

**ALASKA STATE LEGISLATURE**  
**SENATE HEALTH, EDUCATION AND SOCIAL SERVICES STANDING COMMITTEE**

March 12, 2008

5:15 p.m.

**MEMBERS PRESENT**

Senator Bettye Davis, Chair  
Senator Joe Thomas, Vice Chair  
Senator John Cowdery  
Senator Kim Elton  
Senator Fred Dyson

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

SENATE CONCURRENT RESOLUTION NO. 14

Proclaiming February 4 - 10, 2008, as PeriAnesthesia Nurses Week.

MOVED SCR 14 OUT OF COMMITTEE

SENATE BILL NO. 300

"An Act establishing the Alaska Health Care Commission and the Alaska health care information office; relating to health care planning and information; and providing for an effective date."

HEARD AND HELD

SENATE BILL NO. 245

"An Act establishing the Alaska Health Care Commission and the Alaska health care information office; relating to health care planning and information; repealing the certificate of need program for certain health care facilities and relating to the repeal; annulling certain regulations required for implementation of the certificate of need program for certain health care facilities; and providing for an effective date."

HEARD AND HELD

**PREVIOUS COMMITTEE ACTION**

BILL: SCR 14

SHORT TITLE: PERIANESTHESIA NURSES WEEK: FEB 2008

SPONSOR(s): SENATOR(s) GREEN

01/18/08 (S) READ THE FIRST TIME - REFERRALS

01/18/08 (S) HES  
03/12/08 (S) HES AT 5:00 PM BUTROVICH 205

BILL: SB 300

SHORT TITLE: HEALTH CARE: PLAN/COMMISSION/FACILITIES  
SPONSOR(s): HEALTH, EDUCATION & SOCIAL SERVICES

03/06/08 (S) READ THE FIRST TIME - REFERRALS  
03/06/08 (S) HES, FIN  
03/12/08 (S) HES AT 5:00 PM BUTROVICH 205

BILL: SB 245

SHORT TITLE: HEALTH CARE: PLAN/COMMISSION/FACILITIES  
SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

01/19/08 (S) READ THE FIRST TIME - REFERRALS  
01/19/08 (S) HES, FIN  
01/25/08 (S) HES AT 1:30 PM BUTROVICH 205  
01/25/08 (S) Heard & Held  
01/25/08 (S) MINUTE(HES)  
02/08/08 (S) HES AT 1:30 PM BUTROVICH 205  
02/08/08 (S) Heard & Held  
02/08/08 (S) MINUTE(HES)  
02/20/08 (S) HES AT 1:30 PM BUTROVICH 205  
02/20/08 (S) Heard & Held  
02/20/08 (S) MINUTE(HES)  
03/12/08 (S) HES AT 5:00 PM BUTROVICH 205

**WITNESS REGISTER**

GINGER BLAISEDELL, Staff  
to Senator Green  
Alaska State Capitol  
Juneau, AK

**POSITION STATEMENT:** Provided an overview of SCR 14.

DON BURRELL, Staff  
to Senator Davis  
Alaska State Capitol  
Juneau, AK

**POSITION STATEMENT:** Read the sponsor statement for SB 300.

JEAN MISCHEL, Attorney at Law  
Legislative Legal and Research Services Division  
Legislative Affairs Agency  
Juneau, AK

**POSITION STATEMENT:** Answered questions about SB 300.

ROD BETIT, CEO

Alaska State Hospital and Nursing Home Association (ASHNH)  
Juneau, AK

**POSITION STATEMENT:** Supported the language in SB 300 [CSSB 300  
Version \0]; supported SB 245.

MARIE DARLIN, Coordinator  
AARP Capital City Task Force  
Juneau, AK

**POSITION STATEMENT:** Supported SB 300.

DON KUBLEY, Lobbyist  
Mat-Su Regional Hospital  
Anchorage, AK

**POSITION STATEMENT:** Supported SB 300; opposed SB 245.

DR. TODD CURZIE, Treasurer  
Alaska Chiropractic Society  
Anchorage, AK

**POSITION STATEMENT:** Supported SB 300 but requested that a  
chiropractic medical practitioner be included on the commission.

KARLEEN JACKSON, Commissioner  
Department of Health and Social Services (DHSS)  
Juneau, AK

**POSITION STATEMENT:** Supported SB 300 with reservations.

JIM L. LYNCH, Chief Human Resources Officer  
Fairbanks Memorial Hospital (FMH)  
Fairbanks AK

**POSITION STATEMENT:** Supported SB 245.

STANLEY ARCHER, representing himself  
Fairbanks AK

**POSITION STATEMENT:** Opposed SB 245.

JEFF COOK, President  
Greater Fairbanks Committee Hospital Foundation Board  
Fairbanks, Alaska,

**POSITION STATEMENT:** Opposed SB 245.

JUDY BOGARD, Fairbanks Memorial Hospital  
Fairbanks, AK

**POSITION STATEMENT:** Supported the CON.

KARL SANFORD, Associate Administrator

Fairbanks Memorial Hospital  
Fairbanks, AK  
**POSITION STATEMENT:** Supported the CON.

