

ALASKA STATE LEGISLATURE
HOUSE HEALTH AND SOCIAL SERVICES STANDING COMMITTEE

March 26, 2009

3:04 p.m.

MEMBERS PRESENT

Representative Bob Herron, Co-Chair
Representative Wes Keller, Co-Chair
Representative John Coghill
Representative Bob Lynn
Representative Paul Seaton
Representative Sharon Cissna

MEMBERS ABSENT

Representative Lindsey Holmes

COMMITTEE CALENDAR

HOUSE BILL NO. 188

"An Act relating to the taxation of moist snuff tobacco, and amending the definition of 'tobacco product' in provisions levying an excise tax on those products."

- HEARD AND HELD

CONFIRMATION(S)

Commissioner, Department of Health and Social Services

Bill Hogan - Juneau

- CONFIRMATION ADVANCED

State Medical Board

Dr. David Miller
Casey Millar
Edward Hall
Dr. David Powers

- CONFIRMATION(S) ADVANCED

PREVIOUS COMMITTEE ACTION

BILL: HB 188

SHORT TITLE: TAX ON MOIST SNUFF

SPONSOR(s): REPRESENTATIVE(s) HERRON

03/12/09	(H)	READ THE FIRST TIME - REFERRALS
03/12/09	(H)	HSS, L&C, FIN
03/24/09	(H)	HSS AT 3:00 PM CAPITOL 106
03/24/09	(H)	<Bill Hearing Rescheduled to 03/26/09>
03/26/09	(H)	HSS AT 3:00 PM CAPITOL 106

WITNESS REGISTER

DR. JAY BUTLER, Chief Medical Officer
Office of the Commissioner
Department of Health and Social Services (DHSS)
Anchorage, Alaska
POSITION STATEMENT: Testified and answered questions on HB 188.

EMILY NEENAN, Alaska Government Relations Director
American Cancer Society Cancer Action Network (ACS CAN)
Anchorage, Alaska
POSITION STATEMENT: Testified about HB 188.

JOHANNA BALES, Deputy Director
Anchorage Office
Tax Division
Department of Revenue (DOR)
Anchorage, Alaska
POSITION STATEMENT: Testified about HB 188.

MICHAEL HOUGH, Director
Commerce, Insurance and Economic Development & Public Safety and
Elections Task Forces
American Legislative Exchange Council (ALEC)
Washington, DC
POSITION STATEMENT: Spoke in favor of a weight based tax.

MONTE WILLIAMS
United States Smokeless Tobacco Company (USSTC)
POSITION STATEMENT: Testified in support of HB 188.

BILL HOGAN, (Acting) Commissioner
Office of the Commissioner
Department of Health and Social Services (DHSS)
Juneau, Alaska
POSITION STATEMENT: Answered questions during his confirmation
hearing for his appointment as Commissioner of DHSS.

DR. DAVID POWERS

Dillingham, Alaska

POSITION STATEMENT: Answered questions during his confirmation hearing for the State Medical Board.

EDWARD HALL, Physician Assistant (PA)

Anchorage, Alaska

POSITION STATEMENT: Answered questions during his confirmation hearing for the State Medical Board.

DR. DAVID MILLER

Juneau, Alaska

POSITION STATEMENT: Answered questions during his confirmation hearing for the State Medical Board.

CASEY MILLAR

Anchorage, Alaska

POSITION STATEMENT: Answered questions during her confirmation hearing for the State Medical Board.

JENNY OLENDORFF

Soldotna, Alaska

POSITION STATEMENT: Testified about HB 188.

STEVE WARREN

Sitka, Alaska

POSITION STATEMENT: Testified about HB 188.

CARRIE NYSSSEN, Senior Director of Advocacy

American Lung Association of Alaska

Anchorage, Alaska

POSITION STATEMENT: Testified about HB 188.

