

HOUSE FINANCE COMMITTEE
May 13, 2003
4:08 PM

TAPE HFC 03 - 90, Side A
TAPE HFC 03 - 90, Side B

CALL TO ORDER

Co-Chair Williams called the House Finance Committee meeting to order at 4:08 PM.

MEMBERS PRESENT

Representative John Harris, Co-Chair
Representative Bill Williams, Co-Chair
Representative Kevin Meyer, Vice-Chair
Representative Berkowitz
Representative Mike Chenault
Representative Richard Foster
Representative Mike Hawker
Representative Kerttula
Representative Carl Moses
Representative Bill Stoltze
Representative Jim Whitaker

MEMBERS ABSENT

No members were absent.

ALSO PRESENT

Representative Lesil McGuire; Joel Gilbertson, Commissioner, Department of Health & Social Services; Bob Labbe, Deputy Director, Department of Health and Social Services; Stacy Kraly, Department of Law; Vern Jones, Chief Procurement Officer, Department of Administration; Stacy Kraly, Assistant Attorney General, Department of Law; Scot Hawkins, Alaska Supply Chain Integrals.

PRESENT VIA TELECONFERENCE

There were no teleconference participants.

SUMMARY

HB 216 "An Act relating to municipal taxation of refined fuel products."

HB 216 was postponed.

HB 244 "An Act relating to the Code of Criminal Procedure; relating to defenses, affirmative defenses, and justifications to certain criminal

acts; relating to rights of prisoners after arrest; relating to discovery, immunity from prosecution, notice of defenses, admissibility of certain evidence, and right to representation in criminal proceedings; relating to sentencing, probation, and discretionary parole; amending Rule 16, Alaska Rules of Criminal Procedure, and Rules 404, 412, 609, and 803, Alaska Rules of Evidence; and providing for an effective date."

HB 244 was postponed.

HB 267 "An Act relating to the Alaska Railroad; authorizing the Alaska Railroad Corporation to provide financing for the acquisition, construction, improvement, maintenance, equipping, or operation of facilities for the transportation of natural gas resources within and outside the state by others; authorizing the Alaska Railroad Corporation to issue bonds to finance those facilities; and providing for an effective date."

HB 267 was postponed.

HB 313 "An Act authorizing a pilot program relating to state procurement and the use of electronic commerce tools; and providing for an effective date."

HB 313 was REPORTED out of Committee with no recommendation and with a new zero fiscal note by the Department of Administration.

SB 109 "An Act repealing the statute that sets priorities for the Department of Health and Social Services to apply to administration of the medical assistance program when there are insufficient funds allocated in the state budget for that program; authorizing the department to make cost containment decisions that may include decisions about eligibility of persons and availability of services under the medical assistance program; and providing for an effective date."

CSSB 109 (FIN) was REPORTED out of Committee with a "do pass" recommendation and with previously published fiscal note: #1 HSS.

CS SB 128(FIN) am

"An Act relating to licensing common carriers to dispense alcoholic beverages; and providing for an effective date."

CS SB 128(FIN) am was REPORTED out of Committee with a "do pass" recommendation and with previously published fiscal note: #2 REV.

#sb109

SENATE BILL NO. 109

"An Act repealing the statute that sets priorities for the Department of Health and Social Services to apply to administration of the medical assistance program when there are insufficient funds allocated in the state budget for that program; authorizing the department to make cost containment decisions that may include decisions about eligibility of persons and availability of services under the medical assistance program; and providing for an effective date."

Co-Chair Harris MOVED to ADOPT the Committee Substitute, Work Draft 23-GS1124\H. There being NO OBJECTION, it was so ordered.

JOEL GILBERTSON, COMMISSIONER, DEPARTMENT OF HEALTH & SOCIAL SERVICES, spoke in support of the legislation. He stressed that the legislation is needed for the Department to move forward in the prudent adoption of cost containment measures, which would allow it to meet the legislative mandate for fiscal accountability while minimizing the impact on Medicaid beneficiaries. Intent language was modified and is consistent with the Department's intent to develop a preferred drug list that is responsive to clinical evidence. It would also develop an authorization system, which would allow providers to prescribe drugs outside of the preferred drugs in each drug class. He observed that the Committee had held hearings on the House version of the bill.

Co-Chair Harris asked if the bill had been discussed with pharmaceutical companies. The Commissioner did not perform that duty.

Vice-Chair Meyer referred to line 2 of the intent language and asked if "all" was appropriate. Commissioner Gilbertson explained that the section clarifies that the drugs are Medicaid approved medications. This is a smaller subset than "all pharmaceutical products available for sale in the United States". The Medicaid program or Alaska's medical systems program does not necessarily cover a product simply because it is an approved pharmaceutical product. It would also need to be on the national negotiated fee rate system. Each drug company negotiates with the federal government to establish a nation drug rebate schedule for states that participate in the Medicaid Program. The Medicaid program at a state level does not cover a drug unless it has been approved at the federal level. He noted that drugs, which are specifically excluded from the Medicaid program, such

as abortion drugs, which are not under the federally approved program, cannot be prescribed.

