

**ALASKA STATE LEGISLATURE
HOUSE STATE AFFAIRS STANDING COMMITTEE**

March 23, 2004

8:01 a.m.

MEMBERS PRESENT

Representative Bruce Weyhrauch, Chair
Representative Jim Holm, Vice Chair
Representative John Coghill
Representative Bob Lynn
Representative Paul Seaton
Representative Ethan Berkowitz
Representative Max Gruenberg

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 188

"An Act relating to the authority of the Department of Natural Resources to issue citations for certain skiing violations; relating to establishing a bail schedule for certain skiing violations and to procedures for issuing a citation for a skiing violation."

- MOVED HB 188 OUT OF COMMITTEE

CS FOR SENATE BILL NO. 201(HES)

"An Act relating to home care and respite care; and providing for an effective date."

- MOVED SB 201 OUT OF COMMITTEE

OVERVIEW: STATE/TRIBAL RELATIONS (SESSION ONE)

- HEARD [See the 8:48 a.m. minutes for this date]

PREVIOUS COMMITTEE ACTION

BILL: HB 188

SHORT TITLE: BAIL SCHEDULE FOR SKIING VIOLATION

SPONSOR(S): REPRESENTATIVE(S) HAWKER

03/12/03 (H) READ THE FIRST TIME - REFERRALS

03/12/03 (H) RES, STA
02/25/04 (H) RES AT 1:00 PM CAPITOL 124
02/25/04 (H) Moved Out of Committee
02/25/04 (H) MINUTE(RES)
02/26/04 (H) RES RPT 5DP 2NR 1AM
02/26/04 (H) DP: HEINZE, LYNN, KERTTULA, MASEK,
02/26/04 (H) DAHLSTROM; NR: STEPOVICH, GUTTENBERG;
02/26/04 (H) AM: GATTO
03/23/04 (H) STA AT 8:00 AM CAPITOL 102

BILL: SB 201

SHORT TITLE: HOME & RESPITE CARE: CRIMINAL RECORDS
SPONSOR(S): JUDICIARY

04/28/03 (S) READ THE FIRST TIME - REFERRALS
04/28/03 (S) STA, HES
05/15/03 (S) STA AT 3:30 PM BELTZ 211
05/15/03 (S) -- Meeting Postponed to 5/17/03 --
05/17/03 (S) STA RPT 3DP
05/17/03 (S) DP: STEVENS G, COWDERY, DYSON
05/17/03 (S) STA AT 11:30 AM FAHRENKAMP 203
05/17/03 (S) Moved Out of Committee
05/17/03 (S) MINUTE(STA)
02/04/04 (S) HES AT 1:30 PM BUTROVICH 205
02/04/04 (S) Moved CSSB 201(HES) Out of Committee
02/04/04 (S) MINUTE(HES)
02/06/04 (S) HES RPT CS 3DP 1NR SAME TITLE
02/06/04 (S) DP: DYSON, GREEN, WILKEN; NR: GUESS
03/02/04 (S) TRANSMITTED TO (H)
03/02/04 (S) VERSION: CSSB 201(HES)
03/03/04 (H) READ THE FIRST TIME - REFERRALS
03/03/04 (H) STA, HES
03/23/04 (H) STA AT 8:00 AM CAPITOL 102

WITNESS REGISTER

REPRESENTATIVE MIKE HAWKER

Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Testified as sponsor of HB 188.

LARRY DANIELS, General Manager

Alyeska Resort
Girdwood, Alaska

POSITION STATEMENT: Testified in support of HB 188.

MIKE SULLIVAN, Natural Resources Manager

Southcentral Region Office
Division of Mining, Land and Water
Department of Natural Resources (DNR)

POSITION STATEMENT: Testified on behalf of DNR during the hearing on HB 188.

BRIAN HOVE, Staff
to Senator Ralph Seekins
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented SB 201 on behalf of Senator Seekins, sponsor.

