

**ALASKA STATE LEGISLATURE**  
**SENATE JUDICIARY STANDING COMMITTEE**

April 4, 2016

1:33 p.m.

**MEMBERS PRESENT**

Senator Lesil McGuire, Chair  
Senator John Coghill, Vice Chair  
Senator Mia Costello  
Senator Peter Micciche  
Senator Bill Wielechowski

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

SENATE JOINT RESOLUTION NO. 12

Proposing amendments to the Constitution of the State of Alaska relating to the office of attorney general.

- HEARD & HELD

SENATE BILL NO. 164

"An Act relating to sport fishing, hunting, or trapping licenses, tags, or permits; relating to penalties for certain sport fishing, hunting, and trapping license violations; relating to restrictions on the issuance of sport fishing, hunting, and trapping licenses; creating violations and amending fines and restitution for certain fish and game offenses; relating to commercial fishing violations; allowing lost federal matching funds from the Pittman - Robertson, Dingell - Johnson/Wallop - Breaux programs to be included in an order of restitution; adding a definition of 'electronic form'; amending Rule 5(a)(4), Alaska Rules of Minor Offense Procedure; and providing for an effective date."

- HEARD & HELD

SENATE BILL NO. 108

"An Act repealing and reenacting the Alaska Securities Act, including provisions relating to exempt securities and transactions; relating to registration of securities, firms, and

agents that offer or sell securities and investment advice; relating to administrative, civil, and criminal enforcement provisions, including restitution and civil penalties for violations; allowing certain civil penalties to be used for an investor training fund; establishing increased civil penalties for harming older Alaskans; retaining provisions concerning corporations organized under the Alaska Native Claims Settlement Act; amending Rules 4, 5, 54, 65, and 90, Alaska Rules of Civil Procedure; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

**PREVIOUS COMMITTEE ACTION**

BILL: SJR 12

SHORT TITLE: CONST. AM: ELECTED ATTORNEY GENERAL

SPONSOR(s): SENATOR(s) STOLTZE

02/06/15	(S)	READ THE FIRST TIME - REFERRALS
02/06/15	(S)	STA, JUD, FIN
03/03/15	(S)	STA AT 9:00 AM BUTROVICH 205
03/03/15	(S)	Heard & Held
03/03/15	(S)	MINUTE (STA)
03/29/16	(S)	STA AT 9:00 AM BUTROVICH 205
03/29/16	(S)	Moved SJR 12 Out of Committee
03/29/16	(S)	MINUTE (STA)
03/30/16	(S)	STA RPT 4DP 1NR
03/30/16	(S)	DP: STOLTZE, COGHILL, HUGGINS, MCGUIRE
03/30/16	(S)	NR: WIELECHOWSKI
04/04/16	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)

BILL: SB 164

SHORT TITLE: FISH & GAME: OFFENSES; LICENSES; PENALTIES

SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

01/29/16	(S)	READ THE FIRST TIME - REFERRALS
01/29/16	(S)	RES, JUD
02/22/16	(S)	RES AT 3:30 PM BUTROVICH 205
02/22/16	(S)	Heard & Held
02/22/16	(S)	MINUTE (RES)
03/04/16	(S)	RES AT 3:30 PM BUTROVICH 205
03/04/16	(S)	Moved SB 164 Out of Committee
03/04/16	(S)	MINUTE (RES)
03/07/16	(S)	RES RPT 1DP 1NR 3AM
03/07/16	(S)	DP: GIESSEL
03/07/16	(S)	NR: WIELECHOWSKI
03/07/16	(S)	AM: COSTELLO, COGHILL, and MICCICHE

04/04/16

(S)

JUD AT 1:30 PM BELTZ 105 (TSBldg)

**WITNESS REGISTER**

SENATOR BILL STOLTZE  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Sponsor of SJR 12.

