

ALASKA STATE LEGISLATURE
HOUSE STATE AFFAIRS STANDING COMMITTEE

January 24, 2008
8:08 a.m.

MEMBERS PRESENT

Representative Bob Lynn, Chair
Representative Bob Roses, Vice Chair
Representative John Coghill
Representative Kyle Johansen
Representative Andrea Doll

MEMBERS ABSENT

Representative Craig Johnson
Representative Max Gruenberg

COMMITTEE CALENDAR

HOUSE BILL NO. 284

"An Act relating to participation in certain student fellowships as an allowable absence from the state for purposes of eligibility for permanent fund dividends; and providing for an effective date."

- MOVED HB 284 OUT OF COMMITTEE

HOUSE BILL NO. 269

"An Act requiring the state to procure United States and Alaska flags manufactured in the United States; and requiring state buildings and schools to display only United States and Alaska flags manufactured in the United States."

- HEARD AND HELD

HOUSE BILL NO. 293

"An Act relating to the location of the convening of the legislature in session and to the relocation of functions of state government; and providing for an effective date."

- BILL HEARING POSTPONED

PREVIOUS COMMITTEE ACTION

BILL: HB 284

SHORT TITLE: PFD ALLOWABLE ABSENCE: FELLOWSHIPS

SPONSOR(s): REPRESENTATIVE(s) HAWKER

01/04/08 (H) PREFILE RELEASED 1/4/08
01/15/08 (H) READ THE FIRST TIME - REFERRALS
01/15/08 (H) STA, FIN
01/24/08 (H) STA AT 8:00 AM CAPITOL 106

BILL: HB 269

SHORT TITLE: REQUIRE AK/US FLAGS BE MADE IN USA

SPONSOR(s): REPRESENTATIVE(s) LYNN

01/04/08 (H) PREFILE RELEASED 1/4/08
01/15/08 (H) READ THE FIRST TIME - REFERRALS
01/15/08 (H) STA
01/17/08 (H) STA AT 8:00 AM CAPITOL 106
01/17/08 (H) <Bill Hearing Postponed to 01/19/08>
01/19/08 (H) STA AT 11:00 AM CAPITOL 106
01/19/08 (H) <Bill Hearing Rescheduled to 01/24/08>
01/24/08 (H) STA AT 8:00 AM CAPITOL 106

WITNESS REGISTER

REPRESENTATIVE MIKE HAWKER

Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 284 as prime sponsor.

EMILY FERRY

Juneau, Alaska

POSITION STATEMENT: Testified on behalf of herself in support of HB 284.

ROB KULIN

Anchorage, Alaska

POSITION STATEMENT: Testified on behalf of himself during the hearing on HB 284.

VERN JONES, Chief Procurement Officer

Division of General Services

Department of Administration

Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 269.

NANCY MANLY, Staff

Representative Bob Lynn

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Offered clarification regarding HB 269 on behalf of Representative Lynn, prime sponsor.

DENNIS BAILEY, Attorney
Legislative Legal and Research Services
Legislative Affairs Agency
Juneau, Alaska

POSITION STATEMENT: Answered questions during the hearing on HB 269.

ACTION NARRATIVE

CHAIR BOB LYNN called the House State Affairs Standing Committee meeting to order at [8:08:29 AM](#). Representatives Roses, Coghill, Doll, and Lynn were present at the call to order. Representative Johansen arrived as the meeting was in progress.

HB 284-PFD ALLOWABLE ABSENCE: FELLOWSHIPS

[8:09:48 AM](#)

CHAIR LYNN announced that the first order of business was HOUSE BILL NO. 284, "An Act relating to participation in certain student fellowships as an allowable absence from the state for purposes of eligibility for permanent fund dividends; and providing for an effective date."

[8:09:58 AM](#)

REPRESENTATIVE MIKE HAWKER, Alaska State Legislature, presented HB 284 as prime sponsor. He talked about exceptions to the rule that a person must be in Alaska to receive a permanent fund dividend (PFD). Students were one of the first to receive such an exception. He stated that the Fulbright Scholar Program, signed in to law by President Harry S. Truman in 1946, and sponsored by the U.S. Department of State, Bureau of Educational and Cultural Affairs, is not considered for the exception, and HB 284 would correct that inequity by adding Fulbright Scholars to the list of exceptions.

