ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE
May 9, 2005
1:22 p.m.

MEMBERS PRESENT

Representative Lesil McGuire, Chair
Representative Tom Anderson
Representative John Coghill
Representative Nancy Dahlstrom
Representative Pete Kott
Representative Les Gara
Representative Max Gruenberg

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 132(efd fld)
"An Act relating to complaints filed with, investigations, hearings, and orders of, and the interest rate on awards of the State Commission for Human Rights; and making conforming amendments."

- HEARD AND HELD

SENATE BILL NO. 137
"An Act providing that an institution providing accommodations exempt from the provisions of the Uniform Residential Landlord and Tenant Act may evict tenants without resorting to court proceedings under AS 09.45.060 - 09.45.160."

- MOVED HCS SB 137(L&C) OUT OF COMMITTEE

SENATE BILL NO. 172
"An Act relating to the presentation of initiatives and referenda on the ballot."

- BILL HEARING CANCELED

SENATE JOINT RESOLUTION NO. 15
Requesting the United States Congress to end the abuse of tort laws against the firearms industry.

- BILL HEARING CANCELED

CS FOR SENATE BILL NO. 20(JUD)
"An Act relating to offenses against unborn children."

- BILL HEARING CANCELED

PREVIOUS COMMITTEE ACTION

BILL: SB 132
SHORT TITLE: HUMAN RIGHTS COMMISSION
SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

03/04/05	(S)	READ THE FIRST TIME - REFERRALS
03/04/05	(S)	STA, JUD
03/17/05	(S)	STA AT 3:30 PM BUTROVICH 205
03/17/05	(S)	Heard & Held
03/17/05	(S)	MINUTE(STA)
03/29/05	(S)	STA AT 3:30 PM BELTZ 211
03/29/05	(S)	Moved SB 132 Out of Committee
03/29/05	(S)	MINUTE(STA)
03/30/05	(S)	STA RPT 3NR 1AM
03/30/05	(S)	NR: THERRIAULT, WAGONER, HUGGINS
03/30/05	(S)	AM: DAVIS
04/07/05	(S)	JUD AT 8:30 AM BUTROVICH 205
04/07/05	(S)	Scheduled But Not Heard
04/08/05	(H)	JUD AT 8:00 AM CAPITOL 120
04/08/05	(S)	Scheduled But Not Heard
04/14/05	(S)	JUD AT 8:00 AM BUTROVICH 205
04/14/05	(S)	Moved SB 132 Out of Committee
04/14/05	(S)	MINUTE(JUD)
04/14/05	(S)	JUD RPT 1DP 2NR 2AM
04/14/05	(S)	DP: SEEKINS
04/14/05	(S)	NR: THERRIAULT, HUGGINS
04/14/05	(S)	AM: FRENCH, GUESS
04/21/05	(S)	TRANSMITTED TO (H)
04/21/05	(S)	VERSION: SB 132(EFD FLD)
04/22/05	(H)	READ THE FIRST TIME - REFERRALS
04/22/05	(H)	STA, JUD
05/03/05	(H)	STA AT 8:00 AM CAPITOL 106
05/03/05	(H)	Heard & Held
05/03/05	(H)	MINUTE(STA)
05/05/05	(H)	STA AT 8:00 AM CAPITOL 106
05/05/05	(H)	Moved HCS SB 132(STA) Out of Committee
05/05/05	(H)	MINUTE(STA)
05/05/05	(H)	STA RPT HCS(STA) 4DP 1AM
05/05/05	(H)	DP: LYNN, GATTO, ELKINS, SEATON;

05/05/05	(H)	AM: GRUENBERG
05/05/05	(H)	JUD AT 1:00 PM CAPITOL 120
05/05/05	(H)	Scheduled But Not Heard
05/06/05	(H)	JUD AT 1:00 PM CAPITOL 120
05/06/05	(H)	Heard & Held
05/06/05	(H)	MINUTE(JUD)
05/07/05	(H)	RULES TO CALENDAR PENDING REPORT
05/07/05	(H)	IN JUDICIARY
05/08/05	(H)	RULES TO CALENDAR PENDING REPORT
05/08/05	(H)	IN JUDICIARY
05/09/05	(H)	JUD AT 0:00 AM CAPITOL 120

