ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE
May 18, 2003
10:45 a.m.

MEMBERS PRESENT

Representative Lesil McGuire, Chair
Representative Tom Anderson, Vice Chair
Representative Jim Holm
Representative Dan Ogg
Representative Ralph Samuels
Representative Les Gara
Representative Max Gruenberg

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

CS FOR SENATE BILL NO. 175(JUD)(efd fld)
"An Act relating to civil liability for inherent risks in sports or recreational activities."

- MOVED HCS CSSB 175(JUD) OUT OF COMMITTEE

CS FOR SENATE BILL NO. 176(JUD)
"An Act relating to civil liability for injuries or death resulting from livestock activities."

- MOVED CSSB 176(JUD) OUT OF COMMITTEE

CS FOR SENATE BILL NO. 198(STA)
"An Act relating to recovery of civil damages by a peace officer or fire fighter; and providing for an effective date."

- MOVED CSSB 198(STA) OUT OF COMMITTEE

CONFIRMATION HEARING

Regulatory Commission of Alaska

Kate Giard - Anchorage

- CONFIRMATION ADVANCED

CS FOR SENATE BILL NO. 93(JUD) am
"An Act relating to limitations on actions to quiet title to, eject a person from, or recover real property or the possession of it; relating to adverse possession; and providing for an effective date."

- MOVED CSSB 93(JUD) AM OUT OF COMMITTEE

CS FOR SENATE BILL NO. 8(JUD)
"An Act relating to tampering with public records."

- MOVED CSSB 8(JUD) OUT OF COMMITTEE

CS FOR SENATE BILL NO. 85(STA)
"An Act relating to sentencing and to the earning of good time deductions for certain sexual offenses."

- MOVED HCS CSSB 85(JUD) OUT OF COMMITTEE; ADOPTED A HOUSE CONCURRENT RESOLUTION ALLOWING THE TITLE CHANGE

PREVIOUS ACTION

BILL: SB 175
SHORT TITLE:LIABILITY:RECREATIONAL ACTIVITY/BOATS/AIR
SPONSOR(S): SENATOR(S) SEEKINS

Jrn-Date	Jrn-Page		Action
04/07/03	0731	(S)	READ THE FIRST TIME - REFERRALS
04/07/03	0731	(S)	L&C, JUD
04/29/03		(S)	L&C AT 1:30 PM BELTZ 211
04/29/03		(S)	Moved CSSB 175(L&C) Out of Committee
04/29/03		(S)	MINUTE(L&C)
04/30/03	1045	(S)	L&C RPT CS 3DP 1NR NEW TITLE
04/30/03	1046	(S)	DP: BUNDE, SEEKINS, STEVENS G;
04/30/03	1046	(S)	NR: FRENCH
04/30/03	1046	(S)	FN1: ZERO(LAW)
05/03/03		(S)	JUD AT 9:00 AM BELTZ 211
05/03/03		(S)	Scheduled But Not Heard
05/05/03		(S)	JUD AT 1:00 PM BELTZ 211
05/05/03		(S)	Heard & Held MINUTE(JUD)
05/08/03		(S)	JUD AT 8:00 AM BELTZ 211
05/08/03		(S)	Heard & Held MINUTE(JUD)

05/09/03	1267	(S)	JUD RPT CS 3DP NEW TITLE
05/09/03	1268	(S)	DP: SEEKINS, THERRIAULT, OGAN
05/09/03	1268	(S)	FN1: ZERO(LAW)
05/12/03	1335	(S)	RULES TO CALENDAR 5/12/2003
05/12/03	1335	(S)	READ THE SECOND TIME
05/12/03	1335	(S)	JUD CS ADOPTED UNAN CONSENT
05/12/03	1335	(S)	ADVANCED TO THIRD READING 5/13 CALENDAR
05/13/03	1364	(S)	READ THE THIRD TIME CSSB 175(JUD)
05/13/03	1365	(S)	FAILED PASSAGE Y10 N9 E1
05/13/03	1365	(S)	STEVENS B NOTICE OF RECONSIDERATION
05/14/03	1400	(S)	RECON TAKEN UP - IN THIRD READING
05/14/03	1400	(S)	PASSED ON RECONSIDERATION Y13 N7
05/14/03	1400	(S)	EFFECTIVE DATE(S) FAILED Y13 N7
05/14/03	1408	(S)	TRANSMITTED TO (H)
05/14/03	1408	(S)	VERSION: CSSB 175(JUD)(EFD FLD)
05/15/03	1676	(H)	READ THE FIRST TIME - REFERRALS
05/15/03	1676	(H)	JUD
05/15/03		(H)	JUD AT 1:00 PM CAPITOL 120
05/15/03		(H)	-- Meeting Postponed --
05/17/03		(H)	JUD AT 9:00 AM CAPITOL 120
05/17/03		(H)	Scheduled But Not Heard
05/18/03		(H)	JUD AT 10:00 AM CAPITOL 120

BILL: SB 176
SHORT TITLE:CIVIL LIABILITY FOR LIVESTOCK ACTIVITIES
SPONSOR(S): SENATOR(S) SEEKINS

Jrn-Date	Jrn-Page		Action
04/07/03	0731	(S)	READ THE FIRST TIME - REFERRALS
04/07/03	0731	(S)	L&C, JUD
04/29/03		(S)	L&C AT 1:30 PM BELTZ 211
04/29/03		(S)	Moved Out of Committee
04/29/03		(S)	MINUTE(L&C)
04/30/03	1046	(S)	L&C RPT 3DP 1NR
04/30/03	1046	(S)	DP: BUNDE, SEEKINS, STEVENS G;
04/30/03	1046	(S)	NR: FRENCH
04/30/03	1046	(S)	FN1: ZERO(LAW)

05/03/03		(S)	JUD AT 9:00 AM BELTZ 211
05/03/03		(S)	Scheduled But Not Heard
05/05/03		(S)	JUD AT 1:00 PM BELTZ 211
05/05/03		(S)	Moved CSSB 176(JUD) Out of Committee
			MINUTE(JUD)
05/08/03	1246	(S)	JUD RPT CS 1DP 4NR SAME TITLE
05/08/03	1246	(S)	DP: SEEKINS; NR: THERRIAULT,
			OGAN,
05/08/03	1246	(S)	FRENCH, ELLIS
05/08/03	1247	(S)	FN1: ZERO(LAW)
05/12/03	1335	(S)	RULES TO CALENDAR 5/12/2003
05/12/03	1335	(S)	READ THE SECOND TIME
05/12/03	1335	(S)	JUD CS ADOPTED UNAN CONSENT
05/12/03	1335	(S)	ADVANCED TO THIRD READING
			5/13 CALENDAR
05/13/03	1365	(S)	READ THE THIRD TIME CSSB
			176(JUD)
05/13/03	1366	(S)	PASSED Y11 N7 E2
05/13/03	1366	(S)	TAYLOR NOTICE OF
			RECONSIDERATION
05/14/03	1405	(S)	RECON TAKEN UP - IN THIRD
			READING
05/14/03	1406	(S)	PASSED ON RECONSIDERATION Y14
			N6
05/14/03	1408	(S)	TRANSMITTED TO (H)
05/14/03	1408	(S)	VERSION: CSSB 176(JUD)
05/15/03	1676	(H)	READ THE FIRST TIME -
			REFERRALS
05/15/03	1676	(H)	JUD
05/18/03		(H)	JUD AT 10:00 AM CAPITOL 120

BILL: SB 198
SHORT TITLE:DAMAGES RECOVERED BY POLICE/FIREFIGHTER
SPONSOR(S): SENATOR(S) SEEKINS

Jrn-Date	Jrn-Page		Action
04/25/03	0970	(S)	READ THE FIRST TIME -
			REFERRALS
04/25/03	0970	(S)	STA, JUD
05/08/03		(S)	STA AT 3:30 PM BELTZ 211
05/08/03		(S)	Moved CSSB 198(STA) Out of
			Committee
05/08/03		(S)	MINUTE(STA)
05/09/03	1268	(S)	STA RPT CS 2DP 3NR SAME TITLE
05/09/03	1269	(S)	DP: STEVENS G, GUESS;
05/09/03	1269	(S)	NR: HOFFMAN, COWDERY, DYSON

05/09/03	1269	(S)	FN1: ZERO(LAW)
05/12/03		(S)	JUD AT 1:00 PM BELTZ 211
05/12/03		(S)	Heard & Held MINUTE(JUD)
05/13/03		(S)	JUD AT 8:00 AM BELTZ 211
05/13/03		(S)	Moved CSSB 198(STA) Out of Committee MINUTE(JUD)
05/13/03	1358	(S)	JUD RPT CS(STA) 2DP 1NR
05/13/03	1359	(S)	DP: SEEKINS, FRENCH; NR: OGAN
05/13/03	1359	(S)	FN1: ZERO(LAW)
05/14/03	1398	(S)	RULES TO CALENDAR 5/14/2003
05/14/03	1398	(S)	READ THE SECOND TIME
05/14/03	1398	(S)	STA CS ADOPTED UNAN CONSENT
05/14/03	1398	(S)	ADVANCED TO THIRD READING UNAN CONSENT
05/14/03	1398	(S)	READ THE THIRD TIME CSSB 198(STA)
05/14/03	1399	(S)	PASSED Y20 N-
05/14/03	1399	(S)	EFFECTIVE DATE(S) SAME AS PASSAGE
05/14/03	1409	(S)	TRANSMITTED TO (H)
05/14/03	1409	(S)	VERSION: CSSB 198(STA)
05/15/03	1676	(H)	READ THE FIRST TIME - REFERRALS
05/15/03	1676	(H)	JUD
05/16/03		(H)	JUD AT 10:00 AM CAPITOL 120
05/16/03		(H)	<Bill Hearing Postponed to 5/18/03>
05/18/03		(H)	JUD AT 10:00 AM CAPITOL 120

BILL: SB 93
SHORT TITLE:ADVERSE POSSESSION
SPONSOR(S): SENATOR(S) WAGONER

Jrn-Date	Jrn-Page		Action
02/28/03	0300	(S)	READ THE FIRST TIME - REFERRALS
02/28/03	0300	(S)	L&C, JUD
03/11/03		(S)	L&C AT 1:30 PM BELTZ 211
03/11/03		(S)	Heard & Held
03/11/03		(S)	MINUTE(L&C)
04/01/03		(S)	L&C AT 1:30 PM BELTZ 211
04/01/03		(S)	Moved CSSB 93(L&C) Out of Committee
04/01/03		(S)	MINUTE(L&C)
04/02/03	0661	(S)	L&C RPT CS 4DP 1NR NEW TITLE

04/02/03	0662	(S)	DP: BUNDE, DAVIS, SEEKINS, STEVENS G;
04/02/03	0662	(S)	NR: FRENCH
04/02/03	0662	(S)	FN1: ZERO(CED)
04/16/03		(S)	JUD AT 1:00 PM BELTZ 211
04/16/03		(S)	Heard & Held
04/16/03		(S)	MINUTE(JUD)
04/30/03		(S)	JUD AT 1:45 PM BELTZ 211
04/30/03		(S)	Heard & Held MINUTE(JUD)
05/02/03		(S)	JUD AT 1:00 PM BELTZ 211
05/02/03		(S)	Heard & Held MINUTE(JUD)
05/06/03		(S)	JUD AT 8:00 AM BELTZ 211
05/06/03		(S)	Moved CSSB 93(JUD) Out of Committee MINUTE(JUD)
05/07/03	1199	(S)	JUD RPT CS 1DP 4NR NEW TITLE
05/07/03	1199	(S)	NR: SEEKINS, FRENCH, OGAN, THERRIAULT;
05/07/03	1199	(S)	DP: ELLIS
05/07/03	1199	(S)	FN1: ZERO(CED)
05/07/03	1230	(S)	RULES TO CALENDAR 5/7/2003
05/07/03	1230	(S)	READ THE SECOND TIME
05/07/03	1230	(S)	MOTION TO ADOPT JUD CS
05/07/03	1230	(S)	MOTION WITHDRAWN
05/07/03	1230	(S)	RETURNED TO RLS COMMITTEE
05/09/03	1278	(S)	RULES TO CALENDAR 5/9/2003
05/09/03	1278	(S)	BEFORE THE SENATE IN SECOND READING
05/09/03	1279	(S)	JUD CS ADOPTED Y15 N5
05/09/03	1279	(S)	AM NO 1 ADOPTED Y19 N1
05/09/03	1280	(S)	ADVANCED TO THIRD READING UNAN CONSENT
05/09/03	1280	(S)	READ THE THIRD TIME CSSB 93(JUD) AM
05/09/03	1280	(S)	MOTION TO RETURN BILL TO RLS COMMITTEE
05/09/03	1281	(S)	MOTION FAILED Y5 N14 A1
05/09/03	1281	(S)	PASSED Y15 N5
05/09/03	1281	(S)	EFFECTIVE DATE(S) SAME AS PASSAGE
05/09/03	1281	(S)	OGAN NOTICE OF RECONSIDERATION
05/10/03	1309	(S)	RECON TAKEN UP - IN THIRD READING
05/10/03	1309	(S)	PASSED ON RECONSIDERATION Y15

			N3 E1 A1
05/10/03	1309	(S)	EFFECTIVE DATE(S) SAME AS PASSAGE
05/10/03	1311	(S)	TRANSMITTED TO (H)
05/10/03	1311	(S)	VERSION: CSSB 93(JUD) AM
05/12/03	1553	(H)	READ THE FIRST TIME - REFERRALS
05/12/03	1553	(H)	JUD
05/14/03		(H)	JUD AT 1:00 PM CAPITOL 120
05/14/03		(H)	Scheduled But Not Heard
05/15/03		(H)	JUD AT 8:30 AM CAPITOL 120
05/15/03		(H)	-- Meeting Canceled --
05/18/03		(H)	JUD AT 10:00 AM CAPITOL 120