[8:14:27 AM](#)

REPRESENTATIVE HAWKER said he is more often than not opposed to adding exceptions to the PFD residency requirement, but he believes HB 284 should be passed. He asked the legislature to let the regulators know that they are wrong in not including Fulbright scholars to the PFD exception list.

[8:15:39 AM](#)

REPRESENTATIVE HAWKER, in response to a question from Representative Roses, stated his understanding that Rhodes scholars are already included in the exceptions.

REPRESENTATIVE HAWKER directed attention to language [proposed to be added to AS 43.23.008(a), found on page 2, lines 30-31, through page 3, line 1, of HB 284], which read as follows:

(16) participating for educational purposes in a student fellowship sponsored by the United State Department of Education or by the United States Department of State;

REPRESENTATIVE HAWKER explained that the language needs to be broad so that any program that would exist under those strictures would be covered.

REPRESENTATIVE ROSES asked if the Fulbright scholars would have to return to the state like military personnel do to maintain their qualified resident status.

REPRESENTATIVE HAWKER answered: "The requirement that an Alaskan abroad intends to return to Alaska as a qualifying condition to receive a permanent fund dividend exists elsewhere in statute and is not affected by this proposal."

[8:17:28 AM](#)

REPRESENTATIVE COGHILL asked Representative Hawker if he is aware of any other program of student fellowship.

REPRESENTATIVE HAWKER said he is not aware of any. He said the intent of HB 284 is to "wrap up those Fulbright Scholars." In response to a follow-up question from Representative Coghill, he said the length of a Fulbright Scholarship can vary.

[8:19:03 AM](#)

EMILY FERRY testified on behalf of herself in support of HB 284. She stated that her husband, Demian Schane, is a Fulbright recipient, hoping to receive a PFD. She added, "We both are." She told the committee that last fall, she and her husband left Alaska for Iceland on sabbatical for 10 months. She explained that the Fulbright Scholarship is not always connected with a

University. She said her husband's work in Iceland was in researching the European Union (EU) regulations of farmed fish and the effect of farming fish on wild fish populations, while her work was with the School for Renewable Energy Science (RES). She said she and her husband also had the opportunity to take classes, including: Arctic Anthropology and nongovernmental organization (NGO) development.

MS. FERRY told the committee that she and her husband returned to Alaska in July, bought a home, and found new jobs. She described her experience in Iceland as intercultural and valuable on both a personal level and as a benefit to the state. She opined, "I think we should be asking ... all Alaskans to go out and experience the world and come back and bring these skills and tools back here." She asked the committee to support the proposed bill.

[8:21:30 AM](#)

MS. FERRY, in response to a question from Representative Doll, offered her understanding that the typical timeline for a Fulbright Scholarship is 10 months; however, she said the time can vary, and the location can be anywhere in the world. She noted that the U.S. partners with other countries to jointly fund the scholarships. She said the scholarship comes from the [U.S. Department of State], so "they consider you one of their own."

REPRESENTATIVE ROSES asked Ms. Ferry, "Were you also under our fellowship?"

MS. FERRY answered no. She explained:

Because we were married, I think that we got an extra \$300 dollars a month for my presence and participation there. ... Also, through the existing statute, I would be covered as the spouse. And then I found my ... own experience - my own internship, so to speak - with the School for Renewable Energy Science.

MS FERRY, in response to a follow-up question from Representative Roses, offered her understanding that she and her husband will be eligible - "this year, but not last year" - for a PFD. She stated her belief that the loss she and her husband will each incur is one year of income from the PFD.

[8:24:39 AM](#)

REPRESENTATIVE JOHANSEN noted that, as shown in the committee packet, "the U.S. student program offers one academic year of study."