KAREN PERDUE, Board Member  
Fairbanks Memorial Hospital  
Fairbanks, AK  
**POSITION STATEMENT:** Opposed SB 245.

RICK CAULFIELD, Director  
University of Alaska, Fairbanks (UAF)  
Tanana Valley Campus  
Fairbanks, AK  
**POSITION STATEMENT:** Opposed SB 245.

CHERYL KILGORE, Executive Director  
Interior Community Health Center  
Fairbanks, AK  
**POSITION STATEMENT:** Opposed SB 245.

MARK ROWDEN, Inpatient Supervisor  
Pharmacy Department  
Fairbanks Memorial Hospital  
Fairbanks, AK  
**POSITION STATEMENT:** Opposed SB 245

DOUG BISHOP, representing himself  
Fairbanks, AK  
**POSITION STATEMENT:** Opposed SB 245

PAUL FUHS, Lobbyist  
Alaska Open Imaging Center, LLC.  
Anchorage, AK  
**POSITION STATEMENT:** Supported SB 245.

**ACTION NARRATIVE**

**CHAIR BETTYE DAVIS** called the Senate Health, Education and Social Services Standing Committee meeting to order at [5:15:52 PM](#). Present at the call to order were Senators John Cowdery, Kim Elton and Chair Bettye Davis. Senators Joe Thomas and Fred Dyson arrived shortly thereafter.

**SCR 14-PERIANESTHESIA NURSES WEEK: FEB 2008**

CHAIR DAVIS announced the consideration of SCR 14.

[5:16:33 PM](#)

GINGER BLAISEDELL, Staff to Senator Green, said a number of nurses had approached Senator Green to honor the specialized nurses who help patients come out of surgery. The national celebration set aside a week in February, but this resolution proposed a week to coincide with the Pacific Northwest's PeriAnesthesia Nurses' Association convention scheduled for March 15<sup>th</sup> and 16<sup>th</sup> in Fairbanks.

SENATOR COWDERY asked how many were expected to attend the Fairbanks convention.

MS. BLAISEDELL replied there was only a small group of periAnesthesia nurses in Alaska; but they were inviting nurses from other Northwest states including Oregon, Montana, Wyoming, Idaho and Washington. They expected more than 100 nurses to attend the convention, which would be held at Sophie's Station.

SENATOR ELTON asked if it would be just as good to set the date for February 2009.

MS. BLAISEDELL said they had specifically asked for the February date, possibly because it was the first time a week had been dedicated to them; but she did not know if the federal commemorative week would be in February next year or not.

SENATOR COWDERY referred to [page 1] line 14, where Governor Palin is asked to proclaim the week of February 4-10, 2008 as PeriAnesthesia Nurses' Week. He asked if that was their intention.

[5:20:06 PM](#)

MS. BLAISEDELL confirmed that was their original intention, but thought they would be satisfied with a different time period as long as they had the proclamation by the date of their convention.

SENATOR COWDERY moved to report SCR 14 from the committee with individual recommendations and attached zero fiscal note(s). There being no objection, the motion carried.

**SB 300-HEALTH CARE: PLAN/COMMISSION/FACILITIES**

[5:21:07 PM](#)

CHAIR DAVIS announced the consideration of SB 300.

[5:22:48 PM](#)

SENATOR THOMAS joined the meeting.

DON BURRELL, Staff to Senator Davis, read the sponsor statement into the record as follows:

The Alaska Health Care Strategies Council, established by Governor Sarah Palin, met during the 2007 Legislative Interim to set long term goals for the health care of Alaskans. During the Legislative Interim these legislators, health care professionals, and committed citizens of Alaska provided seven clearly delineated goals for *'Making Alaskans the healthiest people in the nation.'*

Among the Council's top recommendations, Senate Bill 300, sponsored by the Senate Health, Education, & Social Services committee, would establish the Alaska Health Care Commission to develop policy recommendations and oversee the newly formed Health Care Information Office. The Alaska Health Care Commission would also oversee the database and website implementation regarding health care and healthy living in Alaska.

The commission would be comprised of 15 members including Alaska health care providers, a small business owner, state officials and public members. Chaired by the Medical Director of the Department of Health & Social Services, the Alaska Health Care Commission would meet regularly, establishing specific goals designed to promote the health and well being of the citizens of the State of Alaska.

SB 300 will also establish the Alaska Health Care Information Office and related database Internet sites to provide transparency to the Alaska Health care industry for health care consumers. The information provided by the Alaska Health Care Information Office would be consistently updated as specified in the bill.

