

**MINUTES**  
**SENATE FINANCE COMMITTEE**  
**April 23, 2002**  
**4:37 PM**

**TAPES**

SFC-02 # 74, Side A

**CALL TO ORDER**

Co-Chair Pete Kelly convened the meeting at approximately 4:37 PM.

**PRESENT**

Senator Dave Donley, Co-Chair  
Senator Pete Kelly, Co-Chair  
Senator Jerry Ward, Vice Chair  
Senator Lyda Green  
Senator Gary Wilken  
Senator Alan Austerman  
Senator Donald Olson  
Senator Loren Leman

**Also Attending:** DR. JOHN MIDDAUGH, Consultant, Department of Health and Social Services; NANCY WELLER, Unit Manager, State, Federal & Tribal Relations, Division of Medical Assistance, Department of Health and Social Services; JOHN BITNEY, Legislative Liaison, Alaska Housing Finance Corporation, Department of Revenue

**Attending via Teleconference:** From Anchorage: JENNIFER RUDINGER, Executive Director, Alaska Civil Liberties Union; PAULINE UTTER

**SUMMARY INFORMATION**

SB 364-MEDICAID PAYMENTS FOR ABORTIONS

The Committee heard testimony from the public and the Department of Health and Social Services. The bill was reported from Committee.

SB 360-ALASKA NATURAL GAS PROJECT ACT

This bill was scheduled but not heard.

HB 160-REPORTING OF ABORTIONS

This bill was scheduled but not heard.

SB 181-SMALL COMMUNITY HOUSING LOANS

The Committee heard from the Alaska Housing Finance Corporation, considered and adopted one amendment, and reported the bill from Committee.

HB 106-FINANCIAL INSTITUTIONS

The bill was reported from Committee.

#SB364

SENATE BILL NO. 364

"An Act relating to medical services under the state Medicaid program."

This was the first hearing for this bill in the Senate Finance Committee.

Co-Chair Kelly stated this bill mirrors guidelines established by the federal Supreme Court regarding public funding of abortion; moreover, it encompasses Alaska statutes and language incorporated into the FY 02 State budget. He voiced the need for "the State" to maintain its position on procreation; however, he commented the Alaska Court System has repeatedly undermined the Legislature's position through such things as the definition of "medically necessary." He stated most people think of the term "medically necessary" as applying to a health condition; however, the Court has repeatedly interpreted it a broad sense whereby a psychologically upset individual would qualify. He stated that Section 1, subsection (b) states written certification by a treating physician must accompany the claim submitted to the State for payment for a medically necessary abortion, and he detailed the bill's specified medical conditions.

JENNIFER RUDINGER, Executive Director, Alaska Civil Liberties Union, testified via teleconference from Anchorage in opposition to SB 364. She stated the Union has represented Planned Parenthood and local physicians in abortion-related lawsuits against the State. She contented there are language issues she would like to address including: the use of adjectives that are "vague and unworkable" such as "significantly aggravated," and "adverse physical condition;" and who would make the determination as to the factors

that constitute "serious danger." She specified that the Alaska Civil Liberties Union believes the patient should decide what is significant "since she is the one who will be suffering this significantly aggravated health problem."

Ms. Rudinger furthered that this bill would exacerbate already difficult dealings with insurance companies over claim denials. She stated the word "would" used repeatedly in this document is problematic, and suggested this word be changed to "could." She stated physicians and lawyers often speak in probabilities and tell clients what might happen, not what would happen. She stressed that if a woman has to wait until the doctor could firmly state the pregnancy would be harmful, the procedures might be more expensive and the abortion more dangerous to perform.

PAULINE UTTER, testified via teleconference from Anchorage, and read a letter from Dr. Kathleen Todd [copy not provided], a Valdez physician, urging the Committee not to pass SB 364 as "this bill excludes any consideration of fetal anomalies as a legitimate reason for abortion" which many women consider legitimate. She continued that the bill's language additionally would require a physician to reach a point of certainty before taking action, and stated the government must stay neutral and not allow any entity to oppose a woman's desire to have an abortion.

DR. JOHN MIDDAGH, Consultant, Department of Health and Social Services, stated he is a physician certified in internal and preventive medicine and, on behalf of the Department, is speaking in opposition to SB 364. He stated, as a physician, the bill's language is difficult to interpret and to apply. He additionally stressed the bill does not recognize the uniqueness of each patient as "one size" does not "fit all" in health issues. He asserted there could be numerous factors involved which make it very difficult for physicians to be 100 percent sure of circumstances, and he noted the omission of language addressing "a pregnant woman carrying an infant" with abnormal medical conditions that "were not compatible with survival." He asserted that negotiating for reimbursement with an insurance company about the abortion decision made between the doctor and patient is not easy to do. He urged the Committee not to proceed with this version of SB 364.