[8:25:29 AM](#)

ROB KULIN testified on behalf of himself during the hearing on HB 284. He said he is currently a graduate student at the University of California San Diego (UCSD), studying Materials Engineering. He related that he was a Fulbright Scholar during the 2004/2005 school year, when he performed research at [Politecnico di Milano], in Milan, Italy. He said he deferred a year at UCSD in order to participate, having recently graduated from the undergraduate program. He noted that most of the Fulbright scholars he knew in Italy were enrolled in degree programs in the U.S. or were between programs, and were not officially affiliated directly with any university, except for wherever the research was performed.

MR. KULIN offered more details regarding his research in Italy. He said the strength of the program is not so much in the technical aspects of study, but in the cultural experience and the understanding gained from it. He remarked on Alaska's own unique culture and being able to share it with other cultures.

[8:28:10 AM](#)

CHAIR LYNN, after ascertaining that there was no one else to testify, closed public testimony.

[8:28:19 AM](#)

REPRESENTATIVE ROSES noted that the effective date of the proposed legislation is January 2009, which would not help those who have testified and others who have done their fellowship in the past.

REPRESENTATIVE HAWKER noted that he is working with the Legal Services Director, Tamara Cook, to consider a plan for retroactivity. He said he fully intends to pursue that issue before the bill has made it through all its committee hearings.

REPRESENTATIVE ROSES stated that he is usually against retroactivity, but is making an exception in this case.

REPRESENTATIVE HAWKER concurred. He stated his belief that there is a difference between retroactively worsening a taxpayer's position or creating a crime - the latter of which is against the constitution - and retroactively correcting a wrong.

[8:30:37 AM](#)

REPRESENTATIVE JOHANSEN talked about "brain drain" - the smart adults leaving the state and not returning, and he said he supports a bill that would encourage them to come back to live in Alaska.

CHAIR LYNN concurred.

[8:31:04 AM](#)

REPRESENTATIVE DOLL moved to report HB 284 out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HB 284 was reported out of the House State Affairs Standing Committee.

REPRESENTATIVE HAWKER noted for the record that it is a zero fiscal note.

The committee took an at-ease from [8:31:57 AM](#) to [8:34:39 AM](#).

HB 269-REQUIRE AK/US FLAGS BE MADE IN USA

[8:34:47 AM](#)

CHAIR LYNN announced that the last order of business was HOUSE BILL NO. 269, "An Act requiring the state to procure United States and Alaska flags manufactured in the United States; and requiring state buildings and schools to display only United States and Alaska flags manufactured in the United States."

[8:34:51 AM](#)

CHAIR LYNN introduced HB 269 as prime sponsor. He read the sponsor statement, which read as follows [original punctuation provided]:

HB 269 requires that official flags of the United States of America and the State of Alaska be manufactured in the United States, and that only such flags be displayed on state buildings and schools.

All manner of products are imported into our nation, but those items are "things." Our nation and state's flags are not "things," not just colored cloth. They are unique symbols to which we "pledge allegiance" because they represent our nation's unique heritage, values, and for which thousands of Americans have died for.

The National Headquarters of the American Legion has passed a resolution that encourages state agencies to purchase and display only American manufactured American flags. States other than Alaska have already enacted such legislation.

Now is the time to bring Old Glory and Alaska's "Eight Stars on a Field of Blue" home to the United States, and that's what this bill does.

[8:37:32 AM](#)

CHAIR LYNN said that many of the flags bought by the State of Alaska are flown over the capitol building. He related that a couple years ago, a constituent serving in the Iraq War requested that an Alaska flag be sent for him to fly. That marine was killed in action soon after receiving that flag. Chair Lynn noted that that marine's mother is now working for Senator Huggins. He said he hopes the flag he sent to the marine was made in America.

CHAIR LYNN noted that he received a letter in support of HB 269 from Michael Porcaro, a talk show host for an Anchorage radio show. He revealed that it was Mr. Porcaro's comments on his radio show that gave him the idea for the bill. The talk show host, naturally reserved, was animated when talking about the flag. Chair Lynn opined that an American flag should indeed be an American flag. He noted that also in the committee packet is a letter from the American Legion.

[8:39:05 AM](#)

CHAIR LYNN directed attention to a memorandum from Dennis C. Bailey, Legislative Counsel, Legislative Legal and Research Services, which addresses the commerce clause of the Constitution of the United States of America. He cited a sentence near the end of the memorandum, which read:

My searches revealed no state or federal cases addressing a requirement that a flag be manufactured in the United States.

