

HOUSE FINANCE COMMITTEE
March 14, 2008
1:47 P.M.

CALL TO ORDER

Co-Chair Meyer called the House Finance Committee meeting to order at [1:47:04 PM](#).

MEMBERS PRESENT

Representative Mike Chenault, Co-Chair
Representative Kevin Meyer, Co-Chair
Representative Bill Stoltze, Vice-Chair
Representative Harry Crawford
Representative Les Gara
Representative Mike Hawker
Representative Reggie Joule
Representative Mike Kelly
Representative Mary Nelson
Representative Bill Thomas Jr.

MEMBERS ABSENT

Representative John Harris

ALSO PRESENT

Representative Lindsey Holmes; Representative Wes Keller; Dwayne Peeples, Deputy Commissioner, Department of Corrections; Nick Jans, Alaskans for Wildlife, Juneau; Jim Pound, Staff, Representative Wes Keller

PRESENT VIA TELECONFERENCE

Anne Carpeneti, Assistant Attorney General, Legal Services Section-Juneau, Criminal Division, Department of Law; Kevin Saxby, Assistant Attorney General, Department of Law; Wade Willis, Anchorage; Scott Ogan, President, Sportsman for Fish and Wildlife, Anchorage; Thomas Scarborough, Fairbanks; Wayne Heimer, Fairbanks; John Toppenberg, Director, Alaska Wildlife Alliance, Soldotna; Gerald Brookman, Kenai

SUMMARY

HB 307 An Act relating to penalizing certain misdemeanor domestic violence offenses as felonies.

CS HB 307 (FIN) was reported out of Committee with a "no recommendation" and with (2) new fiscal notes by the Department of Administration, (1) Department of Corrections, (1) Department of Law,

(1) Alaska Court System, and a new zero note by the Department of Public Safety.

HB 348 An Act relating to the adoption of regulations by the Board of Fisheries and the Board of Game.

HB 348 was HEARD and HELD in Committee for further consideration.

#HB307
[1:47:56 PM](#)

HOUSE BILL NO. 307

An Act relating to penalizing certain misdemeanor domestic violence offenses as felonies.

Vice-Chair Stoltze MOVED to ADOPT work draft 25-LS1236\K, Luckhaupt, 3/12/08 as the version of the bill before the Committee. There being NO OBJECTION, it was adopted.

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Representative Hawker MOVED to ADOPT Amendment 1(a). Vice-Chair Stoltze OBJECTED.

Representative Hawker explained that the amendment would delete language on Page 3, Line 7, "(2) adults or minors who live together or who have lived together." Additionally, it would renumber the sections following. On Page 3, Line 13, following "(7)", deleting "minor" and inserting "parents or". (Copy on File).

He noted that the amendment addresses the qualifications to be a household member in a domestic violence act and would not affect the existing statewide domestic violence statutes. He listed the seven definitions of a household member. He noted that the issues of what is considered a household member for purposes of a domestic violence, three strikes out. He noted that Item 2 is of concern with language "have lived together"; and he thought the provision was too encompassing and recommended that the language be limited to familial relationships.

Representative Hawker addressed another change on Page 3, Line 13, deleting "minor" child and instead include "parents or children of a person in the relationship". He maintained the immediacy of a familial relationship. He urged support for the amendment.

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REPRESENTATIVE LINDSEY HOLMES, SPONSOR, commented on Amendment 1(a). She noted that she would endorse Lines 6-8

of Amendment 1(a); however, indicated she would not choose to delete language on Lines 1-7. That choice was made because prosecutors would have to prove an element of a crime that they never have had to prove before. Until now, domestic violence was something simply checked on a box by a judge. It is common in domestic violence, where the woman recants; the prosecutor would then have to prove the domestic violence, under one of the above listed elements. Without the perpetrator or the victim admitting to it, it would be very difficult to prove that domestic violence had occurred. A third party would not be able to prove that they were engaged in a sexual relationship. Representative Holmes voiced concern deleting the proposed language, the State would miss a lot of domestic violence, which can occur because of the frequency that the woman recants. She understood the possibility the language could sometimes pick up that should not be included; she was willing to entertain limiting factors.

