

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

April 17, 2002

1:10 p.m.

MEMBERS PRESENT

Representative Norman Rokeberg, Chair
Representative Jeannette James
Representative John Coghill
Representative Kevin Meyer
Representative Ethan Berkowitz

MEMBERS ABSENT

Representative Scott Ogan, Vice Chair
Representative Albert Kookesh

COMMITTEE CALENDAR

HOUSE BILL NO. 350

"An Act relating to terroristic threatening."

- MOVED CSHB 350(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 499

"An Act relating to the sale, lease, exchange, or other disposition of business property and assets."

- HEARD AND HELD

CONFIRMATION HEARING

Board Of Governors Of The Alaska Bar

Sheila Selkregg - Anchorage

- CONFIRMATION HEARING POSTPONED

PREVIOUS ACTION

BILL: HB 350

SHORT TITLE:TERRORISTIC THREATS

SPONSOR(S): REPRESENTATIVE(S)MCGUIRE

Jrn-Date	Jrn-Page		Action
01/23/02	2040	(H)	READ THE FIRST TIME -

			REFERRALS
01/23/02	2040	(H)	TRA, JUD
02/19/02		(H)	TRA AT 1:15 PM CAPITOL 17
02/19/02		(H)	Moved CSHB 350(TRA) Out of Committee -- Time Change --
02/19/02		(H)	MINUTE(TRA)
02/20/02	2334	(H)	TRA RPT CS(TRA) NT 5NR 1AM
02/20/02	2334	(H)	NR: SCALZI, OGAN, KOOKESH, MASEK,
02/20/02	2334	(H)	KOHRING; AM: WILSON
02/20/02	2335	(H)	FN1: ZERO(CRT)
02/20/02	2335	(H)	FN2: INDETERMINATE(ADM)
02/20/02	2335	(H)	FN3: INDETERMINATE(LAW)
02/20/02	2335	(H)	REFERRED TO JUDICIARY
02/20/02	2348	(H)	FIN REFERRAL ADDED AFTER JUD
02/27/02		(H)	JUD AT 1:00 PM CAPITOL 120
02/27/02		(H)	Heard & Held
02/27/02		(H)	MINUTE(JUD)
02/27/02		(H)	MINUTE(JUD)
04/17/02		(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 499

SHORT TITLE:DISPOSITION OF BUSINESS ASSETS

SPONSOR(S): JUDICIARY

Jrn-Date	Jrn-Page		Action
02/27/02	2407	(H)	READ THE FIRST TIME - REFERRALS
02/27/02	2407	(H)	JUD
02/27/02	2407	(H)	REFERRED TO JUDICIARY
03/15/02		(H)	JUD AT 1:00 PM CAPITOL 120
03/15/02		(H)	Heard & Held MINUTE(JUD)
04/05/02		(H)	JUD AT 1:00 PM CAPITOL 120
04/05/02		(H)	Heard & Held MINUTE(JUD)
04/17/02		(H)	JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

REPRESENTATIVE LESIL MCGUIRE

Alaska State Legislature

Capitol Building, Room 418

Juneau, Alaska 99801

POSITION STATEMENT: Sponsor of HB 350.

HEATHER M. NOBREGA, Staff

to Representative Norman Rokeberg
House Judiciary Standing Committee
Alaska State Legislature
Capitol Building, Room 118
Juneau, Alaska 99801

POSITION STATEMENT: Responded to questions regarding the
proposed CS for HB 350.

STEVE CONN

Alaska Public Interest Research Group (AkPIRG)
601 West 18th Avenue
Anchorage, Alaska 99501

POSITION STATEMENT: Expressed concern with HB 350.

ANNE CARPENETI, Assistant Attorney General

Legal Services Section-Juneau

Criminal Division

Department of Law (DOL)

PO Box 110300

Juneau, Alaska 99811-0300

POSITION STATEMENT: Assisted with the presentation of the
proposed CS for HB 350 and responded to questions.

ACTION NARRATIVE

TAPE 02-50, SIDE A

Number 0001

CHAIR NORMAN ROKEBERG called the House Judiciary Standing
Committee meeting to order at 1:10 p.m. [stated as 2:10 p.m.].
Representatives Rokeberg, James, Coghill, and Meyer were present
at the call to order. Representative Berkowitz arrived as the
meeting was in progress.

