

ALASKA STATE LEGISLATURE
SENATE JUDICIARY COMMITTEE

May 1, 2002
3:52 p.m.

MEMBERS PRESENT

Senator Robin Taylor, Chair
Senator John Cowdery
Senator Gene Therriault
Senator Johnny Ellis

MEMBERS ABSENT

Senator Dave Donley, Vice Chair

COMMITTEE CALENDAR

CS FOR HOUSE BILL NO. 296(CRA)

"An Act relating to mergers and consolidations of municipalities."

MOVED SCS CSHB 296(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 52 am

"An Act relating to the Interstate Compact for Adult Offender Supervision and the State Council for Interstate Adult Offender Supervision; amending Rules 4 and 24, Alaska Rules of Civil Procedure; and providing for an effective date."

MOVED HB 52am OUT OF COMMITTEE

SENATE BILL NO. 369

"An Act relating to trusts, including trust protectors, trustee advisors, and transfers of trust interests, and to creditors' claims against property subject to a power of appointment; and providing for an effective date."

MOVED SB 369 OUT OF COMMITTEE

PREVIOUS SENATE COMMITTEE ACTION

HB 296 - See CRA minutes dated 4/10/02 and 4/17/02.

HB 52 - No previous action to record.

SB 369 - No previous action to record.

WITNESS REGISTER

Mr. Steve Schweppe
City of Ketchikan
344 Front St.
Ketchikan, AK 99901

POSITION STATEMENT: No position stated on SCS CSHB 296(JUD)

Mr. Kevin Waring
Local Boundary Commission
Department of Community and Economic Development
550 W 7th Ave., Suite 1770
Anchorage, AK 99501-3510

POSITION STATEMENT: Supports Section 1 of SCS CSHB 296(JUD) but opposes Sections 2 and 3

Mayor Tim Bourcy
City of Skagway
PO Box 415
Skagway, AK 99840

POSITION STATEMENT: Supports SCS CSHB 296(JUD)

Mr. Robert Blasco, Attorney
801 West 10th St., Suite 300
Juneau, AK 99801

POSITION STATEMENT: Answered a technical question related to SCS CSHB 296(JUD)

Representative Jim Whitaker
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Supports SCS CSHB 296(JUD)

Ms. Candace Brower
Department of Corrections
431 N Franklin, Suite 400
Juneau, AK 99801

POSITION STATEMENT: Supports HB 52am

Mr. Richard Masters
Council of State Governments
No address provided

POSITION STATEMENT: Supports HB 52am

Mr. William Craig
613 Degraff St.
Sitka, AK 99835

POSITION STATEMENT: Supports HB 52am

Ms. Pat Tuthill
No address provided

POSITION STATEMENT: Supports HB 52am

Mr. Kermit Humphries
National Institute of Corrections
320 First St., N.W.
Washington, D.C. 20534
POSITION STATEMENT: Supports HB 52am

Mr. Doug Blattmachr
No address available
POSITION STATEMENT: Supports SB 369

Mr. Steve Greer, Attorney
4041 B St.
Anchorage, AK
POSITION STATEMENT: Supports SB 369

Mr. Jon Sherwood
Division of Medical Assistance
Department of Health &
Social Services
PO Box 110601
Juneau, AK 99801-0601
POSITION STATEMENT: Expressed concern about SB 369

ACTION NARRATIVE

TAPE 02-23, SIDE A
Number 001

CHAIRMAN ROBIN TAYLOR called the Senate Judiciary Committee meeting to order at 3:52 p.m. Senators Cowdery, Therriault and Chair Taylor were present. The first matter to come before the committee was HB 296.

#HB 296

HB 296-MUNICIPAL MERGER AND CONSOLIDATION

CHAIRMAN TAYLOR informed members that a committee substitute (CS) had been prepared.

SENATOR COWDERY moved to adopt the Senate Judiciary committee substitute (labeled Cook 5/1/02) in lieu of the original bill.

CHAIRMAN TAYLOR announced that without objection, the CS was adopted. He then took teleconference testimony.

MR. STEVE SCHWEPPE, testifying from Ketchikan, said he submitted a written statement to the committee.

