ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE
May 7, 2003
1:32 p.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

Senator Johnny Ellis

COMMITTEE CALENDAR

CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 86(JUD) am
"An Act relating to state permitted projects; and providing for an effective date."
HEARD AND HELD

HOUSE BILL NO. 1
"An Act relating to stalking and to violating a protective order; and amending Rules 4 and 65, Alaska Rules of Civil Procedure, and Rule 9, Alaska Rules of Administration."
HEARD AND HELD

CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 184(L&C) am
"An Act relating to individual deferred annuities; and providing for an effective date."
MOVED SCS CSSSHB 184(L&C) am OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 49(JUD)
"An Act relating to the deoxyribonucleic acid (DNA) identification registration system and testing; and providing for an effective date."
SCHEDULED BUT NOT HEARD

PREVIOUS ACTION

HB 86 - No previous action to consider.
HB 1 – See State Affairs minutes dated 4/24/03 and Judiciary minutes dated 5/3/03.

HB 184 - See Labor and Commerce minutes dated 4/29/03 and 5/1/03.

WITNESS REGISTER

Mr. Jim Pound
Staff to Representative Fate
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Commented on HB 86 for the sponsor.

Mr. David Green, Executive Director
First Amendment Project
Oakland, CA
POSITION STATEMENT: Commented on HB 86.

Mr. Alvin Anders
217 Seward Street
Juneau, AK 99801
POSITION STATEMENT: Opposed HB 86.

Representative Cheryll Heinze
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Sponsor of HB 1.

Lieutenant Matt Leveque
State Troopers
Department of Public Safety
PO Box 111200
Juneau, AK 99811-1200
POSITION STATEMENT: Opposed the proposed amendment to HB 1.

Ms. Mary Wells
c/o Representative Heinze
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Supported HB 1.

Ms. Laurie Hugonin
Alaska Network on Domestic Violence and Sexual Assault
Juneau, AK 99801
POSITION STATEMENT: Supported HB 1.

Representative Coghill
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Sponsor of HB 184.

Ms. Katie Campbell, Life and Health Actuary
Division of Insurance
Department of Community & Economic Development
PO Box 110800
Juneau, AK 99811-0800
POSITION STATEMENT: Commented on HB 184.

ACTION NARRATIVE

TAPE 03-39, SIDE A

HB 86-INJUNCTIONS AGAINST PERMITTED PROJECTS

CHAIR RALPH SEEKINS called the Senate Judiciary Standing Committee meeting to order at 1:32 p.m. Present were Senators Ogan and Therriault. The first order of business to come before the committee was HB 86.

MR. JIM POUND, Staff to Representative Fate, sponsor of HB 86, said it would provide a private remedy to permittees or owners of state permitted projects who are the victims of frivolous or obstructionist type litigation. In addition to any other penalty or sanction otherwise currently provided by law, it will make a person who initiates or maintains a malicious claim against a state permitted project liable for damages by the lawsuit. It specifies the type of damages the aggrieved person would be able to seek. The cause of action is based on concepts established in law for stating a claim for unlawful civil proceedings and abuse of process. The benefits are that it avoids unfamiliar potential ambiguous language and once adopted, the courts will be able to draw up an existing case law from Alaska to help interpret and apply the law. HB 86 only applies to egregious cases and will not deter potential litigants from bringing legitimate meritorious cases to court.

CHAIR SEEKINS stated they were considering CSSSHB 86(JUD) am, version W.a.

SENATOR OGAN asked if there was a definition of malicious claim in somewhere statute.

MR. POUND replied he didn't have a specific definition, but it relates to various aspects of the word "malice."

> Malicious, according to Black's Law, is characterized by or involving malice, having or done with wicked or evil, or mischievous intentions or motives, wrongful or done intentionally without just cause or excuse or as a result of ill will. That's according to the sixth edition of Black's Law, 1990.

CHAIR SEEKINS said more than likely there was case law that defined malice and asked if Senator Ogan was suggesting defining "malice" for this section of the law.

MR. POUND noted that "malicious prosecution" has a lot of case law behind it that could be part of the interpretation.

SENATOR FRENCH arrived at 1:40 p.m.

SENATOR FRENCH asked if frivolous could be malicious.

