

ALASKA STATE LEGISLATURE
SENATE HEALTH AND SOCIAL SERVICES STANDING COMMITTEE

April 26, 2022

1:35 p.m.

MEMBERS PRESENT

Senator David Wilson, Chair
Senator Shelley Hughes, Vice Chair
Senator Lora Reinbold
Senator Tom Begich

MEMBERS ABSENT

Senator Mia Costello

COMMITTEE CALENDAR

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 62 (JUD) AM

"An Act relating to the Legislative Ethics Act; relating to solemnization of marriage; and relating to consent to marriage."

- MOVED SCS CSHB 62 (HSS) OUT OF COMMITTEE

SENATE BILL NO. 242

"An Act relating to exemptions for the purchase and sale of certain food products for home consumption under the Alaska Food Freedom Act."

- HEARD & HELD

SENATE BILL NO. 183

"An Act relating to home and community-based services; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 62

SHORT TITLE: MARRIAGE: WITNESSES/SOLEMNIZATION/CONSENT

SPONSOR(S): REPRESENTATIVE(S) CLAMAN

02/18/21	(H)	PREFILE RELEASED 1/15/21
02/18/21	(H)	READ THE FIRST TIME - REFERRALS
02/18/21	(H)	STA, JUD

02/25/21 (H) STA AT 3:00 PM GRUENBERG 120
 02/25/21 (H) -- MEETING CANCELED --
 03/04/21 (H) STA AT 3:00 PM GRUENBERG 120
 03/04/21 (H) Heard & Held
 03/04/21 (H) MINUTE(STA)
 03/09/21 (H) STA AT 3:00 PM GRUENBERG 120
 03/09/21 (H) Heard & Held
 03/09/21 (H) MINUTE(STA)
 03/11/21 (H) STA AT 3:00 PM GRUENBERG 120
 03/11/21 (H) Moved HB 62 Out of Committee
 03/11/21 (H) MINUTE(STA)
 03/12/21 (H) STA RPT 4DP 2DNP 1AM
 03/12/21 (H) DP: CLAMAN, STORY, TARR, KREISS-TOMKINS
 03/12/21 (H) DNP: EASTMAN, VANCE
 03/12/21 (H) AM: KAUFMAN
 03/19/21 (H) JUD AT 1:30 PM GRUENBERG 120
 03/19/21 (H) <Bill Hearing Canceled>
 03/24/21 (H) JUD AT 1:30 PM GRUENBERG 120
 03/24/21 (H) Heard & Held
 03/24/21 (H) MINUTE(JUD)
 03/29/21 (H) JUD AT 1:00 PM GRUENBERG 120
 03/29/21 (H) <Bill Hearing Canceled>
 03/31/21 (H) JUD AT 1:00 PM GRUENBERG 120
 03/31/21 (H) Moved CSHB 62(JUD) Out of Committee
 03/31/21 (H) MINUTE(JUD)
 04/05/21 (H) JUD RPT CS(JUD) NEW TITLE 4DP 3DNP
 04/05/21 (H) DP: DRUMMOND, KREISS-TOMKINS, SNYDER,
 CLAMAN
 04/05/21 (H) DNP: EASTMAN, VANCE, KURKA
 03/09/22 (H) SUSTAINED RULING OF CHAIR Y21 N14 E4 A1
 03/11/22 (H) TECHNICAL SESSION 3/11 - ON 3/14
 CALENDAR
 03/16/22 (H) TRANSMITTED TO (S)
 03/16/22 (H) VERSION: CSHB 62(JUD) AM
 03/18/22 (S) READ THE FIRST TIME - REFERRALS
 03/18/22 (S) HSS, JUD
 04/05/22 (S) HSS AT 1:30 PM BUTROVICH 205
 04/05/22 (S) Heard & Held
 04/05/22 (S) MINUTE(HSS)
 04/19/22 (S) HSS AT 1:30 PM BUTROVICH 205
 04/19/22 (S) Heard & Held
 04/19/22 (S) MINUTE(HSS)
 04/26/22 (S) HSS AT 1:30 PM BUTROVICH 205

BILL: SB 242

SHORT TITLE: EXEMPTIONS FOR FOOD PRODUCTS

SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

04/08/22 (S) READ THE FIRST TIME - REFERRALS
04/08/22 (S) HSS, FIN
04/19/22 (S) HSS AT 1:30 PM BUTROVICH 205
04/19/22 (S) Heard & Held
04/19/22 (S) MINUTE (HSS)
04/26/22 (S) HSS AT 1:30 PM BUTROVICH 205