BILL: SB 8
SHORT TITLE:TAMPERING WITH PUBLIC RECORDS
SPONSOR(S): SENATOR(S) DAVIS

Jrn-Date	Jrn-Page		Action
01/21/03	0016	(S)	PREFILE RELEASED 1/10/03
01/21/03	0016	(S)	READ THE FIRST TIME - REFERRALS
01/21/03	0016	(S)	HES, JUD
03/05/03		(S)	HES AT 1:30 PM BUTROVICH 205
03/05/03		(S)	Heard & Held
03/05/03		(S)	MINUTE(HES)
03/10/03		(S)	HES AT 1:30 PM BUTROVICH 205
03/10/03		(S)	Scheduled But Not Heard
03/17/03		(S)	HES AT 1:30 PM BUTROVICH 205
03/17/03		(S)	Scheduled But Not Heard
03/24/03		(S)	HES AT 5:00 PM FAHRENKAMP 203
03/24/03		(S)	Moved Out of Committee
03/24/03		(S)	MINUTE(HES)
03/26/03	0588	(S)	HES RPT 2DP 2NR 1AM
03/26/03	0588	(S)	AM: DYSON; DP: GREEN, DAVIS;
03/26/03	0588	(S)	NR: GUESS, WILKEN
03/26/03	0588	(S)	FN1: ZERO(LAW)
04/25/03		(S)	JUD AT 1:00 PM BELTZ 211
04/25/03		(S)	Heard & Held MINUTE(JUD)
05/06/03	1188	(S)	COSPONSOR(S): DYSON
05/06/03		(S)	JUD AT 8:00 AM BELTZ 211
05/06/03		(S)	Moved CSSB 8(JUD) Out of Committee MINUTE(JUD)
05/07/03	1199	(S)	JUD RPT CS 3DP 2NR SAME TITLE
05/07/03	1199	(S)	DP: SEEKINS, FRENCH, ELLIS;

05/07/03	1199	(S)	NR: THERRIAULT, OGAN
05/07/03	1199	(S)	FN2: ZERO(ADM)
05/15/03	1431	(S)	RULES TO CALENDAR 5/15/2003
05/15/03	1431	(S)	READ THE SECOND TIME
05/15/03	1431	(S)	JUD CS ADOPTED UNAN CONSENT
05/15/03	1431	(S)	ADVANCED TO THIRD READING UNAN CONSENT
05/15/03	1431	(S)	READ THE THIRD TIME CSSB 8(JUD)
05/15/03	1432	(S)	PASSED Y20 N-
05/15/03	1432	(S)	COSPONSOR(S): LINCOLN, FRENCH, BUNDE,
05/15/03	1432	(S)	COWDERY, ELTON, ELLIS
05/15/03	1455	(S)	TRANSMITTED TO (H)
05/15/03	1455	(S)	VERSION: CSSB 8(JUD)
05/16/03	1725	(H)	READ THE FIRST TIME - REFERRALS
05/16/03	1725	(H)	JUD
05/18/03		(H)	JUD AT 10:00 AM CAPITOL 120

BILL: SB 85
SHORT TITLE:REPEAT SERIOUS SEX OFFENSES
SPONSOR(S): SENATOR(S) FRENCH

Jrn-Date	Jrn-Page		Action
02/26/03	0274	(S)	READ THE FIRST TIME - REFERRALS
02/26/03	0274	(S)	STA, JUD
04/03/03		(S)	STA AT 3:30 PM BUTROVICH 205
04/03/03		(S)	-- Location Change --
04/10/03		(S)	STA AT 3:30 PM BELTZ 211
04/10/03		(S)	Moved CSSB 85(STA) Out of Committee
04/10/03		(S)	MINUTE(STA)
04/11/03	0807	(S)	STA RPT CS 5DP SAME TITLE
04/11/03	0807	(S)	DP: STEVENS G, DYSON, GUESS,
04/11/03	0807	(S)	COWDERY, HOFFMAN
04/11/03	0808	(S)	FN1: ZERO(COR)
04/11/03	0808	(S)	FN2: ZERO(LAW)
04/28/03		(S)	JUD AT 1:00 PM BELTZ 211
04/28/03		(S)	Heard & Held MINUTE(JUD)
05/02/03		(S)	JUD AT 1:00 PM BELTZ 211
05/02/03		(S)	Moved CSSB 85(STA) Out of Committee MINUTE(JUD)
05/03/03	1127	(S)	JUD RPT CS(STA) 3DP 2NR

05/03/03	1127	(S)	DP: SEEKINS, FRENCH, ELLIS;
05/03/03	1127	(S)	NR: THERRIAULT, OGAN
05/03/03	1127	(S)	FN1: ZERO(COR)
05/03/03	1127	(S)	FN2: ZERO(LAW)
05/03/03	1127	(S)	FIN REFERRAL ADDED AFTER JUD
05/08/03		(S)	FIN AT 9:00 AM SENATE FINANCE 532
05/08/03		(S)	Moved CSSB 85(STA) Out of Committee
05/08/03		(S)	MINUTE(FIN)
05/08/03	1245	(S)	FIN RPT CS(STA) 7DP
05/08/03	1245	(S)	DP: GREEN, WILKEN, TAYLOR, HOFFMAN,
05/08/03	1245	(S)	OLSON, BUNDE, STEVENS B
05/08/03	1246	(S)	FN2: ZERO(LAW)
05/08/03	1245	(S)	FN3: INDETERMINATE(ADM)
05/08/03	1245	(S)	FN4: INDETERIMINATE(COR)
05/14/03	1392	(S)	RULES TO CALENDAR 5/14/2003
05/14/03	1392	(S)	READ THE SECOND TIME
05/14/03	1393	(S)	STA CS ADOPTED UNAN CONSENT
05/14/03	1393	(S)	ADVANCED TO THIRD READING UNAN CONSENT
05/14/03	1393	(S)	READ THE THIRD TIME CSSB 85(STA)
05/14/03	1393	(S)	PASSED Y20 N-
05/14/03	1407	(S)	COSPONSOR(S): COWDERY
05/14/03	1408	(S)	TRANSMITTED TO (H)
05/14/03	1408	(S)	VERSION: CSSB 85(STA)
05/15/03	1675	(H)	READ THE FIRST TIME - REFERRALS
05/15/03	1675	(H)	JUD
05/16/03		(H)	JUD AT 10:00 AM CAPITOL 120
05/16/03		(H)	<Bill Hearing Postponed to 5/18/03>
05/18/03		(H)	JUD AT 10:00 AM CAPITOL 120

WITNESS REGISTER

SENATOR RALPH SEEKINS
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Sponsor of SB 175; sponsor of SB 176; sponsor of SB 198.

STEVE CONN, Special Projects Coordinator
Alaska Public Interest Research Group (AkPIRG)
Anchorage, Alaska

POSITION STATEMENT: Expressed concerns during discussion of SB 175; expressed concerns during discussion of SB 176.

MITCHELL GRAVO, Lobbyist
for Anchorage Police Department Employees Association (APDEA)
Anchorage, Alaska
POSITION STATEMENT: Responded to a question during discussion of SB 198.

KATE GIARD, Appointee
Regulatory Commission of Alaska (RCA)
Anchorage, Alaska
POSITION STATEMENT: Testified as appointee to the Regulatory Commission of Alaska.

SENATOR THOMAS WAGONER
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Sponsor of SB 93.

VANESSA TONDINI, Staff
to Representative Lesil McGuire
House Judiciary Standing Committee
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Provided a clarifying comment during discussion of SB 93.

JONATHAN TILLINGHAST, Lobbyist
for Sealaska Corporation ("Sealaska")
Juneau, Alaska
POSITION STATEMENT: Provided comments and responded to questions during discussion of SB 93.

REPRESENTATIVE ALBERT KOOKESH
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Provided comments during discussion of SB 93.

SENATOR SCOTT OGAN
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Provided comments during discussion of SB 93.

DARYL L. REINDL
Anchorage, Alaska
POSITION STATEMENT: Provided comments during discussion of SB 93.

RONALD L. BAIRD, Attorney at Law
Anchorage, Alaska
POSITION STATEMENT: Provided comments during discussion of SB 93 and suggested language changes.

JIM COLVER
(Address not provided)
POSITION STATEMENT: Provided comments and a suggested language change during discussion of SB 93.

RICHARD BENAVIDES, Staff
to Senator Bettye Davis
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Presented SB 8 on behalf of Senator Davis, sponsor.

SENATOR HOLLIS FRENCH
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Sponsor of SB 85.

ACTION NARRATIVE

TAPE 03-70, SIDE A
Number 0001

VICE CHAIR TOM ANDERSON called the House Judiciary Standing Committee meeting to order at 10:45 a.m. Representatives Anderson, Holm, Samuels, and Gruenberg were present at the call to order. Representatives McGuire, Ogg, and Gara arrived as the meeting was in progress.

SB 175-LIABILITY:RECREATIONAL ACTIVITY/BOATS/AIR

Number 0080

VICE CHAIR ANDERSON announced that the first order of business would be CS FOR SENATE BILL NO. 175(JUD)(efd fld), "An Act relating to civil liability for inherent risks in sports or recreational activities."

The committee took an at-ease from 10:46 a.m. to 10:48 a.m.

Number 0112

SENATOR RALPH SEEKINS, Alaska State Legislature, sponsor, paraphrased his sponsor statement, which read [original punctuation provided]:

> Alaska has many recreational opportunities to offer outdoor enthusiasts. Visitors from all over the world, along with in-state recreationalists [sic], enjoy commercial activities such as river rafting, guided hiking, snowboarding and sport fishing to name a few. Yet, the high cost of liability insurance presents a significant barrier to these enterprises, the vast majority of which are small Alaska-bases companies.
>
> Without exception, participation in outdoor recreational activities carries with it a degree of inherent risk. Senate Bill 175 adds the presumption that a participant accepts the inherent risks of a commercial recreation activity and as such has played a role in any damages resulting from that inherent risk.
>
> This legislation will decrease the uncertainties regarding the legal responsibilities for injuries and encourage the continued viability of responsible businesses that offer commercial recreational activities to the public. Existing legal uncertainties have resulted in high liability insurance costs, which are prohibitive, especially for smaller businesses.
>
> This bill will help avoid unfair and unreasonable claims that make it difficult to provide recreational and outdoor activities that are closely identified with the Alaska lifestyle and have come to be expected by visitors looking for exceptional experiences.

SENATOR SEEKINS remarked that the high cost of insurance is also a substantial barrier to new businesses, that SB 175 "delineates the burden of responsibility" for businesses offering commercial recreation activities and persons who elect to participate in those activities, and that such businesses are still responsible

for meeting safety standards and providing trained and competent personnel.

VICE CHAIR ANDERSON turned the gavel over to Chair McGuire.

Number 0269

REPRESENTATIVE GARA noted that there have been a few deaths caused by rafting on the Nenana River, and that although whitewater rafting carries with it the inherent risk of possibly dying, the chances of that are altered dramatically depending on the raft operator's level of competence. Why should a company that hires incompetent raft operators be exempt from liability? Isn't that unfair to companies that do hire competent raft operators?

SENATOR SEEKINS asserted that SB 175 "doesn't do that." He referred to page 3, lines 1-3, which says:

> (c) This section does not apply to a civil action based on the (1) negligence of a provider if the injury, death, or damage was not the result of an inherent risk of the sports or recreational activity that was provided

SENATOR SEEKINS opined that this language provides that companies are still responsible for hiring competent personnel and providing adequate training. He referred to an incident that occurred a number of years ago in which a woman in her eighties died on a rafting trip, and relayed that the plaintiff's attorney in that case assured him that under SB 175, the rafting company would not have been exempted from the negligence claim brought against it because it was clearly a case of negligence rather than inherent risk. He asserted that the aforementioned attorney considered SB 175 to be good public policy, and that it makes a distinction between negligence and inherent risk.

REPRESENTATIVE GARA observed, however, that the aforementioned language contains a conflict because it says that a provider is liable for negligence unless the damage is caused by an inherent risk of the activity. Such would allow a rafting company to say, "Dying in whitewater, that's an inherent risk of the sports activity," and thereby escape liability even if the company were negligent. He asked Senator Seekins whether he would be comfortable with language that simply said a company is liable if it is negligent.

Number 0522

SENATOR SEEKINS said he understood Representative Gara's concern, acknowledged that "it could probably go either way," but indicated that he felt the current language to be sufficient to allow for a civil action based on negligence. In the aforementioned incident, he said, it was negligence on the part of the provider because "they didn't look for the old lady soon enough".

REPRESENTATIVE GRUENBERG remarked that in a case from the early 1960s, the Alaska Supreme Court did not adopt the defense known as "assumption of the risk," which had previously been applied in cases involving injury to a spectator at a sporting event. He asked whether SB 175 would include spectators of activities.

SENATOR SEEKINS said SB 175 would apply to people who are actually involved in an activity, adding that they should be assuming the inherent risks involved in that activity.

REPRESENTATIVE GRUENBERG asked Senator Seekins whether he would be willing to accept an amendment that would exclude passive spectators.

SENATOR SEEKINS indicated that to some degree, spectators of sporting events are participating in those events, and thus should assume the inherent risks involved.

REPRESENTATIVE SAMUELS said he agrees that people should take responsibility for the inherent risks of the activities they choose to participate in.

REPRESENTATIVE GARA said he agrees with the idea that people need to take responsibility for themselves, that there are certain activities that are very dangerous, and that others should not be held responsible for mishaps during those activities. However, with regard to the aforementioned rafting example, he noted that Senator Seekins did acknowledge that the language currently in the bill could allow a case of negligence to "go either way."

Number 0941

REPRESENTATIVE GARA said that this is a problem for him. He proffered that were he in the position of defending against a claim of negligence because someone he took on a rafting trip

died, in order to get out of being held civilly liable, he would rely on the language currently in the bill allowing for an exemption because of an inherent risk. He said he would simply make the argument that he tells his passengers beforehand that the water is so cold in Alaska that they will get hypothermia within a matter of minutes, and therefore dying from falling in the water is an inherent risk of the activity. He offered the example of a rafting company hiring someone incompetent who ends up dumping all of his/her passengers in the river and they die as a result; the defense for that company could simply say that dying is an inherent risk of the activity, and the company would not be held liable even though it was negligent in hiring the person that was incompetent. Why immunize something like that, he asked, adding that because people could argue about how the language under discussion should be interpreted, he did not want to provide for that kind of uncertainty in the law.

