

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

March 26, 2008

1:34 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

HOUSE JOINT RESOLUTION NO. 29

Urging the President of the United States and the United States Congress to fulfill the federal obligation to provide adequate funding for special education in public schools.

MOVED HJR 29 OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 284(FIN)

"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 CSHB 284(FIN) OUT OF COMMITTEE

SENATE BILL NO. 280

"An Act requiring health care insurers to provide insurance coverage for medical care received by a patient during certain approved clinical trials designed to test and improve prevention, diagnosis, treatment, or palliation of cancer; directing the Department of Health and Social Services to provide Medicaid services to persons who participate in clinical trials; relating to experimental treatments; and providing for an effective date."

MOVED CSSB 280(HES) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HJR 29

SHORT TITLE: FEDERAL FUNDING FOR SPECIAL EDUCATION

SPONSOR(s): REPRESENTATIVE(s) HAWKER BY REQUEST OF JT LEG
EDUCATION FUNDING TASK FORCE

01/15/08 (H) READ THE FIRST TIME - REFERRALS
01/15/08 (H) HES
01/29/08 (H) HES AT 3:00 PM CAPITOL 106
01/29/08 (H) Moved Out of Committee
01/29/08 (H) MINUTE(HES)
01/30/08 (H) HES RPT 7DP
01/30/08 (H) DP: CISSNA, KELLER, FAIRCLOUGH,
GARDNER, SEATON, ROSES, WILSON
03/18/08 (H) TRANSMITTED TO (S)
03/18/08 (H) VERSION: HJR 29
03/19/08 (S) READ THE FIRST TIME - REFERRALS
03/19/08 (S) HES
03/24/08 (S) HES AT 1:30 PM BUTROVICH 205
03/24/08 (S) -- MEETING CANCELED --
03/26/08 (S) HES AT 1:30 PM BUTROVICH 205

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 RPT 4DP 1NR
01/24/08 (H) DP: JOHANSEN, ROSES, DOLL, LYNN
01/24/08 (H) NR: COGHILL
01/24/08 (H) STA AT 8:00 AM CAPITOL 106
01/24/08 (H) Moved Out of Committee
01/24/08 (H) MINUTE(STA)
01/30/08 (H) FIN AT 1:30 PM HOUSE FINANCE 519
01/30/08 (H) Moved CSHB 284(FIN) Out of Committee
01/30/08 (H) MINUTE(FIN)
01/31/08 (H) FIN RPT CS(FIN) 5DP 4NR
01/31/08 (H) DP: CRAWFORD, HAWKER, THOMAS, NELSON,
CHENAULT
01/31/08 (H) NR: GARA, STOLTZE, KELLY, MEYER
02/13/08 (H) TRANSMITTED TO (S)
02/13/08 (H) VERSION: CSHB 284(FIN)
02/15/08 (S) READ THE FIRST TIME - REFERRALS
02/15/08 (S) STA, HES
03/11/08 (S) STA AT 9:00 AM BELTZ 211
03/11/08 (S) Heard & Held
03/11/08 (S) MINUTE(STA)
03/13/08 (S) STA AT 9:00 AM BELTZ 211

03/13/08 (S) Moved CSHB 284(FIN) Out of Committee
03/13/08 (S) MINUTE(STA)
03/14/08 (S) STA RPT 2DP 2NR 1AM
03/14/08 (S) DP: MCGUIRE, STEVENS
03/14/08 (S) NR: GREEN, BUNDE
03/14/08 (S) AM: FRENCH
03/24/08 (S) HES AT 1:30 PM BUTROVICH 205
03/24/08 (S) -- MEETING CANCELED --
03/26/08 (S) HES AT 1:30 PM BUTROVICH 205

BILL: SB 280

SHORT TITLE: MEDICAID/ INS FOR CANCER CLINICAL TRIALS
SPONSOR(s): SENATOR(s) DAVIS

02/19/08 (S) READ THE FIRST TIME - REFERRALS
02/19/08 (S) HES, L&C, FIN
03/14/08 (S) HES AT 1:30 PM BUTROVICH 205
03/14/08 (S) Heard & Held
03/14/08 (S) MINUTE(HES)
03/26/08 (S) HES AT 1:30 PM BUTROVICH 205

WITNESS REGISTER

REPRESENTATIVE MIKE HAWKER
Alaska State Legislature
Juneau, AK

POSITION STATEMENT: Presented the sponsor statement for HJR 29
and HB 284

DEMIAN ASA SCHANE, representing himself
Juneau, AK

POSITION STATEMENT: Supported HB 284.

