

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

April 4, 2003

1:38 p.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

Senator Hollis French

COMMITTEE CALENDAR

SENATE BILL NO. 97

"An Act relating to public interest litigants and to attorney fees; and amending Rule 82, Alaska Rules of Civil Procedure."

SCHEDULED BUT NOT HEARD

CS FOR HOUSE BILL NO. 82(L&C)

"An Act making certain activity related to commercial electronic mail unlawful and an unfair method of competition or an unfair or deceptive act or practice under the Act enumerating unfair trade practices and consumer protections."

MOVED CSHB 82(L&C) OUT OF COMMITTEE

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. 155

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

HEARD AND HELD

PREVIOUS ACTION

HB 82 - See Labor and Commerce minutes dated 3/13/03.
SB 89 - See Judiciary minutes dated 3/26/03 and 3/31/03.

SB 155 - See Judiciary minutes dated 3/31/03.

WITNESS REGISTER

Representative Kevin Meyer
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Sponsor of HB 82.

Mr. Ed Sniffen, Assistant Attorney General
Department of Law
1031 W 4th Ave., Ste 200
Anchorage AK 99510
POSITION STATEMENT: Commented on HB 82.

Ms. Tammy Kempton
Alaska Public Offices Commission
2221 E. Northern Lights, Room 128
Anchorage, Alaska
POSITION STATEMENT: Commented on SB 89.

Mr. Joe Mathis, Sr. Operations Manager
NANA Development Corporation, Subsidiary
NANA Regional Corporation
Ocean view Dr. #A
Anchorage AK 99505
POSITION STATEMENT: Supported SB 89

Mr. Dick Cattanach, Executive Director
Associated General Contractors of Alaska
8004 Schoon
Anchorage AK 99518
POSITION STATEMENT: Commented on SB 89.

Ms. Brooke Miles, Executive Director
Alaska Public Offices Commission
2221 E. Northern Lights, Room 128
Anchorage AK
POSITION STATEMENT: Commented on SB 89.

Ms. Pam LaBolle, President
Alaska State Chamber of Commerce
217 Second Street
Juneau, Alaska 99801
POSITION STATEMENT: Supported CSSB 89(JUD).

Mr. Matt Robus, Acting Director

Division of Wildlife Conservation
Department of Fish & Game
PO Box 25526
Juneau, AK 99802-5226
POSITION STATEMENT: Commented on SB 155.

Mr. Tom Scarborough
1676 Taroka Dr.
Fairbanks AK
POSITION STATEMENT: Supported SB 155.

Mr. Rod Arno
PO Box 871410
Wasilla AK 99687
POSITION STATEMENT: Supported SB 155.

ACTION NARRATIVE

TAPE 03-16, SIDE A

CHAIR RALPH SEEKINS called the Senate Judiciary Standing Committee meeting to order at 1:38 p.m. Present were Senators Therriault, Ogan and Chair Seekins. Senator Ellis arrived shortly thereafter.

HB 82-LIMITATIONS ON COMMERCIAL ELECTRONIC MAIL

CHAIR SEEKINS announced HB 82 to be up for consideration.

REPRESENTATIVE KEVIN MEYER, sponsor of HB 82, said this legislation prohibits individuals from sending unsolicited e-mails that contain sexually explicit material without having "ADV:ADLT" in the subject heading. At least nine other states have the same requirement and twenty others have pending legislation. This will allow anyone to check e-mail headings so that objectionable messages could be deleted, which will aid in setting up filter systems on computers.

SENATOR THERRIAULT asked what ADV meant.

REPRESENTATIVE MEYER said it means advertisement.

SENATOR OGAN asked what the penalty is.

MR. ED SNIFFEN, Assistant Attorney General, answered that the fine for violating any law in this section of statute is \$5,000

per violation and each e-mail will be a separate violation. Department of Law doesn't have the authority to just send out a letter so they would have to file a suit and have the court determine the amount of the fine from \$2,000 to \$5,000.

SENATOR OGAN asked if this is a civil matter, not a crime.

MR. SNIFFEN replied that is correct.

SENATOR OGAN asked why they didn't make it a crime.

MR. SNIFFEN responded they could.

REPRESENTATIVE MEYER said they will certainly consider it from the criminal side.

SENATOR THERRIault pointed out that would change the fiscal note.

