

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

May 5, 2004
9:03 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. 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."

- MOVED CSSB 385(JUD) am OUT OF COMMITTEE

CS FOR SENATE BILL NO. 231(FIN)
"An Act relating to unclaimed property; and providing for an effective date."

- MOVED CSSB 231(FIN) OUT OF COMMITTEE

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 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
04/28/04 (S) RESCIND ACTION IN ADOPTING AM #2 UC
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
05/04/04 (H) Heard & Held
05/04/04 (H) MINUTE(STA)
05/05/04 (H) STA AT 8:00 AM CAPITOL 102

BILL: SB 231

SHORT TITLE: DECREASE TIME TO CLAIM UNCLAIMED PROPERTY

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

05/21/03 (S) READ THE FIRST TIME - REFERRALS
05/21/03 (S) STA, FIN
04/01/04 (S) STA AT 3:30 PM BELTZ 211
04/01/04 (S) Moved CSSB 231(STA) Out of Committee
04/01/04 (S) MINUTE(STA)
04/02/04 (S) STA RPT CS 3DP NEW TITLE
04/02/04 (S) DP: STEVENS G, COWDERY, STEDMAN

04/16/04 (S) FIN AT 9:00 AM SENATE FINANCE 532
 04/16/04 (S) Heard & Held
 04/16/04 (S) MINUTE(FIN)
 04/26/04 (S) FIN RPT CS FORTHCOMING 5DP 2NR
 04/26/04 (S) DP: GREEN, WILKEN, DYSON, BUNDE,
 04/26/04 (S) STEVENS B; NR: HOFFMAN, OLSON
 04/26/04 (S) FIN AT 9:00 AM SENATE FINANCE 532
 04/26/04 (S) Moved CSSB 231(FIN) Out of Committee
 04/26/04 (S) MINUTE(FIN)
 04/29/04 (S) FIN CS RECEIVED NEW TITLE
 05/03/04 (S) TRANSMITTED TO (H)
 05/03/04 (S) VERSION: CSSB 231(FIN)
 05/04/04 (H) READ THE FIRST TIME - REFERRALS
 05/04/04 (H) STA, FIN
 05/05/04 (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
 05/04/04 (H) Heard & Held
 05/04/04 (H) MINUTE(STA)
 05/05/04 (H) STA AT 8:00 AM CAPITOL 102

05/05/04

(H)

JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

JOHN CRAMER, Director

Division of Administrative Services

Department of Military & Veterans' Affairs

Juneau, Alaska

POSITION STATEMENT: During discussion of CSSB 385(JUD)am,
answered questions.

MICHAEL MITCHELL, Assistant Attorney General

Labor and State Affairs Section

Civil Division (Anchorage)

Department of Law

Anchorage, Alaska

POSITION STATEMENT: During discussion of CSSB 385(JUD)am,
answered questions.

DAVID E. LIEBERSBACH, Director

Division of Homeland Security/Emergency Management

Department of Military & Veterans' Affairs

Anchorage, Alaska

POSITION STATEMENT: During discussion of CSSB 385(JUD)am,
answered questions.

MARY ELLEN BEARDSLEY, Assistant Attorney General,

Commercial/Fair Business Section

Civil Division (Anchorage)

Department of Law

Anchorage, Alaska

POSITION STATEMENT: During discussion of SB 231, offered to
answer questions.

TODD THAKAR

Prudential Financial

(No address provided)

POSITION STATEMENT: During discussion of SB 231, offered to
answer questions.

LISA FITZPATRICK, Chair

Human Rights Commission

Office of the Governor

POSITION STATEMENT: Testified that the Human Rights Commission
opposes the language in Section 6 of CSSB 354(STA)am (efd fld).

SCOTT J. NORDSTRAND, Deputy Attorney General

Civil Division
Office of the Attorney General
Department of Law
Anchorage, Alaska

POSITION STATEMENT: During discussion of CSSB 354(STA)am (efd fld), answered questions.

TOMAS H. BOUTIN, Deputy Commissioner
Office of the Commissioner
Department of Revenue
Juneau, Alaska

POSITION STATEMENT: During discussion of CSSB 231(FIN), provided information.

RACHEL LEWIS, Unclaimed Property Section
Treasury Division
Department of Revenue
Juneau, Alaska

POSITION STATEMENT: During discussion of CSSB 231(FIN), discussed sections of the bill that aren't in line with the 1995 Act.

DEBORAH BEHR, Assistant Attorney General
Legislation & Regulations Section
Office of the Attorney General
Department Of Law
Juneau, Alaska

POSITION STATEMENT: During discussion of CSSB 231(FIN), discussed the Department of Law's view on the changes.

ACTION NARRATIVE

TAPE 04-79, SIDE A

Number 0001

CHAIR BRUCE WEYHRAUCH called the House State Affairs Standing Committee meeting to order at 9:03 a.m. Representatives Holm, Seaton, Lynn, Gruenberg, and Weyhrauch were present at the call to order. Representatives Coghill and Berkowitz arrived as the meeting was in progress.

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

Number 0177

CHAIR WEYHRAUCH announced that the first order of business was 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 0185

CHAIR WEYHRAUCH moved to adopt CSSB 385(JUD) am.

REPRESENTATIVE SEATON objected.

Number 0255

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

1. Page 11, line 28 - delete "threat of attacks" and insert "threat level"
2. Page 12, line 16 - delete "threats from attack" and insert "attack threats"
3. Page 13, line 4 - delete "preventive" and insert "prevention"
4. Page 21, lines 7-8 - delete "an attack or imminent threat of attack" and insert "a credible threat of imminent enemy or terrorist attack"
5. Page 21, line 29 - delete "an imminent" and insert "a credible"
Page 21, line 30 - before "enemy" insert "imminent"
6. Page 22, line 6 - delete "an imminent" and insert "a credible threat of an imminent"

CHAIR WEYHRAUCH objected.

