

ALASKA STATE LEGISLATURE
SENATE LABOR & COMMERCE COMMITTEE

April 11, 2002

1:37 pm

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

Confirmation Hearings

Alaska Board of Public Accountancy
Marjorie J. Kaiser - Anchorage
Steven R. Tarola - Homer
Sandra R. Wilson - Fairbanks
SCHEDULED BUT NOT HEARD

Alcoholic Beverage Control Board
Ellen L. Ganley - Fairbanks
SCHEDULED BUT NOT HEARD

State Board of Registration for Architects, Engineers and Land Surveyors
Linda Cyra-Korsgaard - Anchorage
Donald J. Iverson - Anchorage
Scott McLane - Soldotna
Patricia Peirsol - Fairbanks
SCHEDULED BUT NOT HEARD

Board of Barbers and Hairdressers
William R. Graf - Anchorage
SCHEDULED BUT NOT HEARD

Board of Chiropractic Examiners
Dr. Gregory M. Culbert - Eagle River
Dr. R. Clark Davis - Ketchikan
Dr. Carol J. Davis - Fairbanks

SCHEDULED BUT NOT HEARD

Alaska Labor Relations Agency
Roberta Demoski - Anchorage
Aaron T. Isaacs - Klawock
David D. Rasley - Fairbanks
Raymond P. Smith - Anchorage

CONFIRMATIONS ADVANCED

Board of Marine Pilots
Jack G. Poulson - Juneau

CONFIRMATION ADVANCED

Board of Certified Real Estate Appraisers
Judy Kemplen - Anchorage
Stephen F. Turner - Anchorage

CONFIRMATIONS ADVANCED

Real Estate Commission
Lowell T. Freeman - Anchorage
Jeannie Johnson - Douglas
Susan Rainey - Fairbanks

CONFIRMATIONS ADVANCED

Regulatory Commission of Alaska
Will Abbott - Anchorage

CONFIRMATION ADVANCED

Alaska Workers' Compensation Board
Dorothy Bradshaw - Fairbanks
John Giuchici - Fairbanks
Stephen T. Hagedorn - Anchorage
James N. Rhodes - Ketchikan
Phillip E. Ulmer - Eagle River
SCHEDULED BUT NOT HEARD

SENATE BILL NO. 309

"An Act relating to actions to quiet title to, eject a person from, or recover real property or the possession of it, and to acquisition of real property by adverse possession; and providing for an effective date."

MOVED CSSB 309(L&C) OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 480(STA)

"An Act providing that the death of an employee killed because of the employee's job status shall be considered an occupational death for purposes of survivor's pension benefits in the teachers' retirement system and the public employees' retirement system."

MOVED CSHB 480(STA) OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 355(CRA)

"An Act relating to the taxation of mobile telecommunications services by municipalities; and providing for an effective date."

MOVED CSHB 355(CRA) OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 128(L&C)(efd add)

"An Act relating to the required approval of the commissioner of labor and workforce development for the employment of certain minors; and providing for an effective date."

MOVED CSHB 128(L&C)(efd add) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

SB 309 - See Labor and Commerce minutes dated 3/5/02.

HB 480 - No previous action to consider.

HB 355 - No previous action to consider.

HB 128 - No previous action to consider.

WITNESS REGISTER

Mr. Joe Balash
Staff to Senator Therriault
State Capitol Bldg.
Juneau AK

POSITION STATEMENT: Commented on SB 309 for sponsor.

Mr. Ron Wolfe, Corporate Forester
Sealaska Corporation
One Sealaska Plaza
Juneau AK 99801

POSITION STATEMENT: Supported SB 309.

Mr. Jon Tillinghast
Counsel for Sealaska Corporation

One Sealaska Plaza
Juneau AK 99801

POSITION STATEMENT: Supported SB 309.

Mr. Bill Cummings
Assistant Attorney General representing the Department of
Transportation & Public Facilities
3132 Channel Dr.
Juneau, AK 99801-7898

POSITION STATEMENT: Opposed SB 309.

Representative Fred Dyson
State Capitol Bldg.
Juneau AK 99811

POSITION STATEMENT: Sponsor of HB 480.

