

ALASKA STATE LEGISLATURE  
**SENATE STATE AFFAIRS COMMITTEE**

May, 17, 2003  
11:40 am

**MEMBERS PRESENT**

Senator Gary Stevens, Chair  
Senator John Cowdery, Vice Chair  
Senator Fred Dyson  
Senator Gretchen Guess

**MEMBERS ABSENT**

Senator Lyman Hoffman

**COMMITTEE CALENDAR**

SENATE BILL NO. 223

"An Act naming the state ferry first operating to serve between Metlakatla and Ketchikan; and providing for an effective date."

MOVED SB 223 OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 280(FIN)

"An Act relating to the regulation of commercial motor vehicles to avoid loss or withholding of federal highway money, and to out-of-service orders concerning commercial motor vehicles; moving authority for commercial motor vehicle regulation from the Department of Public Safety to the Department of Transportation and Public Facilities; amending Rule 43.1, Alaska Rules of Administration; and providing for an effective date."

MOVED CSHB 280(FIN) OUT OF COMMITTEE

CS FOR HOUSE JOINT RESOLUTION NO. 14(STA)

Urging that the 2006 National Veterans Wheelchair Games be held in Anchorage, Alaska.

MOVED CSHJR 14(STA) OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 10(HES)

"An Act relating to pooling by employers and self-employed individuals for purposes of group health insurance; and providing for an effective date."

MOVED CSHB 10(HES) OUT OF COMMITTEE

SENATE CONCURRENT RESOLUTION NO. 13

Encouraging the Department of Corrections to provide canned Alaska pink salmon to inmates of the Alaska prison system.

MOVED SCR 13 OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 215(STA) am  
"An Act relating to art requirements for public buildings and facilities; relating to identification, monitoring, maintenance, and reporting of art in public buildings and facilities; and relating to the art in public places fund."

MOVED CSHB 215(STA) am OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 209(RLS)  
"An Act relating to municipal property tax adjustments for property affected by a disaster."

MOVED CSHB 209(RLS) OUT OF COMMITTEE

SENATE JOINT RESOLUTION NO. 20  
Relating to the establishment of Reserve Officer Training Corps programs in Alaska by the United States Coast Guard.

MOVED CSSJR 20(STA) OUT OF COMMITTEE

SENATE BILL NO. 201  
"An Act relating to home care and respite care; and providing for an effective date."

MOVED SB 201 OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 24(JUD)  
"An Act relating to intergovernmental agreements with the federal government regarding management of fish or game in the state."

MOVED CSHB 24(JUD) OUT OF COMMITTEE

**PREVIOUS COMMITTEE ACTION**

SB 223 - No previous action to record.  
HB 280 - See Transportation minutes dated 5/14/03  
HJR 14 - No previous action to record.  
HB 10 - No previous action to record.  
SCR 13 - No previous action to record.  
HB 215 - No previous action to record.  
HB 209 - See CRA minutes dated 5/9/03  
SJR 20 - No previous action to record.  
SB 201 - No previous action to record.  
HB 24 - No previous action to record.

**WITNESS REGISTER**

Lieutenant Governor Loren Leman  
Alaska State Capitol  
Juneau, AK 99801-1182  
**POSITION STATEMENT:** Sponsor of SB 223

John MacKinnon  
Department of Transportation &  
Public Facilities  
3132 Channel Dr.  
Juneau, AK 99801-7898  
**POSITION STATEMENT:** Testified on HB 280

Mark Gnadt  
Aide to Representative Eric Croft  
Alaska State Capitol  
Juneau, AK 99801-1182  
**POSITION STATEMENT:** Testified on HJR 14

Helen Bedder  
Staff to Representative Cheryll Heinze  
Alaska State Capitol  
Juneau, AK 99801-1182  
**POSITION STATEMENT:** Testified on HB 10

Barbara Bitney  
Staff to Representative Bill Stoltze  
Alaska State Capitol  
Juneau, AK 99801-1182  
**POSITION STATEMENT:** Introduced HB 215

Representative Mike Chenault  
Alaska State Capitol  
Juneau, AK 99801-1182  
**POSITION STATEMENT:** Sponsor HB 209

Senator Kim Elton  
Alaska State Capitol  
Juneau, AK 99801-1182  
**POSITION STATEMENT:** Sponsor SJR 20

Brian Hove  
Aide to Senator Ralph Seekins  
Alaska State Capitol  
Juneau, AK 99801-1182  
**POSITION STATEMENT:** Testified on SB 201

Jerry Luckhaupt  
Legislative Legal Services Attorney  
Alaska State Capitol  
Juneau, AK 99801-1182  
**POSITION STATEMENT:** Answered questions on SB 201

