESENTATIVE MARK NEUMAN, Alaska State Legislature, in response to Chair Ramras, explained that paragraph (1) refers to premises that a person owns, leases, or resides in. He declared that paragraph (5) was added to allow an individual to protect themselves in a place where they have a legal right to be.

CHAIR RAMRAS asked how paragraph (5) expands the rights beyond the prior four paragraphs.

REPRESENTATIVE NEUMAN named the places a person could be as described in paragraph (1), and noted that this also included a member of the person's family, as noted in paragraph (4). He opined that paragraph (5) expands the current definition for a "place where you have a right to be to be able to protect yourself or your family." He relayed that earlier discussions with the Department of Law (DOL), the National Rifle Association (NRA), and his staff had revolved around the "razor's edge on where you fall on rights." Under the bill, there would still be a determination of whether the use of deadly force was justified. He suggested that this would prevent vigilantism.

1:24:49 PM

ANNE CARPENETI, Assistant Attorney General, Legal Services Section, Criminal Division, Department of Law (DOL), acknowledged that Version E addresses many of the DOL's concerns, but she pointed out that it does not include the "duty to retreat," which is required in Alaska if it can be done in complete safety. In Alaska, self defense is a valid defense only if it can be proven beyond a reasonable doubt that you could not retreat in complete safety. In response to the question from Representative Gatto, DOL offered its belief that paragraph (5) eliminates the need for paragraphs (1) - (4). She explained that these were places that an individual has a right to be, so it is not necessary to list them. She pointed out that Alaska statutes do not define the term "complete safety".

MS. CARPENETI, in response to Chair Ramras, stated that although Version E is better than the original bill, DOL still has concerns. She agreed with Chair Ramras that Version E "makes a bad bill, better."

1:26:39 PM

REPRESENTATIVE HERRON asked Ms. Carpeneti to comment on the title of the bill.

MS. CARPENETI said that juries will evaluate whether a person is justified. She explained that the use of deadly force raises the question of whether the person had the duty to retreat.

1:27:42 PM

REPRESENTATIVE GATTO asked for examples of places that a person had no legal right to be. He asked if a sign declaring "No Trespassing" constituted such a place.

[CHAIR RAMRAS passed the gavel to Representative Herron.]

MS. CARPENETI agreed.

REPRESENTATIVE GATTO asked if his house or his property would be included.

MS. CARPENETI, in response, said that his house would be protected, but that it would depend on whether his property was clearly marked.

REPRESENTATIVE GATTO asked about a paved driveway off a dirt road, which was the only pavement for a mile, and went directly to his house.

[Representative Herron returned the gavel to Chair Ramras.]

MS. CARPENETI replied that all of these instances would be "factually based."

REPRESENTATIVE GATTO expressed concern about determining the boundaries of someone's unmarked property, which could lead to an accidental trespass.

[CHAIR RAMRAS passed the gavel to Representative Herron.]

1:30:46 PM

REPRESENTATIVE GATTO expressed concern about unknowingly trespassing onto unmarked private property.

1:31:42 PM

REPRESENTATIVE GRUENBERG referred to AS 11.46.350(b)-(c) which addresses criminal trespass. He noted that criminal trespass in the first degree is defined as entering or remaining unlawfully with the intent to commit a crime, a Class A misdemeanor. He defined criminal trespass in the second degree as a Class B misdemeanor. He pointed out that entering or remaining unlawfully is defined in the statute. He further explained that a person entering land, without intent to commit a crime, which is unused, unimproved, and not enclosed, is "privileged to do so, unless there is notice against trespass personally communicated to that person by the owner of the land or some other authorized person."

The committee took an at-ease from 1:34 p.m. to 1:35 p.m.

1:35:17 PM

REPRESENTATIVE GRUENBERG asked if being on a paved road could be trespassing.

