ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE
April 16, 2004
1:20 p.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

Representative Tom Anderson, Vice Chair

COMMITTEE CALENDAR

SENATE BILL NO. 344
"An Act relating to the Uniform Probate Code and trusts, including pleadings, orders, nonprobate assets, estates of decedents, minors, protected persons, incapacitated persons, guardians, conservators, trustees, foreign trusts, principal and income, and transfer restrictions; relating to corporate voting trusts; and providing for an effective date."

- MOVED HCS SB 344(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 546
"An Act relating to regulation of the discharge of pollutants from timber-related activities under the National Pollutant Discharge Elimination System; relating to waste treatment and disposal permits; making conforming amendments; and providing for an effective date."

- MOVED CSHB 546(JUD) OUT OF COMMITTEE

CS FOR SENATE BILL NO. 300(FIN)
"An Act relating to an attorney's lien, to court actions, and to other proceedings where attorneys are employed; and providing for an effective date."

- MOVED HCS CSSB 300(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 309

"An Act prohibiting the release of nonindigenous predatory fish into public water."

- HEARD AND HELD; ASSIGNED TO SUBCOMMITTEE

CS FOR SENATE BILL NO. 276(FIN)
"An Act relating to the Alaska Insurance Guaranty Association; relating to the powers of the Alaska Industrial Development and Export Authority concerning the association; and providing for an effective date."

- HEARD AND HELD

CS FOR SENATE BILL NO. 269(CRA)
"An Act relating to access to library records, including access to the library records of a child by a parent or guardian."

- BILL HEARING POSTPONED TO 04/19/04

CS FOR SENATE BILL NO. 288(JUD)
"An Act relating to temporary custody hearings, and to certain determinations concerning placement of a child in child-in-need-of-aid proceedings; and providing for an effective date."

- BILL HEARING POSTPONED TO 04/19/04

PREVIOUS COMMITTEE ACTION

BILL: SB 344
SHORT TITLE: TRUSTS/ESTATES/PROPERTY TRANSFERS
SPONSOR(S): SENATOR(S) SEEKINS

02/16/04	(S)	READ THE FIRST TIME - REFERRALS
02/16/04	(S)	L&C, JUD
03/11/04	(S)	L&C AT 1:30 PM BELTZ 211
03/11/04	(S)	Moved SB 344 Out of Committee
03/11/04	(S)	MINUTE(L&C)
03/12/04	(S)	L&C RPT 3DP 1NR
03/12/04	(S)	DP: BUNDE, DAVIS, SEEKINS; NR: FRENCH
03/17/04	(S)	JUD RPT 2DP 2NR
03/17/04	(S)	DP: SEEKINS, THERRIAULT; NR: FRENCH,
03/17/04	(S)	OGAN
03/17/04	(S)	JUD AT 8:00 AM BUTROVICH 205
03/17/04	(S)	Moved SB 344 Out of Committee
03/17/04	(S)	MINUTE(JUD)
03/26/04	(S)	TRANSMITTED TO (H)
03/26/04	(S)	VERSION: SB 344

03/26/04	(H)	JUD AT 1:00 PM CAPITOL 120
03/26/04	(H)	<Bill Hearing Postponed to 3/29/04>
03/29/04	(H)	READ THE FIRST TIME - REFERRALS
03/29/04	(H)	JUD
03/29/04	(H)	JUD AT 1:00 PM CAPITOL 120
03/29/04	(H)	Bill Postponed To 3/30/04
03/30/04	(H)	JUD AT 1:00 PM CAPITOL 120
03/30/04	(H)	Scheduled But Not Heard
04/14/04	(H)	JUD AT 1:00 PM CAPITOL 120
04/14/04	(H)	Heard & Held
04/14/04	(H)	MINUTE(JUD)
04/16/04	(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 546
SHORT TITLE: POLLUTION DISCHARGE & WASTE TRMT/DISPOSAL
SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

03/25/04	(H)	READ THE FIRST TIME - REFERRALS
03/25/04	(H)	RES, JUD
04/05/04	(H)	RES AT 1:00 PM CAPITOL 124
04/05/04	(H)	Moved Out of Committee
04/05/04	(H)	MINUTE(RES)
04/06/04	(H)	RES RPT 6DP 3NR
04/06/04	(H)	DP: STEPOVICH, GATTO, LYNN, HEINZE,
04/06/04	(H)	MASEK, DAHLSTROM; NR: GUTTENBERG,
04/06/04	(H)	KERTTULA, WOLF
04/07/04	(H)	FIN REFERRAL ADDED AFTER JUD
04/14/04	(H)	JUD AT 1:00 PM CAPITOL 120
04/14/04	(H)	Scheduled But Not Heard
04/16/04	(H)	JUD AT 1:00 PM CAPITOL 120

BILL: SB 300
SHORT TITLE: ATTORNEY'S LIEN
SPONSOR(S): SENATOR(S) STEDMAN

02/06/04	(S)	READ THE FIRST TIME - REFERRALS
02/06/04	(S)	JUD, FIN
02/09/04	(S)	JUD AT 8:00 AM BUTROVICH 205
02/09/04	(S)	Heard & Held
02/09/04	(S)	MINUTE(JUD)
02/20/04	(S)	JUD AT 8:00 AM BUTROVICH 205
02/20/04	(S)	Moved SB 300 Out of Committee
02/20/04	(S)	MINUTE(JUD)
02/20/04	(S)	JUD RPT 3DP 2NR
02/20/04	(S)	DP: SEEKINS, THERRIAULT, OGAN;
02/20/04	(S)	NR: ELLIS, FRENCH
03/11/04	(S)	FIN AT 9:00 AM SENATE FINANCE 532

03/11/04	(S)	-- Meeting Canceled --
03/23/04	(S)	FIN AT 9:00 AM SENATE FINANCE 532
03/23/04	(S)	Moved SB 300 Out of Committee
03/23/04	(S)	MINUTE(FIN)
03/24/04	(S)	FIN RPT CS 6DP 1NR NEW TITLE
03/24/04	(S)	DP: GREEN, WILKEN, DYSON, HOFFMAN,
03/24/04	(S)	BUNDE, STEVENS B; NR: OLSON
03/29/04	(S)	TRANSMITTED TO (H)
03/29/04	(S)	VERSION: CSSB 300(FIN)
03/31/04	(H)	READ THE FIRST TIME - REFERRALS
03/31/04	(H)	JUD, FIN
04/16/04	(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 309
SHORT TITLE: PROHIBIT RELEASE OF PREDATORY FISH
SPONSOR(S): REPRESENTATIVE(S) WOLF

05/08/03	(H)	READ THE FIRST TIME - REFERRALS
05/08/03	(H)	FSH, RES
05/16/03	(H)	FSH AT 7:30 AM CAPITOL 124
05/16/03	(H)	Heard & Held
05/16/03	(H)	MINUTE(FSH)
03/22/04	(H)	FSH AT 9:00 AM CAPITOL 124
03/22/04	(H)	Moved CSHB 309(FSH) Out of Committee
03/22/04	(H)	MINUTE(FSH)
03/24/04	(H)	FSH RPT CS(FSH) NT 3DP 2NR
03/24/04	(H)	DP: GARA, WILSON, SEATON; NR: OGG,
03/24/04	(H)	GUTTENBERG
03/31/04	(H)	RES AT 1:00 PM CAPITOL 124
03/31/04	(H)	Heard & Held
03/31/04	(H)	MINUTE(RES)
04/01/04	(H)	JUD REFERRAL ADDED AFTER RES
04/05/04	(H)	RES AT 1:00 PM CAPITOL 124
04/05/04	(H)	Heard & Held
04/05/04	(H)	MINUTE(RES)
04/07/04	(H)	RES AT 1:00 PM CAPITOL 124
04/07/04	(H)	Moved CSHB 309(RES) Out of Committee
04/07/04	(H)	MINUTE(RES)
04/08/04	(H)	RES RPT CS(RES) NT 1DP 3NR 5AM
04/08/04	(H)	DP: WOLF; NR: LYNN, GUTTENBERG,
04/08/04	(H)	DAHLSTROM; AM: HEINZE, STEPOVICH,
04/08/04	(H)	GATTO, KERTTULA, MASEK
04/16/04	(H)	JUD AT 1:00 PM CAPITOL 120

