

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

April 21, 2004

8:05 a.m.

TAPE(S) 04-48,49,50

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

CS FOR HOUSE BILL NO. 83(JUD)

"An Act adopting a version of the Revised Uniform Arbitration Act; relating to the state's existing Uniform Arbitration Act; amending Rules 3, 18, 19, 20, and 21, Alaska Rules of Civil Procedure, Rule 601, Alaska Rules of Evidence, and Rule 402, Alaska Rules of Appellate Procedure; and providing for an effective date."

MOVED CSHB 83(JUD) OUT OF COMMITTEE

SENATE BILL NO. 385

"An Act relating to homeland security, to civil defense, to emergencies and to disasters, including disasters in the event of attacks, outbreaks of disease, or threats of attack or outbreak of disease; establishing the Alaska division of homeland security and emergency management in the Department of Military and Veterans' Affairs and relating to the functions of that division and that department; and providing for an effective date."

MOVED CSSB 385(JUD) OUT OF COMMITTEE

HOUSE CONCURRENT RESOLUTION NO. 29 am

Relating to support for therapeutic courts for repeat driving while under the influence offenders.

MOVED HCR 29 am OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 56(L&C)

"An Act relating to the award to the state of actual reasonable attorney fees and costs, including costs of investigation, in certain court actions relating to unfair trade practices; and amending Rules 54(d), 79, and 82, Alaska Rules of Civil Procedure."

MOVED CSHB 56(L&C) OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 514(FIN) am

"An Act relating to child support modification and enforcement, to the establishment of paternity by the child support enforcement agency, and to the crimes of criminal nonsupport and aiding the nonpayment of child support; amending Rule 90.3, Alaska Rules of Civil Procedure; and providing for an effective date."

SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: HB 83

SHORT TITLE: REVISED UNIFORM ARBITRATION ACT

SPONSOR(s): REPRESENTATIVE(s) BERKOWITZ

02/07/03	(H)	READ THE FIRST TIME - REFERRALS
02/07/03	(H)	JUD
03/07/03	(H)	JUD AT 1:00 PM CAPITOL 120
03/07/03	(H)	-- Meeting Postponed to 03/10/03 --
03/10/03	(H)	JUD AT 1:00 PM CAPITOL 120
03/10/03	(H)	Heard & Held
03/10/03	(H)	MINUTE(JUD)
03/12/03	(H)	JUD AT 1:00 PM CAPITOL 120
03/12/03	(H)	Moved CSHB 83(JUD) Out of Committee
03/12/03	(H)	MINUTE(JUD)
03/31/03	(H)	JUD RPT CS(JUD) 4DP 2NR
03/31/03	(H)	DP: GARA, ANDERSON, GRUENBERG, MCGUIRE;
03/31/03	(H)	NR: SAMUELS, COGHILL
04/16/03	(H)	TRANSMITTED TO (S)
04/16/03	(H)	VERSION: CSHB 83(JUD)
04/17/03	(S)	READ THE FIRST TIME - REFERRALS
04/17/03	(S)	L&C, JUD
05/13/03	(S)	L&C AT 2:00 PM BELTZ 211
05/13/03	(S)	Heard & Held
05/13/03	(S)	MINUTE(L&C)
05/15/03	(S)	L&C AT 7:45 AM BUTROVICH 205
05/15/03	(S)	Moved Out of Committee
05/15/03	(S)	MINUTE(L&C)
05/16/03	(S)	L&C RPT 3NR
05/16/03	(S)	NR: BUNDE, SEEKINS, STEVENS G

03/05/04 (S) JUD AT 8:00 AM BUTROVICH 205
03/05/04 (S) Scheduled But Not Heard
03/12/04 (S) JUD AT 8:00 AM BUTROVICH 205
03/12/04 (S) Scheduled But Not Heard
04/21/04 (S) JUD AT 8:00 AM BUTROVICH 205

BILL: SB 385

SHORT TITLE: SECURITY;DIV. HOMELAND SECURITY/EMER. MGT
SPONSOR(s): HEALTH, EDUCATION & SOCIAL SERVICES

04/05/04 (S) READ THE FIRST TIME - REFERRALS
04/05/04 (S) HES, FIN
04/05/04 (S) HES AT 1:30 PM BUTROVICH 205
04/05/04 (S) Heard & Held
04/05/04 (S) MINUTE(HES)
04/07/04 (S) HES AT 1:30 PM BUTROVICH 205
04/07/04 (S) -- Rescheduled to 5:30 pm 04/07/04 --
04/07/04 (S) HES AT 5:30 PM BUTROVICH 205
04/07/04 (S) -- Rescheduled from 1:30 04/07/04 --
04/08/04 (S) HES RPT CS 2DP 2NR SAME TITLE
04/08/04 (S) DP: DYSON, WILKEN; NR: GUESS, DAVIS
04/16/04 (S) FIN REFERRAL WAIVED REFERRED TO RULES
04/20/04 (S) JUD REFERRAL ADDED AFTER HES
04/20/04 (S) JUD WAIVED PUBLIC HEARING NOTICE,RULE23
04/21/04 (S) JUD AT 8:00 AM BUTROVICH 205

WITNESS REGISTER

Senator Fred Dyson
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Presented SB 385 for the Senate Health,
Education and Social Services Committee and testified in support
of CSHB 56(L&C)

Mr. Dave Liebersbach
Division of Emergency Services
Department of Military & Veterans Affairs
PO Box 5750
Fort Richardson, AK 99505-5750

POSITION STATEMENT: Answered questions about SB 385

Mr. Jim Butler
Kenai, AK

POSITION STATEMENT: Made suggestions to improve SB 385

Mr. David Gibbs

Emergency Manager
Kenai Peninsula Borough
Kenai, AK

POSITION STATEMENT: Made suggestions to improve SB 385

Lt. Al Storey
Division of Alaska State Troopers
Department of Public Safety
3700 East Tudor Road
Anchorage, Alaska 99507

POSITION STATEMENT: Answered questions pertaining to SB 385

Mr. Dean Guaneli
Assistant Attorney General
Department of Law
PO Box 110300
Juneau, AK 99811-0300

POSITION STATEMENT: Answered questions pertaining to SB 385

Representative Les Gara
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Sponsor of HB 56

Mr. John Bittner
Staff to Representative Cheryl Heinze
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Presented HCR 29am for the sponsor

Ms. Janet McCabe
Partners for Progress

POSITION STATEMENT: Supports HCR 29am

ACTION NARRATIVE

TAPE 04-48, SIDE A

CHAIR RALPH SEEKINS called the Senate Judiciary Standing Committee meeting to order at 8:05 a.m. Senators Ogan, Ellis, French and Chair Seekins were present. The committee took up HB 83.

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^#HB83

CSHB 83(JUD)-REVISED UNIFORM ARBITRATION ACT

CHAIR SEEKINS asked members if everyone had a chance to review the revised uniform arbitration act bill. All members signified they had.

SENATOR FRENCH moved to pass CSHB 83(JUD) to its next committee of referral with its attached zero fiscal note.

CHAIR SEEKINS announced that without objection, the motion carried.

[See corrected motion made later in the meeting.]

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^#SB385

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

CHAIR SEEKINS noted the committee would take up SB 385, which was given an additional referral to the committee yesterday.

SENATOR FRED DYSON, chair of the Senate Health, Education and Social Services Committee, asked members to consider a proposed committee substitute, labeled version I, as the working document before the committee.

SENATOR OGAN moved to adopt version I as the working document before the committee.

CHAIR SEEKINS announced that version I was adopted with no objection.

