

**ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE**

May 15, 2007

10:04 a.m.

MEMBERS PRESENT

Senator Hollis French, Chair
Senator Bill Wielechowski
Senator Lesil McGuire

MEMBERS ABSENT

Senator Charlie Huggins, Vice Chair
Senator Gene Therriault

COMMITTEE CALENDAR

HOUSE BILL NO. 22

"An Act extending the termination date for the Board of Governors of the Alaska Bar Association; and providing for an effective date."

MOVED HB 22 AM OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HB 22

SHORT TITLE: EXTEND BOARD OF GOVERNORS ABA

SPONSOR(S): REPRESENTATIVE(S) STOLTZE, RAMRAS

01/16/07	(H)	PREFILE RELEASED 1/5/07
01/16/07	(H)	READ THE FIRST TIME - REFERRALS
01/16/07	(H)	JUD, FIN
04/27/07	(H)	JUD AT 1:00 PM CAPITOL 120
04/27/07	(H)	Moved Out of Committee
04/27/07	(H)	MINUTE(JUD)
04/30/07	(H)	JUD RPT 3DP 4NR
04/30/07	(H)	DP: GRUENBERG, HOLMES, RAMRAS
04/30/07	(H)	NR: LYNN, COGHILL, DAHLSTROM, SAMUELS
05/09/07	(H)	FIN AT 8:30 AM HOUSE FINANCE 519
05/09/07	(H)	Heard & Held
05/09/07	(H)	MINUTE(FIN)
05/10/07	(H)	FIN RPT 10DP 1NR
05/10/07	(H)	DP: FOSTER, THOMAS, NELSON, CRAWFORD, KELLY, GARA, JOULE, HAWKER, MEYER, CHENAULT
05/10/07	(H)	NR: STOLTZE

05/10/07 (H) FIN AT 8:30 AM HOUSE FINANCE 519
05/10/07 (H) Moved Out of Committee
05/10/07 (H) MINUTE(FIN)
05/14/07 (H) BEFORE THE HOUSE
05/14/07 (H) RET TO 2ND MOTION WITHDRAWN
05/14/07 (H) TRANSMITTED TO (S)
05/14/07 (H) VERSION: HB 22 AM
05/14/07 (S) READ THE FIRST TIME - REFERRALS
05/14/07 (S) JUD

WITNESS REGISTER

JAMES ARMSTRONG, Staff
to Representative Bill Stoltze
Juneau, AK

POSITION STATEMENT: Introduced HB 22 for the sponsor

TOM OBERMEYER
Private citizen
No address provided

POSITION STATEMENT: Commented on HB 22

MATTHEW CLAMAN, President
Alaska Bar Association
Anchorage, AK

POSITION STATEMENT: Commented on HB 22

STEPHEN VAN GOOR
Alaska Bar Association
Anchorage, AK

POSITION STATEMENT: Commented on HB 22

ACTION NARRATIVE

CHAIR HOLLIS FRENCH called the Senate Judiciary Standing Committee meeting to order at [10:04:14 AM](#). Senators French, Wielechowski, and McGuire were present at the call to order.

HB 22 AM -EXTEND BOARD OF GOVERNORS ABA

[10:04:54 AM](#)

CHAIR FRENCH announced the consideration of HB 22. Before the committee was HB 22 AM.

JAMES ARMSTRONG, Staff to Representative Bill Stoltze, Juneau, AK, said HB 22 extends the Board of Governors. The original bill

was for three years, but now it is extended for two years, until June 30, 2009. "That's basically all the bill does," he said.

10:05:45 AM

TOM OBERMEYER said he is representing himself as someone who has attempted to become licensed in Alaska for 23 years. In 1990 he was licensed to practice law in Missouri, a state with which Alaska has reciprocity. His concern is that this board is composed of three public members appointed by the governor and nine who are appointed by members. In his view there is almost no control over admissions and discipline, which are the two main functions. Also, there's continuing education under this board and they were supposed to impose that in the last audit. To his knowledge it hasn't been done. This is a quasi-governmental body and the court is supposed to supervise, but because there really isn't much supervision, the public isn't protected by the admission practices. He said he recently sat for the February 2007 bar exam. There were only 54 applicants statewide and first-time-takers represented just 31 percent of the total. The passage rate was just 48 percent, he said.

