

**ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE**

April 16, 2003

1:00 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. 93

"An Act relating to limitations on actions to quiet title to, eject a person from, or recover real property or the possession of it; and providing for an effective date."

HEARD AND HELD

SENATE BILL NO. 64

"An Act requiring certain consumer reporting agencies to provide individuals with certain information without charge."

MOVED CSSB 64(JUD) OUT OF COMMITTEE

SENATE BILL NO. 155

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

MOVED CSSB 155(JUD) OUT OF COMMITTEE

Confirmation Hearings:

Commission on Judicial Conduct - Richard Burton;
Select Committee on Legislative Ethics - Shirley McCoy;
CONFIRMATIONS ADVANCED

PREVIOUS ACTION

SB 93 - See Labor and Commerce minutes dated 3/11/03 and 4/1/03.
SB 64 - See Labor and Commerce minutes dated 2/20/03 and 4/3/03.
SB 155 - See Judiciary minutes dated 3/31/03 and 4/4/03.

WITNESS REGISTER

Mr. Richard Burton
Ketchikan, AK 99901

POSITION STATEMENT: Answered questions pertaining to his confirmation

Ms. Shirley McCoy
Juneau, AK 99801

POSITION STATEMENT: Answered questions pertaining to her confirmation

Ms. Amy Seitz
Staff to Senator Wagoner
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Presented SB 93 for the sponsor

Mr. Tom Scarborough
1676 Taroka Dr.
Fairbanks, AK 99701

POSITION STATEMENT: Opposed to SB 93

Mr. Henry Crow
No address provided

POSITION STATEMENT: Opposed to SB 93

Mr. Jim Butler
Baldwin & Butler
125 N Willow
Kenai, AK 99611

POSITION STATEMENT: Supports Version V of SB 93

Mr. Jon Tillinghast
Simpson, Tillinghast, Sorenson & Longenbaugh
One Sealaska Plaza
Juneau, AK 99801

POSITION STATEMENT: Answered questions about SB 93

Mr. Steve Cleary
Alaska Public Interest Research Group
PO Box 101093
Anchorage, AK 99510

POSITION STATEMENT: Supports SB 64

Mr. Sam Trivett
No address provided

POSITION STATEMENT: Supports SB 64

Ms. Marie Darlin
Capital City Task Force - AARP
Juneau, AK 99801

POSITION STATEMENT: Supports SB 64

Mr. Matt Robus
Division of Wildlife Conservation
Department of Fish & Game
PO Box 25526
Juneau, AK 99802-5226

POSITION STATEMENT: Answered questions about SB 155

ACTION NARRATIVE

TAPE 03-24, SIDE A

CHAIR RALPH SEEKINS called the Senate Judiciary Standing Committee meeting to order at 1:03 p.m. Senators Ogan, Ellis and Seekins were present. Senator French arrived shortly thereafter. The first item to come before the committee was the confirmation of Richard Burton to the Alaska Commission on Judicial Conduct.

CONFIRMATION ALASKA COMMISSION on JUNDICIAL CONDUCE

MR. RICHARD BURTON, nominee to the Alaska Commission on Judicial Conduct, told members he is a retired commissioner of the Department of Public Safety (DPS) and a resident of Ketchikan. He has been involved in public service all of his life and he has a high regard for law and order and public safety. He is very familiar with Alaska's judicial system and has a desire to continue to participate in public service.

SENATOR OGAN asked Mr. Burton to describe what kind of judicial conduct he would consider to be inappropriate.

MR. BURTON said the commission does not investigate unless a complaint is filed. The commission's responsibilities are to screen and review complaints and pass them on to the court for action. He then gave more biographical details. He came to Alaska as a teenager and ran survey crews to build highways. He quit that work because it was seasonal and ended up working for the police department in Ketchikan. He went to Vietnam as a police advisor for the State Department for two years and then served as commissioner of DPS under Governor Hammond. He also set up police departments in Saipan and on Indian reservations.

He then worked for Governor Hickel and eventually did consulting work for police departments. He is serving his third year on the Ketchikan Gateway Borough Assembly.

SENATOR OGAN asked Mr. Burton how he plans to hold the judicial branch accountable. He asked Mr. Burton if he read the applicable statutes and what kind of complaints he anticipates reviewing. He said it is common knowledge that police are not always enamored of judicial decisions and asked whether that would be an issue if he serves.

