

ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE

April 29, 2005

4:12 p.m.

MEMBERS PRESENT

Representative Lesil McGuire, Chair
Representative Tom Anderson
Representative John Coghill
Representative Pete Kott
Representative Les Gara
Representative Max Gruenberg

MEMBERS ABSENT

Representative Nancy Dahlstrom

COMMITTEE CALENDAR

CS FOR SENATE BILL NO. 104(JUD)

"An Act relating to the crimes of unsworn falsification in the first and second degrees and false information or report; requiring the establishment of a permanent fund dividend fraud investigation unit in the Department of Revenue; and providing for an effective date."

- HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 104

SHORT TITLE: PERMANENT FUND DIVIDEND FRAUD

SPONSOR(S): SENATOR(S) SEEKINS

02/14/05	(S)	READ THE FIRST TIME - REFERRALS
02/14/05	(S)	STA, JUD
02/22/05	(S)	STA AT 3:30 PM BELTZ 211
02/22/05	(S)	Heard & Held
02/22/05	(S)	MINUTE(STA)
02/24/05	(S)	STA AT 3:30 PM BELTZ 211
02/24/05	(S)	Moved CSSB 104(STA) Out of Committee
02/24/05	(S)	MINUTE(STA)
02/28/05	(S)	STA RPT CS 4DP SAME TITLE
02/28/05	(S)	DP: THERRIAULT, ELTON, HUGGINS, DAVIS
03/01/05	(S)	JUD AT 8:30 AM BUTROVICH 205
03/01/05	(S)	Heard & Held

03/01/05 (S) MINUTE(JUD)
 03/02/05 (S) JUD AT 8:30 AM BUTROVICH 205
 03/02/05 (S) Moved CSSB 104(JUD) Out of Committee
 03/02/05 (S) MINUTE(JUD)
 03/02/05 (S) JUD RPT CS 3DP 2NR NEW TITLE
 03/02/05 (S) DP: SEEKINS, THERRIAULT, HUGGINS
 03/02/05 (S) NR: FRENCH, GUESS
 03/07/05 (S) TRANSMITTED TO (H)
 03/07/05 (S) VERSION: CSSB 104(JUD)
 03/09/05 (H) READ THE FIRST TIME - REFERRALS
 03/09/05 (H) STA, JUD
 04/05/05 (H) STA AT 8:00 AM CAPITOL 106
 04/05/05 (H) Moved Out of Committee
 04/05/05 (H) MINUTE(STA)
 04/06/05 (H) STA RPT 4DP 1NR
 04/06/05 (H) DP: LYNN, ELKINS, GRUENBERG, SEATON;
 04/06/05 (H) NR: GARDNER
 04/29/05 (H) JUD AT 4:00 PM CAPITOL 120

WITNESS REGISTER

SENATOR RALPH SEEKINS
 Alaska State Legislature
 Juneau, Alaska
 POSITION STATEMENT: Sponsor of SB 104.

CHRISTOPHER C. POAG, Assistant Attorney General
 Commercial/Fair Business Section
 Civil Division (Juneau)
 Department of Law (DOL)
 Juneau, Alaska
 POSITION STATEMENT: Responded to questions during discussion of SB 104.

SHARON BARTON, Director
 Central Office
 Permanent Fund Dividend Division
 Department of Revenue (DOR)
 Juneau, Alaska
 POSITION STATEMENT: Provided comments and responded to questions during discussion of SB 104.

ACTION NARRATIVE

CHAIR LESIL McGUIRE called the House Judiciary Standing Committee meeting to order at [4:12:58 PM](#). Representatives McGuire, Anderson, Coghill, Gruenberg, and Gara were present at

the call to order. Representative Kott arrived as the meeting was in progress.

SB 104 - PERMANENT FUND DIVIDEND FRAUD

[4:13:06 PM](#)

[Contains discussion of HB 127 and HB 273 and the adoption of a committee substitute (CS) that incorporates those bills into SB 104.]

CHAIR MCGUIRE announced that the only order of business would be CS FOR SENATE BILL NO. 104(JUD), "An Act relating to the crimes of unsworn falsification in the first and second degrees and false information or report; requiring the establishment of a permanent fund dividend fraud investigation unit in the Department of Revenue; and providing for an effective date."

SENATOR RALPH SEEKINS, Alaska State Legislature, sponsor, relayed that SB 104 seeks to strengthen the Department of Revenue's ability to investigate fraud associated with making a false application for a permanent fund dividend (PFD), and would make the crime of submitting a fraudulent PFD application a class C felony. In 2004 the Department of Revenue (DOR) examined over 1,600 fraud tips and audited over 1,700 PFD applications suspected of being fraudulent. This resulted in \$1.4 million in denied or assessed dividends, three federal indictments, and one conviction for crimes involving PFD fraud.

SENATOR SEEKINS offered his understanding that the most common PFD fraud offense involves persons who forge the signature of another on the application, or related documents, with the intent of receiving a dividend to which they are not entitled. It's important to note that the bill is not intended to apply to situations where husbands or wives sign for each other. However, the provisions of this legislation would apply in cases where the individual is attempting to steal from another person or from the state. Current law describes three separate degrees of forgery; the two most serious offenses are punishable as class B and C felonies, but are limited to cases involving various types of financial instruments such as currency, securities, deeds of trust, et cetera.

