

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

March 31, 2003

1:38 p.m.

MEMBERS PRESENT

Senator Ralph Seekins, Chair
Senator Scott Ogan, Vice Chair
Senator Gene Therriault
Senator Johnny Ellis
Senator Hollis French

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 155

"An Act relating to hunting on the same day airborne; and providing for an effective date."

HEARD AND HELD

SENATE BILL NO. 89

"An Act amending the definition of 'lobbyist' in the Regulation of Lobbying Act, and as it applies in the act setting standards of conduct for legislators and legislative employees, to define 'regular' and 'substantial' as those terms describe activities for which a person receives consideration for the purpose of influencing legislative or administrative action."

HEARD AND HELD

SENATE BILL NO. 9

"An Act relating to the evaluation and cleanup of sites where certain controlled substances may have been manufactured or stored; and providing for an effective date."

HEARD AND HELD

CS FOR HOUSE BILL NO. 59(FIN) am

"An Act relating to the evaluation and cleanup of sites where certain controlled substances may have been manufactured or stored; and providing for an effective date."

MOVED CSHB 59(FIN) am OUT OF COMMITTEE

PREVIOUS ACTION

SB 155 - No previous action to record.

SB 89 - See Judiciary minutes dated 3/26/03.

SB - 9 See State Affairs minutes dated 2/11/03 and Judiciary
minutes dated 3/19/03
HB 59 - No previous action to record.

WITNESS REGISTER

Mr. Brian Hove
Aide to the Senate Judiciary Committee
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Presented SB 155

Mr. Joel Bennett
Defenders of Wildlife
15255 Pt. Louisa Rd.
Juneau, AK
POSITION STATEMENT: Opposed to public participation in predator
control programs

Mr. Carl Rosier
Alaska Outdoor Council
8298 Garnet St.
Juneau, AK 99801
POSITION STATEMENT: Supports SB 155 and suggested changes

Mr. Matt Robus
Division of Wildlife Conservation
Department of Fish & Game
PO Box 25526
Juneau, AK 99802-5226
POSITION STATEMENT: ADF&G views SB 155 as a clarification of
current statute rather than a wholesale policy change

Mr. Steve Cleary
Alaska Public Interest Research Group
P.O. Box 101093
Anchorage, AK 99510
POSITION STATEMENT: Opposed to SB 89

Mr. Graham Storey
Nome Chamber of Commerce
PO Box 250
Nome, AK 99762
POSITION STATEMENT: Supports SB 89

Ms. Tammy Kempton
Alaska Public Offices Commission

PO Box 110222

Juneau, AK 99811-0222

POSITION STATEMENT: Answered questions about SB 89

Senator Gretchen Guess

Alaska State Capitol

Juneau, AK 99801-1182

POSITION STATEMENT: Sponsor of SB 9, companion legislation to HB 59.

Mr. Jos Govaars

Staff to Representative Holm

Alaska State Capitol

Juneau, AK 99801-1182

POSITION STATEMENT: Testified for the sponsor of HB 59.

ACTION NARRATIVE

TAPE 03-13, SIDE A

CHAIR RALPH SEEKINS called the Senate Judiciary Standing Committee meeting to order at 1:38 p.m. Senators Therriault, French and Seekins were present. The committee took up SB 155.

SB 155-PREDATOR CONTROL PROGRAMS

MR. BRIAN HOVE, aide to the Senate Judiciary Committee, gave the following explanation of SB 155.

SB 155 alters language within section 16.05.783 of the Alaska statutes relating to the regulation of fish and game. These alterations provide the fish and game board and commissioner with the necessary tools in the management of game populations throughout the state.

The first alteration clarifies legislative intent with respect to airborne predator control programs. The second alteration provides for game population objectives to be taken into consideration in determining whether or not a predator control program should be implemented.

As an example, if the minimum game population objective is met, but the harvest level is not, a management decision - under current law - cannot be made even if it is determined that predators are limiting the game population. The second alteration

allows the board to use prey and game population objectives when making a determination with respect to the use of a predator control program.

Senate Bill 155 makes changes that will allow the fish and game board as well as the commissioner to better manage wildlife by balancing predator and game populations based on the best science available.

SENATOR FRENCH referred to the third paragraph of the sponsor statement, and asked, "Now wouldn't predators always limit a game population?"

MR. HOVE said the intent is to not only allow the board and commissioner to consider predator populations, but to also consider game populations. He understands current law to read that only predator populations are taken into consideration.

CHAIR SEEKINS described the process as follows: The Board of Game meets and takes testimony on objectives and populations. The board gets information primarily from the professional staff of the Alaska Department of Fish and Game (ADF&G). The board then decides whether or not it wants a predator control program in the game management plan. If it decides affirmatively, the board sends a written request to the commissioner for certification of the testimony given by ADF&G biologists. The certification can only be based on prey populations, not predator populations or objectives. He explained that SB 155 would allow the board to use all of its objectives rather than just one.

SENATOR THERRIAULT asked whether the board would be precluded from establishing a predator control program under the current statute if a game population maintains itself at the minimum level.

CHAIR SEEKINS said the board could put a program in place, but the program cannot be activated without the letter from the commissioner, which must be based strictly on the prey populations and objectives.

SENATOR THERRIAULT asked if that would be precluded if the prey populations were down, but not below the objectives.

CHAIR SEEKINS said it would, as he understands the current statute.

