

**ALASKA STATE LEGISLATURE**  
**HOUSE STATE AFFAIRS STANDING COMMITTEE**

May 4, 2004

8:02 a.m.

**MEMBERS PRESENT**

Representative Bruce Weyhrauch, Chair  
Representative Jim Holm, Vice Chair  
Representative John Coghill  
Representative Bob Lynn  
Representative Paul Seaton  
Representative Ethan Berkowitz  
Representative Max Gruenberg

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

CS FOR SENATE BILL NO. 297(RES)

"An Act relating to bear predation management and the donation and sale of bear hides and skulls."

- MOVED CSSB 297(RES) OUT OF COMMITTEE

CS FOR SENATE BILL NO. 385(JUD) am

"An Act relating to homeland security, to civil defense, to emergencies and to disasters, including disasters in the event of attacks, outbreaks of disease, or threats of attack or outbreak of disease; establishing the Alaska division of homeland security and emergency management in the Department of Military and Veterans' Affairs and relating to the functions of that division and that department; and providing for an effective date."

- HEARD AND HELD

CS FOR SENATE BILL NO. 354(STA) am(efd fld)

"An Act relating to complaints filed with, and investigations, hearings, and orders of, the State Commission for Human Rights; and making conforming amendments."

- HEARD AND HELD

**PREVIOUS COMMITTEE ACTION**

BILL: SB 297

SHORT TITLE: BEAR HUNTING/DISPOSAL OF HIDE/SKULL

SPONSOR(S): SENATOR(S) SEEKINS

02/06/04 (S) READ THE FIRST TIME - REFERRALS  
02/06/04 (S) RES, FIN  
03/17/04 (S) RES AT 3:30 PM BUTROVICH 205  
03/17/04 (S) Heard & Held  
03/17/04 (S) MINUTE(RES)  
04/02/04 (S) RES AT 3:30 PM BUTROVICH 205  
04/02/04 (S) Heard & Held  
04/02/04 (S) MINUTE(RES)  
04/07/04 (S) RES AT 3:30 PM BUTROVICH 205  
04/07/04 (S) -- Rescheduled to 4 pm 04/07/04 --  
04/14/04 (S) RES AT 3:30 PM BUTROVICH 205  
04/14/04 (S) Heard & Held  
04/14/04 (S) MINUTE(RES)  
04/16/04 (S) RES AT 3:30 PM BUTROVICH 205  
04/16/04 (S) Moved CSSB 297(RES) Out of  
Committee  
04/16/04 (S) MINUTE(RES)  
04/19/04 (S) RES RPT CS FORTHCOMING 5DP  
04/19/04 (S) DP: OGAN, DYSON, WAGONER,  
04/19/04 (S) STEVENS B, SEEKINS  
04/20/04 (S) RES CS RECEIVED NEW TITLE  
04/21/04 (S) FIN REFERRAL WAIVED REFERRED TO  
RULES  
04/29/04 (S) TRANSMITTED TO (H)  
04/29/04 (S) VERSION: CSSB 297(RES)  
05/01/04 (H) READ THE FIRST TIME - REFERRALS  
05/01/04 (H) STA, RES  
05/04/04 (H) STA AT 8:00 AM CAPITOL 102

BILL: SB 385

SHORT TITLE: SECURITY;DIV. HOMELAND SECURITY/EMER. MGT

SPONSOR(S): HEALTH, EDUCATION & SOCIAL SERVICES

04/05/04 (S) READ THE FIRST TIME - REFERRALS  
04/05/04 (S) HES, FIN  
04/05/04 (S) HES AT 1:30 PM BUTROVICH 205  
04/05/04 (S) Heard & Held  
04/05/04 (S) MINUTE(HES)  
04/07/04 (S) HES AT 1:30 PM BUTROVICH 205  
04/07/04 (S) Rescheduled to 5:30 pm 04/07/04  
04/07/04 (S) HES AT 5:30 PM BUTROVICH 205

04/07/04 (S) Rescheduled from 1:30 04/07/04  
 04/08/04 (S) HES RPT CS 2DP 2NR SAME TITLE  
 04/08/04 (S) DP: DYSON, WILKEN; NR: GUESS,  
 DAVIS  
 04/16/04 (S) FIN REFERRAL WAIVED REFERRED TO  
 RULES  
 04/20/04 (S) JUD REFERRAL ADDED AFTER HES  
 04/20/04 (S) JUD WAIVED PUBLIC HEARING  
 NOTICE,RULE23  
 04/21/04 (S) JUD AT 8:00 AM BUTROVICH 205  
 04/21/04 (S) Moved CSSB 385(JUD) Out of  
 Committee  
 04/21/04 (S) MINUTE(JUD)  
 04/22/04 (S) JUD RPT CS 1DP 2NR SAME TITLE  
 04/22/04 (S) DP: SEEKINS; NR: FRENCH, OGAN  
 04/22/04 (S) FIN AT 9:00 AM SENATE FINANCE 532  
 04/22/04 (S) Waived from Committee  
 04/29/04 (S) TRANSMITTED TO (H)  
 04/29/04 (S) VERSION: CSSB 385(JUD) AM  
 04/30/04 (H) READ THE FIRST TIME - REFERRALS  
 04/30/04 (H) STA  
 05/04/04 (H) STA AT 8:00 AM CAPITOL 102

BILL: SB 354

SHORT TITLE: HUMAN RIGHTS COMMISSION PROCEDURES  
 SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

02/27/04 (S) READ THE FIRST TIME - REFERRALS  
 02/27/04 (S) STA, JUD  
 03/23/04 (S) STA AT 3:30 PM BELTZ 211  
 03/23/04 (S) Heard & Held  
 03/23/04 (S) MINUTE(STA)  
 04/01/04 (S) STA AT 3:30 PM BELTZ 211  
 04/01/04 (S) Moved CSSB 354(STA) Out of  
 Committee  
 04/01/04 (S) MINUTE(STA)  
 04/02/04 (S) STA RPT CS FORTHCOMING 1DP 2NR  
 04/02/04 (S) NR: STEVENS G, STEDMAN; DP:  
 COWDERY  
 04/05/04 (S) STA CS RECEIVED SAME TITLE  
 04/14/04 (S) JUD AT 5:30 PM BUTROVICH 205  
 04/14/04 (S) Scheduled But Not Heard  
 04/20/04 (S) JUD RPT CS(STA) 1DP 3NR  
 04/20/04 (S) DP: SEEKINS  
 04/20/04 (S) NR: THERRIAULT, OGAN, FRENCH  
 04/20/04 (S) JUD AT 8:00 AM BUTROVICH 205

04/20/04	(S)	Moved CSSB 354(STA) Out of Committee
04/20/04	(S)	MINUTE(JUD)
05/02/04	(S)	TRANSMITTED TO (H)
05/02/04	(S)	VERSION: CSSB 354(STA) AM(EFD FLD)
05/03/04	(H)	READ THE FIRST TIME - REFERRALS
05/03/04	(H)	STA, JUD
05/04/04	(H)	STA AT 8:00 AM CAPITOL 102

**WITNESS REGISTER**

SENATOR RALPH SEEKINS  
 Alaska State Legislature  
 Juneau, Alaska  
 POSITION STATEMENT: Sponsor of SB 297.

PAUL JOHNSON (ph)  
 (Address not provided)  
 POSITION STATEMENT: During discussion of SB 297, expressed concerns with aspects of the bill and responded to questions.

JOE KLUTSCH, President  
 Alaska Professional Hunter's Association, Inc. (APHA)  
 Anchorage, Alaska  
 POSITION STATEMENT: During discussion of SB 297, provided comments.

KAREN HOLT (ph)  
 Talkeetna, Alaska  
 POSITION STATEMENT: During discussion of SB 297, provided comments and responded to questions.

KARA BAKKEN CLEMENS (ph)  
 (Address not provided)  
 POSITION STATEMENT: During discussion of SB 297, encouraged the committee not to pass it.

DAVE BACHRACH (ph)  
 (Address not provided)  
 POSITION STATEMENT: Expressed concerns during discussion of SB 297.