BILL: SB 137
SHORT TITLE: EVICTING INSTITUTIONAL PROPERTY USERS
SPONSOR(S): SENATOR(S) SEEKINS

03/08/05	(S)	READ THE FIRST TIME - REFERRALS
03/08/05	(S)	L&C, JUD
03/22/05	(S)	L&C AT 1:30 PM BELTZ 211
03/22/05	(S)	Heard & Held
03/22/05	(S)	MINUTE(L&C)
03/24/05	(S)	L&C AT 2:00 PM BELTZ 211
03/24/05	(S)	Moved SB 137 Out of Committee
03/24/05	(S)	MINUTE(L&C)
03/29/05	(S)	L&C RPT 3DP
03/29/05	(S)	DP: BUNDE, DAVIS, STEVENS B
04/05/05	(S)	JUD RPT 3DP 1NR
04/05/05	(S)	DP: SEEKINS, THERRIAULT, HUGGINS
04/05/05	(S)	NR: GUESS
04/05/05	(S)	JUD AT 8:30 AM BUTROVICH 205
04/05/05	(S)	Moved SB 137 Out of Committee
04/05/05	(S)	MINUTE(JUD)
04/12/05	(S)	TRANSMITTED TO (H)
04/12/05	(S)	VERSION: SB 137
04/13/05	(H)	READ THE FIRST TIME - REFERRALS
04/13/05	(H)	L&C, JUD
04/22/05	(H)	L&C AT 3:15 PM CAPITOL 17
04/22/05	(H)	<Bill Hearing Postponed to 4/25>
04/25/05	(H)	L&C AT 3:15 PM CAPITOL 17
04/25/05	(H)	Heard & Held
04/25/05	(H)	MINUTE(L&C)
04/29/05	(H)	L&C AT 3:15 PM CAPITOL 17
04/29/05	(H)	-- Meeting Canceled --
04/30/05	(H)	L&C AT 1:00 PM CAPITOL 17
04/30/05	(H)	Moved HCS SB 137(L&C) Out of Committee
04/30/05	(H)	MINUTE(L&C)
05/02/05	(H)	L&C RPT HCS(L&C) NT 3DP 4NR

05/02/05	(H)	DP: LYNN, KOTT, ROKEBERG;
05/02/05	(H)	NR: CRAWFORD, LEDOUX, GUTTENBERG, ANDERSON
05/05/05	(H)	JUD AT 1:00 PM CAPITOL 120
05/05/05	(H)	Scheduled But Not Heard
05/07/05	(H)	RULES TO CALENDAR PENDING REPORT
05/07/05	(H)	IN JUDICIARY
05/07/05	(H)	JUD AT 3:30 PM CAPITOL 120
05/07/05	(H)	-- Meeting Postponed --
05/08/05	(H)	RULES TO CALENDAR PENDING REPORT
05/08/05	(H)	IN JUDICIARY
05/08/05	(H)	JUD AT 12:00 AM CAPITOL 120
05/08/05	(H)	-- Meeting Postponed --
05/09/05	(H)	JUD AT 0:00 AM CAPITOL 120

WITNESS REGISTER

SCOTT J, NORDSTRAND, Deputy Attorney General
Civil Division
Office of the Attorney General
Department of Law (DOL)
Anchorage, Alaska
POSITION STATEMENT: During discussion of SB 132, provided comments and responded to questions on behalf of the administration.

GRACE MERKES, Commissioner
State Commission for Human Rights
Anchorage, Alaska
POSITION STATEMENT: Provided a comment during discussion of SB 132.

KELLY FISHER, Human Rights Advocate
State Commission for Human Rights
Anchorage, Alaska
POSITION STATEMENT: Provided a comment during discussion of SB 132.

JOE MICHEL, Staff
to Senator Ralph Seekins
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Presented SB 137 on behalf of the sponsor, Senator Seekins.

REPRESENTATIVE NORMAN ROKEBERG
Alaska State Legislature

Juneau, Alaska
POSITION STATEMENT: As a member of the House Labor and Commerce Standing Committee, provided comments and responded to a question during discussion of SB 137.

ACTION NARRATIVE

CHAIR LESIL McGUIRE called the House Judiciary Standing Committee meeting to order at 1:22:24 PM. Representatives McGuire, Anderson, Coghill, Kott, Dahlstrom, and Gara were present at the call to order. Representative Gruenberg arrived as the meeting was in progress.

SB 132 - HUMAN RIGHTS COMMISSION

1:22:44 PM

CHAIR McGUIRE announced that the first order of business would be SENATE BILL NO. 132(efd fld), "An Act relating to complaints filed with, investigations, hearings, and orders of, and the interest rate on awards of the State Commission for Human Rights; and making conforming amendments." [Stated as HB 132.] [Before the committee was HCS SB 132(STA), as amended on 5/6/05, and a pending motion to adopt Amendment 3.]