BILL: SB 276
SHORT TITLE: ALASKA INSURANCE GUARANTY ASSOCIATION
SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

01/23/04	(S)	READ THE FIRST TIME - REFERRALS
01/23/04	(S)	L&C, FIN
02/03/04	(S)	L&C AT 1:30 PM BELTZ 211
02/03/04	(S)	Heard & Held
02/03/04	(S)	MINUTE(L&C)
02/10/04	(S)	L&C AT 1:30 PM BELTZ 211
02/10/04	(S)	Heard & Held
02/10/04	(S)	MINUTE(L&C)
02/17/04	(S)	L&C AT 1:30 PM BELTZ 211
02/17/04	(S)	Moved CSSB 276(L&C) Out of Committee
02/17/04	(S)	MINUTE(L&C)
02/18/04	(S)	L&C RPT CS 3DP 1DNP NEW TITLE
02/18/04	(S)	LETTER OF INTENT WITH L&C REPORT
02/18/04	(S)	DP: BUNDE, SEEKINS, STEVENS G;
02/18/04	(S)	DNP: FRENCH
02/27/04	(S)	FIN AT 9:00 AM SENATE FINANCE 532
02/27/04	(S)	Heard & Held
02/27/04	(S)	MINUTE(FIN)
03/22/04	(S)	FIN AT 9:00 AM SENATE FINANCE 532
03/22/04	(S)	Moved CSSB 276(FIN) Out of Committee
03/22/04	(S)	MINUTE(FIN)
03/22/04	(S)	FIN RPT CS 3DP 4NR NEW TITLE
03/22/04	(S)	DP: GREEN, WILKEN, STEVENS B;
03/22/04	(S)	NR: DYSON, HOFFMAN, BUNDE, OLSON
04/02/04	(S)	TRANSMITTED TO (H)
04/02/04	(S)	VERSION: CSSB 276(FIN)
04/05/04	(H)	READ THE FIRST TIME - REFERRALS
04/05/04	(H)	L&C, JUD, FIN
04/07/04	(H)	L&C REFERRAL WAIVED
04/16/04	(H)	JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

BRIAN HOVE, Staff
to Senator Ralph Seekins
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Responded to questions during discussion of SB 344 on behalf of the sponsor, Senator Seekins.

DAVID G. SHAFTEL, Attorney at Law
Law Offices of David G. Shaftel, PC
Anchorage, Alaska
POSITION STATEMENT: Responded to questions during discussion of SB 344.

ERNESTA BALLARD, Commissioner
Department of Environmental Conservation (DEC)
Juneau, Alaska
POSITION STATEMENT: Presented HB 546 on behalf of the administration.

JONATHAN TILLINGHAST, Lobbyist
for Sealaska Corporation ("Sealaska")
Juneau, Alaska
POSITION STATEMENT: Testified in support of HB 546 and responded to questions.

TERRY THURBON, Assistant Attorney General
Environmental Section
Civil Division (Juneau)
Department of Law (DOL)
Juneau, Alaska
POSITION STATEMENT: Responded to questions during discussion of HB 546.

DAN EASTON, Director
Division of Water
Division of Environmental Health
Department of Environmental Conservation (DEC)
Juneau, Alaska
POSITION STATEMENT: Responded to questions during discussion of HB 546.

MILES BAKER, Staff
to Senator Bert Stedman
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Presented SB 300 on behalf of the sponsor, Senator Stedman.

DAVID S. CASE, Attorney at Law
Landye Bennett Blumstein LLP
Anchorage, Alaska
POSITION STATEMENT: During discussion of SB 300, expressed a concern, suggested an amendment, and responded to questions.

JO A. KUCHLE, Attorney at Law
Cook Schuhmann & Groseclose, Inc.
Fairbanks, Alaska
POSITION STATEMENT: Assisted with the presentation of SB 300 and responded to questions and comments.

REPRESENTATIVE KELLY WOLF
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Sponsor of HB 309.

ROB BENTZ, Deputy Director
Division of Sport Fish
Alaska Department of Fish & Game (ADF&G)
Juneau, Alaska
POSITION STATEMENT: Responded to comments and questions during discussion of HB 309.

LINDA HALL, Director
Division of Insurance
Department of Community & Economic Development (DCED)
Anchorage, Alaska
POSITION STATEMENT: Presented HB SB 276 on behalf of the administration.

MARTIN PIHL, Chairman
Board of Governors
Alaska Timber Insurance Exchange (ATIE)
Ketchikan, Alaska
POSITION STATEMENT: During discussion of SB 276, provided comments and suggested changes to the workers' compensation insurance system in Alaska.

ACTION NARRATIVE

TAPE 04-67, SIDE A
Number 0001

CHAIR LESIL McGUIRE called the House Judiciary Standing Committee meeting to order at 1:20 p.m. Representatives McGuire, Holm, Ogg, and Gara were present at the call to order. Representatives Samuels and Gruenberg arrived as the meeting was in progress.

SB 344 - TRUSTS/ESTATES/PROPERTY TRANSFERS

Number 0033

CHAIR McGUIRE announced that the first order of business would be SENATE BILL NO. 344, "An Act relating to the Uniform Probate Code and trusts, including pleadings, orders, nonprobate assets, estates of decedents, minors, protected persons, incapacitated persons, guardians, conservators, trustees, foreign trusts,

principal and income, and transfer restrictions; relating to corporate voting trusts; and providing for an effective date."

Number 0073

REPRESENTATIVE OGG moved to adopt the proposed House committee substitute (HCS) for SB 344, Version 23-LS1694\H, Bannister, 4/16/04, as the work draft. There being no objection, Version H was before the committee.

Number 0094

BRIAN HOVE, Staff to Senator Ralph Seekins, Alaska State Legislature, sponsor, on behalf of Senator Seekins, relayed that members of the group that created the bill were on line to answer questions.

REPRESENTATIVE GARA directed attention to page 5, lines 5-10, subsection (b), which read:

> (b) If a trustee petitions a court for an order approving a report that adequately discloses the existence of a potential claim, serves the report on all beneficiaries to be bound by the report, and gives the beneficiaries at least 90 days' notice of the court proceeding, all potential claims of the beneficiaries against the trustee are barred unless the claims are served on the trustee and filed with the court within 60 days after the beneficiaries receive the report.

REPRESENTATIVE GARA asked whether the beneficiaries could still bring up a claim during the proceeding mentioned in subsection (b) if the 60-day deadline has passed.

Number 0270

DAVID G. SHAFTEL, Attorney at Law, Law Offices of David G. Shaftel, PC, replied that according to his understanding of subsection (b), the claim would have to be asserted during the 60-day period; that claim could then be resolved in that proceeding or in a separate proceeding. He surmised that if there are amendments to the claim or matters that a court would consider to be associated with the claim, the court could consider those even if the 60-day deadline has passed. In response to a further question, he said:

> If you're having a formal court proceeding and you have notified the beneficiary that that is occurring, ... they would need to bring those claims within 60 days. ... But certainly I would expect that courts would allow for a broad variety of amendments to refine the claim. If the claim was, for example, ... a matter relating to a certain asset or ... [the fact] that there's an asset missing or these numbers don't look right on this account, then that could well be refined after the 60-day period, but they [would] have brought the general essence of the claim within the 60-day period.

REPRESENTATIVE GARA asked Mr. Shaftel whether it would be alright to add language at the end of proposed subsection (b) to indicate that a claim could also be brought during the proceeding even if the proceeding occurred after the 60-day period.

MR. SHAFTEL replied:

> In our discussions about this procedure we felt that for there to be a meaningful court proceeding, that both sides would need to know what the claims are before the proceeding began so that they could respond to them and hopefully resolve them at that point. So that's why we put in that prior to the actual date of the proceeding, there'd be a cutoff, and that's why it's 90 days with a 60-day cutoff, so that the trustee would know, generally, what claims are being brought, so the trustee could respond to them at that hearing.

REPRESENTATIVE GRUENBERG directed attention to Section 7 of Version H and asked Mr. Shaftel whether it meets his needs.

MR. SHAFTEL said yes.

Number 0688

REPRESENTATIVE GARA made a motion to adopt Amendment 1, on page 5, line 14, replace "12 months" with "two years". He indicated that this change was amenable to those who brought the concept of the bill forth.

MR. HOVE said if the experts in the industry are amenable to Amendment 1, so is the sponsor.

MR. SHAFTEL said that his group discussed this proposed change at length and decided that as long as it wouldn't delay passage of the bill, they were amenable to it.

Number 0811

REPRESENTATIVE OGG objected to Amendment 1.

CHAIR McGUIRE clarified that Amendment 1 would change "12 months" to "24 months".

