

**ALASKA STATE LEGISLATURE
HOUSE EDUCATION STANDING COMMITTEE**

February 24, 2010

12:14 p.m.

MEMBERS PRESENT

Representative Paul Seaton, Chair
Representative Wes Keller

MEMBERS ABSENT

Representative Cathy Engstrom Munoz, Vice Chair
Representative Bryce Edgmon
Representative Peggy Wilson
Representative Robert L. "Bob" Buch
Representative Berta Gardner

OTHER LEGISLATORS PRESENT

Representative Tammie Wilson
Representative Max Gruenberg
Representative Neal Foster

Senator Bill Wielechowski
Senator Joe Paskvan

COMMITTEE CALENDAR

OVERVIEW: LEGISLATIVE INTENT: WHAT DOES IT MEAN TO THE COURTS~
AND HOW DO WE MAKE IT CLEAR?

- HEARD

PREVIOUS COMMITTEE ACTION

No previous action to record

WITNESS REGISTER

WALTER L. CARPENETI, Chief Justice
Alaska Supreme Court
Alaska Court System (ACS)
Juneau, Alaska

POSITION STATEMENT: Provided his perspective on legislative intent and the process of adjudication.

LAEL HARRISON, Attorney
Faulkner Banfield, PC
Juneau, Alaska

POSITION STATEMENT: Responded to questions during the overview.

DON BULLOCK, Attorney
Legislative Legal Counsel
Legislative Affairs Agency
Juneau, Alaska

POSITION STATEMENT: Asked a question during the overview.

SUSAN COX, Senior Assistant Attorney General
Torts and Worker's Compensation Section
Department of Law
Juneau, Alaska

POSITION STATEMENT: Responded to questions during the overview.

ACTION NARRATIVE

[12:14:05 PM](#)

CHAIR PAUL SEATON called the House Education Standing Committee meeting to order at 12:14 p.m. Representatives Seaton and Keller were present at the call to order. Senators Wielechowski and Paskvan, and Representatives Foster, T. Wilson, and Gruenberg were also in attendance.

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**OVERVIEW: Legislative intent: What does it Mean to the Courts,
and How do We Make it Clear?**

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CHAIR SEATON announced that the only order of business would be an educational interactive discussion on Legislative Intent: What does it Mean to the Courts, and How do We Make it Clear?

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WALTER L. CARPENETI, Chief Justice, Alaska Supreme Court, Alaska Court System (ACS), indicated he was speaking for himself and was not representing members of the Alaska Supreme Court. Also, he clarified that he may not be able to answer every question, as traditionally members of the court do not issue advisory opinions. Chief Justice Carpeneti introduced Susan Cox and Lael Harrison.

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CHAIR SEATON pointed out that legislative attorneys were also in attendance and available to answer questions.

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CHIEF JUSTICE CARPENETI gave the definition of legislative intent provided in *Black's Law Dictionary*: The design or plan that the legislature had at the time of enacting a statute. Although this is a simple definition, he cautioned that there is a potential for problems. In response to the question of what the court can and should look at to determine the intention of the legislature, there is a broad sweep of opinion. However, he opined, "Looking to anything ... besides the words of the statute, is essentially a fool's errand," because once the court goes beyond that boundary, there is the risk of coming to a conclusion that the legislature did not enact and the governor did not sign. For example, there may be a case where a legislator may attempt to expand the meaning of a statute to salvage a lost cause. However, it is appropriate for the court to look at legislative history, such as a sponsor's statement, the governor's letter of transmittal, or other written documentation.

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CHIEF JUSTICE CARPENETI advised that other states have a variety of views on this question; in fact, some give little or no weight to legislative history. In Alaska, the court looks first to the words of the statute and then applies the following sliding scale: The greater the ambiguity, the more the court will look at legislative history in order to determine the intent; the less ambiguity, the less the court will look at legislative history. He cited illustrative cases.