CHRIS DAY, Co-owner  
 Emerald Air Service, Inc.  
 Homer, Alaska

POSITION STATEMENT: Expressed concerns during discussion of SB 297.

KEN DAY, Co-owner  
Emerald Air Service, Inc.  
Homer, Alaska

POSITION STATEMENT: Expressed concerns during discussion of SB 297 and responded to questions.

PAT CARTER

Alaska Professional Hunter's Association, Inc. (APHA)  
Anchorage, Alaska

POSITION STATEMENT: During discussion of SB 297, expressed concerns and responded to questions.

MATT ROBUS, Director  
Division of Wildlife Conservation  
Alaska Department of Fish & Game (ADF&G)  
Juneau, Alaska

POSITION STATEMENT: During discussion of SB 297, provided comments and responded to questions.

SCOTT J. NORDSTRAND, Deputy Attorney General  
Civil Division  
Office of the Attorney General  
Department of Law (DOL)  
Anchorage, Alaska

POSITION STATEMENT: During discussion of SB 297, responded to questions.

JOHN CRAMER, Director  
Administrative Services Division  
Department of Military & Veterans' Affairs (DMVA)  
Juneau, Alaska

POSITION STATEMENT: Presented SB 385 on behalf of the Senate Health, Education and Social Services Standing Committee, sponsor.

SENATOR FRED DYSON  
Alaska State Legislature  
Juneau, Alaska

POSITION STATEMENT: Spoke as chair of the Senate Health, Education and Social Services Standing Committee ("SHES"), sponsor of SB 385.

JAMES N. BUTLER III, Attorney at Law  
Baldwin & Butler, LLC

Kenai, Alaska

POSITION STATEMENT: During discussion of SB 385, expressed concerns.

LISA M. FITZPATRICK, Esq., Chair  
Human Rights Commission  
Office of the Governor  
Anchorage, Alaska

SENATOR GRETCHEN GUESS  
Alaska State Legislature  
Juneau, Alaska

POSITION STATEMENT: During discussion of SB 385, spoke as a member of the Senate Rules Standing Committee ("SRLS"), sponsor by request of the governor.

**ACTION NARRATIVE**

**TAPE 04-77, SIDE A**

Number 0001

**CHAIR BRUCE WEYHRAUCH** called the House State Affairs Standing Committee meeting to order at 8:02 a.m. Representatives Holm, Seaton, Coghill, Lynn, and Weyhrauch were present at the call to order. Representatives Berkowitz and Gruenberg arrived as the meeting was in progress.

SB 297-BEAR HUNTING/DISPOSAL OF HIDE/SKULL

Number 0042

CHAIR WEYHRAUCH announced that the first order of business would be CS FOR SENATE BILL NO. 297(RES), "An Act relating to bear predation management and the donation and sale of bear hides and skulls."

Number 0053

SENATOR RALPH SEEKINS, Alaska State Legislature, sponsor, presented SB 297. He reported that there is no shortage of black or grizzly bears throughout Alaska. Furthermore, they are not threatened or endangered and, in some game management units, the bear populations are "many multiples of the established population objectives." The Alaska Department of Fish & Game (ADF&G) estimates statewide black bear populations as high as 200,000 and grizzly and brown

bear populations as high as approximately 35,000. In certain game management units, the estimates show that 70-90 percent of all moose calves are dead before the age of two months, due in large part to bear predation. As a result, Senator Seekins said, "The fall recruitment was virtually nothing, and the reproductive base populations are crashing." He noted that the 2003 McGrath bear relocation experiment "pretty clearly" demonstrated that a reduction in bear population has a direct positive effect on increasing [moose] calf survivability.

SENATOR SEEKINS explained that SB 297 would allow relaxation of the standards regarding who can hunt in areas where there is an overpopulation of bears, thus making it possible to help reduce the number of bears down to the population objective that's been set by the Board of Game. The following findings would have to be established first by the Board of Game: the consumptive use of the big game population is a preferred use; depletion of that big game population has occurred and may result in a significant reduction in allowable human harvest of the population; and enhancement of abundance of a big game prey population is feasibly achievable, utilizing recognized and prudent active management techniques. Once those findings are in place and an intensive management use area is established, then the provisions of SB 297 would come into play. He continued as follows:

Those provisions, basically, are: We would allow a resident ... 21 years of age - who's hunted big game for two years, who's harvested big game in one year, and who has completed a safety course that [the ADF&G] is going to put together - to accompany a maximum of two non-resident or non-resident alien hunters into the field to hunt for bear in that area. ... You cannot get ... remuneration for that. So, ... under the second degree of kindred rule, a ten-year-old could take their ... step-grandfather hunting grizzly bear. This now would allow me to take my daughter's father-in-law with me to go hunting, as long as I meet that criteria. That criteria is more stringent than the requirement that we have for an assistant guide. So, it's not just like anybody gets to go out there and do it ....

SENATOR SEEKINS noted that the bill would also allow a military person coming to Alaska to be considered a resident, in terms of being able to hunt "in that area." If that person meets the aforementioned criteria, he/she would then be able to take a friend along who might not otherwise be able to hunt. He said, "So, it gives them a 12-month edge to be able to get into the field, to be able to hunt." The bill would also require the ADF&G to set up a hunter safety course that's available throughout the state. He also indicated that the Board of Game would have the ability to choose which methods and means would be most effective. Once the population objective set by the Board of Game is met, he remarked, "this whole thing goes away." Senator Seekins stated that something needs to be done before the prey populations crash. He emphasized that there would be a lot of control involved, and areas such as Kodiak will not be one of the areas that will be considered to be active management areas "for this purpose."

Number 0540

CHAIR WEYHRAUCH asked why the distinction between nonresident and nonresident alien is important to the bill.

SENATOR SEEKINS explained that current statute requires that a nonresident or nonresident alien must be accompanied by a big game guide in the field. He stated: "So, by allowing this exception to this statute - with these carefully prescribed qualifications and in these particular areas - that would need to be corrected ... or allowed in statute. That's why it's there."

Number 0583

REPRESENTATIVE HOLM asked why the fee was lowered from \$500 to \$250.

SENATOR SEEKINS responded that it was made a ceiling fee rather than a bear permit. He clarified: "We wanted to make this distinct from hunting; this is bear predation management [and] requires a bear predation management permit that they have to apply for." He explained that the difference is that the person would only pay the money if he/she gets the bear, rather than paying up front and possibly not even seeing a bear. He said it was suggested by Senator Ogan that "we probably will get about the same

amount of money, or maybe more, because we're going to try to reduce that bear population."

Number 0663

REPRESENTATIVE SEATON asked what would prevent a person from hunting as the bill would allow, rather than paying up front to hunt.

SENATOR SEEKINS said the purpose of the bill is to get more people out there hunting to reduce the bear population; however, he emphasized that if someone wants to get a trophy bear, he/she won't find them "in these areas." In response to questions from Chair Weyhrauch, he stated that one of the findings that would be required is that bears are a part of the problem [in predation] and a reduction in bears would help solve the problem. He said there are several game management areas that have this problem. For example, he cited Game Management Unit (GMU) 13, where the bear population is between 1,500-1,600 and the population objective is around 300. In response to a question from Representative Lynn, he revealed that GMU 13 is an area bounded by the Parks Highway, the Denali Highway, the Richardson Highway, and the [Glen Highway]. In that area, moose populations were at one time 27,000, but are currently 7,000-8,000 because of the huge predation problem that exists.

Number 0854

REPRESENTATIVE SEATON asked whether [bears] would automatically qualify under the [wolf] predation [program].

SENATOR SEEKINS said he doesn't know, but offered his belief that bears are part of the problem in GMU 19, 20, and 13.

Number 0953

REPRESENTATIVE COGHILL asked how the annual bear count would be done.

SENATOR SEEKINS replied that although bears are hard to count, there is a rough estimate of populations in "these areas," as well as a population objective. He surmised that Mr. Robus, from the ADF&G, would have the ability to talk about the infield process more than he can.

