

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

February 29, 2016

1:39 p.m.

MEMBERS PRESENT

Senator Lesil McGuire, Chair
Senator John Coghill, Vice Chair
Senator Mia Costello
Senator Peter Micciche
Senator Bill Wielechowski

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 24

"An Act relating to the applicability of the Legislative Ethics Act to legislative interns, legislative volunteers, consultants, independent contractors, sole proprietorships, and other legal entities."

- MOVED CSSB 24(JUD) OUT OF COMMITTEE

SENATE JOINT RESOLUTION NO. 19

Requesting the United States Congress to call a convention of the states to propose an amendment to the Constitution of the United States to set a limit on the number of terms that a person may be elected as a member of the United States House of Representatives and as a member of the United States Senate; and urging the legislatures of the other 49 states to request the United States Congress to call a convention of the states.

- MOVED SJR 19 OUT OF COMMITTEE

SENATE BILL NO. 174

"An Act relating to the regulation of firearms and knives by the University of Alaska."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 24

SHORT TITLE: LEGIS. ETHICS ACT: CONTRACTORS, INTERNS

SPONSOR(s): SENATOR(s) GARDNER

01/21/15 (S) READ THE FIRST TIME - REFERRALS
01/21/15 (S) STA, JUD
03/05/15 (S) STA AT 9:00 AM BUTROVICH 205
03/05/15 (S) Scheduled but Not Heard
03/12/15 (S) STA AT 8:00 AM BUTROVICH 205
03/12/15 (S) Heard & Held
03/12/15 (S) MINUTE(STA)
03/31/15 (S) STA AT 9:00 AM BUTROVICH 205
03/31/15 (S) Moved SB 24 Out of Committee
03/31/15 (S) MINUTE(STA)
04/01/15 (S) STA RPT 2DP 2NR
04/01/15 (S) DP: COGHILL, MCGUIRE
04/01/15 (S) NR: STOLTZE, HUGGINS
02/24/16 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
02/24/16 (S) Heard & Held
02/24/16 (S) MINUTE(JUD)
02/29/16 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

BILL: SJR 19

SHORT TITLE: CALL FED. CONSTITUTIONAL CONV: TERM LIMITS

SPONSOR(s): SENATOR(s) MCGUIRE

02/12/16 (S) READ THE FIRST TIME - REFERRALS
02/12/16 (S) JUD
02/24/16 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
02/24/16 (S) Heard & Held
02/24/16 (S) MINUTE(JUD)
02/29/16 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

BILL: SB 174

SHORT TITLE: REG. OF FIREARMS/KNIVES BY UNIV. OF AK

SPONSOR(s): SENATOR(s) KELLY

02/08/16 (S) READ THE FIRST TIME - REFERRALS
02/08/16 (S) EDC, JUD
02/16/16 (S) EDC AT 3:30 PM BUTROVICH 205
02/16/16 (S) Heard & Held
02/16/16 (S) MINUTE(EDC)
02/17/16 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
02/17/16 (S) Scheduled but Not Heard
02/18/16 (S) EDC AT 3:30 PM BUTROVICH 205
02/18/16 (S) Heard & Held
02/18/16 (S) MINUTE(EDC)

02/23/16 (S) EDC AT 3:30 PM BUTROVICH 205
02/23/16 (S) Moved CSSB 174(EDC) Out of Committee
02/23/16 (S) MINUTE(EDC)
02/26/16 (S) EDC RPT CS 2DP 1DNP 1NR SAME TITLE
02/26/16 (S) DP: DUNLEAVY, HUGGINS
02/26/16 (S) DNP: GARDNER
02/26/16 (S) NR: GIESSEL
02/26/16 (S) FIN REFERRAL ADDED AFTER JUD
02/29/16 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

WITNESS REGISTER

SENATOR BERTA GARDNER
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Sponsor of SB 24.

SENATOR PETE KELLY
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Sponsor of SB 174.

CALLIE CONERTON, Student Body President and
Vice Chair of the Coalition of Student Leaders
University of Alaska Southeast
Juneau, Alaska

POSITION STATEMENT: Testified in opposition to SB 174.

JOE BYRNES, Staff
Senator Pete Kelly
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Provided information related to SB 174.

MICHAEL HOSTINA, General Counsel
University of Alaska System
Fairbanks, Alaska

POSITION STATEMENT: Answered questions from a legal perspective
that relate to SB 174.

MATT COOPER, Associate Counsel
University of Alaska System
Fairbanks, Alaska

POSITION STATEMENT: Provided information related to SB 174.