Number 0837

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

Number 0846

REPRESENTATIVE HOLM moved to report the proposed HCS for SB 344, Version 23-LS1694\H, Bannister, 4/16/04, as amended, out of committee with individual recommendations and the accompanying [zero] fiscal notes. There being no objection, HCS SB 344(JUD) was reported from the House Judiciary Standing Committee.

HB 546 - POLLUTION DISCHARGE & WASTE TRMT/DISPOSAL

Number 0883

CHAIR McGUIRE announced that the next order of business would be HOUSE BILL NO. 546, "An Act relating to regulation of the discharge of pollutants from timber-related activities under the National Pollutant Discharge Elimination System; relating to waste treatment and disposal permits; making conforming amendments; and providing for an effective date."

Number 0906

ERNESTA BALLARD, Commissioner, Department of Environmental Conservation (DEC), said that HB 546 will allow the department, and therefore the state, to achieve its environmental goals while streamlining its permitting process. She went on to say:

> House Bill 546 has to do with state primacy for a portion of the Clean Water Act. The Clean Water Act was designed by the United States Congress for

implementation by the states. Forty-five states fully implement the permitting section of the Clean Water Act, only five do not; we are one of the five states that do not fully implement the provisions the Clean Water Act designed for implementation at the state level. There are two key sections that I want to call your attention to today so I can explain to you how it is that [HB 546] will allow us to continue to achieve our environmental goals while streamlining our permit process, and those two sections are Sections 402 and 401 of the Clean Water Act.

Section 402 is the section of the Act which charges the permitting agency, currently the [U.S.] Environmental Protection Agency [EPA], ... with permitting discharges to the nation's water. Section 401 is the section of the Act which requires the state to [ensure] ... that a permit written under the Clean Water Act will achieve and maintain state water quality standards. The way this is presently organized in the five states, including Alaska, in which there is not state primacy, [is that] the federal government, through [the] EPA, writes the discharge permit, and the State of Alaska certifies that it will achieve state water quality standards.

In other words, it is the state water quality standards which support both the federal permit and the state certification. It is the state which [ensures] ... that its waters will be free from pollution. The permitting applicant has to deal with a federal agency and a state agency in order to [assure] that their discharge will achieve state water quality standards. This is duplicative, it's an unnecessary burden on the applicant, [and] it does not do anything to achieve water quality protection that the state cannot achieve by itself. Primacy is a complicated process of negotiation between the state and [the] EPA. ...

Number 1080

COMMISSIONER BALLARD continued:

The administration had hoped to ask the legislature's permission to (indisc.) primacy for all industry segments. House Bill 546 is a pilot case for us - it

asks for permission to achieve primacy just for the timber industry. And you might [ask] ..., "Why the timber industry?" And the reason is that the timber industry ... [is] the industry segment in Alaska in which the State of Alaska, through the DEC, clearly has the best expertise between the two agencies - the federal and the state agency. That reason being that timber ... used to be a major business for us.

Sadly, it's not so much anymore, but over the course of the last three years there's been a ... major administrative proceeding challenging the federal timber-related permit, and the state has taken the labor (indisc.) to do the clarifying work and the analysis necessary to bring that matter to conclusion. So the timber industry and the state agreed, and the other industry sectors - the seafood, the mining, the oil and gas, and the municipal discharge, which are the major other industry sectors - have all agreed that this is a good test pilot for us to see how primacy will work with [the] DEC assuming that responsibility under the Clean Water Act.

That's what [HB 546] is all about. It does, in summary, then, two things: it ... partially fulfills the state's responsibility, under the Clean Water Act, to assume primacy; and, more importantly, it directly addresses the state's responsibility, articulated by the legislature in Title 46, that we will maintain our natural resources safe from pollution for the social and economic wellbeing of our own people. I'd be happy to answer questions ....

Number 1170

REPRESENTATIVE HOLM asked for clarification regarding the fiscal note.

COMMISSIONER BALLARD said:

In my remarks I pointed out that ... Section 402 of the Clean Water Act is intended for state implementation. In order to achieve primacy, even for one industry sector, we need to work out with [the] EPA all of the regulatory structure that would be necessary to achieve primacy for all industry sectors. [With regard to] the two-year fiscal note, for fiscal

> years '05 and '06, in which you see operating expenses of roughly $400,000 each year - ... half of which will be offset by an EPA grant - those expenses are regulatory expenses to write the regulations.
>
> We need to work through, in specific detail with [the] EPA, what our regulatory structure will be for enforcement, for inspection, for fines, for compliance - what the regulations will actually look like. So there's a labor-intensive, upfront cost to put the regulations in place, and then the ongoing operating costs, which ... [are] referred to in the out years, of ... [$132,000] is simply the cost of a single employee running the program and the associated overhead with that employee. So that would be an addition of one to our staff of roughly 24-25 people that we have in our water program already.

COMMISSIONER BALLARD, in response to questions on an unrelated topic, mentioned that under certain circumstances, municipalities can seek a "301 H Waiver" from treatment provisions of the Clean Water Act; that municipalities throughout Southeast Alaska have such a waiver; and that small boats are required by the U.S. Coast Guard to have marine toilets and are prohibited from discharging them into Alaska waters.

Number 1498

COMMISSIONER BALLARD, in response to another question about the fiscal note, relayed that the federal receipts for fiscal years '05 and '04 are only available for developing regulations to achieve primacy. On the issue of why the state should seek to take over administration of the permitting program, she said:

> The federal government is not set up to run a permitting program for any state, much less a state as large and complex as the state of Alaska. We were called on not too long ago by ... a state industry that asked whether we could help them (indisc) NPDES [National Pollutant Discharge Elimination System] discharge permit, ... [when the] EPA told them they'd have to wait three years before even the file could be opened. [The] EPA is not staffed to accommodate running a program that is designed to [be run] by states; they do it by default because the five states that haven't asked for primacy haven't done so, but

the EPA program is a very process-driven, inflexible program. The state uses risk-based tools. ...

Through its certification that a discharge will meet water quality standards, the state uses a number of site-specific, risk-based tools such as a mixing zone, sight specific criteria, naturally occurring conditions - any number of similar modifications to permit conditions. ... Because it's a state program, we are able to use state authorities to make those kinds of risk-based decisions about a discharge. [With the] EPA (indisc. - coughing) at the end of the pipe, you have to meet our numeric standards or you don't get a discharge. ... There'd be no ability in this state at all for seafood processors, for municipal treatment plants, for any of the permit holders to discharge if the state were not able, through the 401 part of the permit process, to use those site-specific and risk-based tools.

So our permit applicants are now, basically, needing two permits - they need to get a federal permit and a state permit; it's the state permit which gives them the tools that they need to operate, [and] it's the state permit that protects state water quality standards. The federal permit is simply a placeholder until the state is able to take responsibility for this program.

Number 1601

REPRESENTATIVE GARA asked what the state will get in return for the money it spends in developing this program.

REPRESENTATIVE OGG opined that that is a question that should be asked in the House Finance Committee, not the House Judiciary Standing Committee.

REPRESENTATIVE GARA disagreed.

COMMISSIONER BALLARD, in response to questions regarding the notice provision of Section 5, said:

We've attempted, in this administration, to get all of our notice procedures to conform to the ... Administrative Procedure Act (APA), so ... this was a conforming change that attempted to do that. As a

practical matter, the department generally has more notice than less notice; our permits tend to be controversial and they also tend to be interesting to many stakeholders. The only comment I guess I would have for the committee about any proposed amendment here is, if you do change the language here, perhaps you could at least change it to be consistent with the other language which went through our other water bill, which has already gone through the House, so that at least we'd have consistent public notice requirements within the department.

CHAIR McGUIRE observed that in many small towns there may only be one publication.

REPRESENTATIVE GRUENBERG clarified that he wants the notice to be published twice, that it must appear in two different publications.

MS. BALLARD suggested changing "one publication" on page 3, lines 26-27, to "two publications".

Number 1836

REPRESENTATIVE GRUENBERG made a motion to adopt the foregoing suggestion as Amendment 1. There being no objection, Amendment 1 was adopted.

Number 1873

JONATHAN TILLINGHAST, Lobbyist for Sealaska Corporation ("Sealaska"), said Sealaska supports HB 546, and offered to answer questions from a regulated industry's perspective.

REPRESENTATIVE GARA asked what activity the state will get via passage of HB 546.

MR. TILLINGHAST replied that the existing process costs Sealaska a great deal of money that it shouldn't need to spend because it has to get two permits for a single activity.

CHAIR McGUIRE surmised that Representative Gara's question is, what can Sealaska do better or differently if HB 546 is passed.