REPRESENTATIVE COGHILL asked what accountability measure there would be if a person is given a permit and never shows up again.

SENATOR SEEKINS directed attention to page 4, lines 1-4, which read in part:

A nonresident or nonresident alien shall pay a fee of \$250 at the time the bear is sealed by the department. The person shall accurately complete and return to the department in a timely manner reports that may be required by regulations of the Board of Game.

SENATOR SEEKINS said that the ADF&G and the Board of Game will have some timeline requirements regarding how the [report] is returned.

Number 1085

REPRESENTATIVE SEATON directed attention to a letter from [the Alaska Professional Hunter's Association, included in the committee packet], stating that differential treatment of nonresidents in different areas within the state is likely to expose Alaska's bag requirement to a federal constitutional equal protection challenge. He asked Senator Seekins if he had looked at that and sought a legal opinion.

SENATOR SEEKINS said he has not obtained a legal opinion from Legislative Legal and Research Services, but he has worked with attorneys from "several of the outdoor groups." He reiterated the aforementioned criteria. He said:

What we've done is we've tried to make sure that the requirement here is at least in the area of what we would require from a second-class guide. If I personally were going to challenge that constitutionally, I would challenge it based on the "second degree of kindred" rule, because a ten-year-old who's never been in the field can guide their step-grandfather to hunt grizzly bear, under that provision. There are sideboards on this that -- lawyers are 50 percent right/50 percent wrong, and they'll always find a reason not to do something ....

But, what ... we [are] looking at is: Okay, how do we effectively reduce this population? I think we've given them some information here. If you were going to challenge that requirement, it would not be based on these more stringent requirements for someone to be able to accompany, but it would be on a second degree of kindred rule.

Number 1211

PAUL JOHNSON (ph) stated that he totally understands what Senator Seekins is trying to accomplish; however, he said he has a real concern regarding the guide-required portions of the bill. He restated Senator Seekins' remark about lawyers being right 50 percent of the time and wrong the other 50 percent of the time. He indicated the bill would affect more than just bear; sheep and goats would also be jeopardized, as well as the state's resources. He mentioned Montana, and said that attorneys that he has talked with have warned, "Don't play games with this." He mentioned compounding subsistence problems and resident hunt problems, and said [the bill] "puts the industry in jeopardy." He concluded, "It's just a huge gamble; it isn't worth it."

REPRESENTATIVE GRUENBERG asked Mr. Johnson if he represents or is a member of a particular group.

MR. JOHNSON replied that he belongs to the Alaska Professional Hunters Association, Inc. (APHA). He revealed his background as having worked on game issues for over 25 years. In response to a follow-up question from Representative Gruenberg, he confirmed that the legal opinion to which he referred was the same as was earlier noted in the APHA's letter. He emphasized that this is not a new issue. He acknowledged that things aren't perfect, but stressed that they have worked well to this point.

Number 1430

JOE KLUTSCH, President, Alaska Professional Hunters Association, Inc. (APHA), told the committee that the APHA represents over 600 professional members statewide and facilitates a major component of Alaska's visitor industry. He revealed that he has been guiding big game hunts for

over 30 years. Where he lives out on the Alaska peninsula, he noted, brown bears have always been a significant factor in moose calf mortality, and offered his view that predators are generally opportunists; there's no doubt that a relatively small percentage of the bear population are the culprits in calf mortality. He said that to a great extent, it's learned behavior, adding his belief that the indiscriminate or wholesale killing of brown bears and grizzly bears is not likely to result in a notable increase in calf survival. He opined that these are issues best left to the Board of Game.

Number 1505

MR. KLUTSCH referred to the previously mentioned letter which emphasizes the importance of maintaining the guide [requirement] without exception. He said: "Our counsel is a leading national expert on this subject and has cited significant case law that underscored the importance of not making exceptions to the provisions; to do so will ... undermine the defensibility of the provision in its entirety." He noted that the Alaska guide requirement is predicated on considerations of hunter welfare and safety, resource management, enforcement, and accountability. It benefits people who come from outside Alaska to hunt, as well as resident hunters.

MR. KLUTSCH highlighted an excerpt from his letter, which read [original punctuation provided]:

Any action that says, in essence, that these considerations are legitimate and compelling with respect to one area (where the guide requirement is in effect) but are not compelling (and are waived) in another, weakens the rational basis of the requirement. As a result, differential treatment of non-residents in different areas within the state is likely to expose Alaska's guide requirement to federal constitutional equal protection challenge.

MR. KLUTSCH expressed understanding of Senator Seekins's goal in offering the bill, because there has been an absence of meaningful predator management in Alaska for over a decade and "we've seen the consequences in a number of the game management units." He stated his belief that if the Board of Game is left to its own devices to sort the

issue out through traditional seasons, bag limits, and methods and means, eventually widespread public support will be garnered. He noted that that public support does not exist currently, which he said is a concern. He stated that the wholesale approach to harvesting bears doesn't seem to be wise at this time, because the risks outweigh the advantages.

Number 1643

MR. KLUTSCH, in regard to Senator Seekins' remarks about the vulnerability of the "second degree of kindred," said the Senator makes a valid point. He suggested that the solution may be to revise the "second degree of kindred" provision, rather than rifting the guide requirement in its entirety. Mr. Klutsch concluded that this issue is critical, and said he hopes the committee will consider his comments.

Number 1663

CHAIR WEYHRAUCH asked about Section 2, noting that it addresses the issue of bear hides and skulls.

Number 1677

SENATOR SEEKINS offered his belief that, currently, a person cannot sell a grizzly bear hide in Alaska, but he/she can take it to Washington, for example, and sell it to someone who could then bring it back to Alaska. He also offered his understanding that the hides and "trophies" that are confiscated for being illegally taken are sold at auction during the Fur Rendezvous in Anchorage. That revenue supplements the "fish and game fund." He suggested that [Section 2] provides a way for someone to donate a hide or skull back to [the ADF&G] to be sold; after the net proceeds are realized, the person could get up to 50 percent of that back, while the remainder would go either to the ADF&G or to a tax-exempt organization involved in conservation efforts.

SENATOR SEEKINS, in response to a question, offered his belief that [Section 2] would allow the state to auction the items on eBay.

CHAIR WEYHRAUCH asked how the language in the bill regarding of nonresidents and nonresident aliens will

address the problem of bear predation on big game populations.

SENATOR SEEKINS posited that that language will put more hunters in the field. He indicated that the price of hiring a big game guide to go after grizzly bear is \$7,000-\$10,000, and clarified that the intent of the bill is not to disrupt [the hiring of guides] in areas where the bear populations are within the population objectives. He reiterated the example of GMU 13, where there are up to 1,600 grizzly bears, but few guides actively pursuing those bears. He said that in many cases, the bears in that area are not the huge coastal brown bears that people are after, and it is a difficult area to access. Furthermore, big game guides cannot take nonresidents to hunt moose in that area, because the moose population has crashed to the point where only resident hunting is allowed. He noted that currently, there is a year-round bear season, [with a limit of] one bear a year, "no tag," in GMU 13, while in many other areas of the state the limit is one bear every four years. Relaxation of methods and means has not helped to reduce the bear population, he concluded.

Number 1883

CHAIR WEYHRAUCH noted that Section 1, subsection (g), would require the department to provide a hunter safety course, but would not require the hunter to take that course.

SENATOR SEEKINS directed attention to page 3, line 18, which states that the hunter must obtain a hunter safety certificate "under (g) of this section." In response to a follow-up question from Chair Weyhrauch, he confirmed that the hunter would have to pay for the course, so it would be "cost-neutral" [to the department].

Number 1920

REPRESENTATIVE GRUENBERG directed attention to page 4, lines 9, 11, and 20. He suggested inserting the words "obtained from a designated intensive game management unit" after the words "legally taken bear hide or skull".

CHAIR WEYHRAUCH said he thinks that inserting such language would defeat the purpose of the bill. He opined that Section 2 of the bill addresses a broader policy issue; it's not specifically an intensively managed game unit.