MR. BURTON said some of his closest friends are judges and attorneys. He said his decisions would not be based on his opinion of a judge's conduct. The Alaska Commission on Judicial Conduct is one of the few constitutionally established boards. It has a well-balanced membership of three judges, three attorneys, and three lay members. He does not believe one ex-police officer will carry a lot of weight and slant decisions one way or the other. He said he has a lot of respect for the judicial system and has no axes to grind. He pointed out that Judge Fitzgerald was his employer when he was the first commissioner of DPS.

There being no further questions, Senator Ogan moved Mr. Burton's name, with no particular recommendation, to the full body for consideration for confirmation as a member of the Alaska Commission on Judicial Conduct.

CHAIR SEEKINS announced that without objection, Mr. Burton's nomination moved to the full body for consideration. He then called Shirley McCoy.

CONFIRMATION - LEGISLATIVE ETHICS COMMITTEE

MS. SHIRLEY ANN McCOY, nominee to the Select Committee on Legislative Ethics, told members she has served on the ethics committee for nine years and is up for reconfirmation. She noted that she sent members a copy of a statement she sent following her initial confirmation hearing. That hearing was not completed and the next hearing was cancelled. She said she would prefer to concentrate on her reputation and not on a hearing that has nothing to do with her confirmation.

SENATOR FRENCH thanked Ms. McCoy for attending and said her demeanor at the earlier hearing impressed him. He said he is personally happy that she is willing to serve in this capacity.

SENATOR ELLIS commented that the ethics committee is not the easiest place to provide public service. He thanked Ms. McCoy for the years she has served and her willingness to continue to do so.

There being no further questions, Senator Ogan moved the name of Shirley McCoy to the full body with no particular recommendation for consideration of her nomination to the Select Committee on Legislative Ethics.

CHAIR SEEKINS announced that with no objection, Ms. McCoy's name would be forwarded to the full Senate for consideration. He then asked her if her nomination has been considered in the House committees.

MS. MCCOY said she has no idea what is going on with the House. She then commented that the ethics committee has been stalemated because numerous members are up for confirmation. She asked legislators to consider making a change so that ethics committee members are considered in January so that the committee can move forward with its work.

SENATOR OGAN said he believes the ethics committee has the authority to act regardless of whether members have been confirmed.

MS. MCCOY agreed, but noted that on several occasions decision-making has carried over for two or three meetings and it is difficult when a member is replaced mid-way through addressing a complaint.

CHAIR SEEKINS said the Boards of Game and Fisheries share that same frustration. He thanked Ms. McCoy and announced SB 93 to be up for consideration.

SB 93-ADVERSE POSSESSION

MS. AMY SEITZ, staff to Senator Tom Wagoner, sponsor of SB 93, told members that adverse possession is an archaic doctrine. It was established during the Middle Ages when the government wanted a vast amount of wild land put to use. A trespasser could squat on property and after a period of years, the trespasser would gain title to the property at the expense of the true owner. SB 93 will align some of the rights of private property owners with the rights of the state and federal governments that have already exempted themselves from adverse possession laws.

CHAIR SEEKINS interrupted Ms. Seitz to ask that the proposed committee substitute be addressed.

SENATOR OGAN moved to adopt the proposed committee substitute for SB 93, version V, and then objected for the purpose of hearing an explanation of the changes.

CHAIR SEEKINS asked Ms. Seitz to continue her overview on the bill.

MS. SEITZ told members the changes made in Version V are on page 2, beginning on line 7. The phrase "or other interest in land necessary for the construction, management, operation, or maintenance of a public transportation or public access right-of-way" was added. The reason is that the Department of Transportation and Public Facilities (DOTPF) is concerned that the original language would not include land outside of the right-of-way area, such as rest stops and culverts.

SENATOR OGAN said he was looking at the previous bill and the sentence Ms. Seitz described is also in that version.

MS. SEITZ replied, "The uniform version was not the version that was passed out of [Senate] Labor and Commerce. That was a draft CS that Senator Wagoner and everyone agreed would not be adopted so I believe the Q version... was passed out of Labor and Commerce."

The committee took a brief at-ease.

CHAIR SEEKINS said that members now had a copy of version Q, which passed from the Senate Labor and Commerce Committee and they could compare that to Version V.

MS. SEITZ repeated the change to Version V is on page 2, beginning on line 7.

SENATOR OGAN asked why that language was added.

MS. SEITZ said it was added to include the land outside of the right-of-way areas that is necessary for maintenance of rights-of-way, such as rest stops, ditches and culverts.

CHAIR SEEKINS explained that a fill area overlapping a right-of-way would also be covered under this legislation.

MS. SEITZ agreed.