GERALD LUCKHAUPT, Attorney
Legislative Legal Counsel
Legislative Legal and Research Services

POSITION STATEMENT: Answered questions during the hearing on SB 201.

ACTION NARRATIVE

TAPE 04-42, SIDE A

Number 0001

CHAIR BRUCE WEYHRAUCH called the House State Affairs Standing Committee meeting to order at 8:01 a.m. Representatives Holm, Seaton, Berkowitz, and Weyhrauch were present at the call to order. Representatives Coghill, Lynn, and Gruenberg arrived as the meeting was in progress.

HB 188-BAIL SCHEDULE FOR SKIING VIOLATION

Number 0050

CHAIR WEYHRAUCH announced that the first order of business was HOUSE BILL NO. 188, "An Act relating to the authority of the Department of Natural Resources to issue citations for certain skiing violations; relating to establishing a bail schedule for certain skiing violations and to procedures for issuing a citation for a skiing violation."

Number 0096

REPRESENTATIVE MIKE HAWKER, Alaska State Legislature, as sponsor of HB 188, stated that HB 188 is legislation proposed to facilitate implementation of legislation that passed in approximately 1994, which he indicated was referred to as the

Alaska Ski Safety Act. That Act, he said, recognized Alaska's growing skiing facilities across the state and provided that individual skiers have some duties and responsibilities as they participate in the sport. It included facilities run by the state, as well as private enterprises that run downhill ski facilities. He said, "This is kind of ... the same thing as the Motor Vehicle Code for skiers."

REPRESENTATIVE HAWKER indicated that it was "contemplated" in the "original passage" of the [1994] bill to have the Alaska Supreme Court prepare a bail schedule for the violations contained in the Ski Safety Act. The bail schedule, he explained, would be the schedule of fines to be paid for violations of provisions of the Act. He said the violations are those that were considered the most egregious and merited a fine. [The list of violations can be found on the third page of Representative Hawker's sectional analysis, which is included in the committee packet.] He stated that the reason for HB 188 is to ask the legislature's assistance in implementing the bail schedule that was "contemplated in that Act."

Number 0355

REPRESENTATIVE HAWKER turned to a letter, dated August 16, 1995, from the Alaska Supreme Court's Office of the Administrative Director and signed by Susan Miller, Office of Special Projects. The letter states that the court declined to prepare the bail schedule contemplated under the Ski Safety Act because "there is no clear authorization in the statute for such a schedule." He told the committee that he has spoken with people who were involved in the crafting of the Ski Safety Act who believe that the Act did provide that authority. He indicated that legislative statutes are often not interpreted the same by those in the legal system.

Number 0450

CHAIR WEYHRAUCH said it's puzzling that it has taken eight years to come up with a bill to clarify the 1995 letter.

REPRESENTATIVE HAWKER noted that [similar] legislation has made it through the House before getting "lost in the shuffle at the end of a session." He indicated that his interest is due to his own involvement in representing Alyeska [Resort], as well as the fact that one of his staff member's family runs Juneau's Eagle Crest. He said, "It's definitely a priority bill for our district."

Number 0509

REPRESENTATIVE GRUENBERG turned to his two-page handout regarding statutes [included in the committee packet]. He noted that there would only be a few statutes that would be the subject of violations. He said a violation is basically a traffic ticket for a skiing accident. He posited that there are other things in the Act that ought to be considered as violations and, thus, considered in the bail schedule. Referring to Section 05.45.100, on page 2 of his handout, he turned to subsections (b), (d), (e), and (f), which read as follows (original punctuation provided):

(b) A skier has the duty to maintain control of the skier's speed and course at all times when skiing and to maintain a proper lookout so as to be able to avoid other skiers and objects. However, a person skiing downhill has the primary duty to avoid collision with a person or object below the skier.

(d) A skier shall stay clear of snow grooming equipment, vehicles, lift towers, signs, and other equipment on the ski slopes and trails.