SENATOR SEEKINS noted that the crime of forgery in the third degree covers instances where a person intentionally makes a false statement on a written instrument such as a PFD application, but this offense is punishable only as a class A

misdemeanor. The bill's proposal to elevate PFD fraud from a simple misdemeanor to a class C felony is expected to provide a more effective deterrent for this type of theft. Furthermore, SB 104 will aid in identifying and curing instances of permanent fund dividend fraud by codifying in statute a fraud investigation unit within the DOR. This unit will assist the Department of Law (DOL) in detecting and investigating instances of PFD fraud.

SENATOR SEEKINS offered his understanding that once the fraud investigation unit is established, it will have access to national databases for the purpose of locating those who are committing PFD fraud. He posited that everyone knows someone of whom they suspect PFD fraud, and opined that such fraud should be considered a serious offense, and characterized it as fraud committed against both the state and the people of Alaska. He concluded by urging support for the bill.

[4:17:39 PM](#)

REPRESENTATIVE GARA said he supports the effort of making the crime of PFD fraud a class C felony for all of the aforementioned reasons. However, he added, it seems like such a crime should already be a class C felony because PFD's have been above the amount of \$500 and because the same elements are present as for the crime of theft in the second degree, which is a class C felony. He asked what is it that is not in the law now but which will be gained by the adoption of SB 104.

SENATOR SEEKINS suggested that the Department of Law could better answer that question.

[4:18:55 PM](#)

CHRISTOPHER C. POAG, Assistant Attorney General, Commercial/Fair Business Section, Civil Division (Juneau), Department of Law (DOL), said that it is correct that PFD fraud is a class C felony, but only if the person actually receives the PFD. The goal of SB 104 is to catch the person and charge him/her with a class C felony before the PFD is received; such charges would ensue as a result of investigations conducted after PFD applications are received and before PFDs are distributed. Currently, if a PFD from a fraudulent application is not received, then the crime is merely attempted theft - a class A misdemeanor. In response to a question, he explained that the attempt of a crime lowers the offense one grade.

REPRESENTATIVE GARA surmised, then, that the bill will only result in a higher penalty and not in an easier prosecution.

MR. POAG clarified that the bill will actually do both of those things. He elaborated by saying that the current most effective statute to use to prosecute the aforementioned offense is not that pertaining to theft, but rather that pertaining to unsworn falsification because such covers the main elements of what is occurring. By raising the offense to a class C felony it will become easier to prosecute because it will get additional attention and will be treated as a higher class of offense with similar connotations to crimes such as forgery and perjury. Currently, though, the crime of fraudulently filing a PFD application doesn't fit into either of those offenses. For the most part, he added, crimes involving PFDs are discovered before the PFD is received and so the theft [statute] isn't applicable.

REPRESENTATIVE GARA acknowledged Mr. Poag's points.

[4:22:00 PM](#)

SHARON BARTON, Director, Central Office, Permanent Fund Dividend Division, Department of Revenue (DOR), thanked the sponsor for bringing SB 104 forward, and opined that both components of the bill are important to the division, both the penalty provision and the statutory designation of a fraud unit, which will give the division access to federal databases and enhance the division's ability to track down those outside the state who are committing PFD fraud.

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REPRESENTATIVE ANDERSON moved to adopt 24-LS0519\X, Cook, 4/28/05, as the work draft. There being no objection, Version X was before the committee.

CHAIR McGUIRE explained that Version X incorporates provisions from both her bill - HB 127 - and Representative Weyhrauch's bill - HB 273. Version X includes from HB 127 the provisions regarding providing peace corps volunteers and members of U.S. Olympic Teams with allowable absences, and provides for civil penalties, and includes from HB 273 the provision regarding holding the PFDs of those absent from the state in trust for them upon their return to the state.

MS. BARTON said that the division has looked at the statistics pertaining to those that leave the state and then return, and

does not begrudge distributing PFDs to those that are legitimately residents of the state but are out of the state for more than 180 days on allowable absences. However, what the division has learned from the aforementioned statistics - which would not be considered to have been derived from a statistically valid study - is that no group, based on the different allowable absence categories, returns even 50 percent of the time to the state, and that the dollar amount of PFDs paid to such individuals over the years is substantial - approximately \$86.1 million. [This provision of Version X - from HB 273 -] proposes a substantial change [in procedure] as well constitutes a big policy change that perhaps has not yet been fully discussed or explored. In concept, though, it does address a problem that has been observed by the division for some time.

CHAIR McGUIRE asked Ms. Barton to comment on possible technical changes.

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MS. BARTON relayed that the division has looked at two particular aspects, one of them being what she characterized as a programmatic problem. For example, she explained, in a situation where the applicant is out of state for five years while serving in the military and is killed after being deployed to Iraq, he/she would not be able to return to the state for the required period and so his/her estate would not be entitled to the PFDs that he did qualify for. She suggested that the legislature might want to consider whether or not to include a provision that addresses the situation of an applicant dying while on an allowable absence.