CHRIS SHIRWIN, Vice President

Advocacy and Government Affairs

American Heart Association

POSITION STATEMENT: Testified about HB 188.

ACTION NARRATIVE

[3:04:08 PM](#)

CO-CHAIR WES KELLER called the House Health and Social Services Standing Committee meeting to order at 3:04 p.m. Representatives Herron, Keller, Coghill, and Seaton were present at the call to order. Representatives Cissna and Lynn arrived as the meeting was in progress.

HB 188-TAX ON MOIST SNUFF

3:04:31 PM

CO-CHAIR KELLER announced that the first order of business would be HOUSE BILL NO. 188, "An Act relating to the taxation of moist snuff tobacco, and amending the definition of 'tobacco product' in provisions levying an excise tax on those products."

3:05:20 PM

CO-CHAIR HERRON introduced HB 188 as the prime sponsor and said that he had prepared a Committee Substitute (CS) for HB 188, but had not yet distributed it to other members of the committee. He clarified that the committee would first hear public testimony on HB 188 until 3:30 p.m. and then hear testimony for the confirmations.

3:06:36 PM

REPRESENTATIVE COGHILL commented that a CS might require additional testimony.

3:07:04 PM

CO-CHAIR KELLER said that public testimony would be opened again.

3:07:18 PM

CO-CHAIR HERRON read from the Sponsor Statement [Included in the members' packets.] and explained that HB 188 changed the tax methodology used for smokeless tobacco products in order to discourage the use of tobacco. He stated that the use of "chew" was a crisis in his region. He declared that the additional tax revenue would be placed in the general fund or the cessation fund. He supported a change from the ad valorem tax to a unit tax.

3:08:40 PM

DR. JAY BUTLER, Chief Medical Officer, Office of the Commissioner, Department of Health and Social Services (DHSS), testified that one study revealed that a 10 percent increase in the tax on smokeless tobacco would lead to a 4 percent decrease in the use by adults, and a 6 percent decrease in use by boys.

He allowed that the health risks are well known and included cancers of the mouth, gum disease, and cardio vascular affects. He said that the use of smokeless tobacco was high in Alaska, almost 5 percent of adults in 2008. He disclosed that tobacco and obesity were the two drivers of increased health care costs. He shared that DHSS was concerned about the weight based tax, as it would reduce the tax on some products and create a price disparity which favored the newer, light weight tobacco products. He described snus as a smokeless, heavily flavored tobacco product, packaged in small, self contained tin packets. He mentioned that the juices could be swallowed which removed the social stigma of spitting. He described the orbs as gel strips, which dissolved in the mouth, but provided the nicotine kick. He acknowledged that the product weight created an uneven tax field and price disparity. He compared the weights for a tin of snus to be 10 percent of a tin of Copenhagen, so the tax would also be 10 percent that of the Copenhagen. He also noted that weight based taxes were inflation proof, as the portion price for tax would decline as the product price increased.

[3:12:43 PM](#)

DR. BUTLER expressed concern that HB 188 would create low priced tobacco products, which would increase tobacco use among youth.

[3:13:16 PM](#)

REPRESENTATIVE CISSNA asked about the [health] qualities of the gel strip orbs.

[3:13:37 PM](#)

DR. BUTLER replied that the health effects were not well defined, but he observed that it was banned in Australia and most of the European Union.

[3:15:51 PM](#)

EMILY NEENAN, Alaska Government Relations Director, American Cancer Society Cancer Action Network (ACS CAN), applauded the objectives of HB 188 to increase the price, decrease the use, and decrease the death and disease from the use of smokeless tobacco. She disclosed that certain populations of Alaskans had some of the highest smokeless tobacco use in the world. She reported that 67 percent of pregnant women in the Yukon-Kuskokwim (Y-K) region used smokeless tobacco. She expressed concerns about the current version of HB 188. She relayed that

the bill did not have any price adjustment for inflation, as the weight based tax was fixed. [She passed around a tin of camel snus.] She expressed concern about the use of these tobacco products by youth, as they were discreet, easy to hide, and nicely flavored. She mentioned that the current ad valorem tobacco tax rate of 75 percent of wholesale price had not been increased since 1997.