BILL: SB 183

SHORT TITLE: HOME AND COMMUNITY-BASED SERVICES
SPONSOR (s): GRAY-JACKSON

02/08/22 (S) READ THE FIRST TIME - REFERRALS
02/08/22 (S) HSS, FIN
04/26/22 (S) HSS AT 1:30 PM BUTROVICH 205

WITNESS REGISTER

JASMIN MARTIN, Staff
Senator David Wilson
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Answered questions on SB 242.

CHRISTINA CARPENTER, Director
Division of Environmental Health
Department of Environmental Conservation
Anchorage, Alaska

POSITION STATEMENT: Answered questions on SB 242.

EMMA POKON, Deputy Commissioner
Department of Environmental Conservation
Juneau, Alaska

POSITION STATEMENT: Answered questions on SB 242

DAVID RHODES, Chief Assistant Attorney;
Statewide Section Supervisor
Special Litigation and Consumer Protection
Civil Division

Department of Law
Anchorage, Alaska

POSITION STATEMENT: Answered questions on SB 242

SENATOR ELVI GRAY-JACKSON
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Sponsor of SB 183.

BESSE ODOM, Staff
Senator Elvi Gray-Jackson
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented the sectional analysis for SB 183.

JOHN LEE, Director
Division of Senior and Disability Services
Department of Health and Social Services (DHSS)
Anchorage, Alaska

POSITION STATEMENT: Answered questions on SB 183.

KATHERINE BACON, representing self
Palmer, Alaska

POSITION STATEMENT: Testified by invitation on SB 183.

DEBBIE MULHOLLAND, representing self
Anchorage, Alaska

POSITION STATEMENT: Testified by invitation on SB 183.

MARIANA MORANTE, Research and Policy Manager
Service Employees International Union (SEIU) 775
Seattle, Alaska

POSITION STATEMENT: Testified in support of SB 183.

ACTION NARRATIVE

[1:35:41 PM](#)

CHAIR DAVID WILSON called the Senate Health and Social Services Standing Committee meeting to order at 1:35 p.m. Present at the call to order were Senators Hughes, Reinbold, Begich and Chair Wilson.

HB 62-MARRIAGE: WITNESSES/SOLEMNIZATION/CONSENT

[1:36:39 PM](#)

CHAIR WILSON announced the consideration of CS FOR HOUSE BILL NO. 62(JUD) am "An Act relating to the Legislative Ethics Act; relating to solemnization of marriage; and relating to consent to marriage."

[The committee adopted SCS CSHB 62(HSS) 4/19/22 hearing.]

SENATOR BEGICH asked for confirmation that under the Senate CS an emancipated minor would retain the right to marry.

CHAIR WILSON said it was stated on the record during the previous hearing and the memorandum from Legislative Legal Services was discussed. He noted that nobody from Legal Services was online to respond to the question today, but he would ask for a response during hearings in the next committee of referral.

[1:36:53 PM](#)

SENATOR BEGICH said he knows the memorandum effectively says an emancipated youth is considered an adult for purposes of the contract of marriage and he appreciates the chair's assurance and the discussion that's on the record.

SENATOR REINBOLD asked whether the committee would hear the amendments from Senator Costello.

[1:38:18 PM](#)

At ease.

[1:40:20 PM](#)

CHAIR WILSON reconvened the meeting. Finding no final questions for the sponsor, he solicited a motion.

[1:40:34 PM](#)

SENATOR HUGHES moved to report the [Senate Committee Substitute] for HB 62, work order 32-LS0272\I, from committee with individual recommendations and attached fiscal note(s).

CHAIR WILSON asked if there was objection.

[1:40:48 PM](#)

At ease.

[1:40:58 PM](#)

CHAIR WILSON reconvened the meeting.

[1:41:01 PM](#)

CHAIR WILSON found no objection and SCS CSHB 62(HSS) was reported from the Senate Health and Social Services Standing Committee.

[1:41:06 PM](#)

At ease.

SB 242-EXEMPTIONS FOR FOOD PRODUCTS

[1:44:27 PM](#)

CHAIR WILSON reconvened the meeting and announced the consideration of SENATE BILL NO. 242 "An Act relating to exemptions for the purchase and sale of certain food products for home consumption under the Alaska Food Freedom Act."