SENATOR OGAN asked for an explanation of the phrase, "uninterrupted adverse notorious possession."

MS. SEITZ said that phrase is in AS 09.45.052.

SENATOR OGAN asked what would be accomplished by adding the new subsection (c) that deals with uninterrupted adverse notorious possession.

CHAIR SEEKINS explained DOTPF is concerned that without this provision it could not use federal funds to build a road because it would not be able to tell the federal government it had clear title to a right-of-way.

SENATOR FRENCH said instead of the state having to prove that it owns every square inch of a right-of-way it could rely on the fact that a road has existed for 20 years. Even if it didn't have proof through an uninterrupted title, it could say it owned it through adverse possession.

CHAIR SEEKINS said without that provision, DOTPF would have to prove that it owned every square inch.

SENATOR OGAN reminded the committee to be mindful of private property rights as well. He maintains that DOTPF has gotten by for years without this language and questioned why it is necessary now and how it will affect private property rights.

CHAIR SEEKINS said it was included because the committee is trying to change the first section of the bill. In order to do that, the state must make it clear that it is continuing with a policy that has already been in effect.

SENATOR FRENCH agreed and said it basically extinguishes adverse possession as to all players in the state except for the state.

SENATOR OGAN removed his objection and version V was the document before the committee.

CHAIR SEEKINS called for public testimony.

MR. TOM SCARBOROUGH, a registered land surveyor from Fairbanks, said if Alaska extinguishes this right, it might be the first state to do so. Most likely, most Alaskan surveyors are adamantly opposed to preventing adverse possession. Many driveways in the Fairbanks Northstar Borough trespass on someone

else's property. Many of the rights-of-way in some areas have been developed from adverse possession because they have been used for many years. He said it is not right to extinguish this doctrine because the Native corporations do not want to spend money to police their own property.

SENATOR OGAN asked Mr. Scarborough how this bill would affect those people who have driveways on property that does not belong to them.

MR. SCARBOROUGH said it is common for a driveway to cross the corner of a neighbor's lot. If your neighbor decides he doesn't want the driveway there anymore, you would have no rights and access to your property could be blocked even though you used the driveway for many years without any objection. He said he believes the current statute reads that to maintain right to one's property, the individual has to block access at least once per year.

MR. HENRY CROW, a commercial fisherman and homesteader stated opposition to SB 93. He said the current statutes are adequate to handle any kind of land infringement. SB 93 will open up a can of worms. Whenever a law is enacted that infringes upon the Constitution or the Bill of Rights, we go back to anarchy and a time when there were no laws to protect the individual. The right to have or possess a dwelling or shelter goes back to when God gave the Torah and other laws to mankind. He told members that Senator Wagoner informed him that this bill failed three times and he asked members to reject it again as it is unnecessary.

MS. SEITZ told members that DOTPF staff, a representative from Sealaska Corporation, and Jon Tillinghast were available to answer questions.

SENATOR FRENCH noted that version U included an exemption for prescriptive easements. He asked why version V removed the exemption.

MS. SEITZ said that a representative of the Homer Electric Association (HEA) spoke to Senator Wagoner several days ago to express concern that some of their power lines that go through easements might be affected so subsection (d) was removed.

SENATOR FRENCH asked if the exemption was inserted at HEA's request and then removed at HEA's request.

MR. JIM BUTLER, an attorney representing HEA, said this bill was brought to his attention a few weeks ago while he was in the process of working with the land manager to evaluate the scope of utility easements that have been proven through the prescriptive easement process. He has been trying to find out what other interests the bill attempts to address to see if all parties could agree on some language. Subsection (d) in version U appears to address the issue but he wants to clearly understand whether simply addressing prescriptive easements is sufficient. He is also attempting to understand some of the other issues raised for other types of prescriptive easements. He asked Senator Wagoner's staff for a little more time to address the issue.

SENATOR FRENCH asked if this bill would be held in committee and if the easement issue is up for study.

CHAIR SEEKINS said because there are unanswered questions, he plans to hold it over for another meeting.

SENATOR OGAN asked what motivated the sponsor to introduce the bill.

[SENATOR THERRIAULT joined the committee.]

SENATOR WAGONER informed members that Sealaska Corporation asked him to introduce this bill. It deals with a lot of Sealaska and other Native corporation property. The corporations have had many problems and hire people to police their lands to make sure no one is squatting on their properties.

SENATOR OGAN said one of his concerns is that large private properties might not have an RS 2477 or other access to their lands so the only avenue available to them is adverse possession. He said part of a landowner's responsibility is to check his or her land and, if someone built a cabin on that land, the landowner has 10 years to find it.

