

ALASKA STATE LEGISLATURE
HOUSE STATE AFFAIRS STANDING COMMITTEE

March 24, 2011

8:09 a.m.

MEMBERS PRESENT

Representative Bob Lynn, Chair
Representative Wes Keller, Vice Chair
Representative Paul Seaton
Representative Peggy Wilson
Representative Max Gruenberg
Representative Pete Petersen
Representative Kyle Johansen

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 88

"An Act prohibiting a court, arbitrator, mediator, administrative agency, or enforcement authority from applying a law, rule, or provision of an agreement that violates an individual's right under the Constitution of the State of Alaska or the United States Constitution."

- MOVED CSHB 88(STA) OUT OF COMMITTEE

HOUSE BILL NO. 162

"An Act requiring all voters at the polls to exhibit a permitted form of photo identification; relating to the counting of absentee and questioned ballots; and providing for a voter photo identification card to be furnished to certain voters."

- BILL HEARING CANCELED

PREVIOUS COMMITTEE ACTION

BILL: HB 88

SHORT TITLE: USE OF FOREIGN LAW

SPONSOR(S): REPRESENTATIVE(S) GATTO

01/18/11	(H)	PREFILE RELEASED 1/14/11
01/18/11	(H)	READ THE FIRST TIME - REFERRALS
01/18/11	(H)	STA, JUD

03/17/11 (H) STA AT 8:00 AM CAPITOL 106
03/17/11 (H) Heard & Held
03/17/11 (H) MINUTE(STA)
03/22/11 (H) STA AT 8:00 AM CAPITOL 106
03/22/11 (H) <Bill Hearing Rescheduled to 3/24/11>
03/24/11 (H) STA AT 8:00 AM CAPITOL 106

WITNESS REGISTER

KAREN SAWYER, Staff
Representative Carl Gatto
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 88 on behalf of Representative Gatto, sponsor.

MARY ELLEN BEARDSLEY, Assistant Attorney General
Commercial/Fair Business Section
Civil Division - Anchorage
Department of Law (DOL)
Anchorage, Alaska

POSITION STATEMENT: Answered questions during the hearing on HB 88.

JEFFREY MITTMAN, Executive Director
American Civil Liberties Union (ACLU) of Alaska
Anchorage, Alaska

POSITION STATEMENT: Provided testimony and answered questions during the hearing on HB 88.

REPRESENTATIVE CARL GATTO
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: As sponsor, provided comments during the hearing on HB 88.

ACTION NARRATIVE

[8:09:25 AM](#)

CHAIR BOB LYNN called the House State Affairs Standing Committee meeting to order at 8:09 a.m. Representatives Keller, Seaton, Johansen, Petersen, Gruenberg, and Lynn were present at the call to order. Representative P. Wilson arrived as the meeting was in progress.

HB 88-USE OF FOREIGN LAW

CHAIR LYNN announced that the only order of business was HOUSE BILL NO. 88, "An Act prohibiting a court, arbitrator, mediator, administrative agency, or enforcement authority from applying a law, rule, or provision of an agreement that violates an individual's right under the Constitution of the State of Alaska or the United States Constitution."

8:09:40 AM

REPRESENTATIVE SEATON moved to adopt the committee substitute (CS) for HB 88, Version 27-LS033\B, Bailey, 3/23/11.

REPRESENTATIVE GRUENBERG objected for the purpose of discussion.

8:10:57 AM

KAREN SAWYER, Staff, Representative Carl Gatto, Alaska State Legislature, presented HB 88 on behalf of Representative Gatto, sponsor. She reviewed that during the previous hearing on HB 88 [on 3/17/11], the committee had expressed concern regarding how the bill would affect corporations, business contracts, and tribal law. Subsequently, she noted, the bill sponsor received a legal opinion from the Department of Law (DOL) [included in the committee packet], and used that legal opinion to come up with Version B. The two changes to the bill are found in Version B, in subsections (f) and (g), beginning on page 2, line 23. She said although the attorney general states that there would not be a problem for tribal laws, "there was an area that said in limited circumstances, tribal members may be subject to the concurrent jurisdiction of tribal courts and state courts." She said that was included for clarification on the issue.