Ms. May Erickson
Staff to Representative Murkowski
State Capitol Bldg.
Juneau AK 99811

POSITION STATEMENT: Commented on HB 355 for sponsor.

Mr. Darrell Bell
AT&T
No address provided

POSITION STATEMENT: Was available to answer question on HB 355.

Representative Rokeberg
State Capitol Bldg.
Juneau AK 99811

POSITION STATEMENT: Commented on HB 128 for Representative Ogan,
sponsor.

Ms. Rebecca Nance-Gamez, Deputy Commissioner
Department of Labor and Workforce Development
POB 21149
Juneau AK 99802-1149

POSITION STATEMENT: Supported HB 128.

Mr. Richard Mastriano, Director
Division of Labor Standards and Safety
Department of Labor and Workforce Development
POB 107021
Anchorage AK 99510-7021

POSITION STATEMENT: Commented on HB 128.

ACTION NARRATIVE

TAPE 02-20, SIDE A
Number 001

CHAIRMAN BEN STEVENS called the Senate Labor & Commerce Committee meeting to order at 1:37 pm and announced they would take up the confirmation hearings first. There were no objections to the nominees for the Alaska Labor Relations Agency, Board of Marine Pilots, Board of Certified Real Estate Appraisers, Real Estate Commission, Regulatory Commission of Alaska and their names were forwarded to the full body for consideration.

#SB309

SB 309-ADVERSE POSSESSION

CHAIRMAN STEVENS announced SB 309 to be up for consideration.

MR. JOE BALASH, staff to Senator Therriault, sponsor of SB 309, said that the Department of Law had some concerns at the last hearing and representatives from Sealaska Corporation have met with them, but were not able to resolve their differences. However, the Doyon Corporation sent a letter of support. Other corporations had been contacted and had no objections, but he had nothing more in writing.

MR. RON WOLFE, Corporate Forester, Sealaska Corporation, said:

I think the doctrine of adverse possession is one that is problematic for our corporation with the rural ownership that we have where survey boundaries have not been well established or may not be in existence yet. Land is interspersed with other land owners, such as the Forest Service, coastal areas and these sorts of things where someone could in essence squat on Sealaska land and it would be very difficult for us to police that and control that.

He said they contacted the Administration, but were unable to resolve differences. They have contacted other regional and ANCSA corporations and have learned of their support.

MR. JON TILLINGHAST, Counsel for Sealaska Corporation, added he had two phone calls with Mr. Cummings and unfortunately there is simply a philosophical disagreement between the state and his client on the extent to which the government ought to be taking private property without paying for it.

He thought the state overstates the impact in that he didn't believe there is a danger of the state losing any existing right-of-way or any existing rights to any existing right-of-way under this legislation because of the grandfather clause in section 4.

It protects any adverse possession rights that have vested before this law takes affect. It will grant the state that if this law were to pass, that if the state wishes to impose a right-of-way on a piece of private property in the future, they will have to pay the private property land owner for that right. The state thinks that that's a bad thing; we think that's a good thing.

MR. BILL CUMMINGS, Assistant Attorney General representing DOTPF, said that he did have conversations with Mr. Tillinghast over the last couple of weeks. He proposed that AS 9.10.030 be amended to lengthen the period to 15 years. In other words, you would have 15 years in which to go forward and deal with people who were "squatting on your land."

He would also like to delete sections 2 and 3 of the bill. He wanted to correct one apprehension that Mr. Tillinghast has about where the state is coming from. They are not talking about going out and building highways and deliberately imposing the state's facility on property. If the state builds a road that inadvertently goes on to private property and the property owner comes forward, the state has an obligation to pay. They are concerned where people make mistakes between private owners and the government. He gave them two examples from Southeast Alaska where public facilities weren't built where they were supposed to be. One of them is on the Haines Highway where the state had been since 1944 when the United States built the Haines Highway as part of the WWII effort. "Under this statute, the state wouldn't have been able to protect its investment over time on the Haines Highway and would have had to pay for it again."

The second example is a right-of-way out by Eagle River in Juneau where the Unites States in the 1930s built the road and tied into another road that allowed access to the Boy Scout camp at Eagle Beach. The road was built about 400 feet from where it was supposed to be and that was quite obviously a mistake. Without the statute as it's currently written, the public could have been dispossessed of that road. "In the context of DOT, what we're looking at here is an ability to correct mistakes and to prevent, as we illustrated in these two examples, an injustice from occurring."