[3:20:48 PM](#)

REPRESENTATIVE CISSNA asked if the use of smaller amounts of tobacco, such as the use of snus, eliminated the dangers.

[3:23:01 PM](#)

MS. NEENAN, in response to Representative Cissna, said that ingesting tobacco was not safe. She allowed that there was debate about the amount of risk for different tobacco products, but she compared this to playing Russian roulette.

[3:23:59 PM](#)

JOHANNA BALES, Deputy Director, Anchorage Office, Tax Division, Department of Revenue (DOR), referred to the fiscal note for HB 188, and explained that there would be an initial revenue increase, but that as the lightweight tobacco products became more prevalent, the weight based tax method would decrease the tax revenue.

[3:25:30 PM](#)

CO-CHAIR HERRON disclosed that the CS for HB 188 would address these issues.

[3:26:16 PM](#)

MICHAEL HOUGH, Director, Commerce, Insurance and Economic Development & Public Safety and Elections Task Forces, American Legislative Exchange Council (ALEC), declared that this was a tax fairness issue, and that ALEC favored a weight based tax, as opposed to an ad valorem tax. He explained that ad valorem taxed at different rates for like products, as the tax was less for a less expensive product. He expressed that the ad valorem tax would unfairly influence consumer choice.

[3:28:02 PM](#)

MONTE WILLIAMS informed the committee that USSTC were the manufacturers of the round cans of smokeless tobacco. He explained that excise taxes were levied on individual measureable units. He cited as examples, a gallon of gas, a liter of wine, and a single cigarette. He stated that sales taxes were levied on the price of the product. He referred to the Other Tobacco Products (OTP) tax, which was a percentage of the wholesale price on all tobacco products except cigarettes. He commented on the introduction and sales growth for discounted tobacco products priced "below the premium level," which resulted in the loss of tax revenue for Alaska. He opined that ad valorem taxes favored lower priced brands, and that lower taxes should not be a reward for lowering the price of the product.

[3:34:29 PM](#)

MR. WILLIAMS said that the ad valorem tax was not a good excise tax policy. He reported that tobacco prices were not increasing, so there was no increased revenue with an ad valorem tax. He cited that price cuts resulted in tax revenue cuts. He commented that a weight based tax was good for revenue, as the same tax was applied to all the products. He stated that the weight based tax was not a reward for lower prices. He reported that 16 states had adopted a weight based tax. He expressed that USSTC supported HB 188.

[HB 188 was taken up later in this meeting.]

[3:38:34 PM](#)

The committee took an at-ease from 3:38 p.m. to 3:39 p.m.

CONFIRMATION HEARING

Commissioner, Department of Health and Social Services

[3:39:24 PM](#)

CO-CHAIR KELLER announced that the next order of business would be confirmation of the appointment of Bill Hogan to the position of Commissioner of Department of Health and Social Services (DHSS).

BILL HOGAN, (Acting) Commissioner, Office of the Commissioner, Department of Health and Social Services (DHSS), said that he had been working in health and social service, primarily in

mental health and substance abuse, for 35 years. He spoke about his background work prior to his arrival in Alaska, which included an emphasis with rural issues. He pointed out that he started work with the State of Alaska in 2003, as the Director of the Division of Behavioral Health. He affirmed that Governor Palin had nominated him in July, 2008, as Commissioner. He expressed his department philosophy as a social mission: to create an effective, efficient organization which provided the quality services necessary for successful living in the community; and as a business mission: to be good stewards of the public dollar and adhere to the bottom line.