SENATOR DYSON told members similar legislation was originally introduced in the House but has been "hung up" there for various reasons. As a result, the Administration asked the Senate HESS Committee to sponsor this legislation. He thanked the Senate leadership for expediting it. He said the purpose of SB 385 is twofold. First, it reflects in statute the creation of the Department of Homeland Security as a new organization. Second, it adds a new category under which an emergency can be declared and emergency powers used, that being in the case of an eminent threat of a terrorist attack. He advised that SB 385 will grant [the governor with] emergency powers to address a credible threat of an attack. Senator Dyson informed members that during the Christmas holiday, the state received credible information about a planned attack in Valdez. The Department of Public

Safety (DPS), the Alaska National Guard, and the Alaska State Defense Force were mobilized for 20-plus days.

SENATOR DYSON pointed out that as a member of the Senate Finance subcommittee on the Department of Military and Veterans Affairs (DMVA), he was unable to ask questions about DMVA's preparedness for dealing with a terrorist threat without compromising security. Therefore, SB 385 allows for a homeland security emergency management oversight committee, made up of legislators. Its meetings will be closed and committee members will have to pass security clearances and sign confidentiality agreements, similar to the intelligence oversight function of Congress. He said he must ask for information to know whether or not the Department of Homeland Security has done an adequate job of preparedness but he sure would not want our enemies to know that information. The new section creating the oversight committee was not in the House version of the bill.

SENATOR DYSON said in the work done on the companion bill in the House, DMVA worked through a number of jurisdictional issues with DPS and the Department of Transportation and Public Facilities (DOTPF). He believes all inter-agency conflicts have been solved at this point. SB 385 also contains modifications that make Second Amendment right enthusiasts comfortable. He then referred to the explanation of changes to version I distributed to members and described those changes as follows.

Section 2 is the new oversight committee and it's a more extensive section than anticipated.

On page 9, line 16, the word "looking" was replaced with the word "pertaining" for the sake of better language.

On page 9, line 17, a provision was added that requires any actions taken by the new department to be subject to both state and federal constitutional constraints.

CHAIR SEEKINS interjected to ask if that means the state is not authorized to trample on anyone's civil rights.

SENATOR DYSON said yes, but under a declared state of emergency, the emergency powers, for short duration, are excursions from what are usually thought of as constitutional protections.

CHAIR SEEKINS asked if constitutional authorization exists for that but anything outside of that purview would be forbidden.

SENATOR DYSON said that is exactly right. He felt the language in the bill is unnecessary but it does no harm and makes it clearer.

SENATOR DYSON continued his explanation of the changes in version I.

On page 14, line 4, the word "terrorist" was added so that it reads "In the event of an actual enemy or terrorist attack in or against the state, or a credible threat of an imminent enemy or terrorist attack,"

CHAIR SEEKINS asked if "credible threat of imminent enemy or terrorist attack" is defined in the bill.

SENATOR FRENCH noted that definition is on page 15.

CHAIR SEEKINS pointed out that three people must agree that a credible threat exists prior to any exercise of these emergency powers, according to the language on page 15, line 13.

SENATOR DYSON agreed.

{SENATOR THERRIAULT arrived at 8:17 a.m.}

SENATOR FRENCH noted according to that language it is uncertain that the three people must agree but they must communicate. The adjutant general must consult with the commissioner of public safety to certify that a credible threat exists. The governor would then be empowered to make a declaration of emergency powers.

CHAIR SEEKINS agreed and said the governor cannot act unilaterally.

SENATOR OGAN indicated that Legislative Legal and Research Services finds the language on page 15, line 11, to be problematic because the legislature cannot affect the powers of the governor with a resolution and because the Legislative Council has interim authority for the legislature. He suggested delegating that power to the Legislative Council during the interim. He thought the drafter was envisioning that a special session of the legislature would be called to enact a concurrent

resolution to extend a state of emergency for longer than 30 days.

SENATOR DYSON agreed and noted that he intended to address that issue. He asked Senator Therriault his opinion of the merits of delegating this authority to the Legislative Council, versus calling a special session of the legislature.

SENATOR THERRIAULT thought a level of emergency that went beyond 30 days would be of such a nature that the legislature could meet in special session. He was uncertain that all members of the legislature would be comfortable extending all of that power to a subgroup. He questioned whether Senator Ogan's intent is to allow the chair of the Legislative Council to take action.

SENATOR OGAN said he put that proposal on the table since the Legislative Council has the authority to do things on behalf of the legislature during the interim. He did not intend to give that power to the chair of the Legislative Council.

CHAIR SEEKINS said he would be agreeable to giving that authority to the Legislative Council if the legislature is unable to convene in a special session.

SENATOR DYSON said first, members should agree the legislature cannot compel the governor's action with a concurrent resolution, so that provision should be changed so that the legislature would have to enact a law instead.

SENATOR OGAN moved to amend line 11, to replace "concurrent resolution" with "law" as a conceptual amendment [Amendment 1].

SENATOR THERRIAULT objected and asked what the legislature would actually do to approve the governor's action, since the statute would already be on the books.

SENATOR FRENCH thought a two-line bill would be introduced that says pursuant to AS 26.20.040(b), the legislature hereby extends the declaration of emergency made by the governor on a specific date for another 30 days.

SENATOR THERRIAULT noted the legislature would be enacting a temporary act.

SENATOR OGAN cautioned that transportation could be a serious problem. He recalled that after 9/11, no planes were permitted to fly, which could impede the convening of a special session.

CHAIR SEEKINS noted if the situation were that bad, it is unlikely that anyone would object to the governor extending the emergency declaration.

SENATOR DYSON commented, "Also, if we thought the governor was off the reservation and doing inappropriate things, we could call ourselves into special session and with a two or three line bill, repeal his authority to do these things under law and/or repeal it for a specific period of time to stop those things."

CHAIR SEEKINS felt that language creates a check and balance to make sure no governor can extend those powers if the legislature believes otherwise.

SENATOR DYSON repeated the legislature could repeal the governor's powers in a special session.

SENATOR OGAN noted the Legislative Council can call a special session.

SENATOR FRENCH referred to the certification process described in subsection (c) on page 15, line 13, and asked if anyone discussed what form the certification would take, such as a document or oath from the adjutant general to the governor.

MR. DAVID LIEBERSBACH, acting assistant commissioner for homeland security and director of the Division of Emergency Services (DES), Department of Military & Veterans Affairs (DMVA), gave the following answer.

Depending on the time limits I guess I would say, and how rapidly things are occurring, it could simply be a matter of consulting by phone with follow-up documentation. Generally when we do these - and we're most familiar with doing them in emergency disaster declarations where we pull together a disaster policy cabinet that meets within a few hours to a couple-three days of the request for a declaration to give advice to the governor, and then it's forwarded to the governor with a recommendation yea or nay and the governor can of course decide to declare or not. He has that authority.

This is put in because we would anticipate we need to move fairly quickly, particularly if we have good intelligence as we did just prior to the holiday

season for Valdez. We had classified intelligence that, even at this point, has not been made totally public by the federal government, but we had a very serious threat in a couple places in the country, one of them being Valdez.

So what this does is it - as opposed to using the disaster policy cabinet, which in fact isn't established in statute or anything, it's just a system set up through the Department of Military and Veterans Affairs to provide a check and balance, if you will, to disaster declarations, but a check and balance within the administration. The commissioner of public safety and the commissioner of military and veterans' affairs would confer because we don't know down through which lane we would get the intelligence. They would discuss and determine it's credible and make a recommendation to the governor. The governor could then decide to invoke this type of thing.