These two functions of the bill will provide the citizens of Alaska a great avenue for choosing health care for themselves and their families. It is with Alaskan citizens in mind that your consideration and passage of this bill to the next committee of referral is requested.

5:24:12 PM

CHAIR DAVIS said this bill had taken Sections 1 and 2 from SB 245, addressing only the commission and the database system. She noted that this would be the first time it had been heard in committee so she would like to hear any questions or concerns from the committee; she intended to bring it back on the following Friday under previous bills heard.

SENATOR ELTON said he'd like to discuss the effective dates. Discussion on the previous bill indicated there were stress points from effective dates just over the horizon; in this bill, the effective date for Section 2 was July 1, 2013.

CHAIR DAVIS interjected that the 2013 date was actually the sunset date of the commission. The effective date for establishment of the commission was July of 2008.

SENATOR ELTON understood that, with regard to the information office component, an aggressive effective date could be problematic for the department.

SENATOR DAVIS said she could have the department speak to that. She also recollected that in one version of the bill, establishment of the database would be in 2009 and the effective date [of the commission] in 2008.

5:27:30 PM

MR. BURRELL responded that those dates were still in the current bill. On page 9, line 5, under Mandatory Reporting, the effective date of mandated reporting was July 1, 2009. page 11, line 26, Sec. 7 was the sunset date for the Alaska Health Care Commission; line 28, Sec. 9 was the effective date for the Alaska Health Care Commission.

5:28:02 PM

SENATOR ELTON queried how Section 2, the reference on page 11, line 26, sunsetted anything.

MR. BURRELL said the drafter, Jean Mischel, was on line and could answer that.

CHAIR DAVIS said Jean Mischel should be able to walk them through it; those were the requested dates.

SENATOR ELTON said that on page 11, lines 17-18 did say that some of the statutory provisions were repealed, but line 26

seemed to indicate that Section 2 did not take effect until July 1, 2013.

CHAIR DAVIS said Jean Mischel would have to address that.

SENATOR COWDERY asked if Chair Davis intended to work on this bill during the summer.

CHAIR DAVIS said no, she intended to pass it during this legislative session.

[5:30:14 PM](#)

JEAN MISCHEL, Attorney at Law, Legislative Legal and Research Services Division, Legislative Affairs Agency, replied that Section 2 simply removed the reference to the commission at sunset in 2013, causing existing law to revert to the way it was before the Act. She agreed that it was confusing, but explained that Section 1 added a cross reference to the Alaska Health Commission to the duties of the department; Section 2 removed that cross reference on the sunset date in 2013.

SENATOR ELTON said it would be helpful if someone from the hospital association would chime in and tell the committee whether this bill addressed the concerns they had expressed earlier.

[5:32:04 PM](#)

ROD BETIT, CEO, Alaska State Hospital and Nursing Home Association (ASHNH), said the association could support the language in this version of the bill [CSSB 300 Version \0]. It addressed the time lines, making it clear that July 1, 2008 was the beginning of a long journey in terms of trying to understand what health care information would be helpful to consumers, and putting that into a user friendly web format. He admitted that the July 1, 2009 date as a starting point to actually begin loading information into the system was still very ambitious; but information was already being provided to the department that could be made available and added to as the site evolved.

CHAIR DAVIS opened the meeting to public testimony.

[5:33:40 PM](#)

MARIE DARLIN, Coordinator, AARP Capital City Task Force, said the task force had submitted a letter of support for SB 300. She said they would have preferred to have the three issues that were addressed in the original bill separated into three distinct bills; however since CON had been dropped, they were

able to support this version. With regard to establishment of the commission, she questioned whether the Governor ought to be making so many of the appointments. They were confident that the information office would be very helpful in making the marketplace more competitive by spotlighting information on the cost and quality of services to the public.

[5:35:57 PM](#)

DON KUBLEY, Lobbyist, Mat-Su Regional Hospital, thanked the committee for their time and effort in the area of health care and expressed support for SB 300.

[5:37:53 PM](#)

DR. TODD CURZIE, Treasurer, Alaska Chiropractic Society, said the Society had reviewed SB 245 and SB 300 and were generally supportive of the idea of a health planning commission. They were concerned about the composition of the committee; both bills provided seats for 3 public members from the health care community, one representing physicians. State statute designated 3 classes of primary physicians: Allopathic, Osteopathic and Chiropractic. If all of the physicians appointed to the committee were Allopathic, they were not confident that chiropractic patients would be well represented. They proposed the bill be amended to seat a chiropractic physician as a member of the commission.

[5:39:37 PM](#)

KARLEEN JACKSON, Commissioner, Department of Health and Social Services (DHSS), said they would like the Governor's Health Care Transparency Act to pass; if that was not possible, they would support this bill as a vehicle to help them with these two components [Alaska Health Care Commission and Alaska Health Care Information Office].

