

HOUSE FINANCE COMMITTEE
April 22, 2002
2:23 P.M.

TAPE HFC 02 - 89, Side A
TAPE HFC 02 - 89, Side B

CALL TO ORDER

Co-Chair Williams called the House Finance Committee meeting to order at 2:23 P.M.

MEMBERS PRESENT

Representative Bill Williams, Co-Chair
Representative Eric Croft
Representative John Davies
Representative Richard Foster
Representative John Harris
Representative Bill Hudson
Representative Ken Lancaster
Representative Carl Moses
Representative Jim Whitaker

MEMBERS ABSENT

Representative Eldon Mulder, Co-Chair
Representative Con Bunde, Vice-Chair

ALSO PRESENT

Representative Lesil McGuire; Heather Brakes, Staff, Senator Gene Therriault; Mike Tibbles, Staff, Representative Williams; Anne Carpeneti, Assistant Attorney General, Legal Services Section, Criminal Division, Department of Law; Pat Davidson, Director, Division of Budget and Audit; Catherine Reardon, Director, Division of Occupational Licensing, Department of Community and Economic Development

PRESENT VIA TELECONFERENCE

Linda Wilson, Deputy Director, Alaska Public Defender Agency, Department of Administration, Anchorage; Ed Sniffen, Assistant Attorney General, Department of Law, Anchorage; Les Gara, Private Attorney, Consumer Protection, Anchorage

SUMMARY

HB 350 An Act relating to terroristic threatening.

HB 350 was HEARD and HELD in Committee for further consideration.

HB 385 An Act relating to the attorney fees and costs awarded in certain court actions relating to unfair trade practices; and amending Rules 54, 79, and 82, Alaska Rules of Civil Procedure.

CS HB 385 (JUD) was reported out of Committee with a "do pass" recommendation and with fiscal note #1 by the Department of Law.

SB 244 An Act extending the termination date of the Board of Examiners in Optometry; and relating to optometrists.

CS SB 244 (RLS) was reported out of Committee with a "do pass" recommendation and with fiscal note #1 by the Department of Community & Economic Development.

#SB244
SENATE BILL NO. 244

An Act extending the termination date of the Board of Examiners in Optometry; and relating to optometrists.

HEATHER BRAKES, STAFF, SENATOR GENE THERRIAULT, testified in support of the legislation. She noted that SB 244 would extend the termination date of the board, make some statutory changes allowing the board to more effectively license by credentials, update the continuing education requirements to bring them in line with current practice and regulation, replace the State practical exam with the National Board of Examiners in Optometry examination, and would implement an Alaska Jurisprudence exam.

The audit was conducted under Alaska Statutes Title 24 & 44 and the objectives were:

- To determine if the termination date of the board should be extended;
- To determine if the board is operating in the public interest; and
- To determine if the board has exercised appropriate regulatory oversight of licensed optometrists.

Ms. Brakes stated that the Division of Legislative Audit (LBA) found that the Board of Examiners in Optometry should be extended to June 30th, 2006, which would be a standard four-year extension. Auditors found the regulation and licensing of qualified optometrists necessary to protect the public's health, safety, and welfare and that the board assists in providing that public benefit by establishing

minimum educational and work experience standards for licensure.

Ms. Brakes noted that on Page 7 of the report, the findings and recommendations of the auditor were indicated. On Page 15, there is a response to the recommendations from that Division. She noted that SB 244 had been drafted based on those findings and recommendations and attempts to implement that information. It would:

- Extend the Board to June 30, 2006, the standard four-year extension as recommended by the audit report released on December 5, 2001 by the Legislative Budget and Audit Committee;
- Allow the division to retain a photograph of an applicant for future identification;
- Eliminate the State practical exam, and gives the board authority to administer an Alaska jurisprudence examination;
- Implement full licensure by credentials; and
- Update the statutes regarding continuing education by bringing them in line with current practice.

Representative Whitaker referenced Page 1, Line 11, that the Department may require the applicant "to submit a photograph". He asked what the reason for that was.

