

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

April 12, 2013

9:04 a.m.

MEMBERS PRESENT

Senator John Coghill, Chair
Senator Lesil McGuire, Vice Chair
Senator Fred Dyson
Senator Bill Wielechowski

MEMBERS ABSENT

Senator Donald Olson

COMMITTEE CALENDAR

SENATE CONCURRENT RESOLUTION NO. 3

Establishing the Joint Committee on Access and Federal Overreach; and recommending that the Governor establish a working group to consider establishing a permanent office or authority to preserve state sovereignty.

- MOVED CSSCR 3(JUD) OUT OF COMMITTEE

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 63(FIN)

"An Act relating to the Board of Governors of the Alaska Bar Association; and providing for an effective date."

- MOVED CSHB 63(FIN) OUT OF COMMITTEE

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 57(JUD)

"An Act adopting the Alaska Entity Transactions Act; relating to changing the form of entities, including corporations, partnerships, limited liability companies, business trusts, and other organizations; amending Rule 79, Alaska Rules of Civil Procedure, and Rules 602(b)(2), 602(c), and 605.5, Alaska Rules of Appellate Procedure; and providing for an effective date."

- MOVED CSHB 57(JUD) OUT OF COMMITTEE

SENATE BILL NO. 51

"An Act extending the termination date of the Board of Governors of the Alaska Bar Association; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: HB 63

SHORT TITLE: EXTEND BAR ASS'N BOARD OF GOVERNORS

SPONSOR(S): REPRESENTATIVE(S) HAWKER

01/16/13 (H) READ THE FIRST TIME - REFERRALS
01/16/13 (H) JUD, FIN
02/25/13 (H) JUD AT 1:00 PM CAPITOL 120
02/25/13 (H) Moved Out of Committee
02/25/13 (H) MINUTE(JUD)
03/01/13 (H) JUD RPT 5DP 1NR
03/01/13 (H) DP: GRUENBERG, PRUITT, LEDOUX, FOSTER,
LYNN
03/01/13 (H) NR: KELLER
03/01/13 (H) LETTER OF INTENT WITH JUD REPORT
04/08/13 (H) FIN AT 8:00 AM HOUSE FINANCE 519
04/08/13 (H) Heard & Held
04/08/13 (H) MINUTE(FIN)
04/09/13 (H) FIN RPT CS(FIN) NT 4DP 6NR 1AM
04/09/13 (H) DP: THOMPSON, EDGMON, HOLMES, AUSTERMAN
04/09/13 (H) NR: T.WILSON, NEUMAN, MUNOZ, COSTELLO,
GARA, STOLTZE
04/09/13 (H) AM: KAWASAKI
04/09/13 (H) JUD LETTER OF INTENT WITH FIN REPORT
04/09/13 (H) FIN AT 9:00 AM HOUSE FINANCE 519
04/09/13 (H) Moved CSHB 63(FIN) Out of Committee
04/09/13 (H) MINUTE(FIN)
04/11/13 (H) TRANSMITTED TO (S)
04/11/13 (H) VERSION: CSHB 63(FIN)
04/11/13 (S) READ THE FIRST TIME - REFERRALS
04/11/13 (S) JUD
04/11/13 (S) HOUSE LETTER OF INTENT
04/11/13 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
04/11/13 (S) -- MEETING CANCELED --
04/12/13 (S) JUD AT 9:00 AM BUTROVICH 205

BILL: SCR 3

SHORT TITLE: JOINT COMMITTEE ON FEDERAL OVERREACH

SPONSOR(S): SENATOR(S) MCGUIRE

04/04/13 (S) READ THE FIRST TIME - REFERRALS
04/04/13 (S) JUD
04/10/13 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
04/10/13 (S) -- Public Testimony --

04/11/13 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
04/11/13 (S) -- MEETING CANCELED --
04/12/13 (S) JUD AT 9:00 AM BUTROVICH 205

