

ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE

April 9, 2018

2:12 p.m.

MEMBERS PRESENT

Representative Matt Claman, Chair
Representative Jonathan Kreiss-Tomkins, Vice Chair
Representative Louise Stutes
Representative Gabrielle LeDoux
Representative David Eastman
Representative Chuck Kopp
Representative Lora Reinbold

MEMBERS ABSENT

Representative Charisse Millett (alternate)
Representative Tiffany Zulkosky (alternate)

COMMITTEE CALENDAR

SENATE BILL NO. 202

"An Act relating to the liability of a Native corporation for the release or threatened release of hazardous substances present on certain lands."

- MOVED HCS SB 202(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 336

"An Act relating to supported decision-making agreements to provide for decision-making assistance; and amending Rule 402, Alaska Rules of Evidence."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 202

SHORT TITLE: NATIVE CORP. LIABILITY FOR CONTAMINATION

SPONSOR(S): SENATOR(S) HOFFMAN

02/19/18	(S)	READ THE FIRST TIME - REFERRALS
02/19/18	(S)	RES, JUD
02/26/18	(S)	RES AT 3:30 PM BUTROVICH 205
02/26/18	(S)	Moved SB 202 Out of Committee

02/26/18 (S) MINUTE (RES)
02/28/18 (S) RES RPT 4DP 2NR
02/28/18 (S) DP: GIESSEL, BISHOP, COGHILL, VON IMHOF
02/28/18 (S) NR: STEDMAN, MEYER
03/26/18 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/26/18 (S) Heard & Held
03/26/18 (S) MINUTE (JUD)
03/28/18 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/28/18 (S) Moved SB 202 Out of Committee
03/28/18 (S) MINUTE (JUD)
03/29/18 (S) JUD RPT 4DP 1NR
03/29/18 (S) DP: COGHILL, WIELECHOWSKI, SHOWER,
COSTELLO
03/29/18 (S) NR: KELLY
04/02/18 (S) TRANSMITTED TO (H)
04/02/18 (S) VERSION: SB 202
04/04/18 (H) READ THE FIRST TIME - REFERRALS
04/04/18 (H) JUD
04/09/18 (H) JUD AT 1:00 PM GRUENBERG 120

BILL: HB 336

SHORT TITLE: SUPPORTIVE DECISION-MAKING AGREEMENTS
SPONSOR(S): REPRESENTATIVE(S) MILLETT

02/07/18 (H) READ THE FIRST TIME - REFERRALS
02/07/18 (H) HSS, JUD
03/01/18 (H) HSS AT 3:00 PM CAPITOL 106
03/01/18 (H) Heard & Held
03/01/18 (H) MINUTE (HSS)
03/08/18 (H) HSS AT 3:00 PM CAPITOL 106
03/08/18 (H) Moved CSHB 336 (HSS) Out of Committee
03/08/18 (H) MINUTE (HSS)
03/09/18 (H) HSS RPT CS (HSS) 6DP
03/09/18 (H) DP: JOHNSTON, CLAMAN, EDGMON, SULLIVAN-
LEONARD, KITO, TARR
04/09/18 (H) JUD AT 1:00 PM GRUENBERG 120

WITNESS REGISTER

MARIDON BOARIO, Staff
Senator Lyman Hoffman
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: During the hearing of SB 202, presented the legislation.

JOHN HALVERSON, Environmental Program Manager

Contaminated Sites Program
Department of Environmental Conservation (DEC)
Anchorage, Alaska

POSITION STATEMENT: During the hearing of SB 202, discussed Amendment 1 and answered questions.

HANS RODVICK, Staff
Representative Charisse Millett
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: During the hearing of HB 366, presented the legislation and provided a sectional analysis.

PROFESSOR HELEN GAEBLER
Senior Research Attorney
University of Texas School of Law
Austin, Texas

POSITION STATEMENT: During the hearing of CSHB 336, testified.

ANNE APPLGATE, Program Coordinator
Governor's Council on Disabilities and Special Education
Anchorage, Alaska

POSITION STATEMENT: During the hearing of HB 336, testified.

IAN MINER
Anchorage, Alaska

POSITION STATEMENT: During the hearing of HB 336, testified.

KEN HELANDER, Advocacy Director
American Association of Retired Persons (AARP)
Anchorage, Alaska

POSITION STATEMENT: During the hearing HB 366, testified in support of the legislation.

HEIDI KELLY
Anchorage, Alaska

POSITION STATEMENT: During the hearing of HB 336, testified.

ACTION NARRATIVE

[2:12:12 PM](#)

CHAIR MATT CLAMAN called the House Judiciary Standing Committee meeting to order at 2:12 p.m. Representatives Claman, Kopp, LeDoux and Kreiss-Tomkins were present at the call to order. Representatives Reinbold and Eastman arrived as the meeting was in progress.