JAMES JOHNSEN, President
University of Alaska System

Fairbanks, Alaska

POSITION STATEMENT: Requested three changes to SB 174.

ACTION NARRATIVE

[1:39:36 PM](#)

CHAIR LESIL MCGUIRE called the Senate Judiciary Standing Committee meeting to order at 1:39 p.m. Present at the call to order were Senators Costello, Coghill, and Chair McGuire. Senators Wielechowski and Micciche arrived during the course of the meeting.

SB 24-LEGIS. ETHICS ACT: CONTRACTORS, INTERNS

[1:40:12 PM](#)

CHAIR MCGUIRE announced the consideration of SB 24. She noted that public testimony is closed and version H is before the committee.

[1:40:28 PM](#)

SENATOR BERTA GARDNER, Alaska State Legislature, Juneau, Alaska, sponsor of SB 24, summarized that this is a clean-up bill addressing the ethics codes. It is not controversial.

[1:41:02 PM](#)

SENATOR COGHILL moved to report the CS for SB 24, [labeled 29-LS0148\H], from committee with individual recommendations and attached zero fiscal note(s).

[1:41:17 PM](#)

CHAIR MCGUIRE announced that without objection CSSB 24(JUD) is reported from the Senate Judiciary Standing Committee.

SJR 19-CALL FED. CONSTITUTIONAL CONV:TERM LIMITS

[1:41:33 PM](#)

CHAIR MCGUIRE announced the consideration of SJR 19.

She noted this is the second hearing and public testimony is closed.

[1:41:56 PM](#)

FORREST WOLFE, Staff, Senator Lesil McGuire, said Nicolas Tomboulides with U.S. Term Limits is available if there are questions.

CHAIR MCGUIRE found no questions and solicited a motion.

[1:42:10 PM](#)

SENATOR COGHILL moved to report SJR 19 from committee with individual recommendations and attached zero fiscal note.

[1:42:22 PM](#)

CHAIR MCGUIRE announced that without objection, SJR 19 is reported from the Senate Judiciary Standing Committee.

SB 174-REG. OF FIREARMS/KNIVES BY UNIV. OF AK

[1:42:36 PM](#)

CHAIR MCGUIRE announced the consideration of SB 174. She noted this is the first hearing and public testimony would open on Wednesday, March 2.

[1:43:27 PM](#)

SENATOR PETE KELLY, Alaska State Legislature, Juneau, Alaska, sponsor of SB 174, stated that SB 174 allows concealed carry of handguns on the University of Alaska campuses. This affirms that Alaska citizens do not relinquish their constitutional rights when they enter the campus and resolves a conflict between the University of Alaska Board of Regents and the state constitution. He said the Alaska Constitution specifies that the right to keep and bear arms is an individual right and the university has ignored that. He maintained that the university has failed to prove it is the legitimate governing authority, that its policies will be effective in achieving the stated objectives, and that the policy is narrowly tailored to meet a compelling governmental interest by the least restrictive means possible.

SENATOR KELLY said the university has created a gun-free zone and those frequently have become targets for the mentally unstable or those with political agendas. He cited examples from a Marine recruiting center, college campuses, and public schools. He maintained that posting signs prohibiting carrying guns actually serves as a magnet to those who intend to do harm.

[1:46:48 PM](#)

SENATOR WIELECHOWSKI joined the committee.

SENATOR KELLY pointed out that since 1950 most mass shootings have occurred in gun-free zones, whereas there have been no proven problems on the 150 campuses that allow concealed carry. He stressed the need to be proactive and reminded the committee

that this is about a constitutional right over which the Board of Regents has no jurisdiction.

[1:49:55 PM](#)

CHAIR MCGUIRE stated that she has supported a similar bill in the past and she supports this one because of the Second Amendment right under the U.S. Constitution and the specific right under Article I, Section 19 of the Alaska Constitution. She read the passage and pointed out that the Alaska Supreme Court has used a sliding scale analysis when assessing a right. The more fundamental the right, the higher the scrutiny. If the state were to succeed in upholding any kind of infringement on the right of Alaska citizens to bear arms, the means would have to justify the ends, be narrowly tailored and have a tight connection. She opined that the University of Alaska's current policy would not meet that test.

She joined the sponsor's remarks about bad actors and offered her philosophy that the more layered rules in this area, the harder it is on people who abide by the law. She recounted that in her schools she would like to see armed security guards and a few armed teachers.

