

**ALASKA STATE LEGISLATURE**  
**SENATE JUDICIARY STANDING COMMITTEE**

February 18, 2004  
8:13 a.m.

TAPE(S) 04-6

**MEMBERS PRESENT**

Senator Ralph Seekins, Chair  
Senator Scott Ogan, Vice Chair  
Senator Gene Therriault  
Senator Johnny Ellis  
Senator Hollis French

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

SENATE BILL NO. 288

"An Act relating to certain determinations concerning placement of a child in emergency custody and temporary placement hearings in child-in-need-of-aid proceedings; and providing for an effective date."

HEARD AND HELD

CS FOR HOUSE BILL NO. 252(STA)

"An Act relating to the terms and duties of the members of the State Board of Registration for Architects, Engineers and Land Surveyors."

HEARD AND HELD

SENATE BILL NO. 217

"An Act relating to genetic privacy; and amending Rule 82, Alaska Rules of Civil Procedure, and Rule 508, Alaska Rules of Appellate Procedure."

SCHEDULED BUT NOT HEARD

**PREVIOUS COMMITTEE ACTION**

BILL: SB 288

SHORT TITLE: EMERGENCY CHILD CUSTODY PLACEMENT

SPONSOR(S): SENATOR(S) GREEN

02/02/04 (S) READ THE FIRST TIME - REFERRALS

02/02/04 (S) HES, JUD  
 02/09/04 (S) HES AT 1:30 PM BUTROVICH 205  
 02/09/04 (S) Moved CSSB 288(HES) Out of Committee  
 02/09/04 (S) MINUTE(HES)  
 02/11/04 (S) HES RPT CS 3DP SAME TITLE  
 02/11/04 (S) DP: DYSON, GREEN, WILKEN  
 02/11/04 (S) FIN REFERRAL ADDED AFTER JUD  
 02/18/04 (S) JUD AT 8:00 AM BUTROVICH 205

BILL: HB 252

SHORT TITLE: OCC LICENSING: TERMS OF BD & CONT. EDUC  
 SPONSOR(s): REPRESENTATIVE(s) MCGUIRE

04/08/03 (H) READ THE FIRST TIME - REFERRALS  
 04/08/03 (H) L&C, STA  
 05/02/03 (H) L&C AT 3:15 PM CAPITOL 17  
 05/02/03 (H) Moved CSHB 252(L&C) Out of Committee  
 05/02/03 (H) MINUTE(L&C)  
 05/05/03 (H) L&C RPT CS(L&C) NT 4DP  
 05/05/03 (H) DP: LYNN, DAHLSTROM, ROKEBERG, ANDERSON  
 05/07/03 (H) STA AT 8:00 AM CAPITOL 102  
 05/07/03 (H) Moved CSHB 252(STA) Out of Committee  
 05/07/03 (H) MINUTE(STA)  
 05/08/03 (H) STA RPT CS(STA) NT 4DP 1NR  
 05/08/03 (H) DP: DAHLSTROM, LYNN, SEATON, WEYHRAUCH;  
 05/08/03 (H) NR: BERKOWITZ  
 05/15/03 (H) TRANSMITTED TO (S)  
 05/15/03 (H) VERSION: CSHB 252(STA)  
 05/16/03 (S) READ THE FIRST TIME - REFERRALS  
 05/16/03 (S) L&C, JUD  
 05/19/03 (S) L&C RPT 2DP 1NR  
 05/19/03 (S) DP: SEEKINS, STEVENS G; NR: FRENCH  
 05/19/03 (S) L&C AT 8:00 AM BELTZ 211  
 05/19/03 (S) Moved SCS(L&C) Out of Committee  
 05/19/03 (S) MINUTE(L&C)  
 02/18/04 (S) JUD AT 8:00 AM BUTROVICH 205

BILL: SB 217

SHORT TITLE: GENETIC PRIVACY  
 SPONSOR(s): SENATOR(s) OLSON

05/09/03 (S) READ THE FIRST TIME - REFERRALS  
 05/09/03 (S) HES, JUD  
 01/28/04 (S) HES AT 1:30 PM BUTROVICH 205  
 01/28/04 (S) Moved CSSB 217 (HES) Out of Committee  
 01/28/04 (S) MINUTE(HES)  
 01/30/04 (S) HES RPT CS 1DP 1NR 2AM NEW TITLE