We would see it that we would probably very quickly as we start moving forward through whatever elements, whether it's law enforcement or military or all or other agencies of government, we would also be pulling together a disaster policy cabinet, a broader cabinet, to discuss the situation and make sure they understood and were onboard. But we feel that there has the potential for emergency that we need to do this a little quicker than we do even some of our disaster declarations where we already have the authority to start moving forward within the department before the declaration is actually made. We can do a certain amount of things and make certain commitments - life safety, etcetera. This is a little different because the event hasn't happened. We just have the threat of an event.

SENATOR FRENCH said his interpretation is that [the process] depends on the situation and on how fast breaking it is but that Mr. Liebersbach imagines in most cases it will be done orally.

MR. LIEBERSBACH thought the majority of certifications would be documented up front because generally, DMVA has the intelligence information far enough ahead to use the disaster policy cabinet. This provision will allow an oral certification in a fast-breaking situation.

CHAIR SEEKINS asked if this provision would only come into play when a credible threat of attack occurs because this process will be unnecessary if the state is under attack.

MR. LIEBERSBACH agreed and said if the state is under attack, a state of disaster emergency would be declared under AS 26.23, which would precipitate action.

SENATOR FRENCH asked if SB 385 will also cover natural disasters and whether this legislation is an attempt to get "everybody under one umbrella."

SENATOR DYSON said that is correct. SB 385 only adds the threat of credible terrorist activity to existing law.

MR. LIEBERSBACH pointed out that AS 26.20, the civil defense statute, was enacted in 1951. Title 26 is within DMVA; AS 26.23, deals with natural and accidental human caused disasters and was added later on. SB 385 addresses a threat or attack by terrorists.

CHAIR SEEKINS redirected members' attention to Amendment 1 [replacing "concurrent resolution" with "law"]. He noted with no continued objection, Amendment 1 was adopted.

CHAIR SEEKINS affirmed that members were comfortable with Section 9(c) on page 15, line 13.

SENATOR DYSON continued with his description of the changes to version I and asked Mr. Liebersbach for a definition of the word "clearable" on page 2, line 29, which pertains to committee members' security clearance.

CHAIR SEEKINS piped in that means able to obtain or able to clear.

SENATOR FRENCH agreed but asked how one would know a member can be cleared. He expressed concern that the clearance would be post-dated since the committee might not be formed until a threat occurs. He felt the language "back-fills" and suggested looking at similar language used by other states.

SENATOR DYSON felt that language is a practical problem and noted that Mr. Liebersbach could probably confirm that many of the people in the homeland security department have not yet been cleared and are operating on a provisional basis. His question

was whether the word "clearable" is definitive enough to quell any legal issues.

SENATOR OGAN suggested that an entry-level background check might occur - such as checking ASPIN for a history of arrests or convictions. He thought a person involved in a subversive group would not qualify to be in the legislature anyway because the constitution provides grounds for removal of a person who advocates the overthrow of the government.

SENATOR FRENCH said that some of his colleagues are working at the U.S. Attorney General's Office and underwent an extensive background check by the FBI, which included personal interviews with acquaintances. He thought to get cleared at a secret level would require a step beyond that.

MR. LIEBERSBACH told members there are three levels of clearance. The top level is known as top secret and clearance for that level takes about 18 months. He said most of what DMVA will need can be achieved with the next level of clearance - the secret level. He noted that staff at the U.S. Attorney General's Office get top secret clearance, which is why the process is so exhaustive. He added the difference between those two levels is that top secret clearance allows a person to know the source of intelligence information. The state uses the federal standards for clearance, with the exception of a standard referred to as "law-enforcement sensitive." That clearance is fairly easy to get and does not require a background check; it only requires the state troopers to sign off on it. He then described the procedure for getting secret clearance and said the interim clearance provided during that process is probably the origin of the word "clearable" in SB 385.

CHAIR SEEKINS asked if requiring a legislator to have a federal security clearance at the secret level or an interim federal security clearance to serve on the committee would address members' concerns.

MR. LIEBERSBACH believed it would address all concerns.

SENATOR ELLIS moved to adopt Amendment 2, which would read as follows.

A M E N D M E N T 2

On page 2, line 29:

After "security clearance" insert "or interim federal security"

Delete "or must be clearable at the secret level"

CHAIR SEEKINS noted that without objection, Amendment 2 was adopted.

SENATOR DYSON directed members to a letter from Jennifer Rudinger of the Alaska Civil Liberties Union, in which she raised some interesting questions.

CHAIR SEEKINS asked Senator Dyson to proceed with his description of the changes in version I and to address the ACLU letter afterward.

SENATOR DYSON continued:

Chair Seekins suggested the next change. It straightens out an inaccuracy in the House version by adding the words "unincorporated village" and brings that provision into conformity with existing state law.

CHAIR SEEKINS noted that unincorporated community was considered to be a political subdivision of the state, which it technically is not.

SENATOR DYSON continued.

On page 22, a new subsection was added that allows the legislative committee to organize quickly. The Senate HESS version allowed the oversight committee to organize after the beginning of the next legislative session; version I allows it to organize after SB 385 becomes law. SB 385 has an immediate effective date.

SENATOR DYSON summarized that covers all of the changes between the Senate HESS version and version I as amended.

CHAIR SEEKINS announced a brief recess at 8:50 a.m. to allow members to review the letter from the ACLU.

Upon reconvening at 8:55 a.m., CHAIR SEEKINS asked Senator Dyson to comment on the ACLU letter.

SENATOR DYSON commented that Ms. Rudinger has been a friend that has provided valuable input over the past few years. In her letter she mentions several times that the ACLU needs time to further analyze SB 385. She said she would like to see it made clear that the committee has power to request information from the governor. Senator Dyson said he asked Mr. Liebersbach if he could conceive of any information the governor might not want to hand over to the oversight committee and he said no.

SENATOR DYSON proposed that on page 5, line 3, the words "the governor" be inserted right after (2), so that it would read:

(2) the governor, other agencies or persons...

CHAIR SEEKINS suggested adding "the governor" immediately after (1) on the same page, line 1, instead.

SENATOR DYSON questioned whether the Alaska division of homeland security includes the Department of Public Safety.

MR. LIEBERSBACH said it does not.

CHAIR SEEKINS suggested adding DPS and said he would feel more comfortable if DPS was also responsive to the committee.

MR. LIEBERSBACH noted that DPS would be included under "other agencies" in subsection 2, as would DOTPF, DHSS, and DEC.

TAPE 04-48, SIDE B

CHAIR SEEKINS asked members if adding "the governor" before "the Alaska division of homeland security" [Page 5, line 1] would address the concern [Amendment 3].

SENATOR THERRIAULT moved to adopt Amendment 3.

SENATOR DYSON informed members that he is attempting to get an answer to the question of what restrictions and additional authorities state and federal governments are provided with under an emergency declaration. He said he believes the government can hold and seize people for limited periods of time without taking them before a

magistrate within a certain number of hours. He said he is eager that this bill get to the House soon because of the late date in the session but he will do everything he can to get that information in writing for all senators before this bill gets to the Senate floor.