LAURA BONNER, representing herself  
Anchorage, Alaska

**POSITION STATEMENT:** Testified in opposition to SJR 12.

KEVIN BROOKS, Deputy Commissioner  
Alaska Department of Fish and Game (ADF&G)  
Juneau, Alaska

**POSITION STATEMENT:** Introduced SB 164 on behalf of the administration.

MAJOR BERNARD CHASTAIN, Deputy Director  
Alaska Wildlife Troopers  
Department of Public Safety (DPS)  
Anchorage, Alaska

**POSITION STATEMENT:** Provided information related to SB 164.

AARON PETERSON, Assistant District Attorney  
Criminal Division  
Department of Law  
Anchorage, Alaska

**POSITION STATEMENT:** Provided supporting information related to SB 164.

**ACTION NARRATIVE**

1:33:04 PM

**CHAIR LESIL MCGUIRE** called the Senate Judiciary Standing Committee meeting to order at 1:33 p.m. Present at the call to order were Senators Costello, Coghill, Wielechowski, and Chair McGuire. She reviewed the agenda.

**SJR 12-CONST. AM: ELECTED ATTORNEY GENERAL**

1:33:54 PM

CHAIR MCGUIRE announced the consideration of SJR 12. She asked Senator Stoltze to introduce his legislation.

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SENATOR BILL STOLTZE, Alaska State Legislature, Juneau, Alaska, sponsor of SJR 12, said this legislation is based on the belief that the attorney general should be an elected position. The office should serve the people of Alaska, not a body politic. He clarified this is not a reflection on any past, present, or future attorney general. It is a systemic change he believes the people will embrace, given the opportunity to vote on it in a general election. He noted that three members heard this bill very recently in the Senate State Affairs Committee.

SENATOR STOLTZE said he agrees with former Governor William Egan who said during the Constitutional Convention: "I'm in favor of a strong executive branch of government in order that the people might ever be able to place the finger of responsibility without buck passing. One office, I feel, should most certainly remain elective is that of the state attorney general. It would seem to me that this would provide a safeguard against a strong chief executive usurping the powers of the office."

SENATOR STOLTZE opined that the constitution is good but would be stronger and the people better served if the chief law enforcement officer works for the people. It is within the governor's power to obtain his/her own legal advice and representation. He said that is an opinion he believes is shared by many. He summarized that SJR 12 calls for amending the Constitution of the State of Alaska to make the attorney general an elected position. This would need to go before the voters in a general election and he believes a majority would support it.

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CHAIR MCGUIRE noted the chart in the packets showing current governors and the method of selecting their attorney general. She highlighted that just seven states have an attorney general that is not elected by the people. She noted that in six of seven instances the governor and the attorney general are of the same party. Alaska is the exception. She opined that is no accident which indicates that the office is already politicized. She agreed with the sponsor that the governor has the power to obtain his/her own legal counsel. She expressed concern that, at some point, there will not be enough ethical space between the two offices.

She expressed her desire to move the bill today.

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SENATOR COSTELLO asked the sponsor to discuss the concerns that have been raised.

SENATOR STOLTZE said some of the comments have been: if the constitution isn't broken don't fix it, the constitution is a perfect document, and it would politicize the process. He said he believes he has responded to those concerns, but he can't respond to the philosophical concerns.

SENATOR COSTELLO asked if he sees any problem associated with the attorney general trying to raise money for an election at the same time people are trying to influence the outcome of a particular issue.

SENATOR STOLTZE said he thinks there already is a political process at work under the current system. He commented on previous attorneys general, some of whom he believes were outstanding.

SENATOR COSTELLO asked, of the states that have an elected attorney general, was that process in place at the time of statehood.

SENATOR STOLTZE said he doesn't recall, but the history is primarily elected offices in the U.S.

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SENATOR COSTELLO asked if he would prefer the attorney general to be elected if he were governor.

SENATOR STOLTZE answered yes.

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SENATOR WIELECHOWSKI asked if the attorney general should be a nonpartisan position.

SENATOR STOLTZE replied it's a policy consideration. He added that in the past he's proposed making the person ineligible to run for a statewide office for a few years after serving.

SENATOR COSTELLO asked if the attorney general currently takes an oath.

SENATOR STOLTZE replied all cabinet positions take an oath, but they also have strong canons of ethics for serving their clients. He assumes the constitutional oath is the overriding one, but he doesn't know.

CHAIR MCGUIRE assumed that an elected attorney general would be subject to the Executive Ethics Act.

