

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

April 7, 2008

2:19 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

CS FOR HOUSE BILL NO. 332(FIN)(title am)

"An Act defining an elementary school to include certain pre-elementary programs and relating to counting pre-elementary students in a school's average daily membership."

MOVED CSHB 332(FIN)(title am) OUT OF COMMITTEE

SENATE BILL NO. 113

"An Act relating to break times for employees who nurse a child."

HEARD AND HELD

CS FOR HOUSE BILL NO. 207(RLS)

"An Act relating to questionnaires and surveys administered in the public schools."

SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: HB 332

SHORT TITLE: PRE-ELEMENTARY SCHOOL PROGRAMS

SPONSOR(S): REPRESENTATIVE(S) EDGMON

01/18/08	(H)	READ THE FIRST TIME - REFERRALS
01/18/08	(H)	HES, FIN
03/06/08	(H)	HES AT 3:00 PM CAPITOL 106
03/06/08	(H)	Moved Out of Committee
03/06/08	(H)	MINUTE(HES)
03/10/08	(H)	HES RPT 5DP

03/10/08 (H) DP: CISSNA, SEATON, ROSES, KELLER,
WILSON
03/18/08 (H) FIN AT 1:30 PM HOUSE FINANCE 519
03/18/08 (H) Moved CSHB 332(FIN) Out of Committee
03/18/08 (H) MINUTE(FIN)
03/19/08 (H) FIN RPT CS(FIN) 4DP 4NR
03/19/08 (H) DP: CRAWFORD, JOULE, THOMAS, GARA
03/19/08 (H) NR: HAWKER, KELLY, STOLTZE, CHENAULT
04/02/08 (H) TRANSMITTED TO (S)
04/02/08 (H) VERSION: CSHB 332(FIN)(TITLE AM)
04/03/08 (S) READ THE FIRST TIME - REFERRALS
04/03/08 (S) HES, FIN
04/07/08 (S) HES AT 2:15 PM BUTROVICH 205

BILL: SB 113

SHORT TITLE: NURSING MOTHERS IN WORKPLACE
SPONSOR(S): SENATOR(S) ELLIS

03/12/07 (S) READ THE FIRST TIME - REFERRALS
03/12/07 (S) L&C, HES
02/28/08 (S) L&C AT 1:30 PM BELTZ 211
02/28/08 (S) Heard & Held
02/28/08 (S) MINUTE(L&C)
03/27/08 (S) L&C AT 1:30 PM BELTZ 211
03/27/08 (S) Scheduled But Not Heard
04/03/08 (S) L&C AT 1:30 PM BELTZ 211
04/03/08 (S) Moved CSSB 113(L&C) Out of Committee
04/03/08 (S) MINUTE(L&C)
04/04/08 (S) L&C RPT CS 2DP 1NR SAME TITLE
04/04/08 (S) DP: ELLIS, DAVIS
04/04/08 (S) NR: STEVENS
04/07/08 (S) HES AT 2:15 PM BUTROVICH 205

WITNESS REGISTER

REPRESENTATIVE BRYCE EDGMON
Alaska State Legislature
Juneau, AK

POSITION STATEMENT: Presented an overview of CSHB 332.

PATRICK CUNNINGHAM, Staff
Senator Johnny Ellis
Alaska State Legislature
Juneau, AK

POSITION STATEMENT: Presented an overview of SB 113.

ACTION NARRATIVE

CHAIR BETTYE DAVIS called the Senate Health, Education and Social Services Standing Committee meeting to order at [2:19:52 PM](#). Senators Kim Elton, John Cowdery and Chair Bettye Davis were present at the call to order. Senators Fred Dyson and Joe Thomas arrived later.

HB 332-PRE-ELEMENTARY SCHOOL PROGRAMS

CHAIR DAVIS announced the consideration of HB 332. [Before the committee was CSHB 332(FIN)(Title AM).]