SENATOR THERRIAULT asked if anything could be done before an actual population crash if a caribou population was found to be very low.

CHAIR SEEKINS replied:

Until they come back, it's brought up for consideration for that particular district - until they come back and say yes, there is a problem, and it's based strictly on the prey population, they can't do anything. If you saw an imbalance - let's say that you had a population that exceeded the objective - let's say you had 25,000 moose and your objective was 20,000, and you all of a sudden saw growth in the wolf population, and you could see it starting to decline but you still had not gone below the objective for moose population, you could not take - instigate that predator control program until it did. And that's basically how I look at the current statute.... So, it gives them the ability to be able to see trends, to look at them scientifically, and to be able to make management decisions based on those trends from that scientific information.

CHAIR SEEKINS noted that Senator Ogan arrived.

SENATOR FRENCH said this issue has been the source of a wrestling match between the people and the Legislature over the past four years. In 1996, a citizen initiative banned same-day land and shoot wolf hunting. In 2000, the voters did it again because the Legislature overrode the initiative. He asked Chair Seekins where this legislation fits into the struggle.

CHAIR SEEKINS said he believes this is a totally different subject. SB 155 enables the board to make a management decision based on all of the scientific information about all of the populations. He asked where that conflicts with the initiative. He maintained that the actions being contemplated are already allowed by law. SB 155 will only allow the state to make the decision based on predator populations as well as prey populations.

SENATOR FRENCH asked whether the board it could authorize same-day hunting of wolves based on the large wolf population if it saw large populations of wolves and caribou simultaneously.

[SENATOR ELLIS arrived.]

CHAIR SEEKINS said that is conceivable if they had full knowledge that a spiked wolf population would affect the caribou population. He said it depends on objectives. If the wolf population does not exceed the objective that the Board of Game has set for that district, it would not have a predator control program.

SENATOR OGAN pointed out the Legislature has the constitutional authority and the responsibility to manage public trust assets, which are fish and game. With regard to Senator French's comment about a wrestling match between the people and the Legislature over this issue, he said the people keep electing a Legislature that understands its responsibility to manage the state's resources. While hunting in Unit 13 ten years ago, he saw a herd of about 25 moose without one calf and knew that moose population was in trouble. SB 155 would allow the board to be proactive rather than reactive and would allow cultural continuity for those people who have depended on hunting for generations.

CHAIR SEEKINS took public testimony.

MR. JOEL BENNETT, representing Defenders of Wildlife, told members SB 155 creates a fundamental change in the issue of whether or not the public can be involved in same-day airborne wolf hunting as part of a predator control program. The present statute originated in 1996 in an initiative. In 1999, Senator Pete Kelly's SB 74 amended the original statute and removed a fundamental aspect, which was that a biological emergency had to take place before a program could be initiated. Senator Kelly didn't want to counter the fundamental sense of the initiative and didn't want to reauthorize land and shoot wolf hunting. He wanted to preserve the fact that this was something more properly done by ADF&G professional staff. However, in 2000, he introduced SB 267, which provided for same-day airborne hunting of wolves by individuals or by agents and in 2000, a referendum effort was waged.

MR. BENNETT read the first sentence from the referendum booklet: "This referendum was referred to the voters for approval or rejection of a law that allows hunters to fly into an area where the Alaska Game Board has established a wolf control program and on the same day land and shoot a wolf."

MR. BENNETT commented:

This is what the voters in 2000 took away again. So now, I'm hearing that this was legal all along, but we don't think so. We think it clearly wasn't. We think that the legislative record is plain, that the plain language of the statute prohibits it. We think that this bill specifically reauthorizes it. In the past three years, there has been absolute rhetoric from the Board of Game, the Department of Fish and Game or any other people that would suggest that we had this tool or that the state had this tool in its toolbox all along. This tool is being reauthorized by SB 155 and HB 208.

Why did the voters reject the very thing that SB 155 is trying to reinstitute? Because land and shoot in the hands of the public has had a tainted history and has had many abuses in the past. A large and substantial majority of the public feels that it is not properly part of a game management program to reauthorize. It is inefficient to use your own aircraft to land or to shoot from the air. It results in wounding and an inability to retrieve the animals. There are accountability problems that have long been recognized.

But mainly I think...the reason that the public voted against this was that the department already had the tool - the authority to do this - to conduct the predator control program using aerial means. That is plainly authorized under this statute, 16.05.783. The department can engage in a predator control program using helicopters, using their own employees, with or without [indisc.]. They can use fixed wing. I don't think the Alaska public would object to that if the program was justified. But what they do object to is bringing the public back into it, and for that reason we strongly urge rejection of this bill insofar as the same-day land and shoot by agents or by the public has been reauthorized.

As to the second part of the bill, which would change the ground rules in a transfer, conducting a program in an intensive management area, we believe that the underpinning of the whole predator control system is that you address a lower declining prey population - or another way to say that is you have to address a problem before a controversial - and I don't think

anyone would disagree about that - predator control program is instituted. Basically, if there's a population of prey animals that's relatively healthy, why would you institute a predator control program that would take state resources out of the hands of trappers, hunters and other wildlife users. The state would be taking animals away from those public interest groups, those user groups.

I think as long as the system stays with the ground rule that it's a lower declining prey population that has to be in effect, and there's justification that can be made, but to do it on the basis that there may be a problem in the future seems to be misguided.