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CHIEF JUSTICE CARPENETI restated that legislative intent means to the courts, "finding out what the legislature is trying to do with legislation...." The court's effort includes finding the proper documentation, which leads to the second question of how the legislature can make clear its intent. First and foremost, the legislature must express, on the record and in the minutes, what it is trying to accomplish. Chief Justice Carpeneti praised the Alaska legislature for its efforts to improve

recordkeeping; in fact, Alaska's legislative records are more reliable than those of the U.S. Congress. Poor recordkeeping may be the reason U.S. Supreme Court justices do not apply a great deal of weight to legislative history. Conversely, since the early 1980s, Alaska legislative minutes are prepared for all committee hearings in good fashion, tapes for floor debates are available, reference librarians are dedicated, and through these records intent can be established by the courts.

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CHIEF JUSTICE CARPENETI opined intent is further clarified through the sponsor statement, the governor's letter of transmittal, and materials included in the committee packet; in fact, these materials should be updated during the legislative process. He said, "It's not uncommon for us to find, when we're looking at legislative history, a sponsor statement that remains the same all the way through, even though the bill goes through substantial amendments ...". Chief Justice Carpeneti urged bill sponsors to be diligent and work with staff so that statements and committee reports are timely and carry weight.

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CHIEF JUSTICE CARPENETI pointed out that extensive committee debate on the intent of legislation indicates that the reviewing court will also see ambiguity. He then referred Chokwak v. Worley, a court case that raised the question whether AS 04.21.020 grants civil immunity to social hosts who provide liquor to minors. He read from the statute and phrases from the decision to illustrate how the statute, the sponsor statement, the sectional analysis, and the legislative history of the legislation were used by the court during its review.

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CHIEF JUSTICE CARPENETI advised that the courts want to carry out the intent of the legislature, and to justly and fairly decide the cases presented to them. Legislators can help the courts by drafting legislation that is clear initially, and by creating a clear legislative history for those cases that are brought to the court to be decided.

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CHAIR SEATON observed legislators should provide as much clarity as possible and sufficient written guidance. He recalled that

at one time legislative intent was included in a special section of each bill. Chair Seaton asked whether the inclusion of legislative intent in the bill is more helpful to the court than the sponsor statement or sectional analysis.

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CHIEF JUSTICE CARPENETI said his personal belief is that a statement of legislative intent should be helpful; however, there is a risk that aspects of the statement of intent may conflict with the provisions in the statute. In that case, the statement is weakened.

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LAEL HARRISON, Attorney, Faulkner Banfield, PC, opined statements of intent can be less precise than the statute; in fact, statements of legislative intent can have "a much more broad sweep that may cover situations that aren't covered in the statute itself."

REPRESENTATIVE KELLER asked whether weight is put on the sponsor's intent if there are substantive changes to the bill that do not reflect the sponsor's intent.

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CHIEF JUSTICE CARPENETI advised that a sponsor statement that is not updated when the bill is amended creates difficulties. He noted that sponsor statements remain persuasive when they are changed to reflect amendments to the bill.

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REPRESENTATIVE KELLER assumed legislative intent would be "worthless" if in conflict with statute.

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MS. HARRISON responded that in the case of a direct conflict legislative intent would be subordinate to the text of the statute; however, the statement of legislative intent is not thrown out, and may be considered at a later date for a different purpose.

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SENATOR PASKVAN commented on the zeal of two lawyers representing their clients at the level of the Alaska Supreme Court.

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CHAIR SEATON asked whether the court would have an adverse interpretation of legislative intent that is not adopted by both bodies of the legislature.

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CHIEF JUSTICE CARPENETI stated that generally courts do not ascribe meaning to the lack of action on the part of a legislative body, except in fairly rare circumstances. He then referred to Schiel v. Union Oil and related in that case the court looked at statements made by legislators during the consideration of amendments, to identify legislative and statute objectives. Clearly, the court must look at various aspects of what is said about the legislation as it proceeds through the legislative process.