MS. SAWYER noted that there are 17 states that have introduced similar legislation [list included in the committee packet], and many of them have amended their legislation with language that states that "this section shall not apply to a corporation, partnership, or other form of business association."

8:13:23 AM

REPRESENTATIVE SEATON expressed appreciation for the amendments made in Version B.

REPRESENTATIVE GRUENBERG removed his objection. [There being no further objection, Version B was before the committee as a work draft.]

8:14:22 AM

REPRESENTATIVE SEATON asked for confirmation that a treaty signed by the U.S. would not be considered foreign law under HB 88.

MS. SAWYER answered that is correct. She related that the aforementioned legal opinion states that the laws that directly affect Alaska are federal statutes and regulations that implement treaties, and these federal laws preempt state law. In response to Representative Gruenberg, she confirmed that the legal opinion is dated March 21, 2011.

8:16:36 AM

REPRESENTATIVE JOHANSEN cited a sentence in the second paragraph of the legal opinion, which read as follows:

Therefore, in limited circumstances, tribal members may be subject to the concurrent jurisdiction of the tribal courts and the state courts.

REPRESENTATIVE JOHANSEN asked if there is a defined list of those circumstances.

8:17:46 AM

MARY ELLEN BEARDSLEY, Assistant Attorney General, Commercial/Fair Business Section, Civil Division - Anchorage, Department of Law (DOL), responded that she does not have a list and does not deal with the tribal issues addressed by DOL; however, she said she could acquire a list of issues that could arise. She offered her understanding that there are some circumstances where there is concurrent jurisdiction - when both tribunals have equal jurisdiction over an issue.

REPRESENTATIVE JOHANSEN indicated that he would contact the department. He then directed attention to Ms. Beardsley's comments in the [first full] paragraph on page 2 of the legal opinion, and asked her to confirm whether she means that [using foreign law] would be a rare occurrence.

MS. BEARDSLEY affirmed that is correct.

REPRESENTATIVE JOHANSEN ventured that that which HB 88 proposes to address may never happen, but he opined that it is fine to have the legislation in place just in case.

[8:21:10 AM](#)

REPRESENTATIVE GRUENBERG directed attention to the first paragraph on page 3 of the legal opinion, regarding a motion to move a case to Kenya, and asked if that was an Alaska case.

MS. BEARDSLEY responded yes, and confirmed that was an [Alaska] Superior Court decision.

REPRESENTATIVE GRUENBERG said that is the first example he has heard of such a motion in Alaska, and he said he would like a citing or copy of the judge's opinion.

MS. BEARDSLEY suggested that Scott Taylor, the individual more closely involved with that case, contact Representative Gruenberg directly.

CHAIR LYNN requested that that information be made available to the entire committee.

[8:23:36 AM](#)

REPRESENTATIVE GRUENBERG asked Ms. Beardsley if she thinks HB 88 would impact contractual rights entered into in contemplation of marriage.

MS. BEARDSLEY said the bill could have that impact, but said there would have to be a determination by the state court that constitutional rights were being violated.

[8:27:10 AM](#)

MS. BEARDSLEY, in response to Representative Petersen, explained that the purpose of the second paragraph on page 2 of the legal opinion was to illustrate that if a party willingly agrees to file a dispute in a foreign venue, then HB 88 would not apply, because foreign law - not Alaska law - would apply.

[8:29:15 AM](#)

REPRESENTATIVE GRUENBERG asked whether HB 88 could be used to change venues from the foreign country to the U.S. despite the

contract and the fact that the case is being litigated in the foreign country.

[8:31:35 AM](#)

MS. BEARDSLEY ventured that the foreign law would have to apply or the courts would have to determine whether the choice of law provision under that foreign country's law was valid.

REPRESENTATIVE GRUENBERG said he is trying to figure out if the proposed legislation would result in "a race to the court house between the two litigants," which may further aggravate these types of situations.

MS. BEARDSLEY said she thinks Representative Gruenberg may be correct that that could be the result.