Representative Kerttula MOVED Amendments #1: 23-GS1124\A.2. Co-Chair Williams OBJECTED. Representative Kerttula explained that Amendment 1 would address the delegation of authority issue. The amendment would force the Department to bring the list to the Governor so that budgetary decisions could be made. The Department would not be able to eliminate a group until all optional services were eliminated. The Legislative Affairs Agency's attorneys indicated that the bill might over delegate legislative.

Commissioner Gilbert stated that the Administration did not support the amendment. The amendment allows a new priority list to be set in statute a year in advance. He stressed that it would be more responsive to make the decision when the budget deficit in the Medicaid program is determined. He maintained that the list should be more ongoing to be more responsive. He indicated that the list would be created in response to current deficits, in order to achieve savings and minimize impacts. He observed that the amendment would require that all optional services be eliminated before an optional eligible group could be eliminated. He acknowledged that eligible individuals should be protected, but pointed out that the amendment would require that wheel chairs and prosthetics be eliminated before eligibility guidelines for higher earning individuals could be affected. He maintained that this was not feasible and harmful to recipients and stressed that the system is flawed.

Representative Kerttula noted that the amendment is geared toward providing the information with enough time to scrutinize decisions and address the delegation of authority.

STACY KRALY, ASSISTANT ATTORNEY GENERAL, DEPARTMENT OF LAW testified via teleconference. She stated that the Department of Law did not feel that the bill would create an indefensible delegation of authority. She noted that the central issue was whether the legislation would pass legislative authority on to an agency without any limitations on the implementation of the authority. She noted that there were a variety of state and federal limitations, which govern the Medicaid program. She concluded that the issues related to the Medicaid program prevented prioritizing to address budget shortfalls without addressing statutory and regulatory limitations. The legislation limits the discretion of the Department in regards to the implementation of cost containment measures. She asserted that the legislation is an appropriate delegation, providing an agency with a vary specific area of expertise the authority to administer a program.

Representative Kerttula asked if there is any law that would define the order in which cuts would occur. Ms. Kraly acknowledged that there is no companion list, but pointed out that there are limitations regarding the coverage of optional services. Individual determinations would occur, rather than a category of services. She stated that there was no list in federal or state law, but that there were limitations pertaining to individuals.

A roll call vote was taken on the motion.

IN FAVOR: Berkowitz, Kerttula, Moses
OPPOSED: Chenault, Hawker, Meyer, Harris, Williams

Representatives Foster, Stoltze and Whitaker were absent from the vote.

The MOTION FAILED (3-5).

Representative Kerttula MOVED Amendment #2. Co-Chair Williams OBJECTED.

Representative Kerttula stated that the amendment contains a notice provision, which would require the Department to notify individuals that are impacted at least 60 days before coverage would be denied by written notice.

Commissioner Gilbertson agreed that there should be notice provisions, but pointed out that there are already a host of notice requirements under the Medicaid program. There is a minimum 30 days public notice period and a minimum 30-day waiting period before the regulation change can occur. He estimated that it already takes 90 to 120 days for a change [in regulations] to occur. He stated that under federal law, participants have to receive a 10 ten day notice on adverse actions if service is denied, terminated, reduced or required. He concluded that federal law and state regulations addressed notice for changes in service.

Representative Berkowitz clarified that a 10-day notice is required [for the denial of service] and asked if there was a reason not to give more notice.

BOB LABBE, DEPUTY DIRECTOR, DEPARTMENT OF HEALTH AND SOCIAL SERVICES, pointed out that the participants would probably receive two notices. Individual case actions typically required a ten-day notice, but broad category changes generally received a longer notice. He reiterated the ten-day minimum under federal law.

Representative Berkowitz asserted that, in a rural state, ten days was not adequate. He stressed that people might not be contacted in time to make alternative arrangements.

He proposed that the state of Alaska be more courteous than the requirements under federal law

Commissioner Gilbertson responded that there are ample notice requirements under federal law and state regulations. The regulation process would take longer than sixty days. He pointed out that larger changes would require longer notice.

Representative Berkowitz asked the time frame for notifying impacted individuals. Mr. Labbe stated that individual cases were given a 10-day notice. General changes would have a minimum thirty-day notice. He added that regulation changes would be necessary. He speculated that a longer process might require [the Department to institute] larger reductions due to delay [in savings] and a lack of efficiency.

Representative Kerttula pointed out that a regulation notice was very different than a notice to the participant that they are losing a benefit. She observed that there was little information about the nature of notice received by individuals. She suggested that a written notice was easy enough, and maintained that a written notice would not be onerous.