CHAIR LYNN said he would check into the matter further.

[8:40:34 AM](#)

VERN JONES, Chief Procurement Officer, Division of General Services, Department of Administration, testified in support of HB 269. He said the bill would not have any fiscal impact to the division, because the division currently buys flags made only in America.

[8:42:28 AM](#)

REPRESENTATIVE ROSES expressed support for the concept of bill, but stated his concern that this legislation would be cumbersome for school districts. He explained that every classroom has a flag, and he does not want a school to be challenged for not having a flag made in the U.S. when the people in the school had no control over where or how the procurement of the flag occurred.

[8:43:56 AM](#)

MR. JONES, in response to a question from Representative Roses, said, generally speaking, the way a flag would be bought is through price selection; therefore, a U.S.-made flag would not necessarily score better. He added that an Alaskan seller would get an Alaska bidder preference. In response to a follow-up question from Representative Roses as to whether having a U.S. manufacturer preference would help, said it would give an advantage to those selling U.S. product, including flags; however, he stated that he thinks the bill before the committee "is a more direct route for that."

[8:45:43 AM](#)

MR. JONES, in response to a remark by Representative Coghill, said there is no U.S. manufacture product procurement code preference, but there is an Alaska product preference code that provides three levels of preferences, depending on the percentage of the product that's manufactured in Alaska.

REPRESENTATIVE COGHILL recollected that in the past, there has been some U.S. manufacture preference "on scoring."

CHAIR LYNN questioned whether there should be some protection for someone who buys a bunch of flags from a catalog that sells products made in another country. He said it would be a shame for this to become a controversial issue "when they're really trying to do the right thing."

[8:48:09 AM](#)

NANCY MANLY, Staff, Representative Bob Lynn, Alaska State Legislature, noted that the sponsor had discussed how far the bill should go and decided that the intent of the bill would be to cover flags that are "officially flown," not flag pins or small flags to wave in parades, for example.

[8:49:45 AM](#)

DENNIS BAILEY, Attorney, Legislative Legal and Research Services, Legislative Affairs Agency, stated that he does not think a pin is a flag, even though it may depict a flag. He noted that nowhere in the bill does the language mention that the flag must be made of cloth. In the absence of a statutory definition, he proffered, a layman's definition would work, and he said he thinks it is reasonable to say that a flag is normally considered something that flies or is made of cloth.

[8:52:17 AM](#)

REPRESENTATIVE COGHILL mentioned various places in statute that address the flag. He offered his understanding that the bill would mandate that the flag be manufactured in the United States. He questioned how far in scope the bill would be and what the possible effects on various groups would be. He expressed concern that people may start "picking on each other because we're going to go around looking at tags on the flag."

[8:53:29 AM](#)

MR. BAILEY cited AS 44.09.030(b)(1) and (2), which mandate that both the U.S. flag and the flag of Alaska be flown in state buildings and schools.

[8:54:39 AM](#)

REPRESENTATIVE ROSES reiterated his concern that he does not want schools to end up in the midst of a controversy over a matter they cannot control.

MR. BAILEY responded that he thinks that is a potential problem in the bill. He noted that the memorandum he sent addresses the penalties for each of the particular sections that would be changed by the bill. Most of the penalties are not insubstantial. He said he presumes those penalties would apply to the person who has control over the flag that is flown. In response to a request from Chair Lynn, he explained that the memorandum is basically "a plea for more time," because he has not had a chance to study the issue closely. He noted that Representative Gruenberg was the recipient of the memorandum.

MR. BAILEY referenced the second paragraph of the memorandum, which read:

You have asked me to review the penalties that may be imposed on a state entity or school that fails to comply with the requirement that only flags manufactured in the United States may be purchased by the state and displayed in state facilities and schools under AS 14.03.130, which is amended by sec. 1 of HB 269. The statutory penalty violating AS 15.15.060(c), which is amended by sec. 2 of HB 269, probably falls under the crime of election official misconduct in the first degree, which penalizes the intentional failure to perform an election duty under AS 15.56.070(a)(1) and is a class C felony. The penalty for violation of the state procurement code (AS 36.30), which is amended by sec. 3 of HB 269, probably falls under the criminal and civil penalties for violation of the procurement code under AS 36.30.930, which reads:

"Sec. 36.30.930. Civil and criminal penalties.