Last time he testified he talked about a case called Veasey V. Green where a woman could have been dispossessed of her house, but because of the doctrine of adverse possession, she was able to keep it. He recommended, therefore, that the statute not be changed at all or if they want some relief granted, they could change AS 9.10.010 to a 15-year period and make the other

deletions in sections 2 and 3 and delete section 4(a).

SENATOR LEMAN said the last time they heard this, he flagged the change from 7 years to 20 years on page 2, line 6, and asked what was done with that.

REPRESENTATIVE ROKEBERG replied that 20 years was used because it is the longest period of time in any other state in the United States that this doctrine is used. Senator Therriault is not wedded to a particular number of years. He thought it should be bumped up a little bit from 7.

SENATOR LEMAN said he agreed, but he thought 20 years was a bit long unless they could come up with some good reasons for having it. He would like it changed to 10 years.

CHAIRMAN STEVENS noted that the brief in their packets shows the further west we go, the more the number shrinks. It started at 60 years and now it's down to seven.

MR. BALASH said he is correct. The historical explanation for that is that large land grants were given to the railroad corporations as they moved across the country. They were kind of sitting on the land and not getting it into productive use.

In Alaska we have large corporations such as Sealaska who are holding large tracts of land that don't necessarily need to be put into productive use to meet the original intent of granting the land to those corporations. They are holding them for cultural purposes and preserving land for the purposes of harvesting fish and game and things of that nature.

SENATOR LEMAN responded that section 2 has a fairly substantial list of things that someone is going to have to meet and he thought there was added protection there.

SENATOR LEMAN moved to amend 20 years to 10 years on page 2, line 6.

SENATOR DAVIS said she wanted to hear what Sealaska thought about changing it from 20 years to 10 years.

MR. TILLINGHAST said they didn't object to that amendment.

There were no objections and the amendment was adopted.

SENATOR LEMAN moved to pass CSSB 309(L&C) from committee with individual recommendations and the accompanying \$0 fiscal note. There were no objections and it was so ordered.

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#HB480

HB 480-DEATH/SURVIVOR BENEFITS IN PERS & TRS

CHAIRMAN STEVENS announced HB 480 to be up for consideration.

REPRESENTATIVE FRED DYSON, sponsor of HB 480, said that current state law says if somebody shoots you while you're on the job or on your official duties, your survivors will get significantly better benefits than if they shoot you while you're off the job. This bill extends it so if you are shot off the job, but because of the job, your survivors get the full benefits. He understands that the Administration has no objections and actually appreciates this getting fixed.

SENATOR LEMAN asked if a different effective date would require a title change resolution.

SENATOR DAVIS said yes. She moved to pass CSHB480 (STA) from committee with individual recommendations and \$0 fiscal note. There were no objections and it was so ordered.

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#HB355

HB 355-MOBILE TELECOMMUNICATIONS TAX

CHAIRMAN STEVENS announced HB 355 to be up for consideration.

MS. AMY ERICKSON, Staff to Representative Murkowski, said:

State and local governments tax mobile telecommunication services in a variety of ways. Because of the mobility of wireless equipment determining which state and local taxes apply can be very complicated. The process of determining where a transaction is taxable is commonly referred to as sourcing. In order to create a more uniform system for taxing wireless calls, Congress passed a Mobile Telecommunications Act in 2000. States now have until August 1 of this year to conform to the federal act and those states failing to conform will be preempted from imposing taxes on most calls made outside of where the customers' primary use occurs - those so-called roaming customers - to another jurisdiction.

HB 355 conforms state law to federal law to clarify that mobile telecommunications services are subject to taxation in the users' primary place of use, the residential or business address where the customers'

use of the mobile service primarily occurs. Passage will prevent multiple taxation and allow the state to appropriately tax wireless services and eliminate confusion as to where to tax the wireless calls. This bill does not impact the rate of taxes or fees that state and localities impose on the wireless calls or the types of calls subject to taxes. It's revenue neutral. Each jurisdiction with taxing authority will continue to determine to tax calls and at what rates.