[2:20:04 PM](#)

REPRESENTATIVE BRYCE EDGMON, Alaska State Legislature, Dillingham, AK, provided an overview of CSHB 332. He said this bill would allow Headstart facilities to qualify for the "E" rate, the discount rate that the Universal Services Subsidy Fund provided for K through 12 facilities nationwide. Pre-elementary facilities qualified from the inception of the program in 1998 to 2004. For unknown reasons however, the Universal Services Board decided that the definition of pre-elementary facilities in Alaska law was too vague for the Headstart facilities to qualify for the discounted rate; so for the past few years they had been unable to take advantage of that rate, which would have allowed them to participate in the federal program at no expense of matching dollars.

CSHB 332 proposed to add more definition to Title 14 in terms of the department's relationship with pre-elementary facilities. A disclaimer had been added to the last part of the bill stating that by doing so, the state was not intentionally or unintentionally impacting the average daily membership count. That was necessary because intensive needs students from age 3 to 22 actually could be counted into the ADM; so the last sentence stated that "Except for a child with a disability ... pre-elementary students may not be counted in a school's average daily membership under AS 14.17."

Senator Dyson arrived.

[2:22:34 PM](#)

CHAIR DAVIS thanked the sponsor for bringing this important bill forward.

SENATOR COWDERY moved to report committee substitute for HB 332(FIN) from committee with individual recommendations and

attached fiscal note(s). There being no objection, CSHB 332(FIN)(Title AM) moved from committee.

SB 113-NURSING MOTHERS IN WORKPLACE

[2:24:57 PM](#)

CHAIR DAVIS announced the consideration of SB 113. [The committee was considering CSSB 113(L&C).]

PATRICK CUNNINGHAM, Staff to Senator Johnny Ellis, Anchorage, AK, sponsor of SB 113, said that 10 years ago Senator Ellis introduced a bill that became law, which provided the opportunity for women to nurse their babies in public or private locations; currently 39 states had laws providing this opportunity. He pointed out that the committee members' packets contained a state summary from the National Conference on State Legislatures updated in 2008 that identified states with breastfeeding laws. This bill would incrementally move the opportunity to breastfeed to the workplace. He said that 16 states had laws providing for breastfeeding in the workplace, among them the progressive, family-friendly Pacific States of Washington, Oregon, California and Hawaii. If Alaska passed this bill, it would join the other Pacific states in becoming a family-friendly state as well.

The bill was basically a health-promotion bill. Infant and childhood nutrition was a major concern in the state of Alaska and numerous studies had shown that infants who were breast fed had significant health, growth and developmental advantages, as well as decreased risk of acute, chronic diseases. It had also been amply demonstrated that mothers also benefited with lower incidences of breast cancer, osteoporosis and other illnesses.

[2:27:30 PM](#)

MR. CUNNINGHAM continued that women often found it difficult to continue to breastfeed when they returned to the workplace due to lack of break time and lack of adequate facilities for expressing and storing human milk. He maintained that ensuring accommodations for breastfeeding offered rewards not only for the mothers and babies, but for the employers as well. Employers benefited through savings for health care, reduced absenteeism, increased employee moral and employee retention. Women who were given the opportunity to breastfeed at work returned to work sooner; their babies tended not to get sick as often, so mothers did not have to leave work to care for them. It had also been demonstrated that these children, particularly those who were breast fed for a year, did better in school. This bill would require employers to provide reasonable unpaid break time to

nursing mothers for the purpose of breastfeeding or expressing breast milk. The bill would also require employers to provide a clean and sanitary place for the employee to do so. By allowing time for nursing mothers to continue breastfeeding, Alaska employers would contribute toward ensuring that the Alaska workforce of tomorrow would be healthy and strong enough to meet the challenges of the future. Senator Ellis felt this was important and urged their support of this legislation.

[2:29:43 PM](#)

SENATOR THOMAS said he was in favor of the bill; but he noted that, while he felt mothers would not want to breastfeed in the restroom, many businesses had limited facilities to use for this purpose. He wondered what options would be available to an employer if a woman complained that she did not have a clean and sanitary place to feed her baby and needed to leave the premises, particularly in places like Fairbanks where it might be 50 to 60 degrees below zero.