MR. OBERMEYER reviewed the results further and pointed out that on a regular basis this bar exam has a 50-60 percent pass rate. States such as Minnesota and Mississippi pass more than 80 percent on a regular basis and first time takers pass over 90 percent of the time. Looking at the results he suggested that as a policy matter, this bar association for years has taken it on itself to have the lowest passage rates in the nation. People are not passing because this bar association doesn't want you to pass. He noted that the admissions by motion are ironically very high. Each year about one third of the new entrants are coming in by motion. They don't sit for the bar. Many come in by waiver under Rule 43 as military attorneys, Alaska Legal Services attorneys, legal interns, and foreign law consultants. They don't have to take reciprocity, which is not an alternative for him, and they don't need to have 5 of 7 years of active practice. Also, under Rule 2.2(b)(3) he is forbidden from being licensed in Alaska if he fails the bar exam within the last 5 years.

10:11:12 AM

MR. OBERMEYER continued to say that for 23 years this bar association has never found a way for people such as himself to be licensed. If he had stayed outside of the state like many do, he would not have this problem. He has wondered why nobody has done something about this and he's concluded that it's because no one controls this bar association. The same people have been

there for 20 years and they run around the country saying they have a very high bar but the number of active practicing attorneys really doesn't change that much. Why this is good for the public is not clear. When he's challenged this he's won a few concessions, but his options are narrowing. The long and short is the applicant is totally isolated because there are no advocacy groups. The three public members of the board are yes votes and the court doesn't consider it their responsibility to provide supervision. He suggested that there should be a review of the admission policies because the public would benefit by having more attorneys. Restrict it to a few and it becomes a guild society, he said.

[10:13:53 AM](#)

MR. OBERMEYER said discipline is important and the board has not functioned properly in that area either. Former Attorney General Greg Renkes was not disciplined when he had a problem in trying to work out a contract. He stepped down but he was never disciplined. He mentioned other instances in which top legal professionals have had serious problems and have not been disciplined. "I have never had anything against me for character or any other matter that has ever been produced," he emphasized. He expressed concern that nothing will change if the legislature does nothing. "You can give a very clear message today," he said. There is a need for a bar, but a practicing lawyer should be able to walk in and pass the bar exam.

[10:16:09 AM](#)

MR. OBERMEYER noted that there was precedent for ad hoc admission in 1966. "I am asked to go through more than anybody else has ever in this state and I'm going through bar exams without recourse when other people are walking into the state...and they are licensed," he stated. He said he leaves it to the committee to either change the composition of the board or curtail the number of years they are given.

[10:17:42 AM](#)

SENATOR MCGUIRE commented that advocates for unpopular issues are rare. Mr. Obermeyer is a good man and he has good points that should be listened to. When someone fails an exam, it's difficult to stand up and talk about it. She said she would like a formal letter from the American Bar Association responding to the questions she posed when she chaired the Judiciary Committee in the House.

[10:19:36 AM](#)

SENATOR MCGUIRE said some very compelling points have been made about the fact that the bar association allows people with legal expertise to come into the state and do a lot of different things. Referring to SB 69 that will hopefully pass the House today, she explained that it sets aside money for a legal services fund. The point is that legal services are for everyone in the criminal and the civil context because going into court without an advocate is intimidating. To that end, she understands that the bar has about \$1.3 million in a fund to contribute to pro bono work. She'd like to hear about the bar dues and what is being done to stagger those dues for those who do public service. Also, she said she has asked on three occasions to have the bar look at the cost of the bar exam because it is a barrier to entry for many people.

10:22:07 AM

SENATOR MCGUIRE said coming out of law school, there was great interest in what it was like to take the bar, who passed, and what the bar was like in different states. The feed back from Alaska has been pretty grim, she said. For example, a very smart woman took the bar six times and our US senator failed five times. She said she would like to know about the costs of taking the bar because most people don't have much money when they get out of school. She was lucky because the firm that hired her paid the \$1,000. Some of her friends weren't so fortunate. With that in mind she'd like to know more about holding it in a public facility such as UAA as opposed to the expensive Egan Center. Trying to ratchet down those rates as a barrier to entry is important, she said.