He asked whether the department had any comments before the committee moved into the amendment process.

[1:44:55 PM](#)

CHRISTINA CARPENTER, Director, Division of Environmental Health, Department of Environmental Conservation, Anchorage, Alaska, stated that the department has no comments at this time.

[1:45:12 PM](#)

CHAIR WILSON moved to adopt Amendment 1, work order 32-GS2521\A.1.

32-GS2521\A.1
Bullard
4/25/22

AMENDMENT 1

OFFERED IN THE SENATE BY SENATOR WILSON
TO: SB 242

Page 2, lines 9 - 10:
Delete "non-potentially hazardous"
Insert "nonhazardous"

Page 2, line 26:
Delete "non-potentially hazardous"
Insert "nonhazardous"

Page 2, lines 27 - 29:
Delete "A retail space selling a homemade food product under this section shall inform the end consumer that the product has not been inspected and shall display a sign indicating that the product has not been inspected."

Page 3, line 9:
Delete "non-potentially hazardous"
Insert "nonhazardous"

Page 3, lines 10 - 12:

Delete "shall be clearly and prominently labeled with the following language: "This food was made in a home kitchen, is not regulated or inspected and may contain allergens." The non-potentially hazardous food for sale at the retail location or grocery store"

Page 3, line 17:

Delete "non-potentially hazardous"
Insert "nonhazardous"

Page 3, line 20:

Delete " ;"
Insert "."

Page 3, lines 21 - 24:

Delete all material and insert:

"(g) A producer or other seller of eggs or a nonhazardous food product under AS 17.20.331 - 17.20.339 shall include a clearly visible warning stating "This food is not regulated or inspected, and may contain allergens"

(1) on a label attached to the packaging of the eggs or nonhazardous food product; or

(2) if the eggs or nonhazardous food product do not have packaging or cannot be easily labeled, on signage in the area where the eggs or nonhazardous food product are sold.

(h) A producer of a potentially hazardous food product, except for eggs, under AS 17.20.331 - 17.20.339 shall include a clearly visible warning stating "This food is not regulated or inspected and may contain allergens. It is not for resale"

(1) on a label attached to the packaging of the potentially hazardous food product; or

(2) if the potentially hazardous food product does not have packaging or cannot be easily labeled, on signage in the area where the hazardous food product is sold."

Page 6, line 29:

Delete "non-potentially hazardous"
Insert "nonhazardous"

Page 7, line 1:

Delete "non-potentially hazardous"
Insert "nonhazardous"

[1:45:15 PM](#)

SENATOR HUGHES objected for purposes of discussion.

[1:45:19 PM](#)

CHAIR WILSON provided the following explanation of Amendment 1:

This amendment requires labeling on food sold from a producer to the end customer. That brings labeling and food requirements for food sold through a third party in line with food directly sold to the producer to customer. It requires that hazardous food is sold by the producer directly to the consumer to either be clearly labeled, "This food is not regulated or inspected and may contain allergens, and it's not for resale," or the food does not have packaging label that can be affixed to it like farmer market that they have clear signage on the food letting folks know that this food is not regulated or inspected or may contain allergens and is not for resale type of purposes.

[The amendment] also requires nonhazardous foods to be sold by the producer and a third party to be either clearly labeled with the same thing - "This food is not regulated or inspected and may contain allergens, and it's not for resale," or this food does not have the packaging that can be easily affixed to and there must be clear signage, again, where the food is sold. And it also replaces the term "non-potentially hazardous" with the term "nonhazardous."

[1:46:33 PM](#)

SENATOR REINBOLD asked if he knew what it would cost for somebody to comply with the labeling and signage requirements.

CHAIR WILSON said he didn't know, but producers he spoke with said nobody had ever asked whether the product was made in a safe and sanitary kitchen.

[1:47:48 PM](#)

SENATOR BEGICH he has done home labeling and it doesn't cost very much and isn't difficult.

SENATOR REINBOLD asked why the term "non-potentially hazardous" is replaced with the term "nonhazardous." She said it seems like a very high standard and she was concerned about exposing people to liability.

