

HOUSE FINANCE COMMITTEE
February 1, 2007
1:43 P.M.

CALL TO ORDER

Co-Chair Meyer called the House Finance Committee meeting to order at [1:43:05 PM](#).

MEMBERS PRESENT

Representative Mike Chenault, Co-Chair
Representative Kevin Meyer, Co-Chair
Representative Bill Stoltze, Vice-Chair
Representative Harry Crawford
Representative Richard Foster
Representative Les Gara
Representative Mike Hawker
Representative Reggie Joule
Representative Mike Kelly
Representative Mary Nelson
Representative Bill Thomas Jr.

MEMBERS ABSENT

None

ALSO PRESENT

Representative Jay Ramras; Emily Stancliff, Staff,
Representative Jay Ramras

PRESENT VIA TELECONFERENCE

Andy Harrington, Executive Director, Alaska Legal Services

SUMMARY

HB 76 An Act relating to the creation of a civil legal services fund.

CS HB 76 (JUD) was reported out of Committee with a "do pass" recommendation and with zero note #1 by the Department of Administration.

#HB76

HOUSE BILL NO. 76

An Act relating to the creation of a civil legal services fund.

REPRESENTATIVE JAY RAMRAS, SPONSOR, noted that his staff, Emily Stancliff, would be presenting the legislation to the Committee.

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EMILY STANCLIFF, STAFF, REPRESENTATIVE JAY RAMRAS, explained that HB 76 was designed to help fund civil legal services for low-income Alaskans, accomplished by creating a Civil Legal Services Account funded by provisions required under AS 09.17.020(j). Alaska Statutes require that 50% of any punitive damage awards that go to the State be deposited into the General Fund. Each legislature has the power to appropriate those funds into such a place.

Ms. Stancliff added, civil legal needs of low-income Alaskans are no different from others. Without the aide of non-profit organizations, indigent families could loose their homes, jobs, income, medical coverage and rights to be free from domestic violence. Adequate representation for low-income Alaskans is necessary to protect a guarantee to "equal rights, opportunities, and protection under the law" as declared by the Alaska Constitution. Lack of a legal representative in such cases requires more judicial time, which can result in postponement of other legal matters and places judges in the position of offering legal advice to the unrepresented.

The Alaska Legal Services Corporation (ALSC) was established in 1966 in order to address civil legal needs of low-income Alaskans. ALSC is not a statewide agency, but a charitable non-profit organization whose funding comes from a combination of State, federal and private sources. Over the past several years, the funding has dwindled. Appropriations from the State were once as high as \$1.2 million dollars a year; the last appropriation, made in FY04 was \$125 thousand dollars. HB 76 aims to address the financial needs of agencies such as the ALSC to create equal access to the justice system for low-income Alaskans and to bridge that State funding gap.

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Representative Ramras added that the bill is similar to one introduced in the 24th Legislature through the Chairs of both the Senate and House Judiciary Committees. He noted the executive director for Alaska Legal Services would testify on the bill. Currently, ALSC receives funds from the Anchorage Municipality, the Fairbanks North Star Borough and federal funding. ALSC would appreciate funding from the Alaska Court System punitive damage awards.

Representative Ramras encouraged passage of the bill, recommending that it will provide voice to the State's needy.

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Vice Chair Stoltze referenced the handouts, stating that no handout should be distributed to the Committee unless the source is noted. (Copy on File).

Representative Gara replied he had requested distribution of the handout; he was not aware of correct Committee protocol for distributing back-up materials. Vice Chair Stoltze explained that reference is normal Committee policy.

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ANDY HARRINGTON, (TESTIFIED VIA TELECONFERENCE), EXECUTIVE DIRECTOR, ALASKA LEGAL SERVICES CORPORATION, ANCHORAGE, expounded that many calls received by the ALSC result from problems with federal agencies or domestic violence. Often times, laws exist on the books, protecting people from injuries suffered, although not involving a criminal case, but having their rights vindicated. Many people do not have adequate cash to hire a private attorney and then turn to ALSC.

Mr. Harrington pointed out that ALSC recruits as many young attorneys as possible, who barely make minimum wage in order to get the experience needed to handle cases. ALSC recruits private bar attorneys, willing to volunteer their time to represent low income people on civil matters. Most work done through ALSC is in the Court and involves State law, while a small proportion involves federal agencies. He reiterated most of the time is spent in the State Court. The majority of funding originates from federal sources, some from municipal or regional Native nonprofits. Over the years, State funding has drastically declined.

Mr. Harrington observed benefits to both the community & constituents, involving such legal claims. He agreed that those attempting to represent themselves, slow down the legal system and make it more difficult for Court judges.

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Mr. Harrington reiterated, funding to ALSC promotes efficiency of the overall Court system and can prevent certain cases from "blowing up". ALSC provides a more efficient way to process those cases.