BILL: HB 57

SHORT TITLE: ENTITY TRANSACTIONS ACT

SPONSOR(S): REPRESENTATIVE(S) HOLMES, OLSON

01/16/13 (H) PREFILE RELEASED 1/11/13
01/16/13 (H) READ THE FIRST TIME - REFERRALS
01/16/13 (H) JUD
03/13/13 (H) JUD AT 1:00 PM CAPITOL 120
03/13/13 (H) Heard & Held
03/13/13 (H) MINUTE(JUD)
03/18/13 (H) JUD AT 1:00 PM CAPITOL 120
03/18/13 (H) Scheduled But Not Heard
04/06/13 (H) JUD AT 1:00 PM CAPITOL 120
04/06/13 (H) -- MEETING CANCELED --
04/08/13 (H) JUD AT 1:00 PM CAPITOL 120
04/08/13 (H) Moved CSHB 57(JUD) Out of Committee
04/08/13 (H) MINUTE(JUD)
04/09/13 (H) JUD RPT CS(JUD) 6DP
04/09/13 (H) DP: GRUENBERG, PRUITT, FOSTER, LEDOUX,
LYNN, KELLER
04/10/13 (H) TRANSMITTED TO (S)
04/10/13 (H) VERSION: CSHB 57(JUD)
04/11/13 (S) READ THE FIRST TIME - REFERRALS
04/11/13 (S) JUD
04/12/13 (S) JUD AT 9:00 AM BUTROVICH 205

WITNESS REGISTER

CECILE ELLIOTT, Staff
Representative Mike Hawker
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Introduced HB 63 on behalf of the sponsor.

STEVE VAN GOOR, Bar Counsel
Alaska Bar Association
Anchorage, Alaska

POSITION STATEMENT: Answered questions related to HB 63.

NANCY MEADE, General Counsel
Administrative Staff
Office of the Administrative Director
Alaska Court System

Anchorage, Alaska

POSITION STATEMENT: Responded to questions about HB 63.

REPRESENTATIVE LINDSAY HOLMES

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Sponsor of HB 57.

HARRY HAYNSWORTH, Commissioner

National Conference of Commissioners on Uniform State Laws

POSITION STATEMENT: Supported HB 57.

JAMES WALDO, Staff

Representative Lindsay Holmes

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Provided information related to HB 57.

THOMAS S. OBERMEYER, SR., representing himself

Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to HB 57.

ACTION NARRATIVE

[9:04:09 AM](#)

CHAIR JOHN COGHILL called the Senate Judiciary Standing Committee meeting to order at 9:04 a.m. Present at the call to order were Senators McGuire, Dyson, and Chair Coghill.

SCR 3-JOINT COMMITTEE ON FEDERAL OVERREACH

[9:05:07 AM](#)

CHAIR COGHILL announced the consideration of SCR 3, a resolution relating to establishing the Joint Committee on Access and Federal Overreach; and recommending that the Governor establish a working group to consider establishing a permanent office or authority to preserve state sovereignty.

[9:05:21 AM](#)

SENATOR LESIL MCGUIRE, sponsor of SJR 3 introduced the resolution paraphrasing the following sponsor statement:

Senate Concurrent Resolution 3 would establish a joint committee between the House and the Senate to look into federal overreach at the legislative, executive and administrative levels. By having the Senate President and Speaker of the House as the co-chairs,

and requiring participation from both caucuses, the committee would be a comprehensive representation of the State of Alaska, investigating the barrage of new regulations and rules that affect the lives of the resident across the state. After reviewing these issues, the committee would also hold public hearings and take testimony from communities.

This is a crucial step in the assertion of a state being a member of a federation and not simply a servile region. I respectfully urge your support for SCR 3 as it will assure the residents of Alaska their senators and state representatives speak for them and will advocate on their behalf.

[9:06:50 AM](#)

SENATOR WIELECHOWSKI joined the committee.

SENATOR MCGUIRE talked about the legislation this session that focuses on areas of discord between the state and federal government, and Senator Lisa Murkowski's unprecedented discussion about federal encroachment when she addressed the legislature this year. She specifically mentioned the "no more" clause in the [Alaska National Interest Lands Conservation Act] (ANILCA) and the people in King Cove who were denied an emergency access route through the Izembek National Wildlife Refuge. The overarching concern is the belief is that the federal government is paying more attention to the land or the issue than the people who live in the state.

