

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

February 15, 2006
8:40 a.m.

MEMBERS PRESENT

Senator Ralph Seekins, Chair
Senator Charlie Huggins, Vice Chair
Senator Gene Therriault
Senator Hollis French
Senator Gretchen Guess

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 240

"An Act relating to rights of crime victims."
MOVED SB 240 OUT OF COMMITTEE

SENATE BILL NO. 249

"An Act relating to criminal justice information."
HEARD AND HELD

HOUSE BILL NO. 269

"An Act relating to contribution actions relating to the release of a hazardous substance; and providing for an effective date."
MOVED SCS HB 269(JUD) OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 107(FIN)

"An Act relating to unlawful obstruction or hindrance of hunting, fishing, trapping, or viewing of fish or game; and amending Rule 82, Alaska Rules of Civil Procedure, and Rule 508, Alaska Rules of Appellate Procedure."
MOVED SCS CSHB 107(JUD) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: SB 240

SHORT TITLE: DRUG OFFENSES: NEIGHBORS AS CRIME VICTIMS

SPONSOR(s): SENATOR(s) FRENCH

01/17/06 (S) READ THE FIRST TIME - REFERRALS
01/17/06 (S) JUD, FIN

02/09/06 (S) JUD AT 8:30 AM BUTROVICH 205
02/09/06 (S) Scheduled But Not Heard
02/15/06 (S) JUD AT 8:30 AM BUTROVICH 205

BILL: SB 249

SHORT TITLE: REPORTING BAIL AND RELEASE INFORMATION

SPONSOR(S): SENATOR(S) FRENCH

01/23/06 (S) READ THE FIRST TIME - REFERRALS
01/23/06 (S) JUD
02/15/06 (S) JUD AT 8:30 AM BUTROVICH 205

BILL: HB 269

SHORT TITLE: HAZARDOUS SUBSTANCE RELEASE LIABILITY

SPONSOR(S): REPRESENTATIVE(S) RAMRAS

04/14/05 (H) READ THE FIRST TIME - REFERRALS
04/14/05 (H) RES, JUD
04/22/05 (H) RES AT 1:00 PM CAPITOL 124
04/22/05 (H) Scheduled But Not Heard
04/25/05 (H) RES AT 1:00 PM CAPITOL 124
04/25/05 (H) Moved Out of Committee
04/25/05 (H) MINUTE(RES)
04/26/05 (H) RES RPT 4DP 2NR
04/26/05 (H) DP: OLSON, LEDOUX, ELKINS, RAMRAS;
04/26/05 (H) NR: GATTO, CRAWFORD
04/27/05 (H) JUD AT 1:00 PM CAPITOL 120
04/27/05 (H) Moved Out of Committee
04/27/05 (H) MINUTE(JUD)
04/28/05 (H) JUD RPT 6DP
04/28/05 (H) DP: KOTT, ANDERSON, DAHLSTROM, COGHILL,
GARA, MCGUIRE
04/30/05 (H) TRANSMITTED TO (S)
04/30/05 (H) VERSION: HB 269
05/01/05 (S) READ THE FIRST TIME - REFERRALS
05/01/05 (S) RES, JUD
01/23/06 (S) RES AT 3:30 PM BUTROVICH 205
01/23/06 (S) Heard & Held
01/23/06 (S) MINUTE(RES)
01/30/06 (S) RES AT 3:30 PM BUTROVICH 205
01/30/06 (S) Moved HB 269 Out of Committee
01/30/06 (S) MINUTE(RES)
02/01/06 (S) RES RPT 5DP 2NR
02/01/06 (S) DP: WAGONER, ELTON, KOOKESH, DYSON,
STEVENS B
02/01/06 (S) NR: SEEKINS, STEDMAN
02/14/06 (S) JUD AT 9:00 AM BUTROVICH 205