(e) A skier has the duty to heed all posted information and other warnings and to refrain from acting in a manner that may cause or contribute to the injury of the skier or others. Evidence that the signs required by AS 05.45.050 and 05.45.060 were present, visible, and readable at the beginning of a given day creates a presumption that all skiers using the ski area on that day have seen and understood the signs.

(f) Before beginning to ski from a stationary position or before entering a ski slope or trail from the side, a skier has the duty to avoid moving skiers already on the ski slope or trail.

REPRESENTATIVE GRUENBERG noted that the first sentence of subsection (b) is a basic speed law, while the second sentence is a basic right-of-way. He noted that (d) and (f) are also right-of-way positions.

Number 0585

REPRESENTATIVE GRUENBERG suggested considering those subsections as violations that would require a bail schedule. He turned to the first page of his handout, and pointed out Section 05.45.070, subsections (a), (b), and (c), which read as follows:

Sec. 05.45.070. Other duties of ski area operators.

(a) A ski area operator shall equip a motorized snow-grooming vehicle with a light visible at any time the vehicle is moving on or in the vicinity of a ski slope or trail.

(b) When maintenance equipment is being employed to maintain or groom a ski slope or trail while the ski slope or trail is open to the public, the ski area operator shall place a conspicuous notice regarding the maintenance or grooming at or near the top of that ski slope or trail.

(c) A motor vehicle operated on the ski slope or trails of a ski area shall be equipped with at least

(1) one lighted head lamp;

(2) one lighted red tail lamp;

(3) a brake system maintained in operable condition; and

(4) a fluorescent flag at least 40 square inches mounted at least six feet above the bottom of the tracks.

Number 0700

REPRESENTATIVE GRUENBERG said, "I was wondering what the sponsor would think about amending those provisions, lines 6 and 11 to page 1, and line 1 on page 2, to include those (indisc. - paper shuffling)."

Number 0720

REPRESENTATIVE HAWKER responded that although there is merit to Representative Gruenberg's suggestions, the intent of HB 188 is specifically not to rewrite the Ski Safety Act, which had a full and complete hearing. He reiterated that HB 188 is only intended to direct the supreme court to establish the originally intended bail schedule.

Number 0765

CHAIR WEYHRAUCH said he would like to keep [HB 188] "a little bill in a little package" and address the issue raised by the court.

Number 0780

LARRY DANIELS, General Manager, Alyeska Resort, asked the committee to pass the proposed legislation. He said it would be "a tool in our quiver" that would give the state an opportunity to "provide an additional incentive for the most egregious of violators." He indicated some people think "that we would be standing down here with our ticket books out and writing them to ... a large number of people." He said that would not be the case. He noted that, currently, the option exists to write a \$50-dollar ticket and only one or two of them are written a year. He assured the committee that "this is not something that would be a revenue source for the state." He offered to answer questions from the committee. He noted that his mountain manager, Dave Wilson, was also available to testify [via teleconference].

Number 0950

MIKE SULLIVAN, Natural Resources Manager, Southcentral Region Office, Division of Mining, Land and Water, Department of Natural Resources (DNR), testified. In response to a question from Representative Holm, regarding whether he anticipates [needing] state employees to write tickets, he said [writing tickets] is something that has been done for a number of years on a limited basis. He continued as follows:

We don't anticipate it's going to be a huge increase in workload, and we've always viewed our relationship with Alyeska and the other ski areas as kind of a partnership, as it's a sharing of public and private land. And we kind of wanted to support them, and we believe this is an important thing to pursue. So, the relatively small amount of time that it would occupy, I don't believe is a major impact.

REPRESENTATIVE HOLM asked how many cases of egregious activity throughout the state Mr. Sullivan has noticed in the last year.

MR. SULLIVAN estimated that only a few [cases occur] per year. He mentioned using "parks authority" and currently being able to write tickets for out-of-bound skiing. He indicated that

"adding a couple ... more offenses" wouldn't significantly change the numbers.

