

SENATE FINANCE COMMITTEE

April 5, 2013

9:12 a.m.

[9:12:04 AM](#)

CALL TO ORDER

Co-Chair Meyer called the Senate Finance Committee meeting to order at 9:12 a.m.

MEMBERS PRESENT

Senator Pete Kelly, Co-Chair
Senator Kevin Meyer, Co-Chair
Senator Anna Fairclough, Vice-Chair
Senator Click Bishop
Senator Mike Dunleavy
Senator Lyman Hoffman
Senator Donny Olson

MEMBERS ABSENT

None

ALSO PRESENT

Representative Mark Neuman; Rex Shattuck, Staff,
Representative Mark Neuman; Michael Paschall, Staff,
Representative Eric Feige; Dan DeBartolo, Division
Director, Permanent Fund Division, Department of Natural
Resources.

PRESENT VIA TELECONFERENCE

Joshua Decker, ACLU of Alaska, Anchorage.

SUMMARY

CSHB 24 (JUD) SELF DEFENSE

CSHB 24 (JUD) was REPORTED out of committee with a "do pass" recommendation and with four previously published zero fiscal notes: FN1(ADM), FN2(ADM), FN3(LAW), and FN4(DPS).

HB 52 PFD ALLOWABLE ABSENCE

HB 52 was HEARD and HELD in committee for further consideration.

#hb24

CS FOR HOUSE BILL NO. 24(JUD)

"An Act relating to self-defense in any place where a person has a right to be."

9:14:39 AM

REPRESENTATIVE MARK NEUMAN, introduced HB 24 and explained that it addressed concerns from Alaskans related to self-defense. The bill allowed people the right to use deadly force to protect themselves or their family members. He pointed out language on page 2, line 3 stating "in any other place where a person has a right to be." He expressed concern with the statute's statement that a person had the duty to retreat in a self-defense situation. The statute's justification clauses would not be altered. He mentioned past discussion regarding gang violence, alcohol abuse, sexual assaults. The bill's purpose was to add the language "any place where you have the right to be." He pointed out that the House Judiciary Committee added the word "other" following a discussion that a person already had the right to self-defense if in a home, residence or place of business. He mentioned a letter sent from the Attorney General regarding the bill and his opinion that the rights of Alaskans should not be put before the rights of the courts.

9:17:59 AM

Senator Dunleavy stated that the bill was self-explanatory.

Co-Chair Meyer noted that a lot of time was spent with the bill in the judiciary committee. He understood that the bill was introduced last year and wondered where the bill died. Representative Neuman replied that the bill died in the Senate Finance Committee.

9:18:42 AM

Co-Chair Meyer asked if the judiciary committee's concerns had been addressed. Representative Neuman responded that

the judiciary committee reviewed the legislation extensively and passed the bill.

[9:18:57 AM](#)

Senator Olson noted that Connecticut passed multiple laws on gun control following a school shooting. He wondered how Alaska could justify an opposite course. Representative Neuman responded that the issue was one of self-defense and Alaskans supported the concept. He noted that Alaska laws currently allowed the use of deadly force to protect in the event of an incident. The difference presented in the legislation is the opportunity to protect oneself prior to an incident.

[9:20:19 AM](#)

Senator Olson understood that the law allowed one to use deadly force when in the home. He interpreted that HB 24 allowed the use of deadly force outside of the home. Representative Neuman answered in the affirmative, HB 24 allowed the same rights anywhere a person had a right to be in Alaska. He repeated that the justification clauses would remain unchanged.

[9:20:53 AM](#)

Senator Olson stated a great difference between being in one's home versus elsewhere. He inquired how one might justify the use of deadly force outside of the home. Representative Neuman responded that he justified the right for Alaskans to protect themselves. He mentioned court cases where defense attorneys claimed that the criminals were innocent because the victimized Alaskan did not do everything possible to retreat. The rights that Alaskans had to protect themselves in their homes ought to extend to areas outside of the home.

[9:22:31 AM](#)

Senator Dunleavy noted that the issue addressed self-defense rather than guns. He provided a hypothetical scenario and noted that self-defense might include using a gun, knife or even a rock.

[9:23:09 AM](#)

Co-Chair Kelly inquired about the letter from the Attorney General.

[9:23:22 AM](#)

REX SHATTUCK, STAFF, REPRESENTATIVE MARK NEUMAN, clarified that the Attorney General's letter mentioned by Representative Neuman was drafted for last session's version of the bill, HB 80.

[9:23:42 AM](#)

Senator Hoffman inquired how it would be interpreted if a person protecting themselves was breaking another law with a concealed weapon. Representative Neuman replied that the current Alaska laws did not require a person to have a concealed weapons permit. He added that the justification clause addressed the issue.