CHAIRMAN TAYLOR acknowledged receipt and distribution of that testimony and thanked Mr. Schweppe for his efforts. Mr. Schweppe had no further comments to add and committee members had no questions, so Chairman Taylor continued taking public testimony.

MR. KEVIN WARING, Local Boundary Commission (LBC), informed members he submitted written testimony. He then went on to say the LBC supports Section 1 of HB 296, which fixes an omission in existing law. However, the LBC is opposed to Sections 2 and 3, which would change the manner in which votes are counted in consolidation elections for boroughs and cities. The current law provides that consolidation proposals be approved by a simple majority of the voters in the area that would be consolidated. The proposed change would require separate approvals by a majority of voters in each city to be consolidated and by a majority of the voters in the borough area outside affected cities. In the LBC's view, the present procedure basically provides for one person, one vote, and majority rule, which fits with the Alaska Constitution and legislative policy for the last 30 years. The proposed language would allow a minority of residents to veto a consolidation proposal as installing a weighted vote. He repeated the LBC is opposed to Sections 2 and 3.

MR. WARING said he would like to clarify what might be a drafting error in the bill. Section 2 adds a new section to AS 29.06.100. That section in law now deals with the content of consolidation petitions. The proposed new section requires the petition to include guidelines in the petition for how the outcome of consolidation elections is decided. The LBC suggests that this amendment to election procedures might be more appropriately placed in AS 29.06.140, the section of statute that deals with consolidation elections and election procedures. He noted the LBC has statutory powers to amend petitions. If the committee decides to include the changes in Sections 2 and 3 of HB 296, the LBC believes a relocation of Section 2 would clarify legislative intent and prevent any possible confusion.

CHAIRMAN TAYLOR thanked Mr. Waring and called Mr. Bourcy to testify.

MAYOR TIM BOURCY, City of Skagway, informed members the City of Skagway has a borough petition before the LBC at this time. The City of Skagway is in support of HB 296 but is concerned that the bill does not address annexation issues.

CHAIRMAN TAYLOR informed Mayor Bourcy that a sentence was added

in the Senate Judiciary CS that provides for the same application on annexation.

MR. BOURCY thanked the committee and said he would support that.

CHAIRMAN TAYLOR read that sentence on page 2, line 26, as follows, "This subsection is to be consistent with the voting requirements for annexation specified in AS 29.06.040," and asked Representative Whitaker to address the CS.

REPRESENTATIVE WHITAKER, sponsor of HB 296, said he is in support of the CS and hopes the committee does what it thinks is best.

CHAIRMAN TAYLOR asked Mr. Blasco if the CS needs to have a (1) placed at the end of line 27, page 2.

MR. ROBERT BLASCO, attorney, replied, "Yes, Senator Taylor, if that's possible. There are different sections to that portion of Title 29 and the one that references the concerns that we've raised as to annexation is actually Section 1."

CHAIRMAN TAYLOR moved Amendment 1, to add a parenthetical 1 after ".040" on page 2, line 27. There being no objection, the motion carried.

SENATOR THERRIAULT noted Amendment 1 should have read (c)(1).

CHAIRMAN TAYLOR agreed and moved Amendment 2, to insert (c) after ".040" and prior to (1). There being no objection, Amendment 2 was adopted.

SENATOR COWDERY moved SCS CSHB 296(JUD) as amended from committee with individual recommendations.

CHAIRMAN TAYLOR noted that without objection, SCS CSHB 296(JUD) and its accompanying fiscal note moved from committee. The committee then took up HB 52.

#HB 52

HB 52-COMPACT FOR ADULT OFFENDER SUPERVISION

CHAIRMAN TAYLOR announced the committee has held an extensive hearing on this bill. He then took testimony.

MS. CANDACE BROWER, legislative liaison for the Department of Corrections, explained that the Interstate Compact governs the state-to-state transfer and/or travel and supervision of offenders. Currently, the Compact in place was enacted in 1937

and is outdated. The ability to transfer between states is much different now than it was in 1937, when 1,000 offenders crossed state lines. Now, one-quarter of a million offenders cross state lines each year. The current Compact promotes slow and unreliable exchange of case information and frequent violations of the Compact rules result in otherwise supervised offenders slipping through the cracks.