SB 202-NATIVE CORP. LIABILITY FOR CONTAMINATION

[2:12:47 PM](#)

CHAIR CLAMAN announced that the first order of business would be HOUSE CS FOR SENATE BILL NO. 202(JUD), "An Act relating to the liability of a Native corporation for the release or threatened release of hazardous substances present on certain lands."

CHAIR CLAMAN reminded the committee that it previously heard HB 67 [companion bill to SB 202] and his plan is to pass SB 202 out of committee today.

[2:13:42 PM](#)

CHAIR CLAMAN moved to adopt Amendment 1, labeled 30-LS1422\A.4, which read as follows:

Page 1, line 6:

Delete "and (n)"

Delete "exception set out in (i)"

Insert "exceptions [EXCEPTION] set out in (i) and (n)"

Page 2, line 27, through page 3, line 1:

Delete all material and insert:

"(n) A Native corporation that acquired land under 43 U.S.C. 1601 et seq. (Alaska Native Claims Settlement Act) is not liable under this section for a release or threatened release of a hazardous substance on the land unless the Native corporation, by an act or omission, caused or contributed to the release or threatened release of the hazardous substance."

REPRESENTATIVE STUTES objected for purposes of discussion.

[2:14:06 PM](#)

MARIDON BOARIO, Staff, Senator Lyman Hoffman, Alaska State Legislature, explained that Amendment 1 creates an exception to strict liability under AS 46.03.822. Under this amendment, she advised, strict liability does not apply to Native Corporations for any release or threatened release of a hazardous substance on land granted under the Alaska Native Claims Settlement Act (ANCSA) unless the Native Corporation, by an act or omission, caused or contributed to the release or threatened release. The

amendment also removes the burden of proof from the Native Corporation, and she added that Senator Hoffman fully supports Amendment 1.

[2:14:51 PM](#)

CHAIR CLAMAN surmised that the intention of Amendment 1 is that the Senate bill will track the language passed on a recent federal law within an appropriations bill (Indisc.).

MS. BOARIO responded that Chair Claman was correct because when this bill was introduced there was pending federal legislation, which has since passed. When that law was passed, she advised, it came to light that possibly Alaska's statute was not tracking as closely as it should have, and this language makes state law compatible with the federal law.

[2:15:52 PM](#)

REPRESENTATIVE EASTMAN offered a scenario of someone finding a hazardous substance on another person's property and surmised that under this amendment, if someone goes to that property and finds "something, in order for them to be liable, we have to prove that they were to blame for the substance."

MS. BOARIO answered that the burden of proof is on the person who caused the contamination.

[2:16:53 PM](#)

REPRESENTATIVE EASTMAN asked whether the burden of proof is on the Native Corporation to prove that it did not cause the problem, or must someone, possibly the government, prove that they did cause the contamination.

MS. BOARIO replied that Representative Eastman was correct.

[2:17:14 PM](#)

REPRESENTATIVE EASTMAN surmised that that scenario would be different for the Native Corporation than it is for everyone else because in other property situations the burden of proof would be on the person to prove that they did not contaminate the property.

MS. BOARIO deferred to Chair Claman, and said that this is a specific situation for Alaska Native Corporations on transferred land.

[2:18:10 PM](#)

REPRESENTATIVE KOPP commented that it appears Amendment 1 simply makes clear that the Native Corporation owned lands were not conveyed liability in the Alaska Native Settlement Act. In other words, he explained, as SB 202 currently reads, the onus is on the Native Corporation to prove it is not liable. Wherein, under this amendment the Native Corporations are basically moved to a neutral position, and the assumption is that the Native Corporations were not conveyed any liability when lands were conveyed to the Native Corporations.

MS. BOARIO replied that Representative Kopp was correct.

[2:19:01 PM](#)

REPRESENTATIVE STUTES withdrew her objection. There being no objection, Amendment 1 was adopted.

[2:19:16 PM](#)

REPRESENTATIVE LEDOUX moved to adopt Amendment 2, labeled 30-LS1422\A/1, which read as follows:

Page 1, line 1:

Delete "**Native corporation**"

Insert "**person**"

Page 2, line 24, through page 3, line 2:

Delete all material and insert:

"* **Sec. 2.** AS 46.03.822(d) is amended to read:

(d) To establish that a person had no reason to know that the hazardous substance was disposed of on, in, or at the facility, as provided in (c)(1) and (1) of this section, or to establish that a person had no reason to know that the hazardous substance was present on the land at the time the ownership of the land was transferred to the person, as provided in (n) of this section, the person must have undertaken, at the time of voluntary acquisition, all reasonable inquiries into the previous ownership and uses of the property consistent with good commercial or customary practice in an effort to minimize liability. For

purposes of this subsection a court shall take into account all relevant facts, including

(1) any specialized knowledge or experience the person has;

(2) the relationship of the purchase price to the value of the property if it were uncontaminated;

(3) commonly known or reasonably ascertainable information about the property;

(4) the obviousness of the presence or likely presence of contamination at the property; and

(5) the ability to detect contamination by appropriate inspection.