01/30/04 (S) DP: DYSON; NR: GUESS;  
01/30/04 (S) AM: GREEN, WILKEN  
02/06/04 (S) JUD AT 8:00 AM BUTROVICH 205  
02/06/04 (S) Heard & Held  
02/06/04 (S) MINUTE(JUD)  
02/18/04 (S) JUD AT 8:00 AM BUTROVICH 205

**WITNESS REGISTER**

Ms. Jacqueline Tupou  
Staff to Senator Green  
Alaska State Capitol  
Juneau, AK 99801-1182

**POSITION STATEMENT:** Presented SB 288 for the sponsor

Joanne Gibbens  
Program Administrator  
Office of Children's Services  
Department of Health and Social Services  
130 Seward St Ste 406  
Juneau AK 99811-0630

**POSITION STATEMENT:** Answered questions about SB 288

Mr. Vennie Nemecek  
Assistant Attorney General  
Department of Law  
1031 W 4<sup>th</sup>  
Anchorage, AK

**POSITION STATEMENT:** Answered questions about SB 288

Mr. Heath Hilyard  
Staff to Representative Lesil McGuire  
Alaska State Capitol  
Juneau, AK 99801-1182

**POSITION STATEMENT:** Presented HB 252 for the sponsor

Mr. Sam Kito III  
Alaska Professional Design Council

**POSITION STATEMENT:** Supports Version Q of HB 252

Mr. Paul Whipple  
Alaska Professional Design Council

**POSITION STATEMENT:** Supports Version Q of HB 252

Dr. Robert Miller, Chair  
Association of Engineers and Licensed Surveyors

**POSITION STATEMENT:** Supports Version Q of HB 252

**ACTION NARRATIVE**

**TAPE 04-6, SIDE A**

**CHAIR RALPH SEEKINS** called the Senate Judiciary Standing Committee meeting to order at 8:13 a.m. Senators Ellis, French and Chair Seekins were present. The first order of business to come before the committee was SB 288.

^#SB 288

**SB 288-EMERGENCY CHILD CUSTODY PLACEMENT**

MS. JACQUELINE TUPOU, staff to Senator Green, sponsor, explained to members that current law provides that the court must determine within 48 hours of removing a child from the home whether continued placement in the home is contrary to the welfare of the child. However, judges use varied language when making that determination. SB 288 says that judges must specifically state that it is contrary to the welfare of the child to remain in the home. That language is Title IV-E compliant and will result in an increase of Title IV-E funding of \$500,000 in FY 05.

MS. JOANNE GIBBENS, Program Administrator for the Office of Children's Services, Department of Health and Social Services (DHSS), affirmed that SB 288 requires the court to make a specific judicial determination at the very first hearing when emergency custody of a child is taken. He explained that the federal purpose for this requirement is to protect the rights of parents and children by ensuring that states are not removing children unnecessarily. The federal government ties funding to this requirement. SB 288 codifies what should be and, in most cases, is current practice. The purpose of the bill is simply to make sure the court enters findings that are already required by federal law. It does not change the standards used by the court to make out of home placement decisions.

CHAIR SEEKINS announced that Senators Therriault and Ogan had joined the committee.

SENATOR ELLIS asked why the state is not complying with the federal law now.

MS. GIBBENS said ideally this would be happening in every first court hearing, but it does not. SB 288 is a trigger to remind

judges of this requirement. It also aligns Alaska statute with the federal requirement.

SENATOR ELLIS noted that Senator Green has expressed concern in the past about depending on receipt of federal funds and the possible need to use state funds if the federal funds are cut. He noted with the huge federal deficit, there may be cutbacks in the future. He asked if she has any concerns about accepting these federal funds.

CHAIR SEEKINS said he would expect Senator Green to defend her own history.

MS. TUPOU said she does believe this is a good program and not only will this determination make a difference for Title IV-E funds, it will make a difference in the child's entire placement in the program, i.e., with adoption subsidies. She added that many times the court will grant a continuance if the parents cannot be found, so no language is put on the record at the first hearing. SB 288 will require the court to tighten up the language.

SENATOR ELLIS asked Ms. Tupou if she believes that accepting the federal funds would benefit Alaska.

MS. TUPOU said in this situation, where children are in such dire need that they need to be removed from the home, the state should use the resources that are available.

SENATOR SEEKINS said he sees this bill as accomplishing two purposes. First, it brings Alaska statute into compliance with federal law, which could be the primary intent. Second, it could assist in obtaining federal funds.