[3:43:26 PM](#)

MR. HOGAN observed that DHSS focused on outcomes for helping people. He stated that the DHSS programs were only helpful if they successfully trained people to live in and contribute to the community, stay out of the criminal justice system, and stay in school or find a job. He expressed the need for "true outcomes." He said that articulated priorities were important, and he noted that he had already spoken to the House Health and Social Services Standing Committee about those priorities. He mentioned the Department of Health and Social Services (DHSS) accomplishments, which included the integration of the Division of Alcohol and Drug Abuse with the Division of Mental Health, and the integration of the service delivery system to create a behavioral health delivery system. He explained that 60-65 percent of the people they served had co-occurring problems. He reported that the Bring the Kids Home initiative had reduced the out of state placement of kids.

[3:46:24 PM](#)

MR. HOGAN spoke about integration within the department when working with families, as many of the divisions worked with the same families. He confirmed that morale had improved in the last several months, as there was good leadership, a solid direction, and that DHSS was "making a difference." He approved of the DHSS management of the Medicaid budget, and opined that a reasonable FY10 budget request for only a 0.02 percent increase had been submitted. He confirmed the DHSS intent to treat people with dignity and respect, function with integrity, and appreciate its partners.

[3:48:58 PM](#)

CO-CHAIR KELLER asked about the biggest challenges still ahead.

[3:49:22 PM](#)

MR. HOGAN said that it was necessary to address the priorities in a fiscally responsible manner. He surmised that there would never be enough money to meet all the needs, and that the biggest challenge was to do the most with the dollars available. He pointed out the frustrations of state bureaucracy, but he welcomed that the "prize" was doing good things for individuals and families.

[3:50:54 PM](#)

REPRESENTATIVE CISSNA noted the difficulty of constantly changing elected officials and agendas. She commented on the integrated work between many departments.

[3:53:11 PM](#)

MR. HOGAN, in response to Representative Cissna, said that he did work with the criminal justice agencies and that he recognized the need to have solid community behavioral health programs, definitive housing options, and an array of vocational options. He opined that the costs for individuals in the correctional system would be reduced if these agencies worked together. He explained how necessary it was for DHSS to work with the Department of Education. He acknowledged the importance for the foundation of relationships and that DHSS was ready for the next steps.

[3:55:31 PM](#)

CO-CHAIR HERRON referred to Mr. Hogan's resume, noted that he managed a super agency, and asked if he was a superman.

[3:55:56 PM](#)

MR. HOGAN responded that the DHSS structure was nationally referred to as a super agency, as few states had all the Health and Social Service agencies included in one department.

[3:56:35 PM](#)

CO-CHAIR HERRON asked why Mr. Hogan only remained an average of three years at a job.

[3:57:07 PM](#)

MR. HOGAN said that he liked to start programs, but not to maintain them. He said that he had no intention of moving on from this position.

[3:57:55 PM](#)

CO-CHAIR HERRON asked why Mr. Hogan had decided to work with DHSS.

[3:58:25 PM](#)

MR. HOGAN replied that, while working outside the state job, he had opined that he would "make a difference and do things differently." He laughingly acknowledged his realization that this was not so easy to accomplish. He observed that progress had been made during his tenure as Deputy Commissioner.

[4:00:40 PM](#)

MR. HOGAN, in response to Co-Chair Herron, said that any problems in DHSS probably touched every person in Alaska.

[4:02:10 PM](#)

REPRESENTATIVE LYNN asked if he had been involved in the "certificate of need" discussions.

MR. HOGAN said that he was not significantly involved. He noted that new regulations were soon to be released for public comment.

[4:03:43 PM](#)

REPRESENTATIVE COGHILL commented that Alaska had numerous health systems, including the Indian Health Services and the [Division of] Behavioral Health service, with different structures which often dealt with the same people. He asked if it needed to be improved.

