

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

March 3, 2005

9:01 a.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

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."

MOVED CSSB 84(JUD) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

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)
03/02/05 (S) JUD AT 8:30 AM BUTROVICH 205
03/02/05 (S) Heard & Held
03/02/05 (S) MINUTE (JUD)

WITNESS REGISTER

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

POSITION STATEMENT: Commented on SB 84

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

POSITION STATEMENT: Supports SB 84

ACTION NARRATIVE

CHAIR RALPH SEEKINS called the Senate Judiciary Standing Committee meeting to order at [9:01:46 AM](#). Present were Senators Hollis French, Charlie Huggins, Gretchen Guess, and Chair Ralph Seekins.

SB 84-CHILD PROTECTION CONFIDENTIALITY

[9:01:46 AM](#)

CHAIR SEEKINS announced SB 84 to be up for review. He advised the committee there is a new fiscal note from the Public Defenders Agency. He announced that Dianne Olson was on line to answer questions, and clarified the committee was working from version \Y.

[9:03:41 AM](#)

CHAIR SEEKINS asked Senator French if he wanted to propose an amendment.

SENATOR FRENCH advised after talking to the Department of Law, he learned there are good reasons to have the file closed after the open court proceedings. He agreed with Senator Guess's previous suggestion to provide a sunset so that the committee could revisit the legislation to see how it is working.

SENATOR HUGGINS moved to adopt Version \Y as the working document. There being no objection, the motion carried.

[9:06:26 AM](#)

CHAIR SEEKINS advised the committee that Version \Y redrafts the immunity clause.

SENATOR FRENCH said he researched immunity sections in Title 9 and the language in Version \Y is acceptable.

[9:07:38 AM](#)

Senator Therriault joined the committee.

SENATOR THERRIAULT asked whether there was a statutory definition for the municipal agencies or employees and, if so, whether it includes school officials or district employees.

CHAIR SEEKINS asked Ms. Dianne Olson to comment.

[9:09:32 AM](#)

MS. DIANNE OLSON, senior attorney, Anchorage Attorney General's Office, answered that AS 47.10.093 refers to information in social records pertaining to the minor prepared by employees of the state and municipal agencies. She did not see any definition that would relate to a borough.

CHAIR SEEKINS asked Ms. Olson whether a school district was a subdivision of the state.

MS. OLSON answered she would get back to the committee.

CHAIR SEEKINS commented the State of Alaska has subdivisions that include boroughs and cities. He asked whether school districts were involved in Child In Need of Aid (CINA) cases.

MS. OLSON answered in some instances children who are in CINA cases are in school. Under the statutes DHSS has the ability to share some information with the schools. AS 47.10.093 ensures the schools can provide counseling and allows them to provide protection for the child.

[9:11:26 AM](#)

CHAIR SEEKINS asked Ms. Olson whether the intent would be clearer if the committee added language to include the school

district or employees because municipalities, cities, and boroughs are subdivisions of the state; school districts are not.

SENATOR THERRIAULT suggested the committee decide whether or not school employees should be included. After that they should ensure the definition is clear.

9:13:29 AM

CHAIR SEEKINS commented there is a different theory as far as liability is concerned. SB 84 proposes to indemnify somebody from liability for failure to disclose but it protects the state employee and not the school district employee.

SENATOR THERRIAULT asked whether school district employees would be included under SB 84.

CHAIR SEEKINS answered they are trusted with confidential information, and they could be sued for not disseminating important information.

SENATOR FRENCH said generally this type of information flows uphill when it's a report of harm. Then a CINA case is opened and the information flows back. The commissioner or the commissioner's designee would decide whether to make certain information available to the public. He said it is that disclosure or lack of disclosure that the committee would be indemnifying.

9:15:15 AM

SENATOR THERRIAULT agreed the information disclosure goes both ways. He said he is not sure what information a state agency would be expecting the school employee to disclose.

CHAIR SEEKINS asked, "What if a principal didn't tell a teacher important information and a child was further harmed as a result?"

SENATOR FRENCH asked, "Do we want to indemnify that person?" The committee needs to determine how far down the line to extend the indemnification.

9:18:00 AM

SENATOR THERRIAULT said he is not sure it is advisable to hold state agency personnel to a lesser standard than a school employee.

CHAIR SEEKINS agreed.

SENATOR GUESS said in SB 84 a school employee is never providing information down line. It is the state employee who is disclosing information. SB 84 doesn't deal with the school district side.

CHAIR SEEKINS announced a short recess at [9:19:14 AM](#).