* **Sec. 3.** AS 46.03.822 is amended by adding a new subsection to read:

(n) In an action to recover damages or costs, a person otherwise liable under this section for a release or threatened release of a hazardous substance on the person's land is relieved from liability under this section if the person proves that the

(1) person did not know and had no reason to know that the hazardous substance was present on the land at the time the ownership of the land was transferred to the person; and

(2) hazardous substance was present on the land at the time the ownership of the land was transferred to the person."

REPRESENTATIVE STUTES objected for purposes of discussion.

[2:19:27 PM](#)

REPRESENTATIVE LEDOUX commented that "this is a very good bill," except it brings out a problem in Alaska's laws in general. There is the problem that someone could be a good faith purchaser or grantee of a property and end up getting stuck on a strict liability standard for a hazard on the property. She opined that that situation is not fair, which has been pointed out in the context of Native Corporations. Amendment 2, she explained, basically "changes our law, period, so that no good faith person ends up to be liable." She acknowledged that this is a huge change in Alaska law and she does not want to impede this bill because it will help the Native Corporations with its contaminated lands. Representative LeDoux advised that Amendment 2 was drafted to shed light on this existing problem in the Department of Environmental Conservation (DEC) and environmental law wherein a future legislature may possibly

change this law for everyone. She advised that she withdraws Amendment 2.

[2:21:18 PM](#)

REPRESENTATIVE EASTMAN moved to adopt Amendment 3, labeled 30-LS1422\A.2, which read as follows:

Page 2, line 29, following the first occurrence of "the":

Insert "(1)"

Page 2, line 31:

Delete "and the"

Insert ";

(2)"

Page 3, line 1, following "granted":

Insert "; and

(3) Native corporation did not have control of the land at the time the hazardous substance was disposed of or placed on the land"

REPRESENTATIVE KREISS-TOMKINS objected.

[2:21:24 PM](#)

REPRESENTATIVE EASTMAN referred to [SB 202, Sec. 3. AS 46.03.822, page 3, line 1], and explained that Amendment 3 adds the language after the word "granted." as follows:

(3) Native corporation did not have control of the land at the time the hazardous substance was disposed of or placed on the land.

REPRESENTATIVE EASTMAN explained that the language clarifies that a Native Corporation managed its land prior to the granting of land, and if the corporation is already responsible for the land "and there's things being done to it," this would not inadvertently absolve those responsible parties of their responsibility to make certain the hazardous substances were appropriately disposed.

[2:22:12 PM](#)

CHAIR CLAMAN asked the sponsor of the bill, in light of the passage of Amendment 1, whether the sponsor supports Amendment 3.

MS. BOARIO opined that Senator Hoffman would not support Amendment 3.

[2:22:49 PM](#)

CHAIR CLAMAN noted that [within the committee packet] are letters from Daniel Cheyette, Vice President for Lands and Natural Resources, Bristol Bay Native Corporation; and Jaeleen Kookesh, Vice President, General Counsel & Corporate Secretary. He referred to the last sentence of paragraph 3, of the 4/9/18 letter from the Sealaska Corporation which read as follows [original punctuation provided]:

Representative Eastman's amendment would be moot if your amendment is adopted by the Committee and the legislature.

CHAIR CLAMAN asked Representative Eastman whether the passage of Amendment 1 moots his motion to adopt Amendment 3.

[2:23:33 PM](#)

[CHAIR CLAMAN and Representative Eastman discussed receipt of the letter and its content.]

CHAIR CLAMAN again asked whether Representative Eastman had an argument that the passage of Amendment 1 did not moot his motion for the adoption of Amendment 3.

REPRESENTATIVE EASTMAN commented that it is hard for him to understand why Amendment 3 is now moot.

[2:24:20 PM](#)

CHAIR CLAMAN directed Representative Eastman's attention to the 4/9/18 letter from the Bristol Bay Native Corporation [contained within the committee packet] and asked that he read paragraph 4 as it explains why Amendment 3 is moot. He requested that Representative Eastman offer a basis within which Chair Claman should not rule Amendment 3 out-of-order.

REPRESENTATIVE EASTMAN opined that "this actually gets to the substance" of the matter and Amendment 3 is important to discuss.

[2:24:59 PM](#)

CHAIR CLAMAN ruled Amendment 3 out-of-order because he agreed with the analysis provided by the Sealaska Corporation that the adoption of Amendment 1 takes out the burdens "that you are actually talking about."

CHAIR CLAMAN advised that even though the committee passed Amendment 1, it raised a fiscal note issue that John Halverson of the Department of Environmental Conservation would address.

[2:25:44 PM](#)

JOHN HALVERSON, Environmental Program Manager, Contaminated Sites Program, Department of Environmental Conservation (DEC), advised that there would likely be a need for a fiscal note with Amendment 1.

CHAIR CLAMAN requested more clarity as to whether it would be an increased fiscal note and whether there was a fiscal note previously.