SENATOR OGAN expressed concern that SB 385 will give the governor the authority to waive due process and probable cause for seizure of property and arrests. He added:

The concerns I've heard - Don Young came to talk to our majority and he talked about the guy who was arrested for having [indisc.]. He was a U.S. citizen. He was detained and he wasn't given any due process and locked up for six or eight months or whatever - no trial and all that and heck, there's probably a couple thousand Alaskans out there that have eight pounds of powder and, you know, they're good, red-blooded patriotic guys who'd probably be volunteering for the state militia if we needed them. It'd be good to have them if they've got that much powder and that many guns. So if there's a way to put some kind of a circuit breaker in there that - okay, we're going to suspend this due process or that probable cause thing for awhile because of this emergency but make sure that due process is afforded to them that they just can't - if they seize your property under this type of a thing, that you have the due process in the court to say wait a minute, the seizure was out of line, or they have the ability to go before a judge to make sure their due process rights are protected. I haven't had time to analyze the CS to make sure those things are covered or if we want to specifically bring those things up so...

SENATOR DYSON responded that it is his understanding that all of these powers already exist; SB 385 only expands that authority under the credible threat of an imminent attack. That does not remove his concerns about the existing power these agencies have and he feels their existing power is a legitimate concern. He repeated that he would get that information for committee members. Second, this bill requires the agency to pay reasonable rent for any property seized, such as a front-end loader to build a roadblock. He said he likes the fact that the legislature can call itself

into session and stop what the governor is doing because that could place a significant limit on the governor's ability to supersede individual rights.

CHAIR SEEKINS said he is comfortable that SB 385 does not expand those powers but agreed it is important to find out what they are in terms of the federal authorization.

SENATOR ELLIS referred to section 10 on page 15, traffic control, and said he perceives that as an expansion of power. He pointed out that in other parts of the country, roadblocks and traffic checkpoints for criminal activity like drunk driving have been very controversial. He was unsure whether the Alaska Supreme Court has ruled on that activity in Alaska. He said he understands that traffic control after a natural disaster or a terrorist attack would be a matter course, but it makes him anxious that roadblocks could be established for the reason of a perceived threat. He asked Senator Dyson to speak to what would be allowed in that situation.

SENATOR DYSON said roadblocks were set up on the road into Valdez over the holidays because of the threat. SB 385 would give the state agencies authority to do what they did. It is his understanding that DPS and DOTPF are very concerned about that issue, and the provision in the bill is a compromise.

SENATOR ELLIS asked if this provision would allow that to happen in the general vicinity or whether roadblocks could be set up all over the state.

SENATOR DYSON guessed that would depend on the nature of the threat.

MR. LIEBERSBACH answered that the authority to set up checkpoints and close roads is already in statute and rests with DPS and DOTPF. All SB 385 says is the division of homeland security has the authority to work with those departments. When the checkpoints were set up on the road to Valdez, DPS did not have the staff to do the job so National Guard personnel were used; however, DMVA does not have that authority. He said the actions taken would be specific to the threat and the only reason DMVA would do anything on a large-scale is because the state is large. If the threat were to oil field facilities, DMVA would want to

put a checkpoint on the Dalton Highway, which covers a large area, as well as to the Valdez terminal.

CHAIR SEEKINS asked if checkpoints have already been set up along the Dalton Highway.

MR. LIEBERSBACH said they were, right after 9/11, as well as over the holidays because a general threat was made at that time.

SENATOR OGAN said he would be more comfortable with Section 10 if the word "illegal" was added to page 16, line 5, before the word "weapons" [Amendment 4].

CHAIR SEEKINS asked what would happen if a person had a trunk full of legal weapons.

SENATOR OGAN said that a trooper would have to find probable cause that the vehicle occupants intended to engage in criminal activity. He then moved to adopt Amendment 4.

SENATOR DYSON commented that the state just went through an expensive exercise to prove that a 338 Winchester will puncture the pipeline. So, if there is a credible threat on the pipeline and a person is driving through with a weapon that is capable of puncturing the pipeline, it would be important to give agency staff the authority to deal with that weapon.

CHAIR SEEKINS asked Lt. Storey if DPS has the authority to put up roadblocks or close roads right now.

LT. AL STOREY, Alaska State Troopers (AST), said that authority actually lies with DOTPF.

CHAIR SEEKINS asked if SB 385 expands that authority or if it is a sharing of that authority in coordination with the division of homeland security.

LT. STOREY said there is some authority that falls to DPS under common law because DPS can close roads in extraordinary circumstances for short periods of time. He deferred to an attorney to answer whether SB 385 expands that authority.

SENATOR ELLIS noted that fertilizer and diesel fuel are legal; however they would be highly suspicious in the same truck together.

SENATOR OGAN said he would interpret legal weapons to mean weapons used for personal protection - guns. He noted that Section 10 also speaks to explosives, chemicals, biological agents or other instruments capable of causing widespread or severe injury. He said his intent with Amendment 4 is that it apply to weapons used for personal protection.

9:20 a.m.

LT. STOREY said the term "illegal weapons" is a quasi-legal term. He reads that term to mean weapons that have been altered or weapons that have been made fully automatic when they're not supposed to be. He said the hope of Section 10 was that the troopers could be looking for any weapon that could be used for illegal purposes inside the contained area. As the team leader of the Valdez checkpoints, it was everyone's hope to keep all weapons out of the area they were protecting. Therefore, had a person arrived at a checkpoint with weapons, they would have been denied access to the area and would have turned around. He said DPS worked with DMVA on this language; it will not violate people's constitutional rights.

SENATOR FRENCH asked if the checkpoints would be set up in conjunction with a finding under Section 9, only after the credible threat has been certified.

LT. STOREY deferred to DMVA but said that is DMVA's hope in this process. Once a threat is determined to be credible, the protocol to set up checkpoints and barriers would kick in.

SENATOR FRENCH noted that the pipeline parallels the Haul Road as well as vast stretches of the Alaska Highway, which could present an entirely different situation than Valdez, and cause major disruptions for people. He believes most people could understand the restriction if this applies only for 30 days, but he said he would not be comfortable with Section 10 unless it requires a certification first. He suggested tying Section 10 back to Section 9(c).

SENATOR OGAN stated that he disagrees with the philosophy that all weapons need to be banned from an area. He noted

that any gun could cause severe injury to a person (page 16, line 70) so that language could turn any Alaskan into a terrorist.

SENATOR THERRIault noted that a lot of people live along the Richardson Highway to Valdez. He questioned if there was an allegation that someone was going to use a high-powered rifle to shoot a hole in the pipeline, what would be done about the people who live along the highway. He thought Amendment 4 is reasonable because guns are prevalent in Alaska society.

LT. STOREY said that would only happen when the governor determines a sufficiently high threat of attack.

CHAIR SEEKINS asked for the definition of an illegal weapon.

LT. STOREY said his interpretation of an illegal weapon is perhaps a shotgun with the barrel cut off, or one that's been converted into a fully automatic weapon. He maintained that term does not fit well in the bill.

SENATOR OGAN suggested deleting the word "or" on line 7, page 16 instead, so that it reads weapons, etcetera, capable of "causing widespread, severe injury...." He felt that would exclude the average Alaskan.

MR. LIEBERSBACH informed members that the troopers could not seize weapons. Staff would be looking for people with weapons who might be of concern.

CHAIR SEEKINS noted that inserting the word "illegal" would keep the troopers from searching every vehicle that comes through a roadblock so it will not harm the intent of the bill.

MR. LIEBERSBACH agreed and felt the deletion of the word "or," suggested by Senator Ogan would do no harm either.

SENATOR OGAN disagreed that the troopers would not be able to seize weapons because the language on page 14, line 11, reads:

To seize, take, or condemn property if, and only to the extent that, the governor determines that

the property is needed for the protection of the public

Therefore, the troopers could seize guns in the name of public protection.