MR. POUND answered that a frivolous claim could be broader than with malice. He thought the Supreme Court had actually defined the term, but he didn't have a specific case to cite. He said they are targeting mostly the types of lawsuits that are filed after a permitted project has gone through the entire process. These suits are often filed by professional non-profit law firms and individuals who feel they didn't get a fair deal, even though they were part of the entire process all the way through.

MR. DAVID GREEN, Executive Director, First Amendment Project, said they are based in Oakland, California, and that Senator French invited him to address the committee on the proposed statute. The first amendment interest here is the right to petition the government for redress of grievances. The U.S. Supreme Court has spent a fair amount of time considering the right to petition the government and has come up with a very strong threshold requirement for someone to be immune from any liability for petitioning the government. That includes filing of a lawsuit or administrative action. They are immune unless their petitioning activity was objectively baseless.

The main constitutional defect in the proposed statute is that the Supreme Court has very clearly said regardless of what the person's motive was in bringing the action, regardless of any bad faith they may have had, if the action was not objectively baseless, they are entitled to absolute immunity.

Objectively baseless usually means that no reasonable litigant could realistically expect to secure favorable relief or that he

was lacking in any probable cause to institute the proceedings. It's important that the test is objective, not subjective. One of the reasons for this protection is to avoid any infection of the person's subjective motives. This is in recognition that once the discovery process is started, it has a very chilling effect on a person exercising his first amendment rights.

The second part of the test is looking at improper purpose or looking at whether the person bringing the lawsuit was seeking genuine relief or just exploiting the process.

The third constitutional requirement was just affirmed by the U.S. Supreme Court earlier this week in a telemarketing decision. At any time you make provisions for an action that might restrict one's first amendment rights, the burden of proof is on the party bringing that action and it must be clear and convincing.

MR. GREEN felt that the right to petition the government is stronger is situations in which someone is suing the government himself, because they do not believe the government is doing the job it was supposed to do or has exceeded its authority or is acting outside of its bounds. This proposed statute creates potential liability for someone who was actually suing the government. "I believe that the right to petition the government should be protected more strongly than it is today in ordinary civil litigation context."

1:55 p.m.

SENATOR FRENCH asked him if he was referring to the Professional Real Estate Investors v. Columbia case.

MR. GREEN replied yes this is one of the leading cases in this area.

SENATOR FRENCH asked if the Supreme Court rejected the subjective inquiry and relied on objective analysis.

MR. GREEN replied yes. The Court was careful to say that not only was the objective test required it was the threshold of determination. You couldn't go further into the subjective inquiry without making an objective finding first.

CHAIR SEEKINS asked if it was constitutional to award a certain amount of damages to someone based on a frivolous claim, but not on a malicious claim.

MR. GREEN replied that the Supreme Court said the lawsuit must be objectively based and only if the litigation is objectively meritless, can the Court examine the litigant's subjective motivation.

> The fact that it was malicious is not relevant until you determine that it was baseless and that is directly from the Supreme Court case. That indeed is the argument that the Supreme Court rejected. The question before them was - was the presence of bad faith adequate and the Court said no.

CHAIR SEEKINS asked if it would be better to say a frivolous "or" malicious case.

MR. GREEN replied that it would have to say "and", because it requires both and added that he was not an authority on Rule 82.

MR. ALVIN ANDERS said he is representing himself and that he is a member of the Libertarian party. He has the same problem with the bill that other people bring up. He thought it would have a chilling effect on small businesses and individuals who feel they got a bad shake from the government. It sounds like they are trying to outlaw thought crime and trying to fix a problem that probably exists from having too much government already. He said this would stop groups like the Institute for Justice, a Libertarian group that fights eminent domain and things like that.

SENATOR THERRIAULT asked if he would challenge the eminent domain on the fact that the acreage is not needed or that an improper price was being paid.

MR. ANDERS replied that the Institute for Justice is often fighting eminent domain for a part of a larger effort that does require some permits. Maybe the person does feel they got a bad shake by having their property unlawfully taken and are using their meager resources to try to stop the project until they feel justice is done.

SENATOR FRENCH said when he was in law school, traffic stops were used by police to sometimes harass a minority that they thought might be breaking the law (by transporting cocaine), but they didn't have any real good reason to pull them over. There was a split in the Court of Appeals over whether or not you would ever look inside a police officer's mind to see if he had

a bad reason for pulling someone over. The case got resolved after years and years of fighting over it - in the Supreme Court on a 9 - 0 vote. The Court said you don't look at the officer's subjective intentions. This keeps you from having to psychoanalyze the police officer about what he did in the field. He didn't think you could penalize someone for having a terrible reason for bringing a good lawsuit.