REPRESENTATIVE MEYER agreed and said that was why they chose this route for now, because it doesn't have any cost to the state.

CHAIR SEEKINS asked if this would pertain to e-mail that is sent from the State of Alaska and asked how e-mail is regulated that is sent from other places.

REPRESENTATIVE MEYER explained that this law will pertain to anything that originates within the United States, but if it originates outside the country, there would be no jurisdiction.

CHAIR SEEKINS asked how a person in another state will know of restrictions in Alaska.

REPRESENTATIVE MEYER explained that anyone in the commercial business of selling things like this has an obligation to know what the laws of the state are. Alaska's law will be similar to a lot of other states so there should be no excuse for ignorance.

CHAIR SEEKINS asked how they would know that a particular e-mail address came from Alaska.

REPRESENTATIVE MEYER said most carriers in Alaska have the word "Alaska" in their addresses. The burden will be on the business to know the law.

SENATOR ELLIS arrived at 1:49 p.m.

SENATOR OGAN said language in the bill pertains only to e-mail mailed from a computer located in this state to an address the sender knows is held by a resident of this state. He asked if there was a definition of "resident of this state."

MR. SNIFFEN replied they know that a group of e-mail addresses such as gcialaska.net and ptialaska.net are from Alaska. Addresses such as Hotmail and Yahoo are more generic and there is no way a sender could identify where those originated. This legislation likely will not reach those addresses. The bill states if you are sending these types of e-mails from an Alaskan computer, you must put this header in the message. He didn't know that there were that many pornographic sites in Alaska, but the more important part of the bill is if someone else outside of Alaska is sending pornographic e-mail to someone inside Alaska, this information must be in the header.

SENATOR ELLIS said he supports the bill and assumes that a definition in statute of "sexually explicit" would not preclude showing bare breasts in an e-mail about breast-feeding and cancer.

REPRESENTATIVE MEYER said they are not trying to ban subjects like that. A definition of sexually explicit material is in AS 11.41.455. Breast-feeding is not listed, neither is bare breast.

SENATOR OGAN added that sexual material in another law provides, "be on, be viewed, purchased, rented, leased or held by an individual who is 18 years or older."

SENATOR ELLIS asked whether breast-feeding sites would need to put an adult disclaimer on their e-mails.

REPRESENTATIVE MEYER replied he didn't think so, because this bill only pertains to commercial e-mails.

SENATOR ELLIS said that the commercial aspect probably deals with his concern, but he wants members to be mindful that many non-profits and non-commercial interests sell breast pumps and other things on their websites to generate funds for their organizations. He added, "There is a blurring on the Internet now between commercial and non-commercial enterprises."

SENATOR THERRIault asked for clarification of the trigger mechanism on the fine.

REPRESENTATIVE MEYER explained that the individual could take action directly or go through the AG's office.

MR. SNIFFEN added if an individual were to pursue a claim because the header was missing, damages would be limited to \$500 or three times the amount of actual proven damages. The \$5,000 penalty would come into play if the state brought an enforcement action against a violator. They could get restitution for the consumers at \$500 per individual and ask for \$5,000 per violation for penalties to the state.

SENATOR OGAN asked if one person called with a complaint, whether the AG's office could trace the number of e-mails that were sent to people in Alaska.

MR. SNIFFEN said the search techniques are getting better in terms of locating the origin of e-mails and the department has fairly broad authority under the state's consumer protection act to issue subpoenas for information and take statements from witnesses.

SENATOR OGAN asked if this action could be a strict violation instead of a misdemeanor with a set fine. He was concerned about how much energy it would take for the layperson to pursue the issue on his or her own.

MR. SNIFFEN said he thought the legislation pertained more to the state's enforcement effort than a private individual's. As for making it a criminal penalty, it is already a class B felony to violate the Telephone Solicitation Act. The fact that he's unaware of anyone who has gone to jail for that in the last three years indicates that the penalty is quite a deterrent.

3:05 p.m.

SENATOR ELLIS said a constituent mentioned that offensive e-mails seemed to increase when she signed up for a blocking system. Another constituent mentioned that in the beginning, they had to actually go to the cookie that would trigger offensive types of advertisements.