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Representative Hawker advised that as written, there was a presumption of guilt; he wanted to see the prosecutors requiring a certain degree of proof. He thought it could be reasonable protection for certain situations, worrying about the broad dimension of the language.

Representative Kelly submitted that domestic violence issues create a special category of "hate crimes". Representative Holmes said, she was open to including a time-limit factor including necessary limiting language. She did not want to see non-guilty persons be picked up. She reminded members that a person must have three separate convictions before the bill is implemented and will not be a one-time thing.

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Representative Joule wondered what would happen in a relationship, in which the couple had separated and then there was another domestic violence occurrence. He asked if a second assault could still be categorized the same way. Representative Holmes suggested that the relationship would still be considered domestic violence for retaliation in the attempt to leave and would be tied to the prior relationship & assault.

Representative Hawker MOVED to DIVIDE the question in Amendment 1(a) at Line 5. Lines 1-4 would become the new Amendment 1(a) and Lines 5-8 would become Amendment 1(b). There being NO OBJECTION, the amendment was divided.

Representative Hawker MOVED to ADOPT Amendment 1(b). There being NO OBJECTION, it was adopted.

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Representative Hawker MOVED to ADOPT the new Amendment 1(a). Representative Kelly OBJECTED.

Representative Joule asked if the sponsor had recommended the language. Representative Holmes was amenable to limiting 1(a) either by making a time-limit that the couple had lived together or by excluding specific certain categories of relationship. Representative Hawker suggested deleting "or have lived together" on Line 2.

Representative Holmes replied in "the spirit of compromise", she would recommend adding something similar to "having lived together in the last few months". She was concerned about those people that recently fled a relationship, now living in a shelter and not currently living together.

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Representative Hawker WITHDREW new Amendment 1(a). There being NO OBJECTION, it was withdrawn.

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Representative Holmes spoke to the changes made to the work draft addressing concerns of some of the Committee members, as well as the Department of Law, the Public Defender's Agency and the Office of Public Advocacy.

- Now, the bill is only prospective, which means all three convictions would need to occur after the effective date of the bill.
- The bill has a 10-year look back, so all three convictions would need to occur within 10 years of each other.
- Due to the 10 year look back, language was added to clarify the date on which a conviction is considered to have occurred.
- Presently, the first two strikes need to be felony convictions or 4th degree physical assaults, and eliminating "fear" assaults, reckless endangerment and other misdemeanors as strikes.
- The bill's mechanism has slightly changed. Instead of the third strike making a 4th degree assault a felony, it now makes the third strike an assault in the 3rd degree, which is already a felony.
- The bill does counts convictions from other jurisdictions as strikes. It allows municipal assault convictions to count as strikes.
- The bill limits the definition of a household member (which is defined in AS 18.66.990[5]) to exclude

"adults or minors who are related to each other up to the 4th degree of consanguinity, whether of whole or half blood or by adoption, computed under the rules of civil law." The 4th degree of consanguinity would include for example, cousins and great uncles, language, which was too broad.

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Representative Thomas asked about prior out of State convictions. Representative Holmes requested the Department of Law responded to that question, but she assumed they would count in Alaska.

ANNE CARPENETI, ASSISTANT ATTORNEY GENERAL, LEGAL SERVICES SECTION-JUNEAU, CRIMINAL DIVISION, DEPARTMENT OF LAW (Testified via teleconference), stated the convictions from out of state, which meet all the conditions described by Representative Holmes, would count. Representative Thomas inquired how new people moving to the State would know. Ms. Carpeneti explained that it is not a new concept and happens for example, with drunken driving executions.

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Representative Kelly inquired what will be accomplished through passage of the bill. Representative Holmes hoped the bill could raise awareness of the problems which happen so often in Alaska. From information provided by the Court System, it is known that there are people out there that have 8 to 12 of counts of domestic violence, which she found horrifying. She emphasized the need for education and raising awareness that the behavior is no longer tolerated. She hoped that the bill could be used as an opportunity to not only punish but also create a broader effort, to raise awareness to reduce the scope of these problems.

