

ALASKA STATE LEGISLATURE
HOUSE HEALTH AND SOCIAL SERVICES STANDING COMMITTEE

February 22, 2022

3:21 p.m.

MEMBERS PRESENT

Representative Liz Snyder, Co-Chair
Representative Tiffany Zulkosky, Co-Chair
Representative Ivy Spohnholz
Representative Zack Fields
Representative Ken McCarty
Representative Mike Prax
Representative Christopher Kurka

MEMBERS ABSENT

All members present

OTHER LEGISLATORS PRESENT

Representative Andy Josephson

COMMITTEE CALENDAR

HOUSE SPECIAL CONCURRENT RESOLUTION NO. 2
Disapproving Executive Order No. 121.

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HSCR 2

SHORT TITLE: DISAPPROVING EXECUTIVE ORDER 121

SPONSOR(s): HEALTH & SOCIAL SERVICES

02/22/22 (H) READ THE FIRST TIME - REFERRALS

02/22/22 (H) HSS

02/22/22 (H) HEALTH & SOCIAL SERVICES at 03:00 PM
DAVIS 106

WITNESS REGISTER

ANDREW DUNMIRE, Legislative Counsel
Legislative Legal Services
Legislative Affairs Agency
Juneau, Alaska

POSITION STATEMENT: Answered questions during the hearing on HSCR 2.

STACIE KRALY, Director
Civil Division (Juneau)
Department of Law
Juneau, Alaska

POSITION STATEMENT: Answered questions during the hearing on HSCR 2.

ADAM CRUM, Commissioner
Department of Health and Social Services
Anchorage, Alaska

POSITION STATEMENT: Answered questions during the hearing on HSCR 2.

ACTION NARRATIVE

[3:21:29 PM](#)

CO-CHAIR LIZ SNYDER called the House Health and Social Services Standing Committee meeting to order at 3:21 p.m. Representatives Spohnholz, Fields, McCarty, Prax, and Snyder were present at the call to order. Representatives Kurka and Zulkosky arrived as the meeting was in progress. Also present was Representative Josephson.

HSCR 2-DISAPPROVING EXECUTIVE ORDER 121

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CO-CHAIR SNYDER announced that the only order of business would be HOUSE SPECIAL CONCURRENT RESOLUTION NO. 2, Disapproving Executive Order No. 121.

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CO-CHAIR SNYDER, in response to Representative McCarty, reviewed that in order to make any changes to an executive order, the legislature must draft legislation, and that is the purpose of HSCR 2.

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CO-CHAIR SPOHNHOLZ asked whether the administration could still introduce a bill after the personal legislation deadline.

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ANDREW DUNMIRE, Legislative Counsel, Legislative Legal Services, Legislative Affairs Agency, confirmed that the governor may introduce bills after the personal legislation deadline.

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CO-CHAIR SNYDER noted that the committee had heard from Legislative Legal and Research Services, the Department of Law (DOL), and the Department of Health and Social Services (DHSS) during the previous meeting on Saturday. She highlighted the issue of potential additions and subtractions to EO 121 that may broaden or reduce legislative authority.

CO-CHAIR SNYDER highlighted Sections 28, 29, 133, and 65. She questioned whether a change in wording of Section 28 would be considered a broadening of authority. She noted that DOL had a response and asked Mr. Dunmire to give a brief overview of the concerns outlined in his memorandum ("memo").

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MR. DUNMIRE responded that under AS 44.29.020(a), DHSS shall administer "state programs including" [emphasis on "including"] and observed that under current Alaska state law, the legal definition of including - "including but not limited to" - means the proposed Department of Health (DOH) would be able to administer any state program.

CO-CHAIR SNYDER asked if the word "including" was a less concerning issue than the removal of the specification of public health and social services related programs under EO 121.

MR. DUNMIRE responded that Co-Chair Snyder was correct; however, if that phrase is removed, the issue wouldn't be present.