The following penalties apply to violations of this chapter:

(1) a person who contracts for or purchases supplies, equipment for the state fleet, services, professional services, or construction in a manner the person knows to be contrary to the requirements of this chapter or the regulations adopted under this chapter is liable for all costs and damages to the state arising out of the violation;

(2) a person who intentionally or knowingly contracts for or purchases supplies, equipment for the state fleet, services, professional services, or construction under a scheme or artifice to avoid the

requirements of this chapter is guilty of a class C felony."

MR. BAILEY said he was unable to find a specific penalty for violation of AS 44.09.030. He stated that he had time only to reach the conclusions in his memorandum, but has not had time to spend on the issues.

[8:59:02 AM](#)

CHAIR LYNN said the committee would probably be contacting Mr. Bailey, but that he would like to see the legislation passed.

[8:59:32 AM](#)

CHAIR LYNN closed public testimony.

[8:59:37 AM](#)

REPRESENTATIVE ROSES said he would like to know how many members of the House have checked to see if the flag they say the Pledge of Allegiance to on the House floor is made in America. He posited that they don't care, because the flag is a symbol of pride. He talked about growing up as a military dependent and showing respect for the flag. He said, "The reverence is something that's in the heart; it's not something that's in a piece of cloth" He stated that although he supports the intent of the bill, he does not support "the potential of what could happen." He reiterated his concerns related to unintended consequences. He stated that he personally does not care where the flag is manufactured; he does not even have to see the flag to respect it. He said he understands not wanting any country that does everything it can to destroy the U.S. to gain from the benefit of manufacturing a U.S. flag.

[9:03:05 AM](#)

REPRESENTATIVE JOHANSEN said he respects the intent of the sponsor and would not stop the bill, but he asked the committee to consider that having flags made around the world spreads the message of America across the world. He suggested that it is a good thing to have that hope spread around the world.

[9:05:04 AM](#)

REPRESENTATIVE DOLL mentioned that there would be an amendment that would consider the approximately 563 flags that "we" have

on hand. She said she interprets Mr. Jones to have said that all of those flags have been purchased in the U.S. She noted that she would not be offering the amendment today.

[9:05:46 AM](#)

MR. JONES clarified that he had spoken regarding the flags bought by his division, but not those purchased by other branches.

[9:06:12 AM](#)

REPRESENTATIVE DOLL mentioned a report by Legislative Legal and Research Services that indicates that there are approximately 303 [flags] on hand that are of unknown origin. The amendment that would be offered at a later date, she explained, would "phase in the purchase of these American flags as ... we procure them."

CHAIR LYNN said he has no objection to such an amendment.

[9:06:48 AM](#)

REPRESENTATIVE ROSES said his greatest fear is not someone being prosecuted, but a situation in which funding for schools becomes a problem. He explained that the last thing he wants to see is a school with 100 flags it can't fly because they were made in a foreign country and that school not being able to follow a mandate to fly flags because it cannot afford to buy new ones made in the U.S.

CHAIR LYNN noted that the concept for the amendment that had not yet been offered would prevent such a situation.

[9:08:10 AM](#)

REPRESENTATIVE COGHILL said he personally thinks people should buy as close to home manufacture as possible, but he gets nervous around mandates. He said he does not have a problem with a commerce clause, but is concerned that the argument may be on the mandate, rather than focusing on respect for the flag. He said he does not want someone to tell him he can't buy a flag to fly that is not made in the U.S., if he is unable to buy a U.S. made flag because of a cotton crisis or a strike of flag makers in America, for example.

[9:11:15 AM](#)

CHAIR LYNN announced that HB 269 was heard and held.

ADJOURNMENT

There being no further business before the committee, the House State Affairs Standing Committee meeting was adjourned at [9:12:02 AM](#).