SENATOR SEEKINS predicted that after determining that the people got in the water in the first place through an act of negligence, the court would simply rule that the company is liable. He added, however, that the people choosing to participate in the activity accepted the inherent risk of that activity.

CHAIR McGUIRE said she could see Representative Gara's point, as well as that of Senator Seekins. She said she would like to focus on the drafting of SB 175.

REPRESENTATIVE GARA suggested that he and Senator Seekins didn't disagree. He added,

> There is some dividing line between when you've engaged in a potentially dangerous sports activity and you have to accept that it's dangerous - I understand that. But I don't want to throw the baby out with the bathwater, because there are also circumstances where somebody, through complete irresponsibility, who is trying to make money off of you, does a terrible job. And we don't want to encourage that.

SENATOR SEEKINS indicated that he agrees that negligence should not be [exempted from liability]. He said he doesn't have a problem with saying that the negligent person should be held responsible, but that should not include being held responsible for inherent risks.

Number 1220

REPRESENTATIVE GARA said he agrees with Senator Seekins's comments, adding, however, that he wants to "get there and not someplace else." He asked whether it would be alright to rewrite lines 2-3, on page 3, to essentially say there is immunity if the injury, death, or damage is the result of the inherent risk of the sports or recreational activity that are provided except insofar as the provider was negligent.

REPRESENTATIVE HOLM opined that language on page 2, lines 4-7, sums up what the Act is to do and specifies precisely what Representative Gara intends; that language says:

> (b) it is the intent of this Act to (1) limit or eliminate the liability of a provider of a sports or recreational activity to a participant in the activity when an injury or damage caused by or to the participant is the result of the risks inherent in the activity

REPRESENTATIVE GRUENBERG remarked that in spectator sports, there are steps that can be taken by industry to reduce the risks to spectators; for example, there are high Plexiglas barriers around ice hockey rinks [and huge nets are now put in place in the stands behind the goals] to reduce the risk of a spectator getting hit with a puck. He turned attention to page 3, line 4, and noted that it says, "design or manufacture of sports or recreational equipment or products or safety equipment used". He said that he would like the language to also specify the proper installation of the equipment and so forth; thus it could read, "design, manufacture, or installation".

CHAIR McGUIRE asked Representative Gruenberg whether his intent is to create a cause of action against the person who installed the equipment, or whether it is to create a cause of action against the person who installed one type of equipment while knowing that another type should have been installed instead.

REPRESENTATIVE GRUENBERG replied, "Either. Or the operators of the rink or whoever it was."

Number 1381

SENATOR SEEKINS opined that that would result in a cause of action against someone who was not the provider, and so SB 175 would not provide immunity for that person.

The committee took an at-ease from 11:10 a.m. to 11:15 a.m.

REPRESENTATIVE GRUENBERG indicated that his concern is that the current language in SB 175 could be interpreted two different ways and, therefore, it is unclear as to whether there would be a cause of action if safety equipment is not installed properly. He asked Senator Seekins: "If they fail to raise the net or fail to install a Plexiglas shield in a hockey rink, is it your intent to allow a cause of action? Or not?"

SENATOR SEEKINS replied:

> I believe that if the normal protections were there, with the normal installations ..., for an example, and someone failed to put them in place, ... that would subject the provider to a certain degree of liability. And that would not be tolled by this bill.

REPRESENTATIVE GRUENBERG assured Senator Seekins that he is not referring to "the pickup hockey game or basketball game." Instead, he is referring to the Sullivan Arena or a university rink, for example, which are professionally designed but might fail to meet normal [safety precaution] standards.

CHAIR McGUIRE suggested to Representative Gruenberg that he offer an amendment to address his concern.

Number 1535

REPRESENTATIVE GRUENBERG [made a motion to adopt Amendment 1, to add "or installation" to page 3, line 4, after "manufacture"].

CHAIR McGUIRE objected.

Number 1551

A roll call vote was taken. Representatives Gara and Gruenberg voted in favor of Amendment 1. Representatives Ogg, Samuels, and McGuire voted against it. Therefore, Amendment 1 failed by a vote of 2-3.

CHAIR McGUIRE asked Representative Gara which amendment he would be offering.

Number 1574

REPRESENTATIVE GARA said, "The longer one," and offered the following handwritten amendment [original punctuation provided]:

> Delete p. 3 line 2-3
>
> Insert "inherent risk of the sports or recreational activity that was provided, except insofar as the provider was negligent."

REPRESENTATIVE GARA went on to say:

> I think everybody in this room has the same intention on this bill, but currently the wording doesn't satisfy that intention. The wording at page 3, line 2, says, and will be interpreted, that if you are negligent, you are not liable if it was within an activity where the inherent risk is such that you should expect that you might die or be hurt. So, if you are negligent, you're still not liable.
>
> And I don't believe that's the intention of the sponsor of the bill. And so what the amendment says is that you should clearly, clearly be immunized if you are injured because of the inherent risk ... of the activity, but if you are injured because of somebody's negligence, then you're not immunized. And that will be the standard that the court will impose on us; the jury will be asked, "Was it because of the inherent risk, or was [it] because of the negligence?" And if it's because of the negligence, then you're just not immunized. And I believe, from the discussion, that that seems to be the intent of all of us, and this language gets us there.

SENATOR SEEKINS pointed out however, that the language in the bill would then read, "This section does not apply to a civil action based on the inherent risk of the sports or recreational activity that was provided, except insofar as the provider was negligent." He opined that this was exactly the opposite of what's been discussed.

REPRESENTATIVE GARA acknowledged that "there's a negative; Senator Seekins is correct."

Number 1653

CHAIR McGUIRE suggested putting the offered language in a different part of the bill. She said:

> Section 3 is where it sets out those things that you're immunized from, essentially, and then [subsection] (c) is sort of the carve out - it's the caveat, it's the exception. So it's saying the rule is [proposed Sec.] 09.65.290, and that sets it out: "Civil liability for sports or recreational activities." And then it goes on to say, "But please understand, essentially, you can still sue for negligence of a provider if the injury, death, or damage was not the result of inherent risk of the sports activity."

REPRESENTATIVE GARA remarked that he is [rewriting] his amendment.

Number 1687

STEVE CONN, Special Projects Coordinator, Alaska Public Interest Research Group (AkPIRG), said that one of his concerns is that many tourist ventures run by small operators are sold through cruise ship lines, and so these cruise ship lines may "serve up," to the small operators, people that the small operator may or may not want to have participate in the activity offered. "It's going to put quite a burden on that small operator because all shapes and sizes come on the cruise ships," he added. Another concern he said he has is that if misinterpreted, SB 175 will do damage to Alaska's ability to attract participants to Alaska's fledgling tourist industry by suggesting that Alaska is attempting to block providers' normal responsibilities during activities that do have some inherent risk. He said he is assuming that the committee will consider both of his concerns as general policy matters while it proceeds with the bill.

Number 1825

REPRESENTATIVE OGG said he objects to Representative Gara's amendment.

REPRESENTATIVE GARA indicated that he withdrew it in order to create a new version of it.

CHAIR McGUIRE, after determining that no one else wished to testify, closed the public testimony on SB 175.

Number 1853

REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 2, a handwritten amendment which read [original punctuation provided]:

> e This section does not apply if the cause of action is based upon the failure of a professionally designed sports arena to have or utilize normal safety equipment designed to protect patrons who purchase tickets to watch sporting events.

Number 1862

CHAIR McGUIRE objected.

REPRESENTATIVE GRUENBERG said the purpose of Amendment 2 is to protect spectators who purchase tickets at a professionally designed sports arena that fails to have or utilize normal safety equipment designed to protect them. He said he wants this point to be clearly stated so that it is not subject interpretation. In response to another member's concern, he said that he is referring to professional sports arenas that are designed using national standards, and that he does not expect owners of such arenas to put up brick walls, for example, in order to protect spectators. He assured members that he is not suggesting that sports arenas put up anything other than what they would normally have, but if the arenas fail to meet just normal national standards or neglect to utilize what they already have, then they would be liable.

REPRESENTATIVE GARA mentioned that the whole issue of liability to sports arenas almost never comes up. Under existing law, if an arena is built to national safety standards, the jury would be told that, "and they would laugh at the case and it would be done with," he added. He said he has no interest in changing the bill in the manner proposed by Amendment 2 "because it's not a liability problem in the first place."

REPRESENTATIVE GRUENBERG said he is simply concerned about instances in which sport arenas clearly fail to meet national safety standards, adding that he doesn't want SB 175 to change the normal jury instruction in such cases.

REPRESENTATIVE GARA opined that as currently written, SB 175 would change the jury instruction in lot of areas unless it is altered such that "negligence is still in there."

REPRESENTATIVE GRUENBERG said he would not want to adopt Amendment 2 if it wouldn't have any effect on current practice, adding that he just wants to keep the normal standard.

Number 2005

REPRESENTATIVE GARA posited that if SB 175 could be clarified to reflect that one is still liable for negligence but not for inherent risk, then Amendment 2 will not be necessary. Absent that clarification, however, Amendment 2 will be necessary.

REPRESENTATIVE GRUENBERG reiterated that his intent is for Amendment 2 to only pertain to situations in which professional sports arenas do not meet normal national standards.

CHAIR McGUIRE said she understood Representative Gruenberg's intent in offering Amendment 2. However, she remarked, it is a hastily crafted amendment that could have unforeseen consequences. For example, she said that she doesn't know what normal national safety standards are with regard to sporting arenas. She reiterated that she objects to Amendment 2, adding that she thinks Representative Gara is correct in that the jury in a cause of action resulting from an injury occurring at a sports arena will be told whether the arena met with national standards.

REPRESENTATIVE GRUENBERG said that if such is the case, he would be satisfied, reiterating that he just doesn't want SB 175 to change that. He asked Senator Seekins whether such a cause of action would still be allowed under SB 175, adding that if the answer is yes, he would withdraw Amendment 2.

SENATOR SEEKINS said he doesn't know whether there is a national standard. He offered his belief, however, that SB 175 would not immunize a sports arena that left one of the Plexiglas panels down during a hockey game.

REPRESENTATIVE GRUENBERG withdrew Amendment 2.

CHAIR McGUIRE turned attention to Representative Gara's new proposed amendment, which - because the amendment offered by Representative Gruenberg was withdrawn - she then referred to as [Conceptual] Amendment 2.

Number 2134

REPRESENTATIVE GARA made a motion to adopt his amendment, now called [Conceptual] Amendment 2, which reads [original punctuation provided]:

> Insert at p 3 line 7
>
> (d) Immunity under this section shall apply if the injury is the result of the inherent risk of the sports or recreational activity that was provided, except insofar as the provider was negligent, and the negligence caused the injury.

Number 2144

REPRESENTATIVE SAMUELS objected for the purpose of discussion.

REPRESENTATIVE GARA said:

> This leaves the sanctity of the original language, so that Senator Seekins's intent is clear. And so on page 2 and on page 3 it states ..., if it's inherent risk, you're not liable if that's the reason for the injury, but then it just clarifies in a new subsection (d), right after that discussion on page 3 ...

CHAIR McGUIRE interjected to clarify that the current subsections following the insertion of this new subsection (d) would be relettered accordingly.

REPRESENTATIVE GARA said that in essence, [Conceptual] Amendment 2 would clarify that if the injury is the result of negligence, the immunity shall not apply. In this way, the focus of the question will be, "Was it the result of the inherent risk or was it the result of negligence?"

SENATOR SEEKINS opined that [Conceptual] Amendment 2 simply restates the language already in the bill.

Number 2215

CHAIR McGUIRE suggested instead that perhaps page 3, line 2, could be altered to say that the section doesn't apply if the negligence was the cause of the injury, death, or damage.

Number 2231

REPRESENTATIVE GARA relayed that the committee aide has created language that simply says, "This section does not apply to a civil action based on the negligence of a provider."

CHAIR McGUIRE noted, however, that what she likes about Representative Gara's language is that it says, "and the negligence caused the injury."

REPRESENTATIVE GARA offered that that is why he, too, prefers his language. "I think it protects the provider much better and protects the consumer; the focus is on which one caused it," he added.

SENATOR SEEKINS remarked that he understands Representative Gara's intention. He returned to his earlier remark that the court is first going to ask how a person got into the water: was it because of the inherent risk or was it because of the negligence. He opined that SB 175, as currently written, already address that issue - if the person got into the water because of the provider's negligence, there is a cause of action, but if the person dies because of the inherent risk of the activity, there isn't a cause of action.

REPRESENTATIVE GARA replied:

> With all due respect, Senator Seekins, what will happen is, the question in the case is always, "How did she die." ... And one of the how-did-she-dies was that she was rafting a glacial river, she got hypothermia, she should have known that if she fell into the river she would have got hypothermia. And so once that's the how-did-she-die answer, ... there's a very big risk the court is going to say, "Well that was an inherent risk." And that's why we have to be more clear in this bill or else we're just going to throw a statute over [to] the courts and we'll have no idea how it's going to be interpreted.

REPRESENTATIVE GARA said that if this concern of his is addressed by an amendment, he would work with the minority leader and members of the Senate to make sure that the bill is not held up on the floor, because he thinks that the sponsor's intention in introducing this legislation is good one.

Number 2345

CHAIR McGUIRE relayed that the committee aide has suggested the following language change, such that on page 3, lines 2-3, it would read, "an action or failure to take action that was a result of an inherent risk, except insofar as the provider was negligent, and the negligence was a proximate cause of the injury."

CHAIR McGUIRE asked Senator Seekins whether it is just that he doesn't even want the issue of negligence to be raised. "Is it that you just want to say, plain and simple, "if you go rafting, whether people are negligent or not, forget it." She indicated that she could not tell, by the current language in bill, what his intent is.

SENATOR SEEKINS again reiterated his belief that the court would ask the question, how did the person get into the water, and that if it was via negligence, then there would be a cause of action. However, he added that if the person got into the raft knowing he/she was going to get wet and that that would cause health problems, then that is something for which the provider should not be held liable.

TAPE 03-70, SIDE B
Number 2369

SENATOR SEEKINS then said that he wants people who are negligent to still be held responsible. He opined that if a provider uses the wrong size raft, or uses people that aren't trained, then SB 175 would hold them responsible for that negligence. He again added, however, that SB 175 would not hold a provider responsible for death, injury, or damage that was the result of inherent risk.