[9:24:46 AM](#)

Senator Bishop assumed that the Attorney General's opinion was still good today. Representative Neuman responded that the only difference between HB 80 and HB 24 was the addition of the word "other" by the judiciary committee.

[9:25:32 AM](#)

JOSHUA DECKER, American Civil Liberties Union (ACLU) OF ALASKA, ANCHORAGE (via teleconference) testified against HB 24. He explained that the bill did not address the self-defense doctrine. Alaskans always had the right to use deadly force when threatened with imminent injury. He explained that HB 24 lowered the duty to retreat. If the bill was enacted, then where ever an Alaskan had a legal right to be would not require retreat prior to using deadly force. He stated that written testimony was provided to committee members listing multiple examples where retreat was possible, but would not be required under HB 24. He stated ACLU's position that the bill would not increase safety for Alaskans.

[9:27:25 AM](#)

Senator Olson noted that anyone with a knife could kill as fast as a gun and inquired why a person would not wish to be ready to shoot when threatened with a knife. Mr. Decker

agreed and stated that the law allowed a person faced with that threat to use deadly force. The difference with HB 24 was that a person could shoot a person holding a knife who was standing one block away. With that distance, a person could safely retreat.

[9:28:29 AM](#)

Senator Olson noted that if he was threatened with a knife, his thoughts were not on retreating, but were on protecting his family if the offender was a "stone's throw" away. Mr. Decker replied that if an offender were a stone's throw away, then current law would allow a person to use deadly force to protect themselves. He stated that his letter cited an example in Houston Texas where a similar law increased gun play. He referenced the letters of support in the packet.

[9:30:27 AM](#)

Senator Olson interjected that he had a different opinion. He did not wish for a person to incur large legal bills because they were threatened.

[9:31:00 AM](#)

Co-Chair Kelly recalled an article about police training and stated that a person with a knife who was 20 feet away would be able to kill someone before he was able to draw a gun. He derived from the article that the zone around a person that required protection was larger than expected. He disagreed with opinions expressed by ACLU attorneys.

[9:32:09 AM](#)

Senator Dunleavy opined that there was an assumption in Mr. Decker's statement that everyone was fit enough to run away. He noted that a handicapped person would not be able to outrun an attacker. An elderly person might also have difficulty retreating.

[9:33:38 AM](#)

Representative Neuman stated that in the cases that Mr. Decker was referring, it would not have been legal to use deadly force because of Alaska's justification clauses. He

added that line 6 and 7 of the bill ensured that a person must believe that the use of deadly force was necessary.

[9:35:02 AM](#)

Mr. Shattuck stated that the bill addressed self-defense. In each case, the Attorney General would be obligated to review the case and a jury would determine whether self-defense was utilized in accordance with the law.

[9:36:12 AM](#)

Representative Neuman recalled that Commissioner Masters from Department of Public Safety testified that the bill would not change the department's investigation process. He added that testimony from Department of Law stated that the process would remain the same regarding prosecution.

[9:37:26 AM](#)

Co-Chair Meyer CLOSED public testimony. He observed that the bill had a zero fiscal note and wondered why the bill came to finance. He trusted the judiciary committee and he supported the bill.

[9:38:06 AM](#)

AT EASE

[9:38:51 AM](#)

RECONVENED

[9:38:54 AM](#)

Senator Olson inquired what would happen if a person shot someone on their porch after receiving a complaint about loud noise. He queried how the bill would deal with that situation. Representative Neuman replied that the neighbor who approached the porch with the complaint would be considered an initial aggressor under the justification clauses. If the person listening to the loud music felt threatened, then he would be able to protect himself under current Alaska law.

[9:40:22 AM](#)

Co-Chair Kelly understood that the current statute defined the person complaining about the music as the aggressor.

[9:40:30 AM](#)

Senator Bishop noted that he did not oppose the bill, but that he respected the comments of those who did. He noted that it was big decision to take a person's life and that he would do anything personally to retreat rather than taking someone's life. He disagreed that gun play would increase or be encouraged as a result of the bill.

[9:42:14 AM](#)

Senator Dunleavy clarified that the bill was not a gun bill. The bill simply allowed Alaskans to feel safe protecting themselves against aggressors, no matter where they were.

[9:43:01 AM](#)

Senator Olson queried a hypothetical question about hunters trespassing on someone's property and the property owner shooting the hunters. He inquired how the bill would deal with that scenario. Representative Neuman responded that the bill would still be prosecuting in the same way. He observed that under the hunting scenario, the property owner would not be reasonable in thinking that his life was in danger.

[9:45:19 AM](#)

Senator Olson noted that in this particular situation, one boy was killed and the other was paralyzed. He inquired if the bill would protect the shooter. Representative Neuman responded no because the shooter could not prove that he thought his life was in danger.

[9:46:00 AM](#)

Co-Chair Kelly stated that the bill was a "collapsed" version of the statutes. The statutes did not allow the aggressor to shoot a person that was trying to get away.