MR. HALVERSON responded that there was a zero fiscal note previously and with Amendment 1 there would likely be an increase in state costs because the burden of proof will have to fall to the state.

[2:26:41 PM](#)

REPRESENTATIVE KOPP asked whether the burden is normally with the state when it comes to DEC litigated claims on land transfers that move from the state to private ownership, or is the burden of proof normally with the person to whom the land was transferred to, and whether there is a standard that applies here.

MR. HALVERSON responded that normally it would be through the parties to the transaction rather than to the state.

[2:27:31 PM](#)

REPRESENTATIVE KOPP said (Indisc.) transaction happened to be the state and the person to whom the land was conveyed to, he

asked whether it would be the state's job to prove the liability.

MR. HALVERSON answered that the burden would be on the party who previously owned the property. This case deals with properties that were under federal ownership and conveyed to the corporations.

[2:28:17 PM](#)

REPRESENTATIVE KREISS-TOMKINS noted that many of these conveyances are from the federal government to the Native Corporations under the Alaska Native Claims Settlement Act (ANCSA), and asked where the State of Alaska and DEC fit into that equation, and why DEC would have any obligation if this is a transaction between two parties that are not the State of Alaska.

MR. HALVERSON opined that if there is a disagreement between the current landowner and the federal government over responsibility for contamination on the land, the state would typically look to those parties to sort it out and it would provide oversight on any necessary cleanup. Under adopted Amendment 1, the state may incur some additional expenses in trying to research the history on when contamination occurred and whether the Native Corporation had caused or contributed to existing problems at the site.

CHAIR CLAMAN added that one of the key concepts to recognize in SB 202, page 1, lines 9-11, read as follows:

damages, for the costs of response, containment, removal, or remedial action incurred by the state, a municipality, or a village, and for the additional costs of a function or service, including administrative expenses for the incremental costs of providing the

CHAIR CLAMAN advised the if there is contamination, typically the state or municipality engages costs and then looks to the landowner for reimbursement. The above provision essentially says that if there is an effort by the state to try to recoup those costs, it would have to be able to show that the Native Corporation had caused the contamination.

[2:30:26 PM](#)

REPRESENTATIVE KOPP stated that this comes down to a fundamental due process issue because Native Corporations are a corporation, but they are also Alaskans and have been given land under ANSCA. Without this amendment, they would be required to wage legal war with the federal government, who has limitless resources. He opined that this puts the Native Corporations on a more equal footing wherein they are not presumed guilty until they prove otherwise. He said that it introduces a due process protection, which is "very important."

[2:31:11 PM](#)

CHAIR CLAMAN pointed out that no motion had been introduced to change the committee's action on Amendment 1, and moved on to committee discussion.

[2:31:17 PM](#)

REPRESENTATIVE EASTMAN noted that Amendment 2 was not discussed because its sponsor withdrew the amendment. He commented that the sponsors of this bill make a strong point that liability ought not be placed where it does not belong, and Amendment 2 makes that same point. He said that he looks forward to being able to support that amendment or other language at the first opportunity.

[2:32:16 PM](#)

REPRESENTATIVE STUTES commented that she is happy to see SB 202 because her district contains some contaminated areas that have absolutely crippled the Native Corporation from developing the areas. She opined that possibly with SB 202, it will allow the Native Corporations some recourse to move forward because in her area as well, as many other rural areas, housing is a huge problem and the Native Corporations are unable to develop their lands for housing due to these types of issues.

[2:32:56 PM](#)

CHAIR CLAMAN commented that he is particularly pleased with Amendment 1 because it puts state law and federal law on the same path, which is a positive step. Thereby, he advised, the Native Corporations would not have to look at two different rules for two different jurisdictions as they move forward.

[2:33:18 PM](#)

REPRESENTATIVE KREISS-TOMKINS REPRESENTATIVE moved to report SB 202, labeled 30-LS1422\A, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, SB 202(JUD) passed out of the House Judiciary Standing Committee.

[2:33:41 PM](#)

The committee took an at-ease from 2:33 p.m. to 2:51 p.m.

[2:51:01 PM](#)

CHAIR CLAMAN announced that the final order of business would be HOUSE BILL NO. 336, "An Act relating to supported decision-making agreements to provide for decision-making assistance; and amending Rule 402, Alaska Rules of Evidence."

