

ALASKA STATE LEGISLATURE
SENATE STATE AFFAIRS STANDING COMMITTEE

March 18, 2010

9:32 a.m.

MEMBERS PRESENT

Senator Linda Menard, Chair
Senator Kevin Meyer, Vice Chair
Senator Hollis French
Senator Joe Paskvan

MEMBERS ABSENT

Senator Albert Kookesh

COMMITTEE CALENDAR

SENATE BILL NO. 288

"An Act relating to the disposition of human remains."

- BILL HEARING CANCELLED

SENATE BILL NO. 259

"An Act relating to the powers and duties of the legislative audit division."

- MOVED CSSB 259(STA) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: SB 259

SHORT TITLE: LEGISLATIVE AUDIT DIVISION POWERS

SPONSOR(S): STATE AFFAIRS

02/05/10	(S)	READ THE FIRST TIME - REFERRALS
02/05/10	(S)	STA, FIN
02/23/10	(S)	STA AT 9:00 AM BELTZ 105 (TSBldg)
02/23/10	(S)	<Bill Hearing Postponed>
03/18/10	(S)	STA AT 9:30 AM BELTZ 105 (TSBldg)

WITNESS REGISTER

MICHAEL ROVITO
Staff to Senator Menard
Alaska State Legislature
Juneau, AK

POSITION STATEMENT: Introduced a committee substitute for SB 259.

PAT DAVIDSON, Legislative Auditor
Division of Legislative Audit
Juneau, AK

POSITION STATEMENT: Provided information related to SB 259.

SENATOR FRED DYSON
Alaska State Legislature
Juneau, AK

POSITION STATEMENT: Testified in support of SB 259.

CHUCK KOPP
Staff to Senator Fred Dyson
Alaska State Legislature
Juneau, AK

POSITION STATEMENT: Provided information about SB 259.

ACTION NARRATIVE

[9:32:39 AM](#)

CHAIR LINDA MENARD called the Senate State Affairs Standing Committee meeting to order at 9:32 a.m. Present at the call to order were Senators French, Paskvan and Menard.

CHAIR MENARD announced that the hearing for SB 288 had been cancelled.

SB 259-LEGISLATIVE AUDIT DIVISION POWERS

CHAIR MENARD announced the consideration of SB 259.

[9:33:39 AM](#)

SENATOR PASKVAN moved the proposed committee substitute (CS) for SB 259, labeled 26-LS1419\R, for discussion purposes.

CHAIR MENARD announced that without objection, version R was before the committee.

SENATOR MEYER joined the meeting.

MICHAEL ROVITO, Staff to Senator Menard, explained that the CS for SB 259 will give the Legislative Audit Division the authority to perform a financial audit on non-governmental entities that receive funds from the state. SB 259 came about at

the urging of Legislative Legal, particularly assistant revisor, Jack Chenoweth and attorney, Theresa Bannister. Legislative Legal has previously recommended that the Legislature amend AS 24.20.271 to provide a statement of authority to audit non-governmental entities. If SB 259 passes, Alaska will join 16 other states with similar laws. SB 259 would allow Legislative Audit, if so directed by Legislative Audit and Budget committee (LB&A) to perform an audit of a non-profit that has received state money to make certain the money is being use as intended when appropriated.

9:36:44 AM

The other change in version R is on page 2, line 2, where the word "shall" was changed to "may" at the urging of state auditor, Pat Davidson. Ms. Davidson said that while providing accounting advice to clients is a typical activity for auditors, professional, independent auditing requirements limit the amount of advice or assistance that an audit organization can give to an agency before the ability to conduct audits is compromised.

MR. ROVITO summarized that the point of SB 259 is to make sure that state money, going to a non-governmental entity, is being used for the requested purpose.

SENATOR FRENCH asked for examples of misspent state money by non-profits.

MR. ROVITO said he does not have examples.

SENATOR FRENCH said he would like to see Legislative Legal's opinions about the need to modify the statute.

MR. ROVITO replied that he will get those papers to Senator French.

SENATOR PASKVAN asked if nonprofits are required, federally or otherwise, to be audited already.

MR. ROVITO said he would like to yield to the state auditor, Pat Davidson.

9:39:22 AM

SENATOR MEYER said he noticed "shall" was used most of the time through SB 259 but paragraphs (4) and (11) use "may".

MR. ROVITO said that language was done at the urging of Ms. Davidson to allow the flexibility needed to maintain professional, independent standards.

SENATOR MEYER asked if a similar bill to SB 259 had already been heard.

MR. ROVITO replied yes, last year.

SENATOR MEYER asked why SB 259 is being heard.

CHAIR MENARD replied that she was asked to bring SB 259 forward and Senator Dyson could answer that question during testimony.

[9:41:02 AM](#)

PAT DAVIDSON, legislative auditor, Division of Legislative Audit, addressed Senator Paskvan's question about existing audit requirements for non-profits. Currently, the state single audit requires any entity that receives more than \$500,000 from the state to have an audit looking for compliance with the grantee requirements.

