

MINUTES
SENATE FINANCE COMMITTEE
May 14, 2007
1:26 p.m.

CALL TO ORDER

Co-Chair Bert Stedman convened the meeting at approximately [1:26:21 PM](#).

PRESENT

Senator Bert Stedman, Co-Chair
Senator Lyman Hoffman, Co-Chair
Senator Charlie Huggins, Vice Chair
Senator Kim Elton
Senator Donny Olson
Senator Joe Thomas
Senator Fred Dyson

Also Attending: REPRESENTATIVE RALPH SAMUELS; ELEANOR WOLFE, Staff to Representative Kurt Olson; PAT DAVIDSON, Director, Division of Legislative Audit; GINNY AUSTERMAN, Staff to Senator Olson; TALIS COLBERG, Attorney General, Department of Law;

Attending via Teleconference: From offnet locations: CASEY REYNOLDS, Economic Development Planner, City of Wasilla;

SUMMARY INFORMATION

HB 113-OPTOMETRISTS' USE OF PHARMACEUTICALS

The Committee heard from the sponsor. The bill was reported from Committee.

HB 155-EXTEND ALCOHOLIC BEVERAGE CONTROL BOARD

The Committee heard from the sponsor and the Division of Legislative Audit. The bill was reported from Committee.

SB 128-ALCOHOL LOCAL OPTION PROVISIONS

The Committee heard from the sponsor, the Department of Law, the Alcohol Beverage Control Board and the City of Wasilla. A

committee substitute was adopted and the bill was reported from Committee.

#hb113

[1:27:20 PM](#)

SENATE CS FOR CS FOR HOUSE BILL NO. 113(L&C)

"An Act relating to the prescription and use of pharmaceutical agents, including controlled substances, by optometrists; and providing for an effective date."

This was the second hearing for this bill in the Senate Finance Committee.

Co-Chair Stedman announced intent to report this bill from Committee. He noted the zero fiscal note.

[1:28:03 PM](#)

Senator Olson compared the small number of board certified ophthalmologists to the approximately 110 board certified optometrists. He asked the financial consequences to the ophthalmologists resulting from the ability of optometrists to provide some of the medical care previously limited to ophthalmologists. He expressed concern that fewer ophthalmologists would be attracted to practice in Alaska.

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REPRESENTATIVE RALPH SAMUELS, Sponsor of the bill, measured the issue of commercial interest versus health care. Under the provisions of this legislation, patients could receive care from one doctor rather than two. This would save patients money especially those in rural areas who travel to larger communities for medical treatment. Ophthalmologists would continue to perform many procedures, including surgery. Patient care and affordability of treatment was of higher priority than any earnings reduction. The "revenue shift" would not be so significant as to deter ophthalmologists from practicing in the state.

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Senator Olson asked the sponsor to comment on the possibility of including lapse date in which the provisions of the bill would be reviewed and possibly reconsidered.

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Representative Samuels informed that this bill represents his second attempt to implement these changes. Former Governor Frank Murkowski vetoed similar legislation passed unanimously by the Twenty Forth Legislature.

Representative Samuels asserted that a lapse date should not be imposed on the provisions of the current bill for no other reason than "commercial interests".

[1:31:56 PM](#)

Senator Huggins offered a motion to report the bill, 25-LS0411\T, from Committee with individual recommendations and accompanying fiscal note.

[1:32:12 PM](#)

Senator Elton objected to note for the record the receipt of written testimony from Bob Loescher. Senator Elton removed his objection.

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Co-Chair Stedman objected for discussion purposes.

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Senator Dyson shared that the optometrist that he was a patient of has supported this proposal for several years.

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Senator Olson asked if testimony would be taken at this hearing.

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Co-Chair Stedman reminded that testimony had been received at the previous hearing on this bill.

[1:33:01 PM](#)

Senator Olson commented on the "devastating effect", including blindness, of certain diseases that were not diagnosed early.

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Co-Chair Stedman removed his objection to the motion to report the bill from Committee.

Without further objection SCS CS HB 113(L&C) was REPORTED FROM COMMITTEE with zero fiscal note #1 from the Department of Commerce, Community and Economic Development.

#hb155

[1:34:28 PM](#)

CS FOR HOUSE BILL NO. 155(FIN)

"An Act extending the termination date of the Alcoholic Beverage Control Board; and providing for an effective date."

This was the first hearing for this bill in the Senate Finance Committee.

