

ALASKA STATE LEGISLATURE
SENATE LABOR & COMMERCE COMMITTEE

February 7, 2002
1:35 p.m.

MEMBERS PRESENT

Senator Ben Stevens, Chair
Senator Alan Austerman
Senator Loren Leman
Senator John Torgerson
Senator Bettye Davis

MEMBERS ABSENT

All Members Present

COMMITTEE CALENDAR

SENATE BILL NO. 244

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

MOVED CSSB 244 (L&C) OUT OF COMMITTEE

SENATE BILL NO. 257

"An Act extending the termination date of the Board of Professional Counselors."

MOVED CSSB 257 (L&C) OUT OF COMMITTEE

HOUSE CONCURRENT RESOLUTION NO. 12

Relating to the preservation of employment opportunities for United States longshoremen with respect to unloading and loading of foreign vessels.

MOVED HCR 12 OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

SB 244 - See Labor and Commerce minutes dated 1/31/02.

SB 257 - No previous action to consider.

HCR 12 - No previous action to consider.

WITNESS REGISTER

SENATE L&C COMMITTEE

-1-

February 7, 2002

Ms. Heather Brakes
Staff to Senator Therriault
State Capitol Bldg.
Juneau AK 99811

POSITION STATEMENT: Commented on SB 244 for sponsor.

Dr. Christianson, Chair
Board of Examiners and Opticians
Off net

POSITION STATEMENT: Supported CSSB 244 (L&C).

Ms. Deborah Grundmann
Staff to Senator Stevens
State Capitol Bldg.
Juneau AK 99811

POSITION STATEMENT: Commented on SB 257 for sponsor.

Ms. Catherine Reardon, Director
Division of Occupational Licensing
Department of Community and Economic Development
P.O. Box 110806
Juneau AK 99811

POSITION STATEMENT: Commented on SB 257.

Mr. Tim Benintendi
Staff to Representative Moses
State Capitol Bldg.
Juneau AK 99811

POSITION STATEMENT: Commented on HCR 12 for the sponsor.

Mr. Pete Hendrickson
Former President
Long Shore Union
Dutch Harbor AK

POSITION STATEMENT: Supported HCR 12.

ACTION NARRATIVE

TAPE 02-3, SIDE A

Number 001
#SB244

SB 244-OPTOMETRISTS: SUNSET AND MISCELLANEOUS

CHAIRMAN BEN STEVENS called the Senate Labor & Commerce Committee meeting to order at 1:35 p.m. and announced SB 244 to be up for consideration.

SENATOR AUSTERMAN moved to adopt CSSB 244 (L&C), 22-LS1267\C, There were no objections and it was so ordered.

MS. HEATHER BRAKES, Staff to Senator Therriault, Chairman of the Budget and Audit Committee and sponsor of SB 244, explained the changes in the committee substitute. Section 2 implements recommendation #4 of the Audit Report eliminating reference to the state exam and mandates an exam designed to test the applicants' knowledge of Alaska's law in optometry.

Section 3 addresses recommendation #2 of the Audit, implementing full licensure by credentials with requirements acceptable to the Board, such as education, current licensure, active clinical practice and no pending disciplinary actions in another jurisdiction.

Section 4 has no changes from the previous hearing.

She worked on this language with the Legislative Auditor, Director of Occupational Licensing and Dr. Christianson on the Board of Examiners and Optometry.

DR. CHRISTIANSON said the Board could live with this language.

SENATOR DAVIS moved to adopt amendment #1 which inserts: "The department may require the applicant to submit a photograph of the applicant for its files, however the photograph may not be forwarded with the application to the board for review."

SENATOR LEMAN commented:

I think we're making much ado about nothing...If someone comes into an office and interviews for a job, you see what they look like. You see a person. I don't know where the thought is coming from, that somebody has this idea and this amendment is sort of propagating it, that if we see what somebody looks like, then we might discriminate against them. Maybe because I don't think that way, I don't know why others are so concerned about it, but maybe this is a problem in the workplace. I don't know.

SENATOR DAVIS stated:

When we received this package, it was recommended that it not be in there at all. Upon your amendment, it was taken out. I feel that it should be changed. I was the only one that felt that it should have stayed the way it was and I was willing to bring back this amendment this way rather than do it somewhere else. Because I

see that there's nothing wrong with this going in there that way. I don't know if somebody is going to discriminate or not discriminate, but they could. And even though you might not feel that way doesn't mean that everybody else feels that way. I didn't say that you took it out because you were discriminating against. I felt that what you did was making an ado about nothing when you three men voted to take it out, but since I was in the minority, you had the vote; it came out. So, now I'm bringing it back in a different manner. You would still have a picture there so a person could be identified when they get ready to take the test. Somebody can identify who they are. I fill out applications all the time and nobody has asked me to give a picture. So, what's so good about having that stuck in here. Around the nation they're not doing it. The National Board does not recommend that that be in there. So we're doing something over and above what the National Board wants. I take exception to the fact that you would say that I'm making much ado about nothing, because I could say the very same thing when you made the motion last week.