[9:46:45 AM](#)

Co-Chair Kelly MOVED to REPORT CSHB 24 (JUD) out of committee with individual recommendations and the

accompanying fiscal notes. There being NO OBJECTION, it was so ordered.

9:47:08 AM

HB 24 was REPORTED out of committee with a "do pass" recommendation and with four previously published zero fiscal notes: FN1(ADM), FN2(ADM), FN3(LAW), and FN4(DPS).

9:47:10 AM

AT EASE

9:51:43 AM

RECONVENED

#hb52

HOUSE BILL NO. 52 am

"An Act relating to allowable absences from the state for purposes of eligibility for permanent fund dividends; and providing for an effective date."

9:51:43 AM

MICHAEL PASCHALL, STAFF, REPRESENTATIVE ERIC FEIGE, stated that the bill was introduced as an outfall of a provision in the allowable absences pertaining to the Permanent Fund Dividend (PFD). The provision created a situation where members of congress and their staff were allowed to keep their PFD on an allowable absence for longer than ten years. He mentioned that military members were sometimes denied their PFD because of the 10-year rule. The individuals working in Washington DC and those in the military were representing the state while serving their country.

Mr. Paschall commented that the bill removed the 10-year rule from statute, which opened the eligibility to approximately 100 people. He mentioned that the existing regulations used by the division were sometimes bypassed with a justifiable excuse, but when in statute, the division was bound. The bill created a provision allowing an individual to be absent for less than five years with documentation of an allowable absence. Examples of allowable absences were accredited educational institution, military, staff or staff of congress and Peace Corps. During the period of time the individual must return to the

state for a consecutive 72 hours every two years. Following the fifth year, a person must prove they were in the state for 30 cumulative days over the previous five years and provide proof of residency for purposes of a PFD.

[9:56:41 AM](#)

Mr. Paschall shared that there was an outline of criteria in the bill used to evaluate the intent to return. The criteria included a measurement of the length of time away from the state versus the length of time that the individual was present in the state along with the frequency and duration of voluntary return trips to the state during the past five years. Always in the preceding five years, the individual must be in the state for a cumulative of 30 days. He added the criteria of owning a home in Alaska, payment of resident taxes, registration of a vehicle, voter registration and history, driver's license, business license or professional license and receipt of benefits under a claim of residency in the state or other jurisdiction. The hope was for an objective scoring system based upon the length of absence to help make the determination. The final criterion was the priority given by the individual to the state on an employment assignment preference list. He provided an example in military service when a member requested a location for service.

[10:00:24 AM](#)

Mr. Paschall explained the zero fiscal note. He shared that the allotment of the dividend was based upon the performance of the fund. The dividend amount was calculated as a total number based upon the fund's performance. The number of eligible individuals did not have impact on the how much the state dispersed as part of the PFD. The division would not alter their staff because the same investigative staff would continue to inspect applications.

[10:01:50 AM](#)

Co-Chair Meyer opined that more division time would be spent in the investigation process. He remarked that multiple exceptions could result in a significant financial impact to the PFD and further changes would continue to add-up. He agreed that the military personnel were valuable and should be held harmless.

[10:02:22 AM](#)

Senator Bishop surmised that the division must develop the objective scoring system. Mr. Paschall replied that guidelines within the division provided the opportunity to develop new regulations to implement the legislature's requests. The opportunity was available to create a more objective scoring system than the one currently in place. He provided an example of an applicant and noted that an individual who had lived in Alaska during their youth would score higher than an individual who had lived in Alaska for a brief time.

[10:04:15 AM](#)

Senator Bishop asked if section 2 identified the scoring system needs. Mr. Paschall deferred the question to the division director. He knew that many discussions regarding the scoring system had occurred, but he was unsure about the amount of time that the division spent on the process.

[10:04:51 AM](#)

Senator Olson stressed that he had great respect for military service. He wondered how to ensure that the exceptions would not take time or resources from the state. Mr. Paschall explained that there was no change in the definition of an "allowable absence." The justification would be mandatory for those who were not returning to the state after the five years. The provision changed in the legislation addressed the tenth year. The current guidelines would be tightened up after the sixth year with the legislation.

[10:07:30 AM](#)

Senator Olson stressed that the division would spend additional time investigating the applications and allowable absences. He questioned the zero fiscal note. Mr. Paschall deferred the question to the division director.

[10:08:41 AM](#)

Co-Chair Meyer CLOSED public testimony.