Representative Kelly understood that it should apply to both male and female violence; however, pointed out that the bill does not relate to both. Representative Holmes replied, it will not be limited. Representative Kelly asked if it would affect homosexual violence. He worried that the legislation will end up creating many problems; he prefers the standard statute. Representative Holmes asked if Representative Kelly was suggesting eliminating the domestic violence portion, assuming all assaults of the three strike crimes. Representative Kelly reiterated his concern with hate crimes. Representative Holmes acknowledged that was one approach. The goal of the legislation is to deal with people that are being terrorized by people that are close to them. She emphasized that her focus was more limited than that suggested by Representative Kelly.

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Representative Kelly asked if the Department of Corrections or the Department of Law support the bill. Representative Holmes pointed out the letters of support including ones from the Council on Domestic Violence and Sexual Assault and the Alaska Peace Officers. [Copies on File].

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Representative Gara discussed all the testimonial documents regarding someone that has a control relationship over another person and a repeated cycle of violence patterns. He commented the most graphic is between spouses when it becomes a terrorizing relationship. If the bill applies only to those living together, by three times, it is obviously a recurring pattern.

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Representative Nelson responded that the goal of the bill is to save lives because evidence indicates that when there are cases of domestic violence, they are escalating and progressive. Cases rarely de-escalate and when there is domestic violence, it tends to turn to extreme battery and eventual death.

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Representative Kelly spoke in opposition to the statement that domestic violence happens traditionally between married couples. He maintained that is not supported through evidence and that the violence is not related just to the marriage relationship. He commented that language was too broad. He inquired what counts as one, two and three strikes on an assault charge.

Representative Holmes emphasized that a felony assault is considered a very serious assault. The trigger offense is a 4th degree assault, which is the person recklessly causing physical injury to another person or criminal negligence and that person causes injury by means of a dangerous instrument. The fear assault language was eliminated.

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Representative Nelson asked Representative Kelly where the statistics came from regarding "married people batter less". She believed it is more difficult for a married woman to get away from her spouse. Representative Kelly offered to research the statistic. He acknowledged that married people do have problems; however, maintained that the "safest person on the face of the earth is a married female".

Representative Nelson followed up that many people do not know who they are marrying until they are securely in that marriage-relationship. She reiterated her curiosity regarding his observation. Representative Kelly emphasized the safety of a legal marriage and argued that domestic violence does not occur as much in a marriage relationship.

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Representative Gara interjected that if the situation is a third domestic violence assault, it would become a Class C felony and be sentenced. Representative Holmes clarified that the presumptive sentence for a first felony is zero to two years in jail.

Representative Gara commented if the sentence was three domestic violence abuses to a wife & the first two were felonies that would be considered quite serious. There already exists an accommodation for different types of relationships & the seriousness of the pattern. The statute builds in flexibility for different levels of violence.

Representative Kelly observed that the language used to define a relationship seems to be "any two people walking down the street together" and that troubled him.

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Representative Hawker noticed that civil liberties were being discussed and he hoped that anyone viewing the discussion would look at his personal record in sponsoring, caring and passing legislation that made strangulation a crime of domestic violence.

Representative Hawker MOVED to ADOPT new Amendment 1(a), clarifying no changes made to new Amendment 1(a).

Vice-Chair Stoltze OBEJCTED.

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Representative Hawker discussed the modification proposed by the sponsor. He paraphrased the purpose of the legislation as presented by the sponsor, which was explained the purpose was to "stop people being terrorized in their homes by people that love them". He stated that the egregious factor is the control relationship and that Amendment 1(a) removes that situation.

Representative Hawker MOVED to AMEND new Amendment 1(a) by deleting the language on Page 3, Line 7, "or have lived together". Co-Chair Meyer OBJECTED.

Representative Hawker advised that the intent was to make it easier when the conviction felony is determined.

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Representative Holmes clarified her previous testimony regarding those people being "terrorized in their own homes or [not and] by people that love them". She possible for the prosecutors but did not want it to be impossible for them to prove the domestic violence. Representative Holm stood at the will of the Committee.

Vice-Chair Stoltze asked if "living together" included co-habitation.

