

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

March 2, 2005

8:47 a.m.

MEMBERS PRESENT

Senator Ralph Seekins, Chair
Senator Charlie Huggins, Vice Chair
Senator Gene Therriault
Senator French
Senator Gretchen Guess

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 104

"An Act relating to the crime of misrepresenting permanent fund dividend eligibility; requiring the establishment of a permanent fund dividend fraud investigation unit in the Department of Revenue; and providing for an effective date."

MOVED CSSB 104(JUD) OUT OF COMMITTEE

SENATE BILL NO. 84

"An Act relating to the confidentiality of investigations, court hearings, and public agency records and information in child-in-need-of-aid matters and certain child protection matters; relating to immunity regarding disclosure of information in child-in-need-of-aid matters and certain child protection matters; amending Rules 3 and 22, Alaska Child in Need of Aid Rules of Procedure; 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)

BILL: SB 84

SHORT TITLE: CHILD PROTECTION CONFIDENTIALITY

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

01/26/05 (S) READ THE FIRST TIME - REFERRALS
 01/26/05 (S) HES, JUD, FIN
 02/07/05 (S) HES AT 1:30 PM BUTROVICH 205
 02/07/05 (S) Heard & Held
 02/07/05 (S) MINUTE (HES)
 02/09/05 (S) HES AT 1:30 PM BUTROVICH 205
 02/09/05 (S) Moved CSSB 84(HES) Out of Committee
 02/09/05 (S) MINUTE (HES)
 02/14/05 (S) HES RPT CS 4DP 1NR SAME TITLE
 02/14/05 (S) DP: DYSON, ELTON, WILKEN, GREEN
 02/14/05 (S) NR: OLSON
 02/23/05 (S) JUD AT 8:30 AM BUTROVICH 205
 02/23/05 (S) Scheduled But Not Heard
 02/24/05 (S) JUD AT 8:30 AM BUTROVICH 205
 02/24/05 (S) Heard & Held
 02/24/05 (S) MINUTE (JUD)

WITNESS REGISTER

Ms. Sharon Barton, Director
 Permanent Fund Division
 Department of Revenue
 PO Box 110400
 Juneau, AK 99811-0400

POSITION STATEMENT: Testified in support of SB 104

Mr. Dan Boone
 Department of Revenue
 PO Box 110400
 Juneau, AK 99811-0400

POSITION STATEMENT: Testified in support of SB 104

Mr. Chris Poag, Attorney
Department of Law
PO Box 110300
Juneau, AK 99811-0300

POSITION STATEMENT: Testified in support of SB 104

Ms. Gail Voigtlander, Supervising Attorney
Anchorage Attorney General's office
1031 W. 4th Ave
Anchorage, AK 99501

POSITION STATEMENT: Commented on SB 84

Ms. Marcie Kennai
Department of Health & Social Services
PO Box 110601
Juneau, AK 99801-0601

POSITION STATEMENT: Testified in support of SB 84

Ms. Dianne Olson
Department of Law
PO Box 110300
Juneau, AK 99811-0300

POSITION STATEMENT: Testified in support of SB 84

Mr. Scott Calder
Fairbanks, AK

POSITION STATEMENT: Testified in opposition of SB 84

ACTION NARRATIVE

CHAIR RALPH SEEKINS called the Senate Judiciary Standing Committee meeting to order at [8:47:41 AM](#). Present were Senators Hollis French, Charlie Huggins, Gene Therriault, Gretchen Guess and Chair Ralph Seekins.

SB 104-PERMANENT FUND DIVIDEND FRAUD

[8:47:41 AM](#)

CHAIR SEEKINS announced SB 104 to be up for consideration.

SENATOR HUGGINS moved to adopt Version \I as the working document. With no objections, the motion carried.

[8:49:13 AM](#)

CHAIR SEEKINS asked Sharon Barton to comment on Version \I.

MS. SHARON BARTON, director, Permanent Fund Division (PFD), told members the legal drafter worked the PFD violations into existing law. The intent of including the language on Section 10, paragraph (5) is, absent that language, the court would have the option of prosecuting PFD violations as either a misdemeanor or a felony. Version \I clarifies that PFD violations can be prosecuted under its own section.

MR. CHRIS POAG, attorney, Department of Law (DOL), testified Section 10, paragraph (5) does two things. An applicant might submit documentation to accompany an application to the PFD division. However, a person might also be contacted by a division employee and provide information verbally. Section 10 addresses phone representations because currently falsifying information on the phone is not covered under unsworn falsification. He recommended changing the reference on line 31 from AS 11.56.210 to AS 11.56.205.

[8:52:13 AM](#)

CHAIR SEEKINS asked whether that change would mean a person convicted of a felony could not be found guilty of a misdemeanor.

MR. POAG explained:

If you submit an application and it contains false information, that's a written or recorded statement. If you call the PFD division on the phone and make representations over the phone - oral representations - those oral representations don't constitute a violation of the felony act. But those are two separate acts that could be two separate criminal offenses, one being oral representation.