CHAIR McGUIRE suggested setting HB 175 aside.

REPRESENTATIVE GARA opined that either his proposed language or the committee aide's proposed language would make the statute clear and accomplish everyone's goals. Without some change, however, that goal will not be accomplished, he predicted. He asked members to support one of the two suggestions, adding that he is confident that if such is done, he can get the bill moved on the "House side."

The committee took an at-ease from 11:43 a.m. to 11:45 a.m.

Number 2321

CHAIR McGUIRE, upon the committee's return, indicated that during the at-ease, members came to agreement that [Conceptual] Amendment 2 would do the following:

> page 3, lines 2-3
> delete: "injury, death, or damage was not the result of an inherent risk of the sports or recreational activity that was provided"
> insert: "negligence was the proximate cause of the injury, death, or damage"

Number 2296

CHAIR McGUIRE made a motion to adopt Conceptual Amendment 2.

REPRESENTATIVE GARA said he would be honored to be a co-sponsor of Conceptual Amendment 2.

Number 2290

CHAIR McGUIRE asked whether there were any objections to the motion. There being none, Conceptual Amendment 2 was adopted.

REPRESENTATIVE SAMUELS noted that page 3, line 12, contains a typo: "sport of recreational" should read "sport or recreational".

CHAIR McGUIRE announced that Amendment 3 would, after "sport" on page 3, line 12, replace "of" with "or".

Number 2265

REPRESENTATIVE SAMUELS made a motion to adopt Amendment 3. There being no objection, Amendment 3 was adopted.

Number 2257

REPRESENTATIVE GARA made a motion to adopt Amendment 4, to delete lines 7-9 on page 3. The language being deleted reads:

> Nothing in this section shall be construed to conflict with or render as ineffectual a liability release agreement between a person who participates in a sports or recreational activity and a provider.

CHAIR McGUIRE indicated that she disagrees with [the goal of] Amendment 4.

The committee took an at-ease from 11:52 a.m. to 11:54 a.m.

REPRESENTATIVE GARA relayed that there is an existing law used by the courts regarding whether to uphold a release. He said he did not know how the courts will interpret the language on lines 7-9, and that he did not know whether, "at this late hour, with very little reflection," current law should be changed.

CHAIR McGUIRE said she thinks the court has the ability to determine whether a release was signed under duress; whether the waiver was clear; and whether the person signing the release was of reasonable age, intelligence, and so on to understand what he/she was signing. She opined that waivers are an important part of life today.

REPRESENTATIVE GARA mentioned that what he doesn't want to have happen is for a provider to use the language on lines 7-9 as an incentive to create a waiver that says, "And you're also waiving any action if I'm negligent or reckless."

SENATOR SEEKINS pointed out that the language on lines 7-9 starts off with "Nothing in this section shall be construed to conflict with or render".

Number 2137

REPRESENTATIVE GARA concurred with that point and withdrew Amendment 4.

Number 2125

REPRESENTATIVE SAMUELS moved to report CSSB 175(JUD)(efd fld), as amended, out of committee with individual recommendations [and the accompanying zero fiscal note]. There being no objection, HCS CSSB 175(JUD) was reported from the House Judiciary Standing Committee.

SB 176 - CIVIL LIABILITY FOR LIVESTOCK ACTIVITIES

Number 2090

CHAIR McGUIRE announced that the next order of business would be CS FOR SENATE BILL NO. 176(JUD), "An Act relating to civil liability for injuries or death resulting from livestock activities."

Number 2087

SENATOR RALPH SEEKINS, Alaska State Legislature, sponsor of SB 176, relayed that this legislation was introduced in the prior legislature and was crafted as part of a project by 4-H members. He mentioned that at the time, both he and his wife were involved in that project; that the legislation is patterned after Oklahoma law; and that if SB 176 is adopted, Alaska will be the last state to have a limitation of liability for livestock activity, though some states have "contributory negligence standards that apply directly to livestock liability." He noted that he has worked with the American Quarter Horse Association (AQHA) and other national organizations to ensure that SB 176 complies with what is happening in the rest of the nation, and that he is a member of the AQHA's public policy board.

SENATOR SEEKINS said that SB 176 says a person assumes some degree of risk when in the vicinity of livestock, because livestock owners, even with the best of intentions, cannot completely prevent accidents from happening. He assured members that SB 176 does not protect livestock owners who act in an unreasonable manner; rather, by reducing some of the liability, the expectation is that an atmosphere will be created that will encourage more livestock activity. He noted that Oklahoma has a lot of livestock activity, which he attributed to its livestock liability statutes. He said he would appreciate members' support of SB 176.

CHAIR McGUIRE noted that 4-H members visited with her last year in support of this legislation, and as a result of that and her work on the "Worldwide Special Olympics Campaign," she'd come to realize that many equestrian centers are reluctant to cater to handicapped individuals because of liability issues. She predicted that SB 176 will have profound consequences, adding that she really appreciated what the 4-H members had to say during their visit with her last year.

Number 1892

REPRESENTATIVE GRUENBERG said that although he could see the need for the bill, he did have questions regarding a couple of its provisions. He turned attention to page 3, lines 30-31, and said it would seems to say that the owner of an enterprise wouldn't be liable no matter how badly an employee acted.

SENATOR SEEKINS clarified that it says the owner could not be held "vicariously liable" for the acts or omissions of a participant or livestock professional. He offered the following example:

> If someone were to come in there and do something with their animal that would cause ... damage to another animal, the sponsor could not be held liable, vicariously, for that action because you can't control the actions of other participants ... or of another professional. So I think it's just limiting the vicarious liability exposure there ....

REPRESENTATIVE GRUENBERG suggested that by limiting vicarious liability, the legislature would be going further than it ever has before with regard to the issue of limiting damages.

SENATOR SEEKINS remarked that people are looking for new causes of action, an example of which is using vicarious liability "to get into the deep pockets even though someone was not responsible for the action." He offered that the language on page 3, lines 30-31, "is just clarifying that, ... [that] if someone else causes damage and you weren't it, you can't be held vicariously liable for someone else's activities." He added that this language does not pertain to the behavior of employees.

REPRESENTATIVE OGG mentioned that a good example of "this" is bull riding: "You own the bull and you put it into the county fair for people to ride on it, and this covers the activity of a participant or a professional who's going to get on that bull, and [if] he falls off of that bull, it's not your problem."

REPRESENTATIVE GRUENBERG said he now sees the point of that language. He then turned attention to page 4, lines 1-2, and noted that it says a person can waive his/her entire right to recover damages.

Number 1715

SENATOR SEEKINS pointed out, however, that the damages that language is referring to are those that result from an inherent risk of a livestock activity, not those that result from negligence.

REPRESENTATIVE GRUENBERG then turned attention to page 4, lines 17-18, which lists one of the things that could be included as

an aspect of the inherent risk of livestock activities, and which read, "the potential of a person to negligently engage in conduct that contributes to an injury or death during a livestock activity". He remarked that the other proposed aspects of inherent risk seem to focus on livestock or tack.

SENATOR SEEKINS offered the example of an incident that occurred at the Alaska State Fair in Palmer during the Miller's Reach fire. A lot of livestock from the surrounding area were evacuated to fairgrounds and this resulted in very crowded conditions. One woman chose to ride her horse despite these crowded conditions, and when she fell off her horse because it got spooked by other livestock, she sued the fairgrounds. He said that the language on lines 17-18 is intended to address such situations.

CHAIR McGUIRE asked Senator Seekins how he came up with the definition of "livestock".

SENATOR SEEKINS said it was garnered from other states' statutory definitions and input from the Alaska Department of Fish and Game (ADF&G).

REPRESENTATIVE GARA, noting that peafowls and pigeons are listed in the definition, asked whether any cases have been brought because of damage caused by those creatures. Is there an explosion of pigeon liability litigation out there?

REPRESENTATIVE GRUENBERG remarked that peacocks are vicious.

SENATOR SEEKINS added that peacocks are dangerous in some respects because they are unpredictable. He pointed out that his primary concern is with fairs and expositions. If one goes to a fair or exposition and sticks a finger in the pigeon cages, for example, there is the inherent risk of getting bitten.

REPRESENTATIVE GARA noted that the definition specifies that dogs and cats would not be considered livestock.

SENATOR SEEKINS relayed that that specification is standard language in all other states' statutes.

REPRESENTATIVE GRUENBERG, turning attention to the definition of livestock, asked whether there would be future bills to add other species to the list.

SENATOR SEEKINS said he didn't think so because the proposed list is "pretty all-inclusive." In response to other questions, he indicated that "domestic cow" includes cattle, bulls, steers, and oxen; that elephants are not considered livestock; and that SB 176 does not pertain to circus animals.

Number 1343

STEVE CONN, Special Projects Coordinator, Alaska Public Interest Research Group (AkPIRG), opined that SB 176 will lead to unintended consequences. He elaborated:

> This expansion of livestock to include rabbits, hamsters, guinea pigs, turkeys, chickens, and so forth, and [characterizing] them, as a matter of law, as being inherently dangerous, and then creating a duty on the part of a participant "to make a [reasonable] and prudent effort" - quoting from page 3, lines 17-18 - "to determine the ability of the participant to safely manage" it ..., this could find its way into pet shops [and] retail department stores. I just think that the original intent, which relates to things like rodeos, Palmer Fair, livestock shows involving big animals, takes you in the direction that you want to go.
>
> But the pictures that jump into my head ..., in fact, in some strange way, place additional duties on those that manage these inherently dangerous animals like the pony ride that finds its way behind the Sears mall every year for kids, because it does appear that the persons who are the potential victims here are also minors as well as adults. And so I think there's been overkill, in the drafting, to take you away - guide you away - from your serious concerns.
>
> And you are going to end up, by characterizing this vast reach of animals as being inherently dangerous because they're now considered livestock, in some strange ways, you may end up raising the bar of responsibility, rather than immunizing people who manage these sorts of situations in a "Wal-Mart," or in a pet store, or in a pony ride and other sorts of circumstances. So I would strongly recommend, despite the fact this bill has a long history, that it be held over and focused to meet the sponsor and the [4-H members'] fundamental concerns about large animals and

the dangers inherent in using, showing, managing, and offering up to the public the large animals. ... Thank you very much.

Number 1198

REPRESENTATIVE GARA said that the issue of the pony rides did make him wonder whether they should exempt little kids from the bill; for example, not have SB 176 apply to kids under the age of 13.

SENATOR SEEKINS responded that the language in the bill is "fairly uniform language in all the other states," and that there have been no reports, of which he is aware, of unintended consequences. He added that he hopes that "parents or guardians would be responsible for whether they chose to put their child ... in a dangerous situation." He assured the committee that should a child get hurt as a result of the operator of a pony ride not paying attention, the operator would not be granted immunity under SB 176.

REPRESENTATIVE GRUENBERG mentioned his belief that SB 176 will help one of his constituents.

CHAIR McGUIRE, after determining that no one else wished to testify, closed the public testimony on SB 176.

Number 1101

REPRESENTATIVE SAMUELS moved to report CSSB 176(JUD) out of committee with individual recommendations [and the accompanying zero fiscal note]. There being no objection, CSSB 176(JUD) was reported from the House Judiciary Standing Committee.

SB 198 - DAMAGES RECOVERED BY POLICE/FIREFIGHTER

Number 1089

CHAIR McGUIRE announced that the next order of business would be CS FOR SENATE BILL NO. 198(STA), "An Act relating to recovery of civil damages by a peace officer or fire fighter; and providing for an effective date."

Number 1081

SENATOR RALPH SEEKINS, Alaska State Legislature, sponsor, said that SB 198 revises the common law known as the "fire fighter's

rule." Currently, this common law precludes fire fighters and police officers from recovering civil damages for injuries caused by any negligent act inflicted while on duty. However, it doesn't distinguish between negligent acts requiring the fire fighter or peace officer's response and negligent acts that are unrelated to the reason the fire fighter or peace officer was required to respond.

SENATOR SEEKINS offered the following example: Under current common law, a police officer is precluded from suing for damages suffered as a result of being struck by a drunk driver during the course of transporting a prisoner to the courthouse, even though the drunk driving - the negligent act - is unrelated to the duty the officer is performing. In such a situation under SB 198, however, the police officer would be able to sue for damages. If a peace officer is injured while pursuing a drunk driver, though, under SB 198 the peace officer would still be precluded from bringing suit, because such injuries would have occurred in the line of duty. He characterized SB 198 as a good, commonsense bill, which will allow firefighters and peace officers, and their employers, to recover damages that they are currently unable to recover.

CHAIR McGUIRE called SB 198 a good bill, and mentioned that she introduced similar legislation.

SENATOR SEEKINS noted that his example of an officer being hit by drunk driver while transporting a prisoner was "a thumbnail of a real case."

CHAIR McGUIRE relayed that in Moody v. Delta Western, Inc., the Alaska Supreme Court upheld the current common law with regard to damages sustained during the course of duty, but with the caveat that one shouldn't be preempted from seeking damages for any unrelated act of negligence. She surmised that SB 198 simply clarifies that opinion. In response to a question, she also surmised that if fire fighters are called to the scene of a fire and then are shot at by snipers, they would not be able to recover damages.

REPRESENTATIVE GARA said he is worried that they would be limiting the rights of fire fighters and police officers too much. He asked whether subsection (a) of SB 198 still allows an injured fire fighter or peace officer to receive worker's compensation and/or insurance benefits.

CHAIR McGUIRE and SENATOR SEEKINS said yes.

REPRESENTATIVE GARA offered the example of a fire fighter being struck by a drunk driver on the way to or from a fire. He said he is worried that the language in SB 198 might not be sufficient to accomplish the sponsor's goals

Number 0760

MITCHELL GRAVO, Lobbyist for Anchorage Police Department Employees Association (APDEA), indicated that the APDEA is comfortable that SB 198 does accomplish the sponsor's goals.

SENATOR SEEKINS observed that subsection (b) says, "this section does not apply to a negligent act or omission that is unrelated to the activity that created the need". The negligent act or omission referred to in subsection (b) is one which is in no sense related to the reason the fire fighter or police officer is at a particular location at a given point in time.