Co-Chair Stedman announced intent to report this bill from Committee unless issues were raised that could not be immediately resolved.

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ELEANOR WOLFE, Staff to Representative Kurt Olson, testified that this legislation was introduced at the request of the Alcoholic Beverage Control (ABC) Board. The recent report conducted by the Division of Legislative Audit identified some problems in the operation of the Board; however she was assured that they would be addressed in separate legislation. This had not yet occurred but the Committee would be notified as to the status of the effort.

Ms. Wolfe noted that the original version of this bill would extend the Board for six years. The House Finance Committee considered the bill and recommended the extension be three

years. The intent is to provide an opportunity to address any issues similar to those identified in the audit report.

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Senator Huggins recommended reducing the extension from 36 months, as contained in the current version of the bill, to 24 months with the expectation that the issues would be addressed during the interim and reviews by the legislature near the conclusion of the two-year period.

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Co-Chair Stedman repeated Senator Huggins's comments.

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Ms. Wolfe suggested conferring with the Division of Legislative Audit, as the audit process requires one year and would therefore begin in one year.

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Senator Dyson cautioned that because the legislation originated in the House of Representatives any changes made by the Senate would require concurrence and could jeopardize the passage of the bill and subsequent extension of the Board.

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Co-Chair Stedman assured that "ample time" remained in the process to receive concurrence from the House of Representatives.

Senator Dyson did not understand the dynamics between the two legislative bodies and expressed concern that the bill would not pass.

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Co-Chair Stedman reassured this would not occur.

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PAT DAVIDSON, Director, Division of Legislative Audit, testified that the Division is statutorily required to make an audit available to the Legislature when it convenes in the year that a board or commission is scheduled to expire. If the termination date of the ABC Board was scheduled for 24 months, the Division would be required to begin the audit process in June 2008. Interim reporting was another option. Many of the issues highlighted in the recent audit only involve Board action to rectify.

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Co-Chair Stedman identified two options, one to shorten the timeframe to re-extend the Board, and the other to request the Board report its progress in implementing the changes. The intent was to ensure that the Board would take action.

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Ms. Wolfe did not oppose a provision requiring the Board to prepare an interim report to the Legislature.

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Senator Huggins changed his recommendation, instead supporting the existing proposed termination date of the Board and requesting a report from the Board.

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[1:41:54 PM](#)

Co-Chair Stedman asked if the record of this discussion would be sufficient in requesting the report. He preferred the least cumbersome method of ensuring that the Board implements the recommendations identified by the Division of Legislative Audit.

[1:42:47 PM](#)

Senator Elton suggested the Department of Commerce, Community and Economic Development, Division of Corporations, Business and Occupational Licensing could prepare the report. He pointed out that the recent audit was completed during the Murkowski Administration and that a new commissioner had since been appointed who may encourage different practices.

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Co-Chair Stedman asked if intent language would be necessary to request this report or whether the spoken intent would suffice.

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Co-Chair Hoffman offered a motion to report the bill from Committee with individual recommendations and accompanying fiscal note.

There was no objection and CS HB 155(FIN) was REPORTED FROM COMMITTEE with zero fiscal note #2 from the Department of Public Safety.

#sb128

[1:45:18 PM](#)

CS FOR SENATE BILL NO. 128(JUD)

"An Act relating to the sale, distribution, and purchase of alcoholic beverages; relating to a state database for records of certain purchases of alcoholic beverages; relating to the relocation of a license to sell alcoholic beverages; relating to procedures for local option elections for control of alcoholic beverages; and providing for an effective date."

This was the first hearing for this bill in the Senate Finance Committee.

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Co-Chair Stedman expressed intent to move this bill from Committee unless issues arose that could not be addressed during this meeting.

[1:45:35 PM](#)

Senator Olson offered a motion to adopt CS SB 128, 25-LS0742\K, as a working document.

Without objection the committee substitute Version "K" was ADOPTED.

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Senator Olson, sponsor of the bill, emphasized the issue of alcoholism in Alaska, especially in rural areas. This legislation was created in cooperation with the affected departments to ensure that the databases it would establish would not interfere with normal commercial transactions of alcohol and distribution to communities in which alcohol had not been banned or restricted.

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GINNY AUSTERMAN, Staff to Senator Olson, read testimony into the record as follows.

SB 128 came about at the urging of the Rural Justice Commission. This legislation is an integral part of the effort to regulate the sale, distribution, purchase and shipment of alcoholic beverages into damp local option communities within the state of Alaska.