Although there seems to be a legal requirement that all e-mails have a link to click to unsubscribe from the mailing list, constituents tell him that clicking that link just confirms that your e-mail address is valid. He asked Representative Meyer if

he is aware of that or considered any legal penalty for trick links.

REPRESENTATIVE MEYER replied he is aware, and when the bill first started out it was broader. He said he's on everyone's list - weight loss, hair loss, Viagra, everything - and he wants to get rid of it all, but he ran into freedom of speech problems. Basically, you can get the same information via e-mail that you can in your mailbox and you can't hold e-mail to a higher standard. He focused on the age-sensitive material, because you can't receive it in the regular mail or go to the bookstore and buy it.

SENATOR ELLIS said he and Representative Gara ran into the same concerns and asked if they could work together on the issue. He said there might be a compelling case in the future on a commercial enterprise for consumer protection. The phony link to unsubscribe is of interest and he thought if it isn't handled at the federal level, the states will take the lead.

REPRESENTATIVE MEYER said he would work with them.

SENATOR THERRIault made a motion to pass CSHB 82(L&C) out of committee with individual recommendations and attached fiscal notes. There was no objection and it was so ordered.

SB 89-LOBBYING/ LEGISLATIVE ETHICS

CHAIR SEEKINS announced SB 89 to be up for consideration.

SENATOR OGAN motioned to adopt CSSB 89(JUD), 23LS0855\H as the working document.

SENATOR ELLIS objected for purposes of discussion.

CHAIR SEEKINS explained it was an attempt to shorten the definitions to make them clearer and differentiate between two different types of lobbyists, A and B.

SENATOR OGAN asked who suggested 40 hours.

CHAIR SEEKINS said it was his suggestion and it was a compromise.

SENATOR OGAN asked if there were any meetings on this legislation outside of the committee with other folks interested in the bill.

CHAIR SEEKINS replied yes, he met with the entire APOC commission and other people expressed their opinions to him.

SENATOR ELLIS pointed out that you could conduct your business in the Baranof Hotel and that wouldn't be considered "in the building."

SENATOR OGAN asserted that he spent less than four hours at the Baranof this year exclusive of attending some receptions.

SENATOR ELLIS said he wanted their comments on the record and withdrew his objection. Committee substitute CSSB 89(JUD) was adopted as the working document.

3:25 p.m.

MS. TAMMY KEMPTON, Juneau Branch Administrator, Alaska Public Offices Commission, said she is also the regulator of lobbyists. She said she would cover a brief history of the lobbying law in Alaska, focusing on the issue of employees who lobby for their employers and how that's been defined over the years. She also wanted to share research on how other states address the definition. She told members:

The first lobbying law was passed in 1913 and there are two types of lobbyist, but neither type was called a lobbyist. There were legislative counsel or legislative agents and both the lobbyist and the employer were required to register. That requirement was expressed as 'whoever employs a person to act as counsel or agent to promote, advocate or oppose the passage or defeat by the legislature of any bill, resolution or legislative measure or the executive approval or veto thereof or to act in any manner as legislative counsel or agent in connection with any legislation.'

So it was a fairly cumbersome explanation. legislation lobbyists appeared before committees to make arguments and examine witnesses and they acted and advised on specific legislation. Agent lobbyists were employed for any purpose in connection with any legislation. The registration fee in those days was \$5 and that money went to the District Historical Library Fund.

Public and municipal officials and employees were exempt in 1913 as were people invited to appear before the Legislature or its committees and those exemptions are still in effect in the current law.

Also, in 1913 was a provision stating that the lobbying law was not to be construed to prevent any legislator from discussing with their constituents the advisability of any legislation. At that time, the provision was unique in the United States. As late as 1960, it still didn't appear in federal or in any other state's lobbying law. This provision is retained in our current law.

There were no definitions in 1913. Those didn't get added until 1976. In 1949, they amended to qualify the requirement of who had to register as a lobbyist and what they added was whoever being a person being a corporation 'engages or assigned any person already regularly employed by said person, either with or without additional compensation' and then they went on and talked about retaining somebody that was an outside person. That requirement - that any employee who was assigned to lobby must register as a lobbyist, continued until the Act was rewritten in 1976.

Also, in '49 they added provisions that no person can lobby before registering and that compensation cannot be dependent on passage or defeat of legislation. Those last two provisions are also still in the law.