REPRESENTATIVE GARA indicated that his concern is satisfied.

REPRESENTATIVE GRUENBERG noted that "fire fighter" is defined in SB 198, but does not include state fire fighters. He asked Senator Seekins whether he would be amenable to an amendment to include state fire fighters in the definition.

SENATOR SEEKINS relayed that "forestry service personnel" are not looked at as falling under the current definition of fire fighter, or as falling under the current "fire fighter's rule." Thus, if forestry service personnel are struck by a drunk driver on the way to a forest fire, they are not now precluded from recovering damages.

REPRESENTATIVE GRUENBERG asked Senator Seekins whether he would be amenable to an amendment that would clarify this.

SENATOR SEEKINS opined that such an amendment would not change how the courts will interpret the bill.

Number 0471

REPRESENTATIVE GARA moved to report [CSSB 198(STA) out of committee with individual recommendations and the accompanying zero fiscal note]. There being no objection, CSSB 198(STA) was reported from the House Judiciary Standing Committee.

CONFIRMATION HEARINGS

Regulator Commission of Alaska

Number 0420

CHAIR McGUIRE announced that the committee would next consider the appointment of Kate Giard to the Regulatory Commission of Alaska (RCA). She asked Ms. Giard why she wished to serve on the RCA.

Number 0340

KATE GIARD, Appointee, Regulatory Commission of Alaska (RCA), said that she is very interested in the position and has a natural tendency to go to areas that need some significant improvement in process. She elaborated:

> I have an ability to evaluate and work through business-process difficulties. And it sounds like, ... in addition to the extraordinarily complex technical issues that ... the [RCA] deals with, ... there also seems to be some issues within the [RCA] and the activities of the [RCA], and problems getting dockets through. And ... that's the ... part that really excites me about the job. Sitting and taking testimony, ... that's not really my bag - I can do it and I'll do it well - but I'm very interested to get into the [RCA] and see if there [aren't] smart ways that we can make the process a little more responsive to business, a little faster, and yet balance that with the very important needs of the consumer. So, it sounds like a foolish job to want ..., but nevertheless I do desire it. ... I'm quite looking forward to it.

CHAIR McGUIRE relayed that Representative Gara speaks highly of Ms. Giard's ability to tackle RCA issues.

REPRESENTATIVE HOLM asked Ms. Giard to comment on the issue of balancing consumer protection and carrier profitability.

TAPE 03-71, SIDE A
Number 0001

MS. GIARD described what occurred while she was working for Alaskan Choice TV. She indicated that this experience showed her that when competitors come into a monopoly market, although

it creates difficulties for the incumbent carrier, it does benefit consumers. She relayed that in 1998, the then-chairman of the Federal Communications Commission (FCC) said that Alaska is leading the way for local competition in the telecommunications industry. Thus, from a purely economic standpoint, [the Telecommunications Act of 1996] has had a terrific impact on Alaska, and the citizens have benefited from the growth of competing companies. She remarked that although it was a painful process, a balance has been achieved between ensuring the economic viability of providing telephone service in Alaska and ensuring benefits to consumers.

MS. GIARD said that her goal as a commissioner would be to ensure that a vibrant competitive economy is maintained across the state. She went on to say:

> The way that you do that, as a commissioner, is that we need to move quickly on the laws that you pass and we need to make interpretations so that we're not slowing down the economic drivers for those "telcos." The last-mile issue, ... that's got to be resolved by legislation. When we take a look at it, we need to be sure that the decisions that we make - and the profitability that we establish - provide the incentive for those companies ... to continue to want to invest in infrastructure, because infrastructure development, for this type of entity, is what's going to keep the competition alive.

CHAIR McGUIRE mentioned that the committee has spent time trying to determine what the legislature's role ought to be with regard to regulating telecommunications. She asked Ms. Giard to comment on the issue of legislative involvement with the RCA.

Number 0330

MS. GIARD responded:

> I believe that what I have been hearing from the [RCA] and the responses that I get when I talk about being on the [RCA] ... is that the [RCA], ... in the past, ... has not adequately responded to the balance between ... the need and the desire for competition and the need and desire for consumer protection. And that, I think, has resulted in the very ... reasonable questions and issues that both [General Communications Incorporated (GCI) and Alaska Communications Systems,

Inc. (ACS)] have brought up in the past and said, "Okay, the consumer protection agency - the RCA - is not doing enough to respond to our business needs therefore we're going to take our efforts to the legislature ... and we're going to make the legislature do that job."

... I would ask that you give us some time to make us do our job, and I read something in the paper today that said we needed a report by November 15, ... but we really have some clear direction ...: that we need to move quickly, we need to respond, and we need to keep in mind that these businesses are good for our economy, and that we need to not only look at the technical regulations but we also have to have some kind of business sense about the decisions that we make. It's very important.

So I would ask that the legislature consider ... moving forward on the governor's initiative, and giving us some time. You can always yank us down there and say, "Explain what you've been doing." And I'm sure if I do a good job, you're going to be hearing about it because a lot of people are going to be crying and screaming. But it needs some time, and it needs the full faith and backing of the legislature for a period of time to show that it can respond to the needs of telcos. I probably understand, having lived through it, ... what the desires and the needs of the telcos are.

CHAIR McGUIRE asked Ms. Giard whether she believes it appropriate for the legislature to ask the RCA to come back to the legislature by November 15 with policy decisions pertaining to certain areas.

Number 0575

MS. GIARD said she is happy to come back and report, and is excited to get in and work with the other commissioners. She added: "I'm hoping that that's the asset I bring to the [RCA] ...; I can get in there and I can ferret around and I can find more effective ways ... of getting the job done, and that will respond ... to the business needs of those telcos."

CHAIR McGUIRE asked Ms. Giard what resources she will seek out in making her decisions. Chair McGuire mentioned that her

concern is that old decisions will be maintained even though they may no longer be appropriate.

MS. GIARD said that she is not a very good follower, but that she does have a great deal of personal integrity; therefore, in doing her job on the RCA, she will not automatically be relying on past decisions, though she will stand by them if she finds that they are still appropriate. She relayed that she is not unfamiliar with either the Telecommunications Act of 1996 or the amount of research it will take to develop regulations. She said that she will use all the resources at her disposal to do her job to the best of her ability. She added that she is not afraid to formulate her own decisions, take them forward, and argue for them, and is not afraid to work together with other members of the RCA and keep pushing to come up with a consensus that she can, with honor, take forward.

CHAIR McGUIRE said she hopes Ms. Giard will not be afraid to admit it when mistakes are made or when circumstances change.

MS. GIARD indicated that she is not afraid to do so, and offered examples of having done so in the past.

REPRESENTATIVE GARA said he is glad that Ms. Giard is willing to serve on the RCA. He mentioned that there is a sense in the legislature that the RCA is "a little bit rudderless" and needs to make a strong statement in response to the concerns being brought before the legislature every year by the telecommunications industry. Referring to the RCA legislation, he asked Ms. Giard whether she feels that the RCA is going to be willing to address as many issues as possible before November 15 or, as some legislators fear, is the RCA simple going to do as little as possible to address as few issues as possible.

Number 1017

MS. GIARD expressed confidence that she and the rest of the members of the RCA will be working hard to address as many issues as possible. She indicated that she wants the legislature's full backing in order to be better able to work towards achieving the governor and legislature's requested changes. She asked the legislature to confirm her appointment to the RCA, stating that she has the background and experience and will work very hard to implement the changes necessary to get the RCA back on the right track.

REPRESENTATIVE OGG said that after listening to Ms. Giard's testimony, he is excited by her appointment to the RCA. He asked her whether she sees a role for the RCA when service areas become fully competitive.

MS. GIARD said that what amounts to success for the RCA is bringing deregulation to the telephone industry, and that such success does not frighten her in terms of her losing her job with the RCA. She predicted that Alaska will be able to take the Telecommunications Act of 1996 and bring true market competition to the primary markets of Anchorage, Fairbanks, and Juneau. She opined that that type of success will be what's best for both the market and the consumer. She encouraged the legislature to give its full faith to the RCA to make the desired changes.

MS. GIARD, in response to another question, indicated that a four-year sunset period would be more helpful than a shorter one because whenever there is the question of whether an entity or group will continue to be around, not a lot of actual business activities take place during the few months prior to an extension being granted or an administration remaining the same or retaining a group or entity. Noting that both last year and this year the RCA faced a sunset, she remarked that one doesn't want the staff of an organization to be in a constant flux, because it's not a good operating environment.

MS. GIARD opined that members of the RCA are not paid well given the quality of people that are appointed and the quality of work they are expected to perform, adding, "I know what you want, I understand what you want, you want a very good and high qualified individual to come and do that work, and I'm willing to give you a period of time of my life to do that."

Number 1316

MS. GIARD recommended to the committee that instead of having the RCA face a sunset every year, the legislature should change the laws to allow for a review of each commissioner on a yearly basis to determine whether he/she has performed as expected. Then, if a commissioner has preformed as expected, he/she could be given a raise, but if he/she has not performed as expected, then he/she could be removed from the RCA. The commissioners are the people who will either do or not do what the legislature wants, not the staff or the body of the RCA. The body of the RCA, the concept of the RCA, is a very good thing for Alaska, she opined, adding "regulation balanced by consumer needs

balanced by economic needs." What the legislature wants to know, she surmised, is whether the commissioners are going to respond to the various needs of the state in a timely fashion.

REPRESENTATIVE ANDERSON said that he has not been impressed with some of the RCA's wavering on issues. He asked Ms. Giard to be neutral in her deliberations and open-minded to deregulation, and said he hopes she will base all her decisions on what's best for the consumer and on fairness between competitors, which, he opined, has not been done with regard to the telecommunications industry. He said he has been wondering why the legislature should even deal with the RCA given that Dave Harbour, a newly appointed commissioner of the RCA, has relayed to him a preference that the legislature not make any statutory changes to the RCA's authority. He noted that some entities have recommended that a "hearing-officer infrastructure [be] implanted into the RCA." He asked Ms. Giard to comment on that recommendation.

MS. GIARD acknowledged that if utilized properly, a hearing officer might be beneficial. She surmised that Mr. Harbour's reluctance to have the legislature make statutory changes at this time stems from a desire, which she also has, to be allowed to go into the RCA, see what is happening, and then make recommendations for statutory changes if needed. She suggested that such a plan of action will ultimately give the legislature a better understanding of what changes really ought to be made. "My vision for [the RCA] is that it becomes less isolated and more integrated with the legislative process," She added.

Number 1579

REPRESENTATIVE HOLM thanked Ms. Giard for being willing to serve on the RCA, which he called a very important commission. On the issue of sunsets, he noted that [House members] only get two years and it doesn't affect how hard they try to do their work. He said he is concerned with what the legislature's oversight position truly is with regard to the RCA, adding that he did not want to be passing legislation that impedes the RCA's progress and ability to look out for consumers. However, he said he also doesn't want to see businesses bankrupted or impeded in their ability to improve technology due to RCA regulations. In conclusion, he wished Ms. Giard [good luck] in her endeavors.

CHAIR McGUIRE noted that currently, the sunset is the only way the legislature has of sending the RCA a message that it wants to see some changes, adding that it isn't just the commissioners

that ought to have periodic reviews, because the RCA is more than just its commissioners, it is also the staff and the way it goes about conducting business. She too wished Ms. Giard [good luck] in her endeavors.

MS. GIARD said that although it is up to the legislature to determine the length of the sunset period, she sees a short sunset period as creating a tremendous amount of disruption. She pointed out that good, progressive, thoughtful change takes time, an ability to communicate, and a convincing of staff that suggested changes ought to be implemented. She asked the committee to trust that she will work very hard, during whatever period of time the RCA is extended, to make sure that the next time the sunset issue is before the legislature, it won't involve a long, drawn-out process.

CHAIR McGUIRE thanked Ms. Giard for her willingness to serve, and relayed that the committee supports her appointment.

Number 1854

CHAIR McGUIRE asked whether there were any objections to advancing from committee the nomination of Kate Giard as appointee to the Regulatory Commission of Alaska. There being no objection, the confirmation was advanced from the House Judiciary Standing Committee.

SB 93 - ADVERSE POSSESSION

Number 1862

CHAIR McGUIRE announced that the next order of business would be CS FOR SENATE BILL NO. 93(JUD) am, "An Act relating to limitations on actions to quiet title to, eject a person from, or recover real property or the possession of it; relating to adverse possession; and providing for an effective date."

Number 1870

SENATOR THOMAS WAGONER, Alaska State Legislature, sponsor, said that the purpose of SB 93 is to provide more protection to Alaska's private landowners, both large and small, by limiting the ability of others to take private property via adverse possession. He described adverse possession as an outdated doctrine used to transfer land from an owner who is not making use of his/her property to someone who is making use of it. Current law imposes a time limit during which an action can be

brought to recover property; specifically, AS 09.10.030 states that the action must be brought within 10 years. Senate Bill 93 would change that provision such that a landowner could bring an action to recover property at any time if his/her interest in the property is recorded under AS 44.17.

SENATOR WAGONER said that AS 09.45.052 deals with adverse possession when "color or claim of title is involved." The time limit in this provision is seven years, which is not changed by SB 93. Additionally, proposed provisions of SB 93 ensure that there will still be reasonable ways of settling disputes, and that certain public services will be retained. He warned that some provisions of SB 93 are contentious. He turned attention to page 2, line 17, subsection (c), and said it allows public utilities to continue to gain easements for utility purposes after 10 years of use.

SENATOR WAGONER then read a letter he wrote to Tom Irwin, Commissioner, Department of Natural Resources (DNR) [original punctuation provided]:

> Dear Commissioner:
>
> It has been brought to my attention that there is some concern that the wording in Section 4 subsection (c) of Senate Bill 93 would give public utilities the ability to gain interest in easements on state land.
>
> This issue and similar issues have been discussed many times with our legal department. I have been told from the Legislative Legal department that public utilities would not have any more rights than they currently have, and currently they cannot take state of federal lands through adverse possession.
>
> It is not my intent, or the intent of the legislature to give public utilities the ability to gain an easement on state or federal land for utility purposes.

