

ALASKA STATE LEGISLATURE
SENATE JUDICIARY COMMITTEE

February 21, 2001
1:38 p.m.

MEMBERS PRESENT

Senator Robin Taylor, Chair
Senator Dave Donley, Vice Chair
Senator John Cowdery
Senator Gene Therriault
Senator Johnny Ellis

MEMBERS ABSENT

All Members Present

COMMITTEE CALENDAR

SENATE BILL NO. 84

"An Act exempting joint action agencies from regulation by the state or municipalities; relating to the relationship between a joint action agency and the public utilities that form the joint action agency; relating to powers and immunities of a joint action agency; requiring filing of the joint action agency agreement; relating to the financial affairs of a joint action agency; declaring certain joint action agencies to be political subdivisions for certain purposes; relating to liability and indemnification of officers, employees, and agents of joint action agencies; and defining 'agency agreement' as used with reference to joint action agencies."

MOVED CSSB 84 (JUD) OUT OF COMMITTEE

SENATE BILL NO. 81

"An Act relating to the nonademption of property transfers; and providing for an effective date."

MOVED SB 81 OUT OF COMMITTEE

SENATE BILL NO. 37

"An Act relating to collective negotiation by physicians with health benefit plans; and to health benefit plan contracts with individual competing physicians."

MOVED CSSB 37 (JUD) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

SB 37 - See Judiciary minutes dated 1/22/01.

WITNESS REGISTER

Mr. Michael Schrader
Ater Wynne, LLP
222 S.W. Columbia
Portland, Oregon 97201

POSITION STATEMENT: Testified on SB 84

Mr. Brian Bjorkquist, Assistant Attorney General
Department of Law
1031 W. 4th Avenue, Suite 200
Anchorage, Alaska 99501-1994

POSITION STATEMENT: Supports SB 84

Mr. Stephen Greer, Attorney
4041 B Street, Suite 205
Anchorage, Alaska

POSITION STATEMENT: Testified on SB 84

Mr. Kristopher Knauss
Staff to Senator Pete Kelly
Alaska State Capitol
Juneau, Alaska 99801-1182

POSITION STATEMENT: Introduced SB 37

Mr. James Jordan, Executive Director
Alaska State Medical Association
4107 Laurel Street
Anchorage, Alaska 99508

POSITION STATEMENT: Testified on SB 37

Mr. Michael Haugen
Alaska Physicians and Surgeons
4120 Laurel Street, #206
Anchorage, Alaska 99508

POSITION STATEMENT: Testified on SB 37

Mr. Clyde Sniffen, Jr.
Department of Law
PO Box 110300
Juneau, Alaska 99811-0300

POSITION STATEMENT: Testified on SB 37

Ms. Sandy Perry-Provost
Alaska Nurses Association
3280 Foster Avenue
Juneau, Alaska 99801

POSITION STATEMENT: Testified on SB 37

ACTION NARRATIVE

TAPE 01-4, SIDE A
Number 001

CHAIRMAN ROBIN TAYLOR called the Senate Judiciary Committee meeting to order at 1:38 p.m. Present were Senator Cowdery, Senator Therriault and Chairman Taylor. Senator Ellis arrived at 1:47 p.m. and Senator Donley arrived at 2:19 p.m. Chairman Taylor announced the first order of business would be SB 84.

#SB 84

SB 84-PUBLIC UTILITY JOINT ACTION AGENCIES

SENATOR COWDERY moved to adopt CSSB 84 (JUD), version 22-LS0504\J, Cramer, as a working draft. There being no objection, the motion carried.

MR. MICHAEL SCHRADER said he was with the law firm Ater Wynne, which represents the Four Dam Pool Project Management Committee. The Four Dam Pool purchasing utilities were authorized by legislation last year to purchase Four Dam Pool projects from Alaska. The vehicle to purchase the projects is a Joint Action Agency (JAA), which was authorized under prior Alaska law. There was a supplement to the statute allowing formation of a special purpose JAA that is the entity that will be purchasing the Four Dam Pool projects. In the process of forming JAA, the five member utilities ran into a number of issues in terms of the negotiation of the JAA agreement - the document that creates this entity and a number of technical issues. Some of the issues were resolved just by the terms and negotiations of the agreement - others were resolved by either federal or state law.