It puts in place a requirement for the Alcoholic Beverage Control [ABC] Board to create and maintain a database that contains up to date information related to written orders for alcohol shipped to the writer of the order. The package store licensee must consult the database prior to filling each order.

Currently AS 04.11.150(g) regulates the amounts of alcoholic beverages to residents of local option areas. SB 128 requires that the package store licensee, agent or employee access the database to determine the amounts of alcoholic beverages already ordered by an individual. It also requires that the date and amount of the new order will be immediately added to the database.

This database will adversely impact the importation and sale of alcoholic beverages into rural Alaskan communities by bootleggers. The information in the database will be accessible only to package stores and law enforcement. None of the information would be available to the public.

SB 128 also contains a provision to correct an omission in State law relative to the transfer of liquor licenses between an organized borough and communities in that borough. Many communities across the state have used their

allotment of liquor licenses while their borough has not. Boroughs may now transfer alcoholic beverage licenses to those communities.

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Ms. Austerman then read a sectional analysis into the record as follows.

Sections 1 and 2 speak to the requirements of the ABC Board to create and maintain a database to keep track of written orders for alcohol from persons residing in damp local option communities. It clearly states to whom the information in the database is available. They describe in detail the steps for licensees to record and review information in the database and make failure to comply with the requirements a class B misdemeanor.

Section 3 limits the shipping of alcohol in response to a written order to the address of the person ordering the alcohol unless that person lives in an area where there is a community delivery site.

Sections 4 and 5 allow for the relocation of existing liquor licenses within a borough. Such relocation of licenses is limited to not more than three in each decade. "Decade" means each ten year period beginning April 1 in the year ending in "0".

Sections 6, 7, 11, 12 and 13 prohibits reselling of alcohol in violation of the local option and changes such an offense from a class C felony to a class A misdemeanor and makes purchase of alcohol in violation of the local option a class A misdemeanor.

These sections also include conforming amendments for the new provisions in Sections 7 and 12.

Section 8 extends the period after a local option has been adopted from 12 to 24 months before an election may be held to remove the option or change the option to a less restrictive alternative. It also provides for an election to remove or make the option less restrictive once in a 36 month period. Currently that period is 18 months.

Section 9 prohibits a person from purchasing alcohol by written order on behalf of another person who resides in a local option community and makes the violation a class A misdemeanor.

Section 10 prohibits a person in a dry local option area from possessing ingredients or equipment with the intention

of making home brew. This violation would also be a class A misdemeanor.

Sections 14 and 15 amend forfeiture provisions for violations of AS 04.11.499 to include the alcohol purchase from a bootlegger in violation of the community's local option. Forfeiture of an airplane or other vehicle is not allowed.

Section 16 allows the ABC Board to establish pilot alcohol delivery sites in Bethel and Kotzebue. Once opened, these sites would operate for a period of three years.

Sections 17 through 22 include instructions to the Revisor of statutes and effective dates.

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TALIS COLBERG, Attorney General, Department of Law, testified that for the past three years the Alaska Rural Justice Commission had been undertaking efforts cumulating in this legislation. The Commission was established by the federal Department of Justice and involved many people and various groups and organizations. This legislation has the support of affected communities.

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Co-Chair Stedman asked if the Department of Law supports this legislation.

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Mr. Colberg reported that the Department participated in preparing this bill.

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Senator Thomas noted that the language of Section 5, pertaining to relocation of a license for a "restaurant, eating place, or hotel, motel, resort or similar business that contains a restaurant or eating place", made no reference to bars. He presumed that this provision would apply to an established business that was seeking to obtain a beverage license.

Mr. Colberg confirmed that a qualifying business would have an existing beverage dispensing license associated with it.

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Senator Thomas next clarified that the definition of "decade" in Section 5, as "each 10-year period beginning April 1 in a year ending in zero", meant that the relocation of licenses could occur in a year only if zero transfers had occurred in the previous year.

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Ms. Austerman corrected that the definition was of the years 2010, 2020, 2030, etc., and pertained to the year in which transfers would be allowed rather than the number of transfers allowed. Three transfers would be allowed each decade. Once this maximum had been reached, no more transfers would be allowed until the following decade began.

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Co-Chair Hoffman asked the sponsor whether the proposed prohibition of ingredients or equipment utilized for the creation of alcoholic beverages, i.e. homebrew, by residents of a community that has banned alcohol was necessary.