The Mobile Telecommunications Sourcing Act was crafted by industries, state and local tax officials and is endorsed by such entities as the National Governor's Association, the League of Cities and the Federal Tax Administration.

MR. DARRELL BELL, AT&T, said he was available to answer questions.

CHAIRMAN STEVENS wanted to make sure that this bill clarifies that there is only one jurisdiction.

MS. ERICKSON explained further that if as a customer, she had established Anchorage as her home, that means she could "roam" to Seattle and Phoenix and Anchorage will always be able to tax her call. Conversely, we can't tax anyone making a call from here who lives in Seattle.

SENATOR LEMAN moved to pass CSHB 355(CRA) from committee with individual recommendations and the accompanying \$0 fiscal note. There were no objections and it was so ordered.

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#HB128

HB 128-APPROVAL FOR EMPLOYMENT OF MINORS

CHAIRMAN STEVENS announced HB 128 to be up for consideration.

REPRESENTATIVE ROKEBERG said he was pinch-hitting for Representative Scott Ogan, sponsor of HB 128. It lifts some of the restrictions in statute regarding agricultural workers. Currently, when a child 17 years of age seeks employment in this state, they not only have to have the approval of their parents, but they have to fill out an application that is transmitted to the Department of Labor where it needs to be approved. It has to be sent back to the employer before they can work. During the summer months when most teen employment occurs, this can be a slow process. If there are any questions with the application, it could be set aside for additional time. Although this is kind of an arbitrary requirement, in certain businesses there are

hazardous activities, which the Department of Labor has the responsibility to make sure that worker is protected (particularly under age workers). This bill provides for a pre-approval process where an employer can request the Department of Labor to come out and inspect the premises and prequalify job categories. The Department has to do that now anyhow. This bill is having them do it in advance. Then the parents can sign an approval form that can be faxed to the employer so the child can go to work on the same day.

2:10 pm

SENATOR LEMAN said the amendment benefits any employer from farming, fishing to fast food restaurants. He asked if this also applied to someone who wanted to hire someone who is under 17 to fish, as well.

REPRESENTATIVE ROKEBERG replied that he thought it applied to any job that the Department felt it needed to be involved in. That could be clarified.

SENATOR LEMAN said he was trying to determine current law for a child under 17 to work in a fishing operation.

REPRESENTATIVE ROKEBERG said he would have to defer to the Department to answer that.

MS. REBECCA NANCE-GAMEZ, Deputy Commissioner, Department of Labor and Workforce Development, said she wanted to briefly touch on the fiscal note, but Mr. Mostriano would address Senator Leman's question. She said that they worked closely with the sponsor and think they came up with a good product that would be mutually beneficial to the Department and to the employers around the state. The fiscal note is \$22,500, which basically goes to Legal Services, public notices and revising and reprinting posters and pamphlets.

MR. MOSTRIANO, Director, Labor Standards and Safety, said that those under the age of 17 can work in the fish industry with certain restrictions. On a fishing boat a 17 year old can work on the boat, but can't operate any of the hydraulic equipment or things like that. They would approve a work permit for a child to work as a cabin boy or deck hand of some sort. A 14 or 15 year old wouldn't be able to do that, because it would be considered hazardous.

SENATOR LEMAN said he has pictures of his family out on a boat and asked if there were exceptions for family operations.

MR. MOSTRIANO replied that there are. If you are a family-owned business, they do not require a work permit nor any approval from

the Department. If you owned a bar, they would not have problems with them having their child in the bar.

SENATOR LEMAN asked if someone outside the family who was under 16 could do that.

MR. MOSTRIANO replied that they wouldn't be allowed to do that because it is considered hazardous under the U.S. Department of Labor.

SENATOR LEMAN said there were a lot of kids working in the Bristol Bay fisheries and in Kodiak, etc. He asked if they are working illegally.

MR. MOSTRIANO replied yes.

CHAIRMAN STEVENS asked what the penalties are.

MR. MOSTRIANO replied that there is no penalty under our law, but it's a federal law and he didn't know what the penalty was. It depends on how many times it happens. The state has a Memorandum of Understanding with the U.S. Department of Labor that if we find a child working under hazardous situations, they are required to report that and they would go out and investigate. Sometimes the fines are \$3,000 or more.