SENATOR SEEKINS concurred, adding, "There are a lot of hides and skulls out there that maybe aren't even wanted anymore, but ... this could help them serve a good purpose."

Number 1990

KAREN HOLT (ph) said:

Let me begin by stating my wholehearted support for predator management and the intent of Senator Seekins. The concern I have, however, is the part of the legislation that allows individuals who are not licensed, registered guides to accompany a nonresident or nonresident alien bear hunter in the field. I've watched the evolution of the guiding industry during the past 20 years of my husband's career. As you probably know, an individual seeking registered guide status must apprentice in the field [and] take a written and practical exam showing proficiency before they can become licensed as a registered guide. And this process takes many years.

After a guide is registered, they must maintain licensure and, prior to commence going into the field, comply with state laws requiring liability insurance and land-use authorization. These regulations are for the general public, they are for safety, and, most important, they are for a quality hunting experience. This bill is important, but I feel very strongly it needs to be amended for the safety [of] and concern for the general public. And to support the guiding industry, only licensed individuals should accompany those nonresident and nonresident alien bear hunters in the field. I feel this language, as currently written, just opens the door to too many individuals who have no interest in complying with the industry regulations the state has already decided [are] in the ... hunting public's best interest.

MS. HOLT, in response to a question from Chair Weyhrauch, clarified that she is in Talkeetna and her husband is [working as a hunting guide] in Kodiak.

Number 2075

REPRESENTATIVE SEATON asked if the concern is that allowing the "non-guides" to take people hunting will put the guides within those areas out of business.

MS. HOLT answered, "Not necessarily; I think it could be a perception problem when you allow an individual who takes somebody out in the field." She clarified that she is not concerned about the person who takes a relative out, but is concerned about the person who wants to be a guide without going through all of the regulation requirements, apprenticing, and ensuring that the public's interest is put first.

REPRESENTATIVE SEATON asked Ms. Holt if she thinks the section of the bill that wouldn't allow a person to accept money for services would control that situation.

MS. HOLT answered no. She offered her understanding that the bill would allow the person to get reimbursed for expenses, adding that there's no way to control that [amount].

Number 2146

SENATOR SEEKINS referenced page 2, lines 27-31, which read in part:

A resident who is not a registered guide or master guide may not receive any remuneration in excess of direct expenses incurred in accompanying the nonresident or nonresident alien to take a bear and may not accompany more than two nonresidents, regardless of whether they are aliens or not, during a calendar year to take a bear under this subsection.

SENATOR SEEKINS said he wants to ensure that someone [who is not a registered guide] would not go into the guiding business.

CHAIR WEYHRAUCH asked if there would be any penalties for violations.

SENATOR SEEKINS answered that he hopes that issue would be addressed via regulation.

Number 2196

REPRESENTATIVE HOLM offered his understanding that the intent of the bill is to induce people to help with predator control. He echoed Senator Seekins' previous remark that the guides are looking for the large animals, which are not necessarily in the areas where the predator control is needed.

SENATOR SEEKINS directed attention to page 2, lines 25-27, which read in part:

A registered guide or a master guide is not subject to any limitation on the number of nonresident or nonresident alien permittees that the guide may accompany for purposes of taking bear under this section.

SENATOR SEEKINS said, "We've tried to also give some inducement for guides to take these nonresident permit holders into those same areas."

REPRESENTATIVE HOLM remarked, "But they don't seem to be very supportive of that."

SENATOR SEEKINS said he's tried to be sensitive to that. He continued:

I do believe that we've tried to be very careful in raising the requirements for somebody to be able to do that - not [for] those of a registered guide, who [has] done all the things that the previous ... lady with testimony said. And I respect the fact that those master guides and registered guides have to go through a tremendous process. But we've taken the requirements for someone who is a resident above those requirements for a second-class guide who would work for that guide. A second class guide only has to be 19 years ... old, ... hunted big game in Alaska for two years, and have a Red Cross certificate. That's it. So we've tried to bring it to a higher standard than that, for that purpose.

Number 2301

KARA BAKKEN CLEMENS (ph) encouraged the committee not to pass SB 297. She explained that the bill seems to be too extreme a measure, which risks harming the bear population. That population would be slow to recover from such a measure and is an important natural resource to hunters and to brown bear viewing and guiding services.

CHAIR WEYHRAUCH asked for confirmation that the bill addresses the matter by individual game units.

SENATOR SEEKINS answered, "Even by subunit in the game management unit, it can be done."

SENATOR SEEKINS, in response to a question from Chair Weyhrauch, referred to AS 16.05.255(e), which he said is the statute that "controls the intensity of management trigger." He stated, "And those findings now - putting those areas into ... management - are in writing, and are based on biological information provided by the department."

CHAIR WEYHRAUCH noted the term on page 1, line 9, "a cause", and questioned whether it should read, "substantial cause."

SENATOR SEEKINS said, "First of all, ... it has to be in an area where human consumption is important."

CHAIR WEYHRAUCH concluded, "So, ... you're linking your testimony in this bill back to these factors."

SENATOR SEEKINS concurred.

Number 2388

DAVE BACHRACH (ph) told the committee that he owns a wildlife viewing (indisc.).

**TAPE 04-77, SIDE B**

Number 2389

MR. BACHRACH said he has heard concerns expressed regarding hunter welfare and safety, and the potential legal risks and battles that could arise over [SB 297]. He offered his

understanding that the bill does not exempt areas like Kodiak and Katmai; it is a statewide bill. He stated his belief that it should be up to the Board of Game to determine how "these things are managed," that the legislature shouldn't make those decisions. He noted that bear populations are slow to recover, and that older bears have been removed from the Alaska Peninsula, resulting in a generational gap. He indicated that the bill is both scientifically and economically unsound, and he asked that the committee consider that.

Number 2321

CHRIS DAY, Co-owner, Emerald Air Service, Inc., told the committee that her company is a bear viewing operation that has, for the last 17 years, taken about 500 people a year to see brown bears. She stated her concerns regarding the bill. The first concern relates to safety. She emphasized that it's important for people hunting large predators to have an experienced [guide] with them. Second, she characterized the bill as a poor one "biologically." She referred to the previously stated "rough estimate" of the bear population and said that's an understatement. She admitted that she is not a biologist, but works with a lot of biologists and can state that it's difficult to count bears. She echoed Mr. Bachrach's testimony that bears are slow to recover, and she indicated that the effects of the bill may be to knock the population back too far.

MS. DAY recommended looking at the state, in general, and where its dollars are made. She called tourism "an incredible industry in Alaska." Bears and wolves are top on the list of animals that people want to see when they come to Alaska. People also want to come to Alaska to hunt bears. She opined that the perception of the general public towards bills like [SB 297] is that [Alaska] has moved back into the Neanderthal Age. She stated: "The general public - nationwide and worldwide - look for Alaska to preserve the animals and the ecosystem up here; it's the Last Frontier. And I think we need to hold ourselves to a higher standard." She emphasized again her concerns regarding the ramifications of [SB 297].

Number 2216

KEN DAY, Co-owner, Emerald Air Service, Inc., relayed that he was out in the field for years before starting his

business, and that he used to see a healthy population of bears on the Alaska Peninsula. Over the last 10-12 years, that population began to decline rapidly. In areas where there used to be 6-8 large male bears daily, just last year there was one male bear spotted that weighed approximately 600 pounds. He indicated that the state harvest records on the peninsula show that 12 years ago, the average age of a bear taken out of the area was 16 years old. Before the last fall hunt, that average age was 3.8 years old. Biologists in the area are saying that the population is being decimated. Mr. Day said the same evidence has been presented to the Board of Game, but it has taken no action and still allows any hunter that wants to go into this area to hunt. He said he thinks [SB 297] would be just another measure to wipe out the bear population, and would be of benefit to hunters but not the state.

Number 2135

PAT CARTER, Alaska Professional Hunter's Association, Inc. (APHA), stated that 98 percent of [Alaska's] guiding industry is comprised of residents, which is one of the highest resident percentages of any industry in the state. He noted that the guiding industry is roughly a \$120-million-a-year industry. He continued as follows:

While we agree with the need to actively manage all of our wildlife population, including predators, and we commend Senator Seekins for his efforts in that regard, we feel that this ... legislation - by including nonresident and nonresident aliens - is risking a lot.