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MR. DUNMIRE, in response to Representative McCarty, offered his understanding that statute currently lists the programs assigned to departments; however, he reiterated that the use of "including" does not limit the department to what is currently listed. In response to a follow-up question, he indicated just one section in EO 121 laid out the programs that would be run by DOH.

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STACIE KRALY, Director, Civil Division (Juneau), Department of Law, in response to Representative McCarty's question, highlighted Section 41 of EO 121, which provides a multi-page list of items that DOH would manage as a result of the reorganization. She mentioned the instructions to the advisor, which are in Section 134 and 135. She stated that every division has its own statutory scheme under which it operates. For example, she stated that the Division of Healthcare Services operates the Medicaid system, and all of the provisions under the statute relating to Medicaid are currently found under AS 47.05 and AS 47.07. She stated, "Those references are further clarified and reassigned and reorganized under the executive order through instructions to the advisor, so it's clear that those duties ... [would be] assumed by the Department of Health." She offered further examples of where the instructions for other divisions are found under statute and how further instructions to the advisor clarifies the management role of DOH. In response to Representative McCarty, she confirmed that "the totality of the executive order frames the duties that apply to each one of the departments."

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CO-CHAIR SNYDER observed that the language in that section is "loose," and some may be concerned that it may open up a door for DOH to engage in activities within DFCS, for example. Other sections in EO 121 may point to more specific duties. She asked if that summation was correct.

MS. KRALY responded, "That's exactly right." She added that when looking at the entirety of EO 121, how statutes are constructed, and how the administration has reallocated the divisions under the executive order, "it would be kind of hard to ... add those additional far-flung ideas to the Department of Health."

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MR. DUNMIRE, in response to Co-Chair Snyder, confirmed that the only way to change the executive order would be to pass a concurrent resolution; there is no way to amend EO 121 directly.

MS. KRALY concurred.

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REPRESENTATIVE FIELDS suggested it would make more sense to address EO 121 and HSCR 2 simultaneously.

MS. KRALY responded that that is one way to do it; however, she explained that the administration wants to ensure everything has been identified "through this process" so that "we are not doing successive companion bills."

REPRESENTATIVE FIELDS opined that it would be "cleaner" to do both at the same time.

MS. KRALY disagreed. She said the idea that [EO 121] is an overreach is broad. There are technical issues that need to be addressed. She speculated this would require more than one companion bill because "this is a big fix" to a big document, and the intent is "to get it right." She added that some of the things Legislative Legal Services thinks need to be fixed may not need to be fixed because they are "more operational in implementation."

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REPRESENTATIVE PRAX expressed a conceptual obstacle that "if we do nothing, this executive order becomes effective." He said, "We want to do something and nothing at the same time." He concluded, "We've got a whole bunch of stuff to go through, and it might be good to just put this in a parking lot and deal with it later."

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CO-CHAIR ZULKOSKY expressed that there seems to be a shared desire to remedy programs that seem to be in crisis. She acknowledged the concern about protecting the institution with respect to the legislature and ensuring the constitutional obligation to set policy is protected. She asked Mr. Dunmire and Ms. Kraly, because an executive order cannot be amended, what tools are available to the legislature to protect the institution from ceding its authority to set policy. She said she understands the concern expressed by Ms. Kraly at the prior meeting on Saturday, regarding the cumbersome process of making this proposed change via legislation, but she also expressed her concern about any unintended consequence regarding separation of powers.

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MR. DUNMIRE responded that EO 119 had been far more egregious, with blatant statutory changes. He said he does not think EO 121 "rises to a level that it would risk being invalidated by a court ... if the legislature were to not disapprove it." He recommended that the legislature, in protecting its statutory authority, could either disapprove EO 121 outright or make changes by drafting a companion bill.

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CO-CHAIR ZULKOSKY asked Ms. Kraly whether DOL or [DHSS] has made recommendations on statute the legislature might consider.