SENATOR WAGONER said that Sealaska's attorney could address that issue.

MR. JON TILLINGHAST, legal counsel for the Sealaska Corporation, told members that a private landowner is obliged to police his land only because the government has imposed an obligation on the private landowner to do so. One of the ironies of that requirement is that the government does not put the same obligation on itself. If one asks why a person cannot get

adverse possession rights against the state or the United States, they are told it is because the government's land holdings are large and remote and it would be an undue burden to police its own land. Sealaska thinks that logic applies equally to private lands. The doctrine of adverse possession used to have legitimate social functions. It came about because possession used to equate to title. The doctrine went through a lot of iterations and came to the U.S. when the railroads were getting large grants of land adjacent to the lines they were laying. Western legislators wanted individual homesteaders to take that land from the absentee railroads so the doctrine was imported to the western states. He said he does not believe it is the state's public policy to take land from large corporations and give it to individuals at no cost.

MR. TILLINGHAST said when writing the bill, Sealaska tried to take care that it would not affect existing rights. Section 3 says if a person has driven across a driveway for 10 years, nothing in this bill takes that right away. However, from now on, if one wants to drive across another person's property, the person will have to pay for it.

SENATOR THERRIAULT asked about situations in which people thought their driveways were legitimately on their own property.

MR. TILLINGHAST said there are two types of adverse possession: bad faith and good faith. The bad faith involves a person who moves onto a piece of property and builds a squatter's cabin. The good faith involves a person with a deed for a piece of property and he thinks he knows the boundaries, but ends up inadvertently using adjacent property. He said the bill introduced last year would have abolished good faith adverse possession. This bill does not, it only deals with bad faith adverse possession where a person has no written instrument whatsoever on which to base his claim. He said the bill would not affect the people in Senator Therriault's example.

SENATOR OGAN said that a previous testifier said that if this bill were enacted, Alaska would be the first state to undo its adverse possession laws. He asked if that is accurate.

MR. TILLINGHAST said to the best of his knowledge that is correct. He said that in response to a question about the need for state governments since a federal government exists, Justice Brandeis said that states serve as laboratories for improvement of our laws. He said Alaska is the first state to take a hard

look at where the doctrine of adverse possession came from and whether it serves any continuing social utility.

SENATOR OGAN said he probably could claim adverse possession on his neighbor's land because he's been riding his horse across that land for over 20 years. He asked if he would have to assert possession before the effective date of this bill.

MR. TILLINGHAST said his possession would have to be uninterrupted, adverse, contrary to the owner's interest and notorious, meaning it was not a hidden activity. He said if Senator Ogan could meet all of those requirements, he would have a vested right to the easement now and the bill would not take that away.

SENATOR THERRIAULT asked if that would grant a right to an easement, not to ownership.

TAPE 03-24, SIDE B

MR. TILLINGHAST said that is correct.

CHAIR SEEKINS said he would hold SB 93 in committee to give everyone a chance to get their questions answered. He thanked participants and announced the committee would take up SB 64.

1:52 p.m.

SB 64-CREDIT INFORMATION

SENATOR HOLLIS FRENCH, sponsor of SB 64, explained to members that SB 64 is aimed at stemming the growth of identify theft, which is one of the fastest growing crimes in America. It is believed that more than 750,000 people may be victims of identity theft each year and each will spend many hours and typically, more than \$1,000 to repair the damage done to his or her reputation and finances. Victims of identity theft continue to be turned down for loans, credit and for jobs long after the initial damage. They are victims, but are often made to feel guilty. The first indication many people have that they have been victimized is when credit problems surface. Regularly reviewing one's own credit report is an easy way to stop identity theft in the early stages. Providing Alaskan consumers with one free credit report a year will not only help consumers, but also the many businesses that extend credit. Minimizing losses to the business community through identity theft is one aim of this legislation.

SENATOR FRENCH said businesses inspect consumer credit histories when they evaluate applications for credit, insurance, employment and even leases. An individual's credit history is recorded in files maintained by credit reporting agencies that sell those reports. A credit report often contains information about a person's income, debts, credit and payment history, and it also indicates whether a person has been sued, arrested or filed for bankruptcy. If that information is incorrect, the consumer can suffer. SB 64 will require consumer-reporting agencies that maintain files on Alaskans to provide an Alaskan with one free copy of his or her file once a year if requested. The report would include all consumer and credit reports. Six other states have taken similar strong action to help consumers protect and correct their credit ratings.