Representative Nelson spoke to the amendment. She stated that the most dangerous time for a woman in an abusive relationship is when she is about to leave, leaving, or just left, arguably not living together. Representative Hawker pointed out those concerns were addressed in the remaining criteria. Representative Nelson appreciated that notation.

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Representative Joule echoed sentiments of Representative Hawker, pointing out number three and four, agreeing that the protection was covered. He questioned if the departments intended to testify on the amendment.

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Vice-Chair Stoltze reiterated his query regarding "living together". Representative Holmes did not believe it would require cohabitation but rather sharing the domicile. Representative Nelson asked the difference.

Ms. Carpeneti agreed with Representative Holmes that living together is sharing a home. She thought cohabitating was the same thing, which is why the language was included to clarify living together in addition to engaging in a sexual relationship with other factors.

Representative Holmes commented that following the Committee's discussion, she was willing to support the amendment as proposed with the understanding that if the prosecutors were unable to prosecute down-the-road, the guidelines could be reconsidered.

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Co-Chair Meyer WITHDREW his OBJECTION to the amendment. Vice-Chair Stoltze WITHDREW his OBJECTION to the new Amendment 1(a).

Representative Crawford OBJECTED for a question regarding the language being voted on, & if it was just "adults and minors who live together". Co-Chair Meyer said that was correct. Representative Crawford WITHDREW his OBJECTION. There being NO further OBJECTIONS, new Amendment 1(a) was adopted.

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Co-Chair Meyer reviewed the six [6] fiscal notes, understanding that two fiscal notes by the Department of Administration would be replaced.

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Co-Chair Meyer requested testimony on the note from Department of Corrections.

DWAYNE PEEPLES, DEPUTY COMMISSIONER, DEPARTMENT OF CORRECTIONS, explained that the note dated 3/13/08, does address the work draft.

Vice-Chair Stoltze asked if the assumption was it would take people off the streets. Mr. Peeples responded that the Department made no calculations on the deterrent effect of the bill. The Department used the numbers provided by the Courts to make the determination.

Vice-Chair Stoltze did not believe the increasing numbers of incarceration costs would be coming to a halt. Mr. Peeples could make no calculation for any projections or changes in human behavior. When pulling the statistics, the Department observed that the average midpoint for a pool of people getting their third offense is approximately 2.5 years.

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Representative Gara asked how the number was determined that in 2014, the bill would reach a point where 366 people a year would reach three assaults. Mr. Peeples referenced Page 2 of the note, arriving at the accumulating effect. The first year, based on the Department's percentage points, by the time they are adjudicated, sentencing for the two years would be a slow growth, which is an estimate.

Representative Gara asked if there was a difference in cost for someone in jail for two years and someone in jail for six months with 1.5 years of probation. Mr. Peeples replied yes. Representative Gara assumed that the Department would choose the high point number. Mr. Peeples said it is difficult to determine how the sentencing will be handled through the Courts.

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Representative Thomas inquired if counseling was considered to be used as a preventative. Mr. Peeples suggested that the Department of Public Safety or the Council on Domestic Violence & Sexual Assault could address that idea. The Department of Corrections does offer some counseling and treatment inside the facility, but diversion should be addressed by the above mentioned entities. Representative Thomas maintained that when spending \$11 million dollars a year, at least \$1 million should be used for counseling.

Representative Joule inquired where most of the people live who will be impacted through the bill. Mr. Peeples replied that statewide with the largest population in Anchorage.

Representative Joule urged utilizing the number of wealthy statewide resources that should be tapped such as the tribal courts. He noted that the standards of behavior are changing and that these issues should be addressed by the elders living in those communities.

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Representative Hawker discussed the idea of a travel court being intriguing. He asked if in the evaluation of current statistics, the Department would suggest that 80% of offenders would be Alaska Native. He elaborated that was profound. He referenced the anticipated calculation for the fiscal note of 366 offenders, questioning where they would be housed. Mr. Peeples responded that would depend on the length of their sentence and how well the Department does in securing and building new facilities in the State. By that time, the Department anticipates having a new facility built at Fort MacKenzie; he suspected anyone sentenced over nine months could end up there. He maintained that they would still need out of State beds for those sentenced over eighteen months. The Department is growing on an average of 250 beds per year plus what comes out of the bill. Representative Hawker believes the bill will exasperate the current bed situation for the Department. Mr. Peeples advised it is just another factor considered when managing that population.