HB 336-SUPPORTIVE DECISION-MAKING AGREEMENTS

[2:51:52 PM](#)

HANS RODVICK, Staff, Representative Charisse Millett, Alaska State Legislature, advised that HB 336 is known as the "Supported Decision-Making Agreements Act," (Indisc.). This legislation basically creates a new legal framework to help Alaskans with intellectual and developmental disabilities to live fuller, happier, more individualized, and automatous lives. He offered that this bill promotes a philosophy grounded in the principles of equal rights and a belief that all individuals do possess inherent capacities to make decisions and share opinions regarding their lives. Working in conjunction with the Governor's Council on Disabilities and Special Education, this legislation is brought forward to create a new avenue to help adults with intellectual and developmental disabilities (IDD) receive necessary support and help those Alaskans avoid being placed under full guardianship. Guardianship in Alaska is over-utilized, he described, because currently there are over 100 wards per public guardian while the national recommendation caseload is one public guardian for 40 wards. Full guardianship is selected when there are no other less restrictive options for individuals who need that support, and in Alaska, there are not many other options outside of full guardianship. Individuals with intellectual and developmental disabilities (IDD) many times are placed under full guardianship even though they may have the capacity to makes their own decisions. These high caseload numbers can lead to the potential failure to meet on a monthly basis as required by state law, and loss of independence

and self-expression and less employment opportunities for those individuals with disabilities, he said.

2:54:10 PM

MR. RODVICK explained that HB 336 will assist the elderly in Alaska with IDD issues and retain their inherent right to make decisions for themselves. Likewise, he related, it will ensure that the Office of Public Advocacy (OPA) is truly spending its time helping and assisting those who require full guardianship. The sponsor believes, he offered, that it is necessary to give the Alaskans stuck in full guardianship the opportunity for self-direction and restoring their inherent right to self-decision making.

2:54:40 PM

REPRESENTATIVE KREISS-TOMKINS moved to adopt CS for HB 336, labeled 30-LS1239\U, Bannister, 3/29/18 as the working document. There being no objection, Version U was before the committee.

CHAIR CLAMAN opened invited testimony on CSHB 336.

2:56:24 PM

PROFESSOR HELEN GAEBLER, Senior Research Attorney, University of Texas School of Law, advised that she is the Senior Research Attorney for the William Wayne Justice Center for Public Interest Law at the University of Texas School of Law. She offered her appreciation for the opportunity to share some of what they have learned in Texas about supported decision-making following enactment of its own Supported Decision-Making (SDM) legislation which went into effect on September 1, 2015. As previously noted, supported decision-making (SDM) is an important tool for persons who need some support but not necessarily a guardianship. In Texas and elsewhere, limited guardianship is seldom used as a lesser restrictive alternative, and the SDM law in Texas has allowed for less restrictions on the self-determination of persons with disabilities, and provides an alternative that keeps families without resources out of court. Her experience with SDM, she explained, stems from work with her colleague, Lucy Wood who is a former disability rights Texas attorney, and their law school's pro bono program. Professor Gaebler then discussed the work they have been able to accomplish that includes: SDM pro bono clinics in and around Austin, including clinic each year at the Texas School for the Blind and Visually Impaired, and in the Rio

Grande Valley; partnered with approximately 20 school districts; counseled more than 360 clients and their families; facilitated at least 78 Supported Decision-Making (SDM) agreements; provided information about SDM and the Texas legal requirements around guardianship alternatives for many more individuals and families.

[2:58:32 PM](#)

PROFESSOR HELEN GAEBLER advised that for purposes of this hearing, she attempted to gather additional information from other legal providers and advocates. Specifically, she said, she reached out to Disability Rights of Texas, Texas Rio Grande Legal Aid, and the guardianship reform supported decision-making stakeholder groups which first spearheaded the SDM movement in Texas. As of this afternoon, she advised that she received the following information: Disability Rights of Texas reports having served an additional 158 clients and almost all having signed SDM agreements as a result of meeting with the "RTX." The RTX also performs much of the state's training pursuant to a Texas Council on Developmental Disabilities Training Grant, and within the first two years of that grant, the RTX reports having trained almost 6,000 individuals on Supported Decision-Making (SDM) and the Texas legal requirements. The training was for self-advocates and families, legal professionals, schools, parents, service providers, and other professionals. For its part, she explained, Texas Rio Grande Legal Aid estimates it has assisted approximately 100 individuals with SDM agreements and most of these clients were transitioning use and it involved families who were combining SDM agreements with other forms of legal support, such as limited powers of attorney. Its lead trial attorney advised that she has seen more and more applicants specifically seeking SDMs and the power of attorneys as opposed to guardianship, noting that the SDM reforms appear to have done a lot to educate the larger population about guardianship alternatives more generally.