In 1976, the entire law was repealed and rewritten and it was the 1976 law that added the qualifier, substantial or regular, which [is] the subject of the bill before us.

MS. KEMPTON said other states have a variety of requirements for an employee whose job duties do not specifically include lobbying to register as a lobbyist. In Hawaii, employees must register if they lobby in excess of five hours in a month or spend more than \$750 lobbying in that month. In Connecticut, an employee doesn't have to register if lobbying is limited to no more than five hours. Wisconsin requires registration if an employee lobbies for more than four days in a six-month period. Washington State defines nine different types of lobbyists. Employees are exempt if they limit their lobbying to no more

than four days or parts thereof during any three-month period and their expenditures do not exceed \$25.

In Oregon, lobbying activity is defined to specifically include attempting to obtain the good will of legislative officials. Employees are exempt if they lobby less than 24 hours and spend less than \$100 during any calendar quarter. In Arizona and Idaho, employees have to register if they receive income or reimbursement of \$250 or more attributable to lobbying in a calendar quarter. Idaho, Vermont and Virginia all require employees to register if they receive or expend a yearly aggregate of \$500 in compensation or expenditures for lobbying. Montana exempts employees whose reimbursable expenses do not exceed \$1,000 per year, although there is current legislation to raise that limit to \$2,500.

In West Virginia, the exemption is a little different. The exemption is for employees who limit their activities to attending group social functions and make no expenditures in connection with lobbying.

Kentucky's laws are very different. Employees have to register if they lobby on a substantial basis. Substantial basis is defined as contacts which are intended to influence a decision that involve one or more disbursements of state funds in an amount of at least \$5,000 a year.

MS. KEMPTON related that prior to introduction of SB 89, the commission was looking at increasing the number of hours in the regulatory definition of substantial or regular. They consider 16 hours in a 30-day period to be a reasonable definition. The commission's other concern is with the definition of (B) that says, "A person who represents one's self as engaging in the influencing of legislative or administrative action as a business occupation or profession." The concern is with the definition of a lobbyist as "a person who represents one's self." No professional lobbyist represents himself or herself as a lobbyist.

CHAIR SEEKINS interrupted to say he thought she was misinterpreting that definition. Anyone engaged in that profession is advertising that he or she is a professional lobbyist.

MS. KEMPTON replied that she understood that, but she was trying to explain that most professional lobbyists do not call themselves lobbyists; they call themselves consultants and they

call their business consulting. They do more for their clients than just lobby.

CHAIR SEEKINS interrupted to ask if there was a definition in regulation for influencing legislative or administrative action that would clarify that.

MS. KEMPTON replied there is a definition that could possibly clarify that. Because consultants do other things like monitoring legislation, strategizing, etc., they would fall under "A" unless "B" is also rewritten.

TAPE 03-16, SIDE B

MR. JOE MATHIS, Senior Operations Officer, NANA Corporation, supported SB 89. He said he communicates with legislators to ensure that his interests and the interests of Northwest Alaska citizens and businesses are protected. He said he finds the current APOC requirement to register as a lobbyist if you spend four hours in a 30 day period communicating with a public official to be unusually stringent and incorrect. In addition to the time limit, APOC chose to broadly interpret lobbying activities to include attending a reception attended by a legislator.

He said that AS 24.25.171 says a person must register as a lobbyist if a substantial or regular portion of activities for which the person receives compensation is for the purpose of influencing legislative or administrative actions. He said there is no way four hours in a 30 day period could represent a substantial or regular portion of the activities for which he is paid and he's not a lobbyist. Many businesses in Alaska can't afford to hire a full-time lobbyist, and even if his company could, he said he is often the best person to tell how an action might affect NANA Development Corporation.

MR. MATHIS said he doesn't believe it is appropriate public policy to create onerous requirements that do nothing to protect the public's interest, but he firmly believes that people who derive their livelihood from lobbying activities should be registered as lobbyists. He isn't sure the 80 hours in SB 89 is the right amount of time and noted that he also supports HB 106 on the same issue.

MR. MATHIS stated he was going to testify next as the owner of the Montana Creek Campground and a volunteer on the United Way Board, the American Red Cross, Alaska Support Industry Alliance,

Arctic Power Board, Ocean View Community Council, Alaska Campground Owners Association and a volunteer for the Prince William Sound response team. All of those activities, with the exception of the Montana Creek Campground, are volunteer activities and take him to Juneau many times a year.