DEBBIE RICHTER, Director
Permanent Fund Dividend Division
Department of Revenue
Juneau, AK

POSITION STATEMENT: Answered questions on HB 284.

ROBB M. KULIN, representing himself
Anchorage, AK

POSITION STATEMENT: Supported HB 284.

TOM OBERMEYER
Staff to Senator Davis
Alaska State Capitol
Juneau, AK

POSITION STATEMENT: Provided an overview of CSSB 280.

EMILY NEENAN, Alaska Government Relations Director
American Cancer Society
No address provided

POSITION STATEMENT: Supported CSSB 280.

ACTION NARRATIVE

CHAIR BETTYE DAVIS called the Senate Health, Education and Social Services Standing Committee meeting to order at [1:34:47 PM](#). Present at the call to order were Senators John Cowdery, Fred Dyson, Joe Thomas, Kim Elton and Chair Bettye Davis.

HJR 29-FEDERAL FUNDING FOR SPECIAL EDUCATION

CHAIR DAVIS announced consideration of HJR 29.

REPRESENTATIVE HAWKER, sponsor by request, Alaska State Legislature, presented an overview of HJR 29. He said this was one of the recommendations that came out of the Joint Legislative Education Task Force, which he chaired. It was included in the Task Force recommendations at the request of Senator Ellis, who was very concerned with the issue of federal government living up to its commitment to fund education for children with disabilities. Congress passed the Individuals With Disabilities Education Act subject to future funding and the federal government would appropriate a sum equal to 40 percent of the average per-pupil expenditure for education of students under that Act. The evidence brought forward by the Department of Education was that the spending had been closed to 16 percent rather than 40 percent; this resolution was intended to state the position of the Alaska Legislature, that the federal government should fund to the 40 percent level.

[1:37:32 PM](#)

SENATOR THOMAS said he found the wording odd. The bill reads, "free, appropriate, public education for students with disabilities" but amounts to only 40 percent and was not doing even that.

REPRESENTATIVE HAWKER responded that Senator Ellis's office recommended the exact wording and it conformed to the language of the federal statute.

CHAIR DAVIS added that when they passed the federal statute, the federal government agreed to give 40 percent toward the funding

of special education; they did not. There being no further comment, she expressed her desire to move this resolution out of committee and asked for the will of the body in that regard.

SENATOR THOMAS moved to report HJR 29 out of committee with individual recommendations and zero fiscal note(s). There being no objection, the motion carried.

HB 284-PFD ALLOWABLE ABSENCE: FELLOWSHIPS

[1:40:23 PM](#)

CHAIR DAVIS announced consideration of HB 284. [Before the committee was CSHB 284(FIN).]

REPRESENTATIVE HAWKER, prime sponsor, presented HB 284, which resulted from constituent contacts in his and in Representative Beth Kerttula's districts. The original intent of the Permanent Fund Dividend (PFD) language was that it would be only for resident Alaskans, questions quickly arose about the fairness of that to certain Alaskans, specifically students who had embarked upon a university education outside of the state. In response, the legislature passed the "exception to the absence" statutes, saying that a person might be absent from Alaska for specific purposes and still receive a dividend.

The very first exception created was for students receiving secondary or post-secondary education on a full-time basis; but in the process of writing regulations interpreting that statute, an inequity was created. While the exception included students outside of Alaska pursuing a secondary or postsecondary education on a full-time basis, the regulators interpreted that to mean that students traveling abroad on the prestigious Fulbright Scholarship did not qualify.