SENATOR THERRIAULT moved to adopt Amendment 1 and asked Senator French to address the proposed amendment.

SENATOR FRENCH told members the amendment was drafted after he spoke with Chair Seekins about his concern that businesses that extend credit might somehow become responsible for notifying customers of this right. He said that is not the aim of the legislation. The purpose is to enable Alaskans to contact the three big credit-reporting agencies and tell them that under Alaska law they are entitled to one free credit report each year.

CHAIR SEEKINS said it is not uncommon for businesses to have to prove that they gave notice to consumers. He said if someone came to his dealership and applied for credit from the Ford Motor Credit Company, he might be required to notify that person of his or her right and if he did not do so, he could be subject to penalty. The objective of the amendment is to make sure that someone in the business of providing a loan is not required to notify the applicant of this particular right.

SENATOR THERRIAULT again moved to adopt Amendment 1.

CHAIR SEEKINS announced that without objection, Amendment 1 was adopted.

SENATOR FRENCH said in his experience, states with similar laws post this consumer right on their state websites.

CHAIR SEEKINS said he has found that credit-reporting agencies do not necessarily object to having to provide one free report.

They see it as a marketing opportunity for their reporting services.

SENATOR FRENCH said that is a valid point because credit-reporting agencies frequently market one free credit report as a come-on to certain individuals. His take is that when people see something offered for free on a website, they know there is a hitch.

CHAIR SEEKINS said they should know that, but many people do not make that connection. He said he is not arguing against the bill, he is just saying those people that take advantage of it should expect to be targeted for additional solicitations. He then took public testimony.

MR. STEVE CLEARY from the Alaska Public Interest Research Group (AkPIRG) said this bill would provide one more tool for individuals to manage their own credit. It also puts the responsibility for maintaining your own file on the consumer. He said identity theft is on the increase, especially among the elderly and AARP and similar organizations will be excited about this bill.

CHAIR SEEKINS said he would be careful about advising people that one credit check per year will prevent them from having their identity stolen.

MR. SAM TRIVETT said that SB 64 is an excellent consumer protection bill. He is the president of the Retired Public Employees Association and although he is not representing that association today he is aware that identify theft is a big issue for older people. SB 64 will encourage citizens to do checks. He found he had several credit cards listed on his report from stores that had been out of business for many years. He said a credit check is beneficial for citizens and businesses. He urged members to support the bill.

MS. MARIE DARLIN, coordinator of the Capital City Task Force for AARP, said AARP members have been interested in this legislation since it was introduced because many older citizens have problems with their credit reports. This legislation will provide an opportunity to urge people to get their credit checked. She asked if there is any way to put AARP members on a "do not call" list regarding solicitations.

CHAIR SEEKINS said AARP would have to research that question.

MS. DARLIN said that AARP supports SB 64.

SENATOR THERRIAULT said he does not believe this will have an impact on whether a person would be able to block unsolicited phone calls selling that service. They would probably receive solicitations in the mail.

SENATOR ELLIS pointed out that Ms. Darlin was referencing another piece of legislation that addresses the "do not call" issue.

CHAIR SEEKINS encouraged Ms. Darlin to inform people that the marketing aspect will come into play if this bill passes. There being no one else wishing to testify, he closed public testimony.

2:10 p.m.

SENATOR OGAN expressed concern that SB 64 is an unfunded mandate on private business.

CHAIR SEEKINS said he investigated that question and found that the credit reporting agencies do not have any problem with this legislation because they see it as a marketing opportunity to try to get people to purchase regular reporting services.

SENATOR FRENCH said federal law requires free credit reports to people who have been unemployed for a certain length of time, if there has been a denial of credit or if other specific actions might arise to question the status of one's credit. Many states have taken the next step to mandate that consumers be given one free check per year, primarily because of the enormous power these companies have over people in the realm of credit granting.

CHAIR SEEKINS said the influence of incorrect information on one's credit report can be very negative.

SENATOR ELLIS said this legislation seems like a win-win situation for everyone. If this required Alaskan businesses to pay for something to help out consumers, he would be concerned about it being an unfunded mandate.

CHAIR SEEKINS said he came to that same conclusion.

SENATOR OGAN said if the three credit-reporting companies think it is a great thing, he would like to hear from them.

CHAIR SEEKINS said they are international companies. Right now, a person can get a credit report on the Internet at no cost, but those companies can then solicit that person for other services. This bill basically codifies something those companies are already doing on their own websites.