CHAIR DAVIS announced that she would like to propose an amendment to SB 300 and had distributed copies to the committee.

[5:40:50 PM](#)

DON BURRELL, Staff to Senator Davis, said the amendment would add the phrase "relating to a certificate of need study;" to the title starting on page 1, line 2 of the bill. The title would then read:

"An Act establishing the Alaska Health Care Commission and the Alaska Health Care Information Office; relating to health care planning and information; relating to a certificate of need study; and providing for an effective date."

This would require the commission to conduct a study of the CON and come up with recommendations for regulatory and statutory changes.

[5:42:29 PM](#)

SENATOR THOMAS pointed out that the new verbiage was actually inserted as the second information in the title [after the phrase "relating to health care planning and information;"]. He also suggested that they discuss a timeframe for bringing the results of that study to the legislature.

SENATOR ELTON said that as he read the title, it now had three components: 1) establish the Health Care Commission and the health care information office, 2) relating to health care planning and information, and 3) providing for an effective date. He assumed they wanted the Health Care Commission to do the contracting, and wondered if the title change was in the right spot.

[5:44:08 PM](#)

MS. MISCHEL, responded that Senator Thomas was correct. It was a stand-alone phrase that appeared after "information;" and was a generic reference to put people on notice that the Certificate of Need study was also in the bill. The title change did not reference who would conduct the study or modify the first phrase in the title. page 1, lines 6-11 of the amendment inserted the study into uncodified law for the end of the bill, just as the House version had done; but it placed the authority to conduct the study with the Health Care Commission itself. She agreed that they could certainly add a time frame for that study.

[5:45:37 PM](#)

SENATOR ELTON noted that another part of amendment went to page 11 and wanted to verify that it was just renumbering to accommodate the addition of an earlier Section.

CHAIR DAVIS said that it was.

[5:46:13 PM](#)

SENATOR THOMAS said he would be willing to add a timeframe if someone could suggest what an appropriate time would be to complete such a study.

[5:46:36 PM](#)

SENATOR DYSON joined the meeting.

CHAIR DAVIS explained that she had not included a time frame for that very reason, because she was not sure how long it would take. She chose to leave it open-ended and let the commission make the determination.

SENATOR THOMAS said he could accept that, but conjectured that it would be done more timely if a date was specified.

CHAIR DAVIS proposed they set a starting date rather than a date for completion.

MS. MISCHEL said the effective date of the bill as drafted, July 1, 2008, would apply to this section.

[5:48:16 PM](#)

SENATOR THOMAS asked if Ms. Mischel meant the effective date of the bill determined the starting date of the study.

MS. MISCHEL said yes. It established the Health Care Commission and included the mandate that they contract for a study as of July 1, 2008. What was not included was when the report would be due to the legislature, or any end date other than the sunset date for the commission itself.

[5:49:48 PM](#)

SENATOR ELTON surmised that this might change the fiscal note dramatically.

COMMISSIONER JACKSON said it would change the fiscal note; it also assumed that the commission would be up and running before they could contract for the study.

CHAIR DAVIS wondered how they would determine the amount of the new fiscal note.

COMMISSIONER JACKSON said she could provide that information to the committee when they met next to consider the bill.

SENATOR ELTON said he understood that a negotiated regulation process by a group of stakeholders had already begun studying the CON. He asked Commissioner Jackson what she thought the best process would be: continue the negotiated regulation process involving the stakeholders, begin an independent study, or both.

COMMISSIONER JACKSON replied it would depend on what the study was trying to accomplish. If the study was intended to determine what should happen with the Certificate of Need program in

Alaska, the committee had heard volumes of testimony both pro and con from many experts, and that would be part of the body of knowledge already out there. The Certificate of Need Task Force had met and come up with some definitions that would also be part of that body of knowledge. She expected all of that would be taken into consideration, but she would not presume that the providers who came together for the negotiated rule-making task force would necessarily have the time and energy to do all of that work on their own; she presumed they would need a contractor to put the existing knowledge together in a report and recommendation.

[5:53:09 PM](#)

SENATOR THOMAS reflected that this could be discussed forever; but maintained that if they got someone with no dog in the fight to evaluate the existing information, (s)he should be able to provide a recommendation rather quickly. He reiterated that he did not see why it should take more than a year to bring that report to the legislature; because legislature would not be in session July 1, 2009 however, they would probably have to make it an 18 month study to bring the due date to January 2010.

COMMISSIONER JACKSON responded that the sticking point was going to be how quickly the commission could get up and running, and that would depend in part on who was responsible for assigning people to that commission. If the Governor was making the appointments that would be one thing; if legislators were also appointed from each body, the time line would have to accommodate them. Once the commission was operational and the contract in place, she agreed that it should not take very long.

SENATOR THOMAS speculated that 18 months would allow 4 to 5 months to get the commission going and a year to complete the study, which should be plenty of time.