Number 1048

REPRESENTATIVE HAWKER brought to the committee's attention that there are two zero fiscal notes attached to the bill, from both the Alaska Court System and the Department of Natural Resources. He clarified that the bail schedule would allow the [Alaska] Supreme Court to increase the "specific issues" to above the current \$50-dollar amount allowed. It would have a zero net effect on "work and labor involved."

Number 1063

REPRESENTATIVE SEATON asked if the bill covers cross country skiing as well as downhill skiing.

REPRESENTATIVE HAWKER replied that the legislation specifically addresses organized ski areas, which would include all activities in those areas.

REPRESENTATIVE SEATON asked if that would mean that a person cross-country skiing off of a groomed trail would be liable for a penalty.

REPRESENTATIVE HAWKER indicated that there is a huge amount of space in an organized ski area. He said, "Just because you step off of a groomed trail in a park is not going to be an issue here." He clarified, "It is intended to be in those areas in which organized activity is being conducted."

REPRESENTATIVE SEATON responded that he just wanted to get that on the record.

Number 1130

REPRESENTATIVE HOLM stated he thinks [HB 188] seems to be "a bill ... for common sense." He opined that it is kind of strange to fine somebody because they might run into something. He said, "Everything I see in here says to me that we've stepped over the bounds, where we're going to say, 'We're going to go ahead and write policy against ... stupidity.'" He said it really bothers him.

Number 1185

REPRESENTATIVE HAWKER suggested looking to the motor vehicle code as a parallel, which he said accomplishes two things beyond "dealing with stupid people." He characterized the bill as addressing [bad] behavior in a positive manner. He said from an industry prospective, providing these guidelines facilitates the development of a vital tourist industry in the state, and the [dangerous] behaviors are viewed as a risk assessment by potential investors and insurance companies. Those insurance companies, he said, are looking for some statutory guide or authority that shows that there will be some responsible management that protects the people involved and gives investors the ability to protect their investment.

Number 1270

REPRESENTATIVE HOLM responded that this is not an issue that he wants to debate. However, he stated that he can't imagine that the legislature needs to be adding policy that makes business take care of itself. He said he thinks that the way these businesses are run should be for their own safety and ability to buy insurance, not based upon whether or not the State of Alaska has the right to (indisc. - coughing). He said he has a business and he is not sure he wants the State of Alaska to say, [for example], that if someone were to use a pesticide he sells and kill a plant there would have to be some penalty that would be imposed upon them because they misused something they purchased from him or "did something on their own."

Number 1319

REPRESENTATIVE BERKOWITZ stated, "We have the rule of law in order the write down the codes of conduct." He said he understands Representative Holm's point; however, "We've already written volumes of statutes that have asked that point." He asked, "Who's going to enforce these?"

Number 1337

REPRESENTATIVE HAWKER said a representative from DNR could best answer that. Notwithstanding that, he said the employees of the state-operated or privately operated [ski] areas have the authority to propose a citation. That citation would be forwarded to the department, where that "application" for a citation would be reviewed. The citation itself would be issued out of the state department, he explained.

REPRESENTATIVE BERKOWITZ stated that that is the most problematic aspect - having private citizens acting as law enforcement, even if it has to go through a vetting process. He suggested that a way around that may be to endow the private ski operators the ability to enforce their own code of conduct, which might be to subject certain fines. In many ways, he said, it would take the state out of the business.

Number 1397

REPRESENTATIVE SEATON turned to page 1, line 11 and 12 and pointed to the language that was removed, which read, "[OVER WHICH THE STATE HAS JURISDICTION]". He said it's almost like saying the motor vehicle code would be enforced on private property. He asked, "Is that the significance of this, ... that ... even though we don't have state jurisdiction over an area, we'll apply the law to that area?"