02/14/06 (S) Scheduled But Not Heard

BILL: HB 107

SHORT TITLE: HUNTING/FISHING INTERFERENCE

SPONSOR(S): REPRESENTATIVE(S) RAMRAS

01/24/05 (H) READ THE FIRST TIME - REFERRALS
01/24/05 (H) RES, JUD
02/02/05 (H) RES AT 1:00 PM CAPITOL 124
02/02/05 (H) Heard & Held
02/02/05 (H) MINUTE(RES)
02/09/05 (H) RES AT 1:00 PM CAPITOL 124
02/09/05 (H) Heard & Held
02/09/05 (H) MINUTE(RES)
02/16/05 (H) RES AT 1:00 PM CAPITOL 124
02/16/05 (H) Moved CSHB 107(RES) Out of Committee
02/16/05 (H) MINUTE(RES)
02/18/05 (H) RES RPT CS(RES) NT 3DP 1DNP 4NR
02/18/05 (H) DP: OLSON, ELKINS, RAMRAS;
02/18/05 (H) DNP: SEATON;
02/18/05 (H) NR: GATTO, LEDOUX, CRAWFORD, KAPSNER
02/18/05 (H) FIN REFERRAL ADDED AFTER JUD
03/02/05 (H) JUD AT 1:00 PM CAPITOL 120
03/02/05 (H) Heard & Held
03/02/05 (H) MINUTE(JUD)
03/04/05 (H) JUD AT 1:00 PM CAPITOL 120
03/04/05 (H) Moved CSHB 107(JUD) Out of Committee
03/04/05 (H) MINUTE(JUD)
03/07/05 (H) JUD RPT CS(JUD) NT 3DP 3NR
03/07/05 (H) DP: GRUENBERG, ANDERSON, MCGUIRE;
03/07/05 (H) NR: DAHLSTROM, COGHILL, GARA
03/15/05 (H) FIN AT 1:30 PM HOUSE FINANCE 519
03/15/05 (H) Moved CSHB 107(FIN) Out of Committee
03/15/05 (H) MINUTE(FIN)
03/16/05 (H) FIN RPT CS(FIN) NT 2DP 6NR
03/16/05 (H) DP: HAWKER, STOLTZE;
03/16/05 (H) NR: WEYHRAUCH, CROFT, MOSES, KELLY,
MEYER, CHENAULT
05/08/05 (H) TRANSMITTED TO (S)
05/08/05 (H) VERSION: CSHB 107(FIN)
05/09/05 (S) READ THE FIRST TIME - REFERRALS
05/09/05 (S) RES, JUD
01/23/06 (S) RES AT 3:30 PM BUTROVICH 205
01/23/06 (S) Heard & Held
01/23/06 (S) MINUTE(RES)
01/30/06 (S) RES AT 3:30 PM BUTROVICH 205

01/30/06 (S) Moved SCS CSHB 107(RES) Out of
Committee
01/30/06 (S) MINUTE(RES)
02/01/06 (S) RES RPT SCS 3DP 4NR SAME TITLE
02/01/06 (S) DP: WAGONER, DYSON, STEVENS B
02/01/06 (S) NR: ELTON, KOOKESH, SEEKINS, STEDMAN
02/09/06 (S) JUD AT 8:30 AM BUTROVICH 205
02/09/06 (S) Scheduled But Not Heard
02/14/06 (S) JUD AT 9:00 AM BUTROVICH 205
02/14/06 (S) Heard & Held
02/14/06 (S) MINUTE(JUD)

WITNESS REGISTER

Jane Pierson, Legislative Aide
Representative Jay Ramras
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Introduced HB 269

Breck Tostivan, Senior Assistant Attorney General
Department of Law
PO Box 110300
Juneau, AK 99811-0300

POSITION STATEMENT: Testified in support of SB 269

Jim Pound, Legislative Aide
Representative Jay Ramras
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Introduced HB 107

Doug Wooliver, Administrative Attorney
Alaska Court System
303 K St.
Anchorage, AK 99501-2084

POSITION STATEMENT: Testified in support of SB 249

ACTION NARRATIVE

CHAIR RALPH SEEKINS called the Senate Judiciary Standing Committee meeting to order at [8:40:35 AM](#). Present were Senators Hollis French, Charlie Huggins, Gene Therriault, Gretchen Guess, and Chair Ralph Seekins.

HB 269-HAZARDOUS SUBSTANCE RELEASE LIABILITY

[8:41:05 AM](#)

CHAIR RALPH SEEKINS announced HB 269 to be up for consideration.

JANE PIERSON, Staff to Representative Jay Ramras, introduced the bill. She explained that HB 269 is meant to address a United States Supreme Court decision in the case of *Cooper Industries v. Aviall Services*. The US Supreme Court found that a responsible party who cleans up a contaminated property couldn't bring a contribution action against another responsible party until such time as it has been sued by the state or federal government or has entered into a formal administrative settlement of liability.

The *Aviall* decision puts into question the rights of Alaskans who conduct voluntary cleanups on contaminated property against other potentially responsible parties. Voluntary cleanups form the majority of environmental cleanups and relieve a substantial burden from the state.