[4:04:56 PM](#)

MR. HOGAN replied that the Native Health Corporations were important partners and that, in many regions of Alaska, the Native Health was the only provider. He reported that Native Health were the first to recognize the co-existing problems of mental health and substance abuse. He observed that Native

Health engaged families and he allowed a challenge was to modify Medicaid, in order for Native Health to bill for its services. He did not agree that there were separate or parallel systems, and he counseled for one integrated system.

[4:06:34 PM](#)

REPRESENTATIVE COGHILL agreed that it was necessary to work together, especially to have the Medicaid rules work for everyone.

[4:07:16 PM](#)

REPRESENTATIVE SEATON asked if DHSS had any comments about Human Resources (HR) now being a separate, centralized agency, in contrast to DHSS control of its own HR department.

[4:09:11 PM](#)

MR. HOGAN noted that each department had their own HR, when he first worked for the State of Alaska. He expressed his pleasure with the Department of Administration liaison, but he offered his opinion that the successful working relationship was personality driven.

[4:11:24 PM](#)

REPRESENTATIVE COGHILL moved to forward the nomination of Bill Hogan to the joint session of the House and Senate for confirmation. There being no objection, the confirmation of Bill Hogan was advanced from the House Health and Social Services Standing Committee.

State Medical Board

[4:11:47 PM](#)

CO-CHAIR KELLER announced that the next order of business would be confirmation hearings for the appointments of Dr. David Miller, Casey Millar, Edward Hall, and Dr. David Powers to the State Medical Board.

[4:12:03 PM](#)

DR. DAVID POWERS explained that he was "glad for the opportunity" to serve on the state medical board. He opined

that his perspective on work in rural Alaska would lend well to solutions for the long distance challenges of rural health care.

[4:14:01 PM](#)

EDWARD HALL, Physician Assistant (PA), said that he was completing his first four year term on the board. He opined that it was important to have PA representation on the board.

[4:15:29 PM](#)

REPRESENTATIVE CISSNA asked how his perspective had changed the way the board viewed issues.

[4:15:59 PM](#)

MR. HALL said that when he arrived in Alaska, there were not many PA's working in the state. He explained that many providers were still not aware of the scope of practice for PA's.

[4:17:34 PM](#)

DR. DAVID MILLER said that he would represent both the surgeon perspective and SE Alaska.

[4:18:37 PM](#)

REPRESENTATIVE LYNN asked Dr. Miller about his service with the U.S. Air Force.

DR. MILLER said that Alaska was his duty station with the Air Force, and that he had decided to stay in Alaska.

[4:19:19 PM](#)

REPRESENTATIVE CISSNA asked what the important issues were for Dr. Miller.

[4:20:02 PM](#)

DR. MILLER considered that his responsibility was "to maintain high professional and ethical conduct." He responded that he had no agenda as a member of the board and that his decisions would be based on the safety and security for patients, the protection for hospitals, and the just and impartial treatment for physicians.

[4:21:29 PM](#)

CASEY MILLAR said that she was interested in becoming the public member on the board. She announced that she would be a reasonable voice for the public as a consumer representative. She offered to give a fresh perspective from a non-medical viewpoint.

[4:23:05 PM](#)

REPRESENTATIVE COGHILL moved to forward the nominations of Dr. David Miller, Casey Millar, Edward Hall, and Dr. David Powers to the joint session of the House and Senate for confirmation. There being no objection, the confirmations of Dr. David Miller, Casey Millar, Edward Hall, and Dr. David Powers were advanced from the House Health and Social Services Standing Committee.

HB 188-TAX ON MOIST SNUFF

[4:23:38 PM](#)

CO-CHAIR KELLER announced that the final order of business would be a return of the committee's attention to discussion of HB 188.