CHAIR SEEKINS called an at-ease from 2:35 - 2:37 p.m. He came back on the record and announced that APOC said four hours is too restrictive. He said this kind of volunteer activity, where his company is paying him as part of the community service and gets some benefit, is in a gray area. Strict interpretation of the regulations could count that time toward the four hours, which is why they are trying to expand the definition.

MR. DICK CATTANACH, Executive Director, Associated General Contractors of Alaska (AGC), said one of the cornerstones of democracy is citizen participation and each year AGC flies members to Juneau to meet with legislators. It is a two-day event with a reception in the evening and there is face-to-face contact with legislators for 10 - 12 hours. That would make all the people that traveled to Juneau this year in violation of the law. He is certain it is not the intent to make Alaskan citizens into criminals.

CHAIR SEEKINS said they are currently considering a definition of 40 hours in any calendar month. He asked if Mr. Cattanach if he thought that was a reasonable number.

MR. CATTANACH replied it is acceptable 90% of the time, but there might be someone who comes down from AGC in early February and then comes down again with the Chamber in mid-February and, all of a sudden, they're bumping up against that limit. He thought the original bill is aimed at someone who is promoting certain legislation. He opined there may be problems with a strict interpretation of 40 hours.

CHAIR SEEKINS asked if language that says face-to-face representation would make it clearer.

MR. CATTANACH said that would be much better. He noted, "I wouldn't have any trouble with the 20 hours at that point."

MS. BROOKE MILES, Director, Alaska Public Offices Commission, said she was available to answer questions.

SENATOR ELLIS noted that a company named Agrium wanted the state to contribute \$11 million to its coffers to support its business

this year. He asked whether Agrium executives registered as lobbyists when they sought support for legislation by Representative Chenault or did they come with charitable organizations to talk about charities and their business.

MS. MILES deferred to Ms. Kempton who was handling the registrations and had the most up-to-date information.

SENATOR OGAN advised that Agrium's registered lobbyist, a hired consulting firm, visited him and he spent a few minutes with one of the executives.

SENATOR ELLIS asked if he knew whether the executives had registered.

MS. KEMPTON responded that Lisa Parker, Executive Director for Agrium, registers every year and is usually Agrium's sole lobbyist, but this year the company also hired Patten Boggs.

CHAIR SEEKINS asked what kind of a report a lobbyist would have to provide if one spoke to him.

MS. KEMPTON replied lobbyists don't have to do that. His staff might keep records, but they are not required to report meetings.

CHAIR SEEKINS asked if it is true that there is no requirement for him as a legislator or a lobbyist to report to anyone who he talks to about anything.

MS. KEMPTON replied there is no requirement for him to report his meetings to APOC.

CHAIR SEEKINS asked how the law serves notice to the public that Agrium is trying to get an \$11 million contract.

MS. KEMPTON explained that the employer reports any additional monies spent on lobbying activities on the employer report that is not reported on the registered lobbyist report on schedule B. If the employer sent other executives to the Legislature, the employer would have to report when they came, who came, who they met with and what it cost.

CHAIR SEEKINS asked if it is true that the lobbyist is not required to report that.

MS. KEMPTON replied that is true and it's also true on the federal level.

CHAIR SEEKINS said the best way to notify people who legislators talked to is to put it on their websites.

MS. KEMPTON agreed.

CHAIR SEEKINS asked if that would be better than what is done now.

MS. KEMPTON replied it depends on what you think the public wants to know. In 1976, the Legislature felt the public wanted to know how much is spent on lobbying and on which subjects, including bill numbers.

CHAIR SEEKINS asked what if a lobbyist is trying to get a bill introduced.

MS. KEMPTON explained that would fall under the broad subject category. Federal law does not require a lobbyist to report who he met with either.

SENATOR THERRIAULT commented that the \$100 fee and the paperwork are pretty minimal, but he questioned the real purpose of the other restrictions on the person's activities. If the public has full disclosure of the money a person gave to someone's campaign, it's already capped at between \$100-\$500 and disclosed. For instance, a volunteer from United Way has a limited ability to participate in the political process just like every other Alaskan does. That is more onerous than the \$100 to him.