[8:42:49 AM](#)

MS. PIERSON summarized the right to contribution actions provides incentives for voluntary cleanups by allowing parties to recover some of the costs from other responsible parties that fail to assist with remediation. HB 269 would clarify language in AS 46.03.822(j) thereby ensuring that responsible parties that conduct voluntary cleanups may bring contributions actions against other responsible parties.

[8:43:51 AM](#)

SENATOR GENE THERRIAULT asked Ms. Pierson to summarize the written decision of the US Supreme Court.

MS. PIERSON explained the decision stated that it was a timing issue of when contribution claims could be started. The Court said they couldn't be started until such time as the state or federal government had formally sued. The problem is that instead of bringing other responsible parties in from the beginning, it is now uncertain when they can be brought into the action.

SENATOR THERRIAULT asked whether other responsible parties could be brought in voluntarily before a suit occurred.

MS. PIERSON said yes. The owner would pay to clean up the property and the courts would get involved only if there was a disagreement.

[8:45:33 AM](#)

SENATOR HOLLIS FRENCH said he read several pages of the US Supreme Court opinion in the *Aviall* case. It was a statutory cause of action and because the statute didn't authorize a contribution action before there was a lawsuit, there couldn't be a contribution action unless there was a lawsuit and that means there is no such thing as a voluntary agreement to clean up a spill. It was a very narrow and legalistic view of what Congress had done and because Congress didn't specify that two parties could voluntarily get together and do the cleanup, a party cannot sue to bring in another party, he explained.

SENATOR THERRIAULT asked for a definition of "contribution action."

SENATOR FRENCH posed a hypothetical situation of a gas station owner who has a leaky tank and sells the business to a new owner. The new owner is aware of the leaky tank and two years later gets sued to clean it up. A "contribution action" is when the new owner forces the help of the previous owner to do the cleanup. The statute wouldn't allow the new owner to sue the previous owner unless the new owner had been sued first. Because the statute does not authorize it, the statute must be fixed to allow for a voluntary contribution claim.

CHAIR SEEKINS said he understood it to be that a private party that has not been sued under the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) may not obtain contribution from other liable parties.

[8:51:24 AM](#)

SENATOR HUGGINS asked Ms. Pierson how the sponsor discovered the need for the bill.

MS. PIERSON advised the committee that it came as a request from the attorney general's office.

BRECK TOSTAVIN, Senior Assistant Attorney General, Department of Law (DOL), informed the committee that their interpretation of the *Aviall* decision was correct. The concern with that decision in regard to state law is that AS 46.03.822 is patterned after CERCLA. That decision creates an uncertainty of whether the Alaska Supreme Court would interpret a case in the same way that the US Supreme Court did. The concern is that they could interpret it to require the state to actually sue a responsible party to allow that responsible party to bring in others for a contribution action.

The voluntary cleanup process in Alaska occurs in a forward process. When contamination is found, the Department of Environmental Conservation (DEC) sends out notifications to the responsible parties who hire consultants and then engage in the voluntary cleanup. They then seek to recover costs from other responsible parties. HB 269 would keep the current process in place. The *Aviall* decision conflicts with the *Laidlaw* decision [*Federal Deposit Insurance Corporation v. Laidlaw Transit*] where the Alaska Supreme Court said that a lawsuit was not required for a contribution action. The Court said a formal administrative action initiated by the DEC was enough to trigger rights to a contribution action. The bill clarifies that the timing of the contribution right is triggered by the potential liability determination by the DEC.

[8:55:02 AM](#)

CHAIR SEEKINS reiterated that a person could bring a contribution action once that person receives a notice of potential liability determination from the DEC. An administrative action gives the authority to go after a contribution action on another potentially responsible party.

MR. TOSTAVIN agreed. Once a party receives notification and begins to incur expenses associated with the cleanup, they have the contribution action right.

CHAIR SEEKINS noted there was no one else signed up to testify and so he closed public testimony.

SENATOR FRENCH expressed support for the bill.

[8:57:15 AM](#)

SENATOR HUGGINS moved to adopt version G as the working document before the committee. Hearing no objections, the motion carried.

SENATOR HUGGINS moved to adopt the Senate Judiciary Standing Committee letter of intent. Hearing no objections, the motion carried.

SENATOR THERRIAULT moved SCS HB 269(JUD) from committee with individual recommendations and the attached fiscal notes and the letter of intent. Hearing no objections, the motion carried.

CHAIR SEEKINS announced a brief recess at [8:58:39 AM](#).

