

**ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE**

February 9, 2009

1:30 p.m.

MEMBERS PRESENT

Senator Hollis French, Chair
Senator Bill Wielechowski, Vice Chair
Senator Kim Elton
Senator Lesil McGuire
Senator Gene Therriault

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

Confirmation Hearing

Chief Administrative Law Judge

Terry Thurbon

CONFIRMATION ADVANCED

SENATE JOINT RESOLUTION NO. 3

Relating to carrying firearms in national parks.

HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: SJR 3

SHORT TITLE: FIREARMS IN NATIONAL PARK

SPONSOR(S): SENATOR(S) THERRIAULT

01/26/09	(S)	READ THE FIRST TIME - REFERRALS
01/26/09	(S)	JUD
02/09/09	(S)	JUD AT 1:30 PM BELTZ 211

WITNESS REGISTER

TERRY THURBON, Chief Administrative Law Judge
Office of Administrative Hearings
Juneau, AK

POSITION STATEMENT: Chief Administrative Law Judge appointee.

DAVE STANCLIFF, Staff

to Senator Therriault
Alaska State Legislature
Juneau, AK

POSITION STATEMENT: Provided information relative to SJR 3.

SALLY GIBERT, ANILCA Coordinator
Office of Project Management
Department of Natural Resources
Anchorage, AK

POSITION STATEMENT: Provided clarification relative to SJR 3.

ACTION NARRATIVE

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CHAIR HOLLIS FRENCH called the Senate Judiciary Standing Committee meeting to order at 1:30 p.m. Present at the call to order were Senators Therriault, Wielechowski and French. Senators Elton and McGuire arrived soon thereafter.

CONFIRMATION HEARING

CHAIR FRENCH announced the first order of business is the confirmation hearing of Terry Thurbon. He read a letter from the governor stating that the position does not require legislative confirmation, but she is submitting Ms. Thurbon's name because it is important that legislators have confidence in the individual who is the chief administrative law judge for the state of Alaska.

Senator Elton joined the committee.

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TERRY THURBON, Chief Administrative Law Judge, Office of Administrative Hearings (OAH), said that in addition to running OAH her duties include: hearing cases, reviewing applications for the Workers' Compensation Appeals Commission and administering the code of hearing officer conduct. When she sought to be the state's first administrative law judge about four years ago, she had no idea how many dimensions the job would have and how much she would learn about the way the executive branch works and interfaces with the legislative and judicial branches.

She was teaching at the University of the Pacific (UOP) school of law when she got the bug to leave California and come to Alaska. For the first 12 years she was in private practice focusing in natural resource and environmental law. For variety

she also advised business clients on contracts, did occupational licensing and property dispute resolutions. After that she spent a year at the Department of Law again focusing primarily on environmental conservation and natural resources.

Along the way she developed an interest in administrative law and the administrative adjudication processes. She became excited at the prospect of helping to get the new Office of Administrative Hearings off on the right foot. She's been in the job for a little over four years and is asking for reappointment to a second five-year term. She noted that the first term was truncated because of the Title 39 provision for a March 1 expiration date.

Although she intended to do this job for just five years, she found that getting the agency up and running smoothly took longer than the 18 months she anticipated. Also, she didn't account for the spikes in the case load as well as a large backlog that was inherited when hearing units were consolidated into the OAH.

MS. THURBON said she'd like to continue working to make the hearing processes more efficient and timely. Also, there are a host of ancillary functions meant to improve administrative adjudications. In addition to administering the code of hearing officer conduct, she does training and monitors the hearing function and makes recommendations to the Legislature for improvements.

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CHAIR FRENCH recognized that Senator McGuire had joined the meeting.

MS. THURBON again said that the sole reason she asked the governor for reappointment is that there is more she wants to do. "If we'd gotten everything done that I wanted to do in that first few years, then I probably would not have put my name in again. ... If you have confidence in me continuing, I'd be happy to spend a few more years seeing if we can't bring it to the next level and make some more traction on the improvement of administrative adjudication for the executive branch."

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SENATOR ELTON presumed that she might not be interested in staying for a full 5 years.

MS. THURBON conceded that she doesn't know so she isn't giving any guarantees.

CHAIR FRENCH asked the degree to which she interacts and cooperates with the Workers' Compensation Appeals Board.

