

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

March 24, 2010

1:33 p.m.

MEMBERS PRESENT

Senator Hollis French, Chair
Senator Bill Wielechowski, Vice Chair
Senator Dennis Egan
Senator Lesil McGuire

MEMBERS ABSENT

Senator John Coghill

COMMITTEE CALENDAR

SENATE BILL NO. 277

"An Act exempting from regulation by the Regulatory Commission of Alaska and by municipalities generators of electricity from renewable energy resources that sell electricity to regulated utilities."

- MOVED CSSB 277(RES) OUT OF COMMITTEE

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 319(FIN)

"An Act relating to firearms; and providing for an effective date."

- HEARD AND HELD

SENATE BILL NO. 46

"An Act relating to child support awards made by a court; and repealing Rule 90.3, Alaska Rules of Civil Procedure."

- HEARD AND HELD

SENATE BILL NO. 63

"An Act relating to transfer restrictions on trust interests."

- HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 277

SHORT TITLE: PUB. UTILITY EXEMPTION: RENEWABLE ENERGY
SPONSOR(s): ENERGY

02/12/10 (S) READ THE FIRST TIME - REFERRALS
02/12/10 (S) RES, JUD
02/22/10 (S) RES AT 3:30 PM BUTROVICH 205
02/22/10 (S) Heard & Held
02/22/10 (S) MINUTE(RES)
02/25/10 (S) RES AT 4:00 PM BUTROVICH 205
02/25/10 (S) Moved CSSB 277(RES) Out of Committee
02/25/10 (S) MINUTE(RES)
03/02/10 (S) RES RPT CS 1DP 3NR NEW TITLE
03/02/10 (S) DP: MCGUIRE
03/02/10 (S) NR: WIELECHOWSKI, STEVENS, FRENCH
03/19/10 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/19/10 (S) <Bill Hearing Postponed>
03/22/10 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/22/10 (S) Heard & Held
03/22/10 (S) MINUTE(JUD)

BILL: HB 319

SHORT TITLE: FIREARMS
SPONSOR(s): HAWKER

01/29/10 (H) READ THE FIRST TIME - REFERRALS
01/29/10 (H) JUD, FIN
02/10/10 (H) JUD AT 1:00 PM CAPITOL 120
02/10/10 (H) Moved CSHB 319(JUD) Out of Committee
02/10/10 (H) MINUTE(JUD)
02/12/10 (H) JUD RPT CS(JUD) 4DP 2NR
02/12/10 (H) DP: LYNN, DAHLSTROM, GATTO, RAMRAS
02/12/10 (H) NR: GRUENBERG, HERRON
02/16/10 (H) FIN AT 1:30 PM HOUSE FINANCE 519
02/16/10 (H) Moved CSHB 319(FIN) Out of Committee
02/16/10 (H) MINUTE(FIN)
02/19/10 (H) FIN RPT CS(FIN) NT 7DP
02/19/10 (H) DP: KELLY, THOMAS, DOOGAN, AUSTERMAN,
FAIRCLOUGH, STOLTZE, HAWKER
02/24/10 (H) TRANSMITTED TO (S)
02/24/10 (H) VERSION: CSHB 319(FIN)
02/26/10 (S) READ THE FIRST TIME - REFERRALS
02/26/10 (S) JUD, FIN
03/22/10 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/22/10 (S) Heard & Held
03/22/10 (S) MINUTE(JUD)
03/24/10 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

BILL: SB 46

SHORT TITLE: CHILD SUPPORT AWARDS

SPONSOR(s): KOOKESH

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
03/01/10 (S) HSS AT 1:30 PM BUTROVICH 205
03/01/10 (S) Heard & Held
03/01/10 (S) MINUTE(HSS)
03/10/10 (S) HSS AT 1:30 PM BELTZ 105 (TSBldg)
03/10/10 (S) Moved CSSB 46(HSS) Out of Committee
03/10/10 (S) MINUTE(HSS)
03/12/10 (S) HSS RPT CS 5DP NEW TITLE
03/12/10 (S) DP: DAVIS, THOMAS, ELLIS, PASKVAN,
DYSON
03/24/10 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