A roll call vote was taken on the motion.

IN FAVOR: Berkowitz, Kerttula, Moses
OPPOSED: Foster, Stoltze, Hawker, Meyer, Harris,
Williams

Representatives Chenault and Whitaker were absent from the vote.

The MOTION FAILED (3-6).

Co-Chair Harris MOVED to report CSSB 109 (FIN) out of Committee with the accompanying fiscal note. Representative Kerttula OBJECTED.

A roll call vote was taken on the motion.

IN FAVOR: Berkowitz, Kerttula, Moses
OPPOSED: Foster, Stoltze, Hawker, Meyer, Harris,
Williams

Representatives Chenault and Whitaker were absent from the vote.

CSSB 109 (FIN) was REPORTED out of Committee with a "do pass" recommendation and with previously published fiscal note: #1 HSS.
#hb313

HOUSE BILL NO. 313

"An Act authorizing a pilot program relating to state procurement and the use of electronic commerce tools; and providing for an effective date."

REPRESENTATIVE LESIL MCGUIRE, SPONSOR spoke in support of HB 313. The legislation would look at the state of Alaska's procurement process. This is the overhead portion of government: buy and selling. The legislation would streamline procurement through e-commerce tools.

Vice-Chair Meyer asked the potential savings. Representative McGuire estimated that there would be between \$5 and \$20 million dollars in overall savings. The pilot program would start with two distinct departments and two distinct areas to see if the savings can be proved over a three-year period. She felt that the savings would be closer to \$20 million.

In response to a question by Vice-Chair Meyer, Representative McGuire stated that there is an Alaskan company, which is very advanced in procurement, particularly in the North Slope. She noted a Alaskan preference.

Vice-Chair Meyer expressed his support of the bill. He asked if the bill would follow Alaskan guidelines for hiring, for example in hiring veterans, etc. Representative McGuire responded that the selection of the out source company would be implemented under the existing procurement code. There is an exception for the pilot program to allow the commissioner of Administration as much flexibility as possible using the principle set out in the procurement code. She noted that British Petroleum (BP) has similar procurement policies. An on-line action was created [for BP] with their procurement policies.

Representative Hawker asked whether the sponsor would object to a friendly amendment requiring an annual report by the vendor. Representative McGuire stated that she would not object.

SCOT HAWKINS, ALASKA SUPPLY CHAIN INTEGRALS responded that the intention is to prove the concept and be able to expand it and demonstrate its value. A report would be inherent in the intent.

Representative Kerttula noted that the procurement did not actually fall under the Alaskan procurement code and asked why not. Representative McGuire noted discussions with the Administration about ways to provide the most flexibility, including purchase orders.

VERN JONESS, CHIEF PROCUREMENT OFFICER, DEPARTMENT OF ADMINISTRATION clarified that the selection of the original contractor, that would run the pilot, would be subject to the procurement code. The contractors in the pilot would not be subject to the code.

Representative Kerttula asked why the contractors in the pilot would not fall under the code. Mr. Jones stated that there was a recognition that the state procurement code was not designed with efficiency in mind. Parts of the procurement code are inefficient, entailing timelines that the private sector could not follow. He speculate that the intent of the bill was to take advantage of the efficiencies of the private sector and technologies and not to saddle the pilot with the inefficient and time consuming process of government.

Representative McGuire emphasized that e-commerce allows the financial authority to commit and revise purchase orders as an agent of the state. She maintained that for the pilot program to succeed, it must have the required flexibility. She stated that the challenge was to rewrite the entire procurement code or to allow a pilot program in a small area to go forward to see if it can work. She suggested that this may precipitate a change to the procurement code.

Representative Chenault observed that the fiscal note was zero and asked about the potential cost.

Mr. Jones noted that the note was zero since it involves an element of privatization. The idea is that the private sector is able to use cheaper labor, run a cheaper process and obtain cheaper goods and services. He noted that if the pilot did not result in a savings, it would be a failure.

Representative Chenault maintained that there would be some cost involved in putting on the program and asked to know what it is. Mr. Jones noted that there are a number of steps before the pilot can be implemented. The mix of goods and services purchased by various state agencies would have to be studied, along with current bids to select a study. A feasibility study would have to be conducted, per union bargaining agreements. He noted that that the feasibility study would enlighten the potential costs. He acknowledged that there would be a fee involved for the procurement, but stated that unless the program generated a savings, it would not be undertaken. Representative Chenault stressed that it would cost something to initiate a pilot program, whether or not the program was successful.