She discussed conversations she's had with Canadian counterparts about the passion for defending the Second Amendment right. She tells them to study U.S. history regarding the quartering of troops and the reasons for the migration from England. It illustrates the power of the government compared to the individual. She said she'd like to hear the university's view of Article I, Section 19, of the Alaska Constitution and the Second Amendment of the U.S. Constitution and how they feel Alaska would be excluded.

She listed the weapon crime statistics she wanted from the Department of Public Safety: what weapons are used in what crimes; do individuals committing those crimes have a license to carry; information about misconduct involving weapons statutes; how DPS has implemented federal restrictions on the purchase and possession of firearms; and how Title 47 and past statutory proposals relate to firearm possession.

She requested to hear from university police departments regarding response times; campus safety statistics; and the presence and types of weapons and whether or not they were licensed.

[1:57:38 PM](#)

SENATOR COGHILL commented that the issue has risen to this level because of the people who have misused a right. What's happened is that many now believe the gun is the problem when actually it's bad people. He stated agreement with the sponsor and challenged anyone to cite an example of a responsible gun owner who has gone into a gun-free zone and misused their weapon.

He thanked the sponsor for bringing the bill forward and committed to look at the six points with a critical eye.

2:01:00 PM

SENATOR COSTELLO asked what the current status is on campuses.

SENATOR KELLY said concealed carry on campus is prohibited. Someone who owns a gun and lives in a dorm has to turn it in for locked storage and the person has to sign it in and out. He suggested Mr. Byrnes might walk through more specifics.

SENATOR COSTELLO asked what precipitated the bill.

SENATOR KELLY said his motivation was the San Bernardino shooting, part of which took place in a gun-free zone.

2:02:56 PM

SENATOR WIELECHOWSKI highlighted the broad scope of Article 1, Section 19, and questioned whether the bill is necessary in light of the permission in the constitution. He also asked what analysis is done to differentiate an elementary school from the university.

SENATOR KELLY said the reason the bill is necessary is because of what occurred at Umpqua State College. Oregon state law said people could carry weapons on the campus but the college policy manual said carrying weapons on campus is prohibited. He maintained that the university is going outside the bounds of the constitution asserting it is not under the laws of the legislature or the constitution. He asked Senator Wielechowski to repeat the second question.

SENATOR WIELECHOWSKI asked the rationale for not allowing firearms in courts and the legislature but allowing them on the university campuses.

SENATOR KELLY said the restrictions have to be narrowly applied, practical, and imposed by a political subdivision that has that authority. He opined that the university is lacking in all three. He deferred further comment on that point to the

university because he isn't familiar with their rules. He added that he doesn't believe the legislature has any better rules in that regard.

CHAIR MCGUIRE listed the locations where firearms are restricted and opined that they are all ripe for reconsideration. She stated her belief that the posted policy of prohibiting concealed carry in buildings subject to the legislature is unconstitutional. She noted that no one from either the Department of Law (DOL) or Legislative Legal Services is available online.

[2:08:36 PM](#)

SENATOR WIELECHOWSKI said he'd like to talk to legislative lawyers and the Department of Law because it's a legal issue related to the interpretation of the Alaska Constitution.

CHAIR MCGUIRE listed the individuals available to testify and answer questions.

[2:10:04 PM](#)

CALLIE CONERTON, Student Body President, University of Alaska Southeast and Vice Chair, Coalition of Student Leaders, expressed concern with the current draft of SB 174. She said the university should be able to prohibit concealed carry in the multiple buildings dedicated towards K-12 programing. The State of Alaska doesn't require a concealed carry permit so there would be no guarantee that people carrying guns on campus would know about proper firearm safety. She thanked the sponsor and his staff for including four of the six amendments the university suggested.

MS. CONERTON concluded her testimony by informing the committee that the Coalition of Student Leaders collectively opposes SB 174 as currently written.

CHAIR MCGUIRE asked her to describe the four amendments the sponsor accepted.

MS. CONERTON listed the changes in concealed carry in dormitories and the right of the university to take a firearm away from someone who poses a risk of harm to others. She requested Mr. Byrnes complete the list.

CHAIR MCGUIRE asked Ms. Conerton to identify, either in writing or supplemental testimony, which campuses and buildings have K-

12 programing. That information would be used in the legal analysis of the bill.

2:14:44 PM

JOE BYRNES, Staff, Senator Pete Kelly, Alaska State Legislature, informed the committee that the four amendments were incorporated into the committee substitute the Senate Education Committee passed. These are located on page 2, lines 3-12. He read the following exceptions: 1) when the behavior of a student or an employee demonstrates that the student or employee poses a risk of harm to self or others; 2) in student dormitories or other shared living quarters; 3) in university facilities where health services, counseling services, or other services related to sexual harassment or violence are provided; and 4) in university facilities during adjudication of staff or student disciplinary issues.

