

MINUTES
SENATE FINANCE COMMITTEE
April 16, 2004
9:09 AM

TAPES

SFC-04 # 84, Side A
SFC 04 # 84, Side B

CALL TO ORDER

Vice-Chair Con Bunde convened the meeting at approximately 9:09 AM.

PRESENT

Senator Con Bunde, Vice Chair
Senator Ben Stevens
Senator Lyman Hoffman
Senator Donny Olson
Senator Fred Dyson

Also Attending: JANE ALBERTS, Staff to Senator Bunde; TOM BOUTIN, Deputy Commissioner, Department of Revenue; RACHEL LEWIS, Unclaimed Property Administrator, Treasury Division, Department of Revenue; CINDY CASHEN, victim of drunk driving, and Executive Director, Mothers Against Drunk Driving, Juneau Chapter;

Attending via Teleconference: From an offnet location: PATTY OLMSTEAD, certified speech language pathologist and Alaska resident; From Anchorage: NANCY LOVERING, President, Alaska Speech and Hearing Association, and speech language pathologists in private practice; MARY ELLEN BEARDSLEY, Assistant Attorney General, Commercial/Fair Business Section, Civil Division, Department of Law; From Mat-Su: LAURA YOUNG CAMPBELL, Alaska Speech and Hearing Association, and licensed speech language pathologist in the Mat-Su school system;

SUMMARY INFORMATION

SB 365-SPEECH-LANGUAGE PATHOLOGIST ASSISTANTS

The Committee heard from the sponsor and speech pathologists. A committee substitute was adopted and the bill was reported from Committee.

SB 231-DECREASE TIME TO CLAIM UNCLAIMED PROPERTY

The Committee heard from the Department of Revenue and the Department of Law. An amendment was considered but no action was taken. The bill was held in Committee.

SB 170-CRIMINAL LAW/SENTENCING/ PROBATION/PAROLE

The Committee heard from the Department of Law. The bill was reported from Committee.

#SB365

SENATE BILL NO. 365

"An Act relating to the regulation of speech-language pathologist assistants; and providing for an effective date."

This was the first hearing for this bill in the Senate Finance Committee.

JANE ALBERTS, Staff to Senator Bunde, testified the Senate Labor and Commerce Committee sponsored this bill on behalf of Alaskan speech pathologists. She told about the current shortage of qualified speech language pathologists in Alaska. This bill, she stated would provide for credentials and authority to speech language pathologist assistants to administer specific services. She defined speech language pathologist assistants as having completed certain coursework and clinical training, and could perform tasks prescribed, directed and supervised by licensed certified speech language pathologists. She gave examples of the duties the assistants would undertake, including preparing materials and performing clerical duties associated with case management. She stressed the assistant is not intended to replace the pathologists but rather extend services. She reported on significant changes in recent years in the field of speech language pathology in the manner in which services are delivered, such as health care finance reform, public school workloads, technological advances and expanded scope of practices. She noted the pathologists are licensed through Department of Community and Economic Development.

Ms. Alberts stated this bill would mandate that assistants be regulated and supervised to ensure the consumer is receiving appropriate speech language services.

Ms. Alberts predicted this program would increase availability of services while maintaining quality. She pointed out this program

may be the only way that services could be received in rural Alaska.

Senator Bunde asked how one would become an assistant.

Ms. Alberts told of the training program underway and the approximate 30 students enrolled. She expressed intent that these assistants would be utilized in rural communities.

Senator Bunde clarified that the University operates the training program and supports this legislation.

Ms. Alberts affirmed.

Senator Olson asked the number of speech language pathologists in the State and the number of assistants that would be employed.

Ms. Alberts deferred.

Senator Bunde pointed out that assistants are not currently licensed and recognized.

Senator Bunde disclosed he had worked as a speech language pathologist, although he has no intention to return to the profession.

PATTY OLMSTEAD, certified speech language pathologist and Alaska resident, testified via teleconference from an offnet location from the American Speech Language Hearing Office in Washington DC in support of this bill. She informed that approximately 235 audiologist and speech language pathologists practice in Alaska, primarily in schools located in larger communities. She spoke to the benefits of providing education to Alaskans to perform this work.

Senator Olson asked the prerequisites for the assistance-training program.