MS. BROWER stated the new Compact creates oversight of offenders on a national basis. It creates a state council, of which the Compact administrator becomes a commissioner to the national commission. The national commission will be made up of one commissioner from each state. Each state gets one vote. The Interstate Commission will also have non-voting, ex-officio members who are interested parties that can contribute to the facility of the Compact. There will also be paid staff, including an executive director, and Interstate Commission staff who will oversee the day-to-day activities of the Compact, which Alaska does not currently have. Today, each state has a Compact administrator who participates in a formal body, but that body has no power to enforce compliance with the Compact so states can do what they wish. The executive director and staff would administer enforcement and compliance with the provisions of the Compact. They would enforce its bylaws and, as directed by the Commission, perform other duties as assigned. The new Compact will provide uniform procedures, a mechanism for acquiring and maintaining routine data and will provide a structure to adopt new rules and to guarantee or enforce compliance. It will also provide for adequate consideration of victims, more oversight at both the state and national levels, and a way to hold offenders more accountable.

MS. BROWER pointed out that committee packets contain a map of the states that have enacted the Compact at this time: 31 as of today. That number is expected to increase to 35 by June. One reason it is so important that the Alaska Legislature pass this legislation this year is that the first 35 states to enact it will be at the table to set the rules and decide how the Compact will be operated. Alaska's population is small, therefore it is important that it protect its interests. In addition, Alaska exports more offenders than it imports so it will benefit from belonging to the Compact. She pointed out she revised the fiscal note after consulting with some of the folks working on the Compact. The fees are not expected to be initiated until July of 2003 so there will be no fiscal impact until FY 04.

CHAIRMAN TAYLOR asked if the amount is \$16,000.

MS. BROWER said that is correct for FY 04. The amount for FY 03 will be zero.

CHAIRMAN TAYLOR took public testimony.

MR. RICHARD MASTERS, Special Counsel, Council of State Governments (CSG), said he echoes Ms. Brower's comments. The CSG has been involved in the Compact bill for a long time and assisted in the original draft in 1937. The proposed legislation is the result of a year-long study in which Compact administrators under the existing mechanism came together with representatives from the legislative branch, attorneys general offices and decided the existing mechanism is not working as it depends almost entirely on cooperation. It is simply not designed to function in an environment where an offender can move from one part of the country to another in a matter of hours. In addition to the 50,000 known offenders who are under supervision, there are a large number of offenders whose whereabouts are unknown. HB 296 is an attempt to update the 63-year old law to make it effective by giving authority to states to make sure that compliance is achieved.

MR. MASTERS pointed out that the threshold for creation of the commission that would allow the rule making to begin is 35 states. Currently 31 states have enacted legislation and two states have legislation waiting to be signed by their governors. Eight other states have passed legislation through one chamber. The CSG hopes Alaska will be present at the table when the rules are reconsidered and adopted to enforce this important public policy mechanism.

MR. WILLIAM CRAIG, speaking on his own behalf, informed members he is a former police officer and noted the bill addresses victims' rights but it does not cover witnesses or past members of the criminal justice system who may have concerns about an individual. He said he does not worry about most of the people he encountered throughout his brief career, but he would like to know the status of a few people. He is aware of prosecutors and witnesses in the same situation. He hoped, if Alaska does join the Compact, that issue is addressed.

CHAIRMAN TAYLOR noted that Linda Zaugg, Department of Corrections, was available to answer questions. He then continued taking public testimony.