He acknowledged that the funding concept is creative, using the funding share from punitive damage cases. Poor people do not have the expertise or time to handle their own cases; they struggle to just stay alive. Providing funding to promote equal access to the civil justice system, keeps with the Alaska State Constitution.

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Representative Gara inquired if a stable funding source would be more preferable to the proposed legislation. Mr. Harrington acknowledged that would be preferable; stability is always important.

Representative Gara asked how "spotty" funding would be handled within that agency. Mr. Harrington understood that the proposed funding would be a "bit of a roller coaster ride". The agency will attempt to use an averaging approach, looking at projected revenue and gauging budgets based on that, so that during the "years of plenty", it would be adjusted for those projected lean years. He reiterated that he would prefer a stable amount year after year; however, it is currently zero and anything helps.

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Representative Gara pointed out the distributed handout, which indicates dollars since 2000 from the proposed funding source. He stated that the law which created the fund happened in 1997. Since that time, there have been three punitive damage shares resulting in verdicts recovering during civil cases. Since July 2005, the State has only collected a total of \$333 dollars; in January 2005, the State received \$300 thousand dollars. He summarized the handout.

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Representative Nelson noted that the justice system is "finely tuned". Often times, the State spends more funding on fighting crime than offering adequate representation for going to court. She asked about increased spending on the "law and order" side of the budget.

Representative Ramras explained that the legislation identifies only civil services - no criminal violations. Mr. Harrington commented on the type of cases that would be addressed through the proposed legislation. The Public Defenders Office will continue to handle criminal proceedings. The largest categories of civil cases are those involving custody disputes and domestic violence; there are some adoption cases and child-support concerns, which are pro bono contingency cases for low-income people. Some housing cases involve foreclosure and federal benefit programs such as Medicare and Medicaid. He summarized that the majority of cases addressed by ALSC:

- Housing
- Consumer health
- Domestic relations involving domestic violence

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Vice Chair Stoltze inquired if illegal immigrants had been represented by ALSC. Mr. Harrington replied they do not represent un-documented citizens with one minor exception. ALSC is governed by regulations, resulting from the need to get federal funding. There are several categories not handled:

- Incarcerated
- Class action suits
- Undocumented aliens - precluded from defending against a conviction if it were based on a drug related criminal conviction

Mr. Harrington pointed out the exception for representing undocumented aliens is if there were a domestic violence situation, the ALSC could provide assistance. There is a separate group providing such service, the Alaska Immigration Justice Program, providing services, not using income guidelines.

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Representative Gara asked if in the domestic violence & child custody cases, ALSC mostly represents people having custody problems arising out of domestic violence. He assumed that only victims were represented in such cases. Mr. Harrington stated that ALSC has a policy of only representing domestic violence victims. However, there are two sides to every story and it has occurred they have represented the more abusive person. That is not the policy. There is an Alaskan Supreme Court ruling, which clarifies that if ALSC is representing one parent in a custody dispute, the Court system has the obligation to appoint an attorney to the other parent. In a custody dispute, there is a conflict precluding representation of the other parent; however, the Office of Public Advocacy (OPA) can represent the other parent.

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Co-Chair Chenault asked the number of cases that deal with domestic violence or child custody. Mr. Harrington replied that would depend on which office was being referenced. Currently, there are 8 offices around the State; breakdowns vary from area to area. Close to ½ of all cases involve some kind of a domestic relation matters. Out of that number, 60-75% involves some measure of abuse or violence.

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Co Chair Chenault asked to speak with Mr. Harrington privately, regarding the abuse concern.

Representative Ramras pointed out that ALSC serves with about 4,400 cases per year, even given their current budgeting program.

Vice Chair Meyer CLOSED public testimony.

[2:12:31 PM](#)

Representative Gara MOVED to ADOPT Amendment #1, 25-LS0349\M.1, Bailey, 2/01/07. Representative Hawker OBJECTED.

Representative Gara explained Amendment #1, which he believed is a value judgment regarding free legal services for people who have not committed a crime. He emphasized that representation and access to justice is an important thing. He endorsed a stable funding source, pointing out that General Fund was a stable funding source until Governor Murkowski vetoed it. He knew that ALSC would prefer an annual appropriation rather than the inconsistent proposed agency funding.

Representative Gara advised that the funding proposed is inconsistent and would provide only 50% punitive damage support, costs, which are rarely paid and when such cases are settled, the plaintiff does not want the money to go to punitive damages award. The one thing that parties in a lawsuit agree upon is that they do not want any documents claiming they had a case involving punitive damages. The defendants claim that all settlement monies are compensatory damages. Again, a plaintiff would not want 50% to go to that fund as that is the one thing litigants agree upon, that is when a case is settled, it is indicated that the settlement is for compensatory damages. Rarely does money come into that fund for future use.