CHAIR SEEKINS said he reads that to mean if the troopers needed his rifle to shoot at the enemy, they would take it.

SENATOR DYSON noted the definition of "illegal weapons" might change, depending on whether President Bush signs the extension of the assault weapons ban.

CHAIR SEEKINS asked Senator Ogan if his intent was to withdraw Amendment 4 or to amend it.

SENATOR OGAN moved to amend Amendment 4 to drop the word "or" between the words "widespread" and "severe" on page 16, line 7. He then said, "The intent is that ordinary citizens for protection of themselves can still carry weapons but if they have enough weapons and enough firepower to cause widespread severe injury to persons or property, then that's a good reason to turn them back at a checkpoint."

CHAIR SEEKINS noted that without objection, Amendment 4 as amended was adopted. He then announced an at-ease.

TAPE 04-49, SIDE A

CHAIR SEEKINS announced the committee would take public testimony.

MR. JIM BUTLER, an attorney from Kenai, told members he works primarily in the area of incident management and that he appreciated hearing the committee debate some of the perplexing issues surrounding homeland security and creating checks and balances within that system. He asked to offer some general ideas to help streamline the overall size of the legislation. He stated:

When the committee continues to look at the issue of oversight, it might want to take a look at [AS] 26.23.025, which currently defines the relationship between the legislature and disaster emergency. It seems like it provides a tool for the legislature to have oversight and, perhaps,

without having to go through the whole issue of security clearances for legislators and perhaps staff who get involved. It might streamline that process.

The other is the issue related to, in general, the role of where a local jurisdiction fits into the equation. I understand from the bill that there's a requirement for the homeland security component of the new division, as well as the emergency management component, to have plans that the locals would be involved. I can tell you from experience that the general approach today is that most local emergencies are managed on a local level first but the state provides support. That support is typically coordination and funding and so I think one of the things to be aware of is as we start to talk about the state and the role of emergency management, as opposed to emergency services, there'd be [sic] the risk of having some confusion about whether they'd provide coordination or whether they'd actually show up and provide management responsibility on the ground.

I also think that if the committee has the opportunity - I don't know if it's something that they've had background on - for the committee to look at the Administrative Order 170, which was promulgated several years ago and talks about the state developing an emergency management system and you might want to consider how that fits in.

I understand Mr. Chairman and the committee that you're probably getting short on time. There'll be some other opportunities to look at this as it moves through so I'll cut my comments there and I appreciate the opportunity to testify.

MR. DAVID GIBBS, the emergency manager at the Kenai Peninsula Borough, told members that many of his concerns echo Mr. Butler's concerns. SB 385 is a substantial rewrite of the Alaska Disaster Act, which, in his view, changes the responsibilities of local jurisdictions. SB 385 essentially gives the new Department of Homeland Security substantial new powers, some of which are vague. He drew attention to the language on page 10, line 17-20, and expressed concern

that language is vague. He questioned whether "information" refers to memos, faxes, e-mail messages and felt a clearer definition is necessary. He also felt the bill should define the authority of the new Department of Homeland Security for the sake of those working in the field of emergency management.

CHAIR SEEKINS thanked both participants and closed public testimony.

SENATOR FRENCH told members his lingering concern is with the traffic control section of the bill and he asked to hear from a representative from the Department of Law to get more information about the circumstances under which roadblocks could be set up and the steps the government would have to go through before some of these powers can be exercised. He then said that unless he hears otherwise, his desire to link the establishments of roadblocks, particularly on areas like the Richardson or Dalton Highways that are used regularly, to the declaration of a credible threat of imminent danger in Section 9.

CHAIR SEEKINS asked Mr. Liebersbach to comment on the question of emergency coordination versus management.

MR. LIEBERSBACH responded that it's all the same to him. The laws of the state clearly put the responsibility and authority to manage disasters and emergencies at the local level. DMVA has no desire to take that on at the state level. During disasters and emergencies, it sits as a support, unless no local government exists in an area but, even in those cases, DMVA works with a local tribal council or entity. DMVA is not a first-responder organization. Regarding the change in the name from emergency services to management, he said that term is used by almost all states in the country. He clarified that SB 385 will not create a new department; it will create a division of homeland security within DMVA. Currently, two divisions have been established: the division of emergency services and EO 203 established the division of homeland security and the office of homeland security and emergency services. SB 385 will eliminate that office and collapse the two divisions into one division, which is how things are operating now. Instead of having an assistant commissioner and two division directors, DMVA will have one division director. The name change from the division of emergency services to the division of homeland security and emergency management

is necessary because of the heightened visibility of homeland security, which the state's federal partners expect to see from all of the states.

CHAIR SEEKINS said, in response to Senator French's concern, subparagraph (2) on page 15, line 30, says the new department in coordination with DPS and DOTPF can establish and operate checkpoints for roadways that serve critical property or facilities when the governor determines that a sufficiently high threat of attack exists. He asked if the committee wants the procedure in Section 9 to be in effect to establish roadblocks, i.e. coordination between the governor and the commissioners of the two departments or whether the governor should have the singular ability to establish those checkpoints. He then elaborated that his question is whether to allow the governor to establish checkpoints at a lower level where there is a sufficiently high threat of a terrorist attack or whether the governor should have to meet the standard of a credible threat of imminent enemy or terrorist attack. He said personally, he has no problem allowing the governor to establish a checkpoint for a reasonable period of time leading up to the establishment of a credible threat.

SENATOR OGAN thought the committee had gone a long way in putting sideboards and checks and balances on the bill. He thought the public would be howling if it believed the governor was going beyond what was reasonable and the legislature could call itself into special session.

CHAIR SEEKINS moved to insert on page 16, line 1, between "of" and "attack" "enemy or terrorist" [Amendment 5].

SENATOR FRENCH objected for the purpose of discussion. He said although he doesn't have any particular "beef" with Amendment 5, it does not address his concern about tying the establishment of roadblocks back to emergency powers granted in Section 9. He said the governor could, singularly, have his agents set up roadblocks for unlimited duration under the bill. He then withdrew his objection.

CHAIR SEEKINS announced that Amendment 5 was adopted. He then asked if the committee wanted to tie the traffic control provision into any timeframe.

SENATOR OGAN asked if the checkpoints could be established only when the emergency powers are invoked.

CHAIR SEEKINS clarified no, the governor could establish checkpoints prior to invoking emergency powers. He envisioned the governor establishing those checkpoints as a first step.

SENATOR FRENCH noted that police officers operating under probable cause can set up roadblocks right now, and that is done all of the time when an assault or bank robbery happens. Therefore, DPS is not prohibited now from throwing up a roadblock if it believes someone could be endangering others. He said his intent is to put some sideboards on the governor's abilities within the framework of this bill.

CHAIR SEEKINS said he has no problem leaving Section 10 as is as it will provide an early check and offer an interim step.

SENATOR ELLIS asked if that question could be held open for a day.

CHAIR SEEKINS noted that he planned to recess the meeting until 5:30 p.m., at which time the committee could revisit the question.

SENATOR THERRIAULT brought up that when he spoke with Senator Dyson about the oversight committee, he had envisioned a subcommittee, however, SB 385 would create an entirely new committee and he is not sure that is warranted. He said at present, Representative Harris and Senator Wilken are the co-chairs of the Joint Armed Services Committee (JASC) and Senator Guess and Representative Joule are the minority members so they would be four of the six members of the oversight committee, according to the membership list in SB 385. Senator Dyson also sits on the JASC and is the Senate Finance subcommittee chair for the DMVA. He noted that since one member could fill two seats, the committee could be comprised of five people, yet the quorum is rigidly established at four members. In addition, on page 3, lines 13-17 of SB 385, when a member files a declaration of candidacy for an elected office other than the legislature, that member's membership on the committee would be terminated. He felt it is unnecessary to force a member to vacate a seat until s/he is actually elected to another office. He suggested structuring the oversight committee as a subcommittee of the JASC to avoid creating a new committee and looking at some small changes to make the subcommittee administratively workable.

