

ALASKA STATE LEGISLATURE
SENATE HEALTH AND SOCIAL SERVICES STANDING COMMITTEE

February 23, 2009

1:30 p.m.

MEMBERS PRESENT

Senator Bettye Davis, Chair
Senator Joe Paskvan, Vice Chair
Senator Johnny Ellis
Senator Joe Thomas
Senator Fred Dyson

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 32

"An Act relating to medical assistance payments for home and community-based services."

HEARD AND HELD

SENATE BILL NO. 52

"An Act relating to scheduling Salvia divinorum and Salvinorin A as controlled substances."

MOVED SB 52 OUT OF COMMITTEE

SENATE BILL NO. 98

"An Act requiring certain hospitals to make certain disclosures on patient billings."

SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: SB 32

SHORT TITLE: MEDICAID:HOME/COMMUNITY BASED SERVICES

SPONSOR(s): SENATOR(s) ELLIS

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|----------|-----|---------------------------------|
| 01/21/09 | (S) | READ THE FIRST TIME - REFERRALS |
| 01/21/09 | (S) | HSS, FIN |
| 01/21/09 | (S) | PREFILE RELEASED 1/9/09 |
| 02/04/09 | (S) | HSS AT 1:30 PM BUTROVICH 205 |
| 02/04/09 | (S) | Heard & Held |
| 02/04/09 | (S) | MINUTE(HSS) |
| 02/23/09 | (S) | HSS AT 1:30 PM BUTROVICH 205 |

BILL: SB 52

SHORT TITLE: SALVIA DIVINORUM AS CONTROLLED SUBSTANCE

SPONSOR(S): SENATOR(S) THERRIAULT

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| 01/21/09 | (S) | PREFILE RELEASED 1/9/09 |
| 01/21/09 | (S) | READ THE FIRST TIME - REFERRALS |
| 01/21/09 | (S) | HSS, JUD, FIN |
| 02/11/09 | (S) | HSS AT 1:30 PM BUTROVICH 205 |
| 02/11/09 | (S) | Heard & Held |
| 02/11/09 | (S) | MINUTE(HSS) |
| 02/23/09 | (S) | HSS AT 1:30 PM BUTROVICH 205 |

WITNESS REGISTER

MAX HENSLEY, staff
to Senator Johnny Ellis
Alaska State Legislature
Juneau, AK

POSITION STATEMENT: Explained changes in version C committee substitute for SB 32.

JON SHERWOOD, Administrator
Medicaid Special Projects
Department of Health and Social Services (DHSS)
Juneau, AK,

POSITION STATEMENT: Responded to questions related to SB 32.

SENATOR GENE THERRIAULT
Alaska State Legislature
Juneau, AK

POSITION STATEMENT: Sponsor of SB 52.

DAVE STANCLIFF, staff
to Senator Gene Therriault
Alaska State Legislature
Juneau, AK

POSITION STATEMENT: Responded to questions related to SB 52.

ACTION NARRATIVE

1:30:13 PM

CHAIR BETTYE DAVIS called the Senate Health and Social Services Standing Committee meeting to order at 1:30 p.m. Present at the call to order were Senators Paskvan, Thomas, Ellis, Dyson and Davis.

SB 32-MEDICAID:HOME/COMMUNITY BASED SERVICES

CHAIR DAVIS announced consideration of SB 32.

[1:31:08 PM](#)

MAX HENSLEY, staff to Senator Ellis, introduced himself.

CHAIR DAVIS asked if there is a committee substitute (CS).

MR. HENSLEY answered yes.

SENATOR ELLIS suggested that he provide an overview of the bill and then Mr. Hensley will go through the CS that the committee may choose to entertain.

CHAIR DAVIS agreed.

SENATOR ELLIS advised the committee that since the bill was first heard about three weeks ago, he and his staff have been working with Commissioner Hogan and his staff and with Senator Davis's office to find a way to implement the goals of the legislation while respecting the administrative difficulties the department might have in minimizing overhead costs.