MR. SCHRADER said SB 84 would address a number of these issues, resolve them and allow the divestiture of the Four Dam utilities to go forward. Being a tax-exempt entity, both state and federal, is a key factor for JAA and for the economics of divestiture. It is essential for the purchasing utilities that JAA be characterized as a governmental unit, exempt from restrictions of federal tax law. A key factor in having that governmental status is eminent domain or condemnation powers that are granted to JAA. SB 84 makes an amendment to existing law providing JAA expanded eminent domain or condemnation powers, subject to significant limitations but with a sufficient grant of power to assist in its application to the Internal Revenue Service.

Number 300

CHAIRMAN TAYLOR said the first four sections of the work draft are existing law; the only change is to add a new section entitled (o). Sections 6 and 9 cover eminent domain, tax exemption, and make JAA a governmental body.

MR. SCHRADER agreed that the federal and state issues are addressed in these sections. Another issue that arose when going through the formation of JAA had to do with JAA's status as a regulated entity by the Regulatory Commission of Alaska (RCA). Currently, four of the five member utilities are exempt from regulation by the RCA. The power sales agreement is also exempt from review and approval by RCA. There was a disconnect between the provision in Title 42, the RCA provision, in terms of the regulatory status of JAA. On one hand there were provisions that said the power sales agreement is exempt from review and approval by the RCA but on the other hand there was not a provision covering the other aspects of regulation by the RCA. SB 84 that creates consistency in terms of the regulatory status of JAA - this has been reviewed and approved. As long as JAA has outstanding indebtedness to the state, in connection with the acquisition of the projects, JAA would be exempt from regulation by the RCA. When the indebtedness is paid in full, JAA becomes subject to regulation under existing provisions of statute.

Number 503

SENATOR COWDERY asked if SB 84 addresses Kodiak.

MR. SCHRADER said SB 84 does not address the regulatory status of the underlying member utilities. Of the five purchasing utilities only the Kodiak Electric Association is a regulated utility. SB 84 says the organization that is formed is exempt.

MR. SCHRADER noted another concern arose about the pass-through liability of JAA. It is essential to the member utilities that JAA operate as a separate and distinct legal entity. This is provided for in statute, but the concern is that any claims or liabilities of JAA would be passed-through to the member utilities. The member utilities obligations to JAA are defined by the power sales agreement, a long-term agreement that has been in place and will continue to be in place following the divestiture transaction. Additional language in SB 84 makes absolutely clear that there is no pass-through liability - a claim against JAA cannot be asserted as a claim against the member utilities. This is referred to in sections 6 and 13.

Number 631

CHAIRMAN TAYLOR said if these sections had not been added to SB 84, communities could have assumed large liabilities, which would have prevented the project from coming together.

MR. SCHRADER said this was a key factor in forming SB 84.

Number 776

MR. BRIAN BJORKQUIST, Attorney General with the Department of Law (DOL) in Anchorage, said his primary client agency is the Alaska Energy Authority. In working with attorneys and the Four Dam Pool utilities on SB 84, DOL's concern with the previous version have been worked through and addressed. DOL supports CSSB 84 and will continue to work with the utilities and their attorneys as the process goes forward.

SENATOR COWDERY moved CSSB 84 (JUD) from committee with individual recommendations. There being no objection, the motion carried.

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#SB 81

Number 978

SB 81-NONADEMPTION OF TRANSFERS IN TRUSTS

SENATOR THERRIAULT, sponsor of SB 81, said the bill is a clean up for a piece of legislation that was passed last year - HB 275. One section of HB 275 had incorrect language that rendered a portion of the new law ineffective. SB 81 proposes a fix for this problem.

SENATOR ELLIS asked if SB 81 is the "clean-up of the clean-up last year that was the clean-up of the Joe Ryan trust bill."

Number 1057

CHAIRMAN TAYLOR said seven or eight bills have been passed over the years trying to keep up with supreme court and tax court changes - trying to make Alaska an attractive state for people to place their money in trust.

SENATOR ELLIS said a more comprehensive look at SB 81 might be in order.

CHAIRMAN TAYLOR said he has received a report on this question and would be scheduling a meeting at a later time.