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SENATOR COGHILL opined there probably would be diminishing authority for the governor if the attorney general were elected. He encouraged the members to read Federalist Number 10 as a reminder that faction is a danger. He asked the sponsor how he contemplates the people's attorney on the administration of law.

SENATOR STOLTZE pointed out that the attorney general's office has been reticent to put out legal written opinions on the crime bill, and he believes that is a responsibility of the Department of Law. He opined that if the attorney general were elected, they would have open public discussions. In the area of consumer protection he believes an elected attorney general would be a more vigorous advocate. An elected office removes the temptation to protect the governor first and perhaps overlook indiscretion. He also mentioned initiatives that the Department of Law doesn't get involved in even though there is a strong public interest to investigate.

SENATOR COGHILL offered his belief that the attorney general has become the governor's attorney which strengthens the governor's power.

SENATOR STOLTZE added that one attorney general opinion can accomplish something that takes the legislature many steps. That's a strong power for the governor's "legal handmaiden," he said.

SENATOR COGHILL said that point was argued in the Constitutional Convention and the attorney general's opinion has become ex post facto law.

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SENATOR WIELECHOWSKI asked if he envisions this position residing in the executive branch and sitting in on cabinet meetings. He commented that this seems to set up another branch of government.

SENATOR STOLTZE said it creates a third constitutional officer and whether or not the person is invited into the cabinet meetings will be up to the governor. He said he wouldn't call it another branch of government any more than the lieutenant governor is identified as such.

SENATOR WIELECHOWSKI asked if he envisions both the governor and the attorney general being able to file suits if they disagree on a legal matter.

SENATOR STOLTZE said the attorney general would be the chief law enforcement officer but it doesn't diminish the governor's legal ability. He would, however, need to use his own attorney or seek outside counsel. He advised that many of these questions will be resolved through enabling statutes.

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SENATOR MICCICHE joined the meeting.

SENATOR WIELECHOWSKI asked if he envisions an additional fiscal note because it seems that there would be a substantial cost.

SENATOR STOLTZE replied the division has said it will absorb the cost of a constitutional amendment. He can envision additional costs but it's difficult to foresee what they would be. It would depend on the governor and the counsel he desires.

SENATOR WIELECHOWSKI reviewed the requirements and questioned whether there should be a requirement for some experience as an attorney before becoming attorney general.

SENATOR STOLTZE replied those are virtually the same requirements as for other constitutional officers, except for the requirement to be a member of the Alaska Bar. He opined that the voters will look at the qualifications.

CHAIR MCGUIRE asked the circumstances that Hollis French did not meet the requirements.

SENATOR STOLTZE said the Judicial Council ruled him ineligible because he had not been out of state legislative service for a year.

SENATOR WIELECHOWSKI added that he let his law license go inactive and the Judicial Council ruled he had to have been actively practicing law for a year prior to application.

SENATOR STOLTZE said the people should be able to make the decision about qualifications.

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SENATOR COGHILL commented on the current vetting process that gives deference to the governor to the extent possible. With an elected position, the vetting would be with the people and thus much broader.

SENATOR MICCICHE asked how many states elect their attorney general and how many states have an appointment process.

SENATOR STOLTZE said 43 states elect their attorney general, 2 have an alternative selection process, and 5 states have an attorney general appointed by the chief executive.

CHAIR MCGUIRE asked if there were any amendments.

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SENATOR WIELECHOWSKI moved Conceptual Amendment 1 to elect the attorney general through a nonpartisan election.

SENATOR COGHILL objected. He opined that a nonpartisan election won't take the philosophical discussion out of the debate. He said it's appropriate to give people the opportunity to identify with a particular group, just as other constitutional officers do. He added that it is important to have an alignment of interests.

SENATOR WIELECHOWSKI said he believes people are tired of party politics and everything possible should be done to remove party politics from elections. Should this pass, this is an opportunity to create a new position in the constitution that isn't affiliated with a political party. "If the idea is to make this less political, let's make it less political by having it a nonpartisan position. That makes common sense," he said.

SENATOR COGHILL clarified that he did not say party; he said you could pick the label you want to run under.

SENATOR MICCICHE asked Senator Wielechowski his vision of a nonpartisan election.