REPRESENTATIVE GARA again made the motion to adopt Amendment 3, to change "180" days to "one year" on page 2, lines 7 and 9. He offered his understanding that it is the state's position to have the shortest statute of limitations possible and have it match federal law. He opined that Alaska's law doesn't have to match federal law, and that a one-year statute of limitations make sense.

REPRESENTATIVE ANDERSON objected, adding that he thinks the 180-day timeframe is a sufficient period of time during which to seek help [from the Alaska State Commission for Human Rights ("commission")].

REPRESENTATIVE GARA, in response to a question, explained that the U.S. Equal Employment Opportunity Commission (EEOC) allows their 190-day filing deadline to be extended to 300 days if the charge is also covered by a state or local law. He opined that [the legislature] shouldn't want to force people to file lawsuits or claims if they are trying to find remedy informally, and requiring someone to file a claim within 180 days is essentially doing just that, forcing people to be "sue happy" or

face losing their rights. He remarked that one year is still only half of the time given most other victims of injury.

REPRESENTATIVE ANDERSON noted, however, that the filing of a lawsuit does not guarantee its accuracy.

A roll call vote was taken. Representatives McGuire, Kott, Dahlstrom, and Gara voted in favor of Amendment 3. Representatives Anderson and Coghill voted against it. Therefore, Amendment 3 was adopted by a vote of 4-2.

1:26:42 PM

REPRESENTATIVE GARA made a motion to adopt Amendment 4, which read [original punctuation provided]:

Page 4, lines 15-19
Delete all material

REPRESENTATIVE GARA said he has a concern about the language Amendment 4 proposes to delete, that language being:

> (e) At any time after the issuance of an accusation, the executive director or the person charged in the accusation may petition for a summary decision on the accusation. The commission shall grant a petition if the record shows that there is no genuine issue of material fact and the petitioner is entitled to an order under AS 18.80.130 as a matter of law.

REPRESENTATIVE GARA indicated that his concern stems from the fact that sometimes early on in a case there hasn't been enough time to perform an investigation or gather evidence, and so an employer could move to dismiss the case before sufficient material facts have been gathered. He then indicated that he wished to reword Amendment 4.

REPRESENTATIVE GARA withdrew Amendment 4.

REPRESENTATIVE GARA made a motion to adopt a new Conceptual Amendment 4, to insert after "accusation," on page 4, line 15, the words, "and a fair time for investigation,".

CHAIR McGUIRE asked Representative Gara whether he would be amenable to an amendment to this new Conceptual Amendment 4 such that it would say in part, "a reasonable time".

REPRESENTATIVE GARA indicated that he was amenable to that amendment. [New Conceptual Amendment 4 was then treated as having been amended.]

REPRESENTATIVE ANDERSON objected to the motion to adopt new Conceptual Amendment 4, as amended. He asked Mr. Nordstrand to comment.

SCOTT J, NORDSTRAND, Deputy Attorney General, Civil Division, Office of the Attorney General, Department of Law (DOL), on the issue of new Conceptual Amendment 4, remarked:

> It's important to understand that at the time an accusation is issued, the investigation, which is a term of art under the statute, has already occurred. So ... just by operation of the events, ... we have complaint filed, investigation conducted, substantial evidence finding, accusation issued. ... I think we can assume that the [commission] will use good judgment in how it allows summary judgment to be practiced.
>
> This would be like trying to codify, say, Rule 56 of the [Alaska Rules of Civil Procedure], where you'd say you could have an extension of time, for example, under Rule 56(f), to conduct discover before you have to face summary judgment. I don't really think it's necessary, in the statute, to codify that specific process - they have broad regulatory authority to determine how they do summary judgment. All we're trying to [do] here is to encourage a summary judgment process. And we could re-codify ... all of Rule 56 in here if we wanted to, to make it clear what summary judgment means, but we weren't trying to get that specific.

REPRESENTATIVE ANDERSON said he would be maintaining his objection based on that explanation.

1:30:07 PM

REPRESENTATIVE GARA observed that new Conceptual Amendment 4, as amended, would insert the words he wished to add into the wrong part of the bill.

REPRESENTATIVE GARA then withdrew new Conceptual Amendment 4, as amended.

REPRESENTATIVE GARA made a motion to adopt Amendment 4a, to insert after "shows" on page 4, line 17, the words ", and after a reasonable time for investigation,".

REPRESENTATIVE ANDERSON objected, characterizing the term "reasonable time" as ambiguous.

CHAIR McGUIRE asked what the standard is under Rule 56(f) of the Alaska Rules of Civil Procedure.