HB 350 - TERRORISTIC THREATS

[Contains mention that HB 350 and HB 328 have been combined into
a committee substitute (CS) for HB 350; contains references to
HB 325.]

Number 0070

CHAIR ROKEBERG announced that the first order of business would
be HOUSE BILL NO. 350, "An Act relating to terroristic
threatening." [Before the committee was CSHB 350(TRA).]

Number 0076

REPRESENTATIVE LESIL McGUIRE, Alaska State Legislature, sponsor, mentioned that she and staff from her office, from Representative Berkowitz's office, and from Representative Rokeberg's office have been working with Anne Carpeneti from the Department of Law (DOL) to create a committee substitute (CS) that incorporates aspects of both HB 350 and HB 328, which are similar in intent. She posited that this proposed CS would address the statutory changes needed as a result of the terrorist attacks of September 11, 2001.

REPRESENTATIVE McGUIRE explained that the concept of [CSHB 350(TRA)] has been incorporated into Sections 6-8 and 17-18 of the proposed CS. She noted that language pertaining to schedule delays and threats has been inserted into Sections 17 and 18 of the proposed CS. In addition, the proposed CS creates a new statute - AS 11.56.807 - which adds an additional level of terroristic threatening [in the first degree].

REPRESENTATIVE McGUIRE, in closing, remarked that while there is a tenuous balance between protecting an individual's rights and living in a police state, there is also a need to recognize the new threats to security arising from the terrorist attacks of September 11th. She reiterated that it was both her intent and the governor's, via HB 350 and HB 328, to take a comprehensive look at, and possibly update, Alaska's statutes regarding this issue.

Number 0281

HEATHER M. NOBREGA, Staff to Representative Norman Rokeberg, House Judiciary Standing Committee, Alaska State Legislature, in response to a question, mentioned that although there would be fiscal notes accompanying the proposed CS, they were unavailable at this time.

Number 0319

REPRESENTATIVE JAMES moved to adopt the proposed committee substitute (CS) for HB 350, version 22-LS1300\B, Luckhaupt, 4/15/02, as a work draft. There being no objection, Version B was before the committee.

Number 0373

STEVE CONN, Alaska Public Interest Research Group (AkPIRG), testified via teleconference and mentioned his concern that HB

350 could allow a political act to be interpreted in such a way as to trigger provisions of HB 325 that allow the governor to invoke emergency powers. For example, he said, a person could make a false report regarding the threat of an avalanche that results in the delay of a bus going from Anchorage to Seward, and if the governor invokes emergency powers via HB 325, it could result in the suspension of a variety of legal rights including property rights. He opined that [HB 350] creates a vague crime that would be open for challenge, and that the word "terroristic" is extremely unhelpful.

MR. CONN, in response to questions, said that he was looking at language in Section 2 [of CSHB 350(TRA)] which provides that under AS 11.56.810:

(a) A person commits the crime of terroristic threatening if the person knowingly makes a false report that a circumstance (1) dangerous to human life exists or is about to exist and ... (D) disrupts the schedule of an entity providing transportation services for persons or property; (2) exists or is about to exist that is dangerous to the proper or safe functioning of an oil or gas pipeline....

REPRESENTATIVE BERKOWITZ indicated that [Section 18] of Version B has similar language although it has been changed to say:

(a) A person commits the crime of terroristic threatening in the second degree if the person knowingly makes a false report that a circumstance (1) dangerous to human life exists or is about to exist and ... (E) substantially disrupts the schedule of an entity providing transportation services for persons or property; or (2) exists or is about to exist that is dangerous to the proper or safe function of an oil or gas pipeline....

MR. CONN, acknowledging that he does not yet have Version B at his location, opined that language in [CSHB 350(TRA)] "ill serves the public need by diminishing terrorism to an individualized crime, rather [than] one that is, effectively, an attack on the state, on the community."

Number 0766

ANNE CARPENETI, Assistant Attorney General, Legal Services Section-Juneau, Criminal Division, Department of Law (DOL),

surmised that Mr. Conn's comments apply to current law, too, since terroristic threatening, in present law, prohibits a person [from] making a false report that a circumstance dangerous to human life exists or is about to exist and causes various results, for example, placing a person in fear, causing evacuation of a building, [or causing a serious public inconvenience]. Version B, she noted, adds the crime of substantially disrupting the schedule of an entity providing transportation services. Therefore, she opined, Version B is not making any change in the law that [would warrant Mr. Conn's concerns].