Ms. Olmstead replied that the majority of students in the training program have at least a high school education, and that most are studying for an Associates of Arts degree.

Senator Olson asked how this compares to the educational prerequisites for speech language pathologists.

Ms. Olmstead answered that speech language pathologists are required to have a Bachelors degree, a Masters degree and one-year clinical fellowship. She furthered that a national examination is

required to become certified.

NANCY LOVERING, President, Alaska Speech and Hearing Association, and speech language pathologist in private practice, testified via teleconference from Anchorage that most of the students in the Associates of Arts degree speech language assistance program attend Prince William Sound Community College or the University of Alaska-Anchorage. While the assistance would not qualify as replacements for speech language pathologists, she noted the position would supplement the efforts of the pathologists. She surmised that clients would advance further with the aid of the assistants.

LAURA YOUNG CAMPBELL, Alaska Speech and Hearing Association, and licensed speech language pathologist in the Mat-Su school system, testified via teleconference from Mat-Su about the largest need for speech therapy services in schools, especially given the shortage of teachers. She stated the assistant program would allow for more individualized treatment for students using programs she, as a pathologist develops. She furthered that use of assistance would provide her more time to complete paperwork, including that required for the federal No Child Left Behind program. She noted this bill outlines the supervision that assistants would receive. She spoke to the positive impacts on students able to complete their treatment plan in a shorter period of time, which would also cost less to implement.

Senator B. Stevens offered a motion to report the bill from Committee.

Senator B. Stevens removed his motion.

Senator B. Stevens moved to adopt CS SB 365, 23-LS0540\Q as a working document.

Without objection the committee substitute was ADOPTED.

Senator B. Stevens offered a motion to report CS SB 365, 23-LS0540\Q from Committee with individual recommendations and accompanying fiscal note.

There was no objection and CS SB 365 (FIN) MOVED from Committee with fiscal note #1 for \$800 from the Department of Community and Economic Development.

#SB231

CS FOR SENATE BILL NO. 231(STA)

"An Act relating to unclaimed property; and providing for an

effective date."

This was the first hearing for this bill in the Senate Finance Committee.

TOM BOUTIN, Deputy Commissioner, Department of Revenue, testified this bill would change the Alaska Uniform Unclaimed Property Act to generally comply with other regulations in the nation governing unclaimed property. He specified that this bill would shorten time periods after which ownership of unclaimed property would be transferred to the State.

RACHEL LEWIS, Unclaimed Property Administrator, Treasury Division, Department of Revenue, testified this bill would reduce the "dormancy periods" of unclaimed property. She overviewed that the amount of time before which unclaimed property would transfer to State ownership would change from either five years to three years or seven years to five years. She surmised this legislation would improve chances of locating the owners of unclaimed property, would permit businesses to remove the liabilities from accounts, and would transfer unclaimed property to the State general fund sooner "where it could be used for everyone in the state of Alaska." She qualified this legislation does not specifically address demutualization, which is a new practice began the release of the Uniform Law Commissioners Draft of 1995, which this legislation is based upon.

Senator Bunde asked for further definition of the demutualization matter.

Ms. Lewis deferred to industry representatives.

Senator Olson asked the percentage of property currently claimed after the third year and before five to seven years.

Ms. Lewis replied the incidence of claims is greatly reduced over time. She predicted an increase of claimed property in the first two years due to the compressed timeframe.

Senator Hoffman asked what additional measures would be undertaken to identify, locate and notify owners of unclaimed property.

Ms. Lewis replied that currently the Division is required to advertise in newspapers unclaimed property notices annually. She stated this is expensive, and that the Division has found other more cost-effective methods, including maintaining an Internet website, national television programs and commercials, and booths

at conferences and fairs. She stressed that funding for these efforts is limited to the \$30,000 budget and that this legislation would allow the Division to identify and implement the most efficient and successful methods.

Senator Hoffman asked if the Internet is the most effective method for Alaska.

Ms. Lewis reiterated that currently, the Division is required to advertise through newspapers, although more effective methods have been identified. This legislation would allow the Division to evaluate different methods. She listed 300 claims resulting from a \$30,000 newspaper advertising campaign the previous year, compared to 1,600 claims resulting from an Internet posting at no cost to the State.