REPRESENTATIVE GRUENBERG explained that Amendment 1 makes several technical and conforming changes. In response to a question from Representative Holm, he explained that the changes would help conform the bill "to itself," so that there are not any internal inconsistencies.

The committee took a brief at-ease.

Number 0365

REPRESENTATIVE SEATON removed his objection to adopting CSSB 385(JUD) am.

Number 0374

JOHN CRAMER, Director, Division of Administrative Services, Department of Military & Veterans' Affairs, said he is not cognizant of all the changes that were discussed that are in Amendment 1.

REPRESENTATIVE GRUENBERG reviewed the first change [text provided previously]. He said he believes "threat levels" is the correct term to use.

MR. CRAMER explained that one method of depicting levels of threat is by a color system: level yellow, to level orange, to level red. The State of Alaska has adopted a similar threat level [indicator].

REPRESENTATIVE GRUENBERG asked Mr. Cramer if he would "prefer the change that we have here."

Number 0482

CHAIR WEYHRAUCH told the committee that he had indicated to the sponsor that he wanted to move the bill out of committee. He said there is no problem to offering amendments on the House floor, but he doesn't want to slow the bill down in this committee. He clarified that he doesn't mind hearing the department's position, but he isn't inclined to amend the bill.

REPRESENTATIVE GRUENBERG said he would not waste his time if the committee is not inclined to [address the amendment]. He said, "Let's just leave this Amendment 1."

CHAIR WEYHRAUCH clarified that Amendment 1 had been withdrawn.

Number 0549

REPRESENTATIVE GRUENBERG [moved to adopt] Amendment 2, which read as follows:

Page 19, line 8:

Delete "The"

Insert "To the extent preempted by federal law,
the"

CHAIR WEYHRAUCH stated his plans to take Representative Gruenberg's amendments to Senator Fred Dyson's office for him to "think about these in the context of ... this bill." He said he wants the department to "talk about this a little more carefully with Senator Dyson's staff." He mentioned the roles of various departments and committees in this process.

MR. CRAMER concurred with Chair Weyhrauch that he had not had the opportunity to speak with the sponsor or staff regarding any changes to the bill.

CHAIR WEYHRAUCH objected to Amendment 2.

Number 0655

REPRESENTATIVE GRUENBERG said the language that Amendment 2 would add to the bill is the correct legal term to use.

Number 0688

REPRESENTATIVE GRUENBERG, at the request of Chair Weyhrauch, withdrew Amendment 2.

Number 0700

REPRESENTATIVE GRUENBERG [moved to adopt] Amendment 3, which read as follows:

Page 2, line 4, through page 7, line 24:

Delete all material and insert:

"* **Sec. 2.** AS 24.20 is amended by adding a new section to article 5 to read:

Sec. 24.20.680. Legislative review. (a) The president of the senate and the speaker of the house of representatives shall appoint members or committees of the senate and the house, respectively, to review confidential activities, plans, reports, recommendations, and other materials of the Alaska division of homeland security and emergency management established in AS 24.20.025, or of other agencies or persons, relating to matters concerning homeland security and civil defense, emergencies, or disasters

in the state or to the state's preparedness for or ability to mount a prompt response to matters concerning homeland security and civil defense, emergencies, or disasters. In making appointments under this subsection, each presiding officer shall ensure that the political party membership of the members appointed by that presiding officer is proportional to the political party membership of the house of the legislature over which the officer presides.

(b) To be eligible for appointment under (a) of this section, a member shall have a federal security clearance at the secret level at the time of appointment or shall have an interim security clearance at the secret level at the time of appointment and shall apply for and receive a federal security clearance at the secret level. Members holding a federal security clearance at the secret level at the time of appointment or receiving the clearance following appointment shall maintain the federal security clearance at the secret level to remain qualified to serve in appointed status.

(c) The president of the senate and the speaker of the house of representatives may condition the appointment of members under (a) of this section upon the execution of appropriate confidentiality agreements by the members or by persons assisting those members. Information and documents received by appointed members or persons assisting appointed members under a confidentiality agreement as described in this subsection are not public records and are not subject to public disclosure under AS 40.25.100 - 40.25.220.

(d) Appointed members who remain qualified under (b) of this section serve for the duration of the legislature during which the members are appointed. If a member is reelected or a member's term of office extends into the next succeeding legislature and the member remains qualified under (a) and (b) of this section, the member shall continue to serve until reappointed or the appointment of the member's successor.

(e) When a member appointed under (a) of this section files a declaration of candidacy for an elective office other than that of member of either house of the legislature, and the member has not resigned from appointed status, the member's appointed

status terminates on the date that the member leaves legislative office."

Page 22, line 16, through page 23, line 5:

Delete all material and insert:

"* **Sec. 21.** AS 24.20.680 is repealed January 1, 2009.

* **Sec. 22.** The uncodified law of the State of Alaska is amended by adding a new section to read:

PREPARATION AND PRESENTATION OF PROPOSED LEGISLATION. If the adjutant general of the Department of Military and Veterans' Affairs determines that additional qualifications for appointment under AS 24.20.680, added by sec. 2 of this Act, would significantly enhance the security of sensitive materials or information to be reviewed under AS 24.20.680, the adjutant general shall prepare a bill proposing amendments to AS 24.20.680, enacted by sec. 2 of this Act, for consideration by each house of the legislature, and shall deliver the bill to the Secretary of the Alaska State Senate and the Chief Clerk of the Alaska State House of Representatives not later than 30 days following the convening of the First Regular Session of the Twenty-Fourth Alaska State Legislature.