MR. TILLINGHAST replied: "We will have more money available to spend on productive economic activity in the state of Alaska if

this bill passes, because we won't have to spend it in Seattle chasing EPA bureaucrats."

REPRESENTATIVE GARA, expressing a desire to understand the bill before moving it from committee, relayed that his concern is whether passing HB 546 constitutes good policy.

REPRESENTATIVE GRUENBERG turned attention to page 5, lines 8 and 12, and pointed out that the language in essence reads in part: "(b) The department may modify a permit ... **for a permit issued under a federally approved program**". He suggested that "**for a permit**" should be deleted so that the language would then read in part: "(b) The department may modify a permit ... **issued under a federally approved program**".

Number 2074

TERRY THURBON, Assistant Attorney General, Environmental Section, Civil Division (Juneau), Department of Law (DOL), replied:

> The purpose for the modifier for a permit is to limit this particular cause for modification to just these federal Clean Water Act permits.

REPRESENTATIVE GRUENBERG said he understood that concept, but reiterated his belief that as currently written the language appears to be duplicative.

CHAIR McGUIRE agreed.

MS. THURBON indicated agreement as well, and surmised that the error might have occurred because of the use of residual language from when the [DEC] was doing much more with this section of law.

Number 2138

CHAIR McGUIRE made a motion to adopt Amendment 2, to delete "**for a permit**" from page 5, line 12. There being no objection, Amendment 2 was adopted.

REPRESENTATIVE GRUENBERG directed attention to Section 3 on page 3, lines 4-10, and opined that a reading of the proposed new paragraph does not indicate what it modifies. He suggested that they make a technical amendment for the purpose of having the forthcoming CS contain that information.

MS. THURBON said she had no objection to that, adding that the statute being amended by Section 3 is merely a list of powers and duties the DEC has and starts with the phrase, "The department may".

CHAIR McGUIRE surmised that an amendment would not be needed; rather, committee staff could simply ask the drafter to include that information in the forthcoming CS.

REPRESENTATIVE GARA asked whether the DEC will be able to pass on the costs for implementing the program onto those that will be getting the permits.

MS. THURBON said they are anticipating user fees from the industry, since the bill contains a provision that says the department's authority to collect user fees would apply to this program.

Number 2246

DAN EASTON, Director, Division of Water, Division of Environmental Health, Department of Environmental Conservation (DEC), explained that the DEC charges an annual fee associated with log transfer facility permits, and that of the approximately $130,000 annual cost of implementing the primacy program, the DEC anticipates recovering about $30,000.

REPRESENTATIVE GRUENBERG directed attention to Section 4, and asked why they were eliminating the 60-day period referenced therein.

MR. EASTON replied:

> This is a conforming amendment. ... In order to qualify for primacy, we would have to use the EPA regulations. The EPA regulations, instead of 60 days, require 180 days notice prior to commencement, so ... this would go out of state statute and would be replaced in regulation ... with a regulation that conforms to federal regulation that requires 180-day prior [notice].

REPRESENTATIVE GRUENBERG asked about emergency situations in which an entity claims it needs to discharge immediately.

MR. EASTON opined that such would not arise because entities that seek permits to discharge can plan ahead and, thus, would be capable of complying with the 180-day requirement.

REPRESENTATIVE GRUENBERG asked whether it would be a good idea to reference, in Section 4, either the 180-day requirement or the federal regulations, because, as written, Section 4 appears to take away all time-period requirements.

TAPE 04-67, SIDE B
Number 2374

MS. THURBON said the purpose of striking out the 60-day advanced filing deadline rather than substituting 180 or a range of different dates for different programs is to allow the DEC to use its regulations to set deadlines for advanced filing of [permits] according to the nature of the program. She added that AS 46.03.110(a), which is being altered via Section 4, applies to a broad universe of waste disposal permits including those in which the department might need only a 30-day advanced filing deadline. Deleting the language specifying the 60-day advanced filing deadline would allow the DEC regulatory flexibility. In response to another question, she explained that Section 3 would grant the DEC the authority to promulgate regulations for this particular program.

REPRESENTATIVE GARA, regarding Mr. Tillinghast's comments about the extra expense of the current permitting procedure, asked whether the current procedure also results in substantial delay [of projects].

MR. TILLINGHAST said it can involve substantial delay. He elaborated:

> At the present time, our primary facilities that we get permits for have a general permit. But it's also possible in the future, and has been true in the past, that we have to get individual permits. And [the] EPA has, at times, just refused to issue them because they don't have the staff to process them, which leaves the industry, particularly if it's an existing facility, in [the] difficult situation of deciding whether to continue operations unlawfully - because they don't have a permit - or whether to shut down. It puts the discharger in a difficult situation, and that's not something unique to the timber industry; [the] EPA has its priorities in the state, and naturally their major

facilities - primarily oil and gas and mining facilities - is where they put their resources first.

CHAIR McGUIRE, after ascertaining that no one else wished to testify, closed public testimony on HB 546.

Number 2269

REPRESENTATIVE OGG moved to report HB 546, as amended, out of committee with individual recommendations and the accompanying fiscal note. There being no objection, CSHB 546(JUD) was reported from the House Judiciary Standing Committee.

SB 300 - ATTORNEY'S LIEN

Number 2257

CHAIR McGUIRE announced that the next order of business would be CS FOR SENATE BILL NO. 300(FIN), "An Act relating to an attorney's lien, to court actions, and to other proceedings where attorneys are employed; and providing for an effective date."

Number 2224

MILES BAKER, Staff to Senator Bert Stedman, Alaska State Legislature, sponsor, presented SB 300 on behalf of Senator Stedman. He said that SB 300 is a simple bill but one that has pretty significant benefits for Alaskan taxpayers. Under current law, Alaskans who win in civil court are taxed on the gross award including any attorney fees that may be awarded and which are subsequently passed on to plaintiffs' attorneys. The Internal Revenue Service (IRS), in effect, is taxing that money twice, once as income to the plaintiff and again as income to his/her attorney. For plaintiffs who are private citizens, there are no federal tax deductions to offset incorporation of attorney fees into the plaintiff's income, though a corporation is allowed to take a tax deduction on any attorney fees it receives as part of its award.

MR. BAKER said that many of the cases in question involve civil rights issues or employee grievance issues and have zero or very low monetary damage awards. For example a plaintiff might be successful in court in a wrongful termination case and get an award of $5,000 for back pay but have $100,000 in legal fees. Under current law, such a plaintiff would be taxed on the gross award of $105,000 even though $100,000 is being passed through

to the plaintiff's attorney. The current law has the effect, he opined, of penalizing victims who seek redress through the courts in an effort to change illegal or inappropriate behavior.

MR. BAKER relayed that SB 300 would allow Alaskans to be treated similar to residents of Oregon with regard to federal taxes. The bill will clarify that the federal tax on court-awarded attorney fees are the responsibility of the attorney and not the plaintiff, and will bring Alaska lien law in line with the Oregon law, which the 9th Circuit Court of Appeals has held is effective in eliminating double taxation on attorney fees. He noted that members' packets contain an article from The Wall Street Journal that proposes that this is really an issue that should be addressed by the U.S. Congress but, for a variety of reasons, it has not yet done so. Senate Bill 300 will make a minor change in Alaska law that will correct the problem of double taxation on attorney fee awards.

Number 2090

CHAIR McGUIRE characterized SB 300 as a great bill.

REPRESENTATIVE OGG declared a potential conflict, remarking that he could be someone who might benefit from not having to pay taxes on an award of attorney fees. He offered his belief that because of the Exxon Valdez oil spill, SB 300 could be of great benefit to a lot of people from coastal Alaska. He commended the sponsor for coming up with a solution to the problem of double taxation on awards of attorney fees.

MR. BAKER, in response to a question, explained that SB 300 will not change an attorney's tax status at all; currently, both plaintiffs and attorneys are paying taxes on the same money, and SB 300 will ensure that only the attorneys will be responsible for paying taxes on the money that's awarded to them as fees.

REPRESENTATIVE OGG concurred with Mr. Baker's statement that businesses are treated differently than individuals with regard to taxation of awards for attorney fees.

Number 1969

DAVID S. CASE, Attorney at Law, Landye Bennett Blumstein LLP, shared his concern that SB 300 could have the unintended consequence of giving lawyers an ironclad guarantee for their liens on, among other things, the records of the clients they may have. He gave an example of an attorney with a conflict of

interest who'd held on to a former client's records while attempting to enforce a lien. He mentioned that the Alaska Supreme Court, in the Miller v. Paul case, laid out the factors it considered to be important in determining whether a lien [by] an attorney should be allowed. He opined that although the language in SB 300 is necessary to clarify that an attorney has a property interest and a firm claim to proceeds of a settlement, it will also have the unintended consequence of foreclosing any kind of argument a former client of an attorney might have that the attorney is not entitled to keep the client's records.