MS. TUPOU agreed.

SENATOR FRENCH asked Ms. Gibbens what happens if the judge does not have enough information at the first hearing to make a finding.

MS. GIBBENS said a social worker might file a petition with the court at the first hearing and the parents are not present and cannot respond to the petition. In many of those cases, the judge will order a continuance. In that case, the judge may say that based on the evidence available at that time, the child should remain in an out of home placement until the continuance

hearing. At the next hearing, the judge will make another hearing.

MS. TUPOU informed members that she distributed a copy of a response from Assistant Attorney General Nemecek to Senator Green that answered three questions. She noted that the second response directly relates to Senator French's question. She said Senator Green was very concerned about usurping due process rights and would be agreeable to an amendment to change the words "shall determine" to "shall make a preliminary determination" to emphasize the transitory nature of the first hearing.

She then pointed out the first answer in Mr. Nemecek's response pertains to the word, "emergency" on page 1, line 14 of the bill ("remains in the emergency custody of the department"). She was told that word was originally included because it was required for federal compliance but that is incorrect and is actually legally confusing. She said Senator Green would also be agreeable to removing that word.

SENATOR FRENCH pointed out the word "after" on page 1, line 14, on version A, differs from the word "at" used in the DHSS letter. He questioned whether the word "at" is more appropriate to emphasize the fact that you want the judge to make the determination now not after the hearing.

MS. TUPOU explained that the revisor switched the words accidentally but that was corrected in version H.

CHAIR SEEKINS called an at-ease and, upon reconvening, clarified that version H, the Senate Health, Education, and Social Services Committee version, was before the committee.

SENATOR THERRIAULT moved to adopt CSSB 288(HES) as the working document before the committee.

CHAIR SEEKINS announced that without objection, the motion carried and noted the HES version contains the word "at".

SENATOR OGAN pointed out that the committee referrals on version A and version H are different.

CHAIR SEEKINS affirmed that SB 288 picked up a Senate Finance Committee referral. He then closed public testimony, as no one else wished to testify.

8:19 a.m.

CHAIR SEEKINS asked Ms. Tupou to clarify the amendments she suggested.

MS. TUPOU told members the first conceptual amendment [Amendment 1] would be to remove the word "emergency" on line 14, page 1, where it reads:

...remains in the emergency custody of the department.

The second amendment [Amendment 2] is to change the language on line 1 of page 2 to read:

The judge shall make a preliminary determination

SENATOR FRENCH asked if the second change will make a big difference.

MS. TUPOU said, according to Mr. Nemecek's response, it will not.

SENATOR FRENCH said the question of what is contrary to the welfare of the child would come up in every hearing conducted in the course of the placement. He said he would not insist on that language because every finding is preliminary and never final. He maintained that the change is only a matter of housekeeping and not a change to procedure.

MS. TUPOU said that is correct and referred to Mr. Nemecek's response to question 3, which states, "This does not alter current legal standards for those children."

SENATOR FRENCH asked if it will make any changes to legal procedure.

MS. TUPOU said not that she is aware of.

SENATOR OGAN referred to the removal of the probable cause language in Section 1 and asked, "...why is having that probable cause language a problem in existing law and is there a probable cause finding for removing a child that's required under due process?"

MS. TUPOU responded the probable cause determination is determined in a temporary custody hearing. Section 1 refers to an instance of a continuance, during which there is a probable

cause finding. If the hearing is not a continuance, the temporary custody hearing will take place simultaneously.

SENATOR OGAN questioned why that language needs to be removed and what problem will be fixed.

SENATOR THERRIAULT clarified that the language was removed from subsection (d) but placed in subsection (e) as the drafter felt that to be the more appropriate placement, so nothing will be lost.

CHAIR SEEKINS entertained a motion to remove the word "emergency" on page 1, line 14.

SENATOR THERRIAULT asked whether there is any significance to the term "emergency custody" versus just "custody."

MS. TUPOU deferred to Mr. Nemecek.

MR. VENNIE NEMECEK, Assistant Attorney General, Department of Law, explained that the problem with using the word "emergency" is that generally that refers to both an assumption of legal and physical custody. The intent of that sentence is to refer to legal custody because the physical placement is dealt with in the subsequent sentence. He recommended removing the word "emergency" because it confuses the matter.