... [The] APHA's legal council has extensive experience and expertise in this area, and I can't think of anybody that I would regard ... higher ..., with regard to his opinion on this. [Game Management] Unit 13, as Senator Seekins mentioned, has a large population of bears. We're not debating that; we're not debating the need to put more hunters in the field. What we're suggesting, though, is that it is ... very risky proposing to [alter] "guide required" [language] in order to do that.

If we need to encourage hunters in the field, I don't think that it's sportsmen that are going to

actually reduce the population. Speaking with the department yesterday, they mentioned that they had somewhere between 1,200 and 1,500 bears in [GMU] 13. Their desired population is somewhere in the neighborhood of about 300. So, roughly speaking, we're talking about removing 1,000 bears out of that area.

MR. CARTER estimated that the program proposed in SB 297 may result in only 30 bears being killed. He noted that predation of moose calves by bears is a learned behavior that all bears do not display. Therefore, if only 30 bears are killed, possibly only 2-5 of those bears will be the "problem bears." He questioned how many moose would be saved by doing something that is risking the guide industry of Alaska. He asked the committee to carefully consider "the great risk that we're taking here [with] ... the probability of having [a] minimal desired effect."

Number 1983

REPRESENTATIVE HOLM asked what bears normally eat if they are not eating moose calves.

MR. CARTER said bears eat squirrels, smaller game, ptarmigan, and berries. In response to a committee member, he said one of the APHA members was attacked by a bear. He emphasized that hunting for bears is a dangerous activity. Often when hunting bears, the decision is to not shoot. He offered an example of being in close proximity to alder trees and shooting a bear that disappears into those trees. He asked, "Who's going to go in there after them?" He indicated that one of his guides was pressured into doing so because he didn't want to wind up skinning a bear in the dark but paid dearly for it.

MR. CARTER said [the APHA] would remove its opposition to the bill if the language regarding the nonresidents and nonresident aliens was removed, and other means of putting more hunters in the field were considered. He suggested that perhaps the take of the person donating a bear hide could be increased.

Number 1877

REPRESENTATIVE GRUENBERG asked if there would be any legal liability on the part of the department if it gave a permit

to a nonqualified person and, as a result, the person who was guided got injured.

MR. CARTER said he is not qualified to answer the question, but thinks it's a good one to ask. He shared that his earliest memories are of hunting and fishing with his father and grandfather, but he has never hunted bears. He said he has been approached by bears, but has never had to shoot one yet. He said he wouldn't feel qualified to take someone out in the field and pretend to be a guide, because bears are dangerous and, even though he is a resident, he would want to go with an experienced [guide].

Number 1812

MATT ROBUS, Director, Division of Wildlife Conservation, Alaska Department of Fish & Game (ADF&G), stated that CSSB 297(RES) has some important improvements over the original bill. First is the change in approach from a way to use hunting to achieve predator control results to a true predation management program. The bill provides a boundary between two ways of taking bears, with hunting for trophy or food being the established way and depends on fair chase as an integral part of the practice. He continued as follows:

This bill would authorize a program whereby the objective is not fair chase, but - in certain situations identified by the Board of Game, with information provided by the department - to reduce bear populations where bears of one or the other species are a predation problem for an ungulate population.

And so, under the bill, non-ordinary methods of taking bears would be restricted to these areas where the Board of Game has developed a specific program to take care of a specific situation. And I think that that gets to some of the questions that members have asked prior to now about the scope of this. ...

MR. ROBUS indicated that the bill's proposed program for bear predation management is similar to the department's existing program for wolf predation management, and it would allow the Board of Game to incorporate both wolves

and bears in predation management implementation plans, which up until now has not really been possible.

MR. ROBUS noted a second change in CSSB 297(RES) is the removal of methods and means language from the original bill. He relayed that the Board of Game adopted a bear management policy, which it had been working on for over a year, at its March meeting. It also adopted some associated regulations to allow the implementation of that program. He stated, "The way to get to unusual methods and means to stimulate additional bear harvest in areas where it's necessary for management purposes is largely already in place." The Board of Game, under those regulations, has the ability to custom tune those methods and means to the situation; therefore, the department considers it appropriate to have those decisions made at the Board of Game level and not have them incorporated into statute.

MR. ROBUS clarified that the term "hunter safety course" does not refer to the standard hunter education course that the department already delivers. He explained that it would be some form of training that the department presents to address the situation of people going to take bears under one of the predation control permits. He said, "We don't know the exact shape of that yet, but we do want to make sure that people don't think it's just the standard elementary hunter education course."

Number 1579

MR. ROBUS revealed that the department and the Board of Game have, for a long time, agreed that the first step in attempting to reduce bear numbers in a situation where that needs to be done is to liberalize the hunting rules and hope that that results in a higher level of bear take. He explained that that's predicated on the notion that to take more bears, it is usually necessary to put more hunters into the field. He noted that if in GMU 13, for example, a change is made from an 8-month bear season to a 12-month bear season, it won't make a difference if people aren't "attracted to taking bears." To that extent, he said, the department sees the nonresident [and nonresident alien] portion of the bill as an innovative approach to trying to put more people into the field. He said the guides raise a serious point, but since he is not an attorney, he is not prepared or qualified to say "what the true nature of that question is." He indicated that the focus of the

department has been on the methods and means and the mechanism of the program itself.

Number 1508

REPRESENTATIVE GRUENBERG asked whether there would be any legal liability on the part of the department if it gave a permit to a nonqualified person and, as a result, the person who was guided got injured.

MR. ROBUS responded that he is not qualified to answer that question and recommended that it be asked of the Department of Law (DOL).

Number 1478

MR. ROBUS, in response to a question, said that he knows that in the current programs, the department is issuing permits only to residents, but he doesn't know if it is constrained to that.

REPRESENTATIVE SEATON asked what the department's expectation is regarding the number of nonresident and nonresident aliens that will take advantage of the program but who would not otherwise have taken advantage of a guiding opportunity.

MR. RUBUS said it would depend on how much or how little an area the Board of Game decides to identify as a bear predation management control area. He continued as follows:

I think it's safe to say that we're generally not talking about a trophy bear area; we're talking about an area where the hunting regulations would have already been liberalized as far as possible. So, that means that residents would not need to buy a \$25 resident tag to hunt bears there, in the case of brown bears. And of course, [for] black bears, residents hunt without charge everywhere. ... The fact that there might be additional methods and means allowed under a [Board of Game] program - for instance, you might be able to use an aircraft to access the area to begin your hunt, ... and if you do that on the same day, you cannot do that anywhere now - ... might attract more resident hunters.

For nonresident hunters - ... to the extent that they're allowed to participate here - the attraction in the present bill would be for some limited parts of the nonresident community, like first-year military residents; for instance, not having to buy a brown bear nonresident tag. The whole guide fee question comes in here also. That could ... reduce somebody's costs pretty dramatically. So, depending [on] how that part of the bill ends up, it could attract an additional increment of nonresident ... bear takers, under these permits that would be issued, as opposed to a standard hunt.

REPRESENTATIVE SEATON noted that there seem to be some questions regarding putting some of the guiding laws at risk. He said he wants to know whether the department thinks that there is a substantial benefit to this one provision, or whether the bill's other sections offer substantial enough benefit without that provision.

MR. ROBUS said that's a difficult question and has to do with judgment and estimating the situation. He stated, "I think the lowered costs involved would be a significant attractant, but I think the changes to methods and means would be significant for all people participating ...." He explained that since it would be a predator control situation and fair chase is not the primary concern, people would be given an advantage that they don't normally have in getting to and taking bear.

Number 1250

REPRESENTATIVE HOLM said it has been suggested that the balance won't change significantly, because the bears are really not as large a contributor to the decimation of the moose population. He asked Mr. Robus to address that issue.