SENATOR DYSON thanked Senator Therriault for his excellent comments and offered to try to work those things out before the evening meeting.

CHAIR SEEKINS announced a recess until 5:30 p.m.

TAPE 04-50, SIDE A

CHAIR SEEKINS reconvened the Senate Judiciary Committee hearing at 5:08 p.m. Senators Ogan, French, and Chair Seekins were present.

CHAIR SEEKINS announced, for the record, that the committee had been working on version Q of HB 83 during the morning meeting and, for the purpose of clarification, asked for a motion to adopt version Q as the version that passed out of the committee.

SENATOR OGAN moved to adopt version Q of HB 83. With no objection, the motion carried.

CHAIR SEEKINS announced the committee would resume its discussion on SB 385. He said the committee had adopted five amendments to SB 385 so far and has before it a conceptual amendment [Amendment 6], which Senator Dyson indicated applies to Section 2.

SENATOR DYSON asked that the committee consider Amendment 7 first.

CHAIR SEEKINS moved to adopt Amendment 7, which reads as follows:

A M E N D M E N T 7

OFFERED IN THE SENATE
TO: CSSB 385(HES) (Version I)

Page 9, line 8

Delete "cooperate"
Insert "coordinate"

Page 9, lines 12-18:

Delete "and the incidents thereof; and in this connection [TO] take any measures that

- (A) it considers proper to carry into effect a request of the president and the appropriate federal officers and agencies for action pertaining [LOOKING] to homeland security and civil defense; and
- (B) are authorized under this chapter and the Constitutions of the United States and the State of Alaska [,

Insert "[AND THE INCIDENTS THEREOF; AND IN THIS CONNECTION TO TAKE ANY MEASURES THAT IT CONSIDERS PROPER TO CARRY INTO EFFECT A REQUEST OF THE PRESIDENT AND THE APPROPRIATE FEDERAL OFFICERS AND AGENCIES FOR ACTION LOOKING TO CIVIL DEFENSE,"

SENATOR FRENCH objected for the purpose of discussion.

SENATOR DYSON said the division of homeland security wrote this amendment and that it takes care of several issues that the committee discussed. On page 9, line 8, replacing the word "cooperate" with the word "coordinate" will alleviate the fear that the state would be forced to do anything under federal rule that it is not comfortable with. The deletion of the entire phrase "take any measures" on lines 12-18 will not dilute what the division wants to do but removes a phrase of great consternation to several committee members.

MR. LIEBERSBACH explained that the inserted material at the bottom of Amendment 7 would actually delete language that is currently in statute.

SENATOR FRENCH withdrew his objection therefore Amendment 7 was adopted.

CHAIR SEEKINS moved to adopt Amendment 6, which reads as follows:

A M E N D M E N T 6

Conceptually, change from formation of a new joint standing interim committee into a Homeland Security and Emergency Management Subcommittee of the Joint Armed Services Committee. In this transition, accomplish the following:

- (A) Page 2, line 16, delete "six" and insert "four to six"
- (B) Page 3, lines 13-17, change termination of membership to be tied to time of leaving legislative office.
- (C) Page 3, lines 18-23, delete "Vacancy" section. Vacancies to be filled as slots defined under AS 24.20.810 are filled.

- (D) Page 3 lines 24-27, delete "Travel and Per Diem" section. This is already covered for the Joint Armed Services Committee.
- (E) Page 3, line 28, change quorum to three instead of four members.
- (F) Page 4, lines 4-6, delete "Staff" section. This is already covered for the Joint Armed Services Committee.

SENATOR DYSON informed members that Amendment 6 should be moved as a conceptual amendment to take care of the issues raised by Senator Therriault about the oversight committee. He explained that amendment 6 will:

- clarify that the committee is a subcommittee of the JASC
- change the subcommittee membership to four to six members
- disqualify members when a legislator leaves office rather than when a legislator files for another office
- delete the vacancy section, which is already covered in law
- delete the travel and per diem provision because that is covered under the JASC
- change the quorum requirement to three members, anticipating that the committee will not always have six members
- delete the staff provision because JASC staff will serve as the subcommittee staff

SENATOR FRENCH questioned whether the quorum requirement should read half of the members plus one.

CHAIR SEEKINS maintained that a quorum can be established at any number.

SENATOR DYSON felt Senator French's suggestion was a good idea. He added that he envisions the subcommittee to act as an oversight committee, not a decision-making committee.

Members discussed the quorum issue. CHAIR SEEKINS noted that according to Mason's Manual [Sec. 502], a quorum constitutes a majority of all those entitled to vote and that every member entitled to vote should be counted in determining whether a quorum is present, but members disqualified on account of interest from voting on any question cannot be counted for the purpose of making a quorum to act on that question.

SENATOR OGAN questioned how Amendment 6 would change the committee from an interim committee to a subcommittee.

CHAIR SEEKINS referred to the language on page 2, lines 6-10 of version I, and noted the permanent interim committee of the legislature would be change to a subcommittee of the JASC. He then pointed out that the bill could say that a quorum is defined as a majority of the members of the subcommittee and that would comply with Mason's Manual.

SENATOR FRENCH moved to amend Amendment 6 so that it replaces the language in subsection (a) on page 3, lines 28-29, with, "A majority of the members of the committee constitutes a quorum."

CHAIR SEEKINS announced that without objection, Amendment 6 was amended. He asked if the JASC staff would need the same security clearance as the subcommittee members.

SENATOR DYSON was unsure.

CHAIR SEEKINS suggested incorporating that requirement in subsection (b) on page 2, beginning at line 28, of version I.

SENATOR DYSON suggested leaving the staff section in the bill and changing the language on page 4, line 4, to say DMVA staff will staff the subcommittee and be subject to the same security and confidentiality requirements as the subcommittee members.

CHAIR SEEKINS noted that staff members should provide the subcommittee with professional and clerical assistance under the auspices of the JASC and be required to have the same clearances as the members.

SENATOR OGAN moved Senator Dyson and Chair Seekins' suggested language as [another] amendment to Amendment 6. Without objection, Amendment 6 was again amended.

SENATOR DYSON distributed copies of Administrative Orders 203 and 170 and said that AO 203 reorganized the divisions in DMVA and that SB 385 codifies those changes in statute.

MR. LIEBERSBACH agreed, but noted a few changes. He said AO 203 consolidated two divisions into one and eliminated the department of homeland security management, as well an assistant commissioner position and a division director position. Those changes saved a few hundred thousand dollars in the 2005 budget.

SENATOR FRENCH told members that he spoke to Mr. Guaneli about Section 10 and asked that he address the committee.

MR. DEAN GUANELI, Criminal Division, Department of Law, told members that DOL spent a good deal of time on this section when drafting the bill. DOL believes that Section 10 represents a fair and balanced approach to providing security for critical infrastructure in the state and protecting the rights of citizens. He said that DOL hopes that a declaration of emergency by the governor will be very, very rare. Making the standard a "credible threat of an imminent attack" means an attack is highly probable. However, there will be situations where a heightened threat to security will exist but will not rise to the level of an emergency declaration. Because of the importance of critical infrastructure in the state and the perceived need to protect that infrastructure, some additional level of protection is deserved. He stated:

After 9/11, the airports were shut down and, by and large, there weren't planes flying. I think that some of those measures can be put into place to guard against aircraft but really the movement of vehicles on our roads is something that happens regularly and it seems like a fairly measured response to set up checkpoints to limit a road to commercial traffic or residential traffic to stop weapons, to stop explosives, to stop chemical agents that might cause widespread damage to the public or to infrastructure.