SENATOR ELLIS said that the \$100-\$500 contribution isn't the big fish; it's that lobbyists can't hold fundraisers for candidates.

SENATOR THERRIAULT added that they can't give a contribution of any size.

CHAIR SEEKINS noted that the rest of the lobbyist's family could give a fundraiser or contribute.

MS. KEMPTON commented that the prohibition on lobbyists giving to candidates outside of their district was part of the citizen's initiative in 1974 that rewrote the campaign disclosure. It was not part of the lobbying law.

MS. PAM LABOLLE, President, Alaska State Chamber of Commerce, said she supports CSSB 89(JUD) because it creates a more reasonable threshold for establishing who is a professional lobbyist and it clarifies the definition of "communicate directly."

2:55 p.m.

CHAIR SEEKINS said there are some suggestions to further clarify "communicate directly," "influencing legislative or administrative action" and what a lobbyist means.

SENATOR THERRIAULT asked for APOC's position on a person being able to participate in campaigns.

MS. MILES responded that was discussed at the commission's meeting in Juneau last week. All five commission members approved removing from the campaign disclosure law in AS 15.13, the prohibition of a lobbyist giving a lawful contribution to any candidate of her or his choice

SENATOR THERRIAULT asked if they would be changing the law from a Cadillac to a Chevrolet if they adopted that change.

MS. MILES said the Commissioner doesn't believe so.

CHAIR SEEKINS asked Ms. Miles to forward the Commission's recommendations to the committee and put the bill aside for future action.

SB 155-PREDATOR CONTROL PROGRAMS

CHAIR SEEKINS announced SB 155 to be up for consideration and said the committee substitute clarifies how the Board of Game can authorize airborne shooting of predators and adds that the board shall establish predator reduction objectives and limits; methods and means to be employed; and who is authorized to participate.

SENATOR OGAN asked why wolf, fox or lynx was dropped.

CHAIR SEEKINS responded that is an oversight and could be corrected.

SENATOR THERRIAULT motioned to adopt CSSB 155(JUD)\H, 4/4/03 as the working document. There was no objection.

MR. MATT ROBUS, Acting Director, Division of Wildlife Conservation, Alaska Department of Fish and Game (ADF&G), urged the committee to consider referencing objectives established under the intensive management law, in 5 AAC 92.108, which was deleted. He pointed out that it's important to have those objectives for the beginning of something as important and controversial as a predator control program. The objectives are very rigorous.

MR. ROBUS referred to page 1, lines 11-13 and advised that the department would oppose reducing the role of the Commissioner in making the decision to go forward with a predation control program. He said that provision allowed the Commissioner to make a finding in the case in game management unit 19D East at McGrath.

CHAIR SEEKINS asked why he thought it was important for the Commissioner to give a written finding to what the biologists have already testified to.

MR. ROBUS replied the biologists can certainly establish where a particular prey population sits with respect to the different objectives, but in the end, it's the administrator of that department and the administration in general that needs to decide whether to commit the funds and resources to carry out a program.

CHAIR SEEKINS asked if the finding letter would also give the Commissioner the opportunity to override the Board of Game by "pocket-vetoing" it.

MR. ROBUS replied that is true; the Commissioner has the discretion to follow through with a recommendation from the Board of Game.

CHAIR SEEKINS said the board makes decisions based on testimony from ADF&G and asked why the Commissioner should still have the right to veto the program.

MR. ROBUS replied it is his understanding that the Commissioner, as the head of the department, has to be the person to make the decision as to whether a program is going to go or not. Language on page 2 (e) creates a problem, but having the board establish objectives for such a program is appropriate. Recently, in McGrath, the board gave the administration a list of methods from which to choose and he believes it would be the executive's decision as to how to proceed.

CHAIR SEEKINS said Mr. Robus was saying in effect that the executive should be able to override the appointed Board of Game on methods, means, limits, etc. by simply not writing a letter.

MR. ROBUS responded he is only saying that it is the Commissioner of the Department of Fish and Game who should accept the recommendation from the board, assess all the factors, and then make a determination as to what his or her department is going to proceed to do.

CHAIR SEEKINS noted the Governor said department employees and assets were not to be used in the McGrath area to provide wolf control this year and that the local people have to do it. He didn't think there was language forcing the department to actually fund or execute the program.