MR. ROBUS answered that with all things biological, every situation is different and more complicated than first believed. He indicated that [some considerations are] whether habitat conditions will support a higher ungulate population than what currently exists, and whether information shows that predation is limiting an ungulate population. He said that in some cases, bears are

extremely important in keeping an ungulate population suppressed. He mentioned a McGrath study that has been underway for the last decade, in which the department found that while wolves have been and continue to be a significant predator of moose calves, year round, bears are the major predator in the first few weeks of a calf's life. He noted that the department has relocated 100 bears out of a 500 square mile area last spring, as way of reducing the pressure on moose calves. He said that method was an experiment and can't be used very often.

Number 1070

REPRESENTATIVE GRUENBERG directed attention to subsection (e) on page 3, which would provide certain benefits only to people in the military, and questioned whether that would pose any constitutional equal protection problems.

MR. ROBUS said he didn't know.

Number 1021

REPRESENTATIVE LYNN noted that in subsection (e), "the military service" and "the United States Coast Guard" is listed separately. He offered his understanding that the U.S. Coast Guard was [part of] the military services.

REPRESENTATIVE GRUENBERG said, "Except in time of war ...." He mentioned the Department of Transportation [& Public Facilities].

Number 0953

SCOTT J. NORDSTRAND, Deputy Attorney General, Civil Division, Office of the Attorney General, Department of Law (DOL), said he is not prepared to comment on equal protection issues regarding SB 297.

REPRESENTATIVE GRUENBERG reviewed that his two issues are the question of liability in subsection (d) and the question of constitutionality in subsection (e). He said he doesn't want the state getting into any legal problems.

MR. NORDSTRAND responded, "I entirely agree with that." In regard to the question of permitting and licensing, he stated that he is not aware of any cases in the Civil Division during his tenure of 1.5 years that had to do with

the state being sued over wrongfully permitting or licensing someone for some activity.

REPRESENTATIVE GRUENBERG requested that he do further research regarding his concerns.

Number 0881

REPRESENTATIVE SEATON, in regard to [subsection (e)], noted that the military person would be allowed a permit at a lower age and could act as a resident in accompanying nonresidents and nonresident alien permittees to take bear. He asked, "Does that give us the same problems that Representative Gruenberg's talking about, or not?"

MR. NORDSTRAND said he is not familiar enough with the bill to answer that question. In response to a comment from Representative Gruenberg, he said he would be happy to [look into those questions].

Number 0831

REPRESENTATIVE HOLM said it seems to him that "you're" alluding to the fact that maybe people could take away their personal responsibility for their actions if the state licenses them.

REPRESENTATIVES SEATON and GRUENBERG shook their heads no.

REPRESENTATIVE HOLM said, "You know, you get a hunting license, you go out and shoot a bear that was in the alders, and you go in after him; it isn't the state's responsibility you made a stupid act."

Number 0793

REPRESENTATIVE GRUENBERG clarified that he just wants to know whether there would be any liability if the state were to license someone who then has some problems.

Number 0753

CHAIR WEYHRAUCH announced that public testimony on SB 297 was closed.

Number 0746

REPRESENTATIVE SEATON, in response to a request by Chair Weyhrauch, moved to adopt CSSB 297(RES) [as the work draft].

CHAIR WEYHRAUCH objected. [The question of whether to adopt CSSB 297(RES) as a work draft was resolved later in the meeting.]

REPRESENTATIVE SEATON moved to adopt Amendment 1, which read as follows [original punctuation provided]:

Page 2, line 21 -line 25 after the word "guide" and ending on the word "section."  
Delete all material

Page 2, line 27, beginning of new sentence. "A...  
Through page 3, line 4,  
Delete all material

Page 3, line 23-29  
Delete all material

Page 3, line 5-18  
Delete all material

Deleting the material basically deletes a non-resident's ability to take bear under these special circumstances without a big game guide. In all other situations we require big game guides for non-residents. Deleting his [sic] language conforms the bill to existing statutes and most likely removes most objections from game guides, who make their living from taking out non-residents.

CHAIR WEYHRAUCH objected to Amendment 1.

REPRESENTATIVE SEATON mentioned residents and methods and means, and said Amendment 1 would allows the good parts of the bill to go forward, but would simply eliminate the nonresident [and nonresident alien] section of the bill.

Number 0660

SENATOR SEEKINS responded that almost the entire intent of the bill is to put more hunters in the field and there's

nothing in the bill about methods and means. He said there are two choices: airborne hunting, or putting more hunters in the field. He said he chooses the latter.

Number 0569

REPRESENTATIVE GRUENBERG said it sounds like the department "felt that the goal was a valid management tool." He stated that the question becomes one of, who should the hunters be?

SENATOR SEEKINS said guides would be limited to three areas into which they could bring an unlimited number [of people]. He reiterated the issue of GMU 13, and said he is trying to find the most acceptable method of reducing the bear population in the safest way possible. In response to a question from Representative Holm, he confirmed that he has studied biology.

REPRESENTATIVE HOLM noted: "Sometimes empirical data does not translate from ... what we're looking for, for management tools. Many times [there are] genetic changes [and] many times we get unintended consequences because we ... depress on species and all of a sudden something else blooms and grows in a greater quantity someplace else." He stated that he thinks it's important to keep in mind that the ADF&G will be overseeing the process and will act to ensure that the program works. He said he thinks that's probably the best place to leave the analysis.

Number 0320

SENATOR SEEKINS opined that "that's" important because one can't get to intensive management without that.

REPRESENTATIVE SEATON reiterated that he thinks allowing unlimited guides in [those limited] areas is good, as is not requiring a person to buy a tag up front. He reiterated that his problem is in regard to the portion of the bill addressing nonresidents and nonresident aliens; he doesn't think that provision will constitute a significant aspect of what the bill is going to accomplish. He stated that his intent is to not destroy the program. He concluded: "If we're willing to put ... the requirements at risk for this benefit, for nonresidents and nonresident aliens being guided as well as ... residents and others,

than so be it. But that's what the whole intent and the construction of this amendment is about."

SENATOR SEEKINS said he respectfully disagrees.

REPRESENTATIVE SEATON maintained his motion to adopt Amendment 1 [text provided previously].

Number 0199

CHAIR WEYHRAUCH said, "I'm going to withdraw my objection to having [CSSB 297(RES)] before us, so we can deal with the amendment."

Number 0166

A roll call vote was taken. Representatives Gruenberg and Seaton voted in favor of Amendment 1. Representatives Lynn, Holm, and Weyhrauch voted against it. Therefore, Amendment 1 failed by a vote of 2-3.

Number 0107

REPRESENTATIVE HOLM moved to report CSSB 297(RES) out of committee with individual recommendations and the accompanying fiscal notes.

Number 0087

REPRESENTATIVE GRUENBERG objected for discussion purposes. He requested that the Department of Law provide answers to his previously stated questions, so that that opinion can be made available to the next committee of referral.

CHAIR WEYHRAUCH noted that the bill would be heard next in the House Resources Standing Committee. He said he thinks Representative Seaton made some good points during the discussion of Amendment 1, and stated his intent was to talk about the issues some more. He indicated concurrence with Representative Gruenberg's request.

**TAPE 04-78, SIDE A**

Number 0001

SENATOR SEEKINS, in response to a question from Representative Gruenberg, reviewed the previously covered subject of the second degree kindred rule. He illustrated

that a ten-year-old who has never been in the field before could take his/her step-grandfather hunting. He said, "To me, that's the threat to the guide industry, rather than taking someone who's at least 21, has hunted big game for at least two years, has harvested big game, and has passed a course over at [the ADF&G] specifically toward safe hunting of grizzly bear."

REPRESENTATIVE GRUENBERG asked, "Do you plan to do anything about the problem there?"

SENATOR SEEKINS answered no. He said, "Quite frankly, I would prefer that that was expanded just a little bit, ... but I think that's even getting more dangerous."

Number 0090

REPRESENTATIVE GRUENBERG withdrew his objection. There being no further objection, CSSB 297(RES) was reported out of the House State Affairs Standing Committee.