COMMISSIONER JACKSON agreed and said she hoped they could do it quickly, but reiterated that a lot depended on getting that commission up and running.

[5:55:44 PM](#)

CHAIR DAVIS did not want to add a timeline to the amendment.

SENATOR THOMAS asked if they had adopted the original bill.

CHAIR DAVIS said they had not.

SENATOR THOMAS moved to adopt SB 300, Version \A the as the working document of the committee. There being no objection, the motion carried.

SENATOR THOMAS then moved to adopt Amendment 1 to SB 300, Version \A. There being no objection, the motion carried.

5:56:56 PM

SENATOR ELTON objected. He said that he was trying to find the most polite way possible to voice his concern and hoped he had been successful; in charging the Health Care Commission to do this work, the Governor had made it very clear what she wanted to happen with the CON. She had made it so clear that she was not willing to negotiate a position in the middle. He pointed out that this commission was a commission of 15, 11 of whom would be appointed by the Governor. He would rather have the program reviewed by the stakeholders, who were customers of the state and the program, than by a commission, most of whom were appointed by the Governor who had made very clear what she thought the outcome should be. He said he was also uncomfortable doing this without any idea what the cost would be.

CHAIR DAVIS said it was true that many of the members would be appointed by the Governor, but the study would not be done by the commission. She stressed that they had been discussing the matter for years without coming to any conclusion; it had to be done by another body. She was not sure how they could come up with a cost however, and suggested they set an outside limit.

SENATOR ELTON said was not sure either, but reiterated that 11 out of 15 of these people would be appointed by Governor. He remembered the expert witness hired by the department, the first person to testify on the Governor's bill on her behalf, who he felt did not have a good perspective and could not see any shades of gray in a very important discussion. His concern was that, because the Governor hadn't shown any flexibility on this, that person could be the contractor if the Governor wanted and she had 11 votes on the 15 member commission.

6:00:58 PM

SENATOR DYSON agreed the issue was convoluted and the lines were firmly drawn in the sand; he hoped this study would get down to the fundamental issues. Much of the problem was driven by the actions of government, which had told many of the providers, particularly the hospitals, that they must take everybody who came in the door, knowing that a significant portion of the cost of their care would not be recovered. That forced the providers

to shift costs; other patients and/or their insurers ended up paying the cost for the indigent in kind of a shell game. He was clear that he was not saying they should not offer services to those people, but that this had put the health care providers in an untenable position.

SENATOR DYSON continued that if the legislators as representatives of the public, and the public decided to provide some kind of health care to indigents, then that should be paid for from the tax base and not forced on the care providers. He noted that everyone he had heard supporting the existing or even a modified CON process, agreed that they had to maintain it and continue offering those services on which they could make a profit in order to support the areas in which they were doing, for want of a better term, charity work. He hoped this commission and this study would point that out and rub their noses in the fact that this was an unfunded mandate by government and one that government should accept. He said that he did not know this Governor's intention but sensed a cannon shot across their bow. That's why he thought having the commission deal with it would be a good thing; but he appreciated Senator Elton's concern about the Governor "stacking" it. He was worried about the composition being too heavy with care providers whose fiscal life was on the line as well. He thought that perhaps they should require the commission to submit recommendations and let this committee decide who would conduct the study, or let Legislative Council choose.

In summary he said he appreciated Senator Elton's dedication to getting this dealt with in a fair and straight way with all the cards up on the table. Almost everybody that testified had a pretty big, rabid dog in the fight, and it was all spun information, with all due respect.

[6:05:36 PM](#)

CHAIR DAVIS added that both Senators Elton and Dyson had made her think about more than just passing her amendment at this time. She would like to know the approximate cost to do that. She also liked the idea of having the commission bring back recommendations for legislative approval of who would conduct the study. So rather than voting on the amendment as offered, she proposed writing up another to replace it and withdrawing the motion on the floor.

[6:06:35 PM](#)

CHAIR DAVIS withdrew Amendment 1, \A.1

SENATOR DYSON said he would like to see this whole process finished by the time they reconvened in January. He pointed out that the packets distributed by Mr. Burrell contained some communications that raised significant questions, and asked if those had been discussed.

CHAIR DAVIS replied that they had not.

SENATOR DYSON said some of them seemed to contain important detail, so he would like to review those and get some answers.

SENATOR THOMAS asked if everyone was looking at the same fiscal note, the contractual aspect of the fiscal note in the period of 2009-2013. He pointed out that was in the range of \$250,000 for each of those 5 years for contractual work alone. The total was \$750,000 in the first year and \$660,000 in each of the other 4 years; so it was over \$3 million during the 5 year period. He thought that should be enough.

CHAIR DAVIS reiterated that she was going to come back with another amendment on Friday. She asked if there were other concerns or issues regarding SB 300 to be addressed at this time. She held SB 300 in committee.