SENATOR THERRIAULT asked if the DOL wants to make sure the written violation should not be prosecuted as a misdemeanor.

MR. POAG answered correct. He said as the bill is written, there is the potential ambiguity that false information could include that written or recorded statement.

SENATOR THERRIAULT proposed Amendment 1:

Page 4, line 31, delete AS 11.56.210 and insert AS 11.56.205.

With no objections, Amendment 1 was adopted.

[8:53:47 AM](#)

CHAIR SEEKINS asked Ms. Barton if SB 104 gives the PFD division the ability to access the databases.

MS. BARTON said she did not know.

CHAIR SEEKINS advised the intent of the committee was to pass SB 104 out of committee.

SENATOR GUESS asked Ms. Barton whether a false application representing a child was covered.

MS. BARTON answered yes.

[8:55:26 AM](#)

SENATOR FRENCH asked the number of prosecutions that occurred last year.

MS. BARTON said there were no state prosecutions and one federal prosecution.

SENATOR FRENCH asked whether there were no state prosecutions because the felony charge was not available.

MS. BARTON said the main reason was the lack of such a provision in the statute. The federal government is currently attuned to social security, mail and wire fraud and so it has two or three Alaska cases under consideration.

[8:57:34 AM](#)

MR. POAG said Alaska had one state indictment but as part of a plea agreement there was no conviction for the PFD fraud charge.

SENATOR FRENCH asked Ms. Barton who would investigate PFD fraud.

MS. BARTON advised that chief investigator Dan Boone would be responsible.

[8:59:12 AM](#)

MR. DAN BOONE, investigator, Department of Revenue, PFD Division, advised the committee the division submitted two cases. One was declined and was prosecuted by the federal government, resulting in a conviction. The other case was resolved to a felony DUI and the fraud convictions were dropped. Currently the division is using the federal government to obtain prosecutions because state law does not provide enough enforcement power.

CHAIR SEEKINS asked Mr. Boone the number of fraud cases he expects to investigate.

MR. BOONE indicated ample opportunity for prosecution. Out of the 1,600 fraud tips the dividend received, 48 percent resulted in an action. SB 104 would mainly be used to educate the public and deter people from falsifying statements. The DOR is headed toward using online applications and electronic signatures, which are hard to investigate. Educating the public will be a priority, as the division wants to deter people from filing false applications by letting them know beforehand they will be committing a felony.

[9:02:09 AM](#)

CHAIR SEEKINS asked Ms. Barton how the public would be notified regarding falsifying applications.

MS. BARTON replied the application contains conspicuous language regarding consequences of falsification. That language will be "beefed up" if this law passes.

SENATOR HUGGINS voiced concern about college students and military personnel because of additional hurdles they must pass when applying for a dividend, especially time delays experienced by overseas military personnel.

[9:03:47 AM](#)

MS. BARTON said students submit a form from the registrar's office to certify enrollment. The division is also attuned to the special needs of military personnel and is liberal with time extensions for both students and military personnel. She noted that even after denial, the division would reconsider the circumstances. A power of attorney can also be used to file an application. She noted a new law passed last year allows military personnel to apply an additional 90 days after they are removed from an area where they receive combat pay.

[9:08:04 AM](#)

SENATOR HUGGINS asked Ms. Barton the number of students and military personnel who are not getting their dividends.

MS. BARTON advised small numbers of people are denied because of inability to provide proper documentation. The majority of problems occur because people lose their documentation.

[9:10:26 AM](#)

CHAIR SEEKINS asked whether it was an automatic disqualifier when someone moves to another state.

MS. BARTON replied there is no simple question regarding eligibility. Registering to vote or applying for a fishing license in another state disqualifies a person from receiving a PFD.

SENATOR HUGGINS commented military personnel are eligible for resident hunting and fishing licenses in other states. He hoped that does not disqualify them.

[9:13:31 AM](#)

CHAIR SEEKINS said he knows people who never intend to come back but draw a PFD.

SENATOR FRENCH asked Mr. Boone the number of total cases referred out of the division.

MR. BOONE replied that the division's goal is to get money back to the state, not to prosecute. However, some egregious cases need to be prosecuted.

[9:17:43 AM](#)

CHAIR SEEKINS asked Ms. Barton whether she was satisfied with SB 104.

MS. BARTON answered yes.

SENATOR THERRIAULT moved CSSB 104(JUD) out of committee with individual recommendations and zero fiscal notes. There being no objections, CSSB 104(JUD) passed out of committee.

CHAIR SEEKINS announced a brief recess at [9:19:29 AM](#).

CHAIR SEEKINS reconvened the meeting at [9:31:50 AM](#).

SB 84-CHILD PROTECTION CONFIDENTIALITY

[9:31:50 AM](#)

CHAIR SEEKINS announced SB 84 to be up for consideration.

SENATOR HUGGINS moved to adopt Version \F as the working document. Hearing no objections, the motion carried.

CHAIR SEEKINS asked Gail Voigtlander to brief the committee on the immunity section of SB 84.