HB 107-HUNTING/FISHING INTERFERENCE

[9:01:41 AM](#)

CHAIR RALPH SEEKINS recognized Representative Jay Ramras and announced CSHB 107(FIN) to be up for consideration.

MR. JIM POUND, Staff to Representative Ramras, introduced the bill and advised the committee that his intent this day was to follow up on a request by the committee for a definition of "physically interfering."

[9:05:07 AM](#)

CHAIR SEEKINS announced that all committee members had a copy of the Legislative Legal Services memorandum regarding the definition.

MR. POUND explained that "physically interfering" was a concern that Senator Guess brought up regarding people who were combat fishing. She was concerned that people would be able to sue each other for perceived infractions, specifically if a person were to accidentally cause another person to lose a fish that they had hooked. He said the bill relates to cutting trap lines and it would have no effect on sport fishing. In response to a suggestion he received, he said the committee should add the word "with" on page 2 line 4.

[9:06:49 AM](#)

SENATOR GENE THERRIault moved Amendment 1. Section 1, Paragraph 3, add the word "with" after "physically interfering." Hearing no objection, Amendment 1 was adopted.

SENATOR CHARLIE HUGGINS asked whether the question regarding commercial fishing was resolved.

SENATOR HOLLIS FRENCH said his staff contacted the United Fishermen of Alaska (UFA) and they were not concerned with the bill.

CHAIR SEEKINS closed public testimony.

SENATOR GRETCHEN GUESS moved SCS CSHB 107(JUD) from committee with individual recommendations and attached zero fiscal notes. Hearing no objections, the motion carried.

CHAIR SEEKINS announced a brief recess at [9:08:35 AM](#).

SB 240-DRUG OFFENSES: NEIGHBORS AS CRIME VICTIMS

[9:15:22 AM](#)

CHAIR RALPH SEEKINS announced SB 240 to be up for consideration.

SENATOR HOLLIS FRENCH, bill sponsor, introduced the bill. Drug crimes are sometimes referred to as "victimless crimes" but people who live next door to high volume drug houses would not agree. SB 240 would allow neighbors who have lived through the criminal phase of a drug house to stay informed about the progress of the case as the matter moves through the court system. The bill is narrowly tailored to apply only to felony drug crimes that occur on adjacent property where the affected neighbor makes a request to stay informed.

The need for the legislation was brought to his attention through a constituent who was unable to get basic information regarding the progress of a case involving a neighbor who operated a drug house.

[9:17:08 AM](#)

SENATOR FRENCH referred to additional information in the bill packet, such as news accounts and aerial maps of drug houses and the surrounding neighborhoods. The maps highlight the amount of people who could potentially be affected by the bill. It is crafted so that it must be a felony drug crime and it must be an instance where the adjacent neighbor would have to positively contact the district attorney's office for the requested information.

[9:18:58 AM](#)

SENATOR GRETCHEN GUESS asked Senator French how citizens would know that they are authorized to call and request information on a case.

SENATOR FRENCH said it would more likely be an involved citizen motivated to take the affirmative step to trigger the provisions of the bill.

CHAIR SEEKINS asked Senator French at what point in the case would the person be able to obtain information and the type of information that the district attorney's office would be allowed to disclose.

SENATOR FRENCH advised the committee that AS 12.61.010 was the statute being modified. Essentially it would allow the adjacent property owner the right to be notified by the appropriate law enforcement agency or the prosecuting attorney in the case. The information to be disclosed would be the date of trial, the

sentencing, an appeal or any hearing in which the defendant's release from custody is being considered.

[9:21:38 AM](#)

SENATOR FRENCH clarified for the Department of Law (DOL) that the working definition of "adjacent" is out of Black's Law Dictionary. The neighbor would have to be fairly close to the drug house. It would be the neighbors on either side of the house and, if close enough, the neighbor across the street and possibly the one diagonal to the drug house.

CHAIR SEEKINS asked whether it could be all of the people living in an apartment building if the drug house were actually an apartment in the building.

SENATOR FRENCH said yes. The district attorney's office would determine the "reasonable" amount of distance on a case-by-case basis and only the neighbors who qualified could receive the information.

CHAIR SEEKINS referred to the photo of a trailer park that was provided in the bill packet and asked Senator French to provide an example of a reasonable distance.

SENATOR FRENCH gave the example that if the committee were to choose any one trailer in the park, it would be three or four contiguous trailers that would qualify.

[9:24:35 AM](#)

SENATOR GENE THERRIAULT asked about apartment complexes where there are several buildings together.