The intent of the language, that home and community-based services are the key to improving the quality of life of seniors and people, especially children, with developmental disabilities is something he firmly believes. It has been conclusively proven that home and community-based care can help replace or ameliorate the need for institutional care and do so at a lower cost to the state on an individual case basis and across the whole system. A recent study in the Academic Journal of Health Affairs found that states with long-established high proportions of home and community-based services saw a three percent overall decrease in long-term-care spending between 1995 and 2005, as opposed to a 14.5 percent increase in states that have a low proportion of home and community-based services.

According to Department of Health and Social Services (DHSS), Medicaid spending in Alaska is projected to reach \$3.6 billion in 2028. Per enrollee spending is expected to go from \$7400 to \$22,000; long-term care is expected to be the fastest growing segment of those services and a DHSS report suggests that home and community-based services are the reasons that institutional spending is projected to be relatively flat over the years 2008 to 2028. That is not an attack on Alaska's wonderful long-term-care facilities; it just means that home and community-based

services are the least restrictive level of care and the most cost-effective.

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SENATOR ELLIS asserted that policy choices have a significant impact on these projections; the state can control this growth with a wise allocation of current resources. The Department of Health and Social Services and the legislature together hired Meyers and Stouffer, consultants to provide recommendations for home and community-based service methodologies. There is a broad acknowledgement that the current system is broken; the department wants to do better and appreciates legislative guidance in this regard.

Except for an across-the-board four percent increase in 2008, most providers haven't seen increases since 2004; many haven't seen any increase in ten years and have reached a breaking point.

He admitted that there were serious problems in the contractors' methodology; they left out testimony from most of the smaller providers that this bill is aimed at helping.

This legislation specifically gives the department the flexibility to devise a cost-based system that works while fixing the disparity between home and community-based services and institutional care rates. Hospitals and nursing homes have a statutorily defined methodology and required rate review; there is really no reason that home and community-based service providers who are licensed by the State of Alaska should not receive the same treatment by the state as institutional care facilities.

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SENATOR PASKVAN moved to adopt the proposed committee substitute (CS) for SB 32, labeled 26-LS0218\C, as the working document. There being no objection, version C was adopted.

MR. HENSLEY said there are four major changes between the original, R version, and this CS. The first is to move the bill's location in statute from AS 47.07.070-074 to a new section 47.07.069 to give the department the flexibility to interpret the bill in a way that is more appropriate for the many small providers.

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SENATOR ELLIS interjected that this proposed change was easy to do and deals with the concerns of the Alaska Hospital and Nursing Home Association from their long-litigated portion of the statutes. It was never his intent to affect what is going on currently with nursing homes.

MR. HENSLEY continued; the second change is on page 1, lines 8-11 and adds two other categories of service to the provision of home and community-based waiver services: the provision of personal care services in a recipient's home (lines 8 and 9) and assisted living homes for needy or vulnerable persons (lines 10 and 11).

The third change is on pages 2 and 3 in Sections 2 and 3 and is conforming language to change the references for assisted living homes to match the fact that their rates are now being determined by this new process of rate review as opposed to the older process, which was a minimum of \$70 with the department's ability to adjust in regulation.

Fourth, page 3, Section 4, lines 12-26, state that the department will give an annual report on the trends in rates for each of the next five years to keep them informed of what this rate-review process is doing to the rates and how it is being implemented and received. The report will be provided to [the governor and] the legislature through the presiding officers of each house, the chairs of the two finance committees and the chairs of the two health and social services committees.

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Section 5 repeals the reporting requirement after five years, at which point the program will be well-established.

Finally, Section 6 contains a change made in consultation with the department; it provides for a two year delayed effective date to allow the department time to develop a methodology for determining costs in a way that will work with the small providers.

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CHAIR DAVIS asked Mr. Hensley what exactly will be different if the bill passes in this new form.