SENATOR THERRIAULT said Section 1. AS 13.12.712(b), of HB 275, used language such as "authority of a durable power of attorney for an incapacitated principal." This was incorrect language with regard to trusts - when there is a trust there are trustees. This error has been corrected. The AG's office has sent a memo saying SB 81 appears to amend AS 13.12.712 "to properly reflect the purpose for the entire statute, namely the nonademption of specific transfers in trusts."

Number 1220

SENATOR ELLIS thanked Senator Therriault for going to the revisor first.

CHAIRMAN TAYLOR said Senator Ellis' point was a very good one. Often times the revisor is not consulted and bills are just created.

SENATOR THERRIAULT said the State Affairs Committee saw the revisor's bill on 2/20/01.

Number 1350

MR. STEPHEN GREER, Attorney, testifying via teleconference from Anchorage, said HB 275 was a complicated bill trying to give Alaska citizens the benefit of certain tax selections. Section 2, which was a non-tax provision, attempted to make the law applicable to wills equally applicable to revocable trusts. People use revocable trusts to avoid the expense of a probate proceeding. SB 81 cleans up HB 275 with respect to one particular section.

CHAIRMAN TAYLOR asked for the definition of nonademption.

MR. GREER said the definition means not extinguished. As an example: In a will or trust if you give a piece of property to a relative, and that piece of property has been sold by you prior to your death - under the general rule - this request would be adeemed or extinguished because the property does not exist at the time of death and the relative would not receive the property.

MR. GREER said there are a few instances when a specific bequest is not adeemed or extinguished and SB 81 is meant to cover this situation with respect to revocable trusts. He gave the following examples for bequeaths not adeemed:

The first instance is when a property is being condemned and there is an unpaid condemnation award for the taking of the property - the person who would have received the

property is instead entitled to receive the condemnation award.

The second instance is when a piece of property has been directed to a relative and that piece of property is destroyed and insurance proceeds remain unpaid at death, the relative would be entitled to the unpaid insurance proceeds.

Another instance is when a person is the obligee of a promissory note and that person wants the note to go to a relative but before the person's death, there is foreclosure on the note and the property that was used to secure the note is taken back. In this case, the relative would be entitled to that piece of property.

Section (b) is meant to address the situation when a settlor makes a specific bequest but becomes incompetent and the trustee sells the property. In this case, the intended recipient of the specifically bequeathed property is entitled to other properties of equal value.

MR. GREER said all of these examples are in conformity with the Uniform Probate Code.

Number 1526

SENATOR COWDERY asked - for a deed of trust - if the value is larger after a foreclosure than the balance of the money owed - is this an issue for SB 81?

MR. GREER said the Uniform Probate Code has contemplated this - the excess value would go to the residuary estate.

SENATOR COWDERY moved to pass SB 81 from committee with individual recommendations. There being no objection, the motion passed.

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#SB 37
Number 1599

SB 37-PHYSICIAN NEGOTIATIONS WITH HEALTH INSURE

MR. KRISTOPHER KNAUSS, staff to Senator Pete Kelly, said questions from the Department of Law (DOL), Division of Insurance, and the Nurse Practitioners and Midwives (NPM), in the last hearing have been answered. NPM was concerned that their services could be negotiated out of physician contracts with healthcare plans. As SB

37 is written this is not so. It is in statute that those with special occupational licenses from health care plans or health care in general cannot be discriminated against - the new amendment also clarifies this point.

Number 1698

CHAIRMAN TAYLOR said there were concerns about enough state involvement within the process so that under federal law the constraints of the anti-trust legislation could be avoided. He asked if SB 37 was sufficient for allowing the state to participate in these negotiations.

MR. JAMES JORDAN, Executive Director for the Alaska State Medical Association, testifying via teleconference from Anchorage, said there is sufficient regulatory oversight in SB 37 to provide the meeting of the act of oversight test, not only with the various guidelines provided for the oversight agency but also the AG's office.

MR. JORDAN said Texas enacted a similar law in June of 1999 and has been going through a process of adopting regulations to make it functional. Washington has a law that allows joint negotiation under a state action doctrine exception. However, the Washington law did not provide for anything more than is currently allowed under new federal antitrust laws.