[3:00:17 PM](#)

PROFESSOR HELEN GAEBLER said she would point out three trends that have been quite consistent across all of these cases. First, overwhelmingly the population Texas is serving is one of transitioning use who are in or have recently graduated from a transitional learning program. Second, the majority of clients served, certainly through the law school, are individuals who are on the autism spectrum, although many also may have a co-occurring secondary diagnosis. Third, almost all of the law

school's clients have chosen their parents or other family members to serve as their supporters, and she said that she believes this is also the case for the RTX and (indisc.) clients. Importantly, she commented, the feedback on these agreements has been universally positive, the law school has not received any complaints regarding use or misuse of the SDM agreements, and a professor at Rio Grande Legal knows of only two incidents from all of its client contacts and other outreach where an agreement was not accepted by a third party. In at least one of those cases and possibly both, the refusal to accept was due to a lack of awareness about the SDM law in Texas and not due to any substantive concern. In the case of (indisc.) clients, the lead probate attorney reported that most of the third parties she has been involved with have been happy to have something "official" to rely upon in dealing with their individual disability and their family. As to the challenges in implementation, she offered, the one recurring comment has been the challenge of educating the public about the statute and the alternatives to guardianship more generally. Even with the RTX's extensive training and programs like the law school's clinics, it is slow work (coughing) all of Texas. (Audio difficulties.) The comment she received from (indisc.) today was that when families hear about SDM agreements, they "sigh with relief" and are happy with the idea of not taking their child's rights away. The consensus is that this helps families in a meaningful manner, and she offered that this comment certainly comports with the experience they have had at the law school with clients. It is exciting that Alaska is contemplating a SDM statute and, she reiterated that the experiences in Texas have been positive and it continues to push for implementation.

[3:02:59 PM](#)

MR. RODVICK paraphrased the sectional analysis as follows [original punctuation provided]:

Section One: Amending AS 13, which related to decedents' estates, guardianships, transfers, trusts and health care decisions, by adding a new chapter - chapter 56

13.56.010: Authorizes adults to enter into a supported decision-making agreement(SDMA) and spells out reasons why an adult may not enter a SDMA.

13.56.020: Describes the requirements adults must meet to be qualified as supporters in SDMAs.

13.56.030: Sets the parameters for what a SDMA must contain to be legitimate. Also deals with alternate supporters and sharing of information amongst supporters.

13.56.040: This section lays out the precise requirements for a SDMA to be valid, and how the principal and supporter(s) may formalize the signing of the SDMA.

13.56.050: Mandates that each supporter acknowledge their relationship with the principal and their responsibilities to support the principal.

13.56.060: Delineates who a witness to the signing of the SDMA can and cannot be.

13.56.070: Clarifies when a SDMA becomes effective and how long they last.

13.56.080: This section details how either a principal or supporter(s) of a SDMA may terminate all or portions of a SDMA. Likewise, explains what happens to a SDMA if only portions of it are terminated.

13.56.090: States the general duties of supporters.

13.56.100: Outlines the areas of a principal's life, including health, finances, education and communication, that a supporter may provide support in. Also provides a way for supporters to help the principal deal with health information covered under federal healthcare privacy laws.

13.56.110: Prohibits supporters from wrongfully guiding and influencing the principal in a harmful manner. This section also prohibits supporters from using or obtaining the principal's personal information without their consent.

13.56.120: Requires the supporter(s) of a principal to keep all information related to the

principal confidential, protected and shielded from unauthorized use.

13.56.130: Directs people who interact with principals/supporter(s) to recognize the communication, requests and decisions made by the principal (with support from the supporter(s)) as if that communication, request or decision was made solely by the principal.

13.56.140: This section absolves a person (for three distinct reasons) from civil or criminal liability or discipline for unprofessional conduct if they either comply or decline to comply with an authorization in a SDMA.

13.56.150: Delineates the circumstances in which a principal is capable and has capacity. A principal doesn't lack capacity based on how they communicate. Likewise, a principal may make decisions without the support of a supporter(s). Lastly, the existence of a SDMA doesn't mean a principal lacks capacity.

13.56.160: Deals entirely with the affairs of a principal that a SDMA may cover. Work, healthcare, support services education, finances, living arrangements and more are all discussed.

13.56.170: This section spells out the multitude of support services, as referenced in 13.56.160, that supporter may provide the principal as agreed upon in the SDMA.

New Section: 13.56.180: This section creates a statutory form for supported decision-making agreements as prescribed in the other sections of HB 336.

1) Introduction: Principal declares their desire to enter a SDMA.

2) Supporters: Supporters fill out their information and select what they will be helping the principal with. Provides for an alternate supporter to enter the SDMA.

3) Information Access Forms: Enables supporters to obtain the principal's private information.

4) Guardians and Conservators: Principal must declare whether they have a guardian or conservator.

5) Notice to Third Parties: Outlines the rights and obligations of supporters and ensures that a third party must recognize a principal's request or decision as declared under AS 13.56.130.

6) Duration and Termination of Agreement: Principals may end the agreement at any time by giving notice to their supporters.

7) Signature of Principal: Recognition of voluntary signature of the principal to enter the SDMA

8) Signatures of Supporters: Self explanatory

9) Declaration of Supporters: Supporters and possible alternate supporter sign again and acknowledge their role to help the principal with the mutually agreed upon terms.

10) Notarization or Witnessing: Provides area for notary or two witnesses to sign and make the SDMA official.

11) Approval by Guardian: Space for the guardian to approve the principal entering the SDMA.

12) Approval by Conservator: Space for a conservator to approve the principal entering the SDMA.