* **Sec. 23.** The uncodified law of the State of Alaska is amended by adding a new section to read:

INITIAL APPOINTMENT. The President of the Alaska State Senate and the Speaker of the Alaska State House of Representatives shall make the appointments required under AS 24.20.680, enacted by sec. 2 of this Act, within 15 days after the effective date of this Act."

CHAIR WEYHRAUCH objected to Amendment 3.

REPRESENTATIVE GRUENBERG explained that the bill itself sets up a [Homeland Security and Emergency Management] Subcommittee of the Joint Armed Services Committee to receive confidential information. He indicated that those involved would have to receive a "secret clearance" and sign a confidentiality form. Unfortunately, he said, the Joint Armed Services Committee is not a legislative committee. He noted that the Senate does not have a committee on military and veterans' affairs, while the House does. He explained that [Amendment 3] would allow the presiding officers the discretion to appoint individuals or a committee "to deal with this." Those individuals would receive

"secret clearance," sign a confidentiality document, and have access "to this information." He stated, "It's the same process; it's just a question of who would be doing it." Representative Gruenberg said he is under the impression that the co-chair of the [Joint] Armed Services Committee, among others, seem to think [Amendment 3] is a good idea.

REPRESENTATIVE GRUENBERG, in response to a request by Chair Weyhrauch, withdrew his motion to adopt Amendment 3.

Number 0912

REPRESENTATIVE SEATON directed attention to [a two-page list of] questions [included in the committee packet], which were submitted by Jim Butler. He said some of the questions probably ought to be addressed. For example, on page 12, beginning on line 16, the language proposes that folks in the DMVA will have police powers, but they will not get police training. He questioned if the situation would exist where people who are untrained are "doing the establishment of these procedures."

Number 1011

MICHAEL MITCHELL, Assistant Attorney General, Labor and State Affairs Section, Civil Division (Anchorage), Department of Law, said he would defer to Mr. Cramer regarding the specifics of the activities in which the department engages. In regard to page 12, line 16, he offered his understanding that "investigation" in that context is "evaluation or assessment of the nature of the threat, rather than a law enforcement form of investigation or intelligence gathering." More generally, he stated his understanding that DMVA does not engage in law enforcement-type of activities or police-type activities.

Number 1089

DAVID E. LIEBERSBACH, Director, Division of Homeland Security/Emergency Management, Department of Military & Veterans' Affairs, noted that "the individuals that are assigned to this" do get training to the certification of state troopers, when they are acting with the state and before they are deployed with the state troopers. He clarified that the investigative type of work these folks do is gathering information and evaluating critical infrastructure of state or private facilities. He emphasized that the investigations are done by request. For example, assessments are currently being done on Golden Valley Electric Association (GVEA), the Alaska Railroad,

and the Port of Anchorage. He said, "I could go on and on, but we're getting a little bit into sensitive areas." Those investigators are looking for vulnerability to potential terrorist activity, and they provide input to assisting that state or private facility to developing plans and programs to lessen their vulnerability. He emphasized that no kind of criminal investigations are done; that job strictly lies with the Alaska State Troopers or local police, or - if federal - with the federal force.

REPRESENTATIVE SEATON reiterated that he would like answers to Mr. Butler's questions.

MR. CRAMER noted that the language on page 12, "lines 16, 22, 24, 28" is currently in statute, in AS 26.20. He reiterated that those civil statutes were enacted in 1951 and have been there since that time. He said the department has the authority to execute [AS] 26.20. He spoke of combining [two existing divisions into the Division of Homeland Security and Emergency Management], in order to save money. He indicated the intent to "get rid of a lot of the very onerous stuff that was in the ... original civil defense statute.

REPRESENTATIVE SEATON explained that he didn't want [Mr. Butler's] questions glossed over in the committee's rush to address the bill; however, he stated that he knows the committee doesn't have the time to "do it here."

MR. CRAMER stated that [SB 385] is a critical piece of legislation that the department would like to see moved forward. He noted that the department has, for its own use, prepared responses to [Mr. Butler's] questions, and he offered to make those responses available to the committee.

CHAIR WEYHRAUCH said that would be important, particularly if Mr. Cramer could make those available before the bill gets to the House floor.

Number 1374

REPRESENTATIVE GRUENBERG stated his hope that Chair Weyhrauch will indicate on the House floor why the committee left [amendments] to address on the House floor.

Number 1399

CHAIR WEYHRAUCH moved to report CSSB 385(JUD)am out of committee, with individual recommendations and the attached fiscal notes.

REPRESENTATIVE SEATON again removed his objection to adopting CSSB 385(JUD)am.

CHAIR WEYHRAUCH asked if there were any further objections to the motion to report CSSB 385(JUD)am out of committee. There being none, CSSB 385(JUD)am was reported out of the House State Affairs Standing Committee.

SB 231-DECREASE TIME TO CLAIM UNCLAIMED PROPERTY

Number 1433

CHAIR WEYHRAUCH announced that the next order of business was CS FOR SENATE BILL NO. 231(FIN), "An Act relating to unclaimed property; and providing for an effective date."

CHAIR WEYHRAUCH moved to adopt CSSB 231(FIN).

REPRESENTATIVE HOLM objected.

Number 1449

MARY ELLEN BEARDSLEY, Assistant Attorney General, simply noted that she had assisted the department in drafting the legislation, and she offered to answer questions.

Number 1463

TODD THAKAR, testifying on behalf of Prudential Financial, stated that company's support of [SB 231]. He offered to answer questions.