SENATOR THERRIAULT asked which is clearer in the legal world.

MR. NEMECEK said in his experience, it will not make a difference.

CHAIR SEEKINS asked if by eliminating the modifier "emergency" or "temporary," the language will say whenever, at this point during a continuance, that child will remain in the custody, whatever type that may be, and that will cover all bases.

MR. NEMECEK said it does and explained that in general, when custody is viewed from AS 47.10, it refers to legal custody.

SENATOR FRENCH pointed out this is about a temporary custody hearing yet that phrase is used the least in the two subsections. He believes replacing the word "emergency" with the word "temporary" might ease the concerns of the parents whose child was taken away and make the language more consistent. He so moved.

CHAIR SEEKINS asked Mr. Nemecek and Ms. Tupou if that solution would satisfy their concern.

MR. NEMECEK and MS. TUPOU said it would.

SENATOR FRENCH repeated his motion to replace the word "emergency" with the word "temporary" on page 1, line 14.

CHAIR SEEKINS announced that the motion carried without objection. He then noted that with no further discussion, he would hold the bill for a second hearing and announced an at-ease.

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^#HB 252

**CSHB 252(STA)- OCC LICENSING: TERMS OF BD & CONT. EDUC**

The committee took up CSHB 252(STA).

CHAIR SEEKINS announced that the bill sponsor provided the committee with a draft committee substitute, version Q.

SENATOR THERRIALT moved to adopt version Q as the working document before the committee.

CHAIR SEEKINS announced that without objection, the motion carried.

MR. HEATH HILYARD, staff to Representative Lesil McGuire, sponsor, informed members that version Q makes one substantial policy change over the previous version. He noted he would review the changes in version Q but that Mr. Sam Kito and various members of the Architects, Engineers and Land Surveyors (AELS) Board were available to answer specific questions.

MR. HILYARD told members that Representative McGuire sponsored HB 252 at the request of the AELS board. Version Q does three things.

First, it modifies existing statutory language with regard to board members who may serve partial terms. Currently, if a board member serves any portion of a remaining term, that service constitutes a full 4-year term. This change will allow a board member filling a partial term of less than 2 years to also serve up to two full additional terms or 8 years. The amendment offered in the Senate Labor and Commerce Committee would clarify that the change in term limits would only apply to this board.

Second, version Q offers the AELS board statutory authority to adopt regulations concerning continuing education. A Legislative Budget and Audit (LBA) Committee audit, conducted in October of 2003, recommended that the AELS board be given this authority to help implement and maintain high standards. The AELS board will work closely with all relevant professional societies before developing any programs.

Third, the AELS board requested that AS 39.25.120(c) be amended to include the executive secretary of the AELS as the principal executive officer of the board under partially exempt service.

SENATOR FRENCH asked if the current principal executive officer of the AELS is now classified as partially exempt.

MR. SAM KITO III, representing the Alaska Professional Design Council (APDC), explained that currently, the board administrator is a partially exempt position and, through an audit last summer, the board learned it did not have the statutory authority to maintain partially exempt status so the Division of Personnel is proposing to convert that position to a classified one. This effort is to maintain the partially exempt status.

SENATOR FRENCH surmised that this would give the APDC the statutory authority to retain the partially exempt classification for that position; otherwise, there has been a push to change the classification to classified.

MR. KITO said that is correct. He then informed members that the APDC supports version Q.

MR. PAUL WHIPPLE, representing the Alaska Professional Design Council and the Alaska Professional Land Surveyors, stated support for version Q.

SENATOR THERRIAULT commented that having the power to adopt continuing education standards is often quite contentious. He asked Mr. Whipple to review that issue.

MR. WHIPPLE said the APLS has fought since the mid 1980s to require continuing education to maintain licensure, however some of the associated professions have been reticent to make that a requirement. He said his understanding is that the board of one of the associated memberships adopted a resolution to require continuing education. The American Institute of Architects

already have a mandatory continuing education for maintaining membership so the topic is not as contentious as it used to be.

CHAIR SEEKINS asked, "When you talk about the board may adopt regulations to carry out the purpose of the chapter, including regulations establishing continuing education requirements for the persons regulated, how do you come up with a consensus as to just what those continuing education requirements should be?"

MR. WHIPPLE said the national organizations have been working on continuing education programs. Currently, 26 states require continuing education to maintain licensure. The process for adopting continuing education regulations is a joint effort between the AELS board and the representative societies.