MS. THURBON explained that the chief administrative law judge was given two duties in the legislation that created the Workers' Compensation Appeals Commission. The first duty is to review applications, recruit and send names to the governor for the attorney chair position and the management and labor lay-commissioner positions for the appeals commission. She sends two names for lay-commissioner positions and three names for the attorney chair position. She goes through that process once or twice a year. The second duty is to appoint pro tem chairs when the attorney chair has a conflict or will be absent for longer than 10 days. She's had to do that four or five times and all have been conflict cases. Beyond those two functions is the statutory duty to monitor administrative adjudication processes, survey participants and comment to the Legislature on improvements. Those duties apply to all executive branch adjudications across the board, she added.

CHAIR FRENCH asked her to describe one or two controversial topics she's worked on.

MS. THURBON highlighted the certificate of need (CON) cases as hot button topics where competing businesses slug it out through an administrative adjudication process. Professional licensing cases can be contentious, but they often provide interesting issues—both in the application denials and the disciplinary cases. OAH also does administrative child support order hearings for the Child Support Services Division. In this area she's proud to say that many of the cases are resolved through an informal process thus avoiding the elaborate and costly exercise of writing decisions with findings and conclusions.

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SENATOR WIELECHOWSKI said he supported moving the administrative law judges into a single system and it seems to be working well. On the other hand, he has concerns about the Workers' Compensation Appeals Commission. Based on conversations he's had with people in the system, he's not sure that is working the way it was intended. First, it's very expensive. Also, he's hearing that employers are doing interlocutory appeals when employees win cases. That extends the employee's case longer and longer during which time they get no compensation. Then they're

remanding back to the workers' comp board and when the employer gets another decision they don't like they re-appeal to the Workers' Compensation Appeals Commission. The system doesn't seem to be balanced in favor of employees. He asked if there has been any study on how effective it's actually been.

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CHAIR FRENCH asked Ms. Thurbon to include a definition of interlocutory appeal in her response.

MS. THURBON said her understanding of the interlocutory process under the Workers' Compensation Appeals Commission regulations is that it's similar to the process in the courts. Parties who are before a lower tribunal—the Workers' Compensation Board—can pursue an issue up to the next level on appeal before their case is fully developed. They get resolution on the issue and in effect it directs the lower tribunal on how to deal with the particular issue. For example, in workers' comp cases it often comes up as a question of whether or not an additional and independent medical examination should be required.

MS. THURBON relayed that in 2008 OAH did include closed Workers' Compensation Appeals Commission cases in their survey project. Just 10 responses were received and some of the narrative comment clearly was directed at a particular board member or hearing officer and not at the appeals commission. That being said, her perception is that there was a fair amount of comment along the lines that the process wasn't working. She doesn't recall that any of the responses pointed to the interlocutory appeal opportunity as being the principle problem, "but certainly amongst those ten people, several of them did have that perception," she said.

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MS. THURBON said it is interesting that a significant percentage of OAH case survey respondents indicated that they were happy with the process even if they weren't happy with the result of the case. It was the reverse in the completed workers' comp surveys. Even when they liked the result, they sometimes didn't like the process. "That's as much as I can tell you at this point. ... I have not monitored very many Workers' Compensation Appeals Commission proceedings as far as observing them or talking to the parties directly myself," she said.

SENATOR WIELECHOWSKI observed that her limited data does indicate there is a problem and asked if she has a suggestion on how to fix it.

MS. THURBON replied it's too soon to offer a solution because she hasn't identified a specific problem based on the small data set, but it is appropriate to direct her agency to focus more closely on the workers' compensation area. In part OAH rolled workers comp in to the surveys this last year because they realize that it's an area that might provide meaningful feedback.

SENATOR ELTON reviewed the interlocutory appeal process she described and asked if he's missing something because that's not what happens between the district court and the superior court or the superior court and the supreme court.

MS. THURBON said her understanding of the jurisdiction of the Workers' Compensation Appeals Commission is that it would take appeals from the Workers' Compensation Board and also function as the equivalent of a policy maker on workers' comp legal issues. They have a statutory provision that dictates the extent to which the supreme court - when an appeal goes to the next level - must defer to their decisions on the law and whether or not the court system revisits back issues. That said, there is the potential for interlocutory appeals between lower levels of courts and higher levels of courts within the judicial branch and even between executive branch agencies such as OAH and the court system, but it isn't exercised as freely as is seen in the Workers' Compensation Appeals Commission setting. She offered to look into it further.

CHAIR FRENCH asked for clarification that the Workers' Compensation Appeals Commission isn't under her supervision. Nominating officers to the commission is more or less the extent of her involvement.