MR. NORDSTRAND offered his understanding that basically Rule 56(f) says that in order to respond to a motion for summary judgment, an extension of time to conduct discover will not be unreasonably withheld by the court.

REPRESENTATIVE GARA, characterizing that as a very good rule, offered his belief that it won't apply in human rights commission proceedings.

CHAIR McGUIRE acknowledged that point, but mentioned that she is looking to make the language in the bill easily recognizable, and therefore it doesn't appear that placing similar wording in statute would work. She surmised that Representative Anderson's point is: What would constitute a reasonable amount of time to conduct an investigation and how would the question of whether a reasonable amount of time had elapsed be determined?

1:32:07 PM

REPRESENTATIVE COGHILL asked what the current process is in determining whether there is a genuine issue of material fact. He surmised that imbedded in that process might already be a timeframe that could be considered a reasonable amount of time.

CHAIR McGUIRE noted that the [timeframe] standard used in summary judgment with regard to genuine issue of material fact is already in place, though there are exceptions. Once summary judgment is granted, she remarked, one's rights are extinguished.

1:33:23 PM

REPRESENTATIVE COGHILL surmised, then, that in arriving at a determination, there must be a reasonable investigation of the matter.

MR. NORDSTRAND, pointing out that the processes being discussed are already provided for under the commission's current rules, said he doesn't know how one could reach a genuine issue of material fact determination without first having obtained affidavits and/or sworn testimony or having done some discovery "in the form of admissible evidence."

CHAIR McGUIRE surmised that Representative Gara's concern centers around the fact that a plain reading of the language in the bill says that at any time after the issuance of an accusation, the executive director, which is a political position, or the person charged in the accusation can petition for summary judgment. The committee, therefore, is attempting to ensure that summary judgment is the proper path to take.

1:35:16 PM

MR. NORDSTRAND explained that the language Chair McGuire just referred to is also used in the aforementioned Alaska Rule of Civil Procedure, and so the question then becomes one of: When is summary judgment available? He offered his belief that the second sentence in proposed AS 18.80.120(c) is the operative phrase and is the one that appears to cause concern. He reiterated that although the same language currently being used in Rule 56(F) could be added to the bill, the committee should recognize that the commission's regulatory procedures incorporated references to the Alaska Civil Rules of Procedure as a means of setting up its system. He surmised, therefore, that the committee could incorporate the procedure under Rule 56 into the bill and that doing so would be fine.

REPRESENTATIVE GARA expressed agreement with the concept of doing so.

1:36:23 PM

GRACE MERKES, Commissioner, State Commission for Human Rights, relayed that she is unfamiliar with the legal aspects being discussed and so she would have to agree with Mr. Nordstrand's comments.

KELLY FISHER, Human Rights Advocate, State Commission for Human Rights, relayed simply that the hearing unit of the commission essentially follows the civil rules as it advances through discovery and prepares to go to an administrative hearing.

CHAIR McGUIRE noted that one of her concerns is that a lot of the people currently on the commission are brand new to the commission and its procedures and yet they are acting in a [quasi-judicial] capacity. Chair McGuire mentioned that Ms. Merkes's comment merely confirms her worst fears, adding that she wants to know that the commissioners aren't going to merely follow the lead of [an executive branch employee], that they instead understand the process they must follow and that it remains a fair process. Therefore, she opined, "the more that's in here, the better."

1:38:00 PM

REPRESENTATIVE GARA suggested that if there is a current commission rule that says a summary judgment will never be issued until there's been ample time to investigate and prove the case, then that addresses his concern. However, if such a rule doesn't already exist [at the regulatory level], he said he doesn't know where in statute there is language [which will address his concern], and opined that the [bill] should be clarified by the addition of language that allows the aggrieved person to bring forth more information about the case before summary judgment is issued.

MR. NORDSTRAND offered his belief that under the aforementioned proposed subsection, the executive director of the commission would be moving for summary judgment on behalf of the aggrieved person. He pointed out that under Rule 56(f), if someone moves for summary judgment against another person, that other person can ask the court for the time to do discovery. Therefore, he opined, there is no reason for an administrative law judge to not allow a reasonable time upon request - allowing more time would instead be an obvious course of action. If [the committee still feels, however, that] language needs to be added, he suggested, then there is various language in Rule 56 that could be used. He pointed out, though, that the burden of obtaining an extension is on the party seeking the extension, and that there are deadlines regarding how much time one has in order to respond to a motion for summary judgment; the latter, he remarked, could also be included in the bill.