CHAIR SEEKINS responded that gives total power to that board. He asked if the legislation contains a cross reference to national standards or building a consensus among the different members.

MR. WHIPPLE was unable to answer that question.

CHAIR SEEKINS said he has no problem with requiring continuing education, but if he was a land surveyor, he would want to know what they were. He questioned whether they could be used as a tool to limit competition.

MR. WHIPPLE said a national standard for the National Society of Professional Surveyors in association with the American Congress of Surveyors and Mapping developed continuing education. That national organization represents well over 20,000 licensed practitioners and worked with individual states to develop standards. The Alaska ASPLS did develop some draft continuing education requirements for surveyors that are not on record yet. It also worked with AELS and the Alaska section of ACSM to develop those standards.

CHAIR SEEKINS said his only concern is how high the standard can be for the regulations this board can adopt and whether the intent is to establish professionalism or could they be used to limit competition.

MR. WHIPPLE said that has been a concern of every state. He added:

It's the old guild method where they're eliminating any kind of competition. Unless you're a member of the guild, you can't practice and you write up the

standards so that nobody else can practice but that's just not the case. There is a real need to protect the public by ensuring that the practitioners are current in regulation and are current in modern technologies that have been developed.

CHAIR SEEKINS said he was just wondering if there was an upper limit on what the board could do in terms of being able to exceed the national standard. He said he did not see the need to hold the bill in committee if the intent of the measure is basically housekeeping.

SENATOR THERRIAULT asked for a chance to review the discussion in the audit before the bill leaves the committee.

CHAIR SEEKINS agreed to hold the bill in committee and took more public testimony.

DR. ROBERT MILLER, Chair of the AELS board, said he appreciates Chair Seekins' concern about the regulations for continuing education being an obstacle to the practice of any profession. He offered that the board, over the last 5 or 6 years, has increased other education standards in terms of professional degrees for both engineers and land surveyors. The new standards are much more burdensome than the continuing education requirements. When the board decided to pursue the matter, it was at the instigation of the two land surveying members of the board. That effort was reinforced by a legislative audit that recommended the board consider mandatory continuing education. He believes all of the conscientious practitioners support the idea; however, some would agree it should not be burdensome. The board drafted regulations and submitted them to the Attorney General's Office, but learned it did not have the statutory authority to write such regulations. The board would like to implement that authority over a long period of time. It could do so initially just for the land surveyors and, although that might sound discriminatory, the other professions regulated by the board require degrees. Many land surveyors are self-taught or learn on the job.

CHAIR SEEKINS said he was not worried about the requirements being burdensome but unnecessarily burdensome. He questions where that level is in terms of a quantitative analysis.

DR. MILLER then asked to speak to the issue of classification of the administrative position and said the board very much feels it is important that the executive administrator position be

partially exempt. That position is not only a civil servant but also a servant to the profession and the public. A partially exempt classification would allow the board a certain amount of discretion that would be beneficial. The executive administrator is the presence of the board because no board member is on constant call. The board believes it is well served by the executive administrator. He pointed out the title is also referred to as an executive secretary and executive officer, although the board refers to the position as an executive administrator. He asked that the title be made consistent in the legislation and changed to "executive administrator."

MR. HILYARD commented that the sponsor has no opinion on the title of the position.

MR. KITO stated support for Dr. Miller's comments.

SENATOR OGAN questioned why the board term will be changed for this board and no other.

MR. HILYARD explained that his understanding is that in the past, the AELS board in particular has had difficulty filling those positions.

DR. MILLER added that the purpose for the requested change is that the AELS regulates four different professions. The learning curve for board members is sharper than for some of the other boards. Some board members have felt inadequately prepared to deal with the issues after one or two years. Extending the term a person can serve will help the board capture more expertise. He noted that some states have no term limits at all, which he was not suggesting, but said that the AELS has had board vacancies for considerable periods of time. Therefore, being able to keep members for two full terms would be helpful.

SENATOR OGAN asked if any board member would be directly affected by this change.

DR. MILLER said perhaps, but the person would have to be reappointed by the Governor and approved by the Legislature.

CHAIR SEEKINS asked that the sponsor or her representative prepare an amendment to address the executive administrator position for the committee at the next hearing.

MR. HILYARD agreed to do so.

CHAIR SEEKINS announced that he would hold the bill in committee and adjourned the meeting at 8:56 a.m.

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