SENATOR MCGUIRE highlighted the hypocritical policy of the federal government failing for six decades to clean up over 100 legacy wells in the National Petroleum Reserve-Alaska (NPR-A) and requiring immediate cleanup by oil and gas companies. She also expressed concern about the Endangered Species Act (ESA) and the Marine Mammal Protection Act being used as a method of controlling resource development and hampering Alaska's ability to realize its economic destiny as a resource development state.

She explained that the committee would be composed of the Speaker of the House or designee, three members of the House of Representatives appointed by the Speaker, the President of the Senate or designee, and three members of the Senate appointed by the President. Committee reports containing recommendations shall be submitted to the governor and legislature by January 15, 2014 and January 15, 2015. The termination date for the committee is January 15, 2015, unless extended.

[9:11:58 AM](#)

CHAIR COGHILL commented on the importance of being well informed, of being willing to stand up for the state, and being willing to work with the federal government when needed.

SENATOR DYSON stated support for resolution raised the question of following the Utah model and establishing a commission rather than a committee.

CHAIR COGHILL observed that this may lead to a commission.

SENATOR DYSON mentioned HB 83 that talks about the attorney general giving the legislature a report on the areas of conflict between state and federal law.

CHAIR COGHILL referenced page 5, line 5, that authorizes the hiring of consultants and experts. He asked the sponsor if she had considered the potential for a Finance Committee referral.

SENATOR MCGUIRE responded it should be deleted in that case.

SENATOR WIELECHOWSKI said he had the same question.

[9:15:17 AM](#)

CHAIR COGHILL moved Conceptual Amendment 1.

CONCEPTUAL AMENDMENT 1

OFFERED IN THE SENATE BY SENATOR COGHILL
TO: SCR 3

Page 5, line 5:

Delete:

(10) hire consultants and experts; and be it

CHAIR COGHILL found no objection and announced that Conceptual Amendment 1 passed.

He stated support for the resolution and his expectation that it would move from committee with a forthcoming zero fiscal note.

[9:16:20 AM](#)

SENATOR WIELECHOWSKI asked if travel costs or per diem would be paid.

SENATOR MCGUIRE answered there would be no per diem and the intention was to use legislative legal expertise, legislative research services, and consultants already on contract.

SENATOR WIELECHOWSKI asked about travel costs.

SENATOR MCGUIRE said there are no public members so no per diem or travel costs will be paid.

[9:17:24 AM](#)

SENATOR MCGUIRE moved to report SCR 3, as amended, from committee with individual recommendations and forthcoming zero fiscal note(s).

CHAIR COGHILL found no objection and announced that CSSCR 3(JUD) moved from the Senate Judiciary Standing Committee.

[9:18:17 AM](#)

HB 63-EXTEND BAR ASS'N BOARD OF GOVERNORS

CHAIR COGHILL announced the consideration of HB 63. "An Act relating to the Board of Governors of the Alaska Bar Association; and providing for an effective date." [CSHB 63(FIN) was before the committee.]

[9:19:46 AM](#)

CECILE ELLIOTT Staff, Representative Mike Hawker, sponsor of HB 63, explained that the bill would extend the Board of Governors of the Alaska Bar Association (ABA) until June 30, 2021, as recommended by the legislative auditor. The agency found that the board protects the public interest by ensuring that people licensed to practice law are qualified. She continued to explain that Section 2 contains conforming language to clarify that at large members are elected in the same way as other board members. Section 3 requires that members of board complete the voluntary continuing legal education (CLE) credits as set out in the Alaska Bar Rules. She noted that the House Judiciary Committee prepared a letter of intent to support continued CLEs. She highlighted the one continuing recommendation of the legislative auditor was to increase the CLE requirements for attorneys.

[9:21:37 AM](#)

SENATOR MCGUIRE asked Ms. Elliott if the Legislative Budget and Audit report made any other recommendations.

MS. ELLIOTT replied that the one recommendation was to increase CLEs.

CHAIR COGHILL commented that the report also recommended the new June 30, 2021 termination date.