Mary Nicholson  
P.O. Box 2495  
Kenai, AK 99611  
**POSITION STATEMENT:** Testified on SB 201

Representative Bruce Weyhrauch  
Alaska State Capitol  
Juneau, AK 99801-1182  
**POSITION STATEMENT:** Sponsor HB 24

Steve White  
Department of Law  
PO Box 110300  
Juneau, AK 99811-0300  
**POSITION STATEMENT:** Answered questions on HB 24

**ACTION NARRATIVE**

**TAPE 02-03-32, SIDE A**

**CHAIRMAN GARY STEVENS** called the Senate State Affairs Committee meeting to order at 11:40 am. Present were Senators John Cowdery, Gretchen Guess and Chair Gary Stevens. Senator Fred Dyson arrived shortly thereafter. The first order of business to come before the committee was SB 223.

#SB 223

**SB 223-NAMING THE FERRY LITUYA**

LIEUTENANT GOVERNOR LOREN LEMAN explained that the Department of Transportation & Public Facilities (DOTPF) had a contest for school children in Metlakatla to name the new ferry. A second grader suggested the name Lituya, which is the name of a glacier and bay in Southeast Alaska. He urged members to support the legislation.

SENATOR JOHN COWDERY made a motion to move SB 223 and attached fiscal note from committee with unanimous consent. There being no objection, it was so ordered.

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#HB 280

**HB 280-COMMERCIAL MOTOR VEHICLES:REGULATIONS**

JOHN MACKINNON, Deputy Commissioner of Highways and Public Facilities, stated that Executive Order 98 consolidated commercial motor vehicle regulations and enforcement from the Departments of Public Safety and Community and Economic Development into the Department of Transportation and Public Facilities (DOTPF). This was to provide increased convenience to the industry and the public and provide better program management. When implementing the consolidation, the transfer of

necessary regulation authority was unintentionally omitted. HB 280 clears up the omission by placing that regulatory authority in DOTPT.

CHAIR GARY STEVENS asked whether the state would lose federal funding if this legislation were to fail.

MR. MACKINNON replied there is the potential for sanctions regarding funding applied.

CHAIR GARY STEVENS called a brief at ease at 11:45 am and reconvened the meeting at 11:47 am.

CHAIR GARY STEVENS held the bill for a quorum.

#

#HJR 14

**HJR 14-NATIONAL WHEELCHAIR GAMES**

MARK GNADT, staff to Representative Eric Croft, described the legislation as a feel good bill. He said the Paralyzed Veterans of America Exploratory Committee would be visiting Alaska during the 2003 summer to conduct a final review of the Anchorage facilities and the sponsor would like to be able to present the resolution to them to show that they have the full support of the Legislature.

CHAIR GARY STEVENS held the bill for a quorum.

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#HB 10

**HB 10-GROUP HEALTH INSURANCE FOR PRIVATE GROUPS**

HELEN BEDDER, staff to Representative Cheryll Heinze, introduced the legislation and explained it would help provide coverage for more than 100,000 Alaskans that have no health care coverage. Current statute defines eligible group types for which insurance companies may offer coverage. Groups that are formed for insurance services aren't currently listed and therefore, insurance companies may not offer coverage to that group type. HB 10 amends the statute and allows self employed individuals and groups of employers, including non-profits, to pool for the purpose of obtaining health insurance.

SENATOR GRETCHEN GUESS said it is her understanding that certain non-profits might have employees with higher health care needs, which could lead to difficulty in insurance pooling. If that proves to be the case, mental health [Mental Health Trust Authority] has said they would help in the pooling.

MS. BEDDER agreed that insurance companies have been hesitant to

talk to non-profits, but HB 10 shows the need for some action. She said she didn't know how the Mental Health Trust Authority might be used, but they have committed at least \$45,000 to help the non-profits get affordable insurance.

SENATOR FRED DYSON said he appreciates the work that has been done in this area and hopes it will be a significant part of solving a large problem.

SENATOR GUESS made a motion to move HB 10 and attached zero fiscal note from committee with individual recommendations. There being no objection, it was so ordered.

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#HB 280

**HB 280-COMMERCIAL MOTOR VEHICLES:REGULATIONS**

CHAIR GARY STEVENS advised he was holding the bill until there was a quorum present to take action. He explained the provisions of the bill to Senator Fred Dyson.

SENATOR GRETCHEN GUESS made a motion to move HB 280 and attached zero fiscal note from committee with individual recommendations. There being no objection, it was so ordered.