[1:49:03 PM](#)

JASMIN MARTIN, Staff, Senator David Wilson, Alaska State Legislature, Juneau, Alaska, explained that Legislative Legal Services decided to correct that term when it made drafting changes to comply with legislative drafting standards.

SENATOR REINBOLD commented that she didn't know of any product that was required to say on the label that it was nonhazardous.

MS. MARTIN said the amendment does not require that term to be on the label; it's a term that is used throughout the legislation and is in the definitions section.

SENATOR HUGHES recalled that an initial presentation talked about classifying foods and that one category was nonhazardous.

[1:50:49 PM](#)

MS. MARTIN said that's correct and the department could speak to that. She pointed out that the amendment only changes the terminology; it does not change the definition of hazardous, non-potentially hazardous, or nonhazardous.

[1:51:09 PM](#)

CHRISTINA CARPENTER, Director, Division of Environmental Health, Department of Environmental Conservation, stated that as originally drafted, the bill defined potentially hazardous foods as those that require time and temperature control to prevent the risk of foodborne illness. Non-potentially hazardous foods don't need that time and temperature control. The original bill also had different labeling requirements for potentially hazardous foods and non-potentially hazardous foods. She agreed with Ms. Martin that Amendment 1 does not require the food to be labeled to identify it as potentially hazardous, non-potentially hazardous, or [nonhazardous].

SENATOR HUGHES said she didn't want to suggest anything on the fly, but she was thinking about other points where consumers should be informed.

SENATOR REINBOLD asked if these foods needed to have signage about their hazard level but it didn't need to be on the label.

[1:54:46 PM](#)

CHAIR WILSON asked if she was asking about the products that would need a label versus those that would not.

SENATOR REINBOLD said that's part of it but she was trying to understand the difference between the requirement for signage versus labels.

CHAIR WILSON explained that a jar of jam would have to have a label affixed, but a head of lettuce would have signage because a label could not readily be affixed.

[1:55:19 PM](#)

SENATOR BEGICH said the only things that have to be signed or labeled are those identified in the phrases: "This food was made in a home kitchen, is not regulated or inspected, and may contain allergens."; and "This food is not regulated or inspected and may contain allergens." The language on page 2, line 20 clarifies that the food is not for resale. The language on page 2, lines 11-12 and lines 19-20 is part of that. He asked Ms. Martin if she agreed.

MS. MARTIN said that is correct.

CHAIR WILSON asked if there was further debate on Amendment 1.

[1:56:35 PM](#)

EMMA POKON, Deputy Commissioner, Department of Environmental Conservation (DEC), Juneau, Alaska, stated that DEC was comfortable with the amendment.

[1:56:50 PM](#)

SENATOR HUGHES removed her objection.

[1:556 PM](#)

CHAIR WILSON found no further objection, and Amendment 1 was adopted.

[1:57:00 PM](#)

SENATOR HUGHES moved to adopt Amendment 2, work order 32-GS2521\A.2.

32-GS2521\A.2
Bullard
4/25/22

AMENDMENT 2

OFFERED IN THE SENATE

BY SENATOR HUGHES

Page 7, line 12, following "property;":
Insert "and"

Page 7, lines 14 - 16:

Delete "and

(C) does not exceed two hundred fifty thousand dollars in gross revenue annually from the food products;"

[1:57:02 PM](#)

CHAIR WILSON objected for purposes of discussion.

[1:57:05 PM](#)

SENATOR HUGHES explained that Amendment 2 removes the annual \$250,000 sales cap. Feedback from the industry indicates that this would be helpful for startup businesses. This will likely stimulate more interest, which may help with food security.

[1:58:04 PM](#)

SENATOR BEGICH expressed concern that removing the cap would be an open invitation for large producers to potentially avoid inspection. He asked for the department's view.

MS POKON said the amendment is responsive to the concerns that stakeholders expressed when the bill was first introduced. DEC would retain the ability to address any concerns about foodborne illnesses if they should arise.

SENATOR BEGICH pointed out that any follow up on illness would be after the fact.

[2:00:09 PM](#)

MS. POKON confirmed that was correct.

SENATOR BEGICH said perhaps a higher cap is appropriate to recognize startup costs, but he was not comfortable with the department abrogating its responsibility for environmental safety to ensure there are no foodborne illnesses. He said he could support a higher cap but he could not support no cap.