SENATOR LEMAN responded: "You just proved my point."

CHAIRMAN STEVENS asked if there were any further objections. There were no objections and amendment #1 was adopted.

SENATOR AUSTERMAN moved to pass CSSB 244 (L&C) from committee with individual recommendations. There were no objections and it was so ordered.

#

#SB257

SB 257-EXTEND BOARD OF PROFESSIONAL COUNSELORS

MS. DEBORAH GRUNDMANN, Staff to Senator Stevens, said SB 257 extends the Board of Professional Counselors to June 30, 2005. The Legislative Budget and Audit Committee said their opinion is that the Professional Counselors are operating in an efficient and effective manner and should continue to regulate their profession. They also recommended that this board be combined with the Board of Marital and Family Therapists. This legislation does not do that, but it extends the sunset date to coincide with that of the marital and family therapists.

MS. GRUNDMANN explained that the proposed committee substitute addresses the education part of the statute that pertains to the professional counselors and was inserted in the House version of

the same bill.

SENATOR DAVIS moved to adopt the committee substitute to SB 257, 22 LS\1336\F. There were no objections and it was so ordered.

MS. GRUNDMANN said that page 2, line 11 adds "or nationally" and the Department wanted that. It makes that language consistent with "(B) regionally or nationally accredited".

CHAIRMAN STEVENS asked if it's a nationally accredited institute, isn't it redundant to say "regionally or nationally".

MS. CATHERINE REARDON, Director, Division of Occupational Licensing, replied that there are two different accrediting bodies - some are regional and some are national. The reason she was asking for this is the House opened up that section and it seemed like an easy way to bring it up. For the master's degree, the statute allowed the national accredited agrees, but there was a slip up in the initial legislation and "national" got left out.

The Department of Law told the Board that it would be on weak legal ground if it were to deny someone because they were nationally, not regionally, accredited.

SENATOR LEMAN supported this change.

SENATOR AUSTERMAN moved to pass CSSB 257 (L&C) from committee with individual recommendations and the fiscal note. There were no objections and it was so ordered.

#

#HCR12

HCR 12-FOREIGN SHIPS AND U.S. LONGSHOREMEN

CHAIRMAN STEVENS announced HCR 12 to be up for consideration.

MR. TIM BENINTENDI, Staff to Representative Moses, sponsor of HCR 12, said this resolution addresses a long-standing unresolved national labor issue which affects Alaskans whereby longshoremen stand idle while ships of foreign registry from countries not part of labor reciprocity agreements reflag their cargo vessels as they pull into Alaskan ports. The problem is especially acute in Dutch Harbor. The ships do this so that they can use their own, often unskilled and untrained, crews to load and unload the ships.

The reciprocity agreements and the exceptions to them and the enforcement activity and the practice of reflagging are supposed to be enforced by the State Department. The loopholes this is addressing skirt the intention of the U.S. law. HCR 12 would petition Congress and our State Department to close the loopholes

exploited by the reflagging activities.

SENATOR STEVENS asked where the ships would reflag before entering U.S. waters.

MR. BENINTENDI replied that we have agreements with some nations to use their labor when our ships are in their ports and we use our labor when their ships are in our ports and then there are countries that aren't part of these agreements. The problem is when there are ships from countries that aren't part of these agreements. As they approach a port, they simply reflag to be able to use their cheaper and less skilled labor. It saves them money and puts Alaskans out of work. When they pull out of port, they can literally take the flag down and run their own flag back up. He said this has been an issue for about 20 years.

CHAIRMAN STEVENS asked how much of the Bering Sea pollock that goes over seas is being loaded on the vessels that reflag before they enter U.S. waters.

MR. BENINTENDI replied that he didn't know for sure, but he thought it was most of our production.

SENATOR TORGERSON asked if this affects the three-mile limit and don't they load some of these boats a ways off-shore.

CHAIRMAN STEVENS replied that doesn't happen too much any more.

MR. BENINTENDI added that there is an Alaskan exception from 1993, which says the ships can use their own labor if there isn't sufficient local labor, but in Dutch Harbor labor is always available. The Alaskan exception is designed for small communities like Togiak where there are no longshore workers. This is not a problem there, but reflagging is being done in Dutch Harbor, Kodiak and Seward.

SENATOR TORGESRON asked why the city doesn't sign project labor agreements with the longshoremen.

MR. BENINTENDI said he didn't know why.

SENATOR TORGERSON asked if Dutch Harbor supported this resolution.