MS. CARPENETI, in response, said that it would depend on the circumstances. The road would have to be marked as private. She agreed that a mailbox would indicate that it is private, but it would still depend on the circumstances.

1:36:22 PM

MS. CARPENETI, in response to Representative Lynn, declared that any person who is invited in, including service people, has a right to be there.

REPRESENTATIVE LYNN asked about people entering to retrieve an object, such as a ball or a model airplane.

MS. CARPENETI replied that it would depend on the circumstances.

1:38:49 PM

REPRESENTATIVE HOLMES, referring to the DOL letter dated March 15, 2010 [Included in the members' packets], asked if DOL maintained its objection. She read from the second paragraph on page one: "...if person A could avoid killing person B by walking away, he/she would no longer be required to do so, but instead would be authorized by law to kill person B." She asked if this would also now apply with Version E.

MS. CARPENETI replied that it is correct.

REPRESENTATIVE HOLMES read from page three, paragraph two: "The proposed subsection... would almost completely eliminate the duty to retreat." and she asked if this was also still a DOL concern of Version E.

MS. CARPENETI replied that it was still a concern.

REPRESENTATIVE HERRON, referring to Version E, page 2, line 3, asked if this was a re-write from the original bill.

1:40:16 PM

MS. CARPENETI explained that Version E merely changes the numbering of the paragraphs.

1:40:41 PM

REPRESENTATIVE GRUENBERG asked whether there had been discussion with the bill sponsor for inserting "that you only have a duty to retreat when you know you can safely do so." He opined that this was the basic principle of the common law.

MS. CARPENETI replied that this was already included on page 1, lines 4-7, of Version E.

MS. CARPENETI, in response to Representative Gruenberg, said that DOL did discuss with the bill sponsor the "burden of going forward and the burden of proof."

MS. CARPENETI, in response to Representative Gruenberg, stated that the duty of presenting evidence of self defense was discussed in general terms.

1:43:10 PM

REPRESENTATIVE GRUENBERG suggested a statement that "the burden to disprove the defense is on the prosecution beyond a reasonable doubt." He stated further that "all the defendant has to do is put in some evidence, enough to raise the issue, like to say, 'gee, I thought he was gonna go after me' and then the duty to disprove it, to show that didn't occur, is back on the prosecution and it's the highest burden in the law, beyond a reasonable doubt."

1:44:09 PM

MR. ELLIS replied that he would speak with the bill sponsor. He offered his understanding that, for this defense, the burden shifts to the prosecutors to prove beyond a reasonable doubt.

REPRESENTATIVE GRUENBERG agreed, and suggested that this be written into Version E. In response to Representative Herron, he explained that this is a convoluted area of law, which is not clarified in Version E. He suggested that making this change in Version E could better clarify the law.

1:46:23 PM

REPRESENTATIVE HOLMES expressed her concern with gang violence. She offered her belief that Version E would extend the "no duty to retreat" to public places such as malls and parks. She asked if this might unwittingly legalize gang violence.

MS. CARPENETI agreed that DOL also shared this concern. She said that the burden of "beyond a reasonable doubt" could be difficult to prove for either side. In response to a question from Representative Gatto, she explained that for this defense, the prosecution has the burden of disproving beyond a reasonable doubt, as defined in the justification section of Title 11.

MS. CARPENETI, in response to Representative Gatto, said that it

would be unusual to have this written in two places in the law, as it could lead to confusion.

1:49:58 PM

BRIAN JUDY, Senior State Liaison, National Rifle Association - Institute for Legislative Action (NRA-ILA), offered his belief that the intent of the bill is to allow a person to kill someone who criminally threatens him/her. He said there are two questions to answer when someone is criminally threatened: first, is there justification for deadly force; and second, is there the possibility for retreat in complete safety. The NRA believes that no one should have to be burdened with this determination if they are in a lawful place. He agreed that there may still be a need to justify their action. He opined that Version E merely removed the duty to retreat. He opined that gang violence was an issue where justification was necessary. He stated that NRA just wanted to protect the law abiding citizen.