SENATOR WIELECHOWSKI said there would be no primary; anyone who wanted to run would automatically go on the general election ballot and individuals wouldn't be identified by political party. This would give the voters an opportunity to discover what the individuals intend to do if elected. It's a powerful position and shouldn't be based on a political party.

SENATOR MICCICHE expressed agreement with the idea of a nonpartisan election and concern about the mechanics of accomplishing it.

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CHAIR MCGUIRE reconvened the meeting and recapped the discussion on Conceptual Amendment 1 for SJR 12.

SENATOR COGHILL requested the amendment in writing.

SENATOR STOLTZE concurred.

CHAIR MCGUIRE asked Senator Wielechowski if he would withdraw the amendment.

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SENATOR WIELECHOWSKI withdrew Amendment 1.

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LAURA BONNER, representing herself, testified in opposition to SJR 12. She said Alaskans already have a voice; they elect the governor who appoints the attorney general. Alaskans also have the opportunity to contact legislators during the confirmation process if they don't agree with the governor's appointment. She opined that it was the intent of the delegates of the Constitutional Convention that the attorney general would be the governor's counsel and therefore compatible with the governor. She questioned what branch of government the attorney general would belong to and how would he/she be removed if needed.

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CHAIR MCGUIRE held SJR 12 in committee.

**SB 164-FISH & GAME: OFFENSES; LICENSES; PENALTIES**

[2:24:28 PM](#)

CHAIR MCGUIRE announced the consideration of SB 164.

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SENATOR COGHILL moved to adopt the CS for SB 164, labeled 29-GS2958\H, as the working document.

CHAIR MCGUIRE announced that without objection, version H is before the committee.

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KEVIN BROOKS, Deputy Commissioner, Alaska Department of Fish and Game (ADF&G), noted that the four members present heard SB 164 in the Senate Resources Committee. He explained that the purpose of the legislation is to provide Alaska Wildlife Troopers with the authority to issue correctable citations. The bill would prohibit a person from receiving a sport fishing, hunting, or trapping license in Alaska if their privileges had been suspended or revoked in another state. The bill also increases restitution for animals harvested illegally, standardizes penalties for offenses, and provides an additional tool for Alaska Wildlife Troopers to charge some wildlife, fisheries, and habitat offenses as violations. Finally, the bill also allows the display of a license in an electronic format.

He reviewed the following changes between the original, version A, and the current, version H, for SB 164:

- 1) Page 1, line 5 adds a semicolon to the title creating an exemption from payment of restitution for certain unlawful takings of big game animals.
- 2) Page 2, section 3, line 21 removes the words "tag or permit" from an item that can be correctable, and removes reference to the Court. An individual can correct a violation at a Department of Public Safety office.
- 3) Page 5, section 17, line 6 adds language "**and c of this section**" to address changes in section 18 of this bill.
- 4) Page 5, section 17 lines 14-25 changes restitution amounts that the court may apply if the court feels it is appropriate. These increases represent the value of the illegally taken resource to the citizens of Alaska.
- 5) Page 5, line 26 deleted section 17 of the original bill which was redundant with section 15 of the original bill.
- 6) Page 5, section 18, lines 26-31 creates a new section that provides that a court may not order restitution under section 17 of this bill in a case where a defendant voluntarily turns themselves in and

is charged with a violation offence. It also provides that a person must voluntarily and immediately report to ADFG or DPS a violation that they committed to qualify for this affirmative defense.

7) Page 6, section 24, line 21-22 was a drafting error that was corrected to reflect the correct statute number.

8) Page 7, line 7, delete section 27 of the original bill related to Court Rule 5(a)(4).

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VICE CHAIR COGHILL asked Major Chastain if he had anything to add related to the changes in version H.

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MAJOR BERNARD CHASTAIN, Deputy Director, Alaska Wildlife Troopers, Department of Public Safety (DPS), said the substantive changes occur in Section 18. He offered to address those issues and discuss the goal of adding that language.

VICE CHAIR COGHILL asked him to discuss the new language in Section 18, the idea of Court Rule 5(a)(4) for correctable citations going directly to DPS, and how the fines will be implemented.

MAJOR CHASTAIN explained that Sections 1 and 3 provide that a trooper or law enforcement officer who is charged specifically with enforcing fish and game laws regarding licenses may issue an official correctable citation in instances where a person forgot their license in their vehicle or at home. They will then have 30 days to bring their license to any office of the issuing agency to show proof of licensure. The citation is corrected and is not part of the person's record.