MR. CASE suggested adding to page 1, line 9, after "**action**", language that said: ";provided that, nothing herein precludes a party from contesting an attorney's lien under applicable law.".

REPRESENTATIVE GRUENBERG indicated that he would be offering such language as a conceptual amendment later in the meeting.

Number 1842

JO A. KUCHLE, Attorney at Law, Cook Schuhmann & Groseclose, Inc., offered the following comments:

> [Mr. Baker] did a good job laying out why [SB 300 is] very important from a tax point of view. We have hoped for many years that Congress would fix this problem, [but] they haven't. There is a split among the various ... federal court circuits throughout the country, and there's actually a split within the 9th Circuit [Court of Appeals], which is our own circuit. As [Mr. Baker relayed] ... Oregon's lien [statute is] different than Alaska's, so an Oregon taxpayer gets a very different tax result than an Alaskan taxpayer ... [or] a Californian taxpayer.
>
> And we don't have any hope that the [U.S.] Supreme Court's going to hear it. The ... U.S. Supreme Court, even though there's been a split among the circuits, has turned down this issue for years, and we don't really hold out much hope that that's going to happen anytime in the near future, and it does create very inequitable results because individuals ... can't deduct the attorney fees ..., particularly where there's the implication of the alternative minimum tax. So it's a very important change to the attorney

lien law, and I would encourage the committee to pass the bill as written.

I'm interested in Mr. Case's technical amendment, [but] my only concern would be ..., because ... [I haven't had a] chance to compare it to the Oregon law, I would hate to have gutted this bill by adding something that the IRS could hang its hat on in some way and say, "Oh, well, it's different", [and] so we'd still get the same tax result because it's not like Oregon's [law]. ... At first glance, I don't think [the suggested amendment] really changes any rights that an Alaskan already has.

You can fight [about your attorney fees] ... with your attorney, there are grievance procedures through the Alaska Bar [Association] ..., [and] there is an ethics opinion ... that an attorney may not hold the records of a client if that would preclude the client's ability to pursue their case. So if records are the issue, I think that's already covered as far as an attorney's ability to keep those records because you can't, ethically, if it's going to impair the client's ability to pursue [his/her] case. ...

Number 1629

REPRESENTATIVE GRUENBERG offered his belief that Mr. Case's suggested language would be helpful, and suggested that they also add an intent section to the bill.

MS. KUCHLE surmised that adding an intent section would not be harmful in and of itself, but cautioned against changing the bill such that it becomes too different from Oregon law, which is very specific and has been shown to work, in a variety of cases, before the 9th Circuit Court of Appeals.

MR. BAKER noted that a significant amount of work went into the creation of SB 300 so as to ensure that Alaska's law regarding this issue would be just like Oregon's law. He reiterated that the language of Oregon's law, which is contained in the bill as written, has worked in cases before the 9th Circuit Court of Appeals. He shared his concern that changing the language could negate the purpose of the bill.

CHAIR McGUIRE remarked that the bill addresses a very complex area of law.

REPRESENTATIVE GRUENBERG reiterated his belief that they should add an intent section to the bill.

MR. CASE said he is not trying to derail SB 300, but reiterated his aforementioned concern that the bill, as currently written, could have the result of foreclosing any kind of argument a former client of an attorney might have that the attorney is not entitled to keep the client's records.

CHAIR McGUIRE indicated agreement with Mr. Case's point, and suggested that the committee adopt the suggested language and research the issues raised, between now and when the bill goes to the House floor; if the committee subsequently discovers that something in the bill needs to be fixed, a floor amendment can be offered to address the problem.

MS. KUCHLE reiterated her concern about changing the language such that it varies too greatly from Oregon's language. The intent of bill, she pointed out, is to create a significant-enough property interest in the lawyer so that [the award of attorney fees] is just taxed to the lawyer.

Number 1180

REPRESENTATIVE GRUENBERG asked Ms. Kuchle to research the effect an intent section might have on the bill with regard to how the IRS might interpret it.

MS. KUCHLE agreed to do so.

MR. BAKER offered his understanding that currently, an attorney has a right to a lien for compensation regardless of the change proposed via SB 300, and that the court currently has the ability to award attorney fees across a broad [spectrum] of civil lawsuits.

REPRESENTATIVE GRUENBERG offered his belief that state law provides that if one is foreclosing on any kind of a lien, one can get actual attorney fees.

CHAIR McGUIRE noted that a memorandum from Legislative Legal and Research Services highlights a possible conflict with the bill:

> The new language prohibits parties from extinguishing or affecting an attorney's lien, including by settlement. However, AS 34.35.430(a)(4) allows a

special agreement to change the amount of costs that constitute a lien. Is AS 34.35.430(a)(4) consistent with your intent? If not, do you want to delete the special agreement language from AS 34.35.430(a)(4)?

CHAIR McGUIRE remarked that the memorandum helps to highlight that there are other statutory mechanisms that allow discussion of the lien itself and other issues such as those raised by Mr. Case, and that it also raises the question of whether the language in AS 34.35.430(a)(4) does anything to undermine the intent of creating a real and distinct property interest for the lawyer.

MS. KUCHLE said she agrees that there are alternative ways for lawyers deal with getting paid, but does not believe that AS 34.35.430(a)(4) creates any kind of problem as far creating a property right in the view of the IRS.

REPRESENTATIVE GRUENBERG indicated agreement with Ms. Kuchle.

CHAIR McGUIRE posited that the memorandum also somewhat addresses Mr. Case's concern.

MR. CASE relayed that he still has concerns with the bill as written.

CHAIR McGUIRE ascertained that no one else wished to testify on SB 300.

Number 0748

REPRESENTATIVE GRUENBERG made a motion to adopt Conceptual Amendment 1, to add to page 1, line 9, after "**action**", language that said: "; provided that nothing herein precludes a party from contesting an attorney's lien under applicable law.".

CHAIR McGUIRE noted that the drafter would have the leeway to use whatever punctuation is appropriate.

Number 0674

REPRESENTATIVE OGG objected to Conceptual Amendment 1. He said he would prefer that this amendment be made on the House floor so as to allow some research into the issues raised.

REPRESENTATIVE GRUENBERG indicated a preference for adopting Conceptual Amendment 1 now, and said that if someone finds a

problem with it after it's adopted, he would be willing to make an amendment, either in the House Finance Committee or on the House floor, to cure it.

REPRESENTATIVE HOLM relayed that he objected to adopting Conceptual Amendment 1, and indicated a preference for allowing the House Finance Committee to address the issue of whether to adopt the language proposed by Conceptual Amendment 1.

Number 0474

A roll call vote was taken. Representatives Gara - with the caveat of committing to change it later should a problem arise - Gruenberg, Samuels, and McGuire - with the caveat of committing to change it later should a problem arise - voted in favor of Conceptual Amendment 1. Representatives Ogg and Holm voted against it. Therefore, Conceptual Amendment 1 was adopted by a vote of 4-2.

Number 0441

REPRESENTATIVE GRUENBERG moved to report CSSB 300(FIN), as amended, out of committee with individual recommendations and the accompanying zero fiscal notes. There being no objection, HCS CSSB 300(JUD) was reported from the House Judiciary Standing Committee.

HB 309 - PROHIBIT RELEASE OF PREDATORY FISH

Number 0418

CHAIR McGUIRE announced that the next order of business would be HOUSE BILL NO. 309, "An Act prohibiting the release of nonindigenous predatory fish into public water." [Before the committee was CSHB 309(RES).]

Number 0402

REPRESENTATIVE KELLY WOLF, Alaska State Legislature, sponsor, relayed that HB 309 "ran into a glitch" in the House Resources Standing Committee and was therefore referred to the House Judiciary Standing Committee. House Bill 309 addresses the issues of knowingly transporting predatory fish from one body of water in the state to another and of importing predatory fish into the state. Using the Kenai Peninsula as an example, he relayed that within the last two years, the Alaska Department of

Fish & Game (ADF&G) spent nearly $40,000 poisoning a lake that had had "yellow perch" - a predatory fish - introduced into it.