[9:22:26 AM](#)

SENATOR WIELECHOWSKI asked if the sponsor had addressed the 4/9/13 legal opinion from Legislative Legal Services that says the legislature cannot statutorily set a certain number of continuing CLE hours for attorney licensure because it would violate the separation of powers doctrine.

MS. ELLIOTT said no.

CHAIR COGHILL suggested that Steve Van Goor could help with the question.

[9:23:10 AM](#)

SENATOR OLSON joined the committee.

[9:23:22 AM](#)

STEVE VAN GOOR, Bar Counsel, Alaska Bar Association, confirmed that the court has the ability to set the number of CLE hours that lawyers licensed in Alaska are required to meet. He continued to say that while a separation of powers argument could be made, the ABA understands the purpose of Section 3 is for attorney members of the board to set a good example with regard to CLEs.

SENATOR WIELECHOWSKI agreed that the Board of Governors should set an example, but questioned whether the requirement would violate the Alaska Constitution.

MR. VAN GOOR agreed that the court adopts rules of procedure and substantive rules of conduct under its inherent authority in Section 4.1 of the Alaska Constitution. He acknowledged that a separation of powers argument could be made, but given the intent of Section 3 it didn't seem worth the fight.

SENATOR WIELECHOWSKI observed that it's a question of whether a violation of the Alaska Constitution is worth fighting.

CHAIR COGHILL suggested Ms. Meade could add to the discussion.

[9:26:06 AM](#)

NANCY MEADE, General Counsel, Administrative Staff, Office of the Administrative Director, Alaska Court System, said the court doesn't take a position on that particular provision, but Senator Wielechowski raised a valid question. The committee is aware of the issue so it's a policy call whether to put it in statute or not.

CHAIR COGHILL commented that it appears to be more a balance of power discussion between the court and legislature than a separation of powers issue.

He questioned whether the nine members of the board should be confirmed by the legislature. [The question and subsequent discussion related to an amendment, labeled 28-LS0309\0.2, that was not offered.]

MR. VAN GOOR said he couldn't think of an example of an elected local, state, or federal official that also stood for confirmation by their respective legislative body. He cited examples of the mayor of Anchorage, the governor, and the President of the United States.

He referenced Section 4.10 of the Alaska Constitution regarding the Commission on Judicial Conduct and highlighted that the public members are appointed by the governor and subject to confirmation, the attorney members appointed by the board are subject to confirmation, but the judges and justices who serve are elected by their fellow judges and justices and are not subject to confirmation.

MR. VAN GOOR said the ABA isn't interested in making public office difficult for public members to hold and it's certainly unfortunate if public members have been subjected to a type of cross examination unrelated to their fitness for the appointed position.

[9:32:45 AM](#)

CHAIR COGHILL characterized the Board of Governors of the Alaska Bar Association as cartel like. Public members face a different type of scrutiny but serve equally on that board. He asked about the openness of the election process.

MR. VAN GOOR explained that it's open to any active member of the bar who wants to serve. The board is divided into three districts: the combined second and fourth judicial districts; the third judicial district in Southcentral; and the first judicial district in Southeast. One member is elected by the

membership statewide. The letters of intent are published and the individual runs for office like any other elected official.

CHAIR COGHILL expressed interest in further discussions because public members seemed to face different scrutiny.

[9:35:21 AM](#)

SENATOR DYSON asked for written information about how the process in Alaska compares to other states.

MR. VAN GOOR agreed to provide the information.

SENATOR MCGUIRE suggested that it would probably be helpful if the chair was given a general overview of the Alaska Bar Association and how it is different.

MR. VAN GOOR reiterated that the ABA would be happy to provide the information.

[9:38:53 AM](#)

THOMAS S. OBERMEYER, SR., representing himself, Anchorage, Alaska, stated that he has been licensed to practice law in the state of Missouri for 23 years and has been required to take 15 hours of CLE and 2 hours of ethics every year. This is far in excess of the Alaska Bar Association requirements, yet passage rates on the ABA exam are remarkably low compared to Missouri and other states. He offered his belief that the Alaska bar exam is not a test of minimal competence; it's a test of varying standards and exclusion that serves to restrain trade. He maintained that the ABA can set the passage rates based on the essays, although there is some discussion about transitioning to the Uniform Bar Examination. He relayed that the many practicing attorneys he contacted throughout the state said they found the exam itself had very little to do with their practice of law. He said he was denied reciprocity from Missouri under Alaska Bar Rule 2.2(b)3, which says a person who has failed the bar exam in the last five years cannot be admitted. He maintained that this standard isn't uniform, because others in similar situations have not been denied.