2:15:35 PM

SENATOR MICCICHE joined the committee.

CHAIR MCGUIRE expressed support for lines 9-11, and the caveat language on page 2, lines 18-20: "policies adopted or enforced under this paragraph may not abridge the right of the individual guaranteed by art. I, sec. 19, Constitution of the State of Alaska, to bear arms in defense of self or others;".

MR. BYRNES noted that the bill is modeled after Title 29 and the municipal regulation of firearms.

SENATOR WIELECHOWSKI asked him to discuss the amendments that were rejected.

MR. BYRNES said one related to K-12 facilities and the other was concealed handgun permits.

SENATOR WIELECHOWSKI asked if the request was to require a permit to carry a concealed handgun.

MR. BYRNES said that's correct.

2:17:23 PM

MICHAEL HOSTINA, General Counsel, University of Alaska System, Fairbanks, Alaska, offered to answer legal questions that relate to SB 174.

CHAIR MCGUIRE asked him to explain the source of authority for the University of Alaska policy; how the policy works; and why

it meets the sliding scale requirement articulated by the Alaska Supreme Court for regulating yet not abridging an individual's right to bear arms.

MR. HOSTINA said the source of authority is the constitution and the statutory provision that allows the Board of Regents to adopt reasonable regulations for the governance of the university. He reminded the committee that the university is not a political subdivision of the state covered by Title 29. Rather, the university is a constitutional corporation and instrumentality of the state as defined by the Alaska Supreme Court.

CHAIR MCGUIRE asked how that meaningfully impacts the discussion today regarding the university's right to govern in this area.

MR. HOSTINA said he mentioned it primarily because a number of people have testified that the university is a political subdivision of the state. That isn't the case so the university is not governed by Title 29. The constitution provides the Board of Regents the authority to govern the university, but not independent of applicable law. It does provide some basis for the regents to determine the academic sphere and safely manage campus life.

MR. HOSTINA also pointed out that the Board of Regents is uniquely responsible for governing university buildings, programs, personnel, and students. The U.S. Supreme Court has clearly said the Second Amendment protections do not apply to sensitive areas like schools, hospitals, and courts to and government buildings. Thus, there is a strong legal argument against engaging in a strict scrutiny analysis where the regulations are only impacting government buildings.

He stated that the Board of Regents wants to be able to manage very clear, individual situations that pose specific risks on university property. He listed troubled students, situations paralleling domestic violence centers and shelters, areas and programs dedicated to K-12, dormitories and places where alcohol is served.

MR. HOSTINA explained that current policy allows people to bring firearms on campus for specific events, turn the weapon in for secure storage in the dorm setting, secure the weapon at home in faculty housing, and lock a weapon in a vehicle.

[2:23:51 PM](#)

MATT COOPER, Associate Counsel, University of Alaska System, Fairbanks, Alaska, noted that the third part of the question was why the current policy meets constitutional requirements.

MR. HOSTINA restated that the U.S. Supreme Court has said that certain exceptions are carved out of the Second Amendment for sensitive areas such as schools and government buildings. The Alaska Supreme Court has not addressed that issue head on, he said, but has evaluated and upheld restrictions related to K-12 with respect to alcohol and age. It's about government responsibility for its own premises, staff, and students as opposed to regulating the general public. The university rules are administrative and apply only on the premises and under certain situations.

CHAIR MCGUIRE commented on what the forefathers would think of this discussion and questioned whether the university would have a similar view of the rights outlined in Article 1, Section 1, and Article 1, Section 3, of the Alaska Constitution.

[2:27:49 PM](#)

SENATOR WIELECHOWSKI asked if the allowance for the individual right to keep and bear arms would apply to the university as a state corporation.

MR. HOSTINA said the issue here is whether the rules in Title 29 that apply to municipalities would apply to the university. It is the university's position that they do not, he said.

CHAIR MCGUIRE asked why the University of Alaska, as an arm of state government and as a constitutional corporation, has the right to abridge Article 1 rights under the Constitution of the State of Alaska.

MR. HOSTINA replied the university does not have the right to abridge constitutional rights, but it has the right to impose reasonable limitations just as the state has the right to limit the right to bear arms in areas like K-12, areas that serve alcohol, the legislature, domestic violence shelters, and a home where the responsible adult has not agreed to the concealment of firearms. To date those reasonable limitations have not been overruled.