Number 2054

SENATOR WAGONER said that SB 93 would not to abolish all aspects of adverse possession; instead, its purpose is to eliminate the possibility that a landowner will lose property to a squatter who has no claim to the property. He noted that the state and federal government have exempted themselves from adverse

possession laws because it is too costly and time consuming to police their vast lands, and SB 93 simply offers that same protection to private property owners. He reiterated his belief that SB 93 will not give rights to any "entity, utility, or other" that such do not already have, adding that it is not his intention to have the bill do so.

REPRESENTATIVE GARA asked whether SB 93 takes away or limits the state's rights with regard to public access easements.

SENATOR WAGONER said no, and relayed that "there is a section in there that covers that for [the Department of Transportation and Public Facilities (DOT&PF)]."

REPRESENTATIVE GARA said that although SB 93 is intended to limit the ability to claim adverse possession, according to his interpretation, the provisions seem only to expand the ability to claim adverse possession. He asked Senator Wagoner to point out the provision that does what he intends.

SENATOR WAGONER said, "That was in Section 1, the 10-year time limit."

Number 2149

VANESSA TONDINI, Staff to Representative Lesil McGuire, House Judiciary Standing Committee, Alaska State Legislature, clarified that Section 2, proposed AS 09.10.030(b), contains the language Representative Gara is seeking.

SENATOR WAGONER noted that that language begins with, "An action may be brought at any time by a person who was seized or possessed of the real property".

Number 2171

JONATHAN TILLINGHAST, Lobbyist for Sealaska Corporation ("Sealaska"), explained that taken together, Sections 1 and 2 remove the 10-year statute of limitations for the landowner of record to recover his/her property, and this has the effect of repealing the doctrine of adverse possession for the record owner. However, adoption of Sections 1 and 2, he added, would eliminate the ability of the state and utilities to obtain easements by adverse possession. He noted that in order to rectify this situation, the language in Section 4 is necessary; Section 4 does not expand any rights, it simply puts back the rights that Sections 1 and 2 would eliminate. In response to a

question, he indicated that SB 93 will not change anything with regard to easements.

REPRESENTATIVE GARA turned attention to page 2, line 22, and noted that it did not specifically mention "public use". He asked why the bill refers to "public access" but not "public use".

MR. TILLINGHAST asked for an example of "public use".

REPRESENTATIVE GARA then noted that the language on line 23 does specify "trails", and surmised, therefore, that his concern has been addressed.

SENATOR WAGONER explained that [the DOT&PF] suggested the language in that part of the bill and has no concerns about it.

MR. TILLINGHAST said that the terms "trails" and "public access purposes" were used to specifically preserve the rights of the state and municipalities to acquire access across private lands in order to reach public-use areas and public trails.

Number 2265

REPRESENTATIVE ALBERT KOOKESH, Alaska State Legislature, noted that he is chairman of the board of the Sealaska Corporation and a member of Angoon's village corporation. He indicated that Alaska Native corporations will benefit from SB 93, adding that such corporations own a total of 44 million acres of land in Alaska and this makes them the second largest landholder in Alaska next to the state. Senate Bill 93 is important to the corporations because of it is impossible for them to police all of their lands 24 hours a day, seven days a week, all year long.

REPRESENTATIVE KOOKESH said that he wants to make sure that Native corporations, as landholders, are protected under the law, because in this regard, they are no different than individual landholders. He asked the committee to be cognizant of the fact that SB 93 is very important to all private landowners, particularly those who own lands "in fee simple." He said he appreciates the sponsor bringing SB 93 forward.

CHAIR McGUIRE said that her concern with this bill is that there really is a legitimate public-policy argument favoring the existence of adverse possession. She then briefly relayed some of the circumstances from which adverse possession arose.

TAPE 03-71, SIDE B
Number 2364

REPRESENTATIVE KOOKESH also asked the committee to be cognizant of the fact that private landowners have to be very careful about maintaining control of their lands, adding that this is particularly true for Native corporations because they know they will not be getting any more land, and so every piece of the 44 million acres of land owned by Native corporations is very dear to them. He said that he wants the committee to make sure that the rights of private landowners are protected.

MR. TILLINGHAST, in response to a question, said that one cannot squat on federal, state, or municipal land. He added, "There is ... no better indictment of the doctrine of adverse possession than the zeal with which the government resists any effort to apply that doctrine to it."

CHAIR McGUIRE pointed out that under 43 U.S.C.A. 636(d)(1), an exception to the general rule of adverse possession has already been carved out for Native lands.

Number 2268

SENATOR SCOTT OGAN, Alaska State Legislature, remarked that SB 93 attempts to change hundreds of years of common law. Regarding the statement made by Representative Kookesh that a landowner can't monitor his/her land 24 hours a day, seven days a week, all year long, Senator Ogan pointed out that under current law, the landowner need only police his/her developed land once every ten years, adding that undeveloped land cannot be adversely possessed. He said that he is confused enough about adverse possession to warrant his asking the committee to consider holding the bill over the interim for the purpose of researching the issue thoroughly and then looking at it from a fresh perspective next session.

CHAIR McGUIRE, noting that the committee would be taking a recess for the purpose of a House floor session, asked Senator Ogan to discuss his concerns with the bill's sponsor during that time.

The meeting was recessed at 1:27 p.m. to a call of the chair.

Number 2185

CHAIR McGUIRE called the meeting back to order at 6:10 p.m. Present at the call back to order were Representatives McGuire, Anderson, Holm, Ogg, Samuels, and Gara. Representative Gruenberg arrived as the meeting was in progress.

MR. TILLINGHAST explained that Sealaska has about 280,000 acres of land, which is similar to government land in that it's very remote and hard to police. Most of the land is Alaska Native Claims Settlement Act (ANCSA) land, but a fair amount of it, and a growing proportion of it, is not ANCSA land. He mentioned that Sealaska, like other Native corporations and Native regional corporations, is trying to expand its land base by acquiring non-ANCSA lands, which do not have the protection from adverse possession afforded by federal law to undeveloped ANCSA lands. Sealaska ran into some squatter problems with some non-ANCSA lands in Cordova and on Prince of Wales Island. He said that although Sealaska succeeded in evicting the squatters, it did so at significant cost, and, as a result, Sealaska asked him to look into the possibility of a legislative solution to its problem.

MR. TILLINGHAST concurred with Chair McGuire's synopsis of the origins of the doctrine of adverse possession, and noted that the length of time it takes to acquire property by adverse possess land shrinks as one moves westward; for example, on the east coast it takes approximately 20 years, but on the west coast it can take as few as 5 years. He said that the days when individuals could take land out of corporate ownership are over, and concurred that Native corporations are some of the largest landowners in the state, but added that the state has not adopted a policy of wanting to take land away from Native corporations for the purpose of giving it to private individuals.

MR. TILLINGHAST opined that the only continuing social utility of adverse possession is "sort of at the fringes." For example:

> Cleaning up the fence that got built two feet on the wrong side of the property line; or straightening out access problems, whether it be a public trail or a utility easement or a [DOT&PF] project; or kind of the defective deed problems where somebody is claiming property under color of title but there's something wrong with the deed that they've got.

Number 2013

MR. TILLINGHAST said that Sealaska has been working on this type of legislation for several years, but the problem that has arisen in the past is that the drafters took on both the core problem of bad-faith squatters attempting to take property away from the owner and the residual issues in which adverse possession still performs a valuable social function. He relayed that SB 93 is much narrower in that it goes out of its way to preserve the useful part of adverse possession while at the same time getting rid of what he called squatters' rights in which a bad-faith trespasser comes onto someone's land for the express purpose of stealing it. He reviewed one of the problems earlier versions of the legislation had, and assured the committee that SB 93 no longer has that problem. However, in order to fix that particular problem, SB 93 has been worded in such a way as to appear to grant rights of adverse possession to the state and to utilities that they don't already have, though it in fact does not do so.

REPRESENTATIVE GARA said he just wants to make sure that the provision defining the state and its subdivisions' rights to adverse possession is not being made narrower than it currently is. He asked whether the state's rights to adverse possession is currently defined in statute.

[Chair McGuire turned the gavel over to Vice Chair Anderson.]

MR. TILLINGHAST said that the state's rights to acquire property by adverse possession would fall only under the general statute that is being changed by Sections 1 and 2 of SB 93; there is no separate statute specifically pertaining to adverse possession by the state. In response to another question, he said that the state gets its adverse possession rights via AS 09.10.030, as does everybody else. Sections 1 and 2 of the bill take those rights away, and then Section 4 adds those rights back in for the state.

Number 1857

DARYL L. REINDL said that both he and the attorney he's hired for his adverse possession action are unable to determine what the language in SB 93 means. He said that he is assuming SB 93 will take away his rights of adverse possession, specifically regarding his action pertaining to land in the Wrangell-Saint Elias National Park and Preserve. He offered details of his action and the process he'd undertaken, and said that he is on the brink of acquiring quiet title. He remarked, however, that

perhaps SB 93 will not apply to his situation, though his attorney cannot assure him of that.

[Vice Chair Anderson returned the gavel to Chair McGuire.]

MR. TILLINGHAST opined that SB 93 would not have any affect on Mr. Reindl's action because Section 5 says that [the changes] apply only to actions that have not been barred before the effective date of the legislation. Mr. Reindl's right has vested, he added, thus SB 93 would have no effect on it.

MR. REINDL asked whether the bill differentiates between developed and undeveloped property.

MR. TILLINGHAST said it does not. He reiterated that if Mr. Reindl has possessed the land in question for a number of years, he has a vested right to his adverse possession claim, and therefore his claim would not be affected by SB 93.

MR. REINDL asked if the same would be true if he were to be starting the exact same process with similar property today.

MR. TILLINGHAST said that if such were the case, SB 93 would apply and thus Mr. Reindl's action would be affected.

MR. REINDL said he didn't think that was fair.

Number 1677

RONALD L. BAIRD, Attorney at Law, noted that he is a real estate lawyer and a condemnation lawyer, has been so for 25 years, and has litigated adverse possession claims. He relayed that he'd sent the committee a letter addressing some of his concerns, adding that he disagrees with most of Mr. Tillinghast's comments. Mr. Baird went on to say:

> The law of adverse possession is a body of law that the courts use ..., among other legal principles, to decide who owns real estate. It has an ancient history, but it has a current utility, and there's no commentators or judges, that have applied this law in recent cases, that are calling for its repeal. As it currently stands, it serves three policies. The first is, recorded title documents often contain errors by laymen, surveyors, title companies, and, yes, lawyers [too] make mistakes.

The second principle is that what adverse possession says [is that] eventually we must conform the record title to what has actually occurred on the ground, after giving the record title owners multiple opportunities to vindicate their rights. It says, and it has said for centuries, that ownership of property is not free of obligations: You must come forward like any other litigant, eventually, and assert your right or you lose it. So it prevents stale claims from being in the court.

So the doctrine does not condone thievery of property from the rightful owner; it decides who the rightful owner is and has been. It has been helping to decide that question for centuries. The doctrine in its various forms has been applied in more than 20 cases in Alaska since statehood. ... The result in none of those cases has been analyzed by either [Legislative Legal and Research Services] or anybody else to say this is the changes we're making; none of the justices in any of those 20 cases ever called upon or questioned the basic principles of adverse possession, suggesting its repeal. The doctrine is followed in all other 49 states.

The bill before you is justified as eliminating the rights of squatters. My question to you [is], who are these squatters and do they constitute a significant problem. A squatter, as the bill proponents would make it out, is someone who knowingly goes on remote land, without any belief in their ownership, remains there for 10 uninterrupted years, and then goes to court and brings a very expensive proceeding to vindicate their title. So defined, there's no such squatter that's ever appeared in a reported case of the Alaska Supreme Court.

Number 1527

MR. BAIRD continued:

Common sense says that these squatters are probably not there. I own property up by Talkeetna that's eight miles from the nearest road. I've seen people go in there over the years with the view that they're going to live there year around, and what happens is they stay there about two years. Why? Because it's

darn hard work to live out in the rural area. All you have to do is put up one year's worth of firewood to realize that it's not ... an easy thing to do in the state of Alaska. But this bill assumes that those people are there in significant numbers, they stay for eight more years than my experience [shows], and they're the sort of people that are going to hire lawyers and come in and understand this complex body of law and apply it.

I submit to you that the squatter is mythical. But let's assume that he's not. What the committee has ... not been told is how this bill affects the numerous cases where adverse possession has actually been applied. Senator Robin Taylor, when he spoke against this bill on the Senate floor, described cases from his own personal practice, [and] ... said the results would be different than ... [the] outcome he obtained for his client. And if we took the committee through these cases, ... my prediction would be you would not come away with an unequivocal conviction that injustice has been done. But Senator Taylor also raised the question about the constitutionality of this.

And apparently Mr. Tillinghast addressed that question with [Legislative Legal and Research Services], and you have a memorandum dated May 8 from [Legislative Legal and Research Services] attempting to address that. Mr. Tillinghast stated that there has never been litigation addressing the relationship between adverse possession and the just compensation clause of the Alaska [State] Constitution. That is simply incorrect. The case is Alt v. State, 688 P.2d 951, 1984. Does this bill track that case? I don't know. Did [Legislative Legal and Research Services] address whether this bill tracks that case. It certainly did not.

Number 1428

MR. BAIRD went on to say:

What they appear to say in this memo, they agree that there's no constitutional law. And with my ethical duty clearly in mind, I'm telling you this: Alt v. State is a controlling case that has not been

addressed and you do not have a legal judgment rendered on that. But even beyond that, you do not have a legal judgment on the federal constitutional law of just compensation - for which not only is there an issue but there is at least a fiscal risk if not a fiscal impact - which I'd be glad to take a question on after I've completed my remarks.

So what has happened here is, you've got a body of common law - it's not in the statutes, it fills 342 sections in Corpus Juris Secundum, a legal encyclopedia; ... [and] the bill before you wipes all of that law off and then attempts to come back and provide what is socially useful. I submit that that is an inherently flawed approach to dealing with the squatter if the squatter is a problem and if we could define him.