BILL: SB 63

SHORT TITLE: TRANSFER RESTRICTIONS ON TRUSTS

SPONSOR(s): MCGUIRE

01/21/09 (S) PREFILE RELEASED 1/16/09
01/21/09 (S) READ THE FIRST TIME - REFERRALS
01/21/09 (S) STA, JUD, FIN
02/04/10 (S) STA AT 9:00 AM BELTZ 105 (TSBldg)
02/04/10 (S) Heard & Held
02/04/10 (S) MINUTE(STA)
03/11/10 (S) STA AT 9:00 AM BELTZ 105 (TSBldg)
03/11/10 (S) Moved CSSB 63(STA) Out of Committee
03/11/10 (S) MINUTE(STA)
03/12/10 (S) STA RPT CS 2DP 3NR SAME TITLE
03/12/10 (S) DP: MENARD, MEYER
03/12/10 (S) NR: FRENCH, PASKVAN, KOOKESH
03/24/10 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

WITNESS REGISTER

MICHAEL PAWLOWSKI, Staff
to Senator McGuire
Alaska State Legislature
Juneau, AK

POSITION STATEMENT: Provided information related to SB 277 on behalf of the sponsor.

JULI LUCKY, Staff
to Representative Mike Hawker

Alaska State Legislature
Juneau, AK

POSITION STATEMENT: Responded to questions on HB 319 on behalf of the sponsor.

DOROTHY SHOCKLEY, Staff
to Senator Albert Kookesh
Alaska State Legislature
Juneau, AK

POSITION STATEMENT: Presented SB 46 on behalf of the sponsor.

DOUG WOOLIVER, Administrative Attorney
Alaska Court System
Juneau, AK

POSITION STATEMENT: Provided information related to SB 46.

JOHN MALLONEE, Director
Child Support Systems
Department of Revenue (DOR)

POSITION STATEMENT: Provided information related to SB 46.

STACY STEINBERG, Section Chief
Civil Division
Collections and Support Section
Department of Law
Anchorage, AK

POSITION STATEMENT: Provided information related to SB 46.

ESTER CHA, Staff
to Senator Lesil McGuire
Alaska State Legislature
Juneau, AK

POSITION STATEMENT: Presented SB 63 on behalf of the sponsor.

JONATHAN BLATTMACHR, representing himself

POSITION STATEMENT: Testified in support of SB 63.

RICHARD HOMPESCH, representing himself
Fairbanks, AK

POSITION STATEMENT: Testified in support of SB 63.

DAVID G. SHAFTEL, representing himself
Shaftel Law Offices
Anchorage, AK

POSITION STATEMENT: Testified in support of SB 63.

JANET TEMPEL, Senior Trust Officer

Alaska USA Trust
Anchorage, AK

POSITION STATEMENT: Testified in support of SB 63

ACTION NARRATIVE

[1:33:10 PM](#)

CHAIR HOLLIS FRENCH called the Senate Judiciary Standing Committee meeting to order at 1:33 p.m. Senators Egan, Wielechowski, McGuire, and French were present at the call to order.

SB 277-PUB. UTILITY EXEMPTION: RENEWABLE ENERGY

[1:33:41 PM](#)

CHAIR FRENCH announced the consideration of SB 277 and asked the sponsor if she or her staff wanted to amplify or clarify anything that was said at the previous hearing. [CSSB 277(RES) was before the committee.]

MICHAEL PAWLOWSKI, Staff to Senator McGuire, said that as the RCA has recognized, this is a policy call about competition and access to the electricity market. He noted that Mr. Foster's testimony during the previous hearing brought particular clarity and insight to the issue.

[1:34:22 PM](#)

SENATOR MCGUIRE thanked Chair French for bringing Mr. Foster into the conversation and for indulging a broader hearing in terms of looking at how to deal with independent power producers and renewable energy as a whole.