Representative Hawker asked if the fiscal note includes only the day rate costs and not capital costs for constructing a new facility. Mr. Peeples replied that the Department provided a blended rate for running a bed in State and then the out of State contractor; there is no capitalization of bond debt payments in that calculation.

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Representative Gara delineated the three things passage of the crime bill would accomplish:

- Get dangerous people off the streets;
- Punish the conduct that needs to be punished; and
- Reduce the costs.

Representative Gara encouraged putting dollars into the crime prevention through education. He reiterated indications on the fiscal note, and asked if there was real information showing that in 2014, 366 people would be picked up for their third domestic violence assault in ten years. Mr. Peeples responded that the Department is using the Court's determined numbers of 250 a year, using a "snapshot" of 2007, falling under the third hit. The Court's have assumed a 77% conviction rate, reaching 190 per year sentencing.

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Representative Joule questioned the behavior the bill intends to change. He agreed that it is one option method and hoped it would not be the only one. He wanted to see a deterrent to the behavior.

Representative Kelly interjected that there was a time in history when men took better care of their families. He was worried about the direction the legislation leads the issue. He commented that the long range message is that women are doing "stupid things" by marrying the beasts among men. He thought that the uncles, brothers and fathers should be taking care of these problems. He was bothered that it was one more thing insidiously placed onto government to monitor.

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Representative Nelson countered previous testimony by Representative Kelly regarding the intellectual ability of women engaged in abusive relationships. She stated that sometimes, there are vulnerable people that are preyed upon, who need help.

Co-Chair Meyer directed conversation to the Department of Law's fiscal note. Ms. Carpeneti understood that the note addresses the new draft. The cases will be pursued whether they are misdemeanors or felonies. As soon as the cases are prosecuted, there will be a new element to prove, that "without a reasonable doubt". That language is the reason for the note.

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Vice-Chair Stoltze emphasized that it is a serious issue and he wished that there was a better way to separate the circumstances.

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Representative Gara credited Representative Holmes for removing specific portions of the bill, which includes the "scaring" component; it now addresses three actual times of physically hurting someone before the felony option kicks in. He applauded the amount of work done on the bill to narrow the focus. Co-Chair Meyer agreed.

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Vice-Chair Stoltze MOVED to REPORT CS HB 307 (FIN) out of Committee with individual recommendations and with the accompanying new fiscal notes. Representative Kelly OBJECTED.

A roll call vote was taken on the motion.

IN FAVOR: Crawford, Gara, Hawker, Joule, Stoltze,
Thomas, Meyer

OPPOSED: Kelly

Representatives Chenault, Harris and Nelson were not present for the vote.

The MOTION PASSED (7-1).

CS HB 307 (FIN) was reported out of Committee with a "no recommendation" and with (2) new fiscal notes by the Department of Administration, (1) Department of Corrections, (1) Department of Law, (1) Alaska Court System, and a new zero note by the Department of Public Safety.

#HB348

[3:00:25 PM](#)

HOUSE BILL NO. 348

An Act relating to the adoption of regulations by the Board of Fisheries and the Board of Game.

Vice-Chair Stoltze MOVED to ADOPT work draft 25-LS1328\F, Kane, 3/12/08 as the version of the bill before the Committee. There being NO OBJECTION, it was adopted.

REPRESENTATIVE WES KELLER, SPONSOR, introduced the bill as a needed clarification to make regulations to allocate game as an asset. The bill codifies the terms. He argued that human beings are capable of sustainable relationship with the natural world including game. He noted that he does not

support the California legislation that implies that Alaskans are incapable of competent game management. HB 348 would strengthen statute by incorporating the Constitutional language and reflects Alaskan's values. He noted that the Board by regulation, establishes the methods and means of bag limits related to game. He added that HB 348 was accompanied by HJR 31, which is currently in the House Rules Committee.