SENATOR MCGUIRE said Mr. Obermeyer did a good job of highlighting other states. She noted that all of the students from had a 100 percent bar pass rate. Only an essay is required there while Alaska has a combination. I want to hear about that, she said. Finally, she believes the bill should pass today, but the point of a sunset is that the legislature is supposed to be reviewing these boards and commissions to help them do a better job. In the case of the bar, you will not find another profession in Alaska that has more control over its own destiny. Even doctors have the medical licensing board, which is widely viewed as a rubber stamp for the governor. But we don't have that in the bar association, she said. You have a lucky and unique circumstance and you ought to continue to strive to prove to the public and the folks you license why you ought to have that, she said.

10:26:11 AM

SENATOR MCGUIRE said some members are afraid to talk to the board because it sits in judgment on their very livelihood. "Look within your internal policies to see what you can do to be more responsive to the people you do license," she said. It's a difficult balance to serve a legitimate purpose in having high quality members and not become a guild that is a barrier to entry.

[10:27:35 AM](#)

SENATOR MCGUIRE asked the board to include in its letter, a review of Alaska Bar Rule 43. It says that a person can receive permission to practice law in Alaska by court waiver if they have practiced and been a member in good standing in another state or the District of Columbia for five years. Then it excepts a person to practice law for Alaska Legal Services Corporation. Then there is condition (c), which seems a bit absurd and might create absurd results. She posed a hypothetical situation where someone sat for and failed the Alaska bar when they were 23 years old. Then for 20 years that person practiced law in good standing in New York along side their partner. They decided to move to Alaska and open a firm specializing in patent law. Person "B" can waive in while person "A" is immediately prohibited because they took and failed the bar 20 years ago. That is an absurd result and someone should consider that, she said.

CHAIR FRENCH asked a representative from the bar association to respond.

[10:29:10 AM](#)

MATTHEW CLAMAN, President, Alaska Bar Association, Anchorage, AK, said in addition to this short response, a separate and more detailed letter will also be provided. Addressing bar dues he said the board spends considerable time discussing those. Questions that were raised in the House will result in careful scrutiny of the budgeting process. In the past the board has maintained a budget surplus, but there is talk about developing a budget process that is more specific to the needs in a particular year. Consistent with good economic practices, funds are set aside to cover operating expenses for a certain number of months to provide a cushion. There is also a trust fund to protect clients who have been harmed by lawyers, but that's separate from the operating budget. With regard to legal services lawyers, the supreme court has approved or is about to approve the emeritus attorney rule to allow lawyers who are not actively practicing for money to pay minimum bar dues with the condition that they are practicing purely pro bono.

Representative Gara specifically requested that change. Also Senator French has discussed tiered bar dues and a committee is looking into that for new lawyers. Another component is whether public interest lawyers in their early years of practice should pay lower dues. We're receptive to that, he said. A question about the latter is how to decide what is a public interest lawyer, because a wide range of people might fit the definition.

10:32:31 AM

MR. CLAMAN said he could provide a detailed budget of the costs involved in the bar exam itself. Nineteen years ago he sat for the bar exam in the Egan Center, but now a church is used so space cost is reduced. One of the greatest costs is the multi-state exam, which is a component that's been used for a number of years. The board is concerned about passage rate and he believes it's significant that the percentage of first time takers is consistently higher than those who are taking it subsequent times. That's also a significant distinction on a national level, he said. The most recent exam had one of the lowest overall passage rates and the board is trying to address that.

SENATOR MCGUIRE observed that this is the most responsive hearing she has every been a part of and she is appreciative. Highlighting the 48 percent passage rate this year, she said that is unacceptable and it would be interesting to know what's responsible. A lot of folks who have taken the bar have gotten high multi-state scores but they got bogged down on the subjective essay. She suggested the board look at whether it's the subjective part, the objective part, or the half day work product.

10:36:00 AM

MR. CLAMAN said the February bar statistics were reviewed in detail and the people who failed were equally divided on the multi-state and the essay. There wasn't a trend where a group passed one part and not the other.