MR. HENSLEY answered that the changes he went through were changes from the original bill; the language of the bill itself remains basically unchanged. It has moved to a different section, but the bill requires Department of Health and Social

Services to review rates paid through Medicaid to the providers of home and community-based services annually based on costs, so that the providers are paid a rate that reflects the actual cost of providing those services.

CHAIR DAVIS queried, "So with this bill it will not give a rate increase in year 2010?"

MR. HENSLEY answered no, the bill does not take effect until July 2011 and any future rates will be determined by this review. In the opinion of the sponsor, it is early to determine what will happen to the rates; they will probably increase but there is no way to say how much because it has been so long since there has been any comprehensive study done.

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SENATOR THOMAS said the fiscal notes show increases in 2010, and asked what those represent.

MR. HENSLEY responded that the fiscal notes refer to the original version of bill. He suggested that there are some representatives from the department who may be able to address how the proposed CS would change those fiscal notes; but a major reason for the new version is to lower the administrative and overhead costs shown in those fiscal notes.

SENATOR THOMAS asked if he is correct in believing that the new process isn't phased in, but happens all once.

MR. HENSLEY confirmed that is correct.

[1:44:31 PM](#)

CHAIR DAVIS asked Jon Sherwood from Department of Health and Social Services to come forward.

JON SHERWOOD, Administrator, Medicaid Special Projects, Department of Health and Social Services, Juneau, said the department has been working with the committee and the sponsor to come to some understanding about the best way to move forward. They do want to improve their rate-setting methodology and a number of their concerns are addressed in the committee substitute; they still have concerns about setting out the way rates are set in statute and it may be that they simply continue to be in disagreement over that issue. With regard to the fiscal notes, the way this bill has been restructured, they would not expect the same kind of administrative costs either factored into the rate the providers pay to do Medicaid cost reporting or

into the department's audits and review of those cost reports. So although they have not had an opportunity to recalculate the fiscal notes, they would expect a substantial decrease in the amounts. The delayed effective date means that they would not be seeing FY 2010 expenditures with regard to the rate increase.

CHAIR DAVIS asked if the department will be submitting a zero fiscal note based on this CS.

MR. SHERWOOD answered that it would not be a zero fiscal note for the life of bill and that there may be some small administrative expenses required this year; he reiterated that they have not had a chance yet to recalculate the fiscal notes based on the committee substitute.

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SENATOR DYSON asked what the administration would prefer be different in the rate-setting mechanism.

MR. SHERWOOD responded that the department doesn't mind having to do the regulations, to set rates or to subject them to some kind of annual review, but their attorneys always get nervous when the specific language about exactly what they have to look at when they calculate the rates goes into statute. It is one more opportunity for people to argue about what the legislature meant.

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SENATOR DYSON said he can appreciate that; he wondered if the administration is concerned that this puts the review and changing of the rates on "auto pilot" and out of their control.

MR. SHERWOOD said they are concerned that it would restrict their ability to constrain rates if necessary.

SENATOR DYSON asked if the state would be required to fund an increase or if it would be subject to legislative appropriation.

MR. SHERWOOD was not sure, but noted that the Division of Senior and Disabilities Services receives an appropriation that covers nursing homes and home and community-based services and would be affected by both the rates they pay and the people they serve. So if there is some constraint in their budget and they are required by statute to give a rate increase, then something else would have to change... the number of people they serve, some of the service limitations or something else.

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SENATOR DYSON asked, "So you are not required to provide service to everyone who applies?"

MR. SHERWOOD explained that for Medicaid waiver services they are not required to serve everyone who is eligible; they tell the federal government how many people they are going to serve. They cannot directly constrain the number of people served by personal care services, although they could change the eligibility criteria.

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SENATOR DYSON asked if they have traditionally seen line items for these services showing up in the supplemental budget.

MR. SHERWOOD said he did not know.