SENATOR THERRIAULT asked Mr. Bennett if he is unopposed to a predator control program as long as ADF&G personnel take the predators.

MR. BENNETT said that is correct. Since 1996 it's been plain that the public doesn't want to prohibit an ADF&G predator control program as long as it is justified.

SENATOR THERRIAULT referred to Section 1(a) of the existing statute that says, "involving shooting from the air," and said it doesn't specifically address same-day airborne land and shoot. He asked if the Defenders of Wildlife believes ADF&G has the latitude to do same-day airborne hunting and to land and shoot with its own personnel.

MR. BENNETT said the problem is this statute has been rewritten with some of the legislation he referenced earlier and it contains some terms that could be clarified. If the intent were to clarify that ADF&G personnel may shoot from the air or use same-day airborne land and shoot then the Defenders of Wildlife would have no objection. However, it is clear that the first sentence addresses the public. The second sentence starts to address what the department can do. Adding same-day airborne to the second sentence, providing it had a clear reference to ADF&G employees, would not be a problem.

SENATOR THERRIAULT asked if Mr. Bennett believes it is a correct statement to say that the department's ability to shoot from the air or land and shoot was not taken away by the initiatives.

MR. BENNETT said he agrees that the department's ability to shoot from the air was never taken away. He said he would argue

that if shooting from the air were allowed, why would land and shoot not be allowed. He said he can't imagine many cases in which the department would want to land and shoot and create the additional risk if it had the authority to shoot from the air. He said it would clarify the statute to say the department could do both things.

SENATOR THERRIAULT asked Mr. Bennett to reread the sentence from the cover of the initiative.

MR. BENNETT said he read it earlier because there seems to be a lapse of memory about what the actual referendum did. He said the suggestion seems to be that the referendum was unnecessary because the department had the authority anyway. He read:

This referendum would refer to the voters for approval or rejection a law that allows hunters to fly into an area where the Alaska Game Board has established a wolf control program and, on the same day, land and shoot a wolf.

He said nothing could be clearer and that is what the voters rejected. The voters also rejected a clear reference to agents. He questioned how anyone could interpret the existing law as permitting the public to land and shoot if the voters rejected shooting by agents.

SENATOR THERRIAULT asked what year that initiative was voted on.

MR. BENNETT said 2000.

SENATOR THERRIAULT said at that time he questioned the man that was involved in the ad campaign on the vote. There was an ad with airplane engine noise and at the end, the screen turned black and a gunshot sounded. The plane never landed in the ad so it implied the wolf was being shot from the air. The man said he was involved in the making of the commercial and would supply Senator Therriault with a copy, but when he followed up, the man refused to give him a copy. He said he believes the reason the man refused was because the commercial was so misleading. He said he thinks most people rejected that proposal because they thought it would allow unfettered shooting from an airborne plane.

SENATOR THERRIAULT said that legislators are constitutionally mandated to manage the resource. He asked Mr. Bennett if he believes the state should be precluded from trying to manage a

caribou or moose population that is very low but maintaining, when it can be scientifically proven that a very high predator population is the cause.

MR. BENNETT replied:

Well, I think it goes back to the fact that we all recognize the limited resources of the state, that these programs are expensive to administer and monitor and [are] controversial. It seems to many people that they should be used only in circumstances where there's a clear problem. Again, back to the first initiative, the language is a biological emergency and that gave people heartache because some people felt it wasn't defined adequately enough. But the sense of it was that there had to be something more than just a perceived problem that could come about or a borderline situation.

I honestly think that we have enough places in the state where there really are problems that to go and try to expand the whole system to allow for predator control way beyond that is just unnecessary and not a good public policy. I think it has to be tied to a problem. If there's a problem then take some steps to correct the problem. But there are lots of factors that can influence prey and predator populations, weather and other things that happen all year long and just because you have a relatively high number of bears in an area doesn't necessarily mean a year later it's going to mean a serious decline for a moose population that goes below that line you were talking about. Other factors could switch it in a matter of two or three months so that the population might start increasing.

And plus, I just don't think - predator control, many people have said, has to have a [indisc.] of public acceptability. It's hard enough to get the public to accept a predator control program where there are serious problems. To try to do it where there are not serious problems I can't imagine getting that level of public acceptability.

SENATOR OGAN pointed out that according to the initiative sections of the Constitution, the people can put an issue on the ballot by initiative, it can be amended at any time and it can

be repealed by the Legislature within two years of the effective date. He asked Mr. Bennett why that was included in the Constitution.

MR. BENNETT said it was included as a check and balance. It was to guard against an imbalance of laws passed by the people that could never be modified or repealed. He said it was part of the mix to provide a give and take. He pointed out that a referendum has different rules than an initiative. Some people say the referendum that passed in 2000 had a two-year life when it did not, because a law could have been passed a month after the referendum passed to change it back.

2:10 p.m.

SENATOR OGAN said, according to the Constitution, a law could have been passed that amended it, but the amendment could not be a repealer. He said he believes that provision was added during the Constitutional Convention because of the recognition that the population should be able to bring an issue to the voters, but that the Legislature might have different or better information. He said initiatives are driven by popular and often emotional sentiment. He believes the constitutional framers recognized that the Legislature had the ultimate authority to manage the resources and other issues in the state. He believes the Legislature is well within its bounds to reconsider a repealer and legislators will have to answer to their constituents at the next election.