Number 1515

REPRESENTATIVE GRUENBERG mentioned there would be a need to update the bill to the new "Unclaimed Property Act."

[SB 231 was heard and held until later in the meeting.]

SB 354-HUMAN RIGHTS COMMISSION PROCEDURES

Number 1588

CHAIR WEYHRAUCH announced that the next order of business was 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 1600

LISA FITZPATRICK, Chair, Human Rights Commission, Office of the Governor, testifying on behalf of the commission, stated that the commission opposes the language of Section 6 - the provision that provides the remedies that the commission can order when a legal discrimination has occurred - because it would take away the tools the commission needs to do its job.

MS. FITZPATRICK mentioned a recent celebration of the 40 years that the commission has been in existence. She noted that discrimination is just as alive today as it was 40 years ago. She gave examples of discrimination and said there is a continuing need to eliminate discrimination in Alaska. She opined that the bill would encroach on the commission's ability to do its job.

MS. FITZPATRICK noted that, under current law, the commission has the authority to order any appropriate relief when discrimination has occurred. She clarified that appropriate relief isn't extraordinary relief, doesn't include punitive damages, and doesn't include compensating the person for his/her pain and suffering. She stated, "The whole premise of human rights laws is simply: Let the individual back in the situation they would have been in had the illegal discrimination not occurred." She noted that the majority of the cases handled by the commission are regarding discrimination in the workplace; therefore, the remedies that are relevant to workplace discrimination are particularly important.

MS. FITZPATRICK noted that the bill would allow the commission to order "training of the employer for discriminatory practices" and for the reinstatement or upgrading of an individual who has been discriminated. It would authorize the award of front pay for one year. She said the bill doesn't take into account so many types of relief that the commission - and commissions around that country - have been historically empowered to award. She offered examples.

Number 1800

MS. FITZPATRICK explained that back pay compensates an individual for the loss of pay, retrospectively, while front pay - which is rarely awarded - pays an employee prospectively when, for whatever reason, it's not possible to restore the discrimination by restoring the individual to the situation that he/she would have been in before the discrimination. She offered examples. She noted that the bill would [allow for] an award for a period of one year's front pay. She stated that the commission opposes the one-year limitation and would prefer a bill with no limitation on it, because "every situation where it's used is unique." She noted that there has never been a complaint that the commission has abused its discretion in this regard, and she questioned the reason for the change.

Number 1883

MS. FITZPATRICK said she has heard the argument made at previous committee hearings that it's important that individuals know the scope of relief that can be awarded against them. She stated the fact is that people do [know]. She reiterated that the idea is to put the individual back in the position he/she would have been in without the discrimination. She said, "Because this can be so fact-dependent, it's extremely difficult to create an all-purpose list. But, if you have an individual and you have not given them a raise as a result of their being a black person, ... a woman, or disabled, then you can reasonably anticipate exactly what kind of relief ... could potentially be ordered against you."

MS. FITZPATRICK noted that a second argument heard is that victims of discrimination could just take their cases to court. She explained that that is not a realistic alternative for people. She indicated that she doesn't know why it would be preferable to ship the people over to the court's calendar when there is an agency [to deal with these issues]. Furthermore, she stated that it is not practical to send people to the courts. She explained that the average value where the commission has found that there's substantial evidence to proceed is \$5,800. She said there is no economic incentive for a lawyer to take the case and proceed to court with it. She said, "Individuals cannot go to small claims court, because, by statute, the original jurisdiction for these cases lies in the superior court. And that is a world apart from both the commission and from the small claims court forum."

MS. FITZPATRICK estimated 450 cases are processed, and the vast majority of those cases "settle out." She said most of the cases are small dollar settlements; however, in the "cases of higher value," probably only about 20 percent of the employers are represented by attorneys. She said that "this is a very informal sort of a process," which gives people relief. She stated that it doesn't give people anything beyond their restoration to their position before the discrimination, but it serves an incredibly valuable function - both society as a whole and individuals. She said it pains her to consider that a bill has been introduced which could turn back the hands of time on discrimination law by taking away the tools the commission needs to do its job and to protect the public.

Number 2038

REPRESENTATIVE BERKOWITZ noted that the legislative intent section [in current statute] regarding the Human Rights Commission says that the statutory scheme is "to seek out and eradicate discrimination in employment, in credit and financing practices, in places of public accommodations and in the sale, lease or rental of real property." He asked if SB 354 would compromise the ability of the Human Rights Commission to carry out the legislative intent.

MS. FITZPATRICK answered yes.

Number 2080

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

Page 2, line 26

Delete "in the executive director's discretion"
Insert: "with the concurrence of the commission"

REPRESENTATIVE LYNN objected.

REPRESENTATIVE BERKOWITZ said Amendment 1 would ensure that there are some checks and balances involved in the process. He said it would make sure that if an executive director is going to get rid of a case, it is done with the commission's concurrence.

CHAIR WEYHRAUCH suggested that the executive director could send letters to the commission members to which they could reply.

There wouldn't necessarily have to be an affirmative concurrence of the commission by a vote, for example. He asked Representative Berkowitz if he agrees that "this is sort of broad to allow the commission to do its business in lots of different respects."

REPRESENTATIVE BERKOWITZ agreed. He explained that if it's not particularly onerous for the director, he would actually prefer that one person not have the authority to dismiss cases, without the concurrence of others.

Number 2143

REPRESENTATIVE SEATON commented that "that's in line with testimony that we had the other day."

REPRESENTATIVE COGHILL said he would like to hear from the department.