Representative Gara pointed out that Amendment 1 indicates the Access to Justice Task Force. Legal Service funding has dwindled on both the federal and State level. He recommended taking a portion of court filing fees and placing that into a legal services fund, providing a stable source of funding. That is what Amendment 1 offers.

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Representative Ramras opposed Amendment 1, stating that it would be considered a taxing fee, which he does not support. In spite of funding obstacles, ALSC has continued to serve Alaskans.

Representative Hawker emphasized that the amendment raises a fundamental problem in circumventing the Alaska State Constitution, a dedication of funds prohibition. The intent of the Constitutional delegates was to prohibit earmarking revenues as by doing that, the Legislature loses its future ability to match expenditures with public needs as circumstances change from year to year.

Representative Hawker continued, the critical language cites the Constitutional Convention regarding the "evil" of allocating such funds and by doing that, neither the governor nor the legislature would maintain control of the finances for the State. He then extended that concern to the entire premise of the bill.

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Representative Hawker continued his discussion on the dedication of "other funds", circumventing the Constitutional prohibition against the dedication of funds. He reiterated concern with such a move, stating he could not support the amendment. Vice Chair Meyer agreed.

Representative Crawford questioned if Representative Hawker was opposed to the bill or the amendment. Representative Hawker interjected a "point of order" regarding such an inquiry not moving through the Committee Chair. Co-Chair Meyer remarked that questions should always move through the Committee Chair. Representative Crawford reiterated his question to Co-Chair Meyer regarding Representative Hawker's opposition to both the bill and the amendment and asked clarification. Vice Chair Meyer requested that Committee members keep all comments on only Amendment 1.

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Representative Gara clarified that there was nothing in the bill or the amendment, which violates the Alaska State Constitution. He referenced the FY08 proposed budget, which places money into funding appropriations from sources similar to that recommended by Amendment 1. He thought that not violating the dedicated funds prohibition would be establishing an account and calling it a fund. Money would then be placed into that fund, but would not become a dedicated fund, because the Legislature would not be directed toward spending it. He agreed with Representative Hawker, however, advised that answer to the concern would be for the Legislature to take more control over the issue and fund it through the General Fund.

Representative Gara added that he intended to follow Amendment 1, with a conceptual amendment, which would delete the entire bill and insert a \$250 thousand dollar General Fund appropriation.

Vice Chair Meyer recommended that the Committee not be "writing the budget" at this time and asked that such an amendment be held and offered during the budget-making process. He requested that the Committee stay on discussion of Amendment 1.

[2:30:08 PM](#)

A roll call vote was taken on the MOTION.

IN FAVOR: Gara, Nelson
OPPOSED: Crawford, Foster, Hawker, Joule, Kelly,
Stoltze, Thomas, Meyer, Chenault

The MOTION FAILED (2-9).

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Vice Chair Meyer requested that Representative Gara "save" the proposed Amendment 2, discussing it during the subcommittee process. Representative Gara stated he would be willing to work with the Committee but that he was worried with letting the opportunity pass from Committee for something as important as the Alaska Legal Services Corporation. Co-Chair Meyer reiterated, it could be addressed during the subcommittee process.

Representative Hawker pointed out that HB 76 is a policy bill, not an appropriation bill. He did not think that House Rules allow for a policy bill being changed to an appropriation bill through an amendment. Co-Chair Meyer agreed.

Representative Joule argued in support for the concept being proposed in conceptual Amendment 2 & encouraged the process. Co-Chair Meyer agreed.

Representative Gara offered to HOLD conceptual Amendment 2.

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Representative Hawker questioned the fiscal impact regarding funds being transferred. Ms. Stancliff acknowledged that the Sponsor has no idea of what can be expected year to year through the proposed funding. Mr. Harrington agreed with Representative Gara's estimations that the agency could receive anywhere between \$0 - \$300 thousand dollars.

Representative Hawker spoke against "earmarking" funds, and questioned the overall effectiveness of the proposed legislation. He acknowledged the intent, stressing the small amount of enforcement possibility.

Representative Gara reiterated his support for a "flat" funding appropriation to the Alaska Legal Services Corporation.

Representative Kelly interjected comments that the appropriation process is a "judgment call" and that there were differing opinions regarding funding.

Representative Foster MOVED TO REPORT CS HB 76 (JUD) out of Committee with individual recommendations and with the accompanying zero fiscal note. There being NO OBJECTION, it was so ordered.

CS HB 76 (JUD) was reported out of Committee with a "do pass" recommendation and with zero note #1 by the Department of Administration.

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ADJOURNMENT

The meeting was adjourned at 2:43 P.M.