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Representative Gara asked if incorporating "asset" in the language of the bill would prevent future initiatives. Representative Keller hoped the bill would address the following areas of importance:

- Provide a level of confidence to the Board of Game, by clarifying that game is an asset worthy of allocation
- Make for less lawsuits
- Provide a statement to non-residents that there will be management of Alaskan game & predators
- Maintains legislative control

Representative Keller added no part of the bill directly addresses the initiative process. It clarifies only the language that already exists that game is an item to be allocated.

Representative Gara questioned if the statement made is that game is an allocated asset, would it then be removed from the initiative process. Representative Keller responded, it is already out of the initiative process.

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Representative Gara discussed the emotional issues of allocation & management of subsistence and wolf control. If the Courts had interpreted that game was an allocated asset & the Courts already agreed, would that keep the Courts from allowing those issues on the initiative ballot. Representative Keller referred to the Court battles related to the allocation of fish. The bill attempts to clarify such concerns for the Board of Game.

Representative Gara did not understand all the correspondence he had received regarding how the bill affects the initiative process. Representative Keller clarified that the allocation of game does not change the initiative process. It clarifies that the allocation fees are not part of that process. The management of fish and game places the responsibility on the Legislature.

Representative Gara queried if State law indicates that the allocation of game is an asset and made clear in Statute for the Courts, the category then can not be subjected to the initiative process. Representative Keller understood that could clarify it and is a policy statement for the Legislature to make.

Representative Gara noted that once the policy statement is made, then the subject can no longer go on the initiative ballot. Representative Keller replied that would be determined by the State attorneys. He imagined it would improve the current situation.

Representative Gara noted that in order to allocate by initiative, the subsistence preference issue or the same-day airborne wolf control concern would be covered through HB 348. Representative Keller replied that the Board of Game does make those regulations.

Representative Gara inquired if the bill is passed, would the State surrender their ability to have a subsistence preference or same day airborne wolf killing in place. Representative Keller responded that the bill does not address preference, leaving that to the Board of Game. He hoped the choices would be less likely through the bill's passage.

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Vice-Chair Stoltze interjected that the subsistence issue has been a Constitutional amendment that has not been available for the initiative process since the late 1980's.

Representative Hawker reviewed testimony from the previous committee hearings. The Alaska Supreme Court has already ruled that fish are an asset. Representative Keller agreed.

Representative Hawker referenced previous testimony from an Attorney General relating to game, on the precedence of a fish case, an attempt to allocate game through the initiative process would likely is held to the same consideration and that, game would be held as an asset. Representative Keller shared that understanding.

Representative Hawker thought that there was reasonable inference that game is an asset and that he did not see anything in either the Constitution or the bill that would impede the initiative process. The controversy is the use of "allocation" of assets.

KEVIN SAXBY, ASSISTANT ATTORNEY GENERAL, DEPARTMENT OF LAW (Testified via teleconference), offered to answer questions of the Committee. He agreed that game is an asset and established in the precedence and that the real question is,

in the future, would it be considered an appropriation of the asset or characterized in some other manner.

Representative Hawker questioned if a prohibition would be an appropriation or allocation and if an absolute prohibition on a certain activity would be a question of an appropriation. Mr. Saxby responded that sometimes it would depend on what the initiative is. Representative Hawker was satisfied with that clarification.

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Representative Gara asked if the ban on initiatives is that an initiative can not be submitted, creating a ban on appropriations. If game is an asset, apportioning it as an appropriation of an asset, the Courts would then prohibit it from moving through the initiative process. Mr. Saxby advised that there would continue to be a question in the future depending on the wording of a given initiative as to whether or not it is an appropriation.

Representative Gara commented that if by adding the language in the bill, "appropriations" would it make it more likely that the decision would not be allowed in the initiative process. Mr. Saxby thought it would make it more likely "sometimes". Essentially, the language in the work draft codifies two separate fish cases.

Representative Gara asked if there was a determination regarding a rational definition of subsistence preference relying on the resource. Mr. Saxby thought the bill did not change current law, but rather, is a statement by the Legislature that it agrees with what the Supreme Court has already stated.

Representative Gara countered that Mr. Saxby's perspective was because the prior Supreme Court precedence. Mr. Saxby argued that it was stated in two separate cases and that the Legislature would be combining it.