REPRESENTATIVE HERRON declared that HB 301 (Version E) would be set aside until later in the meeting.

**HOUSE BILL NO. 381**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - SECOND SESSION

**BY REPRESENTATIVES NEUMAN, Stoltze, Peggy Wilson, Keller, Ramras, Tammie Wilson, Olson, Kelly**

**Introduced: 2/23/10**

**Referred: Judiciary, Finance**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to self defense."**

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

3 **\* Section 1.** AS 11.81.335(b) is amended to read:

4 (b) A person may not use deadly force under this section if the person knows  
5 that, with complete personal safety and with complete safety as to others being  
6 defended, the person can avoid the necessity of using deadly force by leaving the area  
7 of the encounter, except there is no duty to leave the area if the person is

8 (1) on premises

9 (A) that the person owns or leases;

10 (B) where the person resides, temporarily or permanently; or

11 (C) as a guest or express or implied agent of the owner, lessor,

12 or resident;

13 (2) a peace officer acting within the scope and authority of the officer's  
14 employment or a person assisting a peace officer under AS 11.81.380;

15 (3) in a building where the person works in the ordinary course of the



1 person's employment; [OR]

2 (4) protecting a child or a member of the person's household;

3 (5) in a vehicle that the person owns or leases or uses or occupies  
 4 with the consent of the owner; or

5 (6) in any place where the person has a right to be.

6 \* **Sec. 2.** AS 11.81 is amended by adding a new section to read:

7 **Sec. 11.81.355. Prima facie evidence regarding use of deadly force under**  
 8 **AS 11.81.335 - 11.81.350; additional probable cause determination for arrest. (a)**

9 The following are prima facie evidence that a person's belief that the use of deadly  
 10 force under AS 11.81.335 - 11.81.350 was reasonable:

11 (1) the person against whom the deadly force was used was in the  
 12 process of committing, or had committed, a burglary of a dwelling and the person  
 13 using the deadly force knew or had reason to believe that a burglary was occurring or  
 14 had occurred;

15 (2) the person against whom the deadly force was used was in the  
 16 process of committing, or had committed, a carjacking of an occupied vehicle and the  
 17 person using the deadly force knew or had reason to believe that a carjacking was  
 18 occurring or had occurred;

19 (3) the person against whom the deadly force was used was in the  
 20 process of kidnapping, or had kidnapped,

21 (A) a person from a dwelling or an occupied vehicle and the  
 22 person using the deadly force knew or had reason to believe that a kidnapping  
 23 was occurring or had occurred; or

24 (B) a child or household member of the person using the deadly  
 25 force and the person using the deadly force knew or had reason to believe that  
 26 a kidnapping was occurring or had occurred.

27 (b) The prima facie evidence described in this section does not apply if

28 (1) the person against whom the force was used, as described in (a)(1)  
 29 of this section, was the owner or lawful resident of the dwelling;

30 (2) the person against whom the force was used, as described in (a)(2)  
 31 of this section, was the owner or lawfully entitled to possession of the vehicle;

1                   (3) the person against whom the force was used was a peace officer,  
2 acting within the scope and authority of the officer's employment and the officer either

3                               (A) identified themselves in accordance with any applicable  
4 law; or

5                               (B) the person using the force knew or reasonably should have  
6 known that the person was a peace officer;

7                   (4) the person using the force is engaged in an unlawful activity or is  
8 using the dwelling or occupied vehicle to further an unlawful activity.

9                   (c) A law enforcement agency may use standard procedures for investigating  
10 the use of force, but the law enforcement agency may not arrest a person for using  
11 force as permitted by AS 11.81.335 - 11.81.350 unless the agency determines that  
12 there is probable cause that the force that was used was unlawful.

13                   (d) In this section, "carjacking" has the meaning given in AS 11.81.350.