CHAIR FRENCH said it's an interesting issue and he likes the bill. He views it as a matter of two sophisticated business entities dealing with one another in an arm's length transaction without being forced to strike a deal. That sort of market mechanism should protect consumers in the Railbelt as well as anything, he said.

[1:35:27 PM](#)

SENATOR WIELECHOWSKI said he shares those sentiments. IPPs shouldn't be in a position to dominate the market, but the 65 megawatt limitation and the sunset provides protection for consumers.

SENATOR WIELECHOWSKI moved to report SB 277 from committee with individual recommendations and attached fiscal note(s). There

being no objection, CSSB 277(RES) moved from the Senate Judiciary Standing Committee.

At ease from 1:36 p.m. to 1:37 p.m.

HB 319-FIREARMS

[1:37:20 PM](#)

CHAIR FRENCH announced the consideration of CS for HB 319 [CSHB 319(FIN)]. Public testimony was taken at the previous hearing. He asked Ms. Lucky to discuss how the command to execute federal firearms forms in Section 5 will work in practice.

JULI LUCKY, Staff to Representative Mike Hawker, said this puts a duty on the chief law enforcement officer of a jurisdiction to execute a form, but the bill doesn't specify a remedy if that's not done.

CHAIR FRENCH asked if the failure to execute the form might be the basis of an ethics complaint against a chief law enforcement officer or chief administrative officer.

MS. LUCKY said she could do additional research on that, but since there isn't a remedy in statute it's unclear what the remedy might be for a violation of this section.

CHAIR FRENCH announced he would hold HB 319 in committee to allow time to look at the options. I don't want to create an expectation that can't be enforced or put municipal police departments across the state in a bind, he said.

SB 46-CHILD SUPPORT AWARDS

[1:40:19 PM](#)

CHAIR FRENCH announced the consideration of SB 46. [CSSB 46(HSS) was before the committee.

DOROTHY SHOCKLEY, Staff to Senator Albert Kookesh, said CS for SB 46 puts the Child Support Civil Rule 90.3 Guidelines into statute. When the Alaska Supreme Court enacted the rule in 1987, they admitted that it was substantive law that the Legislature could replace at any time. SB 46 proposes to do that.

MS. SHOCKLEY explained that when a child support guideline is set by court rule, the people who are affected don't have a chance to speak to the individuals who have the power to make changes. This has been a problem. The feedback that the sponsor has received is that people don't mind paying child support, but

they don't agree with the formula the court has set. She related that she encouraged constituents to write to the review committee, but it made a disappointingly small difference. Just one statewide-call-in hearing was held and people in rural Alaska in particular weren't able to talk about their unique situation to anyone who could make changes. Putting the rule into statute is perhaps the only solution, she said.

1:44:00 PM

CHAIR FRENCH asked Mr. Wooliver to explain how it came to be that child support orders are done through a court rule rather than statute.

DOUG WOOLIVER, Administrative Attorney, Alaska Court System, informed the committee that the state's child support guidelines were adopted by the court shortly after the federal law passed requiring states to have guidelines. Then Governor Cowper asked the administrative director of the court if the court would be willing to establish the child support guidelines because neither the Legislature nor the governor wanted to do so. Although it's not a typical role for the court, they did agree and they've been doing it for the past 23 years.

MR. WOOLIVER explained that federal law requires a review of the guidelines every four years. About two years prior to enacting any changes, a committee is appointed and the court sends out a letter asking for public comment on the guidelines. Posters are put in all the court locations, notices are posted in 32 newspapers in the state, and the information is on the court's website. Notices of the contemplated changes go out to all attorneys in a number of venues and to child support services to include in their mailings. The notice tells people who are making and receiving child support payments that a change is coming and it asks for input. This last year the court sent 34,000 notices to child support services to include in their mailings.

After this process the comments are summarized and organized by subject and distributed to the committee members who develop a draft proposal. The draft proposal again goes out for comment and a memo summarizing the rule goes out to many of the same venues as before, including to legislators. Last time the court received 80 comments from members of the public through that process. He said there is one statewide teleconference, but it hasn't been a successful venue. Last time just six people participated.