Ms. Brakes replied that had been a prior audit recommendation made in 1995 when the board was up for sunset review the last time. The Division of Legislative Audit often makes a finding and recommendation when they are reviewing the boards and commissions. The audit recommended that the board not require that a photo be submitted. The bill was originally drafted that way, however, in the Senate Labor and Commerce Committee, the new language was worked out. The photograph will not be forwarded to the board for licensure consideration. The Department of Community & Economic Development can retain it for later identification but it is not something that needs to be considered

Representative Whitaker asked if there was concern that there could be bias based upon someone's looks.

Ms. Brakes replied that there was no evidence of that. That is a protection of the board and it would keep any accusations removed from it. She requested that Pat Davidson be allowed to testify regarding that concern.

PAT DAVIDSON, DIRECTOR, DIVISION OF LEGISLATIVE AUDIT, responded that generally, LBA attempts to eliminate any opportunity for a bias to come into the evaluation for licensure. There was not evidence with this board that there was bias. Whenever there is licensure that has a subjected element, those opportunities are eliminated. There have been requests raised that it would be "nice" to have pictures of who your licensee is. It is just essential that the photograph does not accompany the application.

Representative Whitaker asked if the language was clear enough.

Ms. Davidson replied that it was. The language allows the Division of Occupational Licensing to have a photograph in their files, but it keeps that photo from going to the board for the license decision.

Representative Whitaker asked if "may" should be replaced by "shall".

Ms. Davidson reiterated that it was clear as written.

Representative Davies interjected incorporating the "not" makes the "may" and the "shall" the same. He inquired what the essence of the compromise was.

Ms. Davidson replied that it was a two-fold compromise for examinations and investigation purposes. She noted that she supported the compromise.

Representative Lancaster asked why a photo was being required.

Ms. Davidson explained that has been an on-going requirement and looking back, the applicant was frequently requested to submit a photograph.

Representative Hudson questioned if the requirement was being eliminated for all professional licensing.

Ms. Davidson replied that for most of the audits that LBA provides a sunset for, most of the requests for photos have been eliminated. However, there are licenses and registrations still done that require photos that have not yet been addressed. She acknowledged that it is currently a "mixed bag".

CATHERINE REARDON, DIRECTOR, DIVISION OF OCCUPATIONAL LICENSING, DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT, offered to answer questions of the Committee.

Representative Lancaster MOVED to report CSSB 244 (RLS) out of Committee with individual recommendations and with the accompanying fiscal note.

Co-Chair Williams asked that the MOTION be WITHDRAWN. Representative Lancaster WITHDREW the MOTION.

MIKE TIBBLES, STAFF, REPRESENTATIVE WILLIAMS, noted that he had been working with the drafters of the legislation. He indicated that the Committee could make a conceptual amendment to the bill if interested into existing statute, on Page 2, Section 4, Line 15. He pointed out that #1 is a requirement that person have an educational equivalent of four years attendance at a State high school. He understood that the intent was that a student could also have a general education diploma (GED) to qualify. However, under the word "State", the GED would not qualify. He suggested that language be rephrased in order that, later, it is not a potential problem.

Representative Hudson asked if they would have to be in a certified high school.

Mr. Tibbles replied that a person could have a GED or degree from any high school and then it would be a certified graduate program.

Representative Croft suggested language "had an education equivalent to" indicated that it should be okay. The GED could be the education equivalent.

Mr. Tibbles offered to check to make sure that was the intent with Legislative Legal Services.

Representative Croft noted for the record that there are many things that could be the equivalent to four years of high school including GED's, private schools and the military.

Representative Lancaster MOVED to report CS SB 244 (RLS) out of Committee with individual recommendations and with the accompanying fiscal note. There being NO OBJECTION, it was so ordered.

CS SB 244 (RLS) was reported out of Committee with a "do pass" recommendation and with fiscal note #1 by the Department of Community & Economic Development.

#HB385

HOUSE BILL NO. 385

An Act relating to the attorney fees and costs awarded in certain court actions relating to unfair trade

practices; and amending Rules 54, 79, and 82, Alaska Rules of Civil Procedure.

REPRESENTATIVE ERIC CROFT, SPONSOR, spoke in support of the bill. He noted that the controversial aspect of the legislation had been amended in the House Judiciary Committee. What is left of the bill allows the attorney general's office, when they fully prosecute the consumer protection claim and prevail, to recover their costs. Consequently, if someone has been defrauding the public and after a full court action, is found that they did, the legislation allows the State to recover full attorney fees.