1:41:09 PM

REPRESENTATIVE GARA remarked that although SB 132 proposes to rewrite the whole statutory hearing process, it still doesn't specifically include wording which would ensure that an aggrieved person has a reasonable amount of time to address a

petition for summary judgment, and since Rule 56 is a court rule and thus won't apply to the statute, Mr. Nordstrand's continuing references to that Rule do not alleviate his concerns. He indicated that he would be amenable to inserting the language of Rule 56 into the bill.

REPRESENTATIVE ANDERSON offered his belief that the inclusion of such wording would allow everyone to claim that they weren't given "reasonable" time.

1:43:09 PM

MR. NORDSTRAND, in response to a question, reiterated his understanding of the process that the commission and commission staff undertake when a complaint is filed. He noted that under the bill, if the investigation portion of the process uncovers substantial evidence, then the executive director's staff would prepare an "accusation," which could be likened to a formal complaint. Currently the commission operates under a rule that allows motions, but not motions for summary judgment. Furthermore, the commission's motion practice now is not governed by statute; rather, it is governed by regulations. The DOL simply believes that because of the finding in the Alaska Supreme Court case, Department of Fish & Game v. Meyer, that substantial evidence requires a hearing, that the statute needs to specify that the commission can go to summary judgment without first going to a hearing.

1:44:55 PM

REPRESENTATIVE ANDERSON asked what difference the adoption of Amendment 4a will make.

MR. NORDSTRAND said it wouldn't make any difference in the process, since it will still be up to the hearing officer to determine whether it is reasonable to grant summary judgment at a particular time. He suggested, however, that in Amendment 4a it might be more appropriate to use the word "discovery" instead of "investigation", because the investigation portion of the process happens prior to the accusation. He added: "We're certainly not against there being a reasonable time for discovery. The question is whether it ought to be in the statute or in the rules that they already have, and they do have rules on motions ... in their own regulations."

1:45:52 PM

REPRESENTATIVE GARA indicated that he would be amenable to allowing the commission to come up with its own rules on this issue; therefore, perhaps the legislation could be changed such that it said something along the lines of "after a reasonable amount of time as provided by rules adopted by the commission". He relayed that he merely doesn't want the current language to be used as an excuse to not have rules "like that."

CHAIR McGUIRE asked Mr. Nordstrand to comment on two possible changes: "in a reasonable time for discover" or "in a reasonable time for discovery as provided under rules adopted by the [commission]".

1:46:32 PM

MR. NORDSTRAND suggested that perhaps the word "opportunity" would be more appropriate that the word "time"; therefore, perhaps the language could be changed to say "and a reasonable opportunity for discovery pursuant to rules adopted by the commission".

REPRESENTATIVE GARA withdrew Amendment 4a.

REPRESENTATIVE GARA made a motion to adopt Amendment 4b, to insert after "shows" on page 4, line 17, the words: ", after a reasonable opportunity for discover pursuant to rules adopted by the commission,".

REPRESENTATIVE COGHILL objected for the purpose of discussion. He asked whether the legislature ought to mandate that the commission come up with a rule stating what constitutes "reasonable opportunity". He indicated his preference that the language being inserted simply say ", after a reasonable opportunity [for discovery]," opining that such would give sufficient latitude.

1:48:38 PM

MR. NORDSTRAND explained that within the commission's broad powers to establish regulations to implement legislation lies the power to adopt rules even if the bill doesn't specify such.

REPRESENTATIVE COGHILL recognized that point, but offered his belief that if Amendment 4b remains as is and is adopted, then the commission would feel compelled to adopt a rule on that issue, and he doesn't feel that the legislature needs to compel the commission in that regard.

REPRESENTATIVE GARA indicated that he would be amenable to changing Amendment 4b.

REPRESENTATIVE COGHILL made a motion to amend Amendment 4b, such that the words "pursuant to rules adopted by the commission" would be deleted from it; therefore Amendment 4b, if amended, would insert only the words ", after a reasonable opportunity for discovery," on page 4, line 17, after the word "shows". There being no objection, Amendment 4b was amended.

CHAIR McGUIRE asked whether there were any objections to Amendment 4b, as amended. There being none, Amendment 4b, as amended, was adopted.

REPRESENTATIVE GARA made a motion to adopt Amendment 5, which read [original punctuation provided]:

> Page 4, line 28
> Delete "**noneconomic**"
>
> Page 4, line 30 following "DISCRIMINATION]."
> Insert "**Nothing in this subsection prevents an award of noneconomic damages, including damages for emotional injury.**"

REPRESENTATIVE ANDERSON objected.

1:50:53 PM

MR. NORDSTRAND reiterated that both current statute and the bill provide that the commission may order "any appropriate relief".