#### **SB 245-HEALTH CARE: PLAN/COMMISSION/FACILITIES**

[6:09:50 PM](#)

CHAIR DAVIS announced the consideration of SB 245 and asked for public testimony.

[6:10:19 PM](#)

ROD BETIT, CEO, Alaska State Hospital and Nursing Home Association (ASHNHA), thanked the Chair for the rewrite and noted that a summary of his comments was included in the committee members' packets. He mentioned specifically that Section 4 added a reference to critical access hospitals, which were located in Cordova, Dillingham, Ketchikan, Kotzebue, Nome, Petersburg, Kodiak, Seward, Valdez, Barrow, Sitka and Homer; that became important with regard to the CON language and which communities would have special protections because of the size of the community. Section 5 contained the piece that replaced the repeal of CON and was extremely important to clarify the ongoing disputes between hospitals, imaging centers and physicians about what was and was not subject to CON review when there was imaging equipment in the facility or office. This language was worked out subsequent to the negotiated rule-making

committee breaking up and would eliminate about 80 percent of the appeals and law suits that were before the department. It provided that, to be outside CON and to get the benefit of the physician office exemption in statute, the physicians in question had to actually work in the practice, own at least 50 percent of the practice and equipment, and must actually interpret the images that their imaging equipment produced. If they met that criteria and were in a community with a population greater than 60,000, they would not be subject to CON. They felt it was a fair way to take that particular issue off the table and move forward to deal with the other parts of this legislation; most of ASHNHA's membership was tremendously supportive of that language.

He summarized that there was still much to be done; this bill, unlike the House version, left the discretion and authority with the commission to make decisions regarding who would need to report, what they needed to report and when. That was important in his mind, because so much needed to be accomplished and they would have to learn a lot along the way to give them that kind of discretion and to make this work in a positive way for consumers.

[6:13:42 PM](#)

SENATOR ELTON asked if, with Section 5, no CON study was needed [under SB 300].

MR. BETIT answered that this just set aside most of the disputes that were costing the department time and money. He agreed with the committee that they would never reach a conclusion about whether Certificate of Need helped or hurt consumers in Alaska unless they took a hard look at that question. Placed in the hands of someone credible, with sufficient experience and no axe to grind, he thought the study would point out the concerns they had been expressing as far as a level playing field.

[6:15:45 PM](#)

JIM L. LYNCH, Chief Human Resources Officer, Fairbanks Memorial Hospital (FMH), Fairbanks, AK, asked for clarification on several points. He asked whether, on page 5, line 1 of Version \0, the reference to a borough with a population of 60,000 or more meant that CON would apply in the Fairbanks North Star Borough with the modifications Rob Betit referenced as supported by ASHNHA.

CHAIR DAVIS confirmed that Fairbanks would fall under the specification of a borough with a population greater than 60,000.

MR. LYNCH agreed and explained that they were trying to interpret the implications to CON based on that measure.

CHAIR DAVIS said this didn't change the CON.

MR. LYNCH apologized for the confusion, but said it appeared to read like a new sub-section.

CHAIR DAVIS said he was correct, there was a new sub-section on page 4.

MR. LYNCH continued that they did support the statements of Rob Betit and ASHNHA in general, but sought detailed clarification of that issue to ensure that the CON stayed in place to meet the needs of the Fairbanks community.

CHAIR DAVIS advised Mr. Lynch that she would get clarification for him.

[6:20:19 PM](#)

MR. LYNCH thanked Chair Davis and said he would be happy to work with the committee, but did not want the North Star Borough and the Anchorage municipality to be written out of CON with this new language.

[6:21:05 PM](#)

STANLEY ARCHER, representing himself, Fairbanks, AK, said that as a long-time resident of Fairbanks with considerable experience with medical systems as a patient, he was concerned that the Fairbanks Memorial Hospital (FMH) would be harmed by the loss of the CON. He said he had watched FMH grow into a facility that could handle many types of medical procedures that previously were available only in Anchorage or Seattle. He said he understood how a free-market economy worked, but that FMH was not a retail enterprise and should not be compared to one. FMH was not a for-profit medical facility and had obligations to the community that for-profit clinics and facilities would not have to honor; it was tasked with taking care of all patients, regardless of their ability to pay. He wondered if for-profit medical facilities that are not obliged to, would be willing to do the same, and warranted that they would not. Fairbanks physicians were unwilling even to take Medicare and Medicaid patients because the level of reimbursement was not up to their

standards. He said in his experience the majority of physicians in Fairbanks would not take patients who could not show proof of legitimate health care insurance or demonstrate in some way their ability to pay, and some were requiring a non-refundable fee simply to be on their patient list.