REPRESENTATIVE HAWKER said the Fulbright program was created in 1946 in the aftermath of World War II specifically to foster better understanding among peoples of nations. A student who was awarded a Fulbright Scholarship was allowed to sit in a reserved seat at a foreign university and participate fully in the courses, but did not have to enroll. The [PFD] regulations stated that, in order to qualify for the out of state student exemption, one had to be "enrolled".

REPRESENTATIVE HAWKER said that they had worked with the Department of Revenue, Permanent Fund Division, to find a remedy by amending the regulations. Both sides became frustrated with the legal quagmire of that attempt however, so they hoped to

correct it in statute. This bill added language so a person would have an allowable absence if he/she was participating for educational purposes in a student fellowship sponsored by the United States Department of Education or the United States Department of State.

SENATOR COWDERY asked whether members of the military serving outside the state qualified to receive a dividend.

REPRESENTATIVE HAWKER responded "absolutely" that they needed only to have the intent to return to Alaska [after their tour of duty].

SENATOR COWDERY asked how the Permanent Fund interpreted the status of people serving in the Peace Corps and asked if there were representatives of the Permanent Fund available to speak to that.

REPRESENTATIVE HAWKER answered yes, they did have representatives of the Permanent Fund Dividend Division on hand; but he noted that language expanding the allowable absences to Peace Corps volunteers was included a year ago as the 14th exception to the residency requirements.

SENATOR ELTON asked if it would be appropriate to bring an amendment while the sponsor was at the table.

CHAIR DAVIS asked Senator Elton if he would mind waiting until she had heard testimony on the bill.

SENATOR DYSON encouraged Chair Davis to allow Senator Elton to announce what his amendment would do so that people could comment on that as well.

SENATOR ELTON explained that this amendment would extend to Vista Volunteers the same exception under the law as had been extended to the Peace Corps, people working in the maritime industry and others.

[1:49:54 PM](#)

DEMIAN ASA SCHANE, representing himself from Juneau, said he had provided written testimony but wanted to put a face to that testimony. He went to Iceland the previous year on a Fulbright exchange. There he developed a program he felt would be of interest to both Iceland and Alaska; he studied the policies and regulations behind preventing escapes of farmed fish in fishing operations, which he knew was an important issue here.

SENATOR DYSON said he assumed Mr. Schane was in favor of the bill.

MR. SCHANE answered that he was, and that he appreciated the efforts of Representative Hawker and Miss Debbie Richter in getting this done.

1:51:30 PM

DEBBIE RICHTER, Director, Permanent Fund Dividend Division, Department of Revenue came forward to answer questions.

SENATOR DYSON complemented Ms. Richter on the job she does and asked if she could speak to the potential dangers of continuing to expand the exceptions.

MS. RICHTER responded that as more allowable absences were introduced, the division's workload increased. She said they were advised by counsel that to enlarge the list of allowable absences was OK to a certain point; but beyond that point it became difficult to qualify or disqualify people for eligibility. The question that needed to be asked when adding an exception was whether it could be defined clearly enough to support fair eligibility determinations.

SENATOR DYSON asked if Representative Hawker's exception was sufficiently easy to define.

MS. RICHTER answered that it was.

SENATOR DYSON opined that a talented college athlete who took a year sabbatical from his studies to train for a world competition would not qualify because the existing law specified that the absence must be for education.

MS. RICHTER agreed.

SENATOR DYSON asked Ms. Richter what the legal guys had told her about how to know when they were reaching that precipice.

SENATOR COWDERY asked how the number of checks issued compared to the current population of the state.

MS. RICHTER answered that they had sent out 632,000 PFD checks, approximately 10,000 of them to people who did not reside in the state at that time.

SENATOR COWDERY asked if felons were eligible.

MS. RICHTER answered "No." During the year they were sentenced or incarcerated they were not eligible; after that they were.

SENATOR COWDERY asked if there was a citizenship requirement.