[8:33:11 AM](#)

REPRESENTATIVE JOHANSEN suggested that the current conversation is delving into the realm of the House Judiciary Standing Committee.

CHAIR LYNN concurred.

[8:33:50 AM](#)

JEFFREY MITTMAN, Executive Director, American Civil Liberties Union (ACLU) of Alaska, stated that there are significant problems with HB 88, even in [Version B]. He indicated that the attorney general's legal opinion points to some of the problems. He said his testimony would be in response to specific requests made by Chair Lynn at the previous hearing of HB 88.

MR. MITTMAN said that during the previous hearing, Mr. Yerushalmi [of the Center For Security Policy in Washington, D.C.] had cited 17 cases across the country in which he understood shari'a law had been imposed on American citizens. Mr. Mittman said the ACLU of Alaska reviewed all of those cases, and he listed some of the cases that had been cited where shari'a law was not imposed: Amin v. Bakhaty - a child custody case; People of the State of New York v. Ibrahim Ben Benu - regarding forced child marriage; Rhodes v. ITT Sheraton Corp - regarding the rejection of a foreign country as an alternate forum for resolving a dispute; and Saida Banu Tarikonda v. Bade Saheb Pinjari - regarding an appellate court overruling a lower court's recognition of shari'a divorce law. Mr. Mittman opined

that the aforementioned cases show that the U.S. Court system understands issues of comity, procedural due process, and constitutional rights, and has existing structures with which to address these issues.

[8:38:58 AM](#)

MR. MITTMAN indicated that [HB 88] would increase the cost of litigation, create uncertainty, and cause harm to Alaska corporations and individuals. In response to Chair Lynn, he said Version B may or may not take care of commercial contracts. He explained that the problem is there can be individuals who enter into business, as well.

[8:40:49 AM](#)

REPRESENTATIVE GRUENBERG directed attention to language on page 2, lines 23-24, of Version B, which read as follows:

(f) This section does not apply to a corporation, partnership, or other form of business association.

REPRESENTATIVE GRUENBERG said he interprets that language to mean that this section would apply to an individual. He said in that sense, the "artificial" group would have greater or different rights than that of the person.

MR. MITTMAN said ACLU of Alaska would interpret that language the same way, and it could be a potential problem. He said, "The bill is beginning to throw out of balance existing, well-settled areas of the law that allow courts to draw the difficult decisions." He warned there would be competing interests. In response to a question from Chair Lynn as to whether the interests of Alaska and the U.S. would be paramount, he said currently there are well settled principles of law, and HB 88 is necessary. He indicated that the question to ask is whether or not HB 88 would do harm, and he said the answer is yes. He explained that the proposed bill would throw out of balance the existing interpretation, because courts would have to decide if one side has an advantage over the other.

MR. MITTMAN further related that the proposed legislation was presented to the legislature by Mr. Yerushalmi as a bill that would cite international law, but Mr. Mittman said the supporting documentation that was provided to the committee "is very clear that this is about ... shari'a law." He indicated that HB 88 would entangle the State of Alaska in a highly

controversial, problematic, and difficult constitutional area of law regarding whether the proposed legislation is targeted against a religion. He said based on the documentation provided, the bill will run up against First Amendment right issues.

[8:46:22 AM](#)

CHAIR LYNN offered his understanding that shari'a is not a religion, but is law that stems from a particular religion.

MR. MITTMAN proffered, "Shari'a law could be called a system of law that has arisen through the Islamic tradition and a shari'a court or an Islamic law court." In response to Chair Lynn, he illustrated how Hassidic law could be called into question under HB 88. He said when looking at HB 88, courts will look for legislative intent, and he referred again to the material provided by Mr. Yerushalmi's organization. In response to Chair Lynn, he said he was referring to the Uniform American Laws for American Courts Act.

[8:48:28 AM](#)

REPRESENTATIVE KELLER emphasized that the bill sponsor "has not indicated any organization behind this law." He said the source of law in Alaska is the state's publicly elected legislators, who have the right to adopt legislation that makes it unlawful to apply law that comes from another jurisdiction. He said he can appreciate Mr. Mittman's opinion that HB 88 is not needed, but said he is not convinced that the bill would "complicate things."