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SENATOR ELLIS thanked Mr. Sherwood for assisting the committee with this legislation and stated that he wants it made clear for the record, that the legislature always retains its right to appropriate. The governor does not have a budget; she has a budget proposal and the legislature appropriates the money or does not. If there is a cost-based rate review process on an annual basis, the department will make a proposal to the legislature and the legislature will fund or not fund the services as they do in all other areas. While he appreciates the department's discomfort with setting cost-based rates in statute, all logic dictates that costs would be a significant factor in the setting of rates; so he does not believe the committee has gone beyond reason in this legislation. They are trying to set up a system to get a better handle on how to establish those rates and ultimately any system of rate-review would consider the cost of providing these services by home and community-based services just like they do for nursing homes and hospitals.

SENATOR ELLIS added that he has been surprised by some of the people in the legislative process who are viewing this legislation positively as a management tool for the legislature. He asked Mr. Sherwood to comment on the report and how it might be used to help the department and the legislature to be better policy makers and budget writers.

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MR. SHERWOOD said he's glad Senator Ellis asked that question. The department sees the report as a vehicle for accountability

to give them a forum in which to state what they are doing and encourage open discussion about it. As the talking about this report, he was reminded of the annual developmental disabilities wait-list; by providing that information to people, they have been able to sustain substantial progress at removing people from the wait-list and getting them into service. They think this report will provide a similar vehicle for discussion about rates and to see if the legislature supports the direction they are going.

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SENATOR ELLIS commented that reports required by the legislature are sometimes seen by departments as a hassle and he is pleased that DHSS thinks this is a good idea; it can be a good management tool.

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CHAIR DAVIS said she is a co-sponsor on this bill and appreciates the work that has been put into it, but she does not think this gets them where they need to be. She has a real problem with the two-year delay when they've been waiting for years for this rate review to be completed so they can begin to give these organizations the increases they need; she gets calls almost daily from people who are concerned about lack of money to run their programs. Just today she received a letter from a grantee saying that they had just been through a rate review and were told they have to hire 4.5 more staff members in order to continue the program; they said it will cost them about \$300,000 and yet the state is not going to assist them in any way with funding. She believes there should be some increase forthcoming during this 90-day session.

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MR. SHERWOOD said the department's concern with the delayed effective date had to do with having a statutory rate-setting mechanism in place that they could implement and be ready to comply with when the statute becomes effective. Experience with their contractors, Meyers and Stouffer, didn't get them as far as they'd hoped it would toward determining how to do that rate-setting or get reasonable cost information from providers. They don't want to put anyone in the position of having to come into statutory compliance immediately. That said, they do have the ability through regulation to change rates and if there is adequate funding in the budget they can look at changing the rates in that way.

[2:00:06 PM](#)

CHAIR DAVIS asked if he is saying there is a way to provide a rate increase immediately.

MR. SHERWOOD said there is no reason they can't; it depends on the availability of funds.

[2:00:54 PM](#)

SENATOR ELLIS noted that the House and Senate HSS finance subcommittees are in the process of reviewing the department's budget and asked what line item would need to increase for a rate adjustment in the near term.

MR. SHERWOOD said it would be primarily the Senior and Disabilities Medicaid Services; if they want to increase the amount for assisted living homes paid through the General Relief Assisted Living and Adult Protective Services, that would be the Community and Protection section of the Senior and Disabilities Services budget.

SENATOR ELLIS asked if he would be willing to provide the committee with two or three options regarding what amount of money would need to be appropriated for those lines in the budget to provide for a reasonable rate increase in the near term; they will forward that information to the finance subcommittee.

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MR. SHERWOOD said he believes he can.

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SENATOR PASKVAN said, as he understands it, while the department may have the option of providing personal care in a recipient's home, he wonders what options the department can exercise if a person has to be institutionalized.

MR. SHERWOOD was not sure he understood the question. If someone is institutionalized and goes into a nursing home or a facility for the developmentally disabled, he said, that person is still covered in the same budget component for Medicaid, the Senior and Disabilities Services; it would just be paid for a different provider and those rates are established under the statutory authority in [AS 4]7.07.070. He wondered whether he had answered Senator Paskvan's question.