REPRESENTATIVE GARA relayed that the point of Amendment 5 is to address situations that don't involve economic losses, such as situations in which someone is being sexually harassed at work but continues to come to work and so doesn't lose any wages.

CHAIR McGUIRE asked Representative Gara whether he would accept an amendment to Amendment 5 that would allow for punitive damages to be awarded instead of noneconomic damages.

REPRESENTATIVE GARA noted that with punitive damages, the higher standard of proof pertaining to reckless or intentional conduct applies, and the amount set is the amount needed to punish the behavior. He indicated that he would be amenable to such an amendment to Amendment 5.

CHAIR McGUIRE indicated that she doesn't have a problem with the commission awarding punitive damages in certain cases.

REPRESENTATIVE GARA then remarked, though, that the problem with such a change is that in determining punitive damages, current law says that one must first look to see how much the compensatory damages were. Thus, if compensatory damages are zero because noneconomic damages can't be awarded, then any potential punitive damages would also be zero.

1:53:47 PM

MR. NORDSTRAND in response to comments and questions, offered his belief that there is "a constitutional impairment to the amendment that's being proposed," and relayed that the courts have already concluded that the statutory phrase "any appropriate relief" for purposes of an administrative agency can only consist of payment for direct, calculable, pecuniary loss, and the changes being offered via proposed AS 18.80.130(a), which contains the language that would be altered by Amendment 5, merely attempts to reflect that court ruling. He mentioned, though, that if a human rights Act case is brought before the Alaska Superior Court, the aggrieved party can be awarded compensatory and punitive damage.

MR. NORDSTRAND also mentioned that the courts have already ruled that in cases where part of the relief sought is compensatory and punitive damages, that Article I, Section 16, of the Alaska State Constitution guarantees the parties the right to a jury trial. Furthermore, that same section of the Alaska State Constitution says that in civil cases where the amount in controversy exceeds $250, the right of trial by a jury of 12 is preserved to the same extent as it existed at common law. He relayed that the same issue of what happens if a human-rights type of commission is given the power to award compensatory and punitive damages has been addressed in Hawaii, in a 2003 case. In that instance, the Hawaii legislature amended their human rights Act to say that its commission could award compensatory and punitive damages.

MR. NORDSTRAND pointed out that although it may be constitutional to "add this to the commission's powers," the Hawaii court held that a respondent who appeals a final order from the commission is entitled to a jury trial on any claims that form the basis for the award. Therefore, in Hawaii, if one appeals the award of compensatory or punitive damages, he/she

gets a de novo jury trial on the issues raised with the human rights commission, because he/she has the right to a jury trial.

REPRESENTATIVE GARA opined that no one is being denied the right to go to a jury trial; instead, the commission merely offers people an alternative. He asked whether, in Hawaii, going through the human rights commission then precludes someone from exercising his/her right to a jury trial.

1:58:34 PM

MR. NORDSTRAND pointed out that in Alaska, the responding party does not have the power to "opt into court"; the responding party is the party that loses the right to a jury trial. So while it is true that a complaining party could choose to go to the Alaska Superior Court as an alternative to going before the commission, the responding party cannot. In fact, the complainant is not actually a party in human rights commission cases; instead, the commission becomes the party bringing a claim against the respondent, and again, the respondent doesn't have the right to a jury trial. This is why, in Hawaii, after an award of compensatory or punitive damages, the defendant gets to appeal the issue before a jury.

1:59:25 PM

REPRESENTATIVE GARA said it doesn't seem right that in certain human rights cases the aggrieved party would not be entitled to compensatory or punitive damages.

MR. NORDSTRAND, in response to a question, noted that proposed AS 18.80.130(a)(1) and (2) list the possible remedies that could be awarded. He assured the committee that SB 132 is merely attempting to describe the law rather than change the law.

REPRESENTATIVE ANDERSON indicated that he is concerned with the concept of the commission awarding large sums for punitive or compensatory damages.

CHAIR McGUIRE said that the Hawaii example causes her concern.

REPRESENTATIVE GARA asked whether it would be possible to establish a schedule of fines that the commission could impose.

MR. NORDSTRAND said that doing so could be "implicating criminal issues."

REPRESENTATIVE GARA asked about perhaps imposing civil penalties.

MR. NORDSTRAND said the question then would become whether "we aren't simply substituting a name for punitive damages," and offered his belief that establishing civil penalties would clearly be impairing the right to a jury trial.

2:02:37 PM

REPRESENTATIVE COGHILL asked how Section 11 of the bill would be applied.