Number 2158

SCOTT J. NORDSTRAND, Deputy Attorney General, Civil Division, Office of the Attorney General, Department of Law, said the department drafted the bill to allow the discretion in the executive director. He offered his understanding that the commission supports "the current text." He said [Amendment 1] would require the commission to "do concurrence," and he said he understands that the commission does not support [Amendment 1]. He noted that Ms. Fitzpatrick had indicated that [the commission] prosecutes Human Rights Act violations for the state. He said that in the context of a criminal case, [the department] gives the district attorney's office - and ultimately the attorney general - the authority to decide which cases to bring, based upon the needs of the office and the evidence that's available. He emphasized that [the department] does not ask for the concurrence of the court, at that point. He compared asking for concurrence of the commission to asking for concurrence of the court.

Number 2215

REPRESENTATIVE BERKOWITZ stated that it's not absolutely the case that prosecutors have absolute discretion to "not charge." He said there are some profound policy requirements [to meet] before cases can be dismissed. He noted that there's a great body of law that has to do with prosecutorial discretion and the abuse of prosecutorial discretion. He said the courts and the

executive branch do intrude on how prosecutors charge. He concluded, "And that analogy, I think, is a propos in this case, because we're saying if we don't want a single individual with absolute discretion over whether to pursue or not pursue cases."

Number 2247

MR. NORDSTRAND responded that the whole process of the Human Rights Commission charges the executive director with the responsibility for investigating the cases. He said:

This person has the sole authority to determine whether there is 'substantial evidence,' which is the gate that opens that allows someone to even get to the commission. So, to somehow say that the executive director would have too much power with this, when in fact they are the ones themselves to make the determinations without the commission on whether or not there's a substantial evidence finding that would allow anyone to even ever get to a hearing - it seems to me it's six to one or half dozen of another.

Number 2273

REPRESENTATIVE COGHILL indicated that the concern that is being addressed is that in the process of making a complaint, a complainant may be left without some recourse or "some due process beyond this." He asked Mr. Nordstrand if he could give him some comfort that if [Amendment 1] fails that that [would not happen].

MR. NORDSTRAND responded that if the executive director chooses not to pursue a case, the recourse for the person is to go to court; however, the recourse in the Human Rights Commission would end. He clarified that the process of providing a free attorney to represent the person to go forward through a hearing process and, ultimately, to a decision by the commission would end.

REPRESENTATIVE COGHILL said he wonders if having the commission "review these things" doesn't give the complainant at least some comfort that he/she will be heard. He asked, "Can you give me some reason that that shouldn't happen?"

MR. NORDSTRAND answered, "It certainly could happen. We believe that it's ... more appropriate for the executive director to make that decision, because the executive director has the

information necessary to make that decision. He said he thinks people may be under the assumption that the Human Rights Commission actually hears cases as a body that listens to testimony. He said that's not the fact. He said, "What happens is these cases are heard before ... contract hearing officers that are hired - lawyers that are hired for \$100 an hour to hear the case. They hear all the evidence; they evaluate all the evidence; they write the decisions; they send a recommended decision to the commission; the commission then considers it." He said to ask volunteer member of the commission board to substantively evaluate every dismissal that's made is a big challenge. He said, "We have to ask whether a voluntary commission can do that."

REPRESENTATIVE COGHILL asked if the executive director is held to a protocol.

TAPE 04-79, SIDE B

Number 2382

REPRESENTATIVE COGHILL explained that the reason he is pursuing this line of questioning is because the issue of having significant power vested in the executive director "begins the whole argument of the remaining amendments."

CHAIR WEYHRAUCH asked if Representative Coghill is maintaining his objection.

REPRESENTATIVE COGHILL said he still wants an answer regarding a protocol or body of law that would compel the executive director or hold the executive accountable, such as a district attorney might be.

Number 2345

MR. NORDSTRAND responded that the statute that is being proposed in Section 4 provides that the executive director may dismiss cases in accordance with a list of criteria at the executive director's discretion. He explained that would mean that that decision would be subject to review in the courts for an abuse of that discretion. So, if someone could establish that the director had, for some inappropriate reason, dismissed the case and had not done it meaningfully, accurately, and correctly pursuant to the list of criteria, then the court could reverse the decision and it would be an abuse of discretion situation.

Number 2322

REPRESENTATIVE GRUENBERG mentioned Wagstaff v. Superior Court. In that case, he noted, the superior court said it could not review a decision whether or not to prosecute a case, because that was a violation regarding separation of powers. He stated that there may be "internal things that govern whether a case can be reviewed or not." The question of judicial review is highly circumscribed by the separation of powers doctrine in that case. He offered his understanding that there are other cases, as well.

Number 2282

MR. NORDSTRAND replied that that may be the case, although he is not a criminal lawyer and does not profess to be one. He said:

But, in the case of administrative law, which is what we're talking about here, where a ... representative of an administrative agency takes an action that would violate in some way the statute, and thereby abuse the discretion given under the statute, I would argue that, in fact, the courts do have the power to address whether that ... discretion were abused.

REPRESENTATIVE GRUENBERG said he thinks Mr. Nordstrand should "really check that out," because he does not think it would be an abuse of discretion standard, but is a constitutional separation of powers standard. He emphasized that that's an important difference.

Number 2233

A roll call vote was taken. Representatives Berkowitz, Gruenberg, Seaton, and Weyhrauch voted in favor of Amendment 1. Representatives Lynn, Holm, and Coghill voted against it. Therefore, Amendment 1 was adopted by a vote of 4-3.

Number 2210

REPRESENTATIVE BERKOWITZ moved to adopt Amendment 2, which would delete paragraphs (4), (6), (8), and (9), on page 3, lines 2, 5, 7, and 8, and renumber accordingly. [Amendment 2, as submitted to the committee read "subsections" where it should read "paragraphs".]