MR. ARCHER feared that if CON were eliminated, the new facilities would heavily court private pay and insurance business. They would have to do so in order to fill their facilities to pay for their heavy investment costs, leaving no room for charity or pro-bono medical care. With that, FMH would be left with all the charity cases and insufficient income to support the facility, leading to the degradation of their community hospital. In closing he asked that the committee consider the all of evidence carefully and leave the CON in place.

6:24:41 PM

JEFF COOK, President, Greater Fairbanks Committee Hospital Foundation Board, Fairbanks, AK, said the board was established in 1968 to build health care facilities in Fairbanks. It succeeded the Sisters of Charity, which had St. Joseph's hospital and chose not to operate it because of financial and other issues. In two City & Borough elections, the voters chose not to operate the hospital; fortunately, the foundation was formed by foresighted citizens who gathered the money to open the new Fairbanks Memorial Hospital in 1972.

MR. COOK spoke against elimination of the CON, saying it had worked very well in Fairbanks and was important to the future of health care in Fairbanks. The CON had not impeded state-of-the-art health care in Fairbanks. The Foundation Board's motto was to always act as if there was competition. He said they had a state-of-the-art cancer center, a new heart catheterization lab, a new outpatient imaging center, and a newly expanded emergency department that treated everyone who walked through the door, regardless of their ability to pay. He asserted that the CON had not impeded physician recruiting or retention either. In the past 3 years, 23 physicians had left Fairbanks or ceased practicing, but they had gained 27 new physicians during that time. He added that physician recruiting was a problem across the country and Fairbanks was not unique in that regard. Fairbanks was actually quite successful due in part to their acquisition of Tanana Valley clinic and the many employment options they could offer new physicians.

6:27:21 PM

SENATOR ELTON asked Mr. Cook if they would solve two problems with the CON issue by modifying Section 5 to add a 3) that said "accepts any Medicare and Medicaid patients." So to get out of the CON you would still have to be in a city with a population of 60,000 or more; the facility would have to be owned by one or more licensed physicians; and it would have to accept Medicare and Medicaid patients. He felt that would level the competitive field while encouraging physicians to accept Medicare and Medicaid patients.

MR. COOK contended it was not just a matter of taking Medicare and Medicaid patients; it was also treating the uninsured. He agreed that would be a step forward, but said he would feel more comfortable dropping the CON if those who wanted to provide service did so 24 hours a day, took emergencies including psychiatric emergencies, helped with the chronic inebriates and did all the other things that only FMH did.

CHAIR DAVIS said they had quite a few people from Fairbanks Memorial Hospital signed up to testify, but they were running out of time. She asked if they were all in favor and, if so, if they would be willing to come forward and simply state their position.

[6:29:54 PM](#)

JUDY BOGARD, Fairbanks Memorial Hospital, Fairbanks, AK, supported maintenance of the CON.

[6:30:13 PM](#)

KARL SANFORD, Associate Administrator, Fairbanks Memorial Hospital, supported keeping the CON.

[6:30:28 PM](#)

KAREN PERDUE, Board Member, Fairbanks Memorial Hospital, Fairbanks, AK, wanted to point out how fragile the system was. She explained that Fairbanks was a city of only about 100,000 people trying to support a Hospital that might normally serve a population of 250,000 or more, and emphasized that they did not have the volume Anchorage did. FMH had done everything they could to increase volumes; they were the only hospital in the state serving the Indian Health Service (IHS); they served Alaska Native Beneficiaries; and they did a lot of military work. Finally, she said that if they were going to start eroding the CON, there should be a requirement for providers to serve the uninsured. That was the field the hospital was playing on.

[6:32:32 PM](#)

SENATOR ELTON said he thought the section was not as broad as it was being interpreted. The way he read it, the 60,000 population for a borough only applied to one component and that was diagnostic imaging. This bill would not eliminate the CON in total; it would only eliminate the CON for diagnostic imaging centers.

CHAIR DAVIS agreed.

[6:34:41 PM](#)

RICK CAULFIELD, Director, University of Alaska, Fairbanks (UAF), Tanana Valley Campus, echoed the concerns of others from the Fairbanks area. He said their campus worked very closely with Fairbanks Memorial Hospital and Denali Center (FMH/DC) to meet work force needs in the health care field and they did not want the CON eliminated. He was encouraged to see that the commission envisioned under this legislation would focus on developing a sustainable health care work force in the state, but could not think of a better partner than FMH/DC in identifying and meeting work force needs in the health care field; he was concerned that doing away with the CON would negatively impact their ability to partner with FMH.

[6:37:18 PM](#)

CHERYL KILGORE, Executive Director, Interior Community Health Center, said they were a nonprofit Health Center that provided a broad base of primary care services to people, many of whom were low income and uninsured or underinsured. She was also a Hospital Foundation board member and echoed their support for CON. She felt erosion of the program would make it difficult to meet the needs of the people in their community.