[10:08:53 AM](#)

DAN DEBARTOLO, DIVISION DIRECTOR, PERMANENT FUND DIVISION, DEPARTMENT OF NATURAL RESOURCES testified that both the ten and the five year rules were in place. He stated that the average technician spent an average of eight to ten hours on the discussed cases. If the ten-year rule was eliminated the technicians no longer had that responsibility. He noted that the five year rule was in regulation with "soft" language. The division opined that moving the regulation into statute provided a more powerful statement. If a person did not return to the state for a cumulative of 30 days over the five years, the action demonstrated that they did not intend to return.

[10:11:30 AM](#)

Senator Olson expressed satisfaction with the answer.

Co-Chair Meyer noted that there was a proposed amendment.

[10:12:10 AM](#)

AT EASE

[10:13:47 AM](#)

RECONVENED

Vice-Chair Fairclough stated that she had reviewed the Alaska State Statutes. She related that the amendment proposed another exemption by inserting "or a United States national team for an Olympic sport." She pointed out that exemption 15 in AS 43.23.08 stated that "because of training or competing as a member of the United States Olympic team," which covered her concerns. Mr. Debartolo responded that that the division's interpretation was that the individual was a selected Olympic team member, but not one selected for the national team.

[10:15:38 AM](#)

Vice-Chair Fairclough observed that the department had inappropriately interpreted the intent of the legislature. She proposed review of her amendment.

[10:16:02 AM](#)

Co-Chair Kelly requested an explanation of the department's interpretation. Mr. DeBartolo replied that the division's

interpretation of the legislation was that a "member of the United States Olympic team" had been selected for the team and was on the team while the games were in play. The division did not consider a person who was part of the United States National team a member of the Olympic team.

[10:17:02 AM](#)

Vice-Chair Fairclough wished to investigate the matter further. She understood the division's distinction, but wondered if the amendment would be considered "friendly" by the sponsor.

[10:17:34 AM](#)

Co-Chair Meyer asked if the sponsor agreed with the amendment. Mr. Paschall replied in the affirmative.

[10:17:45 AM](#)

Senator Hoffman cited section 2, "an individual may rebut this presumption by providing clear and convincing evidence to the department." He pointed out line 29 number 4, "additional items that can be used for rebuttal." He called into question registration of a vehicle, voting history, and driver's license. He asked if a person who could prove that they had a registered vehicle outside of the state or was registered to vote or licensed to drive outside of the state would be ineligible for the PFD under the proposed legislation. Mr. Debartolo noted that taking steps to register to vote outside of the state was typically considered a "severing action," which could affect one's eligibility determination. College students were encouraged to vote absentee for that purpose.

[10:19:56 AM](#)

Senator Hoffman inquired what circumstances would allow someone to get a dividend when they had a registered vehicle or voter registration or driver's license from another state. Mr. Debartolo replied that there were few circumstances where a person could receive a dividend under the stated circumstances.

[10:20:46 AM](#)

Vice-Chair Fairclough inquired when the state might expect to hit a tipping point. She observed 17 different exceptions to the original residency requirements and Alaskan's were losing money in their dividends as a result. Mr. Paschall replied that many different options were available. The sponsor chose to address only the issue of treating individuals differently at ten years. The state Supreme Court stated that economic protection under the equal protection clause placed the change at the least scrutiny. He did not feel that the state was close to a tipping point. While he did not object to the amendment, it did add another opening that fell outside of the bill's intentions.

[10:23:39 AM](#)

Vice-Chair Fairclough stated that she would like to hear from the legislative legal department. She wondered where the hurdle was for those who would not testify and who expand in their generosity to share with others being disenfranchised by access to that resource. She wondered if a higher hurdle for access to the PFD would be a wise decision.

[10:25:05 AM](#)

Co-Chair Meyer noted that Vice-Chair Fairclough brought up a good point and that permanent fund had been around since 1981 with 17 exceptions made. He opined that the military personnel were important as members of Congress and their staff, but felt that Vice-Chair Fairclough's concerns warranted attention.

[10:26:07 AM](#)

Senator Hoffman related a hypothetical scenario. He inquired if a minor could reapply for a dividend in cases where a parent neglected to submit their application. He noted that minors were at the mercy of their parents regarding filing for a PFD. Mr. DeBartolo responded that a provision existed for a child that did not receive a dividend. Filing for prior dividends could occur between their 18th and 20th birthday. Eligibility was then reviewed by the division staff.

[10:28:39 AM](#)

Co-Chair Meyer appreciated the questions brought forth by the committee.

Senator Hoffman inquired how many minors fell into the category described. Mr. DeBartolo offered to provide the data to Senator Hoffman.

[10:29:42 AM](#)

Vice-Chair Fairclough inquired if the example that Senator Hoffman had defined was in regulation or statute. Mr. DeBartolo responded that the provision for an 18 year old to reapply for their missed dividends was in statute.

[10:30:47 AM](#)

HB 52 was HEARD and HELD in committee for further consideration.

[10:31:04 AM](#)

ADJOURNMENT

The meeting was adjourned at 10:32 a.m.