But ... the drafters have not yet addressed at least two other problems that are out there in the case law. The first is the oral gift of land. There's an Alaska Supreme Court case where a granddaughter received a gift of land from her grandparents and doesn't get a recorded instrument. She improves the property, it's clearly open and visible, but through the ... machinations that happen with record title, she ends up dealing with somebody that has a record title and who tries to evict her. I can tell you for certain that if this bill goes through, that case result is reversed.

The other area [that] is not addressed by this ... bill is the private driveway cases .... What came back into the bill was public and utility prescriptive rights, but there's a whole bunch of cases out there that deal with the driveway disputes, which are private prescriptive rights.

Number 1314

CHAIR McGUIRE invited Mr. Baird to fax the committee some possible amendments that would address his concern.

MR. BAIRD said he appreciates that offer, and elaborated on his concern:

> We're trying to ... fit about 342 sections of common law ... back into this bill. ... If ... there is a squatter problem and there is an excessive burden on some landowners, the way you get to that is, ... you can lengthen the period of time that adverse possession has to occur before it vests title, ... or you can ... can define the class of lands to which adverse possession does not apply.
>
> And incidentally, the reason why [state] and local government lands are not subject to this doctrine is the same reason why they're not subject to punitive damages. The principle is, you don't punish the public - state or local public - for failures or omissions of government officers. In other words, if the government officers don't take action, you don't punish the public with loss of public lands [for] their failure. That principle simply does not apply in the context of the private property owner where, for centuries, one of the burdens of property ownership has been, you must look out for your rights.

REPRESENTATIVE GARA asked whether common law contains the exemption of state lands from adverse possession.

MR. BAIRD said that in some states it's in the common law and in other states - one of which is Alaska - it's located in statute. Continuing on with his testimony, he said:

> I suggested two fairly common and legislatively precedent ways of dealing with the problem: either define the land that you don't want the law to apply to, or lengthen the prescriptive period. There's a third approach, which is to define the squatter. And instead of saying, as Section 2 of the bill does, we're going to throw out adverse possession, you would instead say the law of adverse possession, or the principle of this citation, does not apply to this litigant, or this class of persons. And then you would go to find this person that we came to feel is a problem and shouldn't have the benefit of this law.

Number 1123

> ... Either of those three approaches would leave real estate titles much more certain; it would leave the law of real estate, which is a pretty stable body of

> law, the least affected. And I'm prepared to volunteer my time and there's other lawyers who could work with the chair to develop a technically feasible bill along those lines if we're given the time. But ... most of my colleagues in the real estate bar are unaware that this bill is even out there. So, if we were allowed to do that, what we could bring back to you would be a surgeon's scalpel dealing with this particular problem; what you have before you is a sledgehammer, it does a great deal of disturbance to the existing law and it raises constitutional questions, both under the [Alaska] State Constitution and the federal Constitution. Thank you very much.

CHAIR McGUIRE said she did not disagree with Mr. Baird's comments. She asked Mr. Baird to write out some suggested language changes encompassing the approaches he's mentioned and fax them to the committee within the next hour. She said that she has deep concerns about SB 93, for example, that it's overly broad and that it changes hundreds of years and pages of common law. She mentioned that she would not be able to hold the bill over; thus any suggested language changes should be faxed to the committee as soon as possible.

REPRESENTATIVE GRUENBERG asked whether the Alaska statute pertaining to this issue requires a clear and convincing standard of proof.

MR. BAIRD said it does not.

REPRESENTATIVE GRUENBERG said he thought that such a standard should be included in the statute.

REPRESENTATIVE GARA said he is wondering whether "public use" should be included in the statute as well.

Number 0896

MR. BAIRD responded:

> The concern I have about this approach with respect to the state provision is this: Under federal constitutional law, there's a case called Loretto v. Manhattan Teleprompter, which says that if legislatively, you create interference with the landowner's right of possession of property, that is a per se taking of property within the federal

constitutional provision under the Fifth Amendment. ... And if, legislatively, you do create a per se taking, the remedy of the landowner is not simply to have the law invalidated.

Under a case called First English Lutheran Church v. [County] of Los Angeles, the United States Supreme Court cleared up a longstanding dispute about what the landowner's remedy is by saying the landowner's remedy is compensation for the period that the invalid or improper law is in place. My concern: the defense that you would have here, if you could precisely tailor the legislation to whatever the common law-right is, you might have a defense, because there's another body of takings law that says if the right that's being asserted, to go on the property, is part of the background principles of real property law - like this 800-year-old doctrine - then there's never a taking.

But here, you're repealing all of that law and you're substituting for it a legislative enactment. I think there's exposure to inverse condemnation claims for temporary takings even if you can satisfy yourself that it's tailored to the common law, which it's not. I'm not prepared to say that it is.

CHAIR McGUIRE relayed that SB 93 would be set aside, which would allow Mr. Baird an opportunity to work with Mr. Tillinghast on the issues raised and the possible amendments suggested.

Number 0741

JIM COLVER suggested defining "developed" such that "we exempted from adverse possession, under 43 U.S.C.A. 636(d)(1), extending the exemption to lands which have been logged or including ancillary logging infrastructure." If those types of lands are taken off the table, he added, it might clear up some other concerns without having to amend the whole statute.

CHAIR McGUIRE announced that the hearing on SB 93 would be recessed for the purpose of hearing two other bills. [The hearing on SB 93 was recessed until later in the meeting.]

SB 8 - TAMPERING WITH PUBLIC RECORDS

[Contains mention that the provisions of SB 55 have been incorporated into SB 8.]

Number 0691

CHAIR McGUIRE announced that the next order of business would be CS FOR SENATE BILL NO. 8(JUD), "An Act relating to tampering with public records."

Number 0654

RICHARD BENAVIDES, Staff to Senator Bettye Davis, Alaska State Legislature, presented SB 8 on behalf of the sponsor, Senator Davis. He said that SB 8 would elevate the crime of tampering with public records, specifically for five particular sections of Title 47, from a class A misdemeanor to a Class C felony. Those five sections are: AS 47.10 - Children in Need of Aid; AS 47.12 - Delinquent Minors; AS 47.17 - Child Protection; AS 47.20 - Services For Developmentally Delayed or Disabled Children; and AS 47.24 - Protection of Vulnerable Adults. He added that the provisions of SB 55 have been rolled into SB 8.

Number 0589

REPRESENTATIVE HOLM moved to report CSSB 8(JUD) out of committee with individual recommendations and the accompanying zero fiscal notes. There being no objection, CSSB 8(JUD) was reported from the House Judiciary Standing Committee.

The committee took an at-ease from 6:50 p.m. to 7:00 p.m.

SB 85 - REPEAT SERIOUS SEX OFFENSES

[Contains adoption of HCR 23 for the purpose of changing the title of SB 85.]

Number 0582

CHAIR McGUIRE announced that the next order of business would be CS FOR SENATE BILL NO. 85(STA), "An Act relating to sentencing and to the earning of good time deductions for certain sexual offenses."

Number 0556

SENATOR HOLLIS FRENCH, Alaska State Legislature, sponsor, said that SB 85 is designed to do two things. One, it will take

repeat sex offenders, those individuals who've been convicted of qualifying prior felony sex crimes, and put them into a new sentencing range - a more severe sentencing range. Two, it will take away the "good time" [sentence reduction] of those same individuals, those repeat sex offenders. He remarked that currently, the law does not account for the type of prior felony a person is convicted of.

[Tape ends early; no testimony is missing.]

TAPE 03-72, SIDE A
Number 0015

SENATOR FRENCH went on to say that currently, if one is a two-time felon, and the second felony is a rape conviction, the law makes no distinction. He offered his belief that a two-time rapist is not the same as any other two-time felon; he/she needs to be put in a separate, more stringent category. The sentencing scheme outlined in SB 85 is intended to address that concern. He remarked that for the past 26 years, Alaska has been at the top, nationwide, for reported rapes. Although SB 85 is not the entire answer, it will put hardcore, repeat offenders away for longer periods of time. In response to a question, he said that nationwide, about 10-25 percent of convicted sex offenders will go on to commit and be convicted of another sex offense within about five years of their first conviction.

REPRESENTATIVE HOLM surmised that SB 85 is addressing the issue of predators, and opined that there is a difference between a sex offender and a rapist and that the two are not the same. He said he would like to have those terms defined a little bit, and that he wanted to know how many people are rapists and how many people are just perverts.

CHAIR McGUIRE said she strongly disagrees with Representative Holm, adding that rapists are predators and are among the worst of people and it is therefore irrelevant whether the person being taken advantage of sexually is a woman or a child or a man.

REPRESENTATIVE HOLM said he just wanted to know what the difference is between the different classes of sexual predator. Are they all the same under the law?

SENATOR FRENCH explained that there are two broad categories. One is sexual assault - known as rape - and the other is sexual abuse of a minor. The latter often involves the same behavior

as the former but it is committed against a child under the age of 16. Those two categories are not exactly the same, he noted, but added that it is so very difficult to differentiate amongst them that, for purposes of SB 85, "we simply say this."

REPRESENTATIVE HOLM surmised: "Treat them all the same."

Number 0335

SENATOR FRENCH clarified that if someone is a repeat offender, "we're going to treat you the same and we're going to spank you hard." He referred to a newspaper clipping, which he relayed said that a 27-year-old Fairbanks man was convicted on five counts after molesting two teenage girls last year. The man was found guilty of fondling his wife's 15-year-old sister and her 16-year-old friend after giving them alcohol. He was convicted on one count each of first and second degree sexual abuse of a minor and one count of third degree sexual assault, and is now facing sentencing on those charges.

SENATOR FRENCH said that if such a situation is a onetime event, the perpetrator will be sentenced like every other first time offender. However, if the perpetrator is convicted again of such crimes, he offered his belief that that perpetrator should be treated more harshly.

REPRESENTATIVE SAMUELS mentioned that "good time" is a management tool for the Department of Corrections (DOC). He asked how many people will be affected by the "good time" provision of SB 85 and what will happen to the DOC when that tool is taken away.

SENATOR FRENCH posited that most sex offenders don't need that tool: "In a disciplined, orderly setting, they seem to be rule followers; they seem to conform their behavior to the structure they find themselves in." He acknowledged, however, that there is a cost aspect to eliminating "good time." He opined that SB 85 will save money in the long run just by keeping perpetrators of sexual offenses in jail longer, rather than letting them out sooner and then having to reprocess them into the correctional system when they are convicted again.

REPRESENTATIVE GARA asked for a comparison between the current sentencing structure and that proposed by SB 85. He also asked whether "statutory rape" is included in SB 85, and what the age difference is that results in a crime being called statutory rape.

SENATOR FRENCH, with regard to age differences between a victim and a perpetrator, said that the victim would be either 13, 14, or 15 years old, with the perpetrator being three years older. So statutory rape would involve a 16-, 17-, or 18-year-old having consensual sex with someone three years younger, and he/she would be guilty of committing sexual abuse of a minor in the third degree, which is a class C felony. He noted that if someone is convicted of statutory rape, by the time he/she gets out of prison, it is unlikely that he/she will still be in the same age category whereby a second conviction for statutory rape is possible. With regard to the differences between the current sentencing structure and that proposed by SB 85, he relayed that a handout detailing those differences is included in members' packets; the handout is titled "Sentencing Guidelines for Repeat Sexual Offenders."

REPRESENTATIVE HOLM asked whether the offenses covered under SB 85 include all the offenses in AS 11.41.410 - AS 11.41.470.

SENATOR FRENCH said yes. He added that "sexual felony" is defined on page 8 [lines 1-6] of SB 85, and is meant to cover "just about every sexual felony in our code."

REPRESENTATIVE GARA, after reviewing the aforementioned handout, remarked that SB 85 seems to add five years.

CHAIR McGUIRE, after ascertaining that no one wished to testify on SB 85, closed public testimony.

Number 0914

REPRESENTATIVE SAMUELS made a motion to adopt Amendment 1, labeled 23-LS0512\U.2, Luckhaupt, 5/18/03, which read:

> Page 1, line 1, following "**Act**":
> Insert "**relating to the factors that may be considered in making a crime victim compensation award;**"
>
> Page 8, following line 6:
> Insert a new bill section to read:
> "*** Sec. 10.** AS 18.67.080(c) is amended to read:
> (c) In determining whether to make an order under this section, the board shall consider all circumstances determined to be relevant, including provocation, consent, or any other behavior of the

victim that directly or indirectly contributed to the victim's injury or death, the prior case or social history, if any, of the victim, the victim's need for financial aid, and any other relevant matters. **In applying this subsection,**

(1) the board may not deny an order based on the factors in this subsection, unless those factors relate significantly to the occurrence that caused the victimization and are of such a nature and quality that a reasonable or prudent person would know that the factors or actions could lead to the crime and the victimization;

(2) with regard to circumstances in which the victim consented to, provoked, or incited the criminal act, the board may consider those circumstances only if the board finds that it is more probable than not that those circumstances occurred and were the cause of the crime and the victimization;

(3) the board may deny an order based on the victim's involvement with illegal drugs, only if

(A) the victim was involved in the manufacture or delivery of a controlled substance at the time of the crime or the crime and victimization was a direct result of the prior manufacture or delivery of a controlled substance; the evidence of this manufacture or delivery must be corroborated by law enforcement or other credible sources; and

(B) the evidence shows a direct correlation linking the illegal activity and the crime and victimization; or

(4) if a claim is based on a crime involving domestic violence or on a crime of sexual abuse of a minor or sexual assault and the offender is

(A) convicted of one of those crimes, notwithstanding (1) - (3) of this subsection, the board may not deny an order based on considerations of provocation, the use of alcohol or drugs by the victim, or the prior social history of the victim; or

(B) not convicted of one of those crimes, the board may not deny an order based on the involvement or behavior of the victim."

Renumber the following bill sections accordingly.

Number 0920

REPRESENTATIVE GARA objected to ask what Amendment 1 does.

REPRESENTATIVE SAMUELS said that Amendment 1 "goes into the criteria that can be used by the [Violent Crimes] Compensation Board, and what it does is it makes sure that they cannot deny for alcohol use, [or] drug use unless drug use was part of the crime itself."

CHAIR McGUIRE mentioned that the language in Amendment 1 was suggested by Senator Gretchen Guess.