Senator Olson challenged that many rural residents are not "property minded" and unlikely to surf the Internet.

Ms. Lewis replied that many people tend to surf the Internet, and notify neighbors, friends and relatives if information is found.

Senator Olson countered that rural areas have limited computer access and therefore Internet surfing is not possible.

Ms. Lewis responded that this legislation would permit the Division to determine the best way to address the issue of notifying owners of unclaimed property. She surmised that if the newspaper advertising were not required, the funds could be utilized in a more effective manner.

Amendment #1: This amendment replaces the language in Section 5 on page 3 of the committee substitute to read as follows.

Sec. 5. AS 34.45 is amended by adding a new section to read:

Sec. 34.45.175. Certain property distributed in insurance company reorganizations. Property distributable in the course of a demutualization or related reorganization of an insurance company shall be deemed abandoned as follows:

(A) any funds, two years after the date of the demutualization or reorganization, if the funds remain unclaimed, and the owner has not otherwise communicated with the holder or its agent regarding the property as evidenced by a memorandum or other record on file with the holder or its agent;

(B) any stock or other equity interest, two years after the date of the demutualization or reorganization if

instruments or statements reflecting the distribution are either mailed to the owner and returned by the post office as undeliverable, or not mailed to the owner because of an address on the books and records of the holder that is known to be incorrect, and the owner has not otherwise communicated with the holder or its agent regarding the property as evidenced by a memorandum or other record on file with the holder or its agent.

(C) property not subject to (A) or (B) above within two years of the distribution shall remain reportable under other sections of this chapter.

Senator Bunde moved for adoption and objected for discussion purposes.

Mr. Boutin indicated he has read the amendment and agreed with the concept. He deferred to Ms. Lewis and the Department of Law to explain the provisions.

Ms. Lewis remarked that the Division agrees "wholeheartedly" with the amendment, which was suggested by industry and she noted that the National Association of Unclaimed Property Administrators also supports the amendment.

MARY ELLEN BEARDSLEY, Assistant Attorney General, Commercial/Fair Business Section, Civil Division, Department of Law, testified via teleconference from Anchorage that she has not had an opportunity to adequately review the amendment. She indicated the Department agrees with the concept of the proposed changes.

Senator Bunde directed attention to a memorandum from the legislative Division of Legal and Research Services [copy on file], which also raises concerns with the amendment.

No further action was taken on the amendment or the bill.

#SB170

CS FOR SENATE BILL NO. 170(JUD)

"An Act relating to murder in the second degree, the justification of defense of self or others, immunity from prosecution, sentencing, probation, discretionary parole, and the right to representation in certain criminal proceedings; relating to violation of a custodian's duty; relating to sexual abuse of a minor; relating to release of information concerning certain cases involving a minor; relating to local options regarding alcoholic beverages, the offense of furnishing or delivery of alcoholic beverages to a person

under 21 years of age, and forfeiture of property used in, and money or other items of value used in financial transactions derived from, violation of certain laws relating to alcoholic beverages; relating to assault by means of a dangerous instrument; relating to operating or driving a motor vehicle, aircraft, or watercraft while under the influence of an alcoholic beverage, inhalant, or controlled substance, to the refusal to submit to a chemical test, and to the presumptions concerning the chemical analysis of breath or blood; and providing for an effective date."

This was the first hearing for this bill in the Senate Finance Committee.

SUSAN PARKS, Deputy Attorney General, Criminal Division, Department of Law, noted this is a comprehensive bill that covers many areas of criminal law. She stated it addresses many "problems" that law enforcement and public safety officers are faced with. She noted this committee substitute is significantly different than the original legislation, as a result of concerns raised during hearings in the Senate Judiciary Committee. She reported that extensive public testimony was taken on the committee substitute in the aforementioned committee. She remarked upon the efforts of the Senate Judiciary Committee to ensure this legislation balances public safety with the rights of defendants.

Ms. Parks stated that Sections 1 through 11 address "the problem of alcohol", specifically bootlegging laws. She explained the goal of these provisions is to provide communities with more options and greater ability to enforce their local liquor option laws. She noted Sections 1 through 4 would allow local communities to adopt a lower threshold standard for possession of alcohol within the community. She informed that currently State statute contains one standard, and although some communities have adopted lower limits, the State does not have the ability to enforce the lower limits. The provisions in these bill sections she said would grant that enforcement ability.