REPRESENTATIVE HOLM objected.

REPRESENTATIVE BERKOWITZ explained that the criteria by which the executive director "in now the commission" would dismiss complaints is overbroad and, in some ways, is a deprivation of due process. He said one of the criteria he wants eliminated is from paragraph (4), which would allow a determination by the executive director that "a hearing will not benefit the complainant". He said that is paternalistic and he doesn't know what that means. Paragraph (6) would be deleted by Amendment 2; it pertains to a determination by the executive director that "a hearing will not represent the best use of commission resources". Representative Berkowitz remarked, "Well, under that criteria, ever the most deserving of cases - if they might tax the resources overmuch to the exclusion of, for example, other cases - could be thrown out because they don't want to take the hard cases that, in fact, might be most in need of attention."

REPRESENTATIVE BERKOWITZ turned to paragraphs (8) and (9), the last two paragraphs which he proposed to delete through Amendment 2. Paragraph (8) would allow a determination by the executive director that "the probability of success of the complaint on the merits is low", while paragraph (9) would allow a determination by the executive director that "proceeding to a hearing will not serve the public interest". Regarding paragraph (8), Representative Berkowitz said, "If you believe that everyone deserves their day in court, then you shouldn't be in a position where the court looks at you and says, "We're tossing you out before we get you, because we don't think you're going to prevail. That's prejudging the evidence, and I think that is ... an unfair way for any branch of the justice system to work. We do not prejudge evidence." Regarding paragraph (9), he said the public interest is determined in AS 18.80.200, and [paragraph (9)] is "an overbroad description and gives too much authority." He added that it frankly is an intrusion on the legislative authority that is enshrined in statute.

Number 2124

MR. NORDSTRAND stated that the department thinks that the four provisions [that would be deleted by Amendment 2] give latitude to the executive director to do what the federal Equal Employment Opportunity Commission (EEOC) does. He explained that the EEOC has similar jurisdiction and "remedies available," and it proceeds with cases that "it chooses to believe are the most important, the most egregious, [and the most] significant." He said that, unlike the Human Rights Commission, if the EEOC wants to bring a complaint, it has to "go downtown to the

federal courthouse and file a complaint in federal court and proceed forward, with a few exceptions." He stated, "We're trying to describe discretion here and ... obviously it's ... intended to be an inclusive list." He offered the example of the issue of resources, which he said is a serious issue for the commission. He continued as follows:

The way the thing is set up now - with the substantial evidence test and the low standard for a substantial finding of a discrimination, combined with the fact that there's no process to ... end claims for summary judgment or any other summary proceeding prior to hearing - essentially, if you have the merest smidgeon of evidence of discrimination, you get a hearing. And that has essentially brought the system ... -- they're certainly working more quickly than they have, but year's past it took years to get to a hearing, because of all the cases that were stacked up. And so, we think that the merits (indisc.) is a good standard. I mean, ... any good lawyer would look at a case and say, "Are we going to win, or is this a waste of time? Is there really enough evidence here to win this case?" And if that's not the case, then government resources need not be used to pursue the case. Again, all of these folks will have the same remedy everyone else does to go to the courts, should they choose to, with any other kind of claim. But it's just these specialized discrimination claims that have access to the Human Right Commission. That's a good thing - that should be there - but we ... I think as a policy matter ought to be able to say which cases are the most significant to take to hearing, and which are not. And this gives them that power.

Number 2023

REPRESENTATIVE BERKOWITZ responded that he is troubled by what Mr. Nordstrand said, because the purpose of alternative ways of pursuing justice is to make justice more affordable and available. He said, "If you're saying that, because we don't want to pay for it at the administrative level people now have to shell out money to go to court, what you're doing is you're putting more of a burden on the court system. You're making it harder for individuals to seek regress in a nonconfrontational way ..., and I just reject that." He said "this" would add costs to the court system if done incorrectly and would deprive people of the chance to pursue the justice they think they need.

Number 1999

REPRESENTATIVE HOLM stated, "I think that flies in the face of what the courts ought to be doing, and that is making decisions about frivolous law suits and frivolous circumstances." He asked Mr. Nordstrand to discuss the balance that should exist between accusation and justice when someone has truly been [discriminated against]. He said it seems to him that that's where the balance is and the assumption would be made that an [executive] director would "get the information at hand" to decide whether [a case] should go forward to some causation. He said it's easy to "spout out" and say that the intent is to look for justice, but he pointed out that the accused deserved justice as well. He stated, "I'm trying to find that middle ground and I think I tend to err on the side of having somebody oversee it first, just to make that decision."

MR. NORDSTRAND said the department's view of the system is that it's designed to provide a fair outcome to all of the parties that appear before it. He confirmed that there are lots of cases that sometimes are brought repetitively by the same people who have grievances that they want to play out in the Human Rights Commission "or other forum like this." He said, "Now, that's not to say there aren't lots and lots of very deserving cases that need the commission's support ... [and action]." He clarified, "What we're saying is, if they can focus better their resources and their efforts on those cases, then I think that we will have a better system overall." Regarding the process, he asked the committee to remember that there's a cost associated with taking every case to hearing. The commission doesn't want to do that. The Department of Law represents the commission in cases where the executive director finds no substantial evidence and the case gets appealed. He said, "Well, the superior court - now based upon the decision we've talked about ... - they reverse it and tell the commission, 'Sorry, you've got to go to hearing on this case.'" He clarified that he is talking about cases that did not even make the substantial evidence test which are being required to be heard. He said that's just not a good use of resources and he thinks the commission would agree with that entirely.