Number 1420

REPRESENTATIVE HAWKER said that, in talking with those who "originally worked on this bill," the intent of that particular language was simply to define the difference between lands that are controlled and all other lands. He said the state has jurisdiction over state-owned lands, as well as having jurisdiction over activities occurring on private property. He said it had been pointed out that it could be interpreted as meaning only state-owned and -operated ski facilities, when clearly the intention is for it to include those privately operated facilities. Many of those [private] facilities involve lands that are leased from the state. He concluded, "That's why that simple clarification was being made."

MR. SULLIVAN addressed the previously stated question regarding a ski operator with the authority to enforce the violation as opposed to giving the citation and having it referred to [DNR]. He explained that, currently, [DNR] gets fairly detailed reports from ski patrollers who witness the activities. He said the department doesn't lightly make decisions to issue the citations and discusses the matter directly with the ski patrol. He said this method has worked fairly well over the last approximately ten years the department has been doing this.

Number 1521

REPRESENTATIVE GRUENBERG mentioned some ski areas that are owned by a municipality. Looking at Section 1 of the bill, he noted

that the only people who are, under current law, authorized to issue citations are the commissioner of DNR, a person designated by the ski area operator, who's authorized by the commissioner, or an employee of DNR. He suggested that a municipal official should be added to that list to be authorized to issue citations in municipal ski areas.

REPRESENTATIVE HAWKER responded that if it was appropriate, the municipal official may be the person designated by the area operator to manage the process. He said, "I believe that's adequately contemplated in existing statute."

Number 1626

CHAIR WEYHRAUCH indicated that he thinks the bail schedule is the main focus of the bill.

REPRESENTATIVE HAWKER asked that the committee not expand the scope of the bill.

Number 1640

CHAIR WEYHRAUCH closed public testimony and asked for a motion on the bill.

Number 1650

REPRESENTATIVE SEATON moved to report HB 188 out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HB 188 was reported out of the House State Affairs Standing Committee.

The committee took a brief at-ease.

SB 201-HOME & RESPITE CARE: CRIMINAL RECORDS

Number 1700

CHAIR WEYHRAUCH announced that the next order of business was CS FOR SENATE BILL NO. 201(HES), "An Act relating to home care and respite care; and providing for an effective date."

Number 1710

[AN UNIDENTIFIED SPEAKER moved to adopt CSSB 201(HES) as a work draft.]

CHAIR WEYHRAUCH objected for discussion purposes.

Number 1725

BRIAN HOVE, Staff to Senator Ralph Seekins, Alaska State Legislature, presented SB 201 on behalf of Senator Seekins, sponsor. He turned to the sponsor statement, which read as follows [original punctuation provided]:

Senate Bill 201 corrects errors identified by the Revisor of Statutes in Chapters 45 and 118, SLA 1994.

Specifically, Chapter 45 enacted various provisions containing a reference to a section that at the same time was repealed by Section 4 of Chapter 118. The section in question was former AS 12.62.035, relating to access to certain crime information. As a consequence of the enactment of these two bills, various sections contain a reference to something that no longer exists.

Senate Bill 201 corrects this error by replacing the repealed information with criminal history record information permitted by "Public Law 105-277 and Alaska Statute 12.62".

Number 1749

CHAIR WEYHRAUCH asked, "Why wasn't this in the revisor's bill."

MR. HOVE offered his understanding that the revisor thought that the change [proposed in SB 201] was substantive and warranted a stand-alone vehicle rather than be "rolled into a revisor's bill."

Number 1811

REPRESENTATIVE GRUENBERG pointed to a handout [in the committee packet, entitled "Federal Statutes Authorizing Criminal Background Checks for Nursing Facility Job Applicants and Employees"]. He then turned to the memorandum to Senator Robin Taylor from [Assistant Revisor] James Crawford, [dated December 18, 2002 and included in the committee packet]. In the fifth paragraph, he noted, the term "criminal justice information" is used, as opposed to "history record information". He also noted that in the next paragraph, the term "past conviction information" was used. He asked why that term was used rather

than "criminal justice information." He said the memorandum seems to state that "criminal justice information" would include the terms of sentences and information of conviction and would perhaps be more appropriate.