SENATOR OGAN asked if this legislation allows those companies to market Alaskan consumers.

CHAIR SEEKINS said the Legislature cannot stop them without more legislation. He said he does not like to force anyone to do something by law unless there is an overriding public purpose. He is willing to give this legislation the benefit of that doubt.

SENATOR THERRIAULT moved CSSB 64(JUD) from committee with individual recommendations and the attached fiscal notes.

CHAIR SEEKINS announced that without objection, the motion carried. He then announced a brief at-ease.

SB 155-PREDATOR CONTROL PROGRAMS

CHAIR SEEKINS announced a proposed committee substitute (CS), version S, to be before the committee.

SENATOR THERRIAULT moved to adopt version S (4/16/03) SB 155 as the working document.

SENATOR ELLIS objected for the purpose of an explanation of the changes.

CHAIR SEEKINS said the changes in version S are primarily semantic changes for the sake of efficiency. One paragraph is added that says when the Board of Game authorizes a predator control program it should establish predator reduction objectives and limits, methods and means to be employed, who is authorized to participate, and conditions for participation. He noted he is still working with the Alaska Department of Fish and Game (ADF&G) on how to properly delineate responsibilities. The bill goes to the Senate Resources Committee so that issue will probably be resolved there.

SENATOR ELLIS asked if the intent of Section 2 on page 2, particularly the words "methods and means to be employed," is to

allow the Governor's ability to prohibit the use of helicopters to be overridden.

CHAIR SEEKINS said it is not; methods and means are statutorily assigned to the Board of Game. The language in Section 2 is a reiteration of a truism that already exists in the statutes. The Board of Game could do that now for private individuals or for permittees. It cannot compel ADF&G to use helicopters, gun ships and gunners. It does not change that separation of power. Section (a) of the original statute says the Board of Game can do these things; section (b) says ADF&G can do these things so it does not touch any of the department's authority.

SENATOR ELLIS asked if the Governor had the authority to tell the board that helicopters could not be used.

CHAIR SEEKINS said, as he understood the Governor's conversation with the board, the Governor said no state helicopters and no ADF&G gunners could be used. He asked a representative from ADF&G to elaborate.

MR. MATT ROBUS, Division of Wildlife Conservation, ADF&G, told members he attended the March Board of Game meeting and participated in the process as the board came forward with its findings and request to the commissioner. He asked for clarification of the chair's question.

CHAIR SEEKINS asked, "Does this, in any way, trump the Governor's statement that he is not going to use helicopters and gunners?"

MR. ROBUS said his understanding, based on discussions with the Department of Law (DOL) and the committee, is that the commissioner still retains the authority to decide what ADF&G will or will not implement.

CHAIR SEEKINS said he understands the Governor to mean that his desire is that the methods and means employed by public people to be at the authorization of the Board of Game, not ADF&G.

SENATOR ELLIS asked if by "public people," Chair Seekins means members of the public.

CHAIR SEEKINS said he means private individuals, not public officials. If someone was going to carry out an aerial shooting in a predator control program, the Board of Game would authorize

those private individuals to do so, but it could not compel the state to do so.

SENATOR ELLIS asked why Section 2 is necessary if it doesn't change the status quo.

CHAIR SEEKINS said it is a reiteration of the existing statutes. It is somewhat unnecessary, but is meant to clarify. He asked Mr. Robus if he agrees.

MR. ROBUS said he only had a few minutes to review the working document. He appreciates the change at the beginning of the bill because that is a better way to state the committee's intent. He said he also appreciates the re-inclusion of wolverine because of their vulnerability to same-day airborne hunting.

In Section 2, he expressed concern that it still potentially sets up a confrontational situation in that ADF&G believes the board already has those powers. If the board develops a particularly narrow program, it would give the administration very little flexibility in determining whether ADF&G will participate.

CHAIR SEEKINS said his intent is to work with the chair of the Senate Resources Committee and members of the department to define that there is no way the board can force the department to participate. At the same time, there should be no way for the department to make it more difficult for the board to carry out its program.

SENATOR OGAN commented, "This is kind of like the secretary who will disavow any of your actions if you're caught kind of thing."

CHAIR SEEKINS said it is not the intent of this bill to force the board to do anything. If ADF&G does not do it, the Legislature can address the department's budget. However, there is a separation of powers in the Administrative Code. He does not want to cross that line. At the same time, he wants to make sure the administration does not have the ability to negate the efforts of the Board of Game to carry out its program.