REPRESENTATIVE BERKOWITZ asked if the committee could hear from a representative of the commission.

Number 1865

MS. FITZPATRICK said the commission is under tremendous monetary pressure due to a backlog in processing cases, and there are cases that the commission believes should be dismissed. She said [the commission] went from a staff of 22 to a staff of 15, within the last several years, and she estimated that the current backlog is 80 cases - a number that is growing. She noted that the backlog was down to zero a couple of years ago because of additional funding, but now that the funding is gone, the commission is struggling once again to keep up with the caseload.

MS. FITZPATRICK offered an example of a case that might be dismissed under [paragraph (4)]: She said there was a case where an individual was offered by his/her employer all of the relief that he/she would be entitled to at the hearing, but the individual somehow wanted something more. Under those circumstances where the commission views that the individual has received all of the benefits that would make them whole, it believes it has to push its resources on to other cases. Because of the fiscal problems the commission faces, it cannot simply prioritize cases, because then people's cases just languish if they're not top priority. She concluded, "So, we believe that this language would actually benefit the commission."

Number 1765

REPRESENTATIVE SEATON asked if the case to which Ms. Fitzpatrick referred wouldn't have been covered under [paragraph (1), on page 2, lines 27-28, which read as follows]: "(1) the complainant's objection to a proposed conciliation agreement is unreasonable;".

CHAIR WEYHRAUCH announced his intent to hold SB 354, return to SB 231, recess to a call of the chair, and address SB 354 when the committee reconvenes.

MS. FITZPATRICK offered to speak to "staff" [regarding Representative Seaton's question] during the recess.

[SB 354 was heard and held. The motion to adopt Amendment 2 was left pending.]

SB 231-DECREASE TIME TO CLAIM UNCLAIMED PROPERTY

Number 1718

CHAIR WEYHRAUCH announced that the committee would return to CS FOR SENATE BILL NO. 231(FIN), "An Act relating to unclaimed property; and providing for an effective date."

The committee took a brief at-ease [due to technical difficulties].

Number 1673

TOMAS H. BOUTIN, Deputy Commissioner, Office of the Commissioner, Department of Revenue, said SB 231 was "worked on last May."

The committee took a brief at-ease [due to technical difficulties].

MR. BOUTIN stated that SB 231 benefits all Alaskans. He deferred further remarks to Ms. Lewis.

RACHEL LEWIS, Unclaimed Property Section, Treasury Division, Department of Revenue, emphasized that SB 231 is in line with the Revised Uniform Unclaimed Property Act of 1995 ("1995 Act"), which was the commissioner's update of the Uniform Act of 1981. She indicated that Alaska [enacted its Unclaimed Property Act] in 1986. She said every portion of the bill, with the exception of four sections, is "straight from the 1995 Act." Any question regarding the shortening of the dormancy periods, she indicated relates to the 1995 Act. She said she would address the sections of the bill that are not in line with the 1995 Act.

MS. LEWIS directed attention to Section 5, on page 3, which read as follows:

***Sec. 5.** AS 34.45 is amended by adding a new section to read:

Sec. 34.45.175. Certain property distributed in insurance company reorganizations. (a) The following property distributable in the course of a demutualization or related reorganization of an insurance company is considered abandoned two years after the date of demutualization or reorganization as follows:

(1) money that remains unclaimed and the owner has not otherwise communicated with the holder or its agent regarding the property as evidenced by a memorandum or other record on file with the holder or its agent;

(2) stock or other equity interest if

(A) the instruments or statements reflecting the distribution are either mailed to the owner and returned by the post office as undeliverable, or not mailed to the owner because of an address on the books and records of the holder that is known to be incorrect; and

(B) the owner has not otherwise communicated with the holder or its agent regarding the property as evidenced by a memorandum or other record on file with the holder or agent.

(b) Property that is not subject to (a) of this section is reportable as otherwise provided in AS 34.45.110-34.45.780.

MS. LEWIS explained that the 1995 Act did not address this section, because "it's a relatively new area of unclaimed property." She deferred to Mr. Thakar to address questions regarding the industry side of "demutualization."

Number 1574

MR. THAKAR, stated that Prudential Financial supports the addition of Section 5, with regard to demutualization. He noted that there are quite a few insurance companies that were mutual companies that have "demutualized."

The committee took a brief at-ease [due to technical difficulties].

Number 1528

MR. THAKAR explained that the companies that have demutualized have become stock companies. He offered his understanding that 25-26 other states have passed virtually identical legislation. He mentioned that Prudential Financial demutualized in 1991 and there were "known bad addresses." He said, "And so, those are the people that would be covered by this bill and would immediately be issued into the state." He noted that several states had asked if "we" had uncashed checks, why weren't "we" also issuing those, thus there has been an amendment that several states have included that would allow "if there's any uncashed checks from our demutualization, that those two would immediately escheat to the state." He said Prudential Financial supports this because it's consistent with what's being done across the country. He stated his belief that [the legislation] would generate a revenue of approximately \$100,000 to Alaska.

Number 1468

REPRESENTATIVE GRUENBERG noted that the attorney liability protection service (ALP) - his malpractice carrier - has gone through the demutualization. He said Prudential Financial obviously not an Alaska corporation; the assets presumably, in a demutualization, would not be held in Alaska; therefore, he presumed that state of the home office "would be the applicable law in demutualization." He asked if that was correct.

MR. THAKAR offered his understanding that "if we know that our last known address, et cetera, is an Alaskan, than Alaska law would dictate on the escheatment timing." In response to a follow-up question from Representative Gruenberg, he confirmed that the law would apply to the home state of the individual, rather than to the company.