SENATOR PASKVAN asked what the intent of SB 259 is.

MS. DAVIDSON replied that she cannot speak to the intent of SB 259 because her office did not generate the bill.

She explained that typically a legislator requests that Legislative Audit conduct an audit. Legislative Audit might use audit requirements within the grant to gain access to conduct an audit. She gave an example of the school district receiving money for transportation. That type of audit is not just financial but looks at the school district's compliance with statutes governing public school transportation.

She understood that the language in SB 259 [Section (11)] will provide more solid ground for Legislative Audit to conduct a financial audit but does not provide any more access for performance oriented audits.

[9:44:43 AM](#)

SENATOR PASKVAN asked if Legislative Audit has both financial and performance audit authority in statute for amounts above \$500,000.

MS. DAVIDSON replied no. The entity is required, through their grant agreement, to get a financial audit if they receive over

\$500,000 in total. Legislative Audit is not required to conduct those audits, rather the entity hires a private CPA firm. SB 259 only address financial related audits and gives access to entities with less than \$500,000 in grants. SB 259 does not provide more of a base to conduct performance audits; it does create solid ground for a financial audit.

9:47:12 AM

SENATOR FRENCH asked how long Ms. Davidson has been the auditor.

MS. DAVIDSON replied approximately 13 years.

SENATOR FRENCH asked Ms. Davidson is aware of any misspent state monies by private entities that receive state money.

MS. DAVIDSON replied yes.

SENATOR FRENCH asked what those are.

MS. DAVIDSON gave an example of a grant that was given to a nonprofit in Fairbanks and the executive director absconded with the money. She has seen questionable things occur with other grants. Legislative Audit has also assisted state troopers on work involving state money and white collar crime.

MS. DAVIDSON referred to Senator Meyer's earlier question about "may". The use of "may" in paragraph (4) is at Legislative Audit's request. That flexibility helps avoid doing anything that violates professional standards. She is not sure what "may" means in paragraph (11). When LB&A approves an audit request, Legislative Audit does not take this as an option but as direction. The use of "may" may be giving Legislative Audit more flexibility in carrying out the direction of the LB&A committee than it should. She suggested the committee might want to take another look at that.

9:50:05 AM

SENATOR MEYER agreed that Legislative Audit performs audits requested by LB&A. He asked Ms. Davidson if Legislative Audit's workload would increase if SB 259 passes.

MS. DAVIDSON replied that she does not expect this. SB 259 expands opportunities for the types of audits that legislators request. SB 259 does not expand what Legislative Audit does on a mandatory basis. She doubts that SB 259 will result in a flood of audit requests because it only relates to financial audits which did not have many barriers previously. She noted a zero

fiscal note is present because any LB&A request is taken up in turn.

SENATOR MEYER commented that Legislative Audit is about one year behind in its audits.

MS. DAVIDSON replied yes, Legislative Audit is about one year behind for LB&A audit requests. Jobs assigned in statute with deadlines are prioritized followed by requests from LB&A, taken in turn.

SENATOR FRENCH asked if Legislative Audit has any excess capacity.

MS. DAVIDSON replied she has no excess capacity.

SENATOR FRENCH said if the LB&A committee decided Legislative Audit needed to do financial audits of six nonprofits that received state money this year, that work would not begin for a year.

MS. DAVIDSON said it could take a year. She explained that one required audit is the statewide single audit. As that money moves through the state system, it must be audited and that audit is more burdensome and time consuming than typical federal money.

SENATOR FRENCH thanked her for the work she does for the state. He expressed concern for Legislative Audit if SB 259 passes. He wondered if the amount of money or the number of tasks should be limited.

[9:54:35 AM](#)

MS. DAVIDSON described one circumstance in which the LB&A committee looked into auditing an entity who received a grant of less than \$50,000. Before undertaking the audit, LB&A asked her to identify the total amount of money that entity received and if the amount was less than a certain threshold, LB&A would not approve the audit. LB&A acts as the gatekeeper.

SENATOR FRENCH said LB&A is responsible in their authority.

MS. DAVIDSON replied yes.

CHAIR MENARD said she did not intend to hinder what Legislative Audit could do but to address concerns that money given to nonprofits is spent correctly.

SENATOR PASKVAN said that most grants require a financial related audit. He asked if Legislative Audit would use any financial audit previously done by a private firm.

MS. DAVIDSON replied that is true. She provided an example of a legislator requesting an audit to make sure a grantee was not spending too much money on travel without accomplishing the goals of the grant. A private CPA firm, just doing the state single audit, will look for proper invoices, categorized properly, to support expenditures. The private CPA firm would not analyze the amount spent on travel in relation to the grant overall. Legislative Audit, upon a request approved by the LB&A committee, would rely the work of the private auditor and then take a further look at the travel, making sure it was consistent with the grant requirements and was not excessive. She explained that an audit can look at any type of transaction and examine not only if the transaction is supported by invoices, but if it was necessary to support the objective of the grant. Legislative Audit would not duplicate the work of another auditor but would use that as a base for the work specifically requested of Legislative Audit.