13.56.190: Definitions

13.56.195: The short title of House Bill 336 is the Supported Decision-Making Agreements Act.

Section 2: Amends Alaska Court Rule 402, Alaska Rules of Evidence, to clarify that the execution of a SDMA cannot be used as evidence of a principal's incapacity.

Section 3: Amends the uncodified law of Alaska by amending Court Rule 402 and clarifies the two-thirds majority vote of each house needed to achieve such action.

3:09:05 PM

REPRESENTATIVE KOPP asked whether it is the intent of this legislation to have a non-governmental private party support persons regardless of the age of the adult. While noting that this legislation is for adults, he said he could imagine an 18-year old with certain disabilities to end of life situations to have something outside of the standard guardian relationship. It appears that no money is involved in this legislation, and it is simply an agreement, he opined.

MR. RODVICK said that Representative Kopp "hit the nail on the head," because the point of supported decision-making agreements is that they are non-governmental agreements between private citizens. Under this legislation there are no extraneous regulations created, there is a zero-fiscal note, and the sponsor was able to "smooth things out" with the Department of Health and Social Services (DHSS). The goal is to ensure that these individuals have support networks of their family, their friends, and individuals they know, to help them throughout their life whether it be dealing with their taxes or otherwise.

3:10:56 PM

REPRESENTATIVE EASTMAN commented that most of the public does not know what these supported decision-making agreements are, and if someone from the public were to ask whether it could be used to help someone end their life, he asked how Mr. Rodvick would respond.

MR. RODVICK responded that the legislation does not presume that individuals will be using supported decision-making agreements to terminate their lives, its intent is to help people make decisions to promote and ensure that they have positive lives and positive outcomes. He referred to CSHB 366, Sec. 13.56.140(3) "Limitation of liability," page 3, lines 12-18, which read as follows:

(3) declining to comply with an authorization related to health care in a supported decision-making agreement, if the person is declining because the action proposed to be taken under the

supported decision-making agreement is contrary to the good faith medical judgment of the person or to a written policy of a health care institution that is based on reasons of conscience.

MR. RODVICK explained that if the doctor has the good conscience and the written policy of a health care institution that does not believe in terminating life before its natural end, they can certainly object. He opined that Alaska has not gone down the road of permitting [end of life efforts].

[3:12:58 PM](#)

REPRESENTATIVE EASTMAN offered a scenario of a series of people who all want to be involved in helping someone end their life and they decide to use this process to pursue that goal, he asked whether anything in the bill would prohibit those actions.

MR. RODVICK deferred to Anne Applegate of the Governor's Council on Disabilities and Special Education, and opined that the protections currently outlined in law would protect people from going down that road and it is not currently under the purview of the legislation.

[3:14:07 PM](#)

REPRESENTATIVE LEDOUX opined that under current Alaska law assisting someone with suicide is a crime and suicide itself is considered a crime.

REPRESENTATIVE KOPP clarified (Indisc.) would already be a crime so anyone assisting someone in terminating their life would be in trouble, and this bill is neutral on that issue, it does not facilitate suicide.

[3:15:16 PM](#)

CHAIR CLAMAN opened public testimony on HB 366.

[3:16:00 PM](#)

ANNE APPELEGATE, Program Coordinator, Governor's Council on Disabilities and Special Education, explained that the Governor's Council on Disabilities and Special Education is the inner-agency coordinating council for the infant learning program, and is also the special education and (Indisc.) panel for the Department of Education and learning development. The

council's members are the real movers behind HB 336, and the majority of its members are those who experience disabilities or are the family members of people with disabilities. It is their commitment to SDMA's that brought HB 336 to the House Judiciary Standing Committee, and continues to be the compelling force behind this legislation. Ms. Applegate, in response to Representative Eastman's concern, advised that the section that dictates what type of decision-making assistance can be made is under AS 13.56.100. Beyond looking at the specific language in each of those subsections which provides detailed types of support, the theme running through those subsections is about providing assistance for a thought process, not for any type of action. Therefore, she pointed out, in the event the discussion was about something that was a legal action, there would not be that type of assistance from someone supporting a thought process.

[3:18:29 PM](#)

IAN MINER advised he is representing himself, and when he turned 18, his high school recommended that his parents obtain guardianship in order to make his decisions as to his education, medical entities, and finances. (Audio difficulties) 10-minute hearing with the judge and that his parents/guardians could not make decisions without discussing it with him first. His parents have always helped him with his goals, he moved into his own home, has a full-time job, and a car. He advised that when he turned 23, his family hired a lawyer and began the two-year process of having the order removed. (Indisc.) power of attorney for his finances, and Supported Decision-Making Agreements were not even an idea in Alaska when he turned 18. In the event it had been an option, that is probably the road they would have taken so he could have described the help and information he wanted with the financial decisions that made him secure. He also would have retained his rights. He acknowledged that he does not know how his life would have been different, but he now knows that he did not need a full guardianship.