MS. THURBON said yes, except for when she provides a chair pro tem. She can do that by hiring a contract person or she can loan someone from her shop if they have the minimum background in workers' compensation. Even then it's not treated like an OAH case; it's not carried on the OAH case list or given an OAH case number.

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SENATOR THERRIAULT recalled that workers' compensation specifically was not included when SB 203 passed [in 2004 to establish OAH]. It was separate legislation that gave OAH the limited interaction that it has. It's just this year you brought the review into your shop, he added.

MS. THURBON said yes. The mandate for OAH to monitor hearing functions throughout the executive branch and to survey hearing participants has always applied beyond her office, but early on they sent surveys only to their own case parties. After about a year they added other case parties starting with workers' compensation at the appeals commission level. This year she intends to add the Workers' Compensation Board level and perhaps some of the others such as DMV or Health and Social Services in-house public assistance type hearings. She has to figure out what is doable, but she would agree that this is a new development as far as getting information.

SENATOR THERRIAULT highlighted that the legislature wrote that section in hopes that other agencies that initially were opposed to being considered to be part of the purview of the new shop would become more comfortable and want to be added. The fact that OAH makes timely decisions may or may not help the problem that Senator Wielechowski talked about, he said.

Another reason he supported her in this position is that she taught legal writing at a law school. He is interested that the decisions coming from her shop are well written and researched so they could stand up to scrutiny if they were appealed into the court system. He asked how she is doing on that.

MS. THURBON replied she believes that the quality of decision writing is better, but there is room for further improvement.

CHAIR FRENCH asked how many administrative law judges (ALJ) she has underneath her.

MS. THURBON explained that there are seven, one is a deputy chief who has some administrative duties and the other six are devoted to hearing cases.

CHAIR FRENCH asked if the ALJs are concentrated in one place or spread out like the court system.

MS. THURBON explained that they have four judges and two staff members in both Juneau and Anchorage. Lots of the work is done telephonically. Most of the complex case hearings occur in Anchorage and they travel when necessary.

1:59:30 PM

CHAIR FRENCH found no further questions and solicited a motion.

SENATOR THERRIAULT moved to forward the name Terri Thurbon to the full body for consideration. There being no objection, it was so ordered.

1:59:56 PM to 2:01 at ease for paper work.

SJR 3-FIREARMS IN NATIONAL PARK

2:01:02 PM

CHAIR FRENCH announced the consideration of SJR 3.

SENATOR THERRIAULT, Sponsor of SJR 3, stated that the resolution supports a Bush administration policy decision and urges the Obama administration to continue and perhaps expand support of that policy. He continued:

It is the intent of SJR 3 to show appreciation for the change in National Park policy that now allows park users to carry the firearms they need for personal protection in National Parks.

Alaskans, who have in their state over 75 percent of the National Park system, understand how important it is to have personal protection in the wilderness. Specifically in the parks in Alaska I am more concerned about protection against the wild critters that live there. Whereas in other areas of country protection of the National Park system may be from other people who are in the park system. The bill affirms that progress has been made to allow the carrying of firearms under the previous administration and encourages the new one to continue that.

Whether it's for bear protection, obtaining food in a survival situation, or signaling for assistance when needed, firearms have been on the hips and in the arms of many Alaskans since the frontier was first explored. This is just to encourage that the current policy decision continues.

2:03:02 PM

CHAIR FRENCH observed that his bill packet has only the first page of the "FAQ-Interior Firearms Policy Update" and the last question doesn't have an answer. He asked Mr. Stancliff to answer the question "Won't visitors and wildlife be endangered by allowing concealed firearms in parks and refuges?"

DAVE STANCLIFF, Staff to Senator Therriault, replied there are varying opinions on whether people should be able to carry firearms in national parks. As the sponsor indicated, his research revealed some tragedies that probably would not have occurred had people been able to defend themselves against wildlife. He also discovered that the ten most dangerous parks are on the list because of dangers associated with drug trafficking and assaults that have happened. So there are two groups of people wanting protection for two different reasons and the policy is under legal challenge.

The Brady group filed suit on December 30, 2008 after talking with the new Interior Department appointee. Mr. Salazar expressed strong support for Second Amendment rights and said he is very comfortable with firearms in the hands of law abiding citizens. He promised to look at the procedure to ensure that it is being followed correctly, but gave no indication he would try to reverse or politically disrupt the decision. Because the Brady group has filed suit, the resolution is very timely.

MR. STANCLIFF described "guns in national parks" as a philosophical issue and said that the pushback in Alaska is significantly less than in the Lower 48. He referred to the two young women who were lost in Denali Park last summer and said they had no way of signaling, protecting themselves or obtaining food. "It's a policy question, but as Alaskans I think we can see both sides of it fairly clearly," he concluded.