#

#HJR 14

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SENATOR GRETCHEN GUESS made a motion to move HJR 14 and attached zero fiscal note from committee with individual recommendations. There being no objection, it was so ordered.

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#SCR 13

**SCR 13-CANNED SALMON FOR PRISONERS**

CHAIR GARY STEVENS asked whether there were any questions regarding SCR 13.

SENATOR FRED DYSON made a motion to move SCR 13\A version from committee with individual recommendations. There being no objection, it was so ordered.

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HB 215- ONE PERCENT FOR ART

BARBARA BITNEY, staff to Representative Bill Stoltze, explained the original legislation was to repeal the one percent for art requirement, but after working with the Alaska State Council of the Arts the bill would:

- Apply only to state funding not federal funding
- Cap the one percent for a project at the first \$10 million and at one-half percent thereafter.
- Set aside five percent of the one percent for maintenance
- The Council would monitor and facilitate the maintenance and restoration of existing art works.
- Strengthen the Alaska artist's preference
- Provide for reporting from state departments to the Council
- Require the Council to report to Legislative Budget and Audit Committee on an annual basis

SENATOR FRED DYSON asked what type of savings they anticipate.

MS. BITNEY explained that the attached report actually provides the best information available because each agency tracks funding differently, which makes the information difficult to piece together.

CHAIR GARY STEVENS said he has followed the issue with interest and would like her to expand on the changes made to the original legislation.

MS. BITNEY said it now applies only to general fund expenditure rather than the total construction cost. Federal funds are no longer included.

SENATOR DYSON asked whether they addressed anomalies such as performing arts centers where the entire building is arguably dedicated to the arts. Would the one percent for art requirement still apply in those instances?

MS. BITNEY replied this was a compromise since the original legislation was to repeal the requirement altogether.

SENATOR DYSON asked about facilities that aren't readily available to the public.

MS. BITNEY explained the one percent for art program is for buildings that have substantial public use and the Department of Transportation and Public Facilities make that determination.

SENATOR GUESS asked why federal funds were no longer included.

MS. BITNEY replied it reduces the required allocation. If you were to use the Anchorage Airport as an example and consider the federal funds that have been added over time, the art allocation would be impossibly large.

SENATOR GUESS made a motion to move HB 215 and attached zero fiscal note from committee with individual recommendations. There being no objection, it was so ordered.

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#HB 209

**HB 209-MUNI.TAX: PROPERTY AFFECTED BY DISASTER**

REPRESENTATIVE MIKE CHENAULT, bill sponsor, explained this is a local tax issue that allows municipalities to provide a tax reduction for property destroyed, damaged or reduced in value as a result of a disaster. Municipalities would have the leeway to define a disaster to include a fire or flood in a private home, which is an option they don't have currently. They would also have the ability to set the parameters on reassessing values after the renovation.

SENATOR FRED DYSON asked whether the fact that a house burned to the ground wouldn't automatically give the property owner tax relief.

REPRESENTATIVE CHENAULT said a municipality would first have to adopt an ordinance declaring that they want to take on these powers. Then they would have to set the criteria for a disaster declaration.

SENATOR FRED DYSON said he could see the situation in which a house burns down, the owners collect the insurance and get a tax break on the property and spend the money.

CHAIR GARY STEVENS asked for the pleasure of the committee.

SENATOR DYSON said, "Move it."

CHAIR GARY STEVENS said, "I assume that's a motion Senator Dyson to move it [CSHB 209(RLS)] with a zero fiscal note and individual recommendations." There being no objection, it was so ordered.

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#SJR 20

## SJR 20-US COAST GUARD ROTC PROGRAM

SENATOR KIM ELTON, bill sponsor, stated it is his belief that everyone is familiar with the role of the Coast Guard and the notion of a ROTC program. The resolution encourages the Coast Guard to establish a junior ROTC program in the Kodiak and Juneau high schools. It would be a reflection of a high school program that has been offered in Miami, Florida for the last ten years. The other component of the program is to encourage a ROTC program at the University of Alaska Southeast (UAS).

The three areas the Coast Guard Academy is most interested in are management, marine and environmental sciences, and government. All of these are strong programs at UAS and the Dean of Students, Paul Kraft, thought the program would be a good match. He noted the Coast Guard Academy is currently meeting about half the need for officers and if this were to happen, it would be the second time the University of Alaska has cooperated with the military. The first was the joint on campus recreation center/National Guard armory facility.

He advised the committee they might want to add Betty Walters, Superintendent of the Kodiak Island School District, and Bob Meade, Principal of the Kodiak High School, to the list of those who would receive copies of the resolution.

CHAIR GARY STEVENS expressed his appreciation for including Ms. Walters and Mr. Meade because the Coast Guard is an important part of the Kodiak community.