SENATOR OGAN pointed out that with regard to the separation of powers issue, the Board of Game is almost an extension of the legislative branch because the Legislature delegates its authority to the board.

CHAIR SEEKINS maintained that the Legislature, as trustee of the resource, has delegated certain authority to the Board of Game. The board should be working cooperatively with ADF&G. The Legislature might anticipate that ADF&G would assist to some degree and provide administrative support if the Board of Game authorized an airborne hunting program. He expressed concern that the board should not be able to issue an order that says that those who are authorized to participate in this program are members of ADF&G and they must use helicopters.

MR. ROBUS agreed that reflects one of ADF&G's major concerns.

CHAIR SEEKINS said, in effect, the board will still be allowed to make that decision but ADF&G would not be forced to be part of the program except for administrative participation.

SENATOR OGAN asked Mr. Robus if he envisions that ADF&G will give biological advice to the board, but ADF&G employees would not fly in planes and shoot.

MR. ROBUS said version S requires ADF&G to present the information upon which this program is based, so ADF&G would be involved there. As the board recognized in the finding for Unit 19D in March, predator management issues can be addressed in different ways. Some involve department participation while some do not. Version S seems to allow the board to come out with a very narrow program, in terms of saying exactly how it could be done, and there may be times when that conflicts with the administration's desires. That's the conversation he had [with the chair] about where the board's authority to direct ADF&G or recommend to ADF&G intersects with the department's authority to participate or not participate.

CHAIR SEEKINS added:

And the accompanying concern that the department doesn't say, well, you have to get a permit to be able to do this and the permits are in Barrow and the hunt is in McGrath. There's some responsibility on all parts there to be cooperative but yet not to cross the lines of individual powers.

SENATOR OGAN asked if anything in current state law prevents a predator control program that involves use of helicopters to identify dens or areas where predators center. He said he has spoken with a professional predator regulator for the federal government who suggested using helicopters for such a purpose.

MR. ROBUS said the general answer is no and unless the person is carrying a collection permit or some sort of authorization, the person can not harass or even disturb an animal because that would fit the definition of "taking." An ADF&G employee doing a survey with a permit is legal. If a private person does that, the person could cross the line from observation to disturbance, which becomes a legal problem.

SENATOR OGAN asked if anything prevents ADF&G staff from getting permits, locating dens, and then using helicopters to drop people off to hunt the next day. He said he is looking for alternatives.

MR. ROBUS said if hunting is involved, helicopters cannot be used to transport hunters or their gear or game. If the activity is something other than hunting, possibly an approved predation control program, something like that could occur.

SENATOR THERRIAULT asked if under the existing statute, individual Alaskans could participate in a predator control program that includes same-day airborne or shooting from planes.

MR. ROBUS said that is correct according to his discussions with the Department of Law.

CHAIR SEEKINS said version S says the board can use more than just the prey population objective to be able to do that. The board can also use harvest or population objectives for prey or predator in an area determined to be an intensive management area.

SENATOR THERRIAULT said the bill now contains language that says the board will assert control over how that is to be done. He maintains that this legislation will not undo the public initiative.

CHAIR SEEKINS agreed and said it clarifies how it can be used. He noted that, hopefully, Section 2 brings some portions of existing statute into focus so that the state isn't turning everybody with a Super Cub and a shotgun lose to kill wolves.

SENATOR ELLIS asked about the term "free ranging wolf."

CHAIR SEEKINS said that free ranging means it is not trapped or confined somehow.

MR. ROBUS acknowledged that is correct.

SENATOR ELLIS asked Mr. Robus if he supports the inclusion of wolves and wolverines on the list and whether they are included because those two species are killing moose calves.

MR. ROBUS said he does not want to give the impression that bears are not involved in some areas. He commented favorably about including wolverines in version S because they were removed from the previous committee substitute. Staff pointed out to him that wolverine, being solitary, having a low reproductive rate and using open country, could be very vulnerable to same day airborne land and shoot practices. Because the first sentence of this statute says certain species may not be hunted, it makes sense to include wolverine. He said the fact that wolves are included is due to the initiative that originally established the statute. However, everything else in the bill says in a predation control situation, wolves may be taken in specific ways. He pointed out that lynx are not often found in country where they would be susceptible to same day airborne shooting and fox have a higher reproductive rate.

CHAIR SEEKINS said he would be hard pressed to find any advantage in using same day airborne hunting to get a fox or lynx. However, wolverines could be more susceptible.

SENATOR ELLIS asked, "And what's your take on the bears?"

CHAIR SEEKINS said they are covered under different statutes.