MR. BENINTENDI said yes. He explained that Mr. Pete Hendrickson, former President of the Longshoremen's Union in Dutch Harbor, is in Washington, D.C. visiting the Alaskan delegation on this issue. The unions, both regional and national, have participated exhaustively over the years on this issue.

MR. PETE HENDRICKSON said he is currently representing Longshore

workers throughout Alaska on the international executive board.

Over the last three years, a large number of foreign trampers visiting our waters to load seafood bound for Europe and Asia have been filing for the reciprocity exception to the Immigration and Nationality Act. They can then displace Alaskan longshore workers by using their own crewmembers to work cargo on the ship side of loading operations. This is accomplished by representing to the Immigration and Naturalization Service that their flag of registry and majority ownership are from countries that currently qualify for this exception. The most common registries do not qualify.

In virtually all cases, the vessels in question have changed their flag just prior to arrival in order to file for this exception, but the result has been the loss of thousands of hours of work for Alaskans and has resulted in loss of cargo and profits for those American companies and foreign vessels that do employ us, but cannot effectively compete against foreign labor.

We believe the reciprocity exception no longer serves any useful purpose for the United States since apparently no American seafarers do any loading elsewhere in the world any more anyway. As we have seen here in Alaska, all this does is provide a mechanism by which certain parties can exploit this exception in order to avoid Alaskan labor.

Further, in the early 1990s we were able to convince Congress to create what is known as the Alaska exception to the Immigration and Nationality Act, which provides for the loading work to be done by foreign crew if Alaskan longshore workers are unavailable. This guarantees that the work will always get done, which is critical to the fishing industry. Our congressional delegation was instrumental in accomplishing this and particularly Senator Stevens was involved in that effort then.

Therefore, we don't think the reciprocity exception should really apply to Alaska. The alternative, if we must live with this exception is to amend it so that application is more true to the original intent and it cannot be misused as it is today. In our view and exception is the best solution.

He said that he is in Washington D.C. talking with the U.S. Department of State and our congressional delegation about this growing problem. Alaska Department of Labor Commissioner Flanagan is also involved. "We think your support of our efforts to either exempt Alaska or revised the law will be instrumental to our success as we continue to work toward solution to what can only be called a scam.."

SENATOR TORGERSON said he thought flagging a vessel had to do with the country of registry. He asked if that was true.

MR. HENDRICKSON replied that he is correct, that the registry and flag are generally of the same country.

SENATOR TORGERSON asked how they could change their flag when they come into port.

MR. HENDRICKSON replied that vessels infrequently change registries and flags for various reasons, especially when they change ownership. It's common that a new owner may prefer a different flag. Most ships in the world don't fly the flag of the country where they are actually from. They fly a flag of convenience from another country, which has minimal safety, insurance and labor standards. That's why there are thousands of Panamanian flagged ships, even though they have never been to Panama.

SENATOR TORGERSON asked why we don't have labor agreements with the municipality that prohibits this activity.

MR. HENDRICKSON replied that might be a solution in one location, but the problem is bigger than that. In Dutch Harbor, for instance, the city dock is not the only dock where this takes place.

SENATOR TORGERSON asked if the other docks were private docks.

MR. HENDRICKSON replied yes, there are a number of private docks in Dutch Harbor and just one city dock.

SENATOR TORGERSON asked if one of the reasons the companies built their own docks was so they could do their own longshoring.

MR. HENRICKSON replied in some cases that might be true, but the Longshoremens' Union does work on a lot of them. He explained that a lot of the small companies have a small number of people working for them and loading ships often takes 10 - 18 people on a foreign vessel.

SENATOR LEMAN asked if reflagging is as simple as running another

flag up, is that consistent with international law and any protocols we have with other countries.

MR. HENDRICKSON answered that there is little that can be done about that.

But there is something in the U.N. Convention on the Law of the Sea about changing flags in mid-stream, but it isn't absolutely prohibited, nor has the United States ratified that convention. So, basically, we are high centered. It is technically legal to change your flag and you don't have to give a particular reason. I'm sure there's some cost associated with it, but I believe that the labor savings in these cases must somewhat exceed the cost of change of flag.

MR. BENINTENDI repeated the question of how much pollock destined for overseas actually goes out under this loophole.

MR. HENDRICKSON replied at least a third of the offshore side of the quota. The shore plants are more likely to be using Japanese or Korean vessels to take their product away from the shore plants. Japan and Korea don't have reciprocity and American longshore workers do that work.

CHAIRMAN STEVENS asked if this problem was mostly with the offshore fleet.

MR. HENDRICKSON replied yes. It's always the offshore product that is loaded by the foreign crews.

There were no further comments.

SENATOR DAVIS moved to pass HCR 12 from committee with individual recommendations. There were no objections and it was so ordered.
#

CHAIRMAN STEVENS adjourned the meeting at 2:07 p.m.