SENATOR MCGUIRE suggested that the board's analysis should also consider the point for making an appeal.

MR. CLAMAN agreed to look at that. He said the board would also look at Bar Rule 43, but an important factor that's considered in terms of reciprocity is whether the person is actively engaged in the practice of law. Reciprocity applications are heard at almost every board meeting, he added. A final important point is that the bar association is fundamentally different

from other licensed professions in the state because it's the only one that is supervised by the supreme court. Therefore, everything the board does – including making a change to the bar exam – must be approved by the court. It's appropriate that it has the authority to license and supervise those who appear in Alaska's courts and it's an important distinction, he said.

[10:39:32 AM](#)

SENATOR WIELECHOWSKI referred to a document summarizing bar passage rates between 1996 to 2005 and noted that there isn't too much difference between Alaska and the national average. He cited several specifics and said the numbers are generally within a few percentage points.

MR. CLAMAN said he knows that California has the lowest passage rate of any state because it has fewer prerequisites and Alaska has a smaller population so you'd expect to see more fluctuation in the statistics on an annual basis.

[10:41:53 AM](#)

SENATOR WIELECHOWSKI said the Alaska bar is difficult, but the exam serves an important function. The Alaska statistics aren't out of line so the board should keep that in mind while it does its review.

[10:42:28 AM](#)

SENATOR MCGUIRE ask the board to notice the years that weren't mentioned because those figures are wildly different. She's talking about comparing Alaska statistics against other western states in particular rather than against the national average. With regard to Bar Rule 43 she'd like an explanation of whether or not condition (c) trumps active practice of law. If you're really able to balance those factors she doesn't know why (c) is there because it shouldn't matter. The point Mr. Obermeyer is making that should be considered is how many people are practicing in Alaska who have not taken this state's bar. It's a problem that some folks waive in, she said.

SENATOR WIELECHOWSKI said he shares Mr. Obermeyer's frustration, but he doesn't have a problem with Alaska being selective. The Alaska average isn't out of line with respect to the rest of the country.

[10:45:17 AM](#)

CHAIR FRENCH said he too appreciates that the bar association is being responsive and Representative Stoltze is owed a debt of gratitude for that. He has caused them to recognize the need to

be more responsive. He said he met with the bar association to discuss his personal grief about the very high dues. He was told that the reason for that is that we have a unified bar so it's not an apples-to-apples comparison. In that conversation he asked for a list of all the bar associations, their dues and which are comparable to Alaska. I've not received that document and I find that disappointing, he said. When he reviewed the bar directory he found that most states have tiered dues like he has advanced. This is a real issue and he hopes the bar association takes a strong look at the system. They can find a way to be more fair to folks who work in the public sector making far less than colleagues in the private sector. On top of that they pay their own bar dues whereas firms pick up the dues for colleagues practicing in the private sector.

10:48:16 AM

STEPHEN VAN GOOR, Alaska Bar Association, Anchorage, AK, confirmed that a detailed response to Senator McGuire's question about reciprocity admission would be forthcoming. Referring to Senator McGuire's hypothetical example, he said it really addresses two sets of rules. The primary reciprocity rule is Bar Rule 2. Under that rule the New York lawyer who failed the Alaska bar at an early age could qualify for reciprocity admission because the exam was taken more than five years ago. The distinction for Bar Rule 43 is that it's basically a waiver for lawyers who practice exclusively for Alaska Legal Services Corporation. Condition (c) does say that a person who wants an exemption to practice exclusively for Alaska Legal Services Corporation can't have failed the exam. The board can look at that to decide whether that should be a barrier to admission, but reciprocity under Bar Rule 2 and the ability to practice for Alaska Legal Services under Bar Rule 43 are two different things, he said.

SENATOR MCGUIRE thanked him for the clarification.

10:50:45 AM

MR. CLAMAN said in the future he anticipates that the bar association will go to Juneau every year to meet with legislators.

CHAIR FRENCH said it sounds like a good idea. He closed public testimony and asked if there were questions.

SENATOR MCGUIRE motioned to report HB 22 AM from committee with individual recommendations and attached fiscal note. There being no objection, it was so ordered.

CHAIR FRENCH adjourned the meeting at [10:51:54 AM](#).