REPRESENTATIVE WOLF noted that it is currently against state law to transport fish without a permit, but pointed out that in the past, people have transported northern pike into places on the Kenai Peninsula and in "the valley," though that type of fish is nonindigenous to those areas. Such behavior can cause huge impacts on local economies, he remarked, adding that this year, the ADF&G, through a grant from the U.S. Department of Fish and Wildlife, used hoop nets to catch and dispose of northern pike from two lakes on the Kenai Peninsula. He suggested that having an invasion of northern pike on Alaska's natural salmon runs would be devastating to Alaska's economy.

REPRESENTATIVE WOLF posited that the question before the committee is, does the legislature want to hold people accountable when they choose to transport and release nonindigenous predatory fish into Alaska's waters simply because they have a desire to catch northern pike, for example, "in their back yard."

CHAIR McGUIRE indicated that she likes the inclusion of a definition section in the bill. Directing attention to page 1, line 13, she asked what is meant by the phrase, "generally accepted conduct in relation to permitted commercial fishing".

REPRESENTATIVE WOLF explained that it is common practice for commercial fisherman to transport live crab in their holds, and he did not want to interfere in that practice; therefore, the aforementioned language was included in the bill as an exemption for permitted commercial fishing activities.

TAPE 04-68, SIDE A
Number 0092

REPRESENTATIVE OGG added that in the crabbing industry it is possible to get crab from one location, transport it live to another location, and in the process release eggs and undersized crabs in an area in which that type of crab is not normally found.

REPRESENTATIVE GARA offered his belief that in the sport fishing industry, it is not really possible to accidentally drop a live fish from one drainage into another drainage.

CHAIR McGUIRE pointed out, however, that in at-sea sport fishing vessels, there are live holding tanks, and so it might be possible to accidentally infest a particular area with fish that do not normally occupy that area.

Number 0310

ROB BENTZ, Deputy Director, Division of Sport Fish, Alaska Department of Fish & Game (ADF&G), concurred that it is possible for commercial crab fishermen to transport one type of crab to an area in which it wouldn't ordinarily be found. He remarked that although the same may be true to some extent for sport fishing, the transported fish/crab would not be transported hundreds of miles such as might be possible in the case of commercial crab fishing.

CHAIR McGUIRE, raised the issue of transporting live bait, and indicated that she did not want to make criminals out of people who are simply engaging in common practice, whether it be commercial fishing or sport fishing.

MR. BENTZ offered his belief that such would not happen under the bill, adding that the Board of Fisheries recently adopted a statewide regulation that specifically allows sport anglers to use, possess, hold, and transport live fish as bait in salt waters.

CHAIR McGUIRE asked whether there would be any harm in amending page 1, lines 13-14, to say, "generally accepted conduct in relation to permitted commercial fishing and sport fishing activities."

MR. BENTZ said he wouldn't have a problem that language so long as the word "saltwater" was added between "permitted" and "commercial"; such would ensure that if an aquatic organism is caught in the Pacific Ocean, it would only be released in the Pacific Ocean, and would preclude someone from making the argument regarding freshwater sport fishing that it is a generally accepted practice to take pike from the Susitna River and release them in the Kenai River.

CHAIR McGUIRE, in response to a question, clarified that her suggestion, then, would be to change page 1, lines 13-14, to say, "(3) generally accepted conduct in relation to saltwater permitted commercial fishing or sport fishing activities."

Number 0524

CHAIR McGUIRE, in response to a question, indicated that that language would be considered Amendment 1, and that the question of whether to adopt Amendment 1 was before the committee.

REPRESENTATIVE GARA indicated that he had alternative language.

Number 0581

CHAIR McGUIRE withdrew Amendment 1.

Number 0599

REPRESENTATIVE GARA made a motion to adopt Amendment 2, to insert "saltwater" between "permitted" and "commercial", and to insert "or sport" after "commercial" on page 1, line 13. The effect of Amendment 2 would be to make page 1, lines 13-14, read: (3) generally accepted conduct in relation to permitted saltwater commercial or sport fishing.". There being no objection, Amendment 2 was adopted.

REPRESENTATIVE HOLM - directing attention to subsection (b), which pertains to ornamental fish - relayed that he'd been in the pet store business for many years. He said he could envision the language in subsection (b) making a felon out of someone who dumps the wastewater from his/her fish tank into a septic system, since the water in a septic system goes into an aquifer and ultimately ends up in "the waters of the state". He then went on to detail the process that some commercial pet stores use with regard to their ornamental fish tanks. He expressed the concern that [subsection (b)], as written, is too broad and may produce unintended consequences.

REPRESENTATIVE WOLF suggested, on page 2, on both lines 1 and 2, changing "the water of the state" to "a water body of the state". He posited that such a change would address Representative Holm's concern.

CHAIR McGUIRE mentioned the term "navigable waters".

REPRESENTATIVE GARA noted that there is already a definition of "waters of the state" [in subsection (d)(4) of the bill], and it does not include aquifers. He suggested changing page 2, line 1, to simply say: "ornamental fish into the water of the state." He indicated his belief that this simplified language coupled with the definition in subsection (d)(4) should be sufficient.

REPRESENTATIVE GRUENBERG, noting that the original version of the bill pertained to predatory fish, asked why the bill should now pertain to ornamental fish as well as predatory fish.

REPRESENTATIVE WOLF said his intent with HB 309 was to focus on predatory fish such as northern pike, but through the committee process the bill has metamorphosed into something far different.

REPRESENTATIVE GRUENBERG asked how members felt about including the term "predatory" in the bill.

REPRESENTATIVE GARA recalled one instance of an ornamental fish living in Campbell Creek.

CHAIR McGUIRE reminded the committee of need to be clear about what kind of conduct it is that leads up to the penalty currently outlined in the bill - a class C felony. She asked Mr. Bentz to comment on why the bill no longer says "predatory nonindigenous fish".

Number 1202

MR. BENTZ pointed out that all aquatic organisms are predatory. Therefore, a list would be needed to clarify what species the bill is intended to apply to.

REPRESENTATIVE GRUENBERG opined that they ought to be able to define, at least generally, the term "predatory fish"; the department could then establish regulations further listing the exact species.

MR. BENTZ remarked that although such could be done, two species that have the potential to cause the greatest harm to Alaska probably wouldn't be included in a list of "predatory fish" - one being the "green crab," which is slowly making its way up the northwest coast and which can cause massive ecological dislocations; and the other being "zebra mussels."

REPRESENTATIVE GRUENBERG said he was thinking along the lines of giving the department the flexibility to create a list of whatever species - be it fish or other organisms - that it determines could be harmful to Alaska's ecosystems.

REPRESENTATIVE BENTZ mentioned that such a list might be quite lengthy.

CHAIR McGUIRE remarked: "If you want to make it a serious crime because of the impacts, which I think we all agree there are, we should know what type of fish we're talking about so that folks can avoid that criminal conduct."

REPRESENTATIVE GARA surmised that there are really two problems, one related to predatory fish and the other related to non-predatory fish that are diseased. Regarding the latter problem, it is not possible to anticipate every scenario that might develop. Therefore, the message the bill sends should be, "You don't put fish into our wild waters that don't belong there."

Number 1462

CHAIR McGUIRE announced that she is assigning HB 309 to a subcommittee consisting of Representative Holm, chair; Representative Gara; and Representative Samuels. She asked the members of the subcommittee to meet soon and consider the issues of appropriate penalties and specificity of species for the sake of clarity.

REPRESENTATIVE SAMUELS asked Mr. Bentz whether the department has caught anyone releasing pike into streams for malicious reasons.

MR. BENTZ said they have not apprehended anyone doing it for malicious reasons; in almost every case, persons have introduced nonindigenous species so as to have the opportunity to fish for a species they are familiar with.

REPRESENTATIVE WOLF said that according to conversations he's had with ADF&G and U.S. Department Fish and Wildlife personnel, there have been several instances wherein they suspected individuals transported northern pike to specific bodies of water within the state, but without being able to actually catch these individuals releasing fish, the prospects of conviction are not good.

CHAIR McGUIRE, addressing members of the subcommittee, mentioned that perhaps staggered penalties might be in order.

REPRESENTATIVE GRUENBERG concurred, suggesting that if someone intentionally introduces a species into a body of water for the purpose of fishing a familiar species, that should have a higher penalty.

MR. BENTZ mentioned that currently, unless specified as misdemeanors, behavior prohibited by ADF&G regulations results in violations.

REPRESENTATIVE HOLM, as chair of the subcommittee, asked Mr. Bentz to provide him with a copy of the current penalties.

REPRESENTATIVE GRUENBERG noted that CSHB 309(RES) contains a minimum fine of $1,500, and suggested that the subcommittee consider this issue as well.