CHAIR SEEKINS called Mr. Rosier to testify.

MR. CARL ROSIER, testifying on behalf of the Alaska Outdoor Council (AOC), told members he was the commissioner of ADF&G under the Hickel Administration and he worked for ADF&G for nearly 30 years. He made the following statement:

The Outdoor Council is a statewide association of about 40 outdoor recreation groups with a total membership that exceeds 10,000 Alaskans. The organization promotes good conservation of our fish and wildlife resources and their habitat, protection of the public access, and fair allocation of resources among Alaskan users of those resources. The council supports the provisions of SB 155, and its companion bill, HB 208. These bills deal with clarification of airborne or same-day airborne as a tool for predator control in problem areas identified by the Board of

Game that require controlled measures for recovery of low or declining prey populations.

You as a Legislature have the benefit of supporting one of the finest boards of game that I've personally observed in many years. The newly appointed members are solid, long term Alaskans that have been managers of the resource, carried out businesses dependent on the resource, and know and appreciate the benefits to all Alaskans from well-managed game herds. It's unfortunate that this new board has been somewhat hamstrung by direction that helicopter control will not be approved by the third floor. Helicopters are, by far, the most efficient, humane and economic method for conduct of a controlled program. I would say also that we are focusing here on a controlled program, not a hunting action in which fair chase becomes a consideration.

The areas the current board has identified for control efforts for game management are Unit 13, 16B, and 19D. All three areas have experienced tremendous drops of over 70 percent in moose densities during the last ten years. Units 13 and 19D have had board plans gathering dust on the shelf for several years. These plans were never permitted to be implemented by the previous administration with the resultant continued decline in the moose population. Action at this time is critical to just maintain the populations at current levels. There will be many years before the moose herds in these areas will even come close to producing a level that will meet even minimal human use of the herds.

MR. ROSIER gave the following three suggestions to strengthen the legislation and better protect the individuals that may choose to participate in a board approved control program.

- on line 8, page 1, insert "in identified game management units" following the word "shooting"
- on page 1, line 10, insert "harvest management objectives adopted" following "based on"
- create a new section (a)(3) that reads, "Prior to taking a wolf, wolverine, fox or lynx, either airborne or same-day airborne, a person must obtain a permit issued by the commissioner."

MR. ROSIER said that a policy of intensive management over a broad area of the state is necessary. Passage of SB 155 and ensuing actions will get the state back on that path. It is a small step in the right direction, but this is not a short-term program. Predator control as a tool of game management must be a long-term policy to maintain the healthy populations that existed in the past.

CHAIR SEEKINS asked Mr. Rosier what happened to the game management and predator management plans that he said have been in effect in some districts for quite some time.

MR. ROSIER said it is his understanding that the governor's office stepped in and precluded the department from going ahead with the implementation of the plan.

CHAIR SEEKINS said the current statute says the game board must go through the process and then ask for a letter from the commissioner. He asked whether the commissioner didn't answer the board's request, which made them consider that to be a pocket veto or whether the problem was funding.

MR. ROSIER said his feeling is that the lack of response was considered to be a pocket veto by the commissioner's office, which was directed by the third floor.

CHAIR SEEKINS asked if the current commissioner could pocket veto a predator control program by not writing that letter.

MR. ROSIER said that is correct.

SENATOR FRENCH asked when anyone authorized airborne hunting of wolves in Alaska last.

MR. ROSIER said he did not know, but ADF&G felt strongly that it had that authority in the early 1990s when he was commissioner. However, it didn't happen then and it hasn't happened since. He surmised that the last time a program was authorized was in the 1980s.

SENATOR THERRIAULT referred to Section 1(a) and asked Mr. Rosier if the existing language "a predator control program involving shooting from the air" would have covered same-day airborne as well as taking from the air.

MR. ROSIER said it would.

SENATOR ELLIS asked Mr. Rosier when the Governor precluded the use of helicopters for predator control.

MR. ROSIER said it happened since the new board met in Anchorage this month.

SENATOR ELLIS asked if the Governor did that by executive order.

MR. ROSIER said his understanding is that the helicopters were taken off of the table before the board took action.

SENATOR ELLIS noted that Mr. Rosier stated that helicopters are the most efficient means and asked why the Governor would do such a thing and whether it was for public relations reasons.

MR. ROSIER said he didn't know what would motivate the Governor to do that in view of the promises he made during his campaign, but it bothers him.

CHAIR SEEKINS asked if ADF&G currently uses helicopters for darting, tagging, and scientific research.

MR. ROSIER said it does.

CHAIR SEEKINS asked if that is a humane process.

MR. ROSIER replied, "Absolutely."

CHAIR SEEKINS asked, "So, it wouldn't be any more harassment to a wolf or a predator that you were using a helicopter to shoot it from the air than it would be to dart it?"

MR. ROSIER replied:

I don't believe so, not from a helicopter, Mr. Chairman. I think that - again, it's the efficiency factor there in terms of making sure that you kill the animal, there's no suffering on the part of the animal and so forth. And once you get in there with a helicopter you've got a stable platform that you can in fact really do controlled work with.