MS. PAT TUTHILL, testifying via teleconference, told members the following story of her daughter Peyton Tuthill and her very preventable murder. After Peyton graduated from college in South

Carolina, she went to the mountains of Wyoming for a survival course camping trip for four weeks. Peyton gave back to the community through her involvement with the American Cancer Society, working as an advocate for the elderly, and then moved to Denver to attend graduate school. After six months in Denver, she entered her apartment at noon to let her dog out. She encountered a man over 300 pounds who brutally tortured, raped and killed her. The offender, Donta Page, had recently been transferred and released from prison in Maryland and traveled to Denver where he was to be under three years of supervised probation in a halfway house. He was lost in the system. No one knew he was there. He was removed from his program for hostile behavior and was to be given a bus ticket to return to prison in Maryland. However, the current Compact was blatantly ignored. The current Compact does not have the technology, database or uniformity to notify and keep track of these prisoners. So, instead of waiting for the bus ticket, he broke into Peyton's apartment where she met her tragic and violent death.

MS. TUTHILL said the 1937 Compact was enacted when there were only 1,000 offenders moving across state lines. Over 250,000 offenders are now moving across state lines. Ms. Tuthill stated, "Peyton should have never died like this. No one should ever have to die like this. This new Compact, with provisions and the witness/victim involvement in the new Compact is going to prevent such tragic deaths. And I have to make a decision every day if I'm going to live or die. And I feel like I'm Peyton's voice now, the voice of other victims. And I live this legislation everyday in the hope that it will be passed because I know what it will do. And I hear words from Peyton everyday and her favorite passage was, when we act from our hearts, speak from our hearts, we're standing in our full strength, for our heart is a place of courage, honor, integrity, wisdom, and passion." She asked committee members to support HB 52.

CHAIRMAN TAYLOR expressed sympathy to Ms. Tuthill for the tragic loss of her daughter and then asked Mr. Humphries to testify.

MR. KERMIT HUMPHRIES, National Institute of Corrections (NIC), said one of his responsibilities at the NIC has been the development and passage of this Interstate Compact. As a former probation/parole officer in Alaska for eight years, he noticed that in all of those years, only one state, on one occasion, returned an offender who had come to Alaska on interstate supervision and violated that arrangement. Many times, the Department of Corrections would do the paperwork, but other states would terminate jurisdiction for the offender so that the offender would stay in Alaska, or they would issue an in-state

warrant. In that case, only residents of that state are protected. In only one case that he supervised was there an extradition back to the sending state. He could not recall any other officers who ever had anyone returned. He said Alaska is particularly vulnerable to the lack of enforcement on the existing Compact. The new Compact was drafted because department of corrections' spokesmen from all around the country came to the NIC saying the existing compact was broken and posed a danger to public safety.

CHAIRMAN TAYLOR noted with no further testimony or questions, he would entertain a motion to move the bill.

SENATOR COWDERY moved HB 52am from committee with individual recommendations and its accompanying fiscal note of \$16,000.

CHAIRMAN TAYLOR announced that without objection, the motion carried.

#

#SB 369

SB 369-POWERS OF APPOINTMENTS/TRUSTS/CREDITORS

CHAIRMAN TAYLOR noted he recently introduced SB 369 as Chair of the Senate Judiciary Committee because there has been some difficulty getting the House bill to the Senate. He informed members that the committee has had extensive hearings on this subject in the past. He stated his intent to move SB 369 from committee today and to ship it over to the House if the House bill does not get to the Senate soon. He then asked Mr. Blattmachr or Mr. Greer to explain the provisions of the bill.

MR. DOUG BLATTMACHR said that back in 1997 and 1998, a lot of trust legislation was passed by the Alaska Legislature, which had the disadvantage of going first. Other states have been able to improve on Alaska's legislation and make their legislation clearer. SB 369 will do four things:

- It gives statutory authorization for provisions that are commonly found in trusts;
- It cleans up a glitch or two in the present law;
- It adds three provisions found in the Delaware law;
- It clarifies what attorneys presently believe the law to be in statute.

MR. BLATTMACHR said the bill is basically a clean-up bill.

CHAIRMAN TAYLOR asked Mr. Blattmachr to stand by in case members had questions and then took public testimony.