The committee takes the comments into account and forwards a recommendation to the five supreme court justices who have the ultimate authority to form the rule.

[1:48:18 PM](#)

SENATOR WIELECHOWSKI asked how similar the current Rule 90.3 is to the federal guidelines on child support.

MR. WOOLIVER offered to find the answer.

SENATOR WIELECHOWSKI asked if other states have their child support rules in statute.

MR. WOOLIVER offered to find the answer.

CHAIR FRENCH asked if he had a feeling for how much of the court's time is absorbed in child support matters because he recalls that they are extremely time intensive.

[1:49:58 PM](#)

MR. WOOLIVER replied these matters take a great deal of the court's time. He reminded the committee that several weeks ago when he asked the Legislature for another superior court judge in Anchorage, one reason he cited was unrepresented litigants in family law cases. That category is child support. He said one reason he asked for just one more judge is because the court wants to add staff, part of whose job will be to help the judges calculate child support payments. The judges do that now.

[1:50:59 PM](#)

JOHN MALLONEE, Director Child Support Services Division, Department of Revenue (DOR) said he was available to answer questions.

CHAIR FRENCH asked if he participates in the process that results in modifications to Civil Rule 90.3 Child Support Guidelines.

MR. MALLONEE replied the Child Support Services Division (CSSD) works through Assistant Attorney General Stacy Steinberg when it wants changes. She currently represents CSSD and has been a member of the committee Mr. Wooliver described.

Responding to an earlier question about the federal law, he explained that 45 CFR 302.56 basically states what the general guidelines must consider. It's fairly open for interpretation by

the states other than that a review is required every four years.

[1:52:52 PM](#)

CHAIR FRENCH asked Ms. Steinberg her perspective on the administration's ability to get changes made in child support guidelines.

STACY STEINBERG, Chief Assistant Attorney General, Section Supervisor, Collections and Support Section, Civil Division, Department of Law (DOL), explained that the attorneys in this section represent CSSD whenever they have legal issues or when a matter goes to court.

MS. STEINBERG said she served on the most recent committee that reviewed child support guidelines and at the time she brought CSSD concerns to the committee's attention. The committee is comprised of private attorneys and a judge who sits as chair and the process the committee undertakes is extensive and time consuming. During the last review CSSD didn't ask for any specific changes but they did work with the committee to make the court form more efficient for collecting child support.

[1:55:01 PM](#)

CHAIR FRENCH asked if the administration had taken a position on the bill.

MS. STEINBERG deferred to Mr. Mallonee.

MR. MALLONEE replied, "We have no objection to the bill." They simply use the guidelines to do the calculations to establish child support orders and it wouldn't matter if it was in statute or court rule.

SENATOR WIELECHOWSKI asked if CSSD gets involved in every four-year review.

MR. MALLONEE said their only real involvement is through the DOL section chief that represents CSSD.

SENATOR WIELECHOWSKI asked if he believes that the formula and other calculations in the bill are fair.

MR. MALLONEE replied it would take an economic study to determine whether or not the percentages are fair and equitable. The last one was done when the rule was established originally.

MS. SHOCKLEY added that the idea was to adopt the same numbers as Civil Rule 90.3 then after they're in statute the sponsor would look at perhaps making changes.

SENATOR WIELECHOWSKI said he appreciates knowing that.

CHAIR FRENCH asked Ms. Steinberg if the new - and as yet not adopted - CS addresses the concerns she outlined in a letter to the sponsor.

MS. STEINBERG replied she understands that that a new CS was drafted, but she hasn't seen it; she's still working from version 26-LS0279\P.

CHAIR FRENCH said he'd wait until a subsequent hearing to adopt the new CS to make sure that everyone was working from the same document. Noting that one concern she spoke to was how medical costs are to be divided, he asked if the problem doesn't exist now if the numbers in the bill were simply lifted from the court rule.