SENATOR FRED DYSON made a motion to adopt a conceptual amendment to add Superintendent Betty Walters and Principal Bob Meade to the list of recipients. There being no objection, amendment one passed.

SENATOR DYSON asked what the Coast Guard population is in Anchorage.

SENATOR ELTON said he didn't have that information, but in Juneau there are between 250 and 300 active duty Coast Guard and a huge retired population. He believes the same situation exists in Kodiak. That pool of talent could be tapped by the school district to set up the ROTC program.

SENATOR DYSON expressed appreciation that the resolution encourages the establishment of ROTC and Junior ROTC programs in other communities in the state.

CHAIR GARY STEVENS estimated there are about 1,000 active duty Coast Guard in Kodiak on ships, planes and the base itself.

SENATOR JOHN COWDERY asked if there was any estimate of how many Alaska students might participate.

SENATOR ELTON said that information isn't available, but because of the number of people that grow up in fishing families and families that are water transportation oriented, there will be significant interest. In Alaska, the Coast Guard performs every function; the military functions, the search and rescue functions and now the homeland security functions.

SENATOR COWDERY made a motion to move CSSJR 20 (STA) and attached zero fiscal note from committee with individual recommendations. There being no objection, it was so ordered.

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#SB 201

**SB 201-HOME & RESPITE CARE: CRIMINAL RECORDS**

BRIAN HOVE, aide to Senator Ralph Seekins, explained the Revisor of Statutes requested the bill, which corrects errors in chapters 45 and 118, SLA 1994.

SENATOR FRED DYSON asked if there had been any testimony against the bill.

CHAIR GARY STEVENS advised there were several people that wanted to testify on the issue. He asked Jerry Luckhaupt whether he had any comments.

JERRY LUCKHAUPT, Legislative Legal Services Council, further explained that two bills were adopted in the same year. One was a comprehensive rewrite of the criminal history record statutes and the other related to home care and respite care agencies and requiring criminal history records checks. Because of the first bill, the statute that guided the process required by the second bill was no longer there and there was no other obvious statute that could be referred to. The Revisor pointed this out to the Judiciary Committee then handed it along to him as the person that handles criminal law and related matters. As the least controversial resolution, he cited a federal law that requires these checks regardless of state law. The referenced federal law provides that respite care and home care agencies and nursing facilities can all request criminal history record checks for employees and prospective employees. Hopefully, Health and Social Services will look at the statutes and decide whether they want certain convictions to disqualify individuals from potential

employment. Federal law doesn't specifically require disqualification for certain jobs. It requires the employer to get the records and make a determination to hire or fire an individual.

MARY NICHOLSON asked:

- If the bill would include consumer direct based aid or just for facility based home care
- If this would cover just local background criminal history checks or would it include finger printing and FBI background checks
- Would the bill allow any of the home care providers to be grand fathered in

MR. LUCKHAUPT advised the bill applies to anyone that is required to be licensed by the department in these areas. Agencies that go into the home are required to be licensed and if they receive state money they must do the checks. The checks have been a state requirement since 1994 and a federal requirement since 1998. It isn't just a local name based check of the Alaska system. It is a national fingerprint check through the FBI and is required under federal law. He stressed this is not a new requirement.

He further explained that in 1994 two laws were passed, one repealing the statute and the other citing to it. Since then federal law has established a new requirement for an FBI fingerprint based check for all, not just new, home health care employees and prospective employees.

Because the Department of Health and Social Services has not come forward to remedy the problem, Legislative Legal took the remedial course of citing federal law as the least controversial solution.

SENATOR DYSON asked whether similar action is needed for childcare facilities.

MR. LUCKHAUPT advised this federal law refers to home health care workers and nursing facilities only.

**SIDE B**  
**12:35 pm**

Respite care for children is covered, but foster parents and similar situations aren't covered under this federal law.

SENATOR DYSON asked if this kind of check is required for childcare and foster parents.

MR. LUCKHAUPT stated there is a separate law dealing with fingerprint based background checks for foster parents and others that deal with children.

SENATOR DYSON said some childcare providers are concerned that they can't get access to juvenile records for individuals they are employing that are just past the age of majority. Areas of sexual misconduct are of particular concern. He asked if it would be possible to have a state statute that would allow access to some juvenile criminal records.

MR. LUCKHAUPT said there's always a problem with federal law with certain people that receive certain federal aid through the Social Security Administration. Some of those records have a requirement for a certain level of confidentiality, but they could open juvenile records if they elected to do so and they have in certain cases.

SENATOR DYSON said he realizes that was off topic for HB 201, but he appreciated the information.