SENATOR FRENCH said in a two-block apartment building it would be just the apartments next to the drug apartment. An apartment at the other end of the building would not be considered adjacent. The idea would be to have common sense apply and the district attorney's office would have discretion as to who could receive the requested information.

CHAIR SEEKINS asked the remedy for people who, for one reason or another, did not get the requested information.

SENATOR FRENCH said they would have the right to complain loudly to the district attorney's office.

[9:26:52 AM](#)

CHAIR SEEKINS noted there was no one signed up to testify and so he closed public testimony.

[9:28:23 AM](#)

SENATOR FRENCH said the bill was not intended to require the police to leaflet a neighborhood. It was for citizens who take the initiative to follow up on a case that affected them.

SENATOR GUESS moved SB 240 from committee with individual recommendations and attached fiscal notes. Hearing no objections, the motion carried.

CHAIR SEEKINS announced a brief recess at [9:29:08 AM](#).

SB 249-REPORTING BAIL AND RELEASE INFORMATION

[9:37:23 AM](#)

CHAIR RALPH SEEKINS announced SB 249 to be up for consideration.

SENATOR HOLLIS FRENCH, bill sponsor, introduced the bill. SB 249 is designed to help continue to allow for effective integration of law enforcement knowledge across the state by putting into statute the ability to add bail conditions to the Alaska Public Safety Information Network (APSIN).

He cited an incident where a swat team cordoned off an Anchorage neighborhood in 2005. A man went to his former spouse's home and held her hostage with a gun. Shots were fired between the man and the Anchorage Police Department (APD) but no one was hurt. The man went to jail but two weeks later was released on bail and returned to the same house to continue the dispute. A neighbor called the police but since the bail conditions were not listed on APSIN the police could not determine whether he was violating bail conditions and therefore were restricted from pursuing any further action against him.

[9:40:24 AM](#)

Bail conditions frequently prohibit someone from doing something that is otherwise lawful and the bill would let officers know whether the person they are dealing with was or was not obeying their conditions of bail.

[9:41:26 AM](#)

DOUG WOOLIVER, Administrative Attorney, Alaska Court System, said Senator French brought the issue to his attention. The court system has a group called the MAJIC group, which stands for multi-agency justice integration committee. It is chaired by a member of the court and includes people from the Department of

Public Safety, (DPS) the APD, the chiefs of police, the Department of Corrections (DOC), district attorneys and others from the criminal justice system. They meet every other week and they are working on this particular problem. Currently there is no connection between the bail conditions and APSIM. The long-term goal is to incorporate the bail conditions information in the computer system, which is a fairly substantial change.

9:43:20 AM

CHAIR SEEKINS asked whether there was a fiscal note attached to the bill.

MR. WOOLIVER reported there was no fiscal note. The court system would estimate an indeterminate fiscal note. It is a long-range project and may cost money in the future but not immediately.

9:45:35 AM

SENATOR FRENCH said that police often deal with people who are on bail restrictions and the bill would offer a valuable service for those situations with repeat offenders.

CHAIR SEEKINS asked whether conditions of probation should be included in the computer for the officers as well.

MR. WOOLIVER said he believes a clerk at the DOC types information for some offenses into the computer system by hand so that it is available for responding officers. The MAJIC group is addressing that issue and others such as letting officers know that the person they are pulling over has not paid their traffic tickets.

CHAIR SEEKINS asked whether a person convicted of a DUI loses their license.

MR. WOOLIVER explained the officer that arrests the person would take their driver's license and that information gets transferred to the Division of Motor Vehicles (DMV) computer system.

CHAIR SEEKINS asked the timeframe for transferring that information.

MR. WOOLIVER said it depends. There is an administrative revocation and a court adjudicated revocation. A court action against a license is still all paper records. Those are sent to the DMV and it takes them approximately two weeks to enter the data into their system. Everything is done by hand, which is why

it takes so long. Finding an electronic solution is one of their top priorities, he said.

[9:54:38 AM](#)

CHAIR SEEKINS noted the title of the bill seemed broad. He suggested the committee hold the bill and research whether they can add conditions of probation as well.

SENATOR FRENCH agreed and offered to incorporate conditions of probation into the bill.

[9:56:39 AM](#)

CHAIR SEEKINS held SB 249 in committee.

CHAIR SEEKINS announced a brief recess at [9:56:56 AM](#).

There being no further business to come before the committee, Chair Seekins adjourned the meeting at [9:59:56 AM](#).