I think that's the key to this whole thing, Mr. Chairman, is that we're not talking about recreational taking. We're talking about a job that needs to be done in terms of game management in which the predator-prey relationship is in fact modified to, in

fact, produce additional prey animals. Ultimately out of that action you in fact end up with a better program for all users of the state, not just a handful, but all of the users because you've got the increased populations in most cases, and we're not talking about maximizing. But, if you've got more game populations out there the viewers are going to be a lot happier, the camera people are going to be a lot happier, and so is the hunter, so...."

CHAIR SEEKINS asked Mr. Rosier if airborne hunting is the most humane way to euthanize a predator.

MR. ROSIER said it is.

CHAIR SEEKINS called Matt Robus to testify.

MR. MATT ROBUS, Acting Director of the Division of Wildlife Conservation, ADF&G, told members that AS 16.05.783 is a statute that prohibits same-day airborne hunting or trapping that involves shooting during the same-day airborne. At the same time, the first part of that statute allows a predator control program to be set up. That's a distinction that is often lost. The first is a recreational pursuit by a hunter or a trapper. The second is a state program meant to reduce the predator population. The statute contains two basic pathways: the first is under paragraph (a), covered by SB 155. This bill makes two specific changes to the first part of the statute, which controls the same-day airborne taking of wolves, wolverine, fox, or lynx. Both of these changes would address ambiguities that are present in the current language describing a predator control program authorized under this law. ADF&G sees this as more of a clarification of the existing statute than a wholesale change in its effect.

MR. ROBUS said the first change, on lines 7 and 8 on page 1, would make the language in paragraph (a) the same as that which occurs in subparagraph (a)(2) on lines 8 and 9 on page 2. Paragraph (a) allows for airborne shooting as part of a predator control program; subparagraph (a)(2) implies that a broader array of methods is contemplated by the statute, that is, both aerial shooting and other forms of same-day airborne take, such as land and shoot hunting. ADF&G believes that conforming the language in both places in the bill will clarify that predator control programs can employ any of these methods.

MR. ROBUS explained that the second change in the bill would modify the phrase, "prey population objectives" on line 10 to a more general statement. For each prey population defined under the intensive management law - moose, caribou, or deer - populations considered important for high levels of human consumption, the Board of Game and ADF&G have been tasked with establishing both a population and harvest objective for each population.

TAPE 03-13, SIDE B

MR. ROBUS said for each population the objectives are linked, but differ in their relationship to each other depending on factors of each herd's particular situation, such as productivity. The Board of Game would normally request the commissioner to make a finding under paragraph (a) when an identified intensive management population falls below its population objective, and predation is implicated as a primary cause of decline or of limiting recovery. However, in some cases, a prey population could meet its population objective but not its harvest objective. In those cases, predation control measures may be an appropriate tool to change the situation to allow a herd to meet its harvest objective. Under AS 16.05.783, a strict reading of the existing phrase, "prey population objectives" could be interpreted to prevent the commissioner from making a finding as outlined in paragraph (a) in a case where a herd met the population objective but failed to meet the harvest objective. Adopting the proposed language would clarify that the commissioner could make a finding based on either or both of those objectives established in regulation.

MR. ROBUS said this statute is complicated and confusing because of its history. However, ADF&G's understanding is that however the existing language came about, the present law does allow non-department people to participate in predator control programs established by the state. The second pathway in the law, paragraph (b), exempts ADF&G personnel from the procedures contained in paragraph (a). If ADF&G personnel are exempt from the procedures in the second part of the law, it raises the question of the need for the first part of the law. ADF&G worked with the Department of Law and their understanding is that if a predation control program would benefit from the use of non-department staff, then the first part of the law that contains the complicated procedures would have to be followed to get there. The referendum removed agents in two places, but only from the second pathway, which had the effect of making the second pathway pertain only to ADF&G personnel in conducting

predator control actions. He opined the changes in SB 155 are more of a "tweak" than a wholesale change.

He referenced the pocket veto discussion and pointed out that under the second part of this statute, there is no finding required by the ADF&G commissioner. He said that ADF&G works for the executive branch and there are times when the Legislature makes a strong request but the department carries out the instructions from the executive branch. In the area of predator control, it repeatedly puts ADF&G in a difficult spot.

SENATOR THERRIAULT asked Mr. Robus if he was referring to Section 1(a)(1) and Section 1(a)(2) of SB 155.

MR. ROBUS replied, "...I'm saying that paragraph (a) under 16.05.783 would be the first pathway and down below that there is a"

CHAIR SEEKINS clarified that in the statute itself, paragraph (b) says "This section does not apply to an employee of the department who, as part of a game management program, is authorized to shoot or assist...."

SENATOR THERRIAULT asked if all involved agree that the original statutory language in paragraph (a) that read, "... involving shooting..." meant land and shoot or taking from the air and that is the vague language that needs clarification.

MR. ROBUS said that is correct.

CHAIR SEEKINS asked Mr. Robus if his assertion is that, as far as ADF&G is concerned, no predator control programs were implemented because of political reasons, not biological reasons.

MR. ROBUS said there was no one consistent reason. Sometimes the decision was political, in others ADF&G did not have the biological evidence deemed necessary. In the early 1990s, ADF&G conducted a ground based predator control program in Fairbanks Unit 20A that had all of the disadvantages of a ground based predator control system.

CHAIR SEEKINS asked Mr. Robus if he is aware of any situation in which ADF&G provided biological facts to the Board of Game that were incorrect.