MR. OBERMEYER asked the committee to deny the eight-year sunset extension for the Board of Governors of the Alaska Bar Association. In the past the extension was four years and he would suggest no more than a two-year extension.

SENATOR MCGUIRE asked Mr. Van Goor why Mr. Obermeyer was being denied reciprocity when others are not.

MR. VAN GOOR explained that the bar rule regarding reciprocity admission has a public protection basis. Originally it said an individual who has taken and failed an Alaska bar examination would never qualify for reciprocity. That rule was changed to say a person cannot apply for reciprocity admission if the person has taken and failed any bar examination within five years. Mr. Obermeyer is not being singled out; it is a requirement that would apply to any person seeking admission from a reciprocal state.

SENATOR MCGUIRE asked if the ABA was considering the universal multi-state test in lieu of the essay.

MR. VAN GOOR responded that Justice Daniel Winfree asked the board to look at the Uniform Bar Examination (UBE), which has been proposed by the National Conference of Bar Examiners. It consists of the multi-state bar exam, the multi-state performance test, and the multi-state essay examination. In addition, an applicant for admission to the ABA has to pass the multi-state professional responsibility exam. The difference between the UBE and the current exam is that the essay and performance portions would be drafted by the National Conference of Bar Examiners. The grading would continue to be done in Alaska except for the multiple choice portion which would be graded by the National Conference of Bar Examiners.

MR. VAN GOOR said it's also important to keep in mind that the ABA does not restrict the number of times a person may sit for the Alaska Bar exam. For 2010-2012, the overall passage rate was 65 percent. For first time takers the passage rate was 77 percent, but for re-applicants the passage rate was 32 percent. The Alaska Bar exam is excellent and in the bar's opinion it works.

[9:52:16 AM](#)

SENATOR WIELECHOWSKI expressed concern with Section 3 and the legal opinion that "a statute prescribing required CLE hours would violate the separation of powers doctrine." He asked the chair if he would consider removing that section from the bill.

CHAIR COGHILL offered his belief that it was within reason, and that it was worth pushing the legal debate.

SENATOR WIELECHOWSKI quipped that could be an example of legislative overreach that needed a task force.

CHAIR COGHILL opined that it pushes against the right edge.

[9:54:31 AM](#)

SENATOR MCGUIRE offered her belief that it was wrong to say that there is no opportunity for the state to reach in and ask for higher standards.

CHAIR COGHILL said that as long as he was chair he wasn't opposed to continuing the discussion.

SENATOR WIELECHOWSKI clarified that he was not arguing that it wasn't a good idea to hold the members to a higher standard; he was arguing that Section 3 goes against a legal opinion. The chair specifically asked legislative counsel if the legislature can statutorily direct the Board to require certain CLEs. The legal opinion specifically said that "a statute prescribing required CLE hours would violate the separation of powers doctrine."

[9:57:49 AM](#)

SENATOR MCGUIRE moved to report CS for HB 63, version 0, from committee [with individual recommendations] and attached zero fiscal note.

[9:58:07 AM](#)

CHAIR COGHILL objected to say he tips his hat to the attorneys that work with the Board of Governors and do continuing education and pro bono work. He removed the objection.

[9:58:36 AM](#)

CHAIR COGHILL announced that, without objection, CSHB 63(FIN) moved from Senate Judiciary Standing Committee.

[9:58:42 AM](#)

At ease

HB 57-ENTITY TRANSACTIONS ACT

[10:02:11 AM](#)

CHAIR COGHILL announced the consideration of HB 57. "An Act adopting the Alaska Entity Transactions Act; relating to changing the form of entities, including corporations, partnerships, limited liability companies, business trusts, and other organizations; amending Rule 79, Alaska Rules of Civil Procedure, and Rules 602(b)(2), 602(c), and 605.5, Alaska Rules of Appellate Procedure; and providing for an effective date."