MS. STEINBERG said the bill initially mimicked Civil Rule 90.3 and the few legal changes that were needed were resolved. The problem came about because of 2008 federal regulations that required the addition of cash medical support and provisions to define reasonableness and accessibility of health insurance. Those aspects were added to version P but because they aren't in rule 90.3 it wasn't clear how some of the uncovered medical expenses would be handled and who would pay. She said the main point of the letter was to ensure that the additions of cash medical support will legally work in this new statute.

[2:03:23 PM](#)

SENATOR WIELECHOWSKI questioned how the judicial branch was able to adopt substantive law if Civil Rule 90.3 is in fact substantive.

MS. STEINBERG replied it is substantive in that it sets how child support is established in each court case, but it is a court rule that only applies to court. The constitutionality of the rule has been challenged and the supreme court found it to be constitutional. CSSD has a separate regulation that specifically says it will follow Civil Rule 90.3.

[2:04:42 PM](#)

CHAIR FRENCH asked the drafting attorney why the nonapplicability of two-thirds vote requirement is included in the bill and how she came to that conclusion.

JEAN MISCHEL, Drafting Attorney, Legislative Legal and Research Services, Legislative Affairs Agency, explained that her office has construed this to be a substantive rule. Since the bill isn't affecting judicial procedure, a two-thirds vote isn't required.

SENATOR WIELECHOWSKI questioned how the Legislature can change a court rule without a two-thirds vote.

MR. WOOLIVER explained that the supreme court adopts rules under two provisions of the constitution. Article 4, Section 15, is the rules of practice and procedure and Article 4, Section 1 is the inherent authority of the court. Rule 90.3 says it is adopted pursuant to the authority under Article 4, Section 1 and is not subject to the super majority requirements that the rules of practice and procedure would be subject to with respect to legislative change. The rule itself says it is a substantive rule and the Legislature can change it by a simple majority vote.

CHAIR FRENCH mused about the separation of powers and the 2/3 vote requirement.

SENATOR WIELECHOWSKI commented that it's an interesting question and the logic is somewhat circular.

[2:07:27 PM](#)

MS. MISCHEL clarified that the court adopts both procedural and substantive rules and the substantive rules are within the purview of both the judicial and legislative branches. As Mr. Wooliver pointed out, the court told the Legislature it could amend or adopt this rule without a 2/3 vote. "We're all in agreement that this is not a procedural rule that the court would have more control over," she said.

CHAIR FRENCH asked if there are other instances of the court adopting substantive rules.

MS. MISCHEL said yes, but it would take time to point them out.

CHAIR FRENCH said he wouldn't move the bill before he heard from the family law section and Mr. Kirk who has been supportive of the bill.

CHAIR FRENCH announced that because this is a fairly significant change, he would hold SB 46 for a future hearing.

SB 63-TRANSFER RESTRICTIONS ON TRUSTS

[2:09:35 PM](#)

CHAIR FRENCH announced the consideration of SB 63. [CSSB 63(STA) was before the committee.]

ESTER CHA, Staff to Senator Lesil McGuire, introduced SB 63 reading from the following sponsor statement:

The climate for trust and estate planning is highly competitive, and the trust business is a multi-billion dollar sector that often crosses state lines in order to take advantage of more attractive state trust laws. In 1997, Alaska became the first state to establish a law that allows a person to form an irrevocable trust, be a discretionary beneficiary of the trust and, if the trust has a spendthrift clause, protect the trust assets from the settlor's creditors.

To give a little background, I'll summarize the aspect of trusts to which this bill refers. In trusts, there are three parties: a settlor also known as a trust-maker, grantor, or testator; the trustee, which can be an individual or an institution; and beneficiaries. The settlor designates whether or not a beneficiary is discretionary, which means that payment of distributions is determined based on the discretion of the trustee instead of the settlor stating how much and how often payments will be distributed. With discretionary beneficiaries, trustees may be given standards by which to exercise discretion e.g. the HEMS or Health, Education, Management, and Support standard. If the trust has a spendthrift provision, a creditor cannot force the trustee to pay money directly to the creditor. Instead, the creditor must wait until the trustee pays out the distribution to a beneficiary, at which time the creditor can seize the assets.