[6:39:00 PM](#)

MARK ROWDEN, Inpatient Supervisor, Pharmacy Department, Fairbanks Memorial Hospital, Fairbanks, AK, and a member of the American Society of Hospital Pharmacists, spoke in opposition to any elimination of the CON. He said there had been a lot of publicity pro and con about the economic ramifications of the CON process; but shopping for the best price in health care didn't really work. He explained that if patients went to more than one physician, got multiple prescriptions and went to multiple pharmacies to fill them, they would not get the benefit of having their whole profile screened for drug interactions; he was concerned about patient safety.

CHAIR DAVIS thanked him for his testimony and pointed out that SB 245 would not eliminate the CON.

6:40:54 PM

DOUG BISHOP, representing himself, said he was not aware that the bill only eliminated the CON for out-patient imaging, which was an important point. Any elimination of the CON however, would cause deterioration of the program. He reiterated that they had an very good community hospital that put a great deal of money back into their facilities and improved services. He was concerned that erosion of the CON would dramatically effect health care and health care availability in their area and did not think enough research had been done to determine whether that was true.

6:43:06 PM

DON KUBLEY, Lobbyist, Mat-Su Regional Health [Medical] Center (MSRMC), wanted to echo some of the statements that had been made about this bill. As Senator Dyson said, there was a huge responsibility placed on hospitals to take care of anybody who walked through the door, 24 hours a day, no matter what the problem. He cautioned that he was pulling figures out of the air and asked the committee to bear with his "60,000 foot perspective," but said if you had twelve departments in a hospital, 3 of them might be making money. It was those 3 departments that allowed the other 9 critical departments to keep functioning.

He said when they talked about leveling the playing field, Mat-Su had played by the rules and on a level field when they went against the odds to get a CON from the state. As a result of that they had invested approximately \$120 million in the Center, as well as \$15 million in federal money to build a water and sewer system from Palmer out to the facility. The Mat-Su Borough now had one of the most sophisticated, best hospitals in the world serving the fastest growing region in the state, and they got that by playing by the rules and jumping through all of the regulatory and monitoring hoops.

He continued that before it even opened, another building began construction in front of it. It was Providence Hospital building an X-Ray facility right in front of them, even though they did not have the state mandated CON to build that facility. Accordingly, MSRMC filed a grievance with the State of Alaska and the state told Providence Hospital that the facility was illegal; but they went ahead. That facility opened despite the ruling and was sucking business from the Mat-Su Regional Hospital against the rules that MSRMC had followed. He admonished that anyone who told them this simple "tweak" to the

CON would level the playing field, was simply trying to grandfather in a facility that had been wrong from the day ground was broken. This bill was trying to change the rules in the 9<sup>th</sup> inning of the World Series with 2 outs; suddenly they wanted 4 outs instead of 3.

MR. KUBLEY admitted that he had not intended to testify today and said, with all due respect to Mr. Betit and his organization, of which MSRMC was a part, when he said a vast majority of their members were in support of this he was correct; but the 2 facilities that did not agree with that position were the second and third largest facilities in the state. Speaking for Mat-Su Regional, he felt this was just another attempt to change the law and retroactively give them [Providence Hospital] permission to run a facility they were told was illegal. He said he believed the committee had a letter from MSRMC's CEO Norm Stevens that outlined the severe damage that facility was doing to their hospital. He hoped the committee would take a good hard look at what that small change would actually do to the level playing field in this state as it had been for a long time.

[6:49:42 PM](#)

CHAIR DAVIS said SB 245 wasn't new. It had been heard twice before.

MR. KUBLEY said he appreciated that and had testified on it before, which was why he did not intend to do so today; but there was a change in the title that put in X-Ray imaging centers and completely changed the bill for Mat-Su Regional and for the second largest hospital in the state, which was not present because they did not know about the change.

CHAIR DAVIS argued the point, saying the change was not new.

MR. KUBLEY said it was the first time he had seen "diagnostic imaging" in the title.

CHAIR DAVIS said he was right.

[6:51:13 PM](#)

PAUL FUHS, Lobbyist, Alaska Open Imaging Center, LLC., Anchorage, AK, said what they had just heard was a complete mischaracterization of what was going on with this bill. He said this [diagnostic imaging] was in the Governor's bill and in the original version, it just was not in the title. Now that the bill was restricted to this, it was proper to add it to the

title. He insisted that Alaska Open Imaging had also played by the rules. The legislature passed a bill in 2003 but did not define what the terms meant; this bill would just define the terms. It had led to several lawsuits, and no one could make any decisions with regard to imaging equipment in the state. It had put the department in a no-win situation, so the Attorney General said they had to at least define the terms and that was what this bill did.

CHAIR DAVIS held SB 245 in committee.

There being no further business to come before the committee, Chair Davis adjourned the meeting at [6:53:02 PM](#).