Representative Gara asked if the same-day airborne wolf killing would be affected by the proposed legislation. Mr. Saxby responded that would depend on the way the initiative was worded, but could very well be.

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NICK JANS, ALASKANS FOR WILDLIFE, JUNEAU, noted that he has lived 28 years in Alaska in the Native subsistence-oriented villages. He stated that he has worked for a big game guide as a packer. He offered to provide members of the Committee with copies of his testimony, as well as supporting documents.

He pointed out that HB 348 appears to be an innocuous bill, which changes a word or two, redefining Alaska's wildlife as an asset. The Department of Law has argued that it and the companion bill, SB 176, simply clarify existing statutes governing wildlife management. However, the intent of HB 348 is far ranging. The legal analysis exposes stealth legislation, designed to subvert the right of the Alaskan people to sponsor ballot initiatives and vote on the issue of predator control, as well as on future wildlife management issues at the behest of special interest groups, notably the Alaska Outdoor Council (AOC), which the Governor is a member. Once wildlife becomes an asset, only the State legislature holds the power to determine the allocation. He maintained that the intent of the bill is to silence the collective voice of Alaska's voters on the issue of aerial predator control.

Mr. Jans encouraged legislators to check the voting records from the past two aerial predator control ballot initiatives. In 1996, each district voted down aerial predator control; however, the practice was reinstated by the Legislature. In 2000, 8 of the 12 districts represented again voted against shooting wolves from aircraft and statewide, 29 of the 40 districts did the same. Now, 56,000 Alaskans are again asking that the Legislature does not silence the voice of the people. Thousands of rural Alaskans have voted against it. All Native bush communities voted against the practice. To say that those people do not understand the nature of subsistence or wolves is an insult to the Native traditions and culture.

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Mr. Jans continued, aerial predator control is not a matter of science, but a matter of policy, directed by political appointees. It is the right of Alaska's people to decide how the management tools will be wielded. Alaska's citizens have a constitutional right to vote on matters of wildlife management policy, and to raise a ballot initiative when the collective will is ignored by those sworn to represent citizens.

Mr. Jans concluded that the issue of aerial wolf and bear shooting pales in comparison to the real issue at stake, the democratic process. He urged members to protect and nurture the democratic process but striking down HB 348.

[3:27:00 PM](#)

Representative Gara agreed with testimony provided by Mr. Jans on the ariel wolf hunting issue. He admitted that there have been powerful arguments on the other side of the issue, an issue which is quite divisive.

Mr. Jans clarified that the attempt of the group he represents is to place the management of wildlife into the Department of Fish and Game for management and make decisions and providing the resources to do so.

Mr. Jans pointed out that none of the specific predator control programs have passed peer review because they do not have enough funding to do so. He maintained that wolves are only one limiting factor in the eco-system. He pointed out, he supports predator control. He emphasized that science should govern these issues, not political appointees. The group Friends of Animals is a polarizing group and full of extreme views and does not accept their input. The Alaskans for Wildlife want a Board of Game that represents sensible use of wildlife for all Alaskans, not just the 15% representing special interest groups. He maintained that predator control should be implemented on area needs basis.

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Representative Nelson agreed that science should govern, not political appointees or the ballot box. She asked Mr. Jans if he was familiar with some of the voting rights act infringements that Native Alaskans have been facing. She pointed out that initiative language is not always plain-spoken English. In Western Alaska, 11% of the population does not speak English at all. She worried about ballot language and how many people can understand the concepts. Mr. Jans could not speculate on that, however, he found the elders to be quite astute, agreeing that Alaska Natives are often cut out of the process.

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Representative Nelson noted the vulnerability of the people in her districts that do not speak English as their first language and how difficult the initiative process can be for them. There is a lot of outside money & advertising put into Alaska during the initiative process. Mr. Jans agreed.

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Vice-Chair Stoltze interrupted Mr. Jans, pointing out the number of other testifiers on line.

[3:40:31 PM](#)

WADE WILLIS, BIOLOGIST, ECO-TOURISM BUSINESS, ANCHORAGE (Testified via teleconference), mentioned a previous conversation he had with Mr. Pound, Staff to Representative Keller, who has clearly stated that HB 348 intends to remove "ballot-box biology", once and for all. Mr. Willis spoke against the bill.