SENATOR COWDERY made a motion to move HB 201 and attached fiscal note from committee with individual recommendations. He asked for unanimous consent. There being no objection, it was so ordered.

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#HB 24

**HB 24-AGREEMENTS ON MANAGEMENT OF FISH AND GAME**

REPRESENTATIVE BRUCE WEYHRAUCH, bill sponsor, explained that when Congress passed ANILCA, [Alaska National Interest Land Conservation Act] it made Glacier Bay National Park a monument and expanded the boundaries to include the inside waters of Glacier Bay out into Icy Strait to the middle of Cross Sound and the outside waters off shore three miles into Lituya Bay, which encompasses about 500,000 marine acres of water. In 1991, the Alaska Wildlife Alliance sued the park superintendent and said ANILCA prohibited fishing in the bay. The Ninth Circuit Court confirmed that ANILCA didn't prohibit commercial fishing in the bay, but the National Park Service (NPS) could, by regulation, close commercial fishing in the park. After that decision, the NPS began to close areas of the bay to fishing and then because of the growing storm in Alaska, Senator Ted Stevens inserted a provision in law that closed commercial fishing in certain areas of Glacier Bay and restricted continued commercial fishing in the bay proper to those who were in the tanner crab, salmon and halibut fisheries giving them a lifetime access permit. Later, Senator Frank Murkowski passed Senate Bill 501 that required the State of Alaska and the federal government to enter into co-management agreements on commercial fishing. Co-management is a concern, and the intent of this bill is to disallow the

commissioner to enter into agreements with the federal government that cede jurisdiction by contract what can't happen by federal or constitutional law.

Initially the bill was introduced to prohibit all co-management agreements between the sovereign and the State of Alaska that surrender jurisdiction and management over commercial fisheries. Currently the bill prohibits the commissioner from entering into any contract with the federal government [National Park Service] that cedes jurisdiction over the management and jurisdiction of Alaska commercial fisheries.

CHAIR GARY STEVENS said he understands that jurisdiction could be ceded, but only after a hearing and the legislative process.

REPRESENTATIVE WEYHRAUCH said, "It would prohibit it. If the State of Alaska and the NPS entered in agreement that the NPS could set species to be harvested or manner and method or seasons, that would be ceding its jurisdiction over the management of commercial fisheries and it couldn't do that by contract because the state has plenary jurisdiction over the management of our commercial fisheries."

The House Judiciary Committee wanted to extend this to every contract between the state and federal government, which was problematic. There are certain agreements that are ministerial and beneficial to the state and don't cede jurisdiction. Co-management agreements are fine so long as they don't cede jurisdiction.

SENATOR JOHN COWDERY asked how many co-management agreements there are.

REPRESENTATIVE WEYHRAUCH said there are many. He said he knew of no co-management agreements over fisheries in Glacier Bay proper and the outside waters, but this is to provide notice that the Legislature is sensitive to this as well as to caution agencies not to cede management jurisdiction.

SENATOR COWDERY asked about economic impacts.

REPRESENTATIVE WEYHRAUCH said there aren't now any co-management agreements that are jurisdictional. The measure is prophylactic.

CHAIR GARY STEVENS asked Mr. White to comment on the bill.

STEVE WHITE, Department of Law, said their initial concerns had been addressed. It is clear that the intent of the bill does not apply to existing agreements in which the state is acting under acknowledged federal authority and assisting in the process of co-management. The state is cooperating with the federal

government in areas such as migratory bird management and management of subsistence, but it's their interpretation that the bill doesn't affect that.

SENATOR FRED DYSON asked what would happen if the federal government determined the state should cede jurisdiction and state law prohibited that.

MR. WHITE replied the federal government couldn't take any state management prerogatives away without an act of Congress.

SENATOR DYSON asked whether it would be necessary to file suit in the event of a disagreement since federal law supercedes state law.

MR. WHITE said he wasn't sure which party would initiate a lawsuit.

REPRESENTATIVE WEYHRAUCH said the state should not cede, through contract, what it can't cede by constitution; and the Legislature needs to go on record as setting a policy in statute that says the state doesn't have co-management agreements that cede management jurisdiction.

SENATOR DYSON asked if anyone had testified against the bill as it moved through the House.

REPRESENTATIVE WEYHRAUCH replied no one had. Initially there was discussion regarding language nuance, but there was no opposition.

SENATOR COWDERY made a motion to move CSHB 24(JUD) from committee with individual recommendations. There being no objection, it was so ordered.

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There being no further business to come before the committee, CHAIR GARY STEVENS adjourned the meeting at 12:50 pm.