MR. ROBUS said ADF&G always does the best it can to give good information to the Board of Game. One problem with wildlife management is that ADF&G often has just partial data because data collection is expensive. He noted there was one survey conducted in Unit 19D East in the late 1990s that happened to come in with a very low moose population result. When ADF&G flew a more expensive and extensive survey the following year, it found the previous estimate was incorrect.

CHAIR SEEKINS asked if one could assume the information transmitted to the board is the best available scientific information.

MR. ROBUS said it is the best that ADF&G has.

SENATOR ELLIS asked Mr. Robus for his professional opinion regarding Governor Murkowski's decision to preclude the use of helicopters in any kind of future control program and whether the decision is based on politics or biology.

MR. ROBUS said he has not been told that is the policy for all future programs. He was told that in the existing situation in Unit 19D East near McGrath, where a management experiment is underway to reduce bear and wolf predation on moose calves, the Governor's Office passed the word that helicopters were not to be a method employed at this time. He said he believes the board was told the same thing. The board presented a finding to the commissioner during that meeting that provided a menu of technical approaches and criteria by which they should be judged. It is now up to ADF&G to determine whether it can find a combination of techniques that would meet the criteria for humaneness, effectiveness, efficiency and affordability.

2:35 p.m.

SENATOR FRENCH said he is hearing two things. First, that this bill is a "tweak" to clear up a gray area. The other is that this bill will allow a preemptive strike against predators and will broaden the number of conditions under which predator control programs are allowed. He asked Mr. Robus if, in his opinion, this would make it easier to hunt wolves from the air or to land and shoot.

MR. ROBUS said no action has ever been taken under this law since it took effect. ADF&G regards SB 155 as conforming the language in two different parts of the bill to reduce confusion. He heard the Board of Game discuss the second change at its

March meeting. That is to take out the phrase "prey population" because it ran up against the situation where a moose herd was barely meeting the population objective and not meeting the harvest objective. The board asked the commissioner to make a finding to move forward with a predator control program. ADF&G responded that because it was meeting the population objective, it felt it could not move forward with a finding. The board then discussed the idea of using two objectives for management of the herd. Under existing law only one is measured as the basis for a finding.

SENATOR FRENCH asked if it would make it more likely that same-day airborne hunting would be allowed if the prey population number were raised.

MR. ROBUS said that is one result, but the commissioner has the discretion to make or not make that finding. ADF&G's history shows that the department is not careless in asking for predator control programs. It can't afford to do many and with the controversy involved, it will make sure there is a real problem.

CHAIR SEEKINS called a three-minute at-ease.

Upon reconvening the meeting, Chair Seekins said that the committee would take up SB 155 at its next meeting.

SB 89-LOBBYING/ LEGISLATIVE ETHICS

CHAIR SEEKINS reminded members that the committee would continue taking public testimony on SB 89 today.

MR. STEVE CLEARY, Executive Director, Alaska Public Interest Research Group (AkPIRG), expressed opposition to SB 89. They believe it would gut the lobbying regulations and don't feel there are any problems with the current lobbying act. The extensive discussion on a similar House bill shows confusion about what lobbying is. It's erroneous to say that registration limits on free speech he said.

AkPIRG's biggest concern with SB 89 is that it will exempt many people who are lobbyists from having to register as lobbyists. This will allow lobbyists to host fundraisers and donate to political candidates who are outside of their legislative districts.

MR. CLEARY said he reviewed the 2003 lobbyist directory and found 3 volunteer lobbyists, 16 representational lobbyists, 65

professional lobbyists, and 96 employee lobbyists. It is the employee lobbyists that will be exempted from regulation as lobbyists, which will encourage more companies to employ in-house lobbyists than to hire professional lobbyists. He said he understands that small businesses need to be represented, but he doesn't think the current regulations prohibit them from doing that.

He repeated that AkPIRG's main concern is that SB 89 will allow employee lobbyists to back up their lobbying with cash and fundraisers.

SENATOR THERRIAULT commented that Mr. Cleary said SB 89 guts the lobbyist statutes, yet he acknowledged that the paid professional lobbyists are still covered by another section of the bill and will not be impacted. In addition, Mr. Cleary indicated the real problem is that a lobbyist, even one employed by a company who lobbies more than four hours, would be able to contribute to a campaign. He noted that contributions would have to be fully disclosed and capped at \$500. He asked Mr. Cleary how it would harm the process if a mom and pop gift shop owner spent more than four hours testifying on a piece of legislation and talking to legislators and then wanted to contribute to a Senate campaign and disclosed that. He said he spoke with APOC staff last week that said it was always a bit nonsensical that such a person is precluded from donating to a campaign since disclosure would be required.

MR. CLEARY said he believes the four hour limit is a good one and eliminating the ban on donating outside of one's election district is of concern because they believe that influences the process. That is the reason that bit of campaign finance reform was instituted and has been upheld by the courts. Donations are capped at \$500 and must be disclosed, but whether a person donates outside of his or her district is of importance because it gives that lobbyist too much power.

SENATOR THERRIAULT said to be a lobbyist requires four hours and one minute and the lobbyist then loses the right to participate in the political process, even if the person is a small mom and pop operator because the language in this bill does not impact contract lobbyists. He again asked where the real danger is of a small business owner wielding tremendous influence in the legislative process, especially if that small business owner must disclose his or her contributions.