[3:20:42 PM](#)

KEN HELANDER, Advocacy Director, American Association of Retired Persons (AARP), explained that the American Association of Retired Persons Alaska is the state's largest member organization. He related that he has the privilege of working with the American Bar Association's Working Interdisciplinary Networks of Guardianship Stakeholders (WINGS) project, which

looks for alternatives to court appointed guardianship. While SDMAs are more and more common for people with developmental disabilities, the concept is also increasingly recognized as a useful tool for older people and advanced planning. He stressed that AARP fully supports SDMAs and was involved in the other states, notably Texas and Delaware, where similar legislation was passed and implemented. The AARP works with stakeholder groups for the assistance and development of tools to guide named supporters in their roles and offer families and affected individuals a framework tailored for the types of problems older people can face that could lead to the need for a guardian. He related that AARP Alaska will certainly do the same for this state. He said SDMA are particularly useful for people with a diagnosis of early stage dementia, such as Alzheimer's Disease. These individuals have enough impairment to make a diagnosis, but also have sufficient capacity to continue to make most of their decisions. Nevertheless, whether by such a diagnosis or simply by age, often these individuals become invisible to medical providers, banks, and even family members and friends. He offered that people will often direct conversations to the spouse or to an adult child as though the older person was not present and could not possibly understand anyway. Not only is this a gross misunderstanding of the disease, it denies the older person the dignity and respect of self-determination and making choices. The SDMA utilizes the practice familiar to everyone seeking council from trusted family, friends, and professionals. The SDMAs simply structure that practice into a legal framework which can guide decisions that must be made when the older person's capacity may diminish as the disease progresses. Rather than becoming invisible and ignored, SDMAs keep the affected individual at the center of the decision-making process. He encouraged the passage of HB 336 as a useful tool for advanced planning.

[3:23:34 PM](#)

HEIDI KELLY advised that she represents herself as a self-advocate for the Governor's Council on Disabilities and Special Education. She stressed that she is honored to voice how this legislature's actions directly affect Alaskans with disabilities, including her and her son. Their lives are impacted by the decisions of this legislature, and she offered testimony as follows:

You cannot wait another second to pass this bill into law. To understand my passion for testifying today, my son, my daughter, and I are all on the autism

spectrum. Autism doesn't define who I am or who I continue to become (Audio difficulties.) I am a part of the Council appointed to use my voice for the Governor's Council on Disabilities and Special Education. I am an autistic speaker advocate (indisc.) professionals and different community members at many venues throughout Alaska with the help of people expanding me to become a national speaker. I have an autism-based business and have accomplished many other things, and I hope to simply inspire others. People never thought it would be possible since I was the typical autistic kid that people assume autism is all about. But I have grown up, I learn along the way, and I continue to make a difference. This is to simply show that if people decided to take full guardianship of me, and not (indisc.) my side support and teach me to use my voice to make my own decisions with proper education, I would not be who I am today. Full guardianship takes away your voice when you have one to use. When my son turned 17, I was structured to become his guardian. Full guardianship does not work for my family, but a Supported Decision-Making Agreement allows us to have a voice of our own lives, yet receive all of the information and support we need to make proper decisions for ourselves and live our lives to the fullest, and what would be the best route for us. Being who I am, what I've gone through, and knowing what my son can become, I will not take his voice away. If any person with disabilities has any form of communication, they should not have a court system or a family member take their voice away from them. We deserve a community that helps us do everything possible to achieve our very best. Because people allowed me to make my own decisions and give me help with what I need, I'm here today to make a difference because people came along my side to help me to do that. Passing this bill is a must to help Alaskans with disabilities have better lives. When you do what you need to do today, you help all of us become the best we can be. (Audio difficulties) logical part of autism, it is still logical to use the power you have to do the job you signed up for, which is to make a difference for the Alaskan people. So, I thank you ahead of time from me and many others when you move forward with this bill. Don't wait another second or push this off one more minute because the most

important decision you make starts right now. Thank you.

[3:27:17 PM](#)

CHAIR CLAMAN, after ascertaining no one wished to testify, closed public testimony on HB 336.

[3:27:28 PM](#)

CHAIR CLAMAN asked Mr. Rodvick whether the Commission on Uniform Laws has taken a position or performed any work on this particular concept.

MR. RODVICK responded that he did not believe so, but his office has not heard from the Commission on Uniform Laws.

CHAIR CLAMAN noted that the Commission on Uniform Laws typically does not perform outreach and may not contact his office. He asked that prior to the next hearing to research whether this a particular subject within which the commission has performed work because it is always interesting to see whether there is any evolving consensus that would be reflected in model legislation.

[3:27:59 PM](#)

REPRESENTATIVE KOPP asked Chair Claman to explain to Mr. Rodvick the types of directives involved with the Commission on Uniform Laws.

CHAIR CLAMAN advised that he would speak with Mr. Rodvick after this meeting.

[HB 336 was held over.]

[3:29:50 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:30 p.m.