Representative Croft advised that the legislation would address his concerns that part of the Department of Law is chronically under funded, which has been a long-term problem and thus, consumer protection claims have become a low priority. He claimed that the proposed legislation would be a good mechanism to fund that concern.

ED SNIFFEN, (TESTIFIED VIA TELECONFERENCE), ASSISTANT ATTORNEY GENERAL, DEPARTMENT OF LAW, ANCHORAGE, testified in support of the legislation. He reiterated that the bill would allow the attorney general's office to recover fees from consumer protection cases. At present time, private attorneys have that authority.

LES GARA, (TESTIFIED VIA TELECONFERENCE), PRIVATE ATTORNEY, CONSUMER PROTECTION, ANCHORAGE, echoed his support of the legislation. He claimed that the bill is crucial to the State of Alaska for a number of reasons. It is difficult for someone that has been defrauded in a small consumer case to find a private attorney. Consequently, the only recourse that people have is to go to the attorney general's office. The State of Alaska has the smallest consumer protection section in the country and they also have a budget problem. If the State is able to recover it's full enforcement costs, then there will be a system in the State where the protection function of the State does not cost the people of the State money.

He stressed that HB 385 is a very healthy bill. HB 385 will help the people of the State save money. Mr. Gara concluded that the proposed bill is a "win-win" situation for everyone in the State and offered to answer questions of the Committee.

Representative Hudson MOVED to report CS HB 385 (JUD) out of Committee with individual recommendations and with the accompanying fiscal note. There being NO OBJECTION, it was so ordered.

CS HB 385 (JUD) was reported out of Committee with a "do pass" recommendation and with fiscal note #1 by the Department of Law.

#HB350

HOUSE BILL NO. 350

An Act relating to terroristic threatening.

REPRESENTATIVE LESIL MCGUIRE, SPONSOR, testified in support of the legislation. She commented that September 11, 2001 changed the lives of Alaskan and Americans. What was once a concern for the safety of those living, working or visiting foreign destination from terrorist acts has painfully come to the homeland. The Nation has been warned of the dangers associated with terrorism.

Representative McGuire stated that terrorism is not confined to public transportation, the bombing of buildings or government offices. The added threat of chemical and biological warfare and weapons of mass destruction make it clear that the world is in need of redefining our laws regarding terrorism.

Representative McGuire continued that the threat alone of a terrorism act could cripple the community. Imagine the chaos that would occur if someone said that they had just contaminated the public water utility with a deadly chemical agent. Citizens would panic, schools and businesses would close, and in general the community would come to a standstill.

House Bill 350 would increase criminal penalties for certain acts of terrorism and would prohibit terroristic threats intended to frighten or cause specific harm to citizens. House Bill 350 would increase penalties of threats to water, food supplies, utilities and pipelines. The bill would also provide law enforcement for the necessary tools to arrest, detain and ultimately prosecute an individual who threatens public areas or conveyances. Any threat at this time, must be taken seriously. House Bill 350 would increase criminal penalties for certain acts of terrorism threats and would punish criminals in accordance with the law.

Representative McGuire proposed a change be made to Page 9, Line 26, deleting "an" and inserting "a public". She thought that change would serve as a middle ground to narrow concerns of the public about it being overly broad.

Representative McGuire requested that Ms. Carpeneti address the bill in further detail.

Representative Hudson MOVED to adopt the proposed amendment to Page 9, Line 26, deleting "an" and inserting "a public".

Representative Whitaker asked for an explanation of the proposed language change.

Representative McGuire pointed out that Line 21, sub-section ©, already states, "causes serious public inconvenience". She thought that it could be reasonably argued that a private versus public charter would be preferred.

Representative Whitaker asked why the State was concerned it would be "overly broad" by not inserting "public".

ANNE CARPENETI, ASSISTANT ATTORNEY GENERAL, LEGAL SERVICES SECTION, CRIMINAL DIVISION, DEPARTMENT OF LAW, stated that the concern is that the State wanted to move slowly in terms of what is done for a crime of terroristic threat. A crime like that could be of harm to the public convenience.

There being NO further OBJECTION, Amendment #1 was passed.