Section 18 relates to self-report violations. It adds language that states the person must voluntarily and immediately report the taking to the department and surrender all salvaged portions of the animal. In those instances, the court is prohibited from applying the restitution amounts listed in Section 17. The individual is only fined for the offense.

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SENATOR WIELECHOWSKI returned to Section 3 and asked if a person who received a citation can mail or email proof of their licensure.

MAJOR CHASTAIN replied the process in place for all correctable citations is that the individual must bring the citation in person to any office of the arresting or citing agency.

SENATOR WIELECHOWSKI commented that this likely will be burdensome for some people living in rural Alaska. He asked if it would be "a big deal" to allow the individual to mail or email the proof.

MAJOR CHASTAIN said the current process requires the citation itself to be officially stamped; that tells the court that the citation has been officially corrected and to pursue no action.

SENATOR WIELECHOWSKI wondered if there couldn't be a way to use technology to make the process less burdensome. He asked the administration to take another look to see if that isn't possible.

MAJOR CHASTAIN said there is likely a way for all correctable citations to be addressed either through the mail or an electronic check-off, but that process isn't in place at this point.

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SENATOR MICCICHE directed attention to page 2, line 3, and recalled discussion in the previous committee was that the reference in paragraph (1) would be sport of personal use fishing. Version H only references sport fishing.

MAJOR CHASTAIN said personal use isn't included in that section. As previously discussed, a personal use permit must be in the individual's possession at the time of the take. There are also recording requirements on the permit before leaving the fishing site. Those are separate violations and the intent was not to make those a correctable citation.

SENATOR MICCICHE offered his understanding that Section 1 is not about correctable citations.

MAJOR CHASTAIN explained that Section 1 is the vehicle for the correctable citation in Section 3.

VICE CHAIR COGHILL asked if Section 18 can be implemented with the existing language.

MAJOR CHASTAIN said DPS believes, in consultation with the Department of Law, that the language will prohibit a judge from imposing restitution when a person voluntarily turns him/herself in.

SENATOR MICCICHE noted that Section 18 is about self-reporting for game but not fish even though that was part of the discussion in the previous committee. He questioned how the department would handle a fisher being over the line due to an equipment breakdown in a commercial fishery. His preference is that the fisher would notify the department they were over the line and harvest the fish as opposed to cutting the gear. He noted this an area of fines rather than restitution.

MAJOR CHASTAIN said he isn't aware of a self-reported commercial fishing violation other than when someone calls to report a mechanical failure. In those situations, the fisherman is treated as fairly as possible. There is no restitution for commercial fishing in this area but if the fish are caught illegally they're sold and the proceeds are held in an account pending the disposition from the court.

SENATOR MICCICHE asked why sport fishing and commercial fishing aren't included under Section 18. He clarified that for commercial fishing he is only talking about a first offense.

MAJOR CHASTAIN said the short answer is that there are no restitution amounts in sport fishing or commercial fishing. In a typical case of being over the limit in sport fishing, the bail schedule provides a flat fine for the offense and an additional amount for each fish taken illegally.

SENATOR MICCICHE commented on the importance of encouraging the best behavior.

MAJOR CHASTAIN said this could be more clear, but he didn't doesn't know how that would look.

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SENATOR WIELECHOWSKI asked if the salvaged portions of the animal discussed in Section 18 include bear paws and bear gall bladders.

MAJOR CHASTAIN replied it is all parts of the animal and if an investigation indicated the parts were being sold, the individual would not be immune from restitution.

SENATOR WIELECHOWSKI asked if there is a problem in Alaska with trafficking animal parts, because he isn't sure the language provides adequate protection from that.

MAJOR CHASTAIN said other areas of regulation and statute require salvage of all game meat and applicable parts, and he feels very comfortable that together they provide adequate protection. With regard to trafficking bear parts, he said the problem isn't as bad as it was in the 1990s.

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SENATOR MICCICHE mentioned the 50-inch challenge and expressed concern that Section 18 doesn't impose a first-time or once-in-five-years limit. Without that, it eliminates the incentive for a hunter to be extra careful.