Number 1880

MR. MICHAEL HAUGEN, Alaska Physicians and Surgeons (APS), testifying via teleconference from Anchorage, started by answering a question that Senator Therriault asked in the last hearing regarding safe harbors. APS has talked with the Alaska Medical Association's (AMA) legal department and has done its own legal analysis regarding whether or not SB 37 needs additional language to protect physicians prior to active negotiations in simply getting together to discuss the possibility of negotiation. Supreme court cases from the 1960's say that provided the applicants are working in good faith to apply for state protection they are exempted from any liability under the Sherman antitrust laws and the federal antitrust rules. The answer to Senator Therriault's question is that provided the doctors are acting in good faith in attempting to petition the AG to negotiate, they are protected.

MR. HAUGEN said APS suggests the AG issue a "Dear Doctor" letter stating the "do's and don'ts" of getting together, before the safe harbor provided under SB 37 goes into effect, to let the doctors know they have to be organizing in good faith and that there may be

areas they should not discuss until the green light is given to negotiate. APS does not think additional language would offer additional protection.

Number 2018

MR. CLYDE SNIFFEN, JR., Attorney General, DOL, testifying via teleconference from Anchorage, said he had not seen the amendment or any answers to the questions referred to by Mr. Knauss. He does not know how the concerns he raised at the last hearing have been addressed and therefore cannot comment on them. DOL continues to have serious concerns with SB 37. The only provision in SB 37 allowing DOL the authority to adopt regulations is specific only to fee issues. DOL also has concerns about geographic and market power issues, they are not well defined or related to anything that would suggest the markets that SB 37 focuses on have an impact on the ability to set prices.

CHAIRMAN TAYLOR asked if DOL had prepared amendments to take care of these concerns.

MR. SNIFFEN replied no.

Number 2187

MS. SANDY PERRY-PROVOST, Alaska Nurse Practitioners Association said she could not comment on the amendment because the nurses have not seen it yet. She pointed out that there is not an (o) under AS 23.50.020 in the amendment.

SENATOR THERRIAULT asked if Chairman Taylor would afford the drafter latitude in changing the language.

CHAIRMAN TAYLOR said the amendment is only conceptual.

TAPE 01-4, SIDE B

Number 2334

SENATOR ELLIS said there had been a request from the Alaska Optometric Association (AOA) as well. AOA supports SB 37 but wants an amendment that would encompass all the groups that have problems with the bill.

CHAIRMAN TAYLOR said the wording of SB 37 is to encompass all groups that would be defined within that category - "the performance of services that are within the scope of their occupational license." The amendment was structured to accomplish

this without listing each group.

CHAIRMAN TAYLOR moved to adopt the conceptual amendment. There being no objection, the motion carried.

SENATOR COWDERY moved to pass CSSB 37 (JUD) from committee with individual recommendations.

SENATOR ELLIS objected.

SENATOR ELLIS said there were still too many concerns that had not been addressed.

CHAIRMAN TAYLOR said he shared some of the same concerns as Senator Ellis about the questions on antitrust. He said he hoped these issues would be resolved before SB 37 goes to the Floor of the Senate. Chairman Taylor said the antitrust issue has to be resolved or SB 37 will not have the desired effect.

SENATOR ELLIS noted there is a significant fiscal note and the discomfort level would go up dramatically if the fiscal note were to be significantly reduced or wiped out allowing no oversight through the AG's office. He does not object to the amendment but wondered if there would be restrictions in other parts of SB 37 that would cause concern that doctors would constrain trade of the concerned groups.

CHAIRMAN TAYLOR said the first section is just legislative findings and the only real substance to the bill is the amended section.

SENATOR ELLIS said, with all respect to the Chairman, if the committee were to move SB 37 he would have a hard time feeling the committee had done a full job.

CHAIRMAN TAYLOR said he shared many of those concerns and he assured Senator Ellis that if these issues were not resolved, he would request SB 37 back to the Judiciary Committee.

A roll call was taken. Senator Donley, Senator Cowdery, Senator Therriault and Chairman Taylor voted "yea." Senator Ellis voted "nay." The motion carried and CSSB 37 (JUD) passed out of committee with individual recommendations.

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There being no further business to come before the committee, Chairman Taylor adjourned the meeting at 2:31 p.m.