As you recall, the Alaska pipeline was pierced by a single bullet from a high-powered rifle so there are situations that are dangerous to the pipeline. It's a big target and, frankly, I think it's an inviting target to some people and this is a fairly measured response. What was intended was instead of the decision to set up these checkpoints being made simply by the department, that the governor intervene and the governor make a decision that a sufficiently high level of threat exists and so it's really the governor's directive and not any single department - and what we think is mid-ground between declaring an emergency that might cause some reaction with the public and the imposition of extraordinary powers. So that's how we got to this draft.

I have advised the Department of Public Safety that when these kinds of checkpoints are set up, there are going to be certain procedures that really have to be followed - have to be followed just in terms of public reaction to a checkpoint and, in terms of the legal challenge, one of those is some warning to the public. There are probably going to have to be signs put up a quarter mile away or a half-mile away saying you are coming to a checkpoint, the road is closed to commercial traffic - something like that

- no explosives, no weapons are allowed, you know, that gives people the opportunity to turn around, gives them fair warning of what is up ahead.

SENATOR OGAN informed Mr. Guaneli that the committee modified the bill so that a person can carry a weapon as long as that weapon is not capable of causing widespread severe injury, with the specific intent of allowing Alaskans to carry personal protection weapons.

MR. GUANELI said he was aware of the change and believes it is appropriate. He said that DOL tried to come up with a measured and responsible response without locking the departments into detailed, operational logistics that probably will need to be taken up on a case-by-case basis.

SENATOR FRENCH said his concern is that checkpoints not be a place where local citizens are harassed. He said if government agencies are allowed to conduct reasonable inspections of persons and vehicles for weapons, the agencies could be looking for something the size of a brick, which would require a fairly invasive search. He proposed, as a conceptual amendment [Amendment 8], including language to make sure that the focus at the checkpoint be on the people who pass through and not on those who turn back so that the fact that a person turned around could not be considered as probable cause for a search.

MR. GUANELI said DOL would have no objection to that if appropriate language can be found. He said the law for sobriety checkpoints in other states is that people must be given fair warning and they must be allowed to turn around without being targeted. He offered to find the correct wording for such an amendment.

SENATOR OGAN thought that would protect a person's right against unreasonable search and seizure.

SENATOR FRENCH pointed out that the mayor {of Anchorage} decided to close a road on Government Hill and residents were very unhappy about being prevented from taking quick short-cuts out of their neighborhoods. He added that there is a political aspect to closing roads because the governor will take the heat if people feel unnecessarily inconvenienced by a checkpoint.

SENATOR FRENCH clarified that the conceptual amendment [Amendment 8] would add on page 16, line 5, language so that those people, after consideration, entering a checkpoint are subject to reasonable inspection.

CHAIR SEEKINS announced that without objection, Amendment 8 was adopted.

SENATOR OGAN noted he is proud to serve on this committee. He then moved CSSB 385(JUD) out of committee with individual recommendations and its zero fiscal note. He noted his assumption that the conceptual amendments would be reviewed by the committee after drafting for accuracy of intent.

Without objection, CHAIR SEEKINS announced the motion carried.

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^#HB56

CASHB 56(L&C)-UNFAIR TRADE PRACTICES ATTY FEES/COSTS

REPRESENTATIVE LES GARA, sponsor of HB 56, told members that this legislation has been around for awhile and originated with legislation co-sponsored by Senator Dyson and Representative Croft in 1997. He advised that Alaska has the smallest consumer protection department of any state. That section was comprised of a staff of about 10 people in the attorney general's office and is now comprised of three half-time attorneys and one investigator. In the mid-1990s, he and others looked at ways to bolster consumer protection in Alaska without costing the state money and the group came up with the approach in HB 56. The legislation will fund consumer protection, in part, by charging the people who engage in bad behavior. He explained that the prevailing party in a lawsuit is entitled to Rule 82 fees and costs, which amounts to about 20 percent of attorney fees and a small portion of costs. He said what the government has done, as a matter of public policy in areas that are historically under funded, is to fund enforcement costs in those areas by charging the people who engage in the bad conduct.

He noted the guts of HB 56, on page 1, lines 5-9, say if the attorney general's office prevails in a consumer case, the party that engaged in the bad conduct should reimburse the state's reasonable attorney fees and costs of the investigation. The federal government uses that approach in federal anti-trust and hazardous waste cases. He said the consumer protection cases the attorney general's office gets run the gamut. He believes that if HB 56 passes, consumer protection cases will become a revenue generator, possibly justifying more staff.

SENATOR OGAN characterized HB 56 as a "we tax the bad guy and pass the savings on to you" bill.

CHAIR SEEKINS asked what the defendant would get if he prevailed.

REPRESENTATIVE GARA said Rule 82 would apply.

CHAIR SEEKINS asked why the defendant wouldn't have the same right [for full reimbursement] as the state.

REPRESENTATIVE GARA said that could be done but doing so would require a fiscal note. He indicated that from an enforcement aspect, these cases, which involve very bad conduct, are not being resolved. The policy argument is that when the state loses a case, it is not because the state committed fraud. However, a defendant who loses a case did so because of fraudulent behavior. Therefore, the state should not be penalized as harshly as a defendant when it loses. He said if the state filed a bad faith case, court rules would allow the other party to get full fees reimbursed by the state. He said he does not believe the legislature wants to open up the state's purse to reimburse full attorney's fees anytime the state doesn't win, because its conduct is not as bad as the conduct of someone who committed fraud. He acknowledged that is a policy call for the legislature to make.

CHAIR SEEKINS noted that several years ago, a consumer protection assistant attorney general went on huge fishing expeditions with Alaska Sales and Service. He does not believe the company was ever convicted of anything. He asked had the company been charged with 20 counts and then settled on one count, whether the state would be reimbursed for a costly investigation.

REPRESENTATIVE GARA said it would not. He explained:

In a settlement it would work like the marketplace. I mean you, as Alaska Sales and Service, would say - you know, you got us on one claim. The other 19 are bogus. If we go to trial, the court's not going to give you the cost of an investigation for those 19 bogus claims so you can keep fighting us and you keep running up your bill, it's just going to cost you. So, I don't think that would make its way into the settlement. The state could ask for it but the guy at Alaska Sales and Service is going to say no way, not a chance.

CHAIR SEEKINS agreed that many of the cases brought by the attorney general's office regarding consumer protection are very egregious but he has a natural aversion to saying what's good for the goose isn't good for the gander. He wondered about the risk faced by a defendant taking a case to court compared to the state's risk.

REPRESENTATIVE GARA said that is a fair concern.

CHAIR SEEKINS asked about Rule 82.

TAPE 04-50, SIDE B

REPRESENTATIVE GARA said Rule 82 is "20 percent of fair and reasonable. It is a schedule but it's partial..."

CHAIR SEEKINS asked if the only exception occurs if the court rules that a case was frivolous.

REPRESENTATIVE GARA said that is correct - reimbursement is at 100 percent if a case is ruled to be frivolous; anything else is reimbursed at 10 to 20 percent of what is considered to be fair and reasonable.