MR. ROBUS replied that his understanding is that Title 16 is in the department's jurisdiction.

CHAIR SEEKINS said, "On how to expend your dollars, correct?"

MR. ROBUS replied, "Correct, but also how to mount game management programs."

CHAIR SEEKINS asked if that wasn't the prerogative of the Board of Game.

MR. ROBUS said he understands that the Board of Game has the prerogative of establishing regulations for the management of fish and game.

SENATOR OGAN asked if he was familiar with art. VIII, sec. 4 of the Constitution that requires management on a sustained yield basis that is subject to preference amongst beneficial uses.

MR. ROBUS replied that he is familiar with that.

SENATOR OGAN said he understands that the Legislature has the constitutional responsibility to manage the public trust of fish and game and they delegate that responsibility to the Board of Game. The department provides information to and carries out the board's policies.

MR. ROBUS said that is correct.

SENATOR OGAN asked why the department feels it should have veto power over policy setting that the Legislature delegates to the Board of Game.

MR. ROBUS replied he is saying that the Commissioner needs to have the ability to choose between all the different things that have to be done across the state and, after a quick reading of the CS, it seems like an automatic pipeline into a predator control program. The department might not be able to deal with everything that goes through such an automatic process. The Commissioner needs to be able to direct how the department will conduct its work.

CHAIR SEEKINS asked if that isn't how the department has essentially stopped all predator control in the state of Alaska.

MR. ROBUS submitted that it wasn't necessarily the department, but there has been a lot of frustration from different quarters.

CHAIR SEEKINS said the instructions came from on high, but they effectively blocked the recommendations of the Board of Game to institute one.

SENATOR OGAN said he thought the issue at hand was the veto power in current statute. He asked whether the Legislature is within its right if it wants to fund helicopters for predator control and delegate the authority to do that.

MR. ROBUS responded that he thought it was within their ability to say that.

SENATOR THERRIAULT asked if there is a problem with deleting wolverine, fox and lynx on page 1, because they don't bring down any big game animals.

MR. ROBUS replied he is correct and the animal they are talking about in predator control programs is the wolf. He didn't know why the other species were included in the first place.

SENATOR THERRIAULT asked if he referenced AS 16.05.255(g) on page 1, line 14 to keep it in the statute.

MR. ROBUS replied yes, "That is the portion of the intensive management law that requires the board to establish harvest and population objectives for identified prey populations."

TAPE 03-17, SIDE A

3:17 p.m.

SENATOR THERRIAULT asked if his suggestion could be achieved by inserting the bracketed language on line 13 after "board."

MR. ROBUS said he thought that would work.

SENATOR THERRIAULT said according to a legal drafter, the last initiative that passed said all same day airborne had been outlawed, but that is not the way the statute works.

MR. ROBUS replied that is their interpretation.

Current statute does not prohibit participation by the public in an aerial or same-day airborne-based predator control program. It bans same-day airborne hunting, but it appears...the first section in this statute allows the public to participate in an approved predation control program. The second part of the statute allows the department without going through all the procedures of the request from the board, the finding by the Commissioner, to go ahead and do a predation control program.

SENATOR THERRIAULT said he has received e-mails charging that we are stripping the will of the people, but clearly the people didn't prohibit that when they amended the law in 2000.

MR. ROBUS replied:

My understanding of what the referendum did in 2000 was to strip away the words "and agents" in two places in the second part of the statute. Up to that point, there was a way for the department to associate people with our operation as agents and go ahead and conduct a predator control program without going through the hurdles represented in the first part of the law. The referendum took those words away so that the second pathway, the least restricted pathway, is available only to the department.

SENATOR OGAN said he has been told more than once that biologists are not allowed to publicly express their professional opinion on predator control. He asked if that is true or false.

MR. ROBUS replied:

To the best of my recollection and knowledge, I don't remember any formal, any gag order. I think what often happens in these situations is we've got professional wildlife biologists that are trained in manipulating populations to produce objectives and at the same time, we're members of an organization that works under policies set by the people up the chain of command. There is sometimes significant tension between those things. I think that on any given year or month there may be biologists who have their opinions on biological situations that may be somewhat at odds with policies, but that's been happening through every administration. I've been through four or five administrations.