Mr. Willis commented that changing the wording from resources to assets to be allocated, ties into the intensive game management laws. A previous chairman of the Board of Game, Mike Fleger, stated that the intent of that was to reallocate, harvestable, surpluses of game from predators to humans. Mr. Willis observed that the proposed wording would remove people from the initiative process. He added that it will strengthen management to reallocate from predators. The bill does not reflect Alaskans intent and that in nearly every district in the State, 72% voted to keep the initiative process in the management of the State's wildlife.

In 2004, the Alaska Department of Fish and Game testified to the Board of Game that they did not have the size to justify predator control.

Mr. Willis directed testimony to Representative Nelson indicating that the Native community very much knows what they are voting on and for. He added that HB 348 removes the public's ability to use the initiative process. The bill removes the tourism industry away from the process. He maintained that any back-door legislation attempting to remove a population base from the process of predator control is wrong. He urged that the Committee should not support the legislation.

[3:46:24 PM](#)

SCOTT OGAN, PRESIDENT, SPORTSMAN FOR FISH AND WILDLIFE, ANCHORAGE (Testified via teleconference), noted opposition for a rural priority. He wanted to see the resources managed for abundance, which he hoped would mitigate the allocation conflicts amongst Alaskans. He maintained that HB 348 provides the opportunity to bridge the rural/urban divide.

Mr. Ogan testified that over twenty well funded groups, listed in the Anchorage phone book, are attempting to "save the State from itself". He asked if the Alaska Supreme Court subverted or corrupted the Constitution with the ruling Polin versus Ulmer. He thought that the bill would codify that ruling. Mr. Ogan pointed out that the bill would not change the initiative process, but rather codifies the Alaska Supreme Court language. He maintained that the bill would elevate wildlife as an asset and urged support.

[3:50:14 PM](#)

THOMAS SCARBOROUGH, FAIRBANKS (Testified via teleconference), echoed sentiments expressed by Mr. Ogan and urged that the bill be passed quickly from Committee.

[3:51:17 PM](#)

WAYNE HEIMER, FAIRBANKS (Testified via teleconference), indicated his support for passage of HB 348. He pointed out that the Alaska Constitution allows initiatives and referendums through Article 11; however, Section 7, lists specific things that can not be done through that process. He pointed out that special legislation can not be addressed through the initiative process. He worried about the political struggles while attempting to manage Alaska's wildlife. He maintained that initiatives were always driven by personal & emotional perceptions of what is honorable or fair & whether an initiative passes or fails, always depends on which side has the most money.

Mr. Heimer thought that the legislation could be clearer by identifying the means for harvest. He added that some of the functions authorized by the Board of Game have been previously authorized through the commissioner of the Department and that should be addressed. He cautioned that voting for the bill would take courage because the initiative industry will be actively involved. He urged passage of the bill.

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JOHN TOPPENBERG, DIRECTOR, ALASKA WILDLIFE ALLIANCE, SOLDOTNA (Testified via teleconference), aligned his testimony with the comments made by Mr. Jans. He assumed that HB 348 is an attempt to "kill" the initiative process and silence Alaskans on the issue of predator control. It is not about biology but rather about eliminating another point of view. Alaska has a well established history of supporting science and the formulation of regulation. The initiative process exists to provide a check on legislative power. Alaskans are entitled to that check. The reality is that Alaska wildlife is a public resource and the public has a role to play in establishing the policy. He urged that the bill be opposed by all legislators.

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GERALD BROOKMAN, KENAI (Testified via teleconference), indicated his opposition to HB 348. He referenced the used of "assets" in the bill. He pointed out that Representative Keller was evasive in his response to the use of that language and he [Mr. Brookman] questioned the true intent of the sponsor. He urged that the Committee vote against HB 348.

[3:58:21 PM](#)

PUBLIC TESTIMONY CLOSED

[3:58:55 PM](#)

HB 348 was HELD in Committee for further consideration.
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ADJOURNMENT

The meeting was adjourned at 4:01 P.M.