SENATOR ELLIS asked if he intends to address that statute.

CHAIR SEEKINS said he intends to look at it at some point and is currently talking to members of the trapping, hunting and guiding industries and ADF&G about how to control bears.

SENATOR ELLIS asked if bears are on the list.

CHAIR SEEKINS said he thinks they should be, but not in all areas.

SENATOR FRENCH said most of his constituents think that any airborne wolf hunting is banned. The tenor of their comments is that they want this to be as tightly regulated as possible. They do not want one inch of leeway to make it easier to do predator control from the air or using same day land and shoot. He said from a political perspective, he sees the Governor saying that

he will not allow department staff to participate in predator control using helicopters, but what he sees coming is the least attractive alternative to his constituents.

TAPE 03-25, SIDE A

2:43 p.m.

CHAIR SEEKINS said Senator French's comment shows a widening of the rural-urban split. He said that people from downtown Anchorage and those from a rural community will be at odds on this issue. If Senator French's constituents want to widen the rural-urban split, this issue provides an opportunity to do so. He said that members of Senator French's party are supportive of this legislation because they are unable to put moose on their tables because of predators. If people in downtown Anchorage do not believe that is a real problem, they should talk to some of those folks in the rural areas. He said the rural populations of moose have declined and, because of ineffective predator control in some areas close to urban populations, urban hunters are hunting in the rural areas. He pointed out that the moose population in Unit 13 has dropped from 27,000 to less than 8,000. The wolf populations are huge in that area. As a result, urban hunters who used to hunt in Unit 13 are now going to the rural areas. That is exacerbating the urban rural tension. They would not travel to rural areas if they had a reasonable opportunity to harvest close to home. The Governor said he wants the local people to take care of predator control rather than ADF&G employees. This bill will authorize local people to do what the Governor wants to have done; it does not set up an adverse position to the Governor's. It allows the Board of Game to make that decision in concert with the Governor's desired methods.

SENATOR THERRIAULT told Senator French this bill is a step in the direction that his constituents want to go. They think airborne hunting is absolutely outlawed: it is not. They believe this legislation undoes the initiative: it does not. Legislators have to educate them. He directed the woman he corresponded with to the sections of statute to show her that this will put some controls on a process she says she does not like. He questioned whether she would rather have no controls. Constituents need to understand this is a step in the right direction.

SENATOR FRENCH said it strikes him that if the issue is the declining moose population criteria already exists in the current statute. The first go around on this issue centered on increasing the number of variables the board could contemplate

when considering airborne predator control. He said the real issue is that the Board of Game did not set the population figures appropriately. It was suggested that the moose population could be maintained at a low level but, because of the rise in the predator population, it would crash. He said he was not convinced of that because he believes the game population must be set with a large enough buffer to take predation into account. He questioned how this bill would change that.

CHAIR SEEKINS replied:

...you may have a population objective in a particular area and you're maintaining that population objective but, because of predation, you have no harvest objective that you can look for in being able to maintain that population objective. So you're cutting back on the size that can be taken. You're removing non-resident hunters from the equation. You're doing other things that can help you maintain the population objective but you now are not able to meet a harvest objective. So this would give you the opportunity to eliminate the competition to be able to meet a harvest objective. Am I correct there?

MR. ROBUS said another way to say it is that, under the current system, the board has only one trip wire that enables it to set up a predation control program - that is if an ungulate population identified for intensive management descends through its population objective. If an ungulate population is above its population objective, but for various reasons is in a downward trajectory, this flexibility to choose several objectives from which to work should allow the board to take some corrective measure to try to recover the population to the lower limit. He said it is important that this is only tied to intensive management populations of ungulates that have been identified as very important for high levels of human use. He said the March meeting of the board demonstrated that, when decisions must be based on a single objective, wildlife management gets very complicated. Giving the board flexibility to look at other objectives makes sense because other factors affect those ungulate populations.

SENATOR OGAN commented that he hunted moose in Unit 13 for a number of years, but he quit 10 years ago because the herd he was hunting had 20 to 30 cows and not one calf. He could tell back then that the population was in trouble.

SENATOR THERRIAULT moved CSSB 155(JUD) from committee with individual recommendations and the attached zero fiscal note.

SENATOR ELLIS objected.

CHAIR SEEKINS called for a roll call vote. The motion to move the bill from committee passed with Senators Therriault, Ogan and Seekins voting in favor, and Senators French and Ellis opposed.

There being no further business to come before the committee, Chair Seekins adjourned the meeting at 2:58 p.m.