[9:46:17 AM](#)

CHAIR SEEKINS reconvened the meeting. He referenced Section 14 and explained the intent is to allow the commissioner or the commissioner's designee to be able to release information in defense of the actions of the state in a particular case. The commissioner and designee are the indemnified people.

SENATOR FRENCH commented that language would solve a lot of open-ended questions.

[9:49:59 AM](#)

SENATOR GUESS proposed the adoption of amendment 1, which reads as follows:

On page 8, line 18: delete "a municipality, or state or municipal agencies or employees." Insert "the commissioner or the commissioner's designee."

CHAIR SEEKINS heard no objections so Amendment 1 to Version \Y was adopted.

SENATOR THERRIAULT said the difference between negligence and gross negligence is a gray area. He asked if the committee should delete the word "gross".

CHAIR SEEKINS said the attorney has the onus to define the difference between negligence and gross negligence.

[9:51:57 AM](#)

SENATOR HUGGINS supported leaving the word "gross" in.

SENATOR FRENCH supported Senator Huggins and offered that the jury should decide whether an action or non-action constituted negligence or gross negligence.

SENATOR THERRIAULT wondered how negligent a person could be and still be protected by immunity.

CHAIR SEEKINS said SB 84 deals with the public dissemination of information. Immunity is only in Section 13, subsection (k).

9:54:50 AM

SENATOR THERRIAULT asked if the immunity clause in AS 47.10.094 (a) was limited to AS 47.10.093(k).

CHAIR SEEKINS said AS 47.10.094 applies only to the actions in AS 47.10.093(k).

CHAIR SEEKINS asked Ms. Olson if the committee understood the amendment correctly.

MS. OLSON agreed that the committee understood the amendment that said immunity is limited only to actions in Section 13, subsection (k). She said the state's tort attorney would like to see the amendment to include all of the downward disclosure under AS 47.10.093 if the committee could figure out to whom the disclosures would go. She cautioned that there are possibilities of missteps by state agencies.

CHAIR SEEKINS countered that those are confidential disclosures, not public disclosures.

MS. OLSON commented under AS 47.10.093, DHSS might be able to disclose confidential information to a foster parent who is a member of the public, or to a governmental agency, or school official for the purpose of providing counseling for the child. There are circumstances where a person might interpret the statute to say a particular piece of information should not have been disseminated. There are a lot of areas for mistakes to be made. It would be good to have that immunity pursued up to gross negligence. Mistakes can be made when you have discretion with regard to the kind of information that you are providing.

9:57:49 AM

CHAIR SEEKINS asked Ms. Olson the level of confidentiality the people she is talking about should be held to.

MS. OLSON answered they would be held to the same level of confidentiality as the commissioner or the commissioner's designee.

CHAIR SEEKINS asked whether a person who disclosed confidential information to the public could be subject to action.

MS. OLSON answered yes, as referenced in another statute.

CHAIR SEEKINS said AS 47.10.094 would be amended to allow the commissioner or the commissioner's designee the ability to disclose confidential information to the public but only under very special circumstances. He said he is not sure the committee wanted to indemnify someone who is in the chain of confidentiality for making public disclosure. People who are allowed to pass on confidential information should be held to a standard and not be given blanket immunity.

[9:59:13 AM](#)

SENATOR GUESS said the question is on page 5, line 22, where employees are making decisions about whether or not they shall disclose confidential information to a group of people. She asked if the committee should provide immunity to the state employees who are making decisions about whether or not to disclose confidential information, understanding that the employee could make the wrong choice and cause harm to a child.

CHAIR SEEKINS said the state's tort attorney would like to address that particular issue. He suggested the committee should consider that issue in another piece of legislation. The committee is trying to consider how to release confidential information to the public. It was a good discussion point but the committee shouldn't hold up SB 84 for that.

[10:00:54 AM](#)

CHAIR SEEKINS asked for further discussion.

SENATOR THERRIAULT asked if the new section [AS 47.10.094 (a)] creates a higher level of protection of immunity than other immunity clauses in the current statutes.

MS. OLSON answered that it is a fairly routine standard.

SENATOR FRENCH said he spent time looking at the immunity sections of the current statutes and found AS 47.10.094 (a) to be standard.

[10:02:08 AM](#)

CHAIR SEEKINS asked for other discussion.

[10:02:21 AM](#)

SENATOR HUGGINS moved CSSB 84(JUD) from committee with individual recommendations and zero fiscal notes. Hearing no objections, the motion carried.

There being no further business to come before the committee,
Chair Seekins adjourned the meeting at [10:02:59 AM](#).