[CSHB 57(JUD) was before the committee.]

10:02:39 AM

REPRESENTATIVE LINDSAY HOLMES, sponsor of HB 57, introduced the bill speaking to the following sponsor statement:

House Bill 57 conforms to the Uniform Law Commissioners' Model Entity Transaction Act (META). If implemented in the State of Alaska, this legislation will help facilitate transactions between more than one form of entity, improve the existing business climate in Alaska, and help reduce unnecessary administrative and legal burdens currently imposed on Alaska companies.

During the past twenty years many new types of business entities - including limited liability companies, limited liability partnerships, and limited liability limited partnerships - have been recognized under state law. As a result of the proliferation of new entity forms, many businesses now utilize various types of entities in their organizational structures. The relaxation of federal tax rules governing entity classification has led to an increase in the volume of restructuring and acquisition transactions by and among the various types of entity forms.

Because of the lack of clear statutory authority allowing transactions between more than one form of entity, these transactions have often required the use of multiple indirect steps, as opposed to a single transaction. House Bill 57 will offer new statutory authority to permit cross-entity transactions in order to remain responsive to the needs of Alaskan companies and should be enacted in order to allow Alaska businesses the opportunity to engage in cross-entity transactions.

Adopting HB 57 will be an important step towards bringing Alaska more into the mainstream of statutory business law

REPRESENTATIVE HOLMES noted that a letter in the packets from Doyon Corporation speaks to how this will help Native corporations. The bill basically makes it easier for different business entities to communicate, do business, and merge. It is based on model law.

[10:06:54 AM](#)

HARRY HAYNSWORTH, Commissioner, National Conference of Commissioners on Uniform State Laws, stated that he was chair of the drafting committee for the Model Entity Transactions Act. He said the sponsor provided an excellent summary and why this is particularly important for states like Alaska that have an incomplete statutory framework. He offered to respond to questions on amendments that might be proposed.

[10:08:25 AM](#)

JAMES WALDO, Staff, Representative Lindsay Holmes, sponsor of HB 57, clarified that Mr. Haynsworth was referring to some technical amendments that were proposed in the House Judiciary Committee at the behest of Department of Commerce, Community and Economic Development (DCCED).

[10:08:56 AM](#)

At ease

[10:13:16 AM](#)

CHAIR COGHILL reconvened the meeting and explained that the off-the-record discussion related to when the bill would reach the floor. He recognized that there were some concerns with the bill but that he was satisfied. He solicited a motion.

[10:13:46 AM](#)

SENATOR MCGUIRE moved to report CS for HB 57, version Y, from committee with individual recommendations and attached zero fiscal note(s).

[10:14:10 AM](#)

SENATOR WIELECHOWSKI objected.

CHAIR COGHILL asked him to speak to his objection.

SENATOR WIELECHOWSKI said it's probably a good bill, but he couldn't in good conscience vote to move a 50-page bill after a 15 minute hearing when he didn't understand what it does. This is the only committee of referral in the Senate and the committee didn't even receive a sectional walk through. He noted that this wasn't a special request for this bill; he made the same request on the large ROTH IRA bill and the chair agreed to hold an additional hearing. He restated his objection.

CHAIR COGHILL said he understood the objection but he was satisfied that the bill was virtually identical to the one the committee heard last year.

10:15:50 AM

A roll call vote was taken. Senators McGuire, Dyson, and Coghill voted in favor of moving HB 57 from committee; Senator Wielechowski voted against it. Therefore, CSHB 57(JUD) was reported out of the Senate Judiciary Standing Committee by a vote of 3-1.

10:16:26 AM

CHAIR COGHILL stated that CSHB 57(JUD) moved from the Senate Judiciary Standing Committee with individual recommendations and attached fiscal note.

10:16:34 AM

There being no further business to come before the committee, Chair Coghill adjourned the Senate Judiciary Standing Committee meeting at 10:16 a.m.