LINDA WILSON, (TESTIFIED VIA TELECONFERENCE), DEPUTY DIRECTOR, ALASKA PUBLIC DEFENDER AGENCY, DEPARTMENT OF ADMINISTRATION, agreed that since September 11, 2001, the State government and Legislature want to and feel the need to respond with appropriate legislation to address threatening in an effort to tighten any loop holes. Ms. Wilson noted that the Public Defenders Agency does support those efforts, however, it does not support HB 350.

Ms. Wilson outlined the concerns with the bill. The concerns have to do with proportionality. The criminal laws in Alaska were carefully classified in accordance with the seriousness of the injury and the cope-ability of the defendant. When crimes were classified in Alaska twenty-five years ago, you would look at the nature of the harm and the cope-ability of the defendant. A Class A felony has been classified for those crimes that involve conduct that actually results in serious physical injury. Class B felonies are generally reported for crimes that are less severe and the most aggravated of property damages.

Crimes that are current Class A felonies are assault in the 1st degree, arson in the 1st degree, misconduct involving weapons in the 1st degree, and misconduct involving controlled substances in the 1st degree. The crimes that are generally classified as a Class B felony are aggravated property damages, criminal mischief in the 2nd degree, theft,

burglary, perjury, forgery, and less serious property or threat to physical injury.

Ms. Wilson stated that HB 350 in regard to the portionality and the classification scheme currently in statute would fuse that by moving some crimes "up" to levels beyond which they perhaps should be. She pointed out that Page 3, Section 3, proposes to create murder in the 1st degree a felony murder specifically for the new classification of criminal mischief in the 1st degree as an Class A felony and the newly created terroristic threatening in the 1st degree.

Ms. Wilson stated that right now, felony murder is classified as murder in the 2nd degree. When there is a felony committed, there are probably ten crimes listed in murder in the 2nd degree felony murder section. Those crimes currently listed in murder of the 2nd degree category are:

- Kidnapping
- Arson in the 1st degree
- Sexual assault
- Sexual abuse of a minor in the 1st or 2nd degree
- Burglary in the 1st degree
- Escape in the 1st or 2nd degree
- Robbery in any degree
- Misconduct involving a controlled substance in the 2nd degree

HB 350 would "leap frog" over murder in the 2nd degree for the particular criminal mischief in the 1st degree and terroristic threatening and puts it up to murder in the 1st degree. She recommended that it would be more appropriately stationed with the other serious crimes, itemized in murder in the 2nd degree.

Ms. Wilson continued that the criminal mischief in the 1st degree section, elevates what is currently a Class B felony to an Class A felony. By doing that, classification of crime should not be piece mealed together. She thought that it would be more appropriate to take a generalized approach to classifications and not by a response to one incident. As currently written, criminal mischief in the 1st degree seems appropriate for a Class B felony. Ms. Wilson pointed out that a person could get nearly 10 years for a B felony.

Ms. Wilson referenced the terroristic threat provisions of the bill, Page 8, Section 17. The Public Defender's concerns with that section are that there should be specific intent to place a person in fear. The problem with the language is that it does not require a result. Adding that with the broad language of the biological or chemical substance, defined broadly as to include material that is

harmful to the health of a person, would classify it as a Class B felony. She recommended that an element or result be included which could be accomplished by amending the language to require that they have the intent to and that they additionally either place the person in fear, cause evacuation of a building or cause serious public inconvenience.

Ms. Wilson clarified that in several statutes, biological and chemical weapons are described. She thought that changing the language from substance to weapons, and makes it something that is just "harmful" to a person than something that is more toxic or designed to cause death or harm to that person for what is being attempted to be addressed in that particular offense.

Ms. Wilson spoke to terrorist threatening in the 2nd degree; the amendment proposed would be well taken. She added that it would be very appropriate to eliminate completely subsection (e). That language is already covered by subsection © and is broad. Ms. Wilson thought the language could be too broad.

Ms. Wilson clarified that the concerns of the Public Defender Agency are that the legislation should look at the proportionality and that the crimes fit so that there are no loopholes. However, jumping into a murder in the 1st degree would be too much in one direction. Additionally, jumping to criminal mischief in the 3rd degree to an Class A felony is not appropriate and should stay in the Class B felony that it already is.

Representative Croft referenced the "terroristic threatening" in the 1st degree. He suggested if there was a practical joke situation in which the intent of the person was to place the other person in fear of physical injury, would that be classified as a Class B felony.