Co-Chair Kelly voiced that Dr. Middaugh's concerns are addressed in the bill, and furthered that if the regulations remain as they currently are, "there is really nothing to stop wholesale elective abortions being funded by the State, which is going on now." He asserted the current regulation wording "is so broad that you could perform an abortion just about based on anything with that regulation."

Dr. Middaugh replied, "the answer would only be if in that judgment between the physician and the patient resulted in a conclusion to meet the medical criteria that that was a medically needed or therapeutically indicated procedure."

Co-Chair Kelly asked Dr. Middaugh for further clarification.

Dr. Middaugh responded that in his professional opinion, he does "not believe that there are abortions, elective abortions, being paid for by the State." He understood this is the intent of this bill; however, he voiced "that the wording that goes beyond 'medical necessary' is very problematic, is very difficult to interpret, and in fact doesn't adequately, in its wording, take into account many of the very serious circumstances that could arise between a physician and a patient in this area."

Senator Leman inquired if Dr. Middaugh considered it "inappropriate" "to have any constraints as a matter of public policy" on a patient and doctor relationship as he understood Dr. Middaugh to be saying "leave us alone, I'm a doctor, here's a patient, you don't know my business as well as I do."

Senator Leman furthered, "should we take our statutes that we have now that speak to medical practice and throw them out."

Dr. Middaugh responded "it is absolutely necessary to have standards of medical practice and that it is very appropriate to assure that there is certification by a treating physician of medical necessity or therapeutically indicated." He continued that nationally, physicians' competency and exercise of their "medical and professional relationship and discharge of those obligations" are scrutinized. He reiterated there is a need for standards.

Dr. Middaugh identified language in Section 1, subsection (b) "as being problematic for physicians to attempt to use those wordings in the way that they have been put forward to achieve that."

Section 1, subsection (b) language reads as follows.

(b) A claim for payment for a medically necessary abortion that is submitted to the Department must be accompanied by a written certification by the treating physician that the abortion is medically necessary to treat a serious

(1) adverse physical condition of a pregnant woman that

(A) either is caused by the pregnancy or would

be significantly aggravated by continuation of the pregnancy; and

(B) would seriously endanger the physical health of the woman if the pregnancy were not terminated by an abortion; or

(2) psychological illness of a pregnant woman who requires medication for treatment of the illness if

(A) the medication required to treat the illness would be highly dangerous to the fetus; and

(B) the health of the woman would be endangered if the medication was not taken during the pregnancy.

Senator Lemman asked Dr. Middaugh if he has suggested amendments.

Dr. Middaugh recommended that deleting all text following "medically necessary" in Section 1, subsection (b), line 12 through subsection (B) on page two, line 8, would be acceptable to the Department and to physicians.

This language reads as follows.

"...to treat a serious

(1) adverse physical condition of a pregnant woman that

(A) either is caused by the pregnancy or would be significantly aggravated by continuation of the pregnancy; and

(B) would seriously endanger the physical health of the woman if the pregnancy were not terminated by an abortion; or"

(2) psychological illness of a pregnant woman who requires medication for treatment of the illness if

(A) the medication required to treat the illness would be highly dangerous to the fetus; and

(B) the health of the woman would be endangered if the medication was not taken during the pregnancy."

Co-Chair Kelly responded those deletions would allow "the same kind of regulations that have been written that deal with psychological health which have, in our opinion and many at this table, resulted in the lack of abortions...its just too broad." He continued that "you could say that someone being stressed out because they are pregnant works for psychological health." He stated the State should not be paying for an abortion of this nature." He summarized if the language identified by Dr. Middaugh is deleted, there would be no reason to pass this bill.

Dr. Middaugh stated the standards for doctors today and patient/doctor interactions "in the process of informed consent convey a far higher level of integrity than your comment would give them credit to." He stressed that the standard of performance for physicians is "pretty high," and passage of this bill without the language he identified would be a powerful affirmation message to the medical community and people of Alaska.

NANCY WELLER, Unit Manager, State, Federal & Tribal Relations, Division of Medical Assistance, Department of Health and Social Services, informed the Committee that the Department is presenting an indeterminate fiscal note for this bill because of the difficulty in determining a "believable estimate" as the Department has no knowledge of how this legislation would affect decisions made between a woman and her doctor regarding a medically necessary abortion nor how many women would elect to carry a baby to term and have Medicaid cover the cost of the birth.

AT EASE 5:00 PM/ 5:03 PM

Senator Ward offered a motion to "move SB 364 out of Committee with individual recommendations and accompanying note."

A roll call was taken on the motion.

IN FAVOR: Senator Green, Senator Lemman, Senator Olson, Senator Ward, Senator Wilken, Co-Chair Kelly

OPPOSED: Senator Austerman, Co-Chair Donley

ABSENT: Senator Hoffman

The motion PASSED (6-2-1)

SB 364 was REPORTED from Committee with accompanying indeterminate fiscal note, dated 4/22/02, from the Department of Health and Social Services.