CHAIR FRENCH asked if any Alaska parks are on the most dangerous list.

MR. STANCLIFF said no; the ones that are listed are dangerous because of people. The sponsor brought to his attention that some of the most dangerous law enforcement assignments are to park rangers in national parks.

SENATOR THERRIAULT clarified that the FAQ sheet was included in the packet to answer specific questions about the issue of "similar state lands." He isn't sure what the answer was to the last question on the page.

CHAIR FRENCH said it was more of a rhetorical question than anything else, but he would add that when he visited the Brooks Lodge at Katmai he was stunned to learn that you couldn't carry a firearm to protect yourself against bears. After several visits he's changed his mind and believes it's really quite safe if you obey certain rules. Referring to the Kenai and Russian

rivers, he said that Alaskans really have figured how and when to use guns and when not to.

MR. STANCLIFF said it's important to note that the policy doesn't apply to national parks in states that don't allow individuals to carry concealed firearms. The rationale was that the federal government was looking carefully at what individual states wanted.

CHAIR FRENCH questioned whether states could apply different rules to different parks in the same state. For example, carve out one rule for the Brooks Lodge [Katmai] and another for Denali or Gates of the Arctic. In some places you may more legitimately need a firearm to defend yourself or signal for help.

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SENATOR ELTON said his sense of the purpose of a resolution is to ask for a change. He questioned sending a resolution that essentially says good job, keep it up.

SENATOR THERRIAULT responded there's an effort to undo the federal regulation and the resolution basically puts the State of Alaska on record saying it supports the Bush administration policy decision and it conforms to Alaska law. Responding to the Chair's question, he said the federal regulation allows a state to carve out a particular park, just as Alaska allows concealed carry, but not in a women's shelter or a court building. "We're basically saying we support the step that was taken just recently and we're encouraging the new administration to resist the attempts to undo it. And to potentially even consider ... letting people carry openly in the parks where states allow that."

[2:14:11 PM](#)

SENATOR ELTON suggested that with the exception of extending it to non-concealed, the resolution is superfluous. He asked if it's permissible now or if it has been permissible to carry a rifle in a national park.

MR. STANCLIFF relayed a personal experience he had in Denali Park. "The answer is you cannot be packing a rifle in sight. If you have a firearm in a park, they're going to probably make you take the bolt out or break it down and put it in a location away from where others will see it and maybe where you could avail yourself to using it."

SENATOR ELTON recapped that it's okay to have a rifle in a park so long as it's unloaded and the bolt has been removed.

MR. STANCLIFF clarified that he's referring to parks where hunting isn't allowed, but he doesn't know anyone who would take their rifle or shotgun into a park for fear of having it confiscated.

SENATOR ELTON said so you can only carry a concealed firearm and that's probably not possible with a rifle.

MR. STANCLIFF agreed it would be very difficult.

[2:17:25 PM](#)

SENATOR THERRIAULT added that Alaskans are generally supportive of the change the federal government made and so it's appropriate for the state government to weigh in and encourage the new administration not to undo it. Also, the policy is very similar to what the BLM and the U.S. Forest Service have on carrying firearms.

SENATOR ELTON said he appreciates the clarification and he would just note that the U.S. Forest Service and BLM allow hunting while national parks do not.

[2:18:39 PM](#)

SALLY GIBERT, ANILCA Coordinator, Office of Project Management, Department of Natural Resources, clarified that all the national park preserves and all the national parks that were created under ANILCA are open to hunting. Therefore they are open to carrying firearms. "This resolution as well as the original Bush administration regulations only apply to the pre-statehood pre-ANILCA parks, which include basically the old core of Mount McKinley National Park, old Glacier Bay, old Katmai and Sitka and Klondike."

CHAIR FRENCH said so under the new regulations I can take a gun climbing and shoot avalanches.

MS. GIBERT said yes as long as they're concealed.

CHAIR FRENCH asked her to clarify that the state or park director could carve out a section of the river near the Brooks Lodge as a no gun zone.

MS. GIBERT said yes the federal government defers to the state; the park service can go along with whatever the state allows. The same with the McNeil River, she said.

2:20:43 PM

CHAIR FRENCH announced he would hold the resolution until the next meeting [Wednesday].

2:20:56 PM

CHAIR FRENCH adjourned the Senate Judiciary Standing Committee meeting at 2:20 pm.