[END OF TAPE - 03-17, SIDE B blank]

TAPE 03-18, SIDE A

SENATOR OGAN said his point is that a number of times the Legislature tried to make the administration carry out the policy of the Legislature, but the administration always seemed to have the ability to end-run it. If there is a gag order from above, they are not going to be able to manage on a strictly biological basis. He suggested language to address that.

MR. ROBUS responded:

As long as I'm involved at headquarters and as far as I know, we have always allowed and encouraged our professional staff to give their professional opinion to the Board of Game. We do not give doctored information and we do not tell people they can't say things that they believe are facts in the case.

MR. TOM SCARBOROUGH, Fairbanks resident, said he supports CSSB 155 and it incorporates most of his suggestions. He said the Governor and department had not done what the Board of Game wanted with wolf control. He said: "It appears to me that the Board of Game is an extended arm of the Legislature and carries out the Legislature's trust responsibilities."

MR. SCARBOROUGH asserted the legislation clarifies the issue by clearly stating that it is the Board of Game's decision to fund it. He noted two Alaska Supreme Court decisions in 1976 and 1983

along those lines. He asserted that the system was manipulated by the past and current ADF&G staff to prevent any predator control. He remarked:

This resulted in a finding by Commissioner Duffy that predator population objectives have been met [in 19D] and thus no wolf control is needed. This is at direct odds with hype coming from ADF&G on low moose populations in 19D East...The population objectives are one moose per square mile. Pre-year-2000, that was three moose per square mile....

He didn't find anything in statute that gives the Governor the authority to dictate methods and means over which the Board of Game has full authority. He suggested that language on page 2, lines 19-20, "airborne or same day aerial shooting", is redundant. The board is given that authority in section 1(a).

MR. ROD ARNO, Wasilla resident, said:

...After nine years of having intensive management legislation, I have yet to see one wolf controlled. Clearly, the problem here is with the Commissioner. It's not with the department or with the Legislature...

He said, "I think this substitute is a band-aid, but if it will get it done, if it will get one wolf controlled before the summer tourist season, I'll be thankful."

He thought the tourist boycott threat is a scam and supported the addition of section 2, even though it is redundant. He noted that the referendum from SB 267 only lost by 20,000 votes.

SENATOR THERRIAULT referred to how the A and B sections work together and asked if Mr. Robus didn't say that the less restrictive route was maintained for department personnel.

MR. ROBUS responded that was his understanding of existing statute and he didn't think the CS took that away.

SENATOR THERRIAULT said the A section says you can't take airborne, "However, the board may authorize a predator control program involving shooting from the air."

It doesn't say for department personnel only. He asked if they could contract it out or make it available to members of the

general public to participate in a predator control program spoken of in the A section.

MR. ROBUS replied:

That's what I'm meaning by the first of the two pathways. That's where the Board of Game can establish a predator control program that includes more than just the department and if the Commissioner makes a finding under the current statute that predation is a significant factor involved in the decline or low-level of the herd and that aerial methods are appropriate to change that, then that program can proceed with public people involved in some manner.

SENATOR THERRIault said he thought Mr. Robus indicated that it is only for department personnel.

CHAIR SEEKINS remarked only in the B section and said:

"...it never took any alternative away from the ADF&G to be able to do predator control, because all the department had to do was give a letter to the Board of Game certifying the findings and they could have used agents...employees...private individuals, based on the decision of the Board of Game at that time. Is that not correct?

MR. ROBUS responded in regard to 19D East and the request from the board:

...recognizing at that time that department personnel might not be includable in the program, they asked the Commissioner to make a finding under the first part of the statute to certify the three things that the statute requires - predation being important and that aerial methods would be appropriate, etc. And the Commissioner declined at that time on the basis of the fact that that population objective for that moose herd had been lowered as part of a compromise at a time when our moose survey information was unfortunately predicting lower numbers than were actually there.

CHAIR SEEKINS said if they could be having a predator control program right now without the letter from the Commissioner if the proposed CS were in effect.

MR. ROBUS replied yes, the CS would put them in that mode, but, "The original bill, if it allowed them to consider harvest objectives, would allow the Commissioner to make a finding to go ahead with the program there, also."

CHAIR SEEKINS said he was not pointing a finger at this particular Commissioner at this time. He held SB 155 in committee and adjourned the meeting at approximately 3:40 p.m.