REPRESENTATIVE GRUENBERG asked if one of the upcoming amendments addresses the issue of the uncashed checks.

MR. THAKAR responded that "it was part of the amendment which we all supported in the Senate version, so it would be incorporated in the bill as is, right now."

Number 1379

MS. LEWIS, in response to a follow-up question from Representative Gruenberg, noted that the amendment incorporated by the Senate is located on [page 3, beginning on] line 19, which read as follows:

(1) money that remains unclaimed and the owner has not otherwise communicated with the holder or its agent regarding the property as evidenced by a memorandum or other record on file with the holder or its agent;

REPRESENTATIVE GRUENBERG mentioned the Uniform [Unclaimed Property Act of 1995] and asked if the addition of Section 5 will destroy the uniformity of [Alaska's Unclaimed Property Act].

MS. LEWIS replied that she doesn't think it will affect the uniformity of the Act, because so many states have realized that "they have already added this to their current laws."

REPRESENTATIVE GRUENBERG suggested, "If they're going to revise this Act again, maybe this is a provision they ought to put in the new addition."

Number 1318

DEBORAH BEHR, Assistant Attorney General, Legislation & Regulations Section, Office of the Attorney General, Department Of Law, said she is also a Uniform Law commissioner. She noted that the act was adopted in 1995, and she stated that it's not unusual for "events in society to pass it by." She noted that laws are routinely updated, especially for electronic commerce or new trends in industry. She stated her assumption that "with 28 states going in a particular direction, we'll be looking at it." She continued as follows:

When I look at things being not uniform, I look that they trump or do something different. If the Uniform Act is silent on it, we're extremely comfortable with the changes that are (indisc. - voice trailed off).

Number 1280

MS. LEWIS directed attention to Section 10, [on page 5, lines 20-26], which she said is different from what is in the Uniform Law Commission has in its '95 Act. Section 10 read as follows:

***Sec.10.** AS 34.45.280(f) is repealed and reenacted to read:

(f) The requirements of this section apply to the holder of intangible property with a total aggregate value greater than \$750 that is presumed abandoned under AS 34.45.110 - 34.45.780 during the year preceding June 30 of each year. For purposes of determining total aggregate value under this subsection, the holder shall include all intangible property from prior years that was not reported under AS 34.45.110 - 34.45.780.

MS. LEWIS noted, "Alaska is the only state that has this unique language, and it was put in by the legislators in 1986, because they did not want companies to have too much paperwork to report unclaimed property." She said unclaimed property is an uncashed check. For example, if there is a "Mom and Pop" store in Alaska that wrote a 16-cent check to the U.S. Post Office that didn't get cashed, the language adopted in 1986 would allow the owners

of that store to wait until they had \$750-worth of property before they would be required to report it.

REPRESENTATIVE GRUENBERG stated his assumption that since "this provision" is simply a clarification, it wouldn't "make it not uniform." He asked Ms. Behr if that is correct.

Number 1212

MS. BEHR answered, "We would not have a problem with it. We now are credited with our '85 Act; this makes no real substantive difference in the '85 Act."

MS. LEWIS directed attention to Section 13, [regarding notice and publication of lists of unclaimed property]. She continued as follows:

Our law requires that we publish the names of people every single year in a newspaper. That cost \$30,000 last year. We had 300 claims that were generated from that. The Internet, which costs us nothing, generated 1,600 claims.

MS. LEWIS said [Section 13] asks the department to evaluate the best way to promote unclaimed property, without always having to advertise.

Number 1170

CHAIR WEYHRAUCH expressed his appreciation of the stated providing an analytical basis for "doing ... a common sense thing."

REPRESENTATIVE GRUENBERG asked, "Does this destroy uniformity?"

Number 1142

MS. BEHR responded, "It's one of these where the events of society have ... passed the '95 Act; in '95 the average person didn't have ... [the] access to computers that they do now. And the nice thing about the way this is written, it allows her to evaluate what is the best way to notify somebody"

Number 1125

MS. LEWIS noted that the last section that differs from the Uniform Law Commission's 1995 Act is Section 17, which read as follows:

***Sec.17.** AS 34.45.760 is amended by adding new paragraphs to read:

(18) "gift certificate" means an obligation of a business association arising from a transaction between the business association and a consumer to provide goods or services at a future date; "gift certificate" includes a gift certificate, stored value card, gift card, on-line gift account, or other representation or evidence of the obligation of a business association;

MS. LEWIS indicated that the term "gift certificate" is being expanded because of all the different types of electronic variations of a gift certificate, which are listed in Section 17.

MS. BEHR, in response to a question from Chair Weyhrauch, stated that [Section 17] would not put Alaska out of conformity with the Uniform Act, because it's just a clarification to deal with electronic commerce that wasn't envisioned in 1995.

Number 1088

REPRESENTATIVE GRUENBERG said he likes all of the provisions that have been added that are not in the Uniform Act and recommended that other states add them.

MS. BEHR responded that she would be happy to "formerly send this to them"

Number 1048

REPRESENTATIVE SEATON moved to report CSSB 231(FIN) out of committee with individual recommendations and the accompanying fiscal notes.

REPRESENTATIVE GRUENBERG asked Ms. Lewis if there were any other amendments that she wanted the committee to consider.

[Any response from Ms. Lewis was inaudible.]

CHAIR WEYHRAUCH complimented Ms. Lewis on a "good job."

Number 0999

CHAIR WEYHRAUCH announced that [CSSB 231(FIN)] was reported out of the House State Affairs Standing Committee.

ADJOURNMENT

The House State Affairs Standing Committee was recessed at 10:23 a.m. to a call of the chair. [The meeting was never reconvened.]