MAJOR CHASTAIN agreed that there was a lot of discussion about that issue in particular, and it came down to giving the troopers or the citing agency flexibility in charging because every situation is different. He explained that violation offenses are typically charged on a first time occurrence only, but it's at the discretion of the district attorney's office or the charging agency because there are many reasons a first offense shouldn't be charged as a violation. One example is a call or multiple calls from people who are watching a violation occur. That scenario is a call for service meaning that the troopers would investigate and make a determination about whether or not the person intended to turn him/herself in. The language is vague to allow the needed flexibility.

SENATOR MICCICHE read the language in Section 17 on page 5, line 12, and in Section 18 on page 5, line 27, and asked if there is another way to charge the illegal taking of an animal other than a violation.

MAJOR CHASTAIN explained that all these crimes default to a misdemeanor offense; 5 AAC 92 and associated regulations provide the ability to charge those crimes as violations. Whenever someone self-reports, they are charged with a violation offense instead of a misdemeanor. That fine is \$500. The language on page 5, line 12, comes from the part of statute dealing with misdemeanor offenses so the court may order up to the amounts listed on page 5, lines 14-25, in restitution for misdemeanor offenses. Section 18 says that when the offense is charged as a violation, the court cannot impose restitution.

SENATOR WIELECHOWSKI said he shares Senator Micciche's concern with Section 18 because he reads the language as mandatory, not discretionary. Should the bill pass as currently drafted, individuals who are now being extremely careful may decide to take a change because they'll get a free shot if they self-report. The language "voluntarily and immediately reported" is also concerning because that could be days later depending on how remote the hunting location happens to be. He pointed out that someone could wait until they were close to their house and then decide not to report after all and instead opt to keep that undersized moose.

MAJOR CHASTAIN said it's important to remember that the charging agency and the district attorney's office have the discretion to decide when to charge as a violation. He deferred further comment to Mr. Peterson.

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AARON PETERSON, Assistant District Attorney, Criminal Division, Department of Law, Anchorage, Alaska, said Section 18 is talking about a case where a person voluntarily turns him/herself in and the court being unable to issue an order to pay restitution. However, if it's somebody who does this year after year or for other reasons the Department of Law decided to treat it as a misdemeanor, the potential fine is \$10,000 per offense and loss of hunting privileges for an extended period of time. These penalties are much more substantial than restitution, although restitution is important as evidenced by the numbers listed in Section 17. To zero in on that alone misses the greater point that somebody who decides to shoot a 30-inch moose and claim they thought it was 50 inches, isn't going to get off. The Department of Law takes this seriously and when an offense needs to be treated as a misdemeanor it is.

MR. PETERSON pointed out that while the language "voluntarily and immediately" is somewhat subjective, it is one of the many places in criminal law where a determination has to be made.

SENATOR WIELECHOWSKI commented that he has a long-standing concern about leaving too much discretion to prosecutors; that's the job of the legislature.

SENATOR MICCICHE expressed increased satisfaction as a result of the discussion. He summarized his understanding that the prosecutor would be more likely to charge with a misdemeanor and require restitution on a subsequent offense.

MAJOR CHASTAIN agreed with the summary and advised that it is rare for a person who self-reports to violate a second time.

SENATOR MICCICHE said he's ready to let go of his concern about the subjective use of prosecution with assurance that the department "has been fairly pure in the prosecution of these cases." He asked Major Chastain what his experience has been.

MAJOR CHASTAIN confirmed that the Wildlife Troopers statewide work very closely with the district attorney offices. DPS has policies and procedures in place and the troopers are well informed on how to follow those policies and charge appropriately with the district attorney's assistance.

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MR. BROOKS informed the committee that the restitution amounts have been raised 50 percent and the companion bill in the House raises some of those higher yet. The House Resources committee thought the amounts ought to be higher to reflect the value of the animals.

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CHAIR MCGUIRE stated she would hold SB 164 in committee.

She noted that SB 108 would be heard on Wednesday under "Bills Previously Heard/Scheduled."

[3:06:03 PM](#)

There being no further business to come before the committee, Chair McGuire adjourned the Senate Judiciary Standing Committee meeting at 3:06 p.m.