JENNY OLENDORFF expressed concern for tobacco use, especially among children. She stated that she had worked in tobacco prevention programs for three years, and she reported a documented increase in the use of smokeless tobacco products. She noted that the increase of regulations for cigarette use had increased the use of smokeless products by youth. She stated that kids considered smokeless use to be a healthier alternative to smoking. She offered her belief that tobacco companies had increased its marketing of smokeless tobacco to the youth. She opined that HB 188 would make lightweight tobacco products, such as snus, more affordable for youth. She opined that weight based taxes had historically increased tobacco use. She declared that cheaper, more available, tobacco products was "a recipe for passing on a deadly addiction to yet another generation." She expressed her interest in the proposed CS.

[4:26:18 PM](#)

STEVE WARREN reported that he had established a tobacco cessation program in Sitka. He declared that HB 188 favored lightweight tobacco products. He described the tobacco

marketing campaign as designed to attract youth. He suggested that there be a tax on units of nicotine. He expressed his concern with the current version of HB 188.

[4:29:52 PM](#)

CO-CHAIR HERRON, in response to Mr. Warren, said that the CS for HB 188 would target the lightweight products.

[4:31:31 PM](#)

CARRIE NYSSSEN, Senior Director of Advocacy, American Lung Association of Alaska, said that the American Lung Association was concerned with the long term effect of HB 188. She described the bill as special interest legislation that would distort the tobacco taxation system for the benefit of a tobacco manufacturer. She endorsed the current ad valorem tax system of tobacco products, other than cigarettes. She declared that the weight based tax created a tax loophole for the low weight products, and that this tax would not maintain pace with inflation or price increases. She expressed concern for the increased nicotine addiction of Alaskan youth, as a weight based tax favored the smokeless tobacco products that were attractive to youth. She offered support for a policy to increase revenue and discourage tobacco use.

[4:34:47 PM](#)

REPRESENTATIVE SEATON, referring to the testimony about the addition of nicotine to other products, asked if nicotine was regulated by the Food and Drug Administration (FDA) and if it was permitted as a chemical additive to other products.

[4:35:39 PM](#)

MS. NYSSSEN said that she would get some information.

[4:35:59 PM](#)

REPRESENTATIVE CISSNA compared the current nicotine additive to the historical addition of cocaine to Coca-Cola.

[4:36:47 PM](#)

CHRIS SHIRWIN, Vice President, Advocacy and Government Affairs, said that the American Heart Association shared the same concerns as the other agencies. He warned of the harms from

smokeless tobacco, and the concern that these were "gateway" products. He said that a weight based tax favored the premium smokeless products, as this would lower its taxes. He lobbied to increase the ad valorem tax, or implement a significant tax floor for these products.

[4:41:23 PM](#)

REPRESENTATIVE LYNN asked about the goal of the bill.

[4:41:42 PM](#)

CO-CHAIR HERRON reflected that "chew" was at a crisis level in his district. He responded that his goal was to increase revenue to the cessation fund, instead of the general fund. He opined that the danger was the new lightweight tobacco products, not the ad valorem tax.

[4:44:11 PM](#)

REPRESENTATIVE LYNN shared a concern for the expansion of the "sin" taxes.

[4:44:36 PM](#)

CO-CHAIR HERRON said that he was annoyed with the advertising messages. He established that his original intent with HB 188 was to reduce the use of tobacco products, and to increase funding for the cessation grants.

[4:45:44 PM](#)

CO-CHAIR KELLER reminded the committee to keep the questions to the bill at hand.

[4:45:58 PM](#)

REPRESENTATIVE CISSNA declared that "habit" had brought Alaska nationwide attention for bad habits. She requested that any solution not allow for the continuance of "habits."

[4:48:08 PM](#)

REPRESENTATIVE SEATON reopened the question of whether the placement of nicotine in other products could be restricted by state law, if it was not restricted by federal law. He summarized about the need to curtail nicotine addiction and he

commented on the possibility of a "tax floor per sale," which would cover weight or quantity.

4:50:02 PM

[HB 188 was held over.]

4:50:22 PM

ADJOURNMENT

There being no further business before the committee, the House Health and Social Services Standing Committee meeting was adjourned at 4:50 p.m.