MR. CLEARY replied the danger is not from small businesses wielding more power. To talk to your own legislator is participating in the political process, but to talk to legislators in an attempt to change something for your business is lobbying so AkPIRG is going to try to keep them separate. In 1996 the vote was to put a limit on fundraising and donations.

He said his greater concern with SB 89 is the employee lobbyist. A company with enough financial resources to pay an employee to go to Juneau will have an advantage because smaller businesses in the same field will not have the same access to their legislators. If that lobbyist can fundraise and donate, that company will get more of an ear from legislators.

SENATOR THERRIault noted that last week APOC said that four hours is unreasonable and suggested 16 hours. In addition, he told members that if a business hires an employee to engage in lobbying, there is a good chance that employee will have to register.

MR. CLEARY said his concern is that a company might hire two or three lobbyists to split up the work so they could sidestep the intent. He said he doesn't see any problem with the law right now because it provides full disclosure of who is trying to influence lawmakers. To raise the bar will not inspire more small businesses to lobby. Their time is more valuable than the \$100 registration fee. This bill would open it up for medium and larger businesses to be able to back up their lobbying with cash and AkPIRG believes that is very harmful.

CHAIR SEEKINS asked Mr. Cleary if AkPIRG wants to take away the average person's ability to talk to their legislator and any legislator they thought was friendly toward their cause.

MR. CLEARY said it depends. Talking to your legislator is a civic duty, but if a person is talking to 60 legislators about a business matter, that is lobbying. If a person is going to lobby, that person should register and should not be able to back up lobbying efforts with fundraising and donations.

CHAIR SEEKINS asked Mr. Cleary if he limits his conversation on topics of interest to AkPIRG to his own legislator.

MR. CLEARY said he does not.

CHAIR SEEKINS asked if he is a registered lobbyist.

MR. CLEARY said he is not because he hasn't reached the number of hours for which he would be required to register.

CHAIR SEEKINS asked what the number is.

MR. CLEARY said currently that number is four hours of any direct lobbying.

CHAIR SEEKINS asked if he limits his lobbying activities to appearances before public sessions of the legislature.

MR. CLEARY said he does, but he has also spent about 30 minutes making phone calls to legislators.

CHAIR SEEKINS asked Mr. Cleary how close he is to spending four hours.

MR. CLEARY said he would have to look at his records and respond at a later date.

CHAIR SEEKINS asked who funds AkPIRG.

MR. CLEARY said they are funded from individual donations and grant money from foundations.

CHAIR SEEKINS asked Mr. Cleary if he is lobbying while giving testimony.

MR. CLEARY said that is his understanding.

CHAIR SEEKINS said he wants to hear from anyone that wants to talk to him on an issue. He doesn't believe he is just supposed to represent one district. As a legislator, he should be able to listen to people from all areas of the state. His intent is to make sure that the real lobbyists are not let out of the net, but that other people who want to influence legislators aren't made into lawbreakers.

SENATOR FRENCH said he believes the current exemption on the lobbying law excludes Mr. Cleary's activities here today.

CHAIR SEEKINS agreed with Senator French. He said the problem is confusion and his intent is to not make criminals out of people. He then called Graham Storey to testify.

MR. GRAHAM STOREY, Nome Chamber of Commerce, stated support for SB 89 for several reasons. First, Alaska has the most

restrictive time requirements of any state. California uses one third of the time spent in direct communications as its yardstick. The Nome area has one Representative and one Senator and, although they are very capable individuals, they do not sit on every committee and do not have time to closely examine every bill that might affect Nome. For example, the Senate Labor and Commerce Committee is considering a bill that will have a substantial impact on the Nome Chamber of Commerce, but the Senator for Nome is not on that committee. Therefore, he would like to be able to talk to the Labor and Commerce Committee members without having to count that time toward making him a professional lobbyist.

He advised that during testimony in the House it came out that direct testimony before a committee is indeed a lobbying activity and APOC was present and agreed that that is the case. During a previous Senate hearing, it was conjectured that testifying before a committee might not be lobbying. This alone shows there is confusion at APOC about what is and is not lobbying and needs to be clarified in law. Mr. Storey said the opponents of this bill seem to be in favor of punishing the smaller and medium sized businesses such as those that make up the Nome Chamber of Commerce in favor of large businesses that can afford to have professional lobbyists.

MS. TAMMY KEMPTON, the Juneau branch administrator of the Alaska Public Offices Commission (APOC) and the regulator of lobbyists, told members that the question of whether testifying before a committee is considered to be lobbying depends. AS 24.45.161 says this chapter does not apply:

...to an individual who lobbies without payment of compensation or other consideration ... and who limits lobbying activities to appearances before public sessions of the legislature, its committees or subcommittees or to public hearings or other public proceedings of state agencies.

Therefore, if a person is not getting paid to sit before a committee and testify, that person is not subject to the law. If that person is an employee who is testifying, once that person hits four hours, that person needs to register.

CHAIR SEEKINS asked if Mr. Cleary's time spent testifying before the committee would count if he spent time lobbying his own legislator.

MS. KEMPTON said it depends on whom else he talked to, if he talks to his own legislator that is specifically exempt.

CHAIR SEEKINS asked where that is located in statute.

MS. KEMPTON said it is in the same section, paragraph (b). It reads:

Nor does anything in this chapter prevent members of the legislature from discussing with constituents the advisability of passing legislation then pending before or to be presented to the legislature.

That has always been interpreted to mean a constituent talking to his or her legislator is not subject to the lobbying law.