He felt that they needed to put "objectively baseless" in there somewhere.

SENATORS Ogan and Therriault both said they needed more time with this bill.

CHAIR SEEKINS said they would hold HB 86 for further discussion.

HB 1-STALKING & PROTECTIVE ORDERS

CHAIR SEEKINS announced HB 1 to be up for consideration. He said there was a proposed amendment.

SENATOR THERRIAULT moved to adopt amendment, \H.3 for purposes of discussion.

23-LS0005\H.3
Luckhaupt
12/11/03

A M E N D M E N T

OFFERED IN THE HOUSE BY REPRESENTATIVE HOLM
TO: CSHB 1(JUD)

Page 1, line 1:
Delete "**stalking and to violating a protective order**"
Insert "**protective orders**"

Page 2, line 17:
Delete "The registry"
Insert "**Except as provided in (f) of this section, the registry** [THE REGISTRY]"

Page 2, following line 18:
Insert a new bill section to read:

"*** Sec. 5.** AS 18.65.540 is amended by adding a new subsection to read:

(f) The Department of Public Safety shall remove from the registry an

(1) an ex parte protective order issued under AS 18.65.855 that

(A) is dissolved by the court; or

(B) expires without a protective order under AS 18.65.850 being issued;

(2) an emergency protective order issued under AS 18.65.855 that

(A) is dissolved by the court; or

(B) expires without an ex parte protective order under AS 18.65.855 or a protective order under AS 18.65.850 being issued;

(3) a protective order issued under AS 18.65.850 that is dissolved by the court before the expiration of the order;

(4) an ex parte protective order issued under AS 18.66.110 that

(A) is dissolved by the court; or

(B) expires without a protective order under AS 18.66.100 being issued;

(5) an emergency protective order issued under AS 18.66.110 that

(A) is dissolved by the court; or

(B) expires without an ex parte protective order under AS 18.66.110 or a protective order under AS 18.66.100 being issued; or

(6) a protective order issued under AS 18.66.100 that is dissolved by the court before the expiration of the order."

Renumber the following bill sections accordingly.

Page 6, line 16:
Delete "sec. 5"
Insert "sec. 6"

Page 6, line 20:
Delete "sec. 5"
Insert "sec. 6"

SENATOR FRENCH objected.

REPRESENTATIVE HOLM, sponsor of the amendment, said there is a 20-day waiting period during which a person who is accused is put in a registry and it isn't purged. One hundred and seventy state agencies have access to that registry for the purpose of ascertaining whether or not the person has a history of breaking the law. He was concerned about protecting a basic tenet of law that a person is innocent until proven guilty.

TAPE 03-39, SIDE B

SENATOR OGAN said he knew there was a process for a person to go through to purge an arrest and asked if he knew about it.

REPRESENTATIVE HOLM said he didn't know of it, but he would be interested in finding out how it is done.

MR. TODD LARKIN, Staff to Representative Holm, said he has read the statute that creates the registry and discovered that there is no mechanism so far to purge a name from the archived registry. This is a section of the ALASKA PUBLIC SAFETY INFORMATION NETWORK (APSIN) system and you can be purged from the regular system (active orders that are in force now) except from the moment the order is put in place, the statute instructs the officers and officers of the court to put you in the archive and there is no mechanism to purge a name from the archive. The archive is only expired orders and the amendment only speaks to those.

SENATOR THERRIAULT thought it applies to ex parte protective orders that are ex parte as well as other regular protective orders.

MR. LARKIN replied that it does deal with regular protective orders in one case - if you missed your original hearing date and petitioned the court to come back at a later date and present evidence that proves the order was meritless, the court can dissolve it.

LIEUTENANT MATT LEVEQUE, State Trooper, said:

> The proposed amendment would affect not only protective orders that would be granted under the provisions of HB 1, but would also include domestic violence (DV) protective orders that are currently granted under Alaska state law. As a consequence, that provision in the proposed amendment would dramatically undo protections that exist for domestic violence

victims in Alaska and it would also reverse to a great degree training that we have provided over the years since the Alaska domestic violence laws were revised in the mid-90s to peace officers and to the general public victims, in particular. This amendment seems to be based on the idea that an ex parte or an emergency order that is not converted to a regular order is on its face meritless or was applied for through some sort of malicious intent. As police officers...we know that there are dozens and dozens of very compelling reasons that the victims of domestic violence and potentially non domestic violence victims of stalking, as envisioned in HB 1, would choose not to convert an emergency order to an ex parte or regular order or alternatively would choose not to convert an ex parte order to a regular protective order.