REPRESENTATIVE BERKOWITZ argued, however, that under current law, causing a serious public inconvenience is a class C felony, whereas under Section 17 of Version B, causing a serious public inconvenience [could be] a class B felony. He noted, too, that Version B adds the new component of substantially disrupting the schedule [of an entity providing transportation services].

REPRESENTATIVE COGHILL pointed out that in Version B, [this new component pertaining to substantially disrupting the schedule of an entity providing transportation services] would still be a class C felony.

REPRESENTATIVE BERKOWITZ noted that under terroristic threatening in the first degree - Section 17, page 9, line 4 - it is a crime to cause serious public inconvenience.

MS. CARPENETI pointed out that the new terroristic threatening in the first degree [Section 17] involves different conduct than the current statute, whereas terroristic threatening in the second degree, as proposed by Section 18, remains a class C felony and adds new ways of committing this crime [including substantially disrupting the schedule of an entity providing transportation services].

REPRESENTATIVE BERKOWITZ suggested that in Section 18, it would be sufficient to have one of the components be causing serious public inconvenience, rather than add language pertaining to substantially disrupting the schedule [of an entity providing transportation services].

CHAIR ROKEBERG noted that the language "causes serious public inconvenience" is in both Section 17 and Section 18.

REPRESENTATIVE BERKOWITZ said that he does not understand what [subparagraph] (E) adds to Section 18.

Number 0949

REPRESENTATIVE McGUIRE pointed out, for example, that the original qualifier of Section 17 - the predicate element - is:

(a) A person commits the act of terroristic threatening in the first degree if the person sends, delivers, or attempts to send or deliver a package or any other item containing a biological or chemical substance or an imitation biological or chemical substance with intent to....

That then modifies the phrase "causes serious public inconvenience". She offered that it is a policy decision whether to additionally have that qualifier modify the phrase that begins "substantially disrupts the schedule of an entity".

REPRESENTATIVE BERKOWITZ, referring to Section 18 [subparagraphs] (C) and (E), offered that there could potentially be a situation in which substantial disruption of a schedule does not rise to the level of serious public inconvenience. The language is written disjunctively, he added.

MS. CARPENETI said that Representative Berkowitz is correct; the language in Section 18 is written in the disjunctive. Therefore, she noted, the issue is whether causing public inconvenience will encompass every instance of substantially disrupting the schedule of an entity providing transportation services for persons or property. She recommended that the language currently in Section 18 of Version B remain as is in order to cover circumstances in which the substantial disruption of public transportation does not cause widespread public inconvenience.

REPRESENTATIVE McGUIRE said that it is a policy decision whether to include both components as being worthy of rising to the level [of a class C felony]. She pointed out that the qualifier for Section 18 is "knowingly making a false report that a circumstance ... dangerous to human life exists or is about to exist and", so there are some elements that have to be met first, before any of the components becomes a class C felony.

MR. CONN indicated that he has received a copy of Version B. He relayed that one of his concerns is that at the same time HB 350 is moving forward as an amendment to the criminal law, HB 325, which adds the term "terrorist attack" to language pertaining to an actual enemy attack, will trigger the imposition of martial

law in Alaska and the subsequent suspension of all rights. He remarked that the language in HB 350 regarding terrorism could become the defining language used as the basis for invoking provisions of HB 325.

Number 1173

MR. CONN pointed out that the current statutory language, which HB 350 proposes to modify, "relates to pre-September 11th thinking about the terror evoked in any single victim by certain acts of the perpetrator." In contrast, HB 325 introduces into Alaska law, coincidental with the word "enemy", "a kind of non-state domestic entity ... whose threat can be such that all laws are suspended." He opined that public policy demands that HB 350 and HB 325 be read jointly so as not to do great harm to HB 325.

REPRESENTATIVE McGUIRE, in response, offered that saying that someone commits a crime of terroristic threatening does not necessarily mean that that person is a terrorist. Terroristic threatening is already a crime under current statutes, so HB 350 would not be setting any precedents. She posited HB 350 is very narrow and pointed out that the individual components of Sections 17 and 18 rely on the predicate elements of their respective subsections (a). She remarked that HB 325 is a separate issue but assured Mr. Conn that she has noted his concerns and would try to address them should HB 325 make it to the House floor for debate.