MS. GAIL VOIGTLANDER, supervising attorney, Anchorage Attorney General's Office, introduced the changes to the bill. She understood the committee was concerned about immunity in the original Section 14. She admitted it is difficult to draft immunity language. The substitute language in the committee substitute is designed to ensure defendants move to summary judgment. The people at risk are court system employees.

[9:38:26 AM](#)

SENATOR THERRIAULT asked where the other immunity section was.

MS. VOIGTLANDER replied AS 47.35.810.

SENATOR THERRIAULT noted the new language in Section 14 sets the bar very high.

[9:40:50 AM](#)

SENATOR FRENCH shared Senator Therriault's concern. He voiced disappointment that the amendment didn't exclude gross negligence. However, the jury will have to review whether gross negligence occurred.

CHAIR SEEKINS advised he is open to amending the bill.

SENATOR THERRIAULT referred to AS 09.50.250 and AS 09.50.253, both of which address immunity clauses. He suggested the committee look at other immunity clauses, which are already in the statutes.

CHAIR SEEKINS asked if other areas in the statutes cover state employees.

SENATOR THERRIAULT answered AS 09.50.253 specifically refers to state employees.

[9:44:22 AM](#)

CHAIR SEEKINS said the umbrella includes municipal and state employees.

SENATOR THERRIAULT commented AS 47.35.810 says a person operating under agreement with the department is immune from civil liability.

[9:45:07 AM](#)

SENATOR FRENCH offered to have the Legislative Research Department do a summary of the immunity clauses in the Alaska statutes to make sure the standards all mesh.

CHAIR SEEKINS said he understands the importance of indemnifying employees who need to work within the scope of their employment and the legitimate best interest of the child.

[9:47:27 AM](#)

SENATOR THERRIAULT said malice is intentional.

CHAIR SEEKINS suggested asking the drafter to make sure Section 14 sets the same standard as that for other state employee immunities, and also includes municipal employees.

[9:48:33 AM](#)

MR. SCOTT CALDER testified the purpose of SB 84 is sided toward the Department of Health and Social Services (DHSS). The image problem that DHSS has is self-imposed. State liability is a good discussion to have. Negative instances occur within DHSS. He voiced concern that DHSS is able to run the show. He said he does not trust DHSS to divulge the truth and the public is not able to correct any false information that may be exposed.

[9:54:02 AM](#)

MR. CALDER said parents should be able to obtain and evaluate any information that DHSS has. Many parents have been shut out of the process. The committee must carefully consider any matter where a child is held by the state.

[9:57:12 AM](#)

SENATOR THERRIAULT reviewed SB 84 for drafting purposes and pointed out that Section 11 needs clarification as to who is covered with immunity.

Ms. DIANNE OLSON, senior attorney, Anchorage Attorney General's office, explained Section 11 was read together with another regulation.

SENATOR THERRIAULT said he wanted to make sure it was standard.

CHAIR SEEKINS perceived it allows sharing of confidential information to people with a legitimate interest.

MS. OLSON said there are no regulations pertaining to who has a legitimate interest.

SENATOR GUESS asked Ms. Olson why Section 3, lines 18-26, doesn't include other parties.

MS. OLSON answered under AS 47.10 the person to be protected is the child. The minor is the subject of the chapter. The concerns that Senator Guess referenced could be brought up in court.

10:01:50 AM

SENATOR GUESS asked Ms. Olson if the courts have leeway.

MS. OLSON replied yes.

SENATOR GUESS asked why the guardian ad litem was removed on Page 5, line 24.

MS. OLSON answered guardian ad litem are included through the court rules process.

SENATOR FRENCH said Section 4 has a new subsection that allows more open hearings in child in need of aide (CINA) cases unless another section applies, closing the hearing. Section 6 suggests sealing records after 30 days. He questioned sealing the records of an open court proceeding.

10:04:16 AM

MS. OLSON said Section 6 pertains to the actual court records of the child. There is a difference between the recording of a hearing and the documents of a court case.

SENATOR FRENCH said he does not understand why an open court proceeding should later be closed.

MS. OLSON explained if the court started opening records, people would be able to view all the documents within the file. Some of those documents are sensitive.

10:07:23 AM

SENATOR FRENCH advised he would consider working on an amendment.

MS. MARCIE KENNAI, Department of Health and Social Services, said the department looked at opening the court records, but the intent is to ensure that family and child confidentiality is maintained. DHSS has to submit items to the court such as a mental health assessment, a person's HIV status and/or participation in substance abuse treatment. The entire court document would not necessarily come out in a hearing.

SENATOR GUESS asked Ms. Kennai whether DHSS discussed consideration of a sunset.

10:10:36 AM

MS. KENNAI replied no. The department looked at other states' laws; 18 have open hearings. There is public interest only in very high profile cases.

CHAIR SEEKINS saw there were no other questions. He advised the committee they would further review SB 84 in the next meeting. The intent is to have the same level of immunity standardized.

SENATOR THERRIAULT suggested authorizing the drafter to converse with the Department of Law.

There being no further business to come before the committee, Chair Seekins adjourned the meeting at 10:13:48 AM.