The committee took an at-ease from 9:41 a.m. to 9:44 a.m.

SB 385-SECURITY;DIV. HOMELAND SECURITY/EMER. MGT

Number 0200

CHAIR WEYHRAUCH announced that the next order of business would be CS FOR SENATE BILL NO. 385(JUD) am, "An Act relating to homeland security, to civil defense, to emergencies and to disasters, including disasters in the event of attacks, outbreaks of disease, or threats of attack or outbreak of disease; establishing the Alaska division of homeland security and emergency management in the Department of Military and Veterans' Affairs and relating to the functions of that division and that department; and providing for an effective date."

Number 0219

REPRESENTATIVE GRUENBERG moved to adopt CSSB 385(JUD)am [as the work draft]. [No further action occurred regarding this motion.]

Number 0230

JOHN CRAMER, Director, Administrative Services Division, Department of Military & Veterans' Affairs (DMVA), reviewed a portion of the sponsor statement [included in the committee packet]. He listed the primary purpose of the legislation as follows: One, to amend the existing civil defense statutes to update them for homeland security purposes; two, to amend existing disaster statutes to make them applicable to homeland security in outbreaks of disease; three, to combine two divisions in the DMVA into the single division of the Division of Homeland Security and Emergency Management; and four, to establish the Homeland Security And Emergency Management subcommittee as a legislative subcommittee of the Joint Armed Services Committee.

Number 0294

MR. CRAMER stated that the civil defense chapter in the DMVA statute, AS 26.20, was enacted in 1951, during the Cold War. The proposed legislation would update that chapter to make it relevant to homeland security; it specifies that DMVA shall coordinate homeland security and civil defense functions in the state, in cooperation with and with assistance from other state agencies. It would authorize the DMVA to undertake certain homeland security planning and preparedness activities, and it also repeals obsolete and potentially far-reaching civil defense powers and requirements existing today. The bill would authorize the governor to declare an emergency and to exercise specified emergency powers in the event of a terrorist attack or a credible threat of imminent attack in the state. Mr. Cramer explained that in order for a situation to be considered a credible threat, it would require certification by the commissioner of DMVA, in consultation with the commissioner of the Department of Public Safety (DPS), based on specific, reliable information that there is a high probability of an attack in the near future. The bill would also authorize the governor to declare a disaster, and exercise his/her disaster powers in the event of an attack or imminent threat of attack, or an outbreak of disease or an imminent threat of an outbreak - again, requiring certification of the threat. He noted that such declarations would be effective for a maximum of 30 days, and the legislature may also terminate the declared emergency or disaster at any time.

Number 0749

SENATOR FRED DYSON, Alaska State Legislature, as chair of the Senate Health, Education and Social Services Standing Committee ("SHES"), sponsor of SB 385, noted that the fundamental change [proposed via SB 385] reflects the difference of the threats that are faced in what he termed "asymmetrical warfare," where there is no clearly defined enemy from a specific location. He opined that it may be necessary to intervene before an attack happens, and the bill would allow the department and the governor to initiate action when there is a credible threat of an imminent terrorist attack. He described preparations that had been made during a recent threat of attack on Valdez, Alaska, to protect the area, though no attack was forthcoming. He indicated that the reason for that may have been that "the bad guys saw the preparation and quit," or it may have been that the information regarding the threat may not have been accurate. However, the bill would authorize what the department thinks needs to be done and what was done at the time [of the threat to Valdez].

SENATOR DYSON noted that the bill also addresses the issue of roadblocks. He said it would allow people the opportunity to turn around if they come across a roadblock. He reiterated some of the other changes that Mr. Cramer had previously reviewed. He stated his belief that the government needs to have the option of acting ahead of an attack.

Number 0735

SENATOR DYSON emphasized the importance of maritime safety. He noted, "Ninety-five percent of our freight moves ... by boat and without that we're in trouble." He said there are a lot of hazardous materials that come out of Prince Rupert, Canada. He also noted that 600,000 people come by cruise ship, and mentioned the oil out of Valdez. He said, "Those things move us up on the probable targets that would attract terrorist attention." He indicated that a big impact would be made in just 3.5 days without the ability to ship oil to the Lower 48.

SENATOR DYSON reminded members that he is on the Joint Armed Services Committee, and on the Military and Veterans Affairs finance subcommittee. He continued as follows:

I did not want to ask the Department of Military & Veterans' Affairs questions about their preparedness in open meetings, because I would not want our enemies to know even the little bit that I know, let alone the embarrassing questions that I might want to be asking these fellows about their preparedness. So this bill authorizes a vetted subcommittee of military and veterans' affairs who must pass a security test [and] sign an agreement on confidentiality to be insiders and be ... the legislature's audit and oversight.

Number 0864

REPRESENTATIVE GRUENBERG, regarding Senator Dyson's last point, noted that the House Special Committee on Military and Veterans' Affairs would normally have oversight "on that and on this bill." He asked how Senator Dyson would feel about having that committee involved.

SENATOR DYSON replied, "I'm not sure that's precluded."

REPRESENTATIVE GRUENBERG said he would like to see that put in the bill, because normally those on that committee would have jurisdiction over the department.

SENATOR DYSON responded, "The way it's set up now is as a subcommittee of that, and if you have members of the special committee that are also ... [members] of the joint committee, they could certainly be a part of it." He cautioned that adding an amendment so late in this process may complicate matters.

REPRESENTATIVE GRUENBERG said he doesn't want to jeopardize the bill, but he thinks it's a good idea.

Number 0980

SENATOR DYSON stated that a fair amount of effort was made to "get everybody on board," including maintaining active communication with the [Alaska Civil Liberties Union (AkCLU)].

Number 1007

JAMES N. BUTLER III, Attorney at Law, Baldwin & Butler, LLC, informed the committee that most of his work involves oil companies and public sector clients in the area of incident management, and emergency response and preparedness. He noted that he has served for approximately one year as the public representative on the State Emergency Response Commission (SERC), and that SERC has not had a chance to take a formal position on the proposed legislation.

MR. BUTLER stated that he is in complete agreement that the proposed authorities to act and take what are anticipated to be fairly new powers - such as limiting public access to open areas - is an important step forward. He expressed concern, however, that there is more complexity to the bill than seems to be suggested. He illustrated that it's not crystal clear who, specifically, at the state agency will be in charge of these events. Noting that the bill uses the term "coordination" a lot, he warned that providing for a unified command structure should be a part of the planning process.

MR. BUTLER said he hopes that the committee has had a chance to review administrative order 170 (AO 170), which he said was developed years ago as an attempt to develop an actual standardized system to manage the resources used in emergency management in Alaska. He stated:

Recognizing that the homeland security threats are, in many cases, almost more of a police function than an emergency management function, I think that ... we might be missing an opportunity to make sure that Alaska - like many other states - has a system that is required to be followed in order to get some of the pass-through money ensuring standardization and more effective use of limited resources.

MR. BUTLER directed attention to page 19, Section 14. He said he's heard a lot of testimony regarding issues of borders, oil terminals, marine trade, and cruise ships. He said he thinks it's important to understand that the requirements of the chapter may not apply to many of the examples that have been used, because most of those facilities are already subject to federal homeland security requirements. He stated that he thinks this is an example of why it's so important to understand, holistically, how

this "fix" is going to fit in to that federal system. He said he's aware that the both DPS and the Department of Transportation & Public Facilities (DOT&PF) have the right to limit access to roads. He continued as follows:

I think it's important for the committee to look at the section that describes the power of this new division, and understand what it is doing. It's creating a police function authority within the division to investigate and assess threats from attack. It's looking at organizing the chains of command and, in fact, coordinating the deployment of the state militia. While I don't have a problem with that, necessarily, I want to make sure that the legislature has the opportunity to clearly understand that we'll be relying on future plans and, to the extent that there's assumptions in those plans, I think none of us want to see that happen.