SENATOR PASKVAN clarified that he is trying to establish whether people might not be covered if they are staying at home, but must be covered if they are in an institution.

MR. SHERWOOD confirmed that there is mandatory coverage for individuals in an institutional setting, but personal care is either provided through state option or through home and community-based waivers, which are essentially a state option. With regard to assisted living services, some of what Medicaid will not cover falls under the adult protection statutes and is covered at 100 percent general funds.

[2:04:56 PM](#)

SENATOR PASKVAN stated that the cost is less for personal care services in a person's own home.

MR. SHERWOOD agreed that is generally the case.

SENATOR ELLIS asked if it is a policy of the state to encourage a person to stay in the least restrictive, most cost-effective level of care.

MR. SHERWOOD assured him that is correct; the department attempts to offer people the option of staying out of institutions if that is their choice.

[2:05:58 PM](#)

CHAIR DAVIS asked if personal care assistants (PCAs) are included in the bill now.

MR. SHERWOOD answered that they are.

CHAIR DAVIS said she has decided to hold SB 32 to gather additional information.

SB 52-SALVIA DIVINORUM AS CONTROLLED SUBSTANCE

[2:07:51 PM](#)

CHAIR DAVIS announced consideration of SB 52.

SENATOR THERRIAULT, sponsor of SB 52, said the legislation before the committee is a reintroduction of a previous bill that would move to place salvia divinorum onto the list of controlled substances. This drug is primarily grown in the mountainous regions of Mexico; it has a history of use as a vision-inducing substance by the Aztec Indians of the region. Because it is so easy to misuse and can produce long-term psychological effects, it has been banned in several countries and a growing number of states across the nation.

The leaves of this perennial herb, once processed, can be eaten, can be drunk as tea or inhaled. It is presently available to people in Alaska who choose to order it on the internet and, although purchasers of the substance are asked if they are 18 years of age or older, those restrictions are very loosely applied. Sellers promise that it will produce mind-altering experiences, but experts warn that that depression and schizophrenia are very real risks with this drug.

SENATOR THERRIAULT said he has received some criticism over the past couple of years for introducing the legislation, by people who say that the if they don't want their children to use the drug, they shouldn't introduce legislation that will generate headlines. That pretends the word doesn't spread over the internet on sites like My Space and Facebook that are frequented by young people. Salvia is enjoying a rise in use due to its powerful effects; he asked that Alaska follow the lead of many other countries and states and put this on the list of controlled substances along with peyote, mescaline and LSD.

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SENATOR ELLIS asked what Senator Therriault's response would be to the religious freedom argument that some folks have made to the committee and to members of the Alaska Libertarian Party regarding the personal freedom of adults aspect of this issue.

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SENATOR THERRIAULT answered that he would say, from the libertarian perspective, while he tends to agree with them on many things, this is in the same category as mescaline and LSD and the state does not give people the freedom to order that over the Internet and exercise their free will to use those drugs. The society has realized that there are certain substances that cause damage to the individual and society as a whole that is great enough to justify putting restrictions on them. He did not see the religious argument as any different from the argument surrounding peyote and that has been placed on the controlled substances list. He would guess that if scheduling this drug causes a problem, they already have that problem with the drugs they have listed, yet he does not hear people asking that legislation be introduced to remove the restriction on those other drugs.

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SENATOR PASKVAN questioned whether Senator Therriault had asked the Alaska Medical Association about this, or if the American

Medical Association has produced any type of study that puts this particular drug in a specific category.

DAVE STANCLIFF, staff to Senator Therriault, said there has been a fair amount of debate as to how this substance reacts in the mind and it is unique among all other hallucinogenics. There is ongoing research by both the Alaska Medical Association and the American Medical Association with regard to how it might be used safely in a medical setting and this bill does not preclude the use of this substance for medical studies.