REPRESENTATIVE GARA withdrew his objection.

Number 0959

CHAIR McGUIRE asked whether there were further objections to Amendment 1. There being none, Amendment 1 was adopted.

REPRESENTATIVE GRUENBERG noted that with the adoption of Amendment 1, a concurrent resolution is now necessary in order to change the title of SB 85.

Number 1010

REPRESENTATIVE SAMUELS moved to report CSSB 85(STA), as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HCS CSSB 85(JUD) was reported from the House Judiciary Standing Committee.

Number 1024

CHAIR McGUIRE announced that the committee now had before it for consideration the proposed House Concurrent Resolution, version 23-LS1164\A, Luckhaupt, 5/17/03.

Number 1039

REPRESENTATIVE SAMUELS moved to adopt and report the proposed House Concurrent Resolution, version 23-LS1164\A, Luckhaupt, 5/17/03, out of committee with individual recommendations. There being no objection, the House Concurrent Resolution [which later became HCR 23] was adopted and reported from the House Judiciary Standing Committee.

[HCS CSSB 85(JUD) was reported from committee.]

The committee took an at-ease from 7:17 p.m. to 7:22 p.m.

SB 93 - ADVERSE POSSESSION

Number 1058

CHAIR McGUIRE announced that the committee would resume the hearing on CS FOR SENATE BILL NO. 93(JUD) am, "An Act relating to limitations on actions to quiet title to, eject a person from, or recover real property or the possession of it; relating to adverse possession; and providing for an effective date."

Number 1078

JONATHAN TILLINGHAST, Lobbyist for Sealaska Corporation ("Sealaska"), said that Sealaska worked on this bill with Chugach Electric Association, Inc., and an agreement was reached to insert the language found on page 2, lines 17-19. This language ensures a public utility's right to continue to acquire easements by adverse possession. In return, Chugach Electric Association, Inc., agreed that it would support or at least not oppose SB 85.

MR. TILLINGHAST remarked that the number of Alaska Supreme Court cases involving squatters is not indicative of how many squatters there actually are in the state, adding that Sealaska has had to deal with squatters. He said that a case in Cordova was typical:

> It was a fellow who had squatted on this property undetected for nine years. We caught him within a year. He didn't take us to court; we had to take him to court and spend quite a bit of money on [attorney] fees to get him off the property.

MR. TILLINGHAST mentioned that the issue of whether repealing the doctrine of adverse possession is unconstitutional has not been addressed. He acknowledged that SB 85 makes no provision for new conveyances by oral gifts, but pointed out that it does have a "grandfather clause." Therefore, although oral gifts of property will no longer be honored, if somebody had made an oral gift more than 10 years ago, it wouldn't be affected by the bill. He remarked that SB 85 was drafted to preclude oral gifts of property because it is not reasonable, in this day and age, for people to think that they can have real property conveyed to them by a mere oral statement; in fact, doing so would now be a violation of the "statute of frauds."

Number 1317

MR. TILLINGHAST relayed that in the case involving an oral gift of property from a grandmother to a granddaughter, the court had to invent the boundaries of the property, and had to do so via a two-page description. He observed that one of the virtues of limiting the doctrine of adverse possession is that it will cut down on litigation because one can rely on the paper record. He offered the following quote from what he called a 1996 "Land and Water Review" article:

> This (indisc.) has endorsed the burial of adverse possession and prescription through legislation; these two ideas are dusty, obscure relics of the past, and finish one bullet short in a showdown with modern public policy.

MR. TILLINGHAST offered the following quote from what he called a 1994 "Cornell Law Review":

> Adverse possession of wild lands should be consigned to the dustbin of legal history as an idea whose time has passed.

MR. TILLINGHAST said that several states have abolished squatters rights by simply saying that one cannot bring an adverse possession claim unless one pays the real property taxes on the property. He called this a brilliant suggestion because it announces to the whole world that someone thinks he/she owns the property, and this puts the actual owner on notice. Such a solution wouldn't work in Alaska, however, because much of the remote land in Alaska is located in unorganized boroughs and is therefore not taxed. He relayed that the Florida supreme court has said that if "it" is not conditioned upon the person paying taxes, the actual owner is not given enough notice, and therefore adverse possession is unconstitutional.

MR. TILLINGHAST, on the issue of "driveway situations," opined that language on page 2, lines 9-12, would "cover the neighbor dispute where neighbor A is using some of neighbor B's property."

Number 1457

RONALD L. BAIRD, Attorney at Law, noted that the quote that speaks to wild lands encompasses the alternative approach that he suggested earlier, adding that that commentator does not

propose repeal of adverse possession but instead proposes creating an exception to it to deal with wild lands. He opined that doing so is a sensible approach.

REPRESENTATIVE HOLM asked Mr. Baird whether he was familiar with "Duncan's camp against Haines Borough," which he called a "traditional possession case."

MR. BAIRD said he was not.

Number 1520

JIM COLVER called SB 93 a very important special interest bill, which seeks to trash 800 years of common law just because Sealaska is worried about trespassers on its land. He relayed that in his profession as a surveyor, he runs across "these claims" all the time: driveways that aren't in the right place, and people building over the property line. He surmised that in the Fairbanks area there are a lot of old gold claims and homesteads and patents where people go across other people's land to get to their cabins. He said that as currently written, there is no sufficient clause in SB 93 to cover private roads and private driveways; the bill only covers "adjoiners," and would not apply in situations where one must travel over several parcels of land owned by separate people.

MR. COLVER said that at a minimum, the committee needs to amend SB 93 such that it would cover private roads, trails, and driveways. He added that such language would look similar to that which pertains to public roads. He said it is really important for people to retain access to their fishing holes, to their cabins, and to their homes. Currently, one can go to court and prove open and notorious use, but under SB 93, "we're doing away with that," he added. He relayed that the Matanuska-Susitna borough attorney was concerned about "the upgrading of the title in the utility provision from prescriptive right to (indisc.) easement, and was concerned that the municipalities would need to be exempted from that." He surmised that perhaps that is the intent, but suggested that some specific language ought to be added to clarify that point.

MR. COLVER said he agrees with Mr. Baird's testimony. He elaborated:

> The way I see this, [Alaska Native Claims Settlement Act (ANCSA)] already exempts Native corporations from adverse possessions in lands that aren't developed,

and lands that are developed don't include surveying, roads, utility construction. A simpler fix, without having to monkey with the whole statute, I believe, would be to define "developed" in our statute as it pertains to [43 U.S.C.A.] 636(d)(1) and ANCSA, and deal with what Sealaska's issues are (indisc.) what status that land is in - has it been logged, [are] there roads on it.

Number 1647

That way, we still preserve the doctrine that is used a lot. And I'll give you one instance. My brother John is an attorney and I talked with him about this bill, and he said he had a case in Chitna where the Kennicott Corporation granted lands to their employees. And deeds were lost or the court house burned down, the family had [known], they'd seen the deeds, but in order to perfect their title and the claim, protect it from the successor to the Kennicott Corporation, they had to go to court and prove adverse possession.

MR. COLVER concluded:

So this is used day in, day out and will ... need to be used for defective titles without any color of title, no deed, document, that asserts any form of ownership. And I don't know why we need to rush on this and wipe out 800 years of legal doctrine to solve a trespass problem. ... I would think that we'd be able to craft language to narrowly deal with Sealaska's concern, and retain the access that we've had to take title and private roads. You've given it to utilities - in this bill - we've given the public roads prescriptive rights, but we've left out those people with driveways and private roads. And at a minimum we need to include them.

REPRESENTATIVE OGG turned attention to Section 4, subsection (d), and said it appears that if the public makes use of someone's private land to get down to the beach for 10 years, the landowner would lose his/her land to the state. He said "that's" offensive to him.

MR. COLVER said that if the landowner blocks off the trail and interrupts its use, the time stops.

REPRESENTATIVE OGG noted that what's being portrayed to the committee are situations wherein the land is so remote that the landowner - for example, Sealaska Corporation - does not know that its land is being used and does not want to have the responsibility of monitoring its land. Currently, if 10 years go by, then adverse possession occurs and the property, in the example of the public accessing the beach, is given to the state or municipality as a public trail.

MR. COLVER acknowledged that currently, 10 years of open and notorious use applies to all property, private or public.

REPRESENTATIVE OGG said he did not think that's right.

Number 1804

MR. COLVER mentioned that surveyors are upset about SB 93.

REPRESENTATIVE GRUENBERG turned attention to the suggested language change offered in writing by the Matanuska-Susitna borough attorney. The change, he surmised, would be to add "any municipality," after "against" on page 2. line 13. He asked whether such language is already in statute elsewhere.

MR. TILLINGHAST suggested that that concern has been addressed via Senator Wagoner's letter to Commissioner Irwin. He added that the bill is not intended to give utilities acquisition authority over municipal, state, or federal land. He opined that the sponsor's letter was sufficient and an actual amendment would not be needed.

REPRESENTATIVE GRUENBERG pointed out that Alaska's superior courts aren't necessarily going to see that letter. Therefore, if the committee really wants to be sure that the sponsor's intent is carried out, there should be language in statute, he added.

MR. BAIRD said that originally, the state and utilities were addressed in the same section the bill, but a belief arose that it would be more convenient to have them addressed in separate sections. He said that he'd proposed a suggestion to add "private land" to subsection (c), located in Section 4 of the bill. Legislative Legal and Research Services, however, opted to use the term "real property". He said he is not sure why Legislative Legal and Research Services want to use "real property", but suggested that this is what has lead to the

concern regarding municipalities. He relayed that his client, Chugach Electric Association, Inc., is satisfied with the language as is, but does not assert that it can, under existing law, acquire a right against the government or private entities, and acknowledges that it has no greater right than a private party.

REPRESENTATIVE GRUENBERG read portions of the borough attorney's written testimony, and posited that perhaps the suggested language ought to go in Section 4, rather than Section 3. Referring to the written testimony, he surmised that it meant that "you couldn't get title, but you could get an easement by adverse possession."

Number 2057

MR. BAIRD said he is wondering why the United States is referred to at all in SB 93, since there is no way that the state can say anything about how the federal government is going to be divested of its lands. He suggested that the language in subsection (d) of Section 4 would make it an exception to Section 2 of the bill, adding that under existing law, private utilities cannot acquire interests by prescription, which is a sub-doctrine of adverse possession, from public entities. He said that the problem with what has been proposed by the borough attorney is that "this" section deals with public utilities, which includes both his client, Chugach Electric Association, Inc., and municipalities to the extent they are providing public utility services.

REPRESENTATIVE GRUENBERG surmised, then, that "it would be meaningless because obviously a municipality can't get adverse possession against itself."

MR. BAIRD added, "Or the state."

REPRESENTATIVE GRUENBERG offered that perhaps the language suggested by the borough attorney ought to go on line 19 at the end of subsection (c).

MR. TILLINGHAST relayed that Legislative Legal and Research Services has indicated that the existing "immunity law" for municipalities only protects them from being divested of title; it does not protect municipalities from being subject to an easement acquired by adverse possession from another governmental entity or a public utility. If such is actually true, he remarked, then the borough attorney's suggestion would

expand the municipality's rights and shield it against a utility acquiring a power line easement over municipal property, and would therefore be a change in existing law.

REPRESENTATIVE GRUENBERG said he thought that under Title 9, "you can't get adverse possession."

MR. TILLINGHAST offered that the operative language is in Title 29.

REPRESENTATIVE GRUENBERG surmised, then, that as a matter of policy, no one should be able to get a prescriptive easement against a municipality. He mentioned that he'd like to insert language to protect municipalities, adding that it would be good public policy.

Number 2248

MR. TILLINGHAST opined that the theory behind protecting a public utility's right to acquire prescriptive rights for power lines is that power lines "sort of go where they go," and they may very well need to go over municipal land.

REPRESENTATIVE GRUENBERG said he is not saying they shouldn't; rather, the question is, do they get a prescriptive easement, which is an easement in perpetuity.

MR. TILLINGHAST surmised that that argument raises the philosophical question of, should yet another exception be carved out wherein government gets preferential treatment over the private sector. He added that adverse possession already prefers the government over private enterprise.

CHAIR McGUIRE asked Mr. Tillinghast whether he would be willing to allow "a carve out for prescriptive easements," for example, in situations where a family has a cabin and has been using a particular path over another person's property for more than 10 years because there is no other way to get out to the roadway or to the lake.

REPRESENTATIVE GRUENBERG remarked, "easement of necessity (indisc.) or by implication."

MR. TILLINGHAST pointed out that in that example, if the family has used the path for over 10 years, then SB 93 would not affect that family because it would be "grandfathered."

CHAIR McGUIRE clarified that she is talking about future such situations.

MR. TILLINGHAST said that under SB 93, for situations in the future, his client would prefer that the family pay for "it," either by negotiating the purchase of an easement or, if his client refuses to do that, by bringing an action claiming the right to an easement by necessity. He added that in the latter case, the court would fix fair market value to the property. The bottom line, he remarked, is whether the family has to take his client to court, which the family would have to do anyway for adverse possession. He stated, "They'll have to pay us the fair market value of that easement and we'd prefer, in the future, that that's the way the world worked."

Number 2346

MR. BAIRD opined that the principal of easement by necessity would not be affected by SB 93 because it is a separate body of law that arises from applied rights under a pattern of "conveyancing," so that if one conveys a series of separate parcels in such a way as to leave somebody landlocked, the law applies, in the conveyance itself, the preservation of an easement. He offered his belief that in such a situation, existing law would protect the family in Chair McGuire's example.

CHAIR McGUIRE indicated agreement.

TAPE 03-72, SIDE B
Number 2362

REPRESENTATIVE ANDERSON moved to report CSSB 93(JUD) am out of committee with individual recommendations and the accompanying zero fiscal note.

Number 2354

REPRESENTATIVE OGG objected.

Number 2349

A roll call vote was taken. Representatives Holm, Samuels, Gara, Anderson, and McGuire voted in favor of reporting the bill from committee. Representatives Ogg and Gruenberg voted against it. Therefore, CSSB 93(JUD) am was reported out of the House Judiciary Standing Committee by a vote of 5-2.

ADJOURNMENT

Number 2330

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 7:55 p.m.