MS. KRALY responded that [DOL] has an idea of the things that may need some technical revision but has not drafted a companion bill to that effect. She expressed that some of the issues can be fixed through a revisor's bill, and other issues may necessitate a companion bill. In response to a follow-up question, she explained that a revisor's bill is a technical bill that fixes things like typographical errors.

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MR. DUNMIRE added that the revisor's ability to change law is extremely limited to technical matters. Any changes to the meaning of the law or wording of statute would require a companion bill.

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CO-CHAIR ZULKOSKY highlighted the difficulty with time constraints. She asked Ms. Kraly what the timeline is in terms of consideration of a companion bill.

MS. KRALY responded that she does not have a date, but that if one looks at the history of executive orders, some of which need fixes, the intention is to make sure that the executive order works, and any necessary fixes can be made outside of the 60-day timeline.

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ADAM CRUM, Commissioner, Department of Health and Social Services, to the same line of questioning, responded that DHSS would work to address some of the large items and get something back to the legislature and ensure that options are presented.

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REPRESENTATIVE SPOHNHOLZ offered her understanding that legislation is the guidebook for the thousands of employees in DHSS. She expressed that she is reluctant to wait until next year for companion legislation for the executive order. She asked Mr. Dunmire for a description of the process behind a revisor's bill versus a companion bill.

MR. DUNMIRE responded that he is unable to answer the question because he has not worked as a revisor.

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REPRESENTATIVE MCCARTY speculated on the amendments or edits that may need to be made and the importance of getting it right at the beginning rather than waiting a year, for example.

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CO-CHAIR SNYDER asked about "potential additions and subtractions." She turned attention to AS 44.29.020, which lists the duties of DHSS. She noted that Section 29 of EO 121 states that DOH would establish regulation of "scheduled reasonable fees" for services provided by the department. She mentioned there is another section that addresses DFCS. She indicated it would be reasonable to think the duties from one are transferred to the other without change, but in the subset of duties directed to DFCS, what was "Child Welfare Services" under AS 44.29.020(a)(12) would be "Child Welfare and Delinquency Services" under EO 121. She asked where the change came from and what the implications might be. She clarified that's in Section 36 of EO 121.

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CO-CHAIR SNYDER, in response to Ms. Kraly, clarified her question.

MS. KRALY responded that within DFCS would be the Pioneer Home, the Division of Juvenile Justice, Delinquency Services, the Office of Children's Services, Child Welfare, and the Alaska Psychiatric Institute. She explained, "So, what we were trying to do was identify the programs that would be administered under the department," to "replicate the intent and the language of the previous statute" but "to create this new statute." She

emphasized, "It's not an addition; it's not a new program." She further explained that this was framed in a way that would describe what was being assigned from the old department to the new one.

CO-CHAIR SNYDER said she understood but commented that "it seems to open the door for some additional programming." She questioned the rationale.

MS. KRALY answered that the rationale was to ensure that the provisions under AS 44.29 matched the duties under AS 44.05 and 44.06, because there was no reference to the delinquency programs, and clearly those programs are managed by DHSS. She concluded, "It's an existing program in [a] division within the department that needed to be allocated within this executive order." In response to Co-Chair Snyder, she further clarified that it reassigns all existing programs to at least one of the two new departments [formed under EO 121].

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REPRESENTATIVE SPOHNHOLZ said she understands both sides of the discussion. She pointed to "management of state institutions" on page 44, line 2, of EO 121, and said it references the Division of Juvenile Justice; line 3 includes Delinquency Services. She said it seems that two terms of art were used to describe the same services, but she asked if they mean different things.

MS. KRALY responded that there was nothing intended other than to clarify the existing programs being allocated to the two departments; "they are not intended for different purposes."

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CO-CHAIR SNYDER made brief closing comments.

[4:10:23 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Health and Social Services Standing Committee meeting was adjourned at 4:10 p.m.