MR. JON SHERWOOD, Division of Medical Assistance, Department of Health and Social Services (DHSS), expressed concern with a provision in SB 369 that may run afoul with another trust provision in statute. He explained that under the Medicaid eligibility rules, people with assets can qualify for Medicaid coverage by putting income or assets into a small class of trusts [a Miller trust]. As part of the criteria to qualify, the trust must provide that upon the death of the beneficiary, the state be reimbursed for the amount of Medicaid expenses or the corpus of the trust, whichever is smaller. DHSS is concerned that the state's ability to collect on these trusts might be affected by the provisions in SB 369 that authorize a trust protector to change or modify the distributions to beneficiaries. Since the legislation was enacted that created that class of trusts in about 1994, the state has collected on 61 trusts for an amount of about \$650,000. DHSS currently has about 200 trust cases open, in which Medicaid clients are still alive. He said that people who use these devices essentially impoverish themselves to get Medicaid. They typically have very high long term care needs or prescription drug costs that are not covered by Medicare.

MR. BLATTMACHR asked to clarify some confusion and explained the trust protector provision would only apply if the document authorized a trust protector and gave the trust protector that particular power. The Medicaid trusts would not have that provision, therefore SB 369 would have no affect.

MR. STEVE GREER asked to address a concern raised by the Attorney General's Office at a different hearing and stated, "What they're missing is the first three core words of the statute that says, 'A trust instrument may provide....'" Mr. Greer said that an attorney would be guilty of malpractice if he or she drew up a Miller trust with a trust protector provision.

CHAIRMAN TAYLOR said, "It wouldn't qualify, would it?"

MR. GREER said it would not. He said the issue is a red herring and has no viability at all.

MR. SHERWOOD said his agency would take the position that such a trust would not qualify but it is seeking clear statutory language because it has come into conflict with attorneys over the interpretation of trust laws. DHSS's decisions are subject to appeal to fair hearing in Superior Court.

MR. GREER informed members that he spoke with Una Gandbhir, an acknowledged expert on Medicaid trusts, and she was incredulous that this issue was raised by DHSS because it signifies that DHSS doesn't understand what a trust protector is. He noted a common example of a trust protector would be one in which he sets up an irrevocable trust for the benefit of his child. He then names a bank as the trustee of that trust. At some point in time, the bank may be inappropriate as the trustee, therefore, in the trust instrument, he could have given and named anyone who is not a beneficiary of the trust the power to remove and replace that trustee. If he did not have the trust protector provision in there, the beneficiary would be forced to go to court and undergo a costly and expensive court proceeding to get the trustee removed. He repeated that this provision has nothing to do with the Miller trust issue raised by DHSS. One would not have a trust protector provision in a Miller trust any more than one could have a Miller trust that was revocable.

CHAIRMAN TAYLOR agreed that one couldn't have either. He asked,

How would a trust qualify for the application, Mr. Sherwood, that they would be attempting to achieve, which is to put those assets in trust, let the income pay over - that's the way it works, right, to the state, and you then provide benefits because their income's too low during that period. Right?

He then asked if DHSS is reimbursed for certain costs it incurred after the person passes on.

MR. SHERWOOD said it is.

CHAIRMAN TAYLOR said if he set up an irrevocable trust, DHSS would not qualify him to receive benefits.

MR. SHERWOOD said that is correct and added that DHSS became aware of this provision yesterday. He stated,

You know, what I would be concerned about is that someone dies, the residual beneficiary after the state is also say, a disabled person with needs and someone might make the determination that that residual beneficiary would, you know, a trust protector could make that.

CHAIRMAN TAYLOR said DHSS cannot accept a trust protector either because that would violate the very intent of the trust that was set up to qualify for the benefits.

MR. SHERWOOD said DHSS would prefer "suspenders and a belt rather than having to go in and litigate."

CHAIRMAN TAYLOR said he planned to move the bill to the Senate Rules Committee because time is limited but that he did not expect further action to be taken on the bill for another week. He offered to work with Mr. Sherwood and the Attorney General's Office designee to draft an amendment if, in fact, a problem exists.

MR. SHERWOOD thanked Chairman Taylor.

SENATOR COWDERY moved SB 369 from committee with individual recommendations. There being no objections, the motion carried.
#

CHAIRMAN TAYLOR noted his third attempt to have a hearing with Arthur Robinson but, once again, the timing did not work out. He said he will try again and adjourned the meeting at 4:36 p.m.