CHAIR SEEKINS asked if the court often determines that a person spent more than a reasonable amount.

REPRESENTATIVE GARA said it does. He noted that the bill says a person gets reimbursed for full, reasonable attorney fees so that if those fees are unreasonable, they don't get any reimbursement. That is to prevent the attorney general's office from padding its bill.

CHAIR SEEKINS asked who determines what is reasonable.

REPRESENTATIVE GARA said the judge does.

SENATOR FRENCH moved CSHB 56(L&C) from committee with its attached indeterminate fiscal note.

CHAIR SEEKINS noted that Senator Dyson wanted to testify on the bill.

SENATOR FRED DYSON told members that the attorney fee provision was part of his and Representative Croft's original bill but the House Judiciary Committee stripped it out. The bill went forward with the part that allows private attorneys to capture their costs if they are successful. He clarified:

It was kind of a new deal for me and it was, in fact, the very circumstance where Representative Gara and I began a relationship and we ran into lots of situations where people were being taken advantage of. We had guys that were going to resurface your driveway, and we had the blue tarp roofing company from Mat-Su that were taking advantage of folks and the state didn't have the horsepower to do it and

a private attorney couldn't afford to do it because there wasn't a way for him to recapture his costs and [indisc.] a few hundred, a few thousand bucks, and I've had more than once, and probably a half-dozen times in the ensuing six or seven years, somebody's come up and said hey, what you guys did really worked because now we've got people who can afford to go after these bunko artists that are out there and nail them. So I'm really pleased to have Representative Gara come along and picking up the pieces that got knocked out of this original piece of legislation. So it really tickles me and I think it will work....

CHAIR SEEKINS repeated his only concern is the possibility of a "scoundrel" assistant attorney general in that division. He noted an overzealous assistant attorney general can also do a lot of damage to the business community and the public trust.

SENATOR FRENCH repeated his motion to move CSHB 56(L&C) from committee. With no objection, the motion carried.

CHAIR SEEKINS announced an at-ease from 6:00 to 6:05 p.m.
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^#HCR29

HCR 29am-SUPPORT THERAPEUTIC COURTS

MR. JOHN BITTNER, staff to Representative Cheryl Heinze, sponsor of HCR 29, gave the following summary of the resolution.

Alcoholism in Alaska is a serious and immediate problem. Conventional methods of dealing with repeat offenders under the influence of alcohol are not effective and are prohibitively expensive. Alcoholism is a mental as well as a physical disease and it needs to be treated as such if we are to have any hope of rehabilitating people with drug and alcohol problems effectively and with the minimum burden to the state and its citizens.

The daily cost of the wellness court is about \$22 a day, which works out to around \$11,000 over the 18-month treatment period. Out of this the state pays around \$6,100 on average. The rest of the cost is paid for by the person receiving treatment. The average cost of traditional incarceration is over \$60,000 for 18 months, or roughly \$113 per day. Traditionally, alcoholics who are incarcerated tend not to receive effective treatment for

their addictions while they are in jail. While the percent of alcohol and drug abusers who have been incarcerated and subsequently rearrested after their release is somewhere around 67 percent nationwide, the percentage of wellness court graduates rearrested after their release is around 25 percent.

This disparity in success rate is attributed to the use of miltrexon, a drug that inhibits alcohol cravings, coupled with community based treatment programs and cognitive behavioral therapy. People with substance abuse problems aren't going to be helped by locking them away with few, if any, treatment options and then releasing them after they have served their time. The best way we have of treating people with addictions is the therapeutic courts.

HCR 29 asks the legislature to show its support for therapeutic courts and reducing DUI crimes. It also asks the Department of Law and the Public Defender Agency to actually participate in the start-up of therapeutic courts in areas with high incidences of DUI offenders and local support for therapeutic courts. They are effective, inexpensive, and easy to implement. Thank you.

CHAIR SEEKINS asked if the legislature recently passed legislation that extended funding for therapeutic courts.

SENATOR FRENCH said it passed legislation that extends the sunset date of the therapeutic court to make sure the legislature gets a final report before making a decision on whether to continue the program.

CHAIR SEEKINS said he has heard no opposition to therapeutic courts.

SENATOR OGAN asked why specific communities for new therapeutic courts are listed on page 2, line 5.

MR. BITTNER said he believes that Fairbanks and Ketchikan were included because of their sizes. Juneau and several other cities already have therapeutic courts or are actively establishing them. The plan is to put the courts in areas with the highest incidence of DUI crimes.

SENATOR OGAN said he was under the impression that the existing therapeutic courts are a pilot program so it might be schizophrenic for the legislature to support more of them before the report about whether or not the program has been successful is completed. He

suggested requiring such a report before allowing new courts to be established.

SENATOR ELLIS joined the committee.

SENATOR OGAN expressed concern that HCR 29am is inconsistent with the legislature's prior actions.

CHAIR SEEKINS said the resolution would provide support but no funding.

MS. JANET McCABE, speaking for Partners for Progress, stated support for HCR 29am. She explained:

There are therapeutic courts at the Superior Court felony level, and those are the ones that of course you recently funded. Then there's Judge Wanamacher's court and the courts at the misdemeanor level and Ketchikan has started and is underway and Fairbanks is very interested and with the court system's assistance, we are applying for a national highway safety grant to fund those courts so I hope that clarifies the finance question...

This resolution supports the development, particularly of Fairbanks, Ketchikan, and Juneau, because those are places that have been strongly interested and Juneau is underway - and Ketchikan. And then it talks about other communities where there's a large population of DUI offenders, and where there's a lot of support for therapeutic courts. The resolution asks the district attorneys, public defenders, and relevant agencies to assist in therapeutic court development and it notes that there are grant funds that have been applied for these DUI courts through the National Institute for Transportation Safety.

Regarding data, for the wellness court we now have three years of solid data from Judge Wanamacher's wellness court in Anchorage and this is data prepared and put together by an impartial source, the University of Alaska, and it's based on court records so it's not anecdotal. It shows that therapeutic courts have been at least three times as effective as incarceration in preventing repeat alcohol crimes. Jailing alcoholic criminals is an expensive revolving door. Seventy-five percent of repeat alcoholic offenders get out of jail and reoffend again, and that also is solid data.

Therapeutic courts stop this cycle by a process that Judge Wanamacher describes as quote, getting the alcohol out of the alcoholic. People spend 18 months in the court program where they are required to be employed, they are monitored for sobriety, they undergo intensive treatment, including medical treatments - there's a medicine now that quells the intense craving that alcohol addicts have for alcohol. They are also required to visit the same judge repeatedly. They are applauded for success or put back in jail for a relapse for a few days. But basically, they're required to be responsible for themselves and they're monitored while they live successfully and work in the community. And when they finish the 18-month program, they are truly changed people. Our data shows that this is a lasting change.

Therapeutic courts save money and prevent public harm. We urge you to pass this resolution, which encourages the development of therapeutic courts where there is both the need and a public interest.

CHAIR SEEKINS referred to the language on page 2, line 2, and page 1, line 11, and suggested adding "for which federal funds are available". He asked Mr. Bittner if the intent is to use federal funds for the start-up of those programs.

MR. BITTNER said it is.

CHAIR SEEKINS noted that using federal funds for those projects would be consistent with the legislature's intent for the pilot program.

SENATOR FRENCH pointed out that language pertaining to federal funds is already included in the third "whereas" clause.

SENATOR OGAN moved HCR 29am from committee with individual recommendations and its attached fiscal note.

CHAIR SEEKINS announced that without objection, the motion carried. He then adjourned the meeting.

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