MR. NORDSTRAND replied that Section 11 addresses penalties in a criminal context that would be imposed on a respondent.

CHAIR McGUIRE asked how often criminal charges are pursued.

MR. NORDSTRAND offered his understanding that it is very uncommon for anyone to pursue criminal charges in such cases.

2:03:38 PM

REPRESENTATIVE GARA suggested that the committee work on the bill over the summer.

CHAIR McGUIRE said she would be amenable to that concept. She then asked Mr. Nordstrand whether he knew of a particular reason to rush the bill through the process.

MR. NORDSTRAND said:

> The ... [commission] has, for the last ten years, been suffering under the burden of the Meyer decision and the requirement that virtually every case that's filed with any evidence at all proceed to hearing. Not only has the [commission] itself suffered under that burden but everyone who has to respond to human rights commission complaints; it's a very expensive process. Now, if in some way this language about noneconomic and punitive damages is troubling, all we were trying to do was to tell people what the law is as it [exists] now. Remove it [and] the law will remain the same, but I don't believe that it's a defect in the bill to not have done additional things that we weren't intending to.

> Certainly next year, later this year, tomorrow, another bill could be introduced to make other changes. But this was designed to clean up some things in ... [statute], make sure everybody understood the remedies that were available ..., and allow the commission to [go about its business] ... without taking unnecessary cases to hearing and without exposing employers to enormous [attorney] fees that are not recoverable. ...

2:05:51 PM

REPRESENTATIVE COGHILL expressed a preference for moving forward with the bill.

MR. NORDSTRAND, in response to comments, reiterated that currently, under the Meyer ruling, a case proceeds to trial if there is a finding of substantial evidence regardless of whether the commission feels that it is a worthwhile case; currently the commission does not have the prosecutorial discretion to not go forward with a case. Essentially the court in the Meyer case described the standard of evidence to be very low, and thus it is now very difficult to have any case not go forward and for the commission to even figure out what the standard of evidence actually is. Many such cases are likely to fail, but the state is now compelled to go forward with them anyway.

CHAIR McGUIRE relayed that HCS SB 132(STA), as amended, would be set aside [with the motion to adopt Amendment 5, and the question of whether to amend it, left pending].

SB 137 - EVICTING INSTITUTIONAL PROPERTY USERS

2:09:39 PM

CHAIR McGUIRE announced that the final order of business would be SENATE BILL NO. 137, "An Act providing that an institution providing accommodations exempt from the provisions of the Uniform Residential Landlord and Tenant Act may evict tenants without resorting to court proceedings under AS 09.45.060 - 09.45.160." [Before the committee was HCS SB 137(L&C); included in members' packets was a proposed House committee substitute (HCS) for SB 137, Version 24-LS0739\I, Kurtz, 5/4/05.]

REPRESENTATIVE DAHLSTROM began a motion to adopt [one of the bill versions] as a work draft.

CHAIR McGUIRE interrupted the motion.

The committee took an at-ease from 2:10 p.m. to 2:11 p.m.

JOE MICHEL, Staff to Senator Ralph Seekins, Alaska State Legislature, sponsor, said on behalf of Senator Seekins that SB 137 seeks to clarify that institutions [providing a residence] exempted from Alaska's Uniform Residential Landlord and Tenant Act do not have to comply with certain other statutes which outline actions that must be taken by individuals and companies currently governed by that Act. For example, AS 34.03.330(b)(1) specifically exempts residence at an institution, either public or private, if that residence is incidental to detention or the provision of medical, geriatric, educational, counseling, religious, or similar services. The heightened protections designed for residential renters, he opined, are not applicable to those obtaining residence at such institutions.

MR. MICHEL relayed that the University of Alaska asked Senator Seekins to introduce SB 137, and that this request was engendered by situations in which university students violating the terms of their student housing contract have used the court system to stall eviction proceedings. The Uniform Residential Landlord and Tenant Act was designed to alleviate injustices inflicted on residential renters by private landlords, he explained, and was taken almost verbatim from the national Uniform Residential Landlord And Tenant Act outlined in the federal Fair Housing Act. Senate Bill 137 is meant to fix the discrepancy between the legislative intent of the state's Uniform Residential Landlord and Tenant Act and the recent lower court decision regarding the eviction/removal of individuals residing in a residence that is owned by an institution described under AS 34.03.330(b)(1).

MR. MICHEL then read AS 34.03.330(b)(1), and posited that this language means that a student who has been expelled from school should not be able to insist on remaining in student housing until a court order is obtained. He offered his understanding that the university has put in place a "three-strike" system intended to work with students residing in university housing, that there is a long review process, that students have a chance to appeal a decision, and that [eviction and charges of trespass constitute] the university's last line of defense. In conclusion, he mentioned that a representative from the university was available for questions.