CHAIR ROKEBERG remarked that Mr. Conn raises an interesting point, that it should be clearer that there is disconnection between HB 350 and HB 325. He also said that he did not necessarily agree with Representative McGuire that defining the crime of terroristic threatening does not also define what a terrorist is.

CHAIR ROKEBERG closed public [testimony] on HB 350.

REPRESENTATIVE BERKOWITZ, referring to Section 16, lines 20-22, asked why that language has been added to AS 11.56.800(a)(3).

MS. CARPENETI explained that it was added as a precautionary measure to make it clear that if conduct arises to the level of terroristic threatening in the second degree, it should be charged under that. In response to a question, she acknowledged that depending on the facts, such conduct might possibly be considered a lesser included offense under AS 11.56.800.

REPRESENTATIVE BERKOWITZ asked whether there have been any problems in the past that require adding language to the criminal code, specifically to AS 11.56.800. He remarked that he doesn't like to add language to the criminal code without a demonstrable need to do so. He asked what the addition of the new language proposed by Section 16 adds to the criminal code, or what it corrects.

MS. CARPENETI said that in drafting Version B, [she and the sponsor] wanted to make it clear that conduct covered under AS 11.56.810 - terroristic threatening in the second degree - should be charged under that provision. Thus, addition of language in Section 16 would ensure that if there were any confusion that certain conduct came under both AS 11.56.800 and AS 11.56.810, the conduct would be charged under the latter.

Number 1490

REPRESENTATIVE BERKOWITZ made a motion to adopt Amendment 1, which would delete [subparagraph] (E) from Section 18.

Number 1499

CHAIR ROKEBERG objected.

REPRESENTATIVE BERKOWITZ, in defense of Amendment 1, opined that "causes serious public inconvenience" would include the substantial disruption of the schedule of an entity providing transportation, which, by contrast, could have no practical effect if, for example, a bus or ferry was delayed but was not carrying any passengers.

CHAIR ROKEBERG said he disagreed.

REPRESENTATIVE McGUIRE opined that it is important to retain the language in [subparagraph] (E) in case it could apply to certain circumstances.

REPRESENTATIVE BERKOWITZ opined that [subparagraph] (E) is superfluous, and that retaining it would be an invitation for trouble.

Number 1615

A roll call vote was taken. Representatives Berkowitz voted for Amendment 1. Representatives Meyer, James, Coghill, and

Rokeberg voted against it. Therefore, Amendment 1 failed by a vote of 1-4.

Number 1623

REPRESENTATIVE JAMES moved to report the proposed committee substitute (CS) for HB 350, version 22-LS1300\B, Luckhaupt, 4/15/02, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 350(JUD) was reported from the House Judiciary Standing Committee.

HB 499 - DISPOSITION OF BUSINESS ASSETS

Number 1640

CHAIR ROKEBERG announced that the last order of business would be HOUSE BILL NO. 499, "An Act relating to the sale, lease, exchange, or other disposition of business property and assets." [Before the committee was committee substitute (CS) for HB 499, version 22-LS1490\S, Bannister, 4/5/02, which was adopted as a work draft on 4/5/02.]

CHAIR ROKEBERG asked members to comment on the retroactivity provision of Version S.

REPRESENTATIVE COGHILL said he that he has concerns with that provision.

CHAIR ROKEBERG said that he would be willing to delete the retroactivity provision - Section 9 on page 7 - in order to move the bill.

REPRESENTATIVE MEYER remarked that in a conversation he'd had with Mr. Theodore M. Pease, Jr., attorney at law, regarding the retroactivity provision, Mr. Pease "had a pretty good defense" for it.

CHAIR ROKEBERG said that he agreed with Mr. Pease but [did not want to overlook members' concerns].

REPRESENTATIVE JAMES said that she, too, agreed with Mr. Pease.

REPRESENTATIVE BERKOWITZ indicated that he, in addition to Representative Coghill, has some serious concerns with the retroactivity provision.

CHAIR ROKEBERG said that he wanted to move this bill from committee, and that he is willing to work on it as it continues in the process.

REPRESENTATIVE MEYER said that he would rather have the bill remain as is.

REPRESENTATIVE BERKOWITZ stated that he would like to remove the retroactivity provision.

REPRESENTATIVE JAMES said that [she] objects to taking it out.

Number 1780

CHAIR ROKEBERG announced that HB 499 would be held over.

ADJOURNMENT

Number 1818

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 1:48 p.m.