Mr. Hawkins noted experience in the private sector, and observed that companies generally worked within the

existing budget for a department and demonstrated their ability to reduce the budget for that activity. Regarding start up costs, he stated, that these costs would be integrated within the department's budget. He maintained that the funding was found within the savings. He noted that if savings were not realized, then the business would not be undertaken. In response to a question by Representative Chenault, Mr. Hawkins confirmed that if savings are not demonstrated, costs would not be incurred.

Vice-Chair Meyer observed that the intent is to use Alaskan services where possible. Mr. Hawkins agreed.

Representative Berkowitz spoke in support of the legislation. He observed that the two departments in which the pilot program would occur could be quite large, such as the Department of Transportation and Public Facilities or the Department of Health and Social Services. He suggested that if it were a pilot program it would be a C5 [procurement]. Representative McGuire responded that the chief procurement officer is working closely with the commissioner of Administration. They would examine the potential costs and determine where savings would be realized. She stated that the intent was to implement a mechanism for a feasibility study.

Mr. Jones stressed that there had not been any studies to target any agencies and noted that a division or office could be targeted. Organizational structures must be analyzed. He expressed the hope that a self-contained unit could be found to use as a test case.

TAPE HFC 03 - 90, Side B

Representative Berkowitz asked if it was possible to model the program. He asked if one could simply complete a comparison for the entire state procurement, rather than for two departments. Mr. Jones stated that the idea was to examine smaller portions of the administration, since there were great complexities and a wide variety of goods and services. He stated that a test case was desired before taking broad action. He pointed out that private firms had lower labor costs, and life cycle costs. He stressed that while a model would reflect potential benefit, it might not reflect a complete picture.

Representative Berkowitz referred to the procurement code, and pointed out that there were reasons that the government did not operate in the manner of the private sector. He expressed concern with deviations from the procurement code, and questioned if policy problems were considered in abandoning the code. Mr. Jones responded that this was the reason for a pilot program, to prevent widespread outsourcing. Policies and procedures for contractors need to

be developed; these may be more than that needed for private sector clients. There is a lot of due process. The intent is not to end up with a private sector contractor, which is operating in the same manner as the state.

Representative McGuire reiterated the commitment to Alaskan business. She recounted her experience with the Alaska Supply Company, and pointed out that procurement requirements could be programmed into the process. She emphasized that parts of the state procurement code would remain unchanged and could be programmed in.

Mr. Hawkins explained that the procurement code requires three quotes. He noted that the company could set up a mini marketplace of providers to create a "smart catalogue" of suppliers, chosen to compete on a regular basis. When procuring, the electronic system provides the best price from those providers on any given day. The electronic process would replace the need to get three quotes by telephone or mail. He pointed out that the code did not allow the same process to realize these savings. He noted that his company would not advocate choosing too large a pilot program. It is important that the pilot be successful and not overreach. The challenge is to right size the program.

Representative Stoltze referred to the current procurement code and the number of changes to it that have been necessary. He noted the advantage of technological advances.

Representative Berkowitz asked if any consideration was given to allowing state procurement offices to compete in the bidding process. Mr. Jones stated that this was not the intent of the bill, but the process did allow for counter proposals as part of the union bargaining process.

Representative Kerttula expressed concern with the potential amount to be expended without any sidebars. She asked how preferences of the procurement code might be maintained.

Mr. Jones speculated that any policies and procedures developed would be contained in a contract, which the contractor would be required to adhere to. The presumption of the bill is that the private sector can achieve savings, if it is not encumbered with governmental procedures. He acknowledged that there were many preferences that would be difficult to administer. He did not envision writing requirements substantially equivalent to the state system into the contract.

Representative Moses expressed concern that legislation was required to implement the pilot program. Representative

McGuire noted that in discussions with the Administration, it was decided that this was the proper avenue, since it proposed potentially large policy changes. She felt that, in a few years, they would be able to view preferences contained in the contract.

Representative Berkowitz MOVED to AMEND Page 2 line 8 of the bill to delete "with a person from the private sector".

Vice-Chair Meyer OBJECTED. Representative McGuire observed that [using the private sector] is the would of the bill. She clarified that partnerships would be included.

Representative Berkowitz explained that the private sector would not be precluded, but that it would allow cities and other entities to participate. Representative Moses suggested the use of "entity". Representative McGuire expressed opposition to the amendment.

Co-Chair Williams OBJECTED to the amendment.

A roll call vote was taken on the motion.

IN FAVOR: Berkowitz, Kerttula
OPPOSED: Chenault, Foster, Meyer, Moses, Stoltze,
Whitaker, Williams

Co-Chair Harris was absent from the vote.

The MOTION FAILED (2-8).

Representative Foster MOVED to report HB 313 out of Committee with the accompanying fiscal note NO OBJECTIONS

HB 313 was REPORTED out of Committee with no recommendation and with a new zero fiscal note by the Department of Administration.

#

ADJOURNMENT

The meeting was adjourned at 5:19 PM