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REPRESENTATIVE GARA said he has problems with the bill applying in situations involving those who, for purposes of geriatric care, reside in a residence owned by an institution providing such services; therefore he prefers HCS SB 137(L&C) over Version I.

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MR. MICHEL offered his belief that under current state law, institutions providing residence for the purpose of geriatric care [are already allowed to evict residents without a court order] because those residents sign contracts authorizing such action; furthermore, there are already agencies involved in overseeing the treatment, care, and placement of seniors in such institutions. He noted that members' packets include comments by the National Conference of Commissioners on Uniform State Laws (NCCUSL) regarding its intent behind recommending the language now included in AS 34.03.330(b)(1); those comments read in part [original punctuation provided]:

> This Act regulates landlord-tenant relations in residential properties. It is not intended to apply where residence is incidental to another primary purpose such as a residence in a prison, a hospital or nursing home, a dormitory owned and operated by a college or school, or residence by a landlord's employee such as a custodian, janitor, guard or caretaker rendering service in or about the demised premises. This Act is intended to apply to government or public agencies acting as landlords ....

REPRESENTATIVE ANDERSON noted that the House Labor and Commerce Standing Committee narrowed the bill such that it would only apply to the university.

MR. MICHEL, in response to a question, reiterated that the situation involving the university was the impetus for the bill, and that it was the university that asked Senator Seekins to introduce the legislation. Though the sponsor's intent, he remarked, is for the bill to remain broad in its application because the sponsor doesn't want to have certain private institutions being forced to "hold a bed" for someone when that person could actually be receiving services elsewhere. If an institution owns a residence for the placement of those partaking of its services, and if there is a violation of the residential housing contract signed by those individuals, the

institution should be able to remove those individuals without having to go through a court action.

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MR. MICHEL, in response to comments, reiterated that the sponsor prefers a more expansive approach, and remarked that the sponsor views the bill as merely a clarification of existing laws.

CHAIR McGUIRE asked for a list of all the institutions that would be affected by the adoption of a more expansive version of the bill.

MR. MICHEL, in response, relayed that according to a word search, the word "geriatric" is only found once in statute. He then reread portions of AS 34.03.330(b)(1):

> (1) residence at an institution, public or private, if incidental to detention or the provision of medical, geriatric, educational, counseling, religious, or similar services;

CHAIR McGUIRE surmised, then, that Mr. Michel doesn't really know what specific institutions would be affected by a broader version of the bill, nor all of its implications, adding that [this latter point] is of concern to her. She said she can understand what is meant by, and can support the use of, the term "University of Alaska", but not simply the reference to "an institution" as described in AS 34.03.330(b)(1). She concluded by saying that she doesn't want to make a mistake regarding taking away someone's legitimate rights under the Uniform Residential Landlord and Tenant Act.

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REPRESENTATIVE GARA again expressed a preference for HCS SB 137(L&C).

REPRESENTATIVE NORMAN ROKEBERG, Alaska State Legislature - Member, House Labor and Commerce Standing Committee - opined that HCS SB 137(L&C) is appropriate in as much as it limits the scope of the application. Additionally, HCS SB 137(L&C) maintains the Alaska Rules of Civil Procedure; there are other causes of action, he remarked, under "unlawful detainer," that may be prohibited under a more expansive version of the bill, adding that he doesn't believe there is any need for such a prohibition. In response to a question, he said he would be

willing to serve on a conference committee should one be appointed for SB 137.

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REPRESENTATIVE GARA said that [the more expansive version of the bill] causes him alarm, and again reiterated his preference for a bill that applies only to the university.

REPRESENTATIVE ROKEBERG offered his recollection that the HCS that became HCS SB 137(L&C) was brought forth by the sponsor's staff.

REPRESENTATIVE ANDERSON offered his recollection that the HCS was brought forth by the sponsor's staff in an effort to appease Representative Rokeberg's concern.

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CHAIR McGUIRE, after ascertaining that no one else wished to testify, closed public testimony on SB 137.

REPRESENTATIVE KOTT, noting that HCS SB 137(L&C) was automatically before the committee, moved to report HCS SB 137(L&C) out of committee [with individual recommendations and the accompanying fiscal notes]. There being no objection, HCS SB 137(L&C) was reported from the House Judiciary Standing Committee.

ADJOURNMENT

The House Judiciary Standing Committee was recessed at 2:28 p.m. to a call of the chair. [The meeting was never reconvened.]