Number 1719

CHAIR McGUIRE relayed that HB 309 [CSHB 309(RES), as amended] would be held over for the purpose of allowing the subcommittee to meet and discuss the issues raised.
The committee took an at-ease from 3:25 p.m. to 3:35 p.m.

SB 276 - ALASKA INSURANCE GUARANTY ASSOCIATION

[Contains mention that HB 403, companion bill to SB 276, has been heard briefly by the committee; contains mention of support for HB 540.]

Number 1739

CHAIR McGUIRE announced that the final order of business would be CS FOR SENATE BILL NO. 276(FIN), "An Act relating to the Alaska Insurance Guaranty Association; relating to the powers of the Alaska Industrial Development and Export Authority concerning the association; and providing for an effective date."

CHAIR McGUIRE reminded members that the committee briefly heard the companion bill, HB 403, at a prior meeting.

Number 1758

LINDA HALL, Director, Division of Insurance, Department of Community & Economic Development (DCED), in presenting SB 276, relayed:

> The [Alaska Insurance Guaranty Association] has a purpose to minimize financial loss to claimants and policyholders. The [Alaska Insurance Guaranty Association Fund], due to the insolvency of four workers' compensation [insurance] carriers, has run

out of ... money. ... The next step, when there are no funds available, is to prorate claims, and in that process we would see lost wages and medical benefits to injured workers prorated. ... Workers' compensation is an obligation of the employer; [when the Alaska Insurance Guaranty Association runs out of money], the employer would then inherit the financial obligations for workers' compensation benefits.

I put in your packet a ... spreadsheet ... [that] shows a projection of the monies needed to fund the [Alaska Insurance Guaranty Association]. The most controversial provision of this bill has been the assessment on other lines. [The] first provision of the bill would be to increase the assessment on the line in which the insolvency occurred, which, in this case, is workers' compensation. That would raise, from 2 percent that [is the] current statutory cap, to 4 [percent] in times of need. These assessments are only made when there is a need for cash; they do not accumulate money, they do not keep balances.

Number 1839

[For] the year 2004, the assessment on the other lines of business would be [.19 percent] .... To put that into some perspective, on a $650 premium, ... that [.19 percent] ... would generate [a] $1.24 assessment. So we're talking, really, a fairly minimal amount of money and impact. In 2005, because there's no carry-forward money, that assessment on the other lines would be .47 percent - less than half a percent; [the] same policy premium of $650 would generate a $3.06 assessment. At that point, that assessment on the other lines would go away, as you can see, when you go down to 2006. There would no longer be a need for that assessment. In fact, in 2006, the assessment on the workers' compensation account would begin to drop to 3.37 [percent], [to] 2.48 [percent in 2007], and ultimately that will also go back down.

MS. HALL continued:

And I would emphasize again that there are no assessments unless there is an analysis by an actuary determining there is a cash need projected for the upcoming year. The only other thing I'd like to show

you, and it's not something I can pass out because it's quite confidential, ... is this list. I have eight pages here, double columns, of employers who will get back $20 million in [workers' compensation] benefit obligations.

... We have a wide range of employers who will, if we don't do something to fund this, get this obligation back. I think this could put people out of business. I think the financial obligation will be overwhelming to Alaskan businesses. Today there are ... 370 [businesses] and 579 injured workers who have claims .... Some of these employers no longer exist; there will be no place for those employees to go for their benefits. But I think when we have 370 employers who do not anticipate getting back a $20 million [obligation], we need to look at that. ... The bill in front of you is the identical bill that you saw in HB 403 ....

Number 1985

CHAIR McGUIRE surmised that SB 276 attempts to address a current crises, and that in subsequent years, it is anticipated that the assessment on other lines will not be necessary though would still be available.

MS. HALL concurred, adding that statute requires an actuarial analysis and determination of the projected cash needs of the upcoming year before an assessment is allowed. On the bill's proposed statutory increase of the workers' compensation line assessment to 4 percent, she said that it would provide a mechanism by which to deal with future similar crises should any arise. She predicted that there will be insolvencies in the future, though hopefully not of the magnitude of the current four insurance carriers' insolvencies. She detailed the present market share and aspects of some companies currently writing workers' compensation insurance policies in Alaska, and said she has no reason to believe that they face insolvency in the future. Nonetheless, she remarked, she is hesitant to say that those companies would never become insolvent, and SB 276 will provide the tools to ensure that claims are paid under the mission of the Alaska Insurance Guaranty Association.

REPRESENTATIVE OGG asked Ms. Hall to elaborate on the list she referred to.

MS. HALL said:

> These are people who, in good faith, purchased an insurance policy from a carrier who's now insolvent. The [Alaska Insurance Guaranty Association] steps in, in the case of an insolvency - it's the safety net; that safety net has now also failed and, while there would likely be an interruption of benefits to injured workers, the financial responsibility will go back to these 370 employers who may or may not ... have a lot of extra money laying around to take on that obligation.

Number 2150

MS. HALL, in response to question, said she didn't know how many of the companies on the list are no longer in business nor how many of their employees are now left without benefits. In response to further questions, she said that the "assigned risk pool" is considered the market of last resort; that there are two servicing carriers who handle the claims in this pool just as if those claims came from their regular clients; that there is a direct obligation, in this pool, that insurance companies pay loses; and that this pool is totally separate from the Alaska Insurance Guaranty Association, which comes into play only in the case of insolvencies of an admitted insurance company. She went on to say:

> We have today, in the workers' compensation arena, four insolvent insurers; we have in ... one of the other accounts a company who wrote predominantly medical practice who's insolvent. So when there's an insolvency, then the [Alaska Insurance Guaranty Association] steps in and stands in the place of that insolvent carrier to pay claims.

REPRESENTATIVE HOLM asked what happens in situations where a business buys its own insurance policy that has nothing to do with "the pool."

MS. HALL pointed out that the pool is not an entity of the State of Alaska, and that there are 200 insurance companies listed that write workers' compensation, though 6 or 8 of those are active in the state and are called voluntary companies. She noted that sometimes a group of businesses in a similar industry will join together and purchase an association policy that will ultimately pay dividends; in such instances, the rates are set,

and any deviation from those rates has to be filed with the Division of Insurance, which must approve that rate to ensure it is actuarially sound. The assigned risk pool, however, has a surcharge rate for people who, typically, either because of size of loss experience, are unable to obtain insurance in the voluntary market whether its an association plan or through another company that writes workers' compensation insurance policies. Regardless, there will be base rates and the Division of Insurance approves all of those rates.

MS. HALL, in response to further questions, relayed that Alaska's workers' compensation statutes make the responsibility for workers' compensation benefits the obligation of the employer. This is normally satisfied via purchase of a workers' compensation insurance policy, though when the insurance company becomes insolvent, the Alaska Insurance Guaranty Association becomes the safety net; however, if the Alaska Insurance Guaranty Association fails, the obligation of paying workers' compensation benefits comes back to the employer who would be contacted by [the state].

TAPE 04-68, SIDE B
Number 2354

MS. HALL, in response to questions regarding the accounts that would be assessed under SB 276, explained that there are three accounts in the Alaska Insurance Guaranty Association Fund: workers' compensation; auto, both personal and commercial; and "other." She relayed that 18 states have a single account and so any assessments in those states automatically come from all types of insurance. In Alaska, the "other" account - which is currently being assessed at about .5 percent predominately for the failure of a medical malpractice insurance carrier - includes homeowners' insurance, commercial property insurance, liability insurance, and medical malpractice insurance. Under SB 276, the assessment would be done through the insurer, and the insurer may pass the assessment on to the policyholder but is not required to do so.

MS. HALL, in response to a request, reiterated the information she provided earlier regarding the current and anticipated future assessments to each account. She noted that if claims are settled for amounts less than what is currently anticipated, it will change the percentage that might be assessed. She offered her hope that the crises which SB 276 addresses will be temporary, and reiterated her comments regarding the likelihood of having to address a similar situation again.

CHAIR McGUIRE surmised that everyone will end up paying, one way or another, for the insolvencies of workers' compensation insurance carriers, and raised the issue of perhaps including a sunset provision in SB 276 in order to give the legislature the opportunity to see whether the solution proposed by SB 276 is actually working and whether the higher assessments are still needed.