SENATOR WIELECHOWSKI asked if he believes that the state would be violating the constitution by passing the bill as currently written.

MR. HOSTINA answered no.

SENATOR WIELECHOWSKI asked him to walk through the strict scrutiny analysis the court would apply.

MR. HOSTINA reiterated that it is unlikely that the Alaska Supreme Court would apply strict scrutiny since this involves an arm of government managing its own premises. The university has very specific situations that parallel other restrictions in state law on the carriage of weapons and firearms, and he believes the university would survive whatever level of scrutiny is applied.

[2:33:52 PM](#)

CHAIR MCGUIRE asked how university students become an arm of the government. She also mentioned the Hyde Amendment and asked how the university would treat the First Amendment right of a student to speak.

MR. HOSTINA said the university is subject to the restrictions in both the Alaska Constitution and the U.S. Constitution regarding freedom of speech and cannot regulate the speech based on content. However, it can regulate speech based on time, place, and manner restrictions; areas of the campus that are not open to speech; and areas of the campus that are reserved for administration. The right to speak is well established and rights have begun to be established in the area where the Second Amendment has been interpreted as providing an individual right to bear arms. Thus far the courts have said the government has a right to regulate its own premises in identified sensitive areas.

[2:38:24 PM](#)

CHAIR MCGUIRE asked how students at the university are an arm of the government.

MR. HOSTINA said he doesn't believe that students are an arm of the government, but they are subject to reasonable restrictions that apply to the area they are entering. The same analogy applies to speech; when you enter a regulated area, you accept the regulations that apply in that area.

[2:41:02 PM](#)

CHAIR MCGUIRE disagreed with the analogy.

SENATOR MICCICHE requested an at-ease.

[2:41:50 PM](#)

At ease

[2:41:54 PM](#)

CHAIR MCGUIRE reconvened the meeting.

SENATOR MICCICHE asked him to explain his testimony about the need to regulate concealed carry in light of the exemptions on page 2, lines 4-12. He noted he was speaking to version N.

[2:44:06 PM](#)

MR. HOSTINA said the university appreciates the areas in version N that permit management and does not oppose the bill in its current form. However, it could be improved in three respects.

CHAIR MCGUIRE asked for clarification that the committee is considering version N and Senator Coghill moved version N.

CHAIR MCGUIRE summarized the foregoing discussion for Senator Micciche and noted his point was good regarding areas that are permitted and whether or not that right to permit would be abused. She noted she asked the committee to think about whether or not a permitted entity, agency, group becomes an arm of the state regulating itself. If so, that's a slippery slope, she said. It's something that should be discussed on the record and have some sideboards.

SENATOR COGHILL noted the memo to the sponsor that says the right to keep and bear arms is based on two fundamental principles: the right to privacy and the right to bear arms. He said the amendments tried to consider public safety and those two bedrock principles and enforce them in the least restrictive manner. He noted that an individual right can be managed but it does not dissipate.

[2:49:18 PM](#)

JAMES JOHNSON, President, University of Alaska System, Fairbanks, Alaska, thanked the sponsor for the four changes reflected in the current committee substitute (CS), [version N]. They will allow the Board of Regents to manage firearms in common, high conflict, high risk situations. That said, the university believes the bill could be improved in three areas that are not addressed in the CS. Two are substantive and one is technical.

First, the university requests the ability to regulate concealed carry of handguns or knives in a manner consistent with existing

law regarding K-12. He emphasized that there is no intent to regulate outside the facilities where dedicated K-12 programs are occurring or at times when those programs are not taking place. He offered to work with the sponsor and committee on a provision that is specifically and narrowly focused on this concern.

Second, the university supports concealed carry with a permit. This makes sense in conjunction with other management tools and would ensure that a student or employee who is carrying a concealed weapon would have some training and knowledge of gun safety and the applicable law. Of course, people with certain, but not all, criminal histories would be excluded from obtaining a permit.

Third, the university requests a technical fix to include disputes in the section addressing disciplinary issues. The university has lots of disputes including grievances, administrative reviews, and harassment/discrimination complaints. They don't typically involve discipline but disputes are emotional and volatile.

CHAIR MCGUIRE stressed that the tone of the questions isn't meant to convey disrespect for the university's right to have a position on the subject.

[2:55:40 PM](#)

CHAIR MCGUIRE held SB 174 in committee with public testimony open.

[2:56:10 PM](#)

There being no further business to come before the committee, Chair McGuire adjourned the Senate Judiciary Standing Committee meeting at 2:56 p.m.