[8:49:44 AM](#)

MR. MITTMAN clarified that the point he was trying to make is that when the courts look at whether a bill is constitutional or valid, one of the things they consider is legislative intent, and legislative record is considered in legislative intent.

[8:50:31 AM](#)

REPRESENTATIVE JOHANSEN offered his understanding that Mr. Mittman had prefaced all his comments by saying, "You don't have to be an attorney to understand this." He expressed appreciation for Mr. Mittman's "dumbing this down for the benefit of the legislature." He remarked that he appreciates Mr. Mittman's support for the fairness of the court system, and

he will look for consistency in that viewpoint in future cases where the court's opinion may not support that of ACLU of Alaska. He directed attention to the aforementioned legal opinion and stated that the bottom line is that individual circumstances are reflected off of the public policy, which is enacted by the legislature in the laws of Alaska. He said he has a great deal of "comfort with the legal opinion," and he echoed the comments made by Representative Keller. He said he thinks "we've exhausted this" and he would like to move the bill out of committee.

[8:52:08 AM](#)

REPRESENTATIVE CARL GATTO, Alaska State Legislature, as sponsor of HB 88, talked about the numerous jurisdictions throughout the world, and said HB 88 is acknowledging that Alaska cannot absorb all those jurisdictions into the laws of the state. He said the intent of HB 88 is to clarify that the laws of the country will be superior to the laws of a foreign country.

[8:53:14 AM](#)

REPRESENTATIVE GRUENBERG reiterated his concern that only an individual could invoke HB 88, but a corporation would not have the right to do so. He said that could have the opposite of the intended effect of the bill. He then questioned what the "right guaranteed by the Constitution of the State of Alaska or the United States Constitution" - as referred to on page 2, lines 18-19 of Version B - really means. He referred to the Law of the Sea Treaty and the question of whether it would violate Alaska's right to sovereignty. He said HB 88 would "open up a whole new panoply of legal arguments." He talked about guessing at the bill drafter's intent.

[8:55:50 AM](#)

REPRESENTATIVE JOHANSEN stated his objection and pointed to Representative Gatto as the person who wrote HB 88.

[8:56:13 AM](#)

REPRESENTATIVE GRUENBERG said the question is whether HB 88 is going to allow a different level of constitutional argument, which would be that it "violates somebody's alleged constitutional right to apply any foreign law because it violates our sovereignty." He said he cannot determine "how good or bad it would be in a given set of circumstances," but

said he wants consideration given to this issue, because "it will come up if this bill passes."

CHAIR LYNN opined that it would be more appropriate to take up that issue in the House Judiciary Standing Committee, which is the next committee of referral.

[8:57:38 AM](#)

REPRESENTATIVE SEATON said he appreciates the sponsor's coming forward with Version B to take out the language regarding corporations, because that was problematic. He remarked that other states that have passed [similar legislation] have "done the same thing." He said he would like the House Judiciary Standing Committee to consider whether there would be any restrictions for female Alaskans in signing contracts in foreign lands.

[8:58:44 AM](#)

REPRESENTATIVE KELLER moved to report CS HB 88, Version 27-LS0333\B, Bailey, 3/23/11, out of committee with individual recommendations and the accompanying fiscal notes.

[8:59:04 AM](#)

REPRESENTATIVE GRUENBERG objected.

[8:59:13 AM](#)

A roll call vote was taken. Representatives Keller, Petersen, Johansen, P. Wilson, Seaton, and Lynn voted in favor of moving CS HB 88, Version 27-LS0333\B, Bailey, 3/23/11, out of committee with individual recommendations and the accompanying fiscal notes. Representative Gruenberg voted against it. Therefore, CSHB 88(STA) was reported out of the House State Affairs Standing Committee by a vote of 6-1.

[9:00:10 AM](#)

ADJOURNMENT

There being no further business before the committee, the House State Affairs Standing Committee meeting was adjourned at 9:00 a.m.