#SB181

SENATE BILL NO. 181

"An Act making the interest rate for the Alaska Housing Finance Corporation's small community housing mortgage loans the same as the interest rate on mortgage loans purchased under the corporation's special mortgage loan purchase program from the proceeds of the most recent applicable issue of

taxable bonds before the origination or purchase of the small community housing mortgage loans."

This was the fifth hearing for this bill in the Senate Finance Committee.

Co-Chair Kelly noted this is the second year of hearings on this bill and that several Committee members have been working with the Alaska Housing Finance Corporation (AHFC) to address the rural housing loan program concerns raised by Committee members.

Co-Chair Donley stated the bill addresses the two following issues: the first regarding loans used to build "very very expensive houses" by limiting the subsidized portion of the loan to that portion up to the statewide housing average; and the second issue expanding the non-owner occupied language to allow the Rural Housing Assistance Loan Fund program (HALF) to be "utilized for low cost loans for teacher housing" in rural and small communities.

Co-Chair Donley moved to adopt CS SB 181, 22-LS0488\G as a working draft.

There being no objection, Version "G" was ADOPTED.

Senator Green inquired if the language allowing for teacher-housing loans applies to houses owned by one party but rented or leased to teachers.

Co-Chair Donley responded if a certified teacher occupies the home, the home would qualify for financing under the loan program.

Senator Green asked if this language includes "classified" school employees.

Co-Chair Donley clarified it only applies to teachers.

Senator Green asked if a person in the process of acquiring teacher certification would qualify.

Co-Chair Kelly believed this scenario would be a subject-need certification and voiced support for their inclusion.

Senator Green voiced this would be an important provision.

Co-Chair Kelly concurred.

JOHN BITNEY, Legislative Liaison, Alaska Housing Finance

Corporation, Department of Revenue suggested adding language to the owner-occupied portion of the program on page one, line 13. He informed the Committee "that definitions and subsequent parts of statutes allow for up to a duplex;" therefore, wording the section to allow for a "single-family or a duplex would have that same cut-off level."

Co-Chair Donley qualified this would be acceptable as long as it specifies owner-occupied duplex.

Mr. Bitney responded this is addressed in subsequent statute that defines the term "housing" under this section.

Co-Chair Donley stated he would support this change if it would generate AHFC's support for the bill.

Mr. Bitney stated this change would further define the bill and allow AHFC "to apply the same threshold level for a duplex as we would for a single family" home.

Amendment #4: This amendment further defines the types of qualifying housing for AHFC small community loans by inserting "or owner occupied duplex" following "single-family house" on page one, Section 1, lines 13 and 14.

Co-Chair Donley moved for adoption of Amendment #4.

There being no objection, Amendment #4 was ADOPTED.

Mr. Bitney stated AHFC has been working with the Department of Labor and Workforce Development to develop a "working number" for the subsidized loan program, and the Department of Labor and Workforce Development has provided an estimate of \$185,000 as the statewide average sales price of a single family home.

Senator Olson inquired how the transient nature of teachers in small communities would affect the provision for teacher occupied housing.

Co-Chair Donley responded Section 2 of the bill allows for non-owner occupancy of a house if a teacher occupies it. He elaborated that a community, a private individual, or a teacher could build the house as long as a teacher occupies it.

Mr. Bitney explained to the Committee that the intent of this program is to offer to the borrower a commitment for a period of time, usually 160 to 180 days, during which they could secure construction financing from a commercial bank. He stated, "once the

terms of the commitment have been met, the construction has been done, then the takeout on the loan." He remarked this commitment practice is the industry standard for new home construction.

Co-Chair Donley offered a motion to move "CS SB 181 as amended and the accompanying zero fiscal note from Committee with individual recommendations."

There being no objections, CS SB 181 (FIN) was REPORTED from Committee with a new zero fiscal note dated 1/28/02 from the Department of Revenue.

#HB106

SENATE CS FOR CS FOR HOUSE BILL NO. 106(JUD)

"An Act relating to the authorizations for certain state financial institutions of certain powers and limitations; relating to confidential records of depositors and customers of certain financial institutions; relating to the examination of certain institutions subject to AS 06; relating to the Alaska Banking Code, Mutual Savings Bank Act, Alaska Small Loans Act, and Alaska Credit Union Act; relating to credit cards; amending Rule 45, Alaska Rules of Civil Procedure, Rules 17 and 37, Alaska Rules of Criminal Procedure, and Rule 24, Alaska Bar Rules; and providing for an effective date."

This was the second hearing for this bill in the Senate Finance Committee.

Senator Leman offered a motion to report SCS CS HB 106 "from Committee with individual recommendations and the accompanying zero fiscal note."

There being no objection, SCS CS HB 106 (FIN) with a new zero fiscal note, dated 2/26/02 from the Department of Community and Economic Development was REPORTED from Committee.

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#### **ADJOURNMENT**

Co-Chair Pete Kelly adjourned the meeting at 05:15 PM.