MS. RICHTER said a person must have filed for citizenship in order to qualify.

ROBB M. KULIN, Anchorage, said he was a former Fulbright scholar to Italy and a strong proponent of the bill.

CHAIR DAVIS asked if the sponsor of the bill would like to speak to Senator Elton's amendment.

SENATOR THOMAS moved amendment 1.

CHAIR DAVIS objected for discussion purposes.

REPRESENTATIVE HAWKER said he had seen this amendment before. It would add an exemption unrelated to the education exemptions currently in the bill, exempting persons serving as volunteers under the National Community Service Trust Act of 1993, generically referred to as AmeriCorps. He explained that the Peace Corps was for foreign service and the federal government established AmeriCorps for domestic service. Representative Hawker resisted this amendment for 2 very pragmatic reasons that did not imply any comment on the value and importance of the AmeriCorps program. First, every exception to the residency statutes was very controversial. Many legislators, and he included himself in that number, resisted adding to the reasons one could be out of the state; the PFD was meant for in-state residents. That controversy did not touch the exemption for Fulbright scholars, but adding an exemption for the AmeriCorps program could make it difficult to correct the inequity they were attempting to correct with this bill. Second, the VISA program had been discussed previously as a possible exception to the residency requirements in the context of bringing the Peace Corps exception into statute. At that time, the consensus was that while the Peace Corps was a foreign service operation and easy to define, VISTA volunteers could serve anywhere in the United States and indeed there were VISTA volunteers from other states working in Alaska. They might actually be creating conflicting objectives if the idea was to encourage young Alaskans to stay and help in Alaska, but they were incentivized to go work in other states through the maintenance of the Permanent Fund Dividend. He conceded that it was a policy call, but respectfully asked the committee to leave this bill as it was, righting a wrong in what was

clearly the intent of the statutes, and bring the VISTA Volunteer exception forward as its own proposition.

CHAIR DAVIS set HB 284 aside until Senator Elton returned.

SB 280-MEDICAID/ INS FOR CANCER CLINICAL TRIALS

2:03:36 PM

CHAIR DAVIS announced consideration of SB 280 and noted the proposed committee substitute (CS).

TOM OBERMEYER, Staff to Senator Davis, read an overview of version \E CS to SB 280, labeled 25-LS1464\E.

The E version reflects and defines language routinely found in other state statutes concerning clinical trials. These changes make clear the objective of this bill to require insurers to cover no more than routine patient care costs and specifically exclude other extraordinary non-clinical costs of housing, companion costs, etc related to clinical trials.

In detail, the "E" version:

1. Replaces "coverage of the costs of medical care" with "routine patient care costs" as defined on page 2, lines 30-31, ending page 3, line 17. Specifically,
 - a. Routine patient care costs are medical care costs which are related to cancer that would otherwise be covered under a health care insurance plan if the medical care was not in connection with an approved clinical trial related to cancer, including cost of transportation essential to the medical care.
 - b. This section excludes:
 - 1) A drug or device associated with the clinical trial not approved by US Food & Drug Administration;
 - 2) Housing, companion expenses, or other nonclinical expenses associated with the trial;
 - 3) An item or service provided solely to satisfy data collection and analysis and not used in the clinical management of the patient;
 - 4) An item or service excluded from coverage under the patient's health care insurance plan; and

- 5) An item or service paid for or customarily paid for through grants or other funding.
2. Requires insurer to provide coverage under this section only if:
 - a. There were clearly no superior non-investigational treatment alternative; and
 - b. Available clinical or preclinical data provide a reasonable expectation that the treatment provided in the clinical trial will be at least as "efficacious" (i.e., capable of producing the desired effect) as any non-investigational alternative. (ref: page 1, line 13, beginning with "The health care...", and ending on page 2, line 7).
3. Coverage is subject to the standard policy provisions applicable to other benefits, including deductible or copayment provisions (page 2, lines 10-11).