LIEUTENANT LEVEQUE said there are currently three types of orders: emergency orders, which would be applied for by a law enforcement officer on behalf of a victim (they last three days); ex parte orders, which are applied for by a victim without the responding party present; and, protective orders.

The standard, which the judge makes a decision about issuing protective orders if they're emergency or ex parte, is that there be probable cause to believe that the victim has been a victim of a crime involving domestic violence. The standard that the judge applies is higher when an actual regular protective order is being considered. In the event the committee chose to accept this proposed amendment, what happens is we're telling law enforcement officers that many, if not most, domestic violence victims are in fact not telling the truth when they are filing their petitions, because the amendment would say, 'Look, we don't trust that you're serious about this event that you allege, that we don't believe you unless you are willing to come back and convert this into a regular order. That's a dangerous message to send to victims and to police officers that we've struggled to reorient regarding what we know about victimology of domestic violence victims.

This amendment would also remove a tremendously important investigative tool that law enforcement officers in this state are in fact required by law to avail themselves of. Before a trooper or police

officer makes a decision regarding arrest in a domestic violence case, they are required to consider prior complaints. That's under AS 18.65.530. One of the best methods for establishing whether there have been prior complaints is to be able to check the historical record within the registry to determine whether in fact there have been prior complaints. Taking that away means that police officers are kind of punching around in the dark and victims don't always think in a moment of crisis that, 'Oh yeah, I had applied for an order six months or two years or three years ago.'

There's also, I believe, some confusion with respect to terminology. Respondents are what we call the individuals who have protective orders filed against them and sometimes we hear the expression that people are charged with a protective order. Charging, and Ms. Carpeneti can correct me if I'm mistaken, is a legal term that describes the process whereby somebody has formal criminal charges presented at the court either through an arrest or a complaint process, indictment, etc. The protective orders are civil orders that do not show up in an individual's criminal history records because there is no arrest; there is no charge and consequently no conviction.

We know on another point of concern to law enforcement statewide that domestic violence calls are among the most dangerous that police officers and troopers routinely respond to across the state. And the inability, as an officer responding to a domestic violence call, for a dispatcher to go ahead and check a historical record about prior complaints involving the victim and or the suspect as we're responding, takes away a huge officer safety consideration. To a certain degree, officers lined up walking into these situations would be blinded if the committee chose to adopt the amendment that's before it.

LIEUTENANT LEVEQUE explained the registry is a component in APSIN.

The Alaska Public Safety Information Network has information related to our drivers' licenses, vehicle registrations, whether, when we were younger, our parents reported us as a run away or a missing

> individual - a whole gigantic volume of information about us, none of which may be released except under the most specific circumstances established in state law and in policy. Of course, the consequences for release of that information are dramatic. There are, I believe, criminal penalties and at the least a member could expect to lose his or her job. The records of protective orders are in fact public records available at the courthouse. If there was a protective order against me in Anchorage, one of you could go to the courthouse and get the complete record. So having this record in the historical archive, if you will, within APSIN, is actually not shielding an individual's reputation in any manner because we can't release the APSIN information to the general public, but the general public can get that information regarding a protective order from the court house.
>
> I'd like to remind the committee that a protective order is proof of no wrong doing whatsoever. It's only an allegation, which a judge in his or her wisdom has made an attempt to make a decision about. When I have spoken with some individuals over the course of the past couple of days about this amendment, I know there are concerns that somehow or another police officers will make decisions solely on the basis of the fact that there's a prior history. It's a component in a process whereby in subsequent investigations that might involve domestic violence that we would access, but otherwise, it is largely meaningless.

He concluded by saying that the department strongly opposes this particular provision.

SENATOR OGAN said a police officer must consider prior complaints before they make a decision on an arrest, but they are required to make an arrest in a DV case and that troubles him.

LIEUTENANT LEVEQUE replied that the law requires an arrest only in cases where the officer determines probable cause exists that a domestic violence crime has occurred. It's not just that they respond to a domestic violence report and must arrest someone. AS 18.65.530 says which person to arrest and number one on the list is to consider prior complaints of domestic violence.