SENATOR AUSTERMAN said that fiscal note analysis says the bill removes the preapproval requirements and yet they just heard testimony to the effect that it will make the preapproval requirements work better. He asked what changed.

MS. GAMEZ replied that it changes the preapproval requirements. In current law you would have to get preapproval before the child can go to work. Under the new law, an employer can approve an entire job class as opposed to the individual minor. She agreed that the language is confusing.

SENATOR AUSTERMAN asked if the bill removes the preapproval requirement.

MS. GAMEZ replied that it removes the preapproval requirement per individual and replaces it with classes of employment instead. For instance, if a farmer in the Mat-Su Valley wanted to hire some kids who are 16 to harvest produce, under the new law, they could fax a letter to Mr. Mastriano saying they were going to hire 15 kids and this was the type of work they would do prior to the harvest time.

MR. MASTRIANO explained they would tell the employer that this job is safe for a 14 or 15 year old or whatever and keep the employer out of harms way of having a hazardous order situation

where they could get penalized by the U.S. Department of Labor. His department would review the job and the equipment the prospective employees would be asked to use and any chemicals and tell the employer what age would be allowed to work that job.

CHAIRMAN STEVENS asked if an employer has to state the number of individuals he is going to hire under that approval.

MR. MASTRIANO replied that that was not quantified.

The thought was if you said we had a job to do burgers at McDonalds, we wouldn't care how many people. We would say that job could be done by a 14, 15, 16 or 17 year old. When we got the work permit, then we would know who would in fact - and you would have up to seven days according to the new law to submit the work permit.

CHAIRMAN STEVENS asked if these reviews had to be done annually.

MR. MASTRIANO replied that they wouldn't do that unless the job conditions change and then they would rely on the employer to tell them that. The work permits themselves are good for a year. If a child went to work at McDonalds at the age of 14, they could work until their 17th birthday and not have to have their work permit changed, because none of the job duties have changed. "This is a little more restrictive."

CHAIRMAN STEVENS asked why an annual renewal was recommended.

MR. MASTRIANO said that was worked out in committee.

REPRESENTATIVE ROKEBERG said that whole section was put in in committee.

CHAIRMAN STEVENS said he thought it was good policy to give them scope with the job permit, but it seems onerous for the employer to have an inspection every year.

MR. MASTRIANO responded that it would be up to the individual minor to get a new work permit yearly - not the employer.

SENATOR LEMAN asked about a 16 year old kid who wants to mow your lawn.

MR. MASTRIANO replied:

At your house it's fine, but if they come to your business to mow your lawn, the Department would probably consider them an independent contractor, which

means that they're exempt from the law. However, if you hire a 13 year old that cuts his Dad's lawn every day or every other day and you hire him to cut your lawn as part of your business, he has to be at least 16 years of age to do that.

SENATOR LEMAN commented that maybe this bill doesn't go quite far enough and they've exposed some things that may need further revision. "One thing I firmly believe is that we need to keep younger people busy and in the summer especially. The phrase, 'Idleness is the devil's workshop...'

MR. MASTRIANO said one of the things they have always tried to do is work with the employers and the kids.

TAPE 02-20, SIDE B

MR. MASTRIANO continued saying that in today's economy there are a lot of kids who really need to work.

It's our job to get them out into the workforce. It's also our job to protect them and that's the issue that I have to enforce on my folks...We don't want to put a child in a case where they're going to be injured or possibly killed. We have had two fatalities this year - 15 year olds working for their parents and that was one of the concerns that I expressed to Representative Rokeberg - is that parents don't always know what the hazardous [indisc.] are. So we would like to at least review some of the jobs that their kids are going to be working at, not necessarily for their parents, but in other industries. I agree that anything we can do to get kids out off the streets and productive workers, I'm in favor of that.

SENATOR LEMAN said he was glad to hear that and moved to pass CSHB 128(L&C)(efd add) out of committee with individual recommendations and the attached fiscal note. There were no objections and it was so ordered.

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CHAIRMAN STEVENS thanked everyone and adjourned the meeting at 2:25 pm.