CHAIR DAVIS added that these changes had been provided to the people who asked that the bill be introduced and they had no problem with them. She said they had also met with the Division of Insurance and the changes were in line with their recommendations. Although this was a Labor & Commerce Issue, since the bill was in their presence she decided to go ahead with the modifications.

SENATOR DYSON asked if this had to go to Labor & Commerce and whether there were any other referrals.

CHAIR DAVIS answered yes, it had to go to Labor & Commerce, then Finance.

SENATOR THOMAS said, as he understood it, unless he was misunderstanding the routine patient care costs, it specifically addressed only care that directly related to the clinical procedures and would rule out other diagnoses or any other issues that might arise during the trial. He asked if that was correct.

MR. OBERMEYER responded that it was directed only to the clinical trial and if routine patient care were to include a contemporaneous discovery of other diseases or ailments, that might be included but he did not know; he suggested that might be a question for the medical doctors or even the insurers.

SENATOR THOMAS assumed that if it was considered something that might be due to the treatment itself, it would be taken care of by this bill.

MR. OBERMEYER answered yes, and said the language of the bill itself defined the types of diseases and cancers that might be discovered.

SENATOR COWDERY asked what other states had instituted this type of language.

MR. OBERMEYER replied that with 5,000 to 6,000 cancer trials going on at any one time, virtually every state in the United States had trials going on; and he carefully examined the statutes of a number of states before coming up with this language.

SENATOR DYSON questioned what would happen if the treatment in a clinical trial turned out to be 10 times as expensive as the usual treatment and whether this bill would require the insurance company to pay the unexpected cost.

CHAIR DAVIS responded that she would need to get more information in order to answer Senator Dyson's question; but she expected that the oncologists involved in the trial would bring in other doctors to handle any other diseases discovered during treatment.

SENATOR DYSON clarified that he was talking about [treatment] for the cancer.

[2:13:52 PM](#)

TOM OBERMEYER answered that the [cost of the] clinical trial would be completely separate. Routine costs meant the same costs the patients would incur for treatment if they were not involved in a clinical trial. This bill sought simply to ensure that patients did not have to fear losing coverage for their routine care through participation in a clinical trial.

SENATOR DYSON said Mr. Obermeyer had answered part of his question. He persisted that if the cost of treatment for a patient involved in a clinical trial was 10 times as much as the alternative [treatment] would have been, he wanted to know if the insurance company would be on the hook to pay 10 times as much for the treatment because they had passed this bill.

MR. OBERMEYER said that was already remedied in the "E" version. It required the insurer to provide coverage *only* if there was:

- a) clearly no superior "non-investigational" treatment alternative; and
- b) available clinical or preclinical data provide a reasonable expectation that the treatment provided in the clinical trial will be at least as "efficacious" as any non-investigational alternative

He continued that they did not want to drive up costs unreasonably.

CHAIR DAVIS interjected that testimony from patients who had been involved in clinical trials indicated that they were concerned about whether their insurance companies would continue to cover them. One individual said her insurance company had approved coverage for the trial.

SENATOR DYSON stated that it was not a doctor question; it was a legal question.

CHAIR DAVIS said they could get a legal opinion.

[2:17:43 PM](#)

SENATOR THOMAS asked for clarification on paragraph (d) on page 2, line 12: "This section does not apply to a fraternal benefit society."

MR. OBERMEYER said the drafter explained during the last hearing that this needed to be in here because there was language in other statutes that required it.

SENATOR THOMAS moved to adopt the proposed committee substitute, CSSB 280, Version E, as the working document of the committee. There being no objection, the motion carried.

CHAIR DAVIS expressed her desire to move this out of committee.

[2:19:37 PM](#)

EMILY NEENAN, Alaska Government Relations Director, American Cancer Society, responded to Senator Dyson that, in general, the impetus behind this kind of legislation was not to increase any cost to the insurance company, simply to make sure people had access to clinical trials. That was what the whole piece around routine care costs was referring to. She added that 20 other states had this provision in statute and 4 that had worked out

voluntary agreements with all of the insurance companies in their states.