[2:31:12 PM](#)

MR. CUNNINGHAM said the Department of Labor would most likely define what was reasonable and what was not; he granted that for some places it might create an undue hardship to provide the opportunity to breastfeed or express milk so more than likely they would not mandate that the employer do something about that. In other areas it might be relatively easy for employers to accommodate their employees and many had already done so.

[2:32:07 PM](#)

SENATOR COWDERY noticed that in several places the bill read "child," and asked about mothers who had twins or triplets; he felt it should be changed to read "children."

MR. CUNNINGHAM agreed that was certainly a possibility.

SENATOR COWDERY also questioned how this would address the capitol building, franchises that had a proscribed building size and design, or the Ma and Pa restaurant down the street; he wondered if the bill would require remodeling all of the existing facilities.

MR. CUNNINGHAM thought it would depend on the type of business and what kind of resources it had. The intent was for it to be reasonable; so if it would cause great expense and be highly inconvenient to the employer perhaps they would not be required to accommodate their employees in that situation.

SENATOR COWDERY asked if this would affect only new construction or if existing construction would have to be remodeled.

2:33:53 PM

MR. CUNNINGHAM repeated that he did not think that was the intent; it was to support and encourage more employers who *had* the resources and a room that was available to make that accommodation.

SENATOR COWDERY opined that some of the franchises like McDonald's could probably afford it, but wondered who would make the decision about which businesses could and which could not.

2:35:43 PM

SENATOR DYSON asked if the bill specified a minimum size for the businesses that would have to make these accommodations.

MR. CUNNINGHAM said the way the employer was defined was "any employer" so it did not distinguish between a large corporate employer or a small business.

SENATOR ELTON noted that the bill read "An employer shall provide reasonable unpaid break time each day to an employee who is the nursing mother of a child so that the employee may breastfeed or express breast milk" and asked if SB 113 created an inherent right for a mother to bring her child to the workplace. He wondered what would be expected if a mother worked as a flagger, for example, and did not have a safe place to bring an infant.

MR. CUNNINGHAM said that was brought up when the bill was heard in the Labor and Commerce Committee and Senator Stevens wondered if employers would have to accommodate an infant in their facilities; so the committee substitute included a line that said "Nothing in this section requires an employer to allow a child in the workplace at times other than break times." That meant that if the mother chose to make accommodations to feed the infant in the business where she was employed, it would be during her break time. She would have to arrange for someone to bring the baby to the facility in order to provide breastfeeding. He thought that more women would take advantage of the opportunity to express breast milk and store it in order to provide it to the child care provider later.

2:39:16 PM

SENATOR ELTON said he was having a tough time wrapping his head around this because the notion seemed to be that the workplace

was a facility, and many workplaces were not. He wondered if they were creating a right for mothers that might go beyond the social good of breastfeeding.

[2:40:05 PM](#)

CHAIR DAVIS said those things did come up in Labor and Commerce, and they seemed to think that the amendment they made to the bill would cover those issues.

MR. CUNNINGHAM said that a certain number of women chose to breastfeed their children because of the positive results that came from it; but women returning to the workforce often didn't because of the lack of facilities or lack of break time. This bill was intended to increase the numbers of working women who would have the opportunity to breastfeed by encouraging employers who could do so to provide mothers that opportunity. It was not the intent of the sponsor to mandate that all employers make allowances for it regardless of their circumstances.

[2:42:13 PM](#)

SENATOR ELTON persisted that the provision beginning on line 10 was that "An employer shall provide..." and that seemed to be problematic. It could be a biologist doing creel censuses at the dock, or any number of other circumstances where it might be a problem.

CHAIR DAVIS said it must be in close proximity to the workplace.

SENATOR ELTON said there was an extensive repaving of the road 30 miles out of town and proximity there would be defined in miles. He was concerned by the "shall".

[2:43:54 PM](#)

SENATOR COWDERY asked how they would address women working on charter boats that were out for hours or days.

MR. CUNNINGHAM said perhaps the mother would have to schedule expressing milk so that she could continue to breastfeed when she got home. He suggested that perhaps they could add a condition to cover an unreasonable situation with regard to the word "shall." If the situation demonstrated that it would not be reasonable, the employer could be exempted from the responsibility to provide the mother that opportunity.