SENATOR PASKVAN pointed out Mr. Stancliff's use of the term "misuse" and wanted to know what the difference is in these studies between appropriate use and misuse.

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MR. STANCLIFF said his research has revealed that there is no quality control for this substance, so buyers don't know what they are really getting. Also, frequent users of this and other psychic substances state that they have not found a level that is predictable; there is no way to predict what the reaction will be from one use to the next. Since this is so much more powerful than any other natural hallucinogenic substance, it takes very little to induce a trance or put people into a catatonic state if they use too much; even the most experienced "mind travelers" warn about this particular substance. There is no medical way at this point to measure or determine response.

[2:15:46 PM](#)

SENATOR PASKVAN assumed this would make users of salvia felons and he wondered why it is classified that way.

MR. STANCLIFF said that in some states it is on Schedule I, but they have chosen to put it on Schedule II because it seems to have the same difficult properties as those other substances have. He thinks they will hear from others in the administration who can speak to exactly how Schedule II works in terms of the degrees of criminality involved. Certainly it is no less dangerous, and perhaps far more dangerous, than mescaline, LSD, peyote and other drugs that are on this schedule. It might be worth putting on record that since Senator Therriault started this effort three years ago when he was aware of only one place where a person could obtain this, it has escalated to the point that smoke shops all over state are carrying it and 4,600 sites on YouTube are showing people using it.

[2:17:58 PM](#)

SENATOR PASKVAN explained that what he is struggling with is the concept of felony vs. misdemeanor vs. infraction for something that he has heard no definitive medical statement about.

MR. STANCLIFF said he understands and doesn't know of anywhere that those organizations have made a statement regarding what degree of criminality would be appropriate.

[2:18:41 PM](#)

SENATOR THERRIAULT added that they are left to make comparisons with the other drugs they have already listed and try to match its effects with those of other substances on the list.

MR. STANCLIFF quoted from the Navy's Drug Detection and Deterrence Branch:

There has been a recent interest among young adults and adolescents to re-discover ethnobotanical plants that can induce changes in perception, hallucinations, or other psychologically-induced changes. ... information provided by abusers indicates that the negative long-term effects of Salvia Divinorum may be similar to those produced by other hallucinogens such as LSD (lysergic acid diethylamide) including depression and schizophrenia." The [Drug Enforcement Agency] DEA states "It's a drug of concern because of its wide availability and unknown long-term effects." And DEA spokeswoman Rogene Waite said "...just because it hasn't been scheduled doesn't mean it's safe or healthy.... It's dangerous from what you can see from anecdotal material.

[2:20:03 PM](#)

SENATOR ELLIS said he has gone on YouTube and watched some of the videos and has no doubt it can be damaging, but wonders if there is anything to include in the packet about the health impacts of the substance to justify making it illegal.

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SENATOR THERRIAULT said placing it on controlled substance list does just that; it could still be prescribed but is controlled like many medications that pharmaceutical companies determine have a beneficial use but are not available without a prescription. He added that he is not aware of any scientific research showing that it has any specific use; but if that were determined in the future, the fact that it is on this list would not preclude its use.

SENATOR THERRIAULT stated that he does have a letter of support from the Advisory Board on Alcohol, Drug Abuse and Mental Health.

[2:22:22 PM](#)

CHAIR DAVIS said she would think that if there is a concern from a health standpoint someone would be here to testify to that. They have heard this bill twice before and have not heard anything from representatives of any health organizations or the department.

CHAIR DAVIS asked the will of the committee.

[2:24:02 PM](#)

SENATOR DYSON moved to report SB 52 from committee with individual recommendations and attached fiscal note(s).

SENATOR ELLIS said he would not object, but wanted it on the record that he will be signing "no recommendation." He thinks there are a few things still to be addressed before this becomes law.

CHAIR DAVIS announced that SB 52 is moved from committee.

[2:24:43 PM](#)

There being no further business to come before the committee, Chair Davis adjourned the meeting at 2:24 p.m.