CHAIR DAVIS asked if there was further testimony. There being none, she asked for a motion.

[2:21:43 PM](#)

SENATOR THOMAS moved to report CSSB 280, Version \E, from committee with individual recommendations and the attached fiscal note(s). There being no objection, CSSB 280(HES).

HB 284-PFD ALLOWABLE ABSENCE: FELLOWSHIPS

[2:21:54 PM](#)

CHAIR DAVIS announced the committee would again hear HB 284.

SENATOR ELTON moved to adopt Amendment 1.

CHAIR DAVIS objected.

SENATOR ELTON explained that this amendment would change the title of the bill to include participation in AmeriCorps programs as an allowable absence. The substance of the change in the bill was on page 3, line 2, following 17, inserting "serving as a volunteer under the National Community Service Trust Act of 1993, AmeriCorps." Speaking to the bill, he said that he thought he was responsible for one of the exceptions that allowed Alaskans who have to leave the state to tend for a terminally ill family member to receive a PFD.

He recognized that they had to be careful as they added exceptions, not to provide a "Christmas tree" atmosphere in which one good idea was met by a second and a third etc; but he suggested that since this was the last committee of referral that would not happen. He felt members of the AmeriCorps should be extended the same courtesy as had been extended to those volunteering for the Peace Corps.

CHAIR DAVIS asked the bill sponsor to speak to Senator Elton's amendment.

REPRESENTATIVE HAWKER explained to Senator Elton that he had 2 resistances to including this amendment in the bill. One was perfectly pragmatic, in that he believed it increased the likelihood the bill would fail in that session. The substance of the bill as it existed, limited only to clarifying a regulatory inconsistency, was something that would be universally well-

received by the bodies. Any exception clauses, no matter how meritorious, always created great controversy, so he was advocating strongly against introducing any element of discord.

Secondly, they researched the history of the Peace Corps amendment and found that the VISTA program was discussed during testimony on that amendment. It was not adopted at that time because the legislative consensus was, since VISA volunteers serve domestically including in Alaska, it made more sense to incentivize those volunteers to stay and work in Alaska. They felt the difference between this and the Peace Corps was that Peace Corps service was not available in the state.

[2:28:28 PM](#)

He continued to say that the rationale was very consistent with the second existing exception, which allowed persons "(2) receiving vocational, professional, or other specific education on a full-time basis for which, as determined by the Alaska Commission on Postsecondary Education, a comparable program is not reasonably available in the state;" to continue to receive a PFD.

REPRESENTATIVE HAWKER summarized by saying that he saw merit to the VISTA provision, but felt that it should be brought forward as a separate, stand-alone provision.

CHAIR DAVIS stated that this amendment had failed in 2 other committees; she supported the amendment but was afraid its inclusion would cause the bill not to pass.

SENATOR ELTON said he did not disagree on the substance. His preference would be to add this [exception] and subtract 3 or 4 more, because he did not understand some of the priorities in that list of exceptions. For example, he did not understand why a person working as a staffer to one of our congressional delegates should get a dividend without, perhaps, ever having stepped foot in Alaska. He did not understand why someone who committed to volunteerism should be kept out of the dividend system while a person working as a mariner in the merchant marine did qualify. To the sponsor's point that they wanted to encourage Alaskans working in Alaska, it was a good argument, but not one that compelled a previous legislature promoting volunteerism in foreign countries. He stressed that he was not unsympathetic to any of the arguments he had heard against this, and perhaps this amendment could have been coupled with removal of a couple of amendments that were already in law; but he decided that was a sure way to kill it.

A roll call vote was taken on Amendment 1. Senators Elton and Thomas voted yea and Senators Cowdery, Dyson and Davis voted nay. Therefore, Amendment 1 failed 2 to 3.

2:34:52 PM

SENATOR ELTON moved to report CSHB 284 from the committee with individual recommendations and attached fiscal note(s). There being no objection, CSHB 284(FIN) moved from committee.

There being no further business to come before the committee, Chair Davis adjourned the meeting at 2:35:35 PM.