SENATOR OGAN said that answers his question, but he has talked to troopers in the field who resent that sometimes their judgment is circumvented by a mandatory arrest. He was also concerned about an ex parte protective order because only one side can argue and the other is denied due process and that right can be abused by the APSIN. Some people in the capitol building believe there have been abuses of the APSIN system in the past that have been swept under the rug for political reasons.

REPRESENTATIVE HEINZE said one of her concerns is that there could be a loophole where a vindictive person could use this against another person.

LIEUTENANT LEVEQUE replied yes. They know those abuses would happen sometimes, but they would be few and far between. Someone could fabricate a story and present a compelling argument to the judge and get a protective order against him, for instance.

REPRESENTATIVE HEINZE asked if there was any way to mitigate that in this bill.

LIEUTENANT LEVEQUE replied that he didn't know. He thought the issue was balancing the safety and protection of domestic violence victims and victims of stalkers against the possibility that eventually, malicious people will attempt to obtain protective orders against innocent people.

SENATOR OGAN said he has seen this happen the most in custody disputes where someone tries to build a record against a spouse. He wanted to err on the side of the stalking victims, but he didn't know how to do that without trampling on constitutional rights.

REPRESENTATIVE HOLM said that was the reason he brought this issue forward.

SENATOR FRENCH asked if every APSIN inquiry comes with an identifier so they could find out who was accessing the records.

LIEUTENANT LEVEQUE said he didn't know for sure, but he thought that was the case. People who do have access probably keep meticulous logs about who requested a particular check and for what purpose.

CHAIR SEEKINS asked how a trooper responding to a DV situation could be allowed to have that information within the time frame

necessary for him to make a determination of whether or not he was entering a potentially violent situation.

LIEUTENANT LEVEQUE replied the dispatcher the trooper is in contact with has access to the historical archive and he can get that information at the speed of electrons and provide it to the trooper.

CHAIR SEEKINS asked if the information is transmitted in a confidential manner.

LIEUTENANT LEVEQUE replied that in most cases, police channels are not encrypted.

CHAIR SEEKINS said in that case, this information could become public with the speed of an electron.

MS. MARY WELLS, past stalking victim, said she went to the courthouse the previous day and looked at the first 100 cases of applicants applying for protective order and found that in Anchorage, as of May 5 for 2003, there have already been 1,040 applications. Of the first 100 cases she accessed, 87 were clearly defined as domestic violence, 13 of them fell into a similar classification as hers (stalked by someone with no direct relationship to her). Of the 100 applications, 75 children's names were added to the list for that protective order; 35 were complaints of stalking and they included words like "followed, hang around, and telephoning excessively."

Of the 100 applicants, 62 were denied a protective order. Of the 13 applications that didn't get protective orders and had the same qualifications as she did, 12 children were added to that list. Of the 13 applicants, 7 people were actually complaining that they were stalked. Of the 13 people that had the same qualifications as she did, three were almost identical in that there were threats of violence, attempts to go into the home, leaving sexual connotations on the phone, etc. On a lighter note, she said of the 100 applications, one was a domestic violence situation over a dog visitation.

SENATOR FRENCH thanked her for doing that research and said if he had to guess what percentage of ex parte orders were denied, he would have guessed a much lower percentage.

CHAIR SEEKINS noted that no one was against the bill, but they don't want to make a victim out of the person who has a complaint filed against them.

MS. LAURIE HUGONIN, Alaska Network on Domestic Violence and Sexual Assault, said that this bill was introduced last year, but didn't make it to the Senate floor before the end of session.

> Victims of stalking have been waiting for over a year to try to get a way into civil courts to get some protection. They hope concerns with domestic violence orders don’t outweigh the necessity for victims of stalking to be able to get some protection this year.

She urged them to move the bill this year and questioned that there may be the need for a title change if the amendment is added. The bill is geared toward stalking, not domestic violence. She said a Supreme Court committee on domestic violence in Anchorage found that of all the petitions submitted in Anchorage, only 40 percent were granted - despite the perception that all you have to do is go to court and get one.