[9:58:40 AM](#)

SENATOR PASKVAN asked about a financial audit as opposed to a performance audit.

MS. DAVIDSON replied that a financial related audit will make sure that the travel was supported by invoices. If a legislator requested the audit out of concern that the grant objectives were not being met, i.e. the number of participants served was less than expected due to too much travel expenditure, then the audit would be performance based. Legislative Audit would look at travel records but also at the number of participants and types of participant outcomes. This kind of performance related audit is not covered in SB 259.

CHAIR MENARD asked if performance based audits are not covered because she already has that ability.

MS. DAVIDSON replied no.

[10:00:48 AM](#)

SENATOR PASKVAN said he understands that the LB&A committee can currently request that type of audit. He asked what SB 259 is needed for.

MS. DAVIDSON replied that financial related audits are relatively easy to access because of existing grant agreements and statutes; however, SB 259 makes it black and white in the power and duties of Legislative Audit.

SENATOR PASKVAN asked if Legislative Audit, attempting to investigate, has ever had anyone deny them access. He questioned if a substantive problem exists if Legislative Audit has always been able to do the work.

MS. DAVIDSON replied that Legislative Audit has been able "to get in there" for financial related audits requested by LB&A. The occurrences in which an audit has not been able to be complete have been performance audits, not financial audits. SB 259 does nothing to address that.

[10:03:38 AM](#)

SENATOR MEYER said the committee needs an explanation on why paragraph (11) is "may" and not "shall" as Legislative Audit does work for the LB&A committee.

SENATOR DYSON said he has the Legal Services documents that Senator French asked about earlier. He said he believes legislators are responsible for making sure that public funds are spent for the purposes for which they are intended. He said Ms. Davidson has refused to audit anything that is not a state employee or agency saying she does not have the explicit authority. Senator Dyson said his reading of the statute is that it looks like Legislative Audit does have the authority. Legislative Legal has said, "you should probably clear this up". He said Alaska is a small state and relationships get cozy. People have come to him over the years and said, "Do you know person X who administers these grants? Girlfriend and son-in-law are recipients of these grants." He noted that LB&A has been responsible and we don't need to worry about them misusing this power.

[10:07:21 AM](#)

He referred to Senator Meyer's question about a similar bill being before the legislature and said as a committee bill, SB 259 will have more weight and a better chance of getting through the process. Not to be clear that the Legislature has the authority to look after the people's money is irresponsible.

SENATOR MEYER asked if Senator Dyson knows why paragraph (11) says "may" instead of "shall".

CHUCK KOPP, aide to Senator Dyson, replied that language was the result of a committee discussion last year.

SENATOR DYSON said given the authority that LB&A has, he can't imagine that Legislative Audit won't do as directed.

SENATOR MEYER said he believes Legislative Audit would do as directed.

SENATOR DYSON said paragraph (4) is "may" as well and that is because of professional ethics.

SENATOR MEYER commented that all the other paragraphs say "shall" but paragraph (4) and (11) use "may".

CHAIR MENARD said the committee can make that correction. She reiterated that SB 259 is a committee bill.

SENATOR MEYER requested Ms. Davidson come back up.

10:10:11 AM

SENATOR MEYER asked if Ms. Davidson recalled hearing this legislation previously and if "shall" was changed to a "may" in paragraph (11).

MS. DAVIDSON said she does remember the language in paragraph (11) was changed. She thought the original version had "may" but was it was not limited to financial audits. She is unsure about what was done previously.

CHAIR MENARD said she has a copy of the original legislation and it did say "may" [in paragraph (11)].

SENATOR MEYER asked Ms. Davidson if she thought "shall" would read better.

MS. DAVIDSON replied that "shall" would clearly indicate that Legislative Audit shall carry out the wishes of the LB&A committee which would be consistent with all other sections in the legislation.

SENATOR PASKVAN said he still wonders if SB 259 is a solution applied where there is no problem. He questioned what is being accomplished if the LB&A committee has the ability to do this now. He said Ms. Davidson has always been able to accomplish a financial audit.

CHAIR MENARD said SB 259 gives it more meat.

MR. ROVITO said that Legislative Legal suggested that a statement of authority in statute would prevent future issues. For example, if someone wanted to fight the audit, it would then be in statute that the audit is explicitly a power of Legislative Audit.

[10:13:46 AM](#)

SENATOR MEYER moved to adopt conceptual amendment 1, to change "may" to "shall" on page 2, line 24, paragraph (11). There being no objection, the motion carried.

[10:14:35 AM](#)

SENATOR MEYER moved to report CS for SB 259, as amended, from committee with individual recommendations and accompanying fiscal notes.

CHAIR MENARD announced that without objection CSSB 259(STA) moved from the Senate State Affairs Standing Committee.

[10:14:59 AM](#)

CHAIR MENARD, seeing no further business to come before the committee, adjourned the meeting at 10:14 a.m.