Ms. Wilson replied that it would.

Representative Croft pointed out that the "intent" was to place a person in fear of a physical injury. The "intent" would be the cause for fear. He asked what the penalty would be for 1st degree murder.

Ms. Wilson replied that penalty would be 20 to 99 years in prison. The penalty for a 2nd degree murder would be 5 to 99 years in prison.

Representative Croft asked if there was a possibility that the court could give less than 20 years for a 1st murder.

Ms. Wilson responded that they could not.

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Ms. Carpeneti explained that the material would have to be actually harmful to a person's health. The intent was to prohibit false anthrax scares that cause public inconvenience.

Co-Chair Williams asked if Ms. Wilson had testified before the House Judiciary Committee.

Ms. Wilson replied that she had not as there had been complications with her equipment system.

Co-Chair Williams recommended that the bill should be placed into Subcommittee to address the legal concerns.

Ms. Carpeneti asked to respond to comments made by Ms. Wilson. She pointed out that many of the provisions contained in HB 350 were taken from the Governor's terrorism package. She added that after September 11th, the Department of Law attorney's got together to discuss criminal acts. The conclusion was that there are holes in our current criminal codes, with the main concern being damage to the pipeline, a damage that could cause serious public harm. Other concerns are damage to water supplies and the possibility of an anthrax scare.

Ms. Carpeneti disagreed with comments made by Ms. Wilson. Causing damage to the oil or gas pipeline or a supporting facility is reasonable to raise from a Class B to a Class A felony. The bill raises all conduct in terms of the pipeline on one level. That is what exists in current law, a Class B felony. It would raise it to a Class A felony.

Ms. Carpeneti commented that murder in the 1st degree, such as when someone kills another person when blowing up a pipeline facility, that sort of terroristic act has the potential to cause a lot of harm, which made it appropriate to increase the charge to murder in the 1st degree.

Ms. Carpeneti agreed with Ms. Wilson's specifics that perhaps it could be "tighter", however, she noted that something would need to be "harmful". She added that would answer the concerns voiced by Representative Croft. She commented that these had been the concerns discussed throughout the State regarding the problems with Alaska's criminal code and response to acts of terrorism.

Representative Hudson pointed out the five fiscal notes.

Representative Davies agreed that terrorist activity concerning the pipeline should be reclassified. He thought

that if there was "intent" but nothing actually happened, the crime should be classified as 2nd degree. He referenced the section.

Ms. Carpeneti replied that section does not address harm to the pipeline. In response to Representative J. Davies, Ms. Carpeneti explained that the way in which "intent" is proven is through being successful.

Representative McGuire countered that the State already has on the books AS 11.56.810 which includes all the items with the actual exemption of sending a "package". She thought that Representative J. Davies' concern rested with reference back to Section #3.

Representative Davies agreed that was part of it and would also include the reality of the event actually happening. He noted his concern with the crime raising it to the 1st degree. He suggested to take the written language in the 1st degree, move it to the 2nd degree and then rewrite it for when one of the listed offenses actually happens.

Representative McGuire agreed that would work.

Representative Croft acknowledged that he liked the bill and the intent. He worried about some sections of the bill and offered to help address those concerns.

Representative McGuire advised that it had been the intent to take portions of the Governor's bill and her bill and make the definitions consistent. She noted that the biological and chemical substance is consistent throughout the bill and added that she was willing to narrow that language with the suggested conceptual language.

Representative Croft asked Ms. Wilson if she had referenced the federal law definitions.

Ms. Wilson advised that she used definitions from the Internet that defined Title 18, U.S. Code, the definition of a chemical weapon as a "toxic chemical and its' precursors that are intended for a purpose not prohibited under that chapter". It also mentioned a chemical weapon being a munitions or device specifically designed to cause death or other harm through toxic properties.

Representative Croft acknowledged that language could be too "tight" but that it could be used as the "outer" guidelines.

Co-Chair Williams commented that the bill would be HELD in Committee for Representative McGuire, Ms. Carpeneti and Representative Croft to meet to discuss the legal matters.

HB 350 was HELD in Committee for further consideration.

ADJOURNMENT

The meeting was adjourned at 3:36 P.M.