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CHIEF JUSTICE CARPENETI informed the Senators and Representatives present that members of the court were concerned about the subject of his presentation. He asked whether legislators have been suspicious about floor debate that may have been intentionally submitted into the record as a basis for future review.

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REPRESENTATIVE KELLER agreed that legislators are making policy and intent comes into the floor debate on one side or another.

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CHIEF JUSTICE CARPENETI asked whether legislators have a responsibility to respond to debate that is clearly incorrect.

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REPRESENTATIVE KELLER opined there is accountability during the debate process on the floor.

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REPRESENTATIVE GRUENBERG observed that in committee, and on the floor, it is impossible to rebut every statement that one knows to be incorrect. Furthermore, there is not time to legislate with concern about a future court interpretation of legislative history. On occasion, a letter of intent accompanies a bill. In Congress, sectional analyses become a part of the committee report and are signed by members, thus becoming a primary source of legislative history. He suggested the legislature should begin recording subcommittee hearings in addition to committee hearings. Representative Gruenberg stressed that a member's views expressed on the floor are especially troubling in regard to initiatives, which have no legislative history, and in certain constitutional amendments, which are broadly written.

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REPRESENTATIVE GRUENBERG asked whether there are any states that have passed statutes or rules as to how legislative history should be interpreted within the state. He pointed out that a change in the membership of the Alaska Supreme Court could affect the method of its interpretation of legislative history.

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CHIEF JUSTICE CARPENETI said he was unsure.

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SENATOR PASKVAN stated that the responsibility to defend the intent of the bill on the floor falls to the sponsor.

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CHIEF JUSTICE CARPENETI added that debate may not be an attempt to stop or slow down legislation, but to instill a misleading statement of legislative intent. This action is an illegitimate use of the legislative system.

SENATOR PASKVAN indicated that this does happen.

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CHAIR SEATON also agreed, and related that members are only to speak once on a bill, except for the sponsor who may answer questions. During a long debate, members may not take the time to correct a statement made by another. He said this

presentation has pointed out the importance of establishing accurate legislative intent.

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CHAIR SEATON requested questions from the legislative staff or the audience.

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DON BULLOCK, Attorney, Legislative Legal Counsel, Legislative Affairs Agency, observed that generally bills do not include findings of intent, with the exception of legislation related to constitutional issues in which there is a public purpose issue. He asked whether the court found this helpful.

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CHIEF JUSTICE CARPENETI deferred to Susan Cox.

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SUSAN COX, Senior Assistant Attorney General, Torts and Worker's Compensation Section, Department of Law, said in her experience in litigating the constitutionality of a statute, the department made a serious effort to ensure that positions were supported in the legislative process and debate, thus this information was ultimately available to the court.

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CHIEF JUSTICE CARPENETI agreed the above procedure was effective.

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CHAIR SEATON reminded members that a bill is generally amended, and it is difficult to say that the intent of one committee is more significant than another. In fact, some sponsor statements are intentionally unclear. He summarized that legislators must be as clear as possible in the wording of the statute, and ambiguities should be addressed and clarified during committee discussion. Further, legislative intent that is voted on is the most helpful.

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REPRESENTATIVE GRUENBERG acknowledged that legislative history is very tricky from the point of view of the judiciary. Alaska has not had sufficient time for a second generation of "fix it" legislation to pass. In addition, testimony on a bill during committee hearings may not fully represent both sides. This is particularly a problem now because certain agencies do not testify on proposed legislation, thus only one side of the story is represented.

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CHAIR SEATON pointed out that committee hearings have full public notice and most bills have two hearings. Furthermore, committee members have the opportunity and responsibility to ask pertinent questions.

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CHAIR SEATON thanked the participants.

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CHIEF JUSTICE CARPENETI said he appreciated the opportunity to present.

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ADJOURNMENT

There being no further business before the committee, the House Education Standing Committee meeting was adjourned at 1:15 p.m.