MR. BUTLER stated that while he applauded the legislature's interest to monitor and keep track of the developments in "this particular area," he is concerned that more levels of oversight would be created, which would create more potential for confusion over who is responsible for what. He suggested that the committee get information on SERC, which has many of the same responsibilities that this committee would have regarding the response to a disaster. He indicated he understands that the committee is considering the issues revolving around pre-disaster or pre-attack. He said, "So, it's adding more pieces to the equation that might be a net benefit, but I think that before we create committees that have requirements to meet in secret to talk about how planning occurs, I think we should tread cautiously."

CHAIR WEYHRAUCH announced that SB 385 would be held over.

#### SB 354-HUMAN RIGHTS COMMISSION PROCEDURES

Number 1330

CHAIR WEYHRAUCH announced that the last order of business would be CS FOR SENATE BILL NO. 354(STA) am(efd fld), "An Act relating to complaints filed with, and investigations, hearings, and orders of, the State Commission for Human Rights; and making conforming amendments."

Number 1360

LISA M. FITZPATRICK, Esq., Chair, Human Rights Commission, Office of the Governor, said she would focus on the provisions of the bill that contain the remedies that would be available to the commission in the event that there is a finding of discrimination. She reported that the commission is contacted annually by thousands of individuals looking for information and relief. Many of those cases are not limited by jurisdiction, and so the commission actually ends up opening files on approximately 450 cases annually. Of those cases, Ms. Fitzpatrick said, most are resolved short of investigation and litigation.

MS. FITZPATRICK said that historically, when there is a finding of discrimination, the commission has been authorized to put the individual who has been discriminated against back in the same state that he/she would have been [in] before the alleged discrimination occurred. She mentioned language in statute that allows the commission to award any appropriate relief. She noted that the language says, "including but not limited to" and then she enumerated several forms of relief.

MS. FITZPATRICK said that SB 354 would modify that [statute] by allowing the commission to only award a few limited types of relief, which would include "back pay and front pay." She said the commission agrees those are important forms of relief, but not the only forms of economic relief that an individual ought to be able to obtain if he/she goes to the commission for a determination. The commission would also be allowed to order an employer to reinstate an employee, which is historically one of the mainstay forms of relief that people are afforded. She continued as follows:

If you have an individual who requires a reasonable accommodation for their disability, it does not specifically allow the commission to authorize and order a reasonable accommodation for the person with the disability. It does not require the payment of retirement benefits, for example, if an individual has been discharged for discriminatory reasons. It doesn't allow for lost benefits that would have been included in the paycheck. So, for example, if you have an

individual who is hired to work in a remote site and housing is a part of their ... compensation package but, as a result, their actual monetary paycheck is reduced, it does not specifically allow the commission to award compensation ... that would make up the difference. ...

And there are ... varying situations under which, ... if an individual is discharged, they would lose their benefits of health insurance. But [also] there are actually instances where we are aware of an employer ... keeping an employee, but taking away their medical benefits when they became aware that the individual was pregnant. And it's hard to conceive of a justification that would be nondiscriminatory for that kind of an action, but the result is that then the employee is not covered by insurance and is in a situation of ... having to subsidize their pregnancy-related costs out of their own pocket. And under the present statutes it's not clear that ... the commission could do anything to assist that individual under those circumstances.

There are other instances, as well. For example, ... if an individual has been discharged, the absence of any relief pertaining to vesting in a retirement plan or bonus, ... vacation pay, ... or restoration [of] seniority, reimbursement of other medical costs or other out-of-pocket expenses are not addressed in this bill. And these are all forms of relief that the commission has historically awarded individuals in varying forms. Obviously, in any one of these there's a duty on the part of the individual to mitigate their damages, to try to offset any costs that they might incur or have incurred. But [historically] the commission has been enabled to ... [make] these individuals ... whole, and we are concerned that by taking away that form of relief, ... these individuals are going to be coming up short and that there's realistically no other form [of relief] available to them.

The Department of Law has argued in the past that these individuals can just go to the court system and file a case, and in some instances that is

correct. But in the general run-of-the-mill case, there are a number of reasons why it is not a realistic alternative for these individuals. First off, the average case that the commission handles where it makes a finding of substantial evidence that there has been discrimination involves a small amount of money in the scheme of cases ...

CHAIR WEYHRAUCH interjected to request that Ms. Fitzpatrick continue with her testimony at a future meeting.

Number 1650

SENATOR GRETCHEN GUESS, Alaska State Legislature, spoke as a member of the Senate Rules Standing Committee ("SRLS"), sponsor by request of the governor. She stated that she is "fairly passionate about this bill" and some changes that she would like considered.

SENATOR GUESS directed attention to Section 4, which is in regard to "**Dismissal of complaint without prejudice**", and said she is concerned about the broad authorization it would give to any executive director to dismiss a case. She said she knows that the commission is overwhelmed and needs to start being able to dismiss cases without going to full hearings. Notwithstanding that, she pointed out that there is not concurrence with the commission on any of the dismissals, so it would give the executive director full authority to dismiss cases, without any concurrence or review by the commission. The specific dismissals that Senator Guess said were of concern to her are listed on page 3: [subsection (a), paragraphs] (4), (6), (8)-(9). Paragraph (4) read: "(4) a hearing will not benefit the complainant". Paragraph (6) read: "(6) A hearing will not represent the best use of commission resources". Paragraph (8) read: "(8) the probability of success of the complaint on the merits is low". Paragraph (9) read: "(9) proceeding to a hearing will not serve the public interest".

SENATOR GUESS offered her understanding that paragraphs (4) and (8) deal in prejudging the situation, while paragraphs (6) and (9) are very subjective statements for one person to make about an important issue. She asked the committee to consider whether it wants an executive director to have that much authority in statute, noting that the reason for

the proposed dismissals are that [the commission] is too overwhelmed. However, from a policy perspective, she stated that she is not sure why the bill doesn't "go towards prioritizing versus dismissing." She clarified, "I don't mind a prioritization if we don't have enough resources, but I'm a little concerned when we start dismissing cases."

Number 1807

SENATOR GUESS directed attention to some of the language being added to page 4, lines 17-18, which read: "The commission may not order an award of noneconomic or punitive damages in any case". She stated that the withdrawing of noneconomic and punitive damages prevents the commission from considering creative alternatives that would hopefully stop complaints in the future. She said she thinks the commission has done a good job at being creative about solutions, "both to make the person whole and, hopefully, helping that employer so there's no more complaints in the situation." She continued as follows:

I [understand] wanting to make it clear to the public ... [that] it can't think that they're going to come and get a million-dollar judgment from [the] Human Rights Commission. On the other hand, I don't know if limiting the commission is the way to achieve that - if having very strict policy and regulations around that is the way to achieve it.

Number 1887

SENATOR GUESS turned to the issue of front pay and the proposed limits on such. She noted that it used to be unlimited front pay, and explained that means that if she were discriminated against at the beginning of the process by never being hired, and it was found to be discrimination, the front pay would be what she would have been paid. She mentioned a considered compromise in the Senate of going to two years, the average length of one of the cases, and remarked that she is not certain how it ended up being one year, but surmised that there wasn't a lot of thought put into it and she just happened not to be in committee that day. She indicated that this is another issue for the committee to consider.

Number 1929

SENATOR GUESS, in response to a question, offered her understanding that back pay exists only if a person is hired and then fired. She indicated that the Senate had not been able to "flesh that out" and the commission still "had some problems with it."

REPRESENTATIVE SEATON responded, "But if the question comes down that after determination is made, everything beyond that would have been considered back pay, and we are talking about a year in the future, you don't have a problem with that?"

SENATOR GUESS answered no. She said she thinks that's a reasonable policy. She said, "It's having a clear definition, which, on the Senate side, it wasn't."

[SB 354 was held over.]

Number 1966

The meeting was recessed at 10:18 a.m. to a call of the chair.

Number 1970

CHAIR WEYHRAUCH called the meeting back to order at 1:06 p.m. Present at the call back to order were Representatives Holm, Seaton, and Weyhrauch.

#### **ADJOURNMENT**

There being no further business before the committee, the House State Affairs Standing Committee meeting was adjourned at 1:06 p.m. [Due to technical difficulties, the adjournment was not recorded.]