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Senator Olson described the sugar, artificial sugar, malt and yeast used to make homebrew. All these ingredients with the exception of malt could be utilized for purposes other than the creation of alcohol and therefore intent to create homebrew would be necessary to be in violation of the prohibition. However in his experience, many people who make homebrew have the intent to do so.

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Ms. Austerman furthered that Co-Chair Hoffman's question was raised in a committee that previously considered this legislation. It was concluded that a person in possession of the aforementioned ingredients who did not intend to make homebrew would be less likely to also possess bottles and other equipment necessary to make the alcohol.

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Mr. Colberg acknowledged that intent is difficult to determine. Many people possess the necessary ingredients.

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Senator Elton cited the "fine line" dividing intent and action. He asked the substantive difference in this situation.

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Mr. Colberg agreed the distinction was ambiguous, but stressed that the homebrew issues in these communities was serious and widespread. The primary problem was the absence of law enforcement. If a person or persons were not caught in the act of preparing homebrew, intent could possibly be identified and the proposed provision implemented.

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Senator Huggins found irony in the Alaska Supreme Court ruling pertaining to the amount of marijuana a person was allowed to possess and that this provision would ban the possession of ingredients to allow a person to make blueberry wine. He supported and defended communities' right to choose to ban or restrict alcohol, but wanted his comments noted.

[2:00:01 PM](#)

Senator Olson commented that homebrew could be made with only sugar, yeast, and raisins, and that all equipment associated with the production was not necessary. The issue was the need to provide law enforcement "teeth" to address blatant violations in communities that had voted to be "dry". The situation was "out of control" and worsening.

[2:01:29 PM](#)

Senator Huggins agreed, but noted that the court could place a limit on the amount of sugar and other items a person could possess.

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Senator Olson agreed and shared that he operates a store from his home and stocks sizable quantities of sugar and other homebrew ingredients.

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CASEY REYNOLDS, Economic Development Planner, City of Wasilla, testified via teleconference from an offnet location, that the provision in this bill relating to the relocation of liquor licenses was proposed at the request of his and other communities. Current restrictions hamper the ability for communities to grow economically. Many communities serve not only its residents but also those residing outside its boundary. However the number of licenses a community is permitted is based only on the population within the boundary.

Mr. Reynolds stressed that the relocation would only apply to restaurants and would not include bars or package stores. The flexibility is requested to allow for additional restaurants. The number of licenses would not increase

2:04:53 PM

DOUG GRIFFIN, Director, Alcohol Beverage Control Board, testified via teleconference from an offnet location to the licensing issue. Mr. Reynolds was correct in saying that more licenses would not be issued, but instead the allocation of licenses would be adjusted.

Mr. Griffin explained that the fiscal note reflected the best estimate of the cost to establish and administer a database for package stores to track sales of alcohol destined to dry or damp communities. The fiscal note does not include financial estimates to establish and administer the pilot projects described in Section 16 that would be located at Bethel and Kotzebue. If those communities elected to participate in the project, the cost would be significant and would include building space, security and staffing. Some of the costs could be recovered with user fees, but start-up expenses would be substantial. He was unsure if the municipalities would support having the ABC Board operate the facilities as a State entity. He preferred that the facilities be overseen by the municipalities. However, he understood that this option might not be possible due to "political reasons".

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Co-Chair Stedman established that fiscal note #2 superseded a fiscal note dated March 2007.

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Mr. Griffin affirmed and explained that the initial fiscal note listed the costs as indeterminate. An effort was then made to estimate the actual costs.

[2:08:08 PM](#)

Co-Chair Stedman commented that the amount was larger than he had expected.

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Co-Chair Hoffman spoke of separate legislation from a previous Legislature requiring the labeling of alcohol transported to "damp" communities with restricted alcohol allowances. A court ruling disallowed such labeling and he asked whether the statute must be changed to reflect this.

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Mr. Griffin indicated he would consult with the Department of Law on this matter. He opined to the importance of retaining the statute.

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Co-Chair Stedman established that no further testimony or questions were forthcoming.

[2:10:05 PM](#)

Co-Chair Hoffman offered a motion to report CS SB 128, 25-LS0742\K, from Committee with individual recommendations and accompanying fiscal notes.

There was no objection and CS SB 128 (FIN) was REPORTED FROM COMMITTEE with fiscal note #2 for \$317,500 from the Department of Public Safety, and zero fiscal note #3 from the Department of Law.

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ADJOURNMENT

Co-Chair Bert Stedman adjourned the meeting at [6:20:23 PM](#)