REPRESENTATIVE GRUENBERG asked Ms. Barton if she has a technical amendment to suggest that would address such situations.

MS. BARTON offered her understanding that Legislative Legal and Research Services is working on one.

[4:30:41 PM](#)

MR. POAG said that in reviewing HB 273, he became concerned that for all practical purposes, the division would be deciding that those who are on allowable absences are not in fact eligible for a PFD until they are able to prove that they intend to return to Alaska and remain indefinitely, that the state would hold their checks until they came back to the state and proved that fact.

He said he determined that this is in effect a change in eligibility criteria. He relayed that he is not a big fan of telling a person that he/she is eligible for a PFD but then refusing to give it to him/her.

MR. POAG went on to list the current criteria for qualifying for a PFD - found in AS 43.23.005 - and explained that to say that a person is eligible under those criteria but then not give him/her a PFD would probably provide that person with a decent argument that he/she has a vested interest in the PFDs that he/she has been determined to be eligible for. So to try to avoid those issues, he said, he would recommend that the eligibility criteria be modified such that a person who meets all of the current requirements but is on an allowable absence be conditionally found eligible conditioned upon his/her return to Alaska and demonstration of an intent to remain indefinitely. This will avoid the issue of determining that a person is eligible but holding the PFD hostage and essentially taking it away after saying that the person is eligible.

MR. POAG relayed that he has reviewed state cases regarding this issue, and noted that in those cases a constitutional issue was triggered by a person's constitutional rights to travel. In one case the court addressed this issue by finding that the impingement on the right to travel was minor and the state's purpose - that being to ensure that the PFD goes only to those that are permanent residents - was sufficient to justify that impingement. However, in that case and in one other, the persons were found to not be eligible for PFDs. He predicted that an amendment would be important if the court were to apply the precedents established in those two cases. He noted that the state constitutional right to travel is more protective than the federal constitutional right to travel, and posited that if [the provisions of HB 273] are found to pass constitutional muster under the Alaska State constitution, they will also do so under the U.S. Constitution.

[4:34:27 PM](#)

CHAIR McGUIRE relayed that she'd already discussed with the sponsor the concept of incorporating into SB 104 the provisions of HB 127 but had only just recently considered incorporating provisions of HB 273. However, should concerns with HB 273's provisions arise, she suggested, the committee could simply remove those provisions and then report Version X from committee along with an appropriate title change resolution.

CHAIR McGUIRE, after ascertaining that no one else wished to testify, closed public testimony on SB 104.

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REPRESENTATIVE GARA opined that they should insert the provisions that are likely to meet constitutional muster, and indicated that he is in favor of the provisions from HB 273 but noted that he does have a couple of reservations [about them]. He offered his belief that those who are not earning money while they are absent, or those who are gone for educational reasons should not have to wait until they return to the state to get their PFDs; he indicated that he has an amendment to that effect [original punctuation provided]:

Page 10, line 6

Delete "AS 43.23.008(a)(1)-(8) or (10)-(15)"

Insert "AS 43.23.008(a)(3), (4), (10), (11), (14)
or (15)."

CHAIR McGUIRE asked whether there would be any equal protection issues arising from such an amendment.

MR. POAG noted that the equal protection analysis is a sliding scale, and that the main focus will be on whether the groups that are to be treated differently are similarly situated. If such is the case, and the groups have the same needs, the same interests, and the same reasons for receiving a PFD, but they are then treated differently, then the state would be opening itself up to an equal protection attack. However, if the groups have different needs and are not similarly situated, and if legislative findings could be provided to illustrate why those groups are different, then there is a pretty good argument that there isn't an equal protection issue. The current statute carves out a whole host of allowable absences, and the [Alaska] Supreme Court has been very approving of those "bright line" rules, he concluded.

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REPRESENTATIVE GARA offered his belief that in an equal protection analysis regarding a PFD, the court says it is okay to treat people differently as long as there is some rational basis for doing so. He stated that the rational reason that would be used in his proposed amendment is that the person is

not making money. He remarked that carving out a similar exception for congressmen would be a legislative policy call.

CHAIR McGUIRE expressed a desire to hold the bill over for the purpose of researching constitutional issues.

MR. POAG indicated he could easily draft language that would address members' concerns and further their wishes with regard to the direction they want the bill to proceed in.

CHAIR McGUIRE offered her understanding that the sponsor is amenable to some of the changes being proposed, and said she would have committee staff work with the DOL and the sponsors' staff on the other issues that have been raised.

REPRESENTATIVE GRUENBERG mentioned the issue raised by Ms. Barton.

MS. BARTON remarked that if Representative Gara's proposed amendment regarding those who don't earn money is adopted, then the issue of eligibility for those who accompany such individuals should also be considered.

REPRESENTATIVE GARA offered his understanding that such people are addressed in his suggested amendment.

[SB 104, Version X, was held over.]

ADJOURNMENT

[4:44:44 PM](#)

The House Judiciary Standing Committee was recessed at 4:44 p.m. to a call of the chair. [The meeting was never reconvened.]