Senator Bunde asked whether local communities would retain the option to adopt local liquor option laws but would not be required to do so.

Ms. Parks affirmed. She continued that these provisions would eliminate a loophole, which she explained occurs as a result of closed communities adoption of conflicting rules, and from overlapping boundaries. She stated that bootleggers have been able to take advantage of these discrepancies.

Ms. Parks noted bootlegging statutes currently do not allow for the confiscation of property and pointed out this legislation would match provisions for seizure of property used in drug crimes.

Ms. Parks also noted this legislation would create new statutes in Sections 14 and 17. She described Section 14, to correct an omission in the current statutes governing assaults. She stated this provision would create a new Class C felony for crimes in which criminal negligence causes serious physical injury by means of a dangerous instrument. She gave as the most common example, instances in which the driver of a vehicle was not found to be intoxicated, but who nonetheless inflicted serious injury due to criminal negligence.

Ms. Parks stated that Section 17 relates to violation of third-party custodian duties. She informed that currently a judge has the option of releasing a defendant on bail into the custody of a third party who promises to report any violations the defendant may commit. Unfortunately, she reported many of the third party custodians fail to fulfill these duties and the State only has the option of pursuing criminal contempt charges. This legislation, she said would establish a and b misdemeanor crimes depending on whether the person the third party custodian was supervising was charged with a felony or a misdemeanor.

Ms. Parks continued that this legislation would also amend some existing statutes to "make them stronger". Section 13, she said would modify the felony murder statutes, noting that currently all participants in a serious felony crime, such as a robbery, in which someone other than the participant is killed, is held responsible for that death. She stated this legislation proposes that if the death of a participant is caused by someone other than a participant, such as a store clerk shooting one of the robbers, all participants are held accountable for the death. She remarked this is because the conduct of the participants in the robbery or other crime prompted the death.

Ms. Parks informed that Sections 15 and 16 would amend current statutes pertaining to the crime of sexual abuse of a minor, noting that currently statutes make no distinction between penetration and touching in offenses perpetrated on a minor by juveniles 15 years of age or younger. The crimes are all classified as misdemeanors, she said, despite the disproportion of the harm caused by penetration. She remarked that this legislation would classify penetration of victims three or more years of age younger than the juvenile offender who is 15 years of age or younger, as a C felony crime. She qualified the case would remain in the juvenile judicial system, but that the higher classification would be a recognition

of the seriousness of the conduct.

Ms. Parks indicated that Sections 26 and 27 would amend the statutes relating to felony driving under the influence of drugs or alcohol.

Ms. Parks informed that currently provisions allow the Department of Health and Social Services to release identifying information on juvenile offenders to schools and law enforcement, but not to the general public. Section 32, she stated would allow the release of this information in certain circumstances for public safety reasons, although in such a manner as to protect confidentiality,

Senator Dyson asked if this would allow child care providers who employ teenagers to obtain this information.

Ms. Parks replied that is the situation that prompted this change.

Ms. Parks then reminded that current statutes are intended for judges to impose consecutive sentencing for each victim and crime committed by an offender; however, she stated adequate sentencing is not occurring. She remarked that Sections 22, 23, 30 and 31 would mandate the legislative intent of the current statute.

Ms. Parks then told the Committee this legislation would establish procedures for instances in which a witness in a court proceeding is granted immunity in exchange for testimony but refuses to testify citing protection under the Fifth Amendment to the US Constitution.

Ms. Parks next told of situations of gang or drug-related violence whereby all parties claim self defense when an innocent party is injured. She remarked that this bill would prohibit a self-defense plea for anyone who brings a gun to drug or gang activities.

Ms. Parks addressed the "big gulp" defense claim sometimes made in driving under the influence arrests that the alcohol was consumed shortly before the driver took the wheel and that the driver would have reached his or her destination before the alcohol entered the blood stream had the driver not been stopped.

CINDY CASHEN, victim of drunk driving, and Executive Director, Mothers Against Drunk Driving (MADD), Juneau Chapter, read testimony into the record as follows.