[2:01:21 PM](#)

CHAIR WILSON said paragraph (14) still has the two items in subparagraphs (A) and (B) that talk about what it means to be a producer. The individual may not produce more than two hundred fifty thousand individual food products each year and they must

grow, harvest, prepare, process, or make and package the food product on land they own or lease. He opined that (A) and (B) would eliminate commercial entities.

SENATOR HUGHES asked, should the amendment pass, would an illness need to occur or could the department intervene if an end consumer reported a problem.

[2:02:42 PM](#)

MS. POKON directed attention to the exceptions listed on page 4. She read that nothing prevents the department from conducting an inspection based on a report of foodborne illness, unsafe sanitary practices, or misbranded or adulterated food. That authorizes the department to respond to such complaints.

SENATOR HUGHES expressed satisfaction with the level of protection to the end consumer.

SENATOR BEGICH said he was uncomfortable but he wouldn't object.

[2:04:26 PM](#)

CHAIR WILSON removed his objection. Finding no further objection, Amendment 2 was adopted.

[2:05:02 PM](#)

At ease.

[2:05:31 PM](#)

CHAIR WILSON reconvened the meeting and noted that David Rhodes was available to respond to questions that were asked earlier. He asked Senator Hughes to restate her question.

[2:05:53 PM](#)

SENATOR HUGHES asked whether the signage and labeling called for in Amendment 1 would relieve a producer of liability should an end consumer get sick from that producer's product.

[2:06:35 PM](#)

DAVID RHODES, Chief Assistant Attorney General; Statewide Section Supervisor, Special Litigation and Consumer Protection, Civil Division Department of Law, Anchorage, Alaska, stated that the bill does not create or eliminate any new liability for manufacturers.

[2:07:07 PM](#)

SENATOR HUGHES noted that no new liability assumes there already is some liability. She asked if there were any protections that

could be put into the law so that producers or manufacturers that are contributing to food security would be less subject to debilitating lawsuits.

MR. RHODES said he'd defer the discussion to the agency, but he believes there are options for the legislature to consider that would reduce liability.

SENATOR HUGHES asked whether the department could suggest ways to reduce liability for producers.

[2:08:30 PM](#)

CHAIR WILSON asked Deputy Director Pokon to work with the Department of Law on suggested options for the committee to consider. The information could be forwarded to his office for distribution to the members.

[2:08:44 PM](#)

MS. POKON stated that if it was the will of policymakers, DEC would be happy to have those discussions. She agreed with Mr. Rhodes that the bill, as written, does not affect the current landscape regarding liability for producers.

[2:09:13 PM](#)

CHAIR WILSON stated that he would hold SB 242 in committee for future consideration.

[2:09:41 PM](#)

At ease

SB 183-HOME AND COMMUNITY-BASED SERVICES

[2:13:02 PM](#)

CHAIR WILSON reconvened the meeting and announced the consideration of SENATE BILL NO. 183 "An Act relating to home and community-based services; and providing for an effective date."

[2:13:33 PM](#)

SENATOR ELVI GRAY-JACKSON, Alaska State Legislature, Juneau, Alaska, sponsor of SB 183, introduced the bill by reading sponsor statement:

Alaska has recently seen an increased demand for home-care services from our senior population and those with disabilities due to both growth in our senior population and increasing waiting periods to access

home and community-based services. Currently, we are unable to meet these demands. We have seen many individuals who qualify for Home and Community-Based Services (HCBS) waivers and Community First Choice Medicaid State Plan (K) have service levels cut, get stuck on waiting lists for long periods of time, or unable to hire caregivers of their choice. There is a high need for caregivers yet hourly wages for caregivers has declined over the past decade.

This harms Alaskans everywhere. Without access to home-care services, many Alaskans either go without the care they need, rely exclusively on unpaid and untrained friends and family members, or are forced to move thousands of miles away from their community and support systems to receive institutional care.

SB 183 takes steps to ensure that Alaskans who need in-home care receive it, so they may live with dignity and independence at home, while providing more stability to caregivers. This bill will raise the threshold for reduction of benefits, ensure benefit recipients are notified of eligibility assessment results and their options for appeal, and allow for re-assessment of eligibility for those whose levels of service have been reduced over the past two years. It will make it easier for eligible caregivers to become Personal Care Assistants under HCBS waivers and the Community First Choice Medical State Plan (K).

Passing SB 183 helps Alaska meet the in-home care needs of seniors and people with disabilities. It ensures