Alaska established in 1997 that assets in a trust would be protected from a settlor's creditors if he designates himself as a discretionary beneficiary, provided that he has no current claims pending. Since

Alaska enacted this statute, numerous other states have enacted similar statutes. At present, twelve states allow this type of trust. SB 63 upgrades Alaska's trust statute by adopting provisions that have been adopted by other states. Therefore, without changes in legislation, Alaska would not be able to maintain its position at the forefront.

This bill provides the following amendments:

- It clarifies the burden of proof which a creditor must meet to establish that a transfer in trust was done with the intent to defraud a creditor
- Clarifies that a spendthrift provision will apply to a trust if distributions are made under the exercise of discretion by a trustee who is not the settler, whether or not the exercise of the discretion is governed by the standard
- Provides that the spendthrift provision in a trust will apply even though the trustee may distribute income or principal to the settlor to pay income taxes
- Clarifies that a beneficiary's interest in a trust, whether or not vested, is not considered a factor or economic circumstance in the division of property subject to divorce

These changes in SB 63 were brought to our office's attention by experts in the probate and trust field. SB 63 is part of an ongoing effort to modernize our trust laws and by doing so (1) to create jobs and revenue, (2) to diversify our economy, and (3) to continue making Alaska attractive to trust business and investment.

[2:14:02 PM](#)

JONATHAN BLATTMACHR, Principal, ILS Management, characterized SB 63 as a catch-up bill for trusts that will ensure that Alaska trust laws are at least as good as any other state's and better in some respects. He noted that in Private Letter Ruling 2009 44002, the IRS held that an individual could create an Alaska trust of which he or she is a discretionary beneficiary and those assets wouldn't be included in that person's estate upon

their death. He opined that the only other state that might possibly fall under that favorable ruling is Nevada. He urged the committee to pass the bill.

[2:16:58 PM](#)

RICHARD HOMPESCH, II, Attorney, Hompesch and Evans LLC, Fairbanks, said he agrees with Mr. Blattmachr's comments and believes that Alaska is nationally recognized for its trust laws. This has made a difference in his practice and has had an impact on the estate planning his company does for clients in Fairbanks. He urged the committee to pass SB 63.

CHAIR FRENCH asked if out-of-state individuals enlist his services to establish trusts under Alaska law because the statutes in this state are more favorable.

MR. HOMPESCH said yes and cited examples.

[2:19:03 PM](#)

DAVID G. SHAFTEL, Shaftel Law Offices, said he is a private attorney and a member of the informal group of attorneys and trust officers who have been working with the Legislature since the late 1990's on trust legislation. He related that he has had a similar experience as Mr. Hompesch; many Alaska clients as well as individuals from other states have wanted to take advantage of Alaska's superior trust laws. The provisions in SB 63 will further strengthen the law with respect to this type of trust. He urged the committee to approve the bill.

[2:20:04 PM](#)

SENATOR WIELECHOWSKI asked if the increased out-of-state business will create additional work for the court system.

MR. SHAFTEL said he doesn't believe so; if non-residents with trusts here were to litigate these matters, they would likely do it in bankruptcy court or the state court where the settlor is a resident rather than in Alaska.

[2:21:15 PM](#)

CHAIR FRENCH asked for a motion to adopt the committee substitute (CS).

SENATOR WIELECHOWSKI moved to adopt work draft CS for SB 63, labeled 26-LS0317\P, as the working document. There being no objection, version P was before the committee.

[2:21:47 PM](#)

JANET TEMPEL, Senior Trust Officer, Alaska USA Trust Company, said her company is the trustee for residents and non-residents on a number of trusts that have been set up under the Alaska Trust Act. She said she completely agrees with the previous testimony that it is important to keep Alaska's trust laws updated. We completely support SB 63, she said.

CHAIR FRENCH closed public testimony and held SB 63 to a future hearing.

2:22:45 PM

There being no further business to come before the committee, Chair French adjourned the meeting at 2:22 p.m.