MADD supports the committee substitute for House Bill 244. We support the right for communities to adopt lower limits of alcohol possession and importation in order to improve the

health and safety of their people. Empowering communities to take part in dealing with alcohol abuse and the breaking of the laws is something that MADD supports.

We support stricter drunk driving sanction for high-risk drivers - these are drunk drivers who have repeatedly chosen to endanger themselves and everyone else who shares the road system - must be held accountable for their crimes. About one-third of all drivers arrested or convicted of driving under the influence are repeat offenders. These drivers are 40 percent more likely to be involved in a fatal crash than those without prior DUIs. We support increased penalties for those who chose to drink and drive, which results in the serious injury of an innocent victim or victims.

People who drink and drive - referring to the "big gulp" theory - they're not doctors. They're not experts. They aren't able to determine if they're sober before arriving at their destination. If a person chooses to drink and drive, they've broken the law; they've committed a crime and they should be held accountable for it. It's that simple.

Ms. Cashen then relayed her story in which the drunk driver was to receive a sentence for each life taken and a lesser sentence for the serious injury caused to another. She stated that the victims' families agreed to this, but the judge "felt sorry" for the offender and imposed a lesser sentence, combining the crimes.

Ms. Cashen also stressed the need to address the third party custodian statutes. She told of a drunk driving death that occurred in Hoonah and her assistance to the mother of the deceased boy.

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Ms. Cashen continued that the offender was released to a third party custodian pending trial and subsequently drank and even partied in the house of the victim, and yet no action could be taken against the third party custodian. She predicted this legislation would provide consequences for third party custodians who fail to report violations committed by their charge.

Senator Dyson thanked the witness for turning a tragedy into something useful to others.

Senator Hoffman asked the number of MAAD chapters in Alaska.

Ms. Cashen listed Anchorage, Fairbanks and Juneau with established chapters, and the June 2004 opening of a chapter in Mat-Su, and the formation of another in Petersburg.

Ms. Cashen commented that April 19 would be the four-year anniversary of her father's death and "yet nothing has been done."

Senator Hoffman referenced Ms. Park's testimony that several communities requested lower alcohol possession limits and he asked which communities made this request. He also asked the impetus of the proposed changes to the alcohol possession statutes made to the bill in the Senate Judiciary Committee. He noted the committee substitute received only one "do pass" recommendation from that Committee.

Ms. Parks replied that the community of St. Mary's, plus two others, has adopted rules providing lower levels of alcohol possession.

AL STORY, Lieutenant, Alaska State Troopers, Department of Public Safety, testified via teleconference from an offnet location that currently troopers are unable to enforce the limited alcohol possession rules because of current statutory language.

Ms. Parks informed the matter of the alcohol possession provisions was discussed extensively in the Senate Judiciary Committee.

Senator Hoffman pointed out these provisions were not included in the original version of the bill and asked why it was included in the Senate Judiciary committee substitute.

Ms. Parks replied that over the interim, it became a priority of Governor Murkowski to keep alcohol out of "dry" communities.

Senator Hoffman wanted to know how this provision would keep alcohol out of communities. He reminded that he sponsored the original legislation to provide for the establishment of dry communities and questioned how the proposed provision would be effective.

Ms. Parks responded that it would provide the State the ability to better enforce community decisions. She admitted there is no "silver bullet" for those who want to commit crimes.

Senator Hoffman noted the additional penalties for offenses involving alcohol.

Ms. Parks explained the proposal to increase to a C felony, the

penalty for supplying alcohol to a minor in an area closed to alcohol. She noted mandatory forfeiture of seized items if the offense involved "egregious" circumstances.

Senator Hoffman asked if conviction of a C felony results in forfeiture of permanent fund dividends.

Ms. Parks answered yes.

Senator Dyson appreciated the efforts made in drafting this legislation and commented that the bill must also pass the House of Representatives and that other opportunities would be available to address concerns.

Senator Dyson offered a motion to report the bill from Committee with individual recommendations and an accompanying and a new fiscal note.

There was no objection and CS SB 170 (JUD) MOVED from Committee with fiscal note #3 for \$3,400 from the Department of Corrections, and a new fiscal note for \$90,800 from the Department of Administration dated 4/8/04.

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ADJOURNMENT

Vice-Chair Con Bunde adjourned the meeting at 10:05 AM.