MS. HALL relayed that a sunset provision has not yet been discussed within the administration, but agreed to give it consideration. She reiterated that there are safeguards in the Alaska Insurance Guaranty Association Fund statutes that require an actuarial analysis to determine need before any assessment can be done. Because the Alaska Insurance Guaranty Association does not do assessments for the purpose of keeping a pot of money, the assessments are called post-loss assessments. If there is an insolvency, the Alaska Insurance Guaranty Association Fund board meets, receives actuarial analysis, determines it needs "X" amount of money for the upcoming year, and the assessments are then based on "a percentage of premium."

Number 2073

MS. HALL noted that one of the reasons the workers' compensation account generates the smallest amount of premiums is because it is the smallest line, generating approximately $4.3 million to $4.5 million. The auto line and the "other" line, by comparison, generate approximately $7.5 million each. This is why the Alaska Insurance Guaranty Association cannot make up its anticipated shortfall solely through the workers' compensation line unless it were to assess a much larger percentage.

REPRESENTATIVE GRUENBERG said he'd received a letter dated 3/1/04 from Eden Larson, President and Chief Executive Officer, Associated Builders and Contractors, Inc., wherein Ms. Larson says in part: "The simple way to avoid this impact is to ensure that the change to the workers' compensation fee structure is a 'new and renewal change' rather than an 'in force' change. If increases are incorporated in workers' compensation fees at renewal, the contractor is already looking ahead to increases or adjustments in that expense as he or she is bidding."

MS. HALL relayed that such is what will already occur, noting that she has seen that letter and has reviewed it with the actuary that approves filings. She offered her understanding that the incident that prompted that letter was one in which,

approximately three years ago, there was a change in workers' compensation benefits with the effective date being July 1; when a change in benefits is effective, there is also a change in premium, and the premium also became effective July 1, which was in the middle of construction season, and so contractors were not prepared for what turned out to be about a 7 percent increase.

MS. HALL relayed that this instance has since made everyone very careful to ensure that rates become effective January 1 and that changes only take place on brand new policies or upon renewal of existing policies. For example, if an assessment is done in January, but a workers' compensation policy renews in September, the policy owner will not get the January assessment until September. She noted that she responded to Ms. Larson's letter, but is not sure whether the general business community is aware that a cure for what happened three years ago is now in effect.

Number 1887

MARTIN PIHL, Chairman, Board of Governors, Alaska Timber Insurance Exchange (ATIE), after mentioning that the ATIE does not wish to block passage of SB 276 or HB 403, relayed that the ATIE was formed in 1980 as a reciprocal workers' compensation company, is owned by its policy holders, specializes in logging and other higher-risk "coverages," has been very successful in promoting workplace safety, and returns yearly profit to policy holders in the form of dividends. He said that the ATIE sets it rates conservatively high in order to protect its policyholders' surplus balances, knowing that the dividend reduces the net cost to the policyholders. Over the last ten years, the ATIE's dividend has averaged 66 percent of premium; however, for 2003, the ATIE's profit was wiped out by an assessment of $800,000 for a reallocation of insolvent companies' share of the assigned risk pool loses. This was a severe blow to the ATIE's policy holders, he remarked, particularly given that 2003 was one of the ATIE's best years in terms of accident frequency and severity.

MR. PIHL said that the ATIE has other legitimate and serious concerns - which, he posited, are shared by all other insurance companies - regarding fixes that are needed by the workers' compensation insurance system in order to bring fairness to all parties and secure and protect coverage to injured workers. He elaborated:

We feel we must find the right bill or platform to advance these needed improvements, and we're trying to work with the director and administration. The [workers' compensation] system has been a shipwreck situation, floundering and awash in losses for a great number of years; [Ms. Hall] inherited a very bad situation. The assigned risk pool has operated at very substantial losses for the last seven consecutive years, aggregating about $60 million. As you know, this loss gets allocated or assessed back against the surviving insurance companies. This has resulted in assessments against our member policyholders of $2.8 million - we're fairly small. Continuation of these hits will impair our capital, and threatens our own solvency. There is another major insolvency pending, and we believe it's fairly near upon us; [Ms. Hall] can advise you.

Number 1736

In addition to the funding needs which [SB 276] addresses, the other amendments we feel essential are, number one, to improve the lost cost filing process in rate setting. Rates have been terribly inadequate ... particularly in the assigned risk pool. Insurance companies have been forced to decline coverage in the open commercial market, forcing insurers and people seeking insurers to the assigned risk pool, resulting in a massive expansion of the pool and its huge losses. Fixing the rate structure is addressed by House Bill 540, which we support. There should be a statutory mandate that the assigned risk pool operate on a break-even basis.

[The] second amendment we would seek is to require collateralization of assigned risk pool [loss] reserves to protect against an insurers insolvency. This can simply be done by requiring the high-grade investments that are controlled by current statute by the director's (indisc.) to be required beyond (indisc.) with a custodian in Alaska, available to the director and (indisc.) insolvency. California and Oregon require collateralization, and if we in Alaska don't, we're accepting the last position in securing protection for the injured worker and the employer.

MR. PIHL continued:

> The third amendment we seek is that since all policies, including the assigned risk pool policies, pay what has been the 2 percent assessment to the ... [Alaska Insurance Guaranty Association] Fund, we feel that ... an insolvent insurer's share of assigned risk pool losses should travel as a part of that insolvent insurers bankruptcy to the [Alaska Insurance Guaranty Association] fund, rather than ... get reassessed to the remaining insurance companies. This has all occurred out of our control, and it's just very unfair.

Number 1641

> We really look for fairness from the ... government, [but] essentially the insurance companies have been treated as a deep pocket, there to be assessed to cover all losses from (indisc.) mismanagement of the system by the state, and we believe it's time to address it [with] all the needed fixes. These points that I'm outlining are covered by a three-page discussion outline we would be happy to provide to the committee. ...
>
> Again, we're not interested in blocking [SB 276], we believe it's part of the fix, but there's a whole lot more. And when it comes to funding, even [SB 276] isn't the preference of anybody, insurance companies or employers; employers are going to pay the increased assessment, and it's been out of the control of insurance companies, at least those that have been operated on [a] sound basis, such as ours. So I thank you for the opportunity to testify; I'd be willing [and] happy to answer any questions.

MS. HALL mentioned that she has Mr. Pihl's points, and would be happy to share her thoughts regarding those points at the bill's next hearing. For the most part, though not in total, she remarked, she strongly supports the ideas that Mr. Pihl has put forward, one of which is in another bill.

MR. PIHL expressed concern that some of the other bills pertaining to insurance may not pass, and urged that needed changes be brought forth via a vehicle or platform that has a chance of succeeding.

CHAIR McGUIRE expressed agreement, and asked Ms. Hall to consider incorporating some of Mr. Pihl's suggestions into SB 276.

Number 1494

MS. HALL said she will consider doing so, but feels very strongly about ensuring that SB 276 is kept clean and addresses a single, nonpartisan issue. Currently, SB 276 has strong bipartisan support; therefore, she remarked, she is very hesitant to make changes to SB 276 that could create problems for it as it moves through the process.

CHAIR McGUIRE reiterated her suggestion to include a sunset provision in the bill, and relayed that she understands Mr. Pihl's frustration with the current system, particularly in light of all that has been done and proposed thus far to make it better.

REPRESENTATIVE HOLM relayed that as an employer, he is very disturbed by the workers' compensation program. He went on to say:

> It is one of the most frustrating parts of business because it's a ... piece of net profit. When [the terrorist attacks of September 11, 2001] occurred, all of the industry nailed us for it. [It] wasn't something we were charged with, not something we did, not something we caused, not anything, and yet my workers' [compensation insurance] policy went up $16,000 net ... in one year. How does industry recover that?

REPRESENTATIVE HOLM expressed frustration with the current workers' compensation system as it relates to what he perceives to be false claims, opining that employers don't get an opportunity to rebut any of those claims. He also expressed dissatisfaction with the cost of workers' compensation insurance premiums for small business in Alaska.

MS. HALL said she understands Representative Holm's concerns, and acknowledged that there are some serious problems [with the workers' compensation insurance system], but noted that problems cannot be fixed overnight. She indicated that Alaska businesses should be paying the same workers' compensation rate, and that the state does investigate workers' compensation fraud. Therefore, if members become aware of possible instances of

workers' compensation fraud, they should let the department know so that an investigation can be started. "It is a huge problem; it's a huge problem nationally, and I would like very much to work towards solutions ....

REPRESENTATIVE HOLM expressed hope that solutions can be found, and made comments regarding the classification of workers.

MS. HALL noted that classification of workers must follow the rules pertaining to classification; if such is not done, it constitutes premium fraud.

[SB 276 was held over.]

ADJOURNMENT

Number 1076

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 4:25 p.m.