SENATOR OGAN said the Key Campaign gives a presentation to the Legislature every year. He suspects someone pays his or her expenses, but he hasn't confirmed that. Other groups, such as school districts, do the same thing and their students spend more than four hours in the Capitol. He asked if they are considered to be lobbyists if they get reimbursed for reasonable travel and living expenses.

MS. KEMPTON said yes, someone whose travel and living expenses are reimbursed is supposed to register as a representational lobbyist. There is no fee and all of the other prohibitions, such as contributions, don't apply.

SENATOR OGAN asked if APOC issues cards for representational lobbyists.

MS. KEMPTON said APOC doesn't issue cards, but they do list those names on their website. For the most part, APOC has never gone out and tracked down representational lobbyists. Groups, such as the Key Campaign, are not being compensated. They are only reimbursed for expenses.

SENATOR THERRIAULT asked if a company employee that testifies before a committee on legislation would have to count that time as lobbying hours.

MS. KEMPTON replied the employee would have to count that time and that's why APOC believes the four hour limit should be raised to 16 hours.

SENATOR THERRIAULT asked if Mr. Cleary's testimony on behalf of AkPIRG would count toward lobbying hours.

MS. KEMPTON said it should and Mr. Cleary called APOC with that question.

SENATOR THERRIAULT asked if APOC still contends the word "regular" should be struck from the statute.

MS. KEMPTON replied:

I have a copy of what the commission marked up and I believe they provided you with a copy. I believe they decided 'regular' should be left in the statute, but that in the explanation where you have it divided out between small [i] regular, small [ii] substantial, that should be changed so that you're only defining - and defining together - substantial or regular. The reason for this, one thing, is because when you're defining regular in that lower case i, it's only relating it to legislative action but lobbying is also executive branch. And, so, if you just do this, now you have a regulation that's in effect that would remain in effect. It would be four hours now for administrative action and it would be 60 hours for legislative action and I think that's probably a real problem. So what the commissioner proposed is that substantial and regular receive the same definition, which would be 16 hours in a 30-day period for direct communication with a public official or legislative employee.

SENATOR THERRIAULT asked if APOC believes those two words need further refinement in the statute and that the existing four hour limitation in regulation is too restrictive.

MS. KEMPTON said APOC prefers 16 hours because they believe that four hours is too restrictive. APOC would be happy to change the number in regulation if that is easier than placing it in statute.

SENATOR THERRIAULT asked if APOC would portray those changes as gutting the law. He wanted to make it clear that a watchdog group is aware of the issue. Although part can be changed through regulation and the other through statutory changes, making those changes will not strip the oversight of lobbyists.

MS. KEMPTON asked members to note the other change proposed by APOC.

CHAIR SEEKINS interjected to say he had not yet distributed that change to the members. He said he would copy the written suggestions he received from Mr. Wood and distribute them to members and then the committee would take them up as possible amendments at the next meeting. SB 89 was held in committee.

At-ease taken from 3:16 to 3:21 p.m.

TAPE 03-14, SIDE A

SB 9-CLEANUP OF ILLEGAL DRUG SITES
CSHB 59(FIN)am-CLEANUP OF ILLEGAL DRUG SITES

SENATOR GRETCHEN GUESS, sponsor of SB 9, told members that SB 9 was heard and held in the Senate Judiciary Committee last week. The committee substitute (CS) to SB 9, with the exception of one change proposed by Senator Cowdery in the Senate State Affairs Committee, is identical to CSHB 59(FIN)am that passed the House.

CHAIR SEEKINS noted that Senator Guess and Representative Holm have done a tremendous amount of work on both SB 9 and HB 59 and he is impressed with the measure.

SENATOR THERRIAULT asked how draperies and furnishings that have soaked up chemicals would be certified as clean or whether the contents of the dwelling would have to be disposed of.

MR. JOS GOVAARS, staff to Representative Holm, said that would depend upon the size of the methamphetamine lab. If the size of the lab was significant and chemicals were spilled on the furnishings, they would have to be disposed of properly.

SENATOR GUESS said she expects the regulations for clean up would address the furnishings.

SENATOR THERRIAULT noted that the walls would have to be stripped of paint because of the fumes from the operation so he would assume the fumes would permeate the furnishings also.

MR. GOVAARS agreed.

SENATOR FRENCH moved CSHB 59(FIN)am from committee with individual recommendations.

SENATOR OGAN objected and stated the bill is extensive and no one has testified.

CHAIR SEEKINS noted that public testimony on the bill was closed earlier.

SENATOR ELLIS said his understanding is that Senator Guess answered all of the questions about her bill as well as those that pertain to Representative Holm's bill and that testimony was given.

CHAIR SEEKINS said if there are additional questions on the bill, he would put it on the top of the "bills previously heard" list of bills to be heard on Wednesday.

SENATOR OGAN thanked Chair Seekins.

SENATOR GUESS stated that public testimony was taken on SB 9 and that no one else contacted her office with a desire to testify.

SENATOR OGAN removed his objection.

CHAIR SEEKINS asked Senator French to repeat his motion.

SENATOR FRENCH made a motion to move CSHB 59(FIN)am from committee with individual recommendations.

CHAIR SEEKINS noted that without objection, the motion carried. With no further business to come before the committee, Chair Seekins adjourned the meeting at 3:27 p.m.