While it is true that ex parte protective order means only one person has to be there in order for the judge to be able to make a decision, it has to list on the petition any attempts made to contact the respondent. There is a belief that there must be some kind of effort if your safety is not at great risk to let the respondent know that this is going to go forward. Also, if you have been granted an ex-parte order, you get your copy, law enforcement gets a copy, law enforcement serves it on the respondent and that person has an opportunity to come before the court and say they don't think it is right or whatever. With an ex parte order, the court is required within three days or sooner to actually have a hearing on the respondent's issues. If the order is modified or dissolved, the court has the responsibility to get that change to law enforcement and they, then, have a responsibility to get that change into the registry as soon as possible. Orders in the registry are supposed to be current.

One of the helpful things about having ex parte orders in the registry is that a person may accidentally leave the protective order somewhere and the respondent is breaking the order. When law enforcement responds and if she doesn't have the order on her and if they don't have access to the registry, they won't be able to act in an expeditious manner.

3:00

She was concerned with Representative Holm's amendment, because it seems to imply that there is some connection between the three types of orders.

> It's very clear in the Domestic Violence and Victim's Protection Act of 1996 that we meant to have three distinct and separate borders. They are not linked together; they're not supposed to be linked together. If I need a 20-day order to keep me safe and that's all I need, that's all I need. If I just want to go for a regular order first, I can just go for that regular order first. One isn't contingent upon the other one and I think that's an important principal and it's actually one that we litigated against the court system after the passage of the Act in 1996, because the court system had structured their forms in such a way that... you had to apply for two at the same time. That was not the intent of the legislature and we actually won that litigation. There are three separate and distinct orders. So, we're concerned with this concept of somehow linking them together at this point....
>
> Also, if there is a concern that there are orders that are meritless on their face being granted, the statute provides ability for a judge or magistrate to go no further with that hearing...

MS. HUGONIN repeated that the amendment should not get in the way of victims of stalking, which is what HB 1 is about.

CHAIR SEEKINS said he would hold this bill for further work.

HB 184-INDIVIDUAL DEFERRED ANNUITIES

CHAIR SEEKINS announced HB 184 to be up for consideration.

REPRESENTATIVE COGHILL, sponsor of HB 184, said it deals with AS 21.45.305 - insurance and individual deferred annuities. Market changes have put pressure on the need for an interest rate change on the minimum deferred annuity rate, which was set in statute in the 1970s at the current 3%. Then there was no expectation that the market would be where it is today. The Division of Insurance wanted to lower the floor to 1.5% with the idea that the National Insurance Commissioners were going to come up with a long-term fix. They did that and the long-term fix is a model law and in section 2 sets a cap at 3 percent, a

floor at 1 percent and a floating average based on a constant maturity rate...

TAPE 03-40, SIDE A

REPRESENTATIVE COGHILL said that section 2 allows the flexibility for insurance companies to do a re-determination and a transition period. This bill has the support of those who buy annuities, those who sell them and our regulatory agency that oversees them.

SENATOR THERRIAULT asked if they were getting into a turf battle between the banking and insurance industries.

MS. KATIE CAMPBELL, Life and Health Actuary, Division of Insurance, replied that she didn't know of any such battle. This was brought to their attention at the national level when interest rates started taking a dive and there were 3 percent guarantees in the contracts. Companies were concerned about solvency at that point and having to guarantee something they couldn't earn on their monies. Annuities guarantee a return; something comparable on the banking side would be a CD type of instrument. These are longer term guaranteed contracts.

SENATOR FRENCH asked if this would change any existing annuity contracts.

MS. CAMPBELL replied that the effective date provision was designed so that it was very clear that it doesn't affect any contract that is currently in place. It would only affect contracts that were issued after the effective date.

SENATOR FRENCH asked why they have to change the law and why couldn't the annuity folks recognize lower interest rates the way the rest of us have and write lower interest rates into their contracts from here on out.

MS. CAMPBELL replied that the minimum rate in the law is 3 percent and this bill provides flexibility for the rate to drop.

SENATOR FRENCH asked if the same problem would arise if interest rates went to 0 percent.

MS. CAMPBELL replied that the model language in this bill still guarantees a return at 1 percent.

CHAIR SEEKINS asked if the Division of Insurance thought these changes were compatible with the best interest of the people of the State of Alaska.

MS. CAMPBELL replied the division supports the bill.

SENATOR OGAN moved to pass SCS CSSSHB 184(L&C) from committee with individual recommendations and accompanying fiscal notes and asked for unanimous consent. There was no objection and it was so ordered.

CHAIR SEEKINS adjourned the meeting at 3:17 p.m.