MR. HOVE deferred the question to Mr. Luckhaupt.

Number 1900

GERALD LUCKHAUPT, Attorney, Legislative Legal Counsel, Legislative Legal and Research Services, indicated that Mr. Crawford was pointing out that there are various alternatives. He said, "This could be a judgment that the legislature should be making as to what term to use." He continued as follows:

The criminal justice information term is not one that we usually use for ... any employment screening for noncriminal justice purposes. The term we use is "criminal history record information." As you may know, there are a lot of times people are arrested and nothing ever comes of that arrest. And so, for the most part, ... that information is usually not available to employers where the legislature has chosen to give out that information.

Where we have chosen to give out information is using the term "criminal history record information," which means a record of conviction. It includes current offender information and current arrests that are out there. Criminal history record information also includes identification information - you know, a photo or something so they can identify that this person is who they are.

... In Alaska, the way we use that term - and also the feds for that matter - ... you limit access to correctional information and the record of how the person did in a penitentiary and things like that; you don't allow that out to the public.

Number 1995

REPRESENTATIVE BERKOWITZ read from a one-page handout [included in the committee packet, labeled "SB 201 - Notes for the record"], which read [original punctuation provided, but some formatting changed]:

Criminal justice information provided under AS 12.62 is generally limited to the information that may be released under 12.62.160(b)(8) and (9).

AS 12.62.160(b): Subject to the requirements of this section, and except as otherwise limited or prohibited by other provision of law or court rule, criminal justice information

(8) may be provided to a person for any purpose, except that information may not be released if the information is nonconviction information or correctional treatment information;

(9) including information relating to a serious offence, may be provided to an interested person if the information is requested for the purpose of determining whether to grant a person supervisory or disciplinary power over a minor or dependent adult.

"interested person" means a person as defined in AS 01.10.060 that employs, appoints, or permits a person to serve with or without compensation in a position [sic] in which the employed, appointed, or permitted person has or would have supervisory or disciplinary power over a minor or dependent adult." AS 12.62.900(18).

REPRESENTATIVE BERKOWITZ stated, "In essence, ... you can't release information if it's nonconviction information or correctional treatment information." He said he thinks those are the most relevant factors for [the legislature] to consider. He said, "To try and modify the proposed language in the proposed bill is a huge, huge effort; it connects to all kinds of other statutes and, cumbersome that it might be, this is probably the simplest way of addressing the issue." Representative Berkowitz suggested that the aforementioned handout could be incorporated into a letter of intent that would accompany the bill.

Number 2029

REPRESENTATIVE GRUENBERG said he wants to know why it's "limited to information under PL 105-277, rather than also including the National Child Protection Act of 1993, and possibly Public Law 92-544."

[SB 201 was held until later the same day.]

Number 2035

The House State Affairs Standing Committee took an at-ease at 8:40 a.m. in order to prepare for the overview. [For the overview regarding Tribal/State Relations, see the 8:48 a.m. minutes for this date.]

CHAIR WEYHRAUCH reconvened the House State Affairs Standing Committee meeting at 10:07 a.m. following the overview. Present were Representatives Seaton, Holm, Lynn, Coghill, Berkowitz, and Weyhrauch.

SB 201-HOME & RESPITE CARE: CRIMINAL RECORDS

TAPE 04-43, SIDE A

Number 0001

CHAIR WEYHRAUCH announced that the committee would return to CS FOR SENATE BILL NO. 201(HES), "An Act relating to home care and respite care; and providing for an effective date."

Number 0015

REPRESENTATIVE BERKOWITZ moved to report CSSB 201(HES) out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSSB 201(HES) was reported out of the House State Affairs Standing Committee.

ADJOURNMENT

Number 0033

There being no further business before the committee, the House State Affairs Standing Committee meeting was adjourned at 10:08 a.m.