[2:45:48 PM](#)

CHAIR DAVIS reminded them that there was not a law requiring them to allow a mother to bring the baby to the workplace.

SENATOR DYSON said he would vote no on this in its present form because of the issues brought up today. He would support it if there were a minimum size for businesses that had to comply, perhaps 10-15 employees. It would also need to allow time, a year or two, for employers to revamp their facilities. He believed that most enlightened employers would bend over backward to make accommodation for good employees and for the health of the children. The case was well made, but this could be too heavy a burden on small business operators.

[2:48:10 PM](#)

SENATOR THOMAS said he agreed with some of the previous comments and would not want to create a situation that would cause employers to feel negatively about hiring women based on a concern for what they might have to provide. He had some concern about the "shall" and the requirements, which he thought needed to be expanded a bit, and felt that a couple of changes would make it more palatable to him.

[2:49:19 PM](#)

SENATOR ELTON said he supported the legislation and knew that time was short; but he had concerns about the "shall" and about line 6 where it said "the employee may breastfeed or express milk." It seemed as if it was the employee's choice to bring a child into the workplace and not the employer's; he felt that could be a problem on some work sites. He asked if they could have legal take a look at that and reassure him that the implementation would not be as strict as his reading of it, and if they would suggest language to replace "shall."

[2:50:30 PM](#)

CHAIR DAVIS said she was sure they could get someone from legal to do that; but she pointed out that the wording was "An employer shall provide *reasonable* unpaid break time" so the mother could do that. She did not understand his reservations.

SENATOR ELTON explained that this created a requirement; the employer must do this. And then on line 6 it said, "the employee may breastfeed or express breast milk." It seemed to him that language made it the decision of the employee to have a child there to breastfeed or to express breast milk. If the woman chose to breastfeed, it would mean the baby would be at the workplace whether or not it would create a safety hazard for the child or others.

SENATOR ELTON suggested that in order to avoid slowing down the process they could move it on to the next committee, where several of them also sat, and ask legal to respond to his concerns there.

[2:52:09 PM](#)

CHAIR DAVIS said they might as well keep the bill in their committee and deal with it. She asked if the next committee of referral would be Finance.

MR. CUNNINGHAM replied that the next committee would be Senate Rules because there was no fiscal note.

CHAIR DAVIS said since this was the last committee of referral, they would have to deal with their concerns before moving it out; but she was not sure whether they would be able to bring the bill back.

The committee took a brief at-ease at [2:53:46 PM](#).

[2:54:57 PM](#)

SENATOR THOMAS expanded on Senator Elton's example of a woman working as a flagger. Because flagger was a certified position, if there were one flagger on a job the whole job could be slowed down. They would have to bring in another certified flagger to take that person's place during breaks, which could mean a lot of shuffling. He agreed that there were some circumstances that would be very difficult for an employer. He was supportive of the concept, but knew that in his previous life, he would have heard about it if he had tried to put this in one of his contracts.

[2:56:10 PM](#)

CHAIR DAVIS thanked Mr. Cunningham again for bringing the bill forward, but said they would not be able to move it out of committee. She asked him to make notes and take it back to the sponsor so those issues could be addressed. She held SB 113 in committee.

CHAIR DAVIS said there were no other bills to come before the committee.

SENATOR DYSON said he thought they were going to hear HB 207.

CHAIR DAVIS responded that it was not in their committee; it was on the pending referral and was referred to the Special Committee on Education (SED).

SENATOR DYSON asked if it would come back to their committee and commented that he thought he was hearing a funeral knell.

CHAIR DAVIS said it was scheduled to come to them after SED but it was getting too late [in the session] to do anything with it; it would not come to them this year.

SENATOR ELTON asked if this was the last meeting.

CHAIR DAVIS said it was supposed to be.

SENATOR ELTON thanked her for Chairing the committee.

CHAIR DAVIS thanked the committee and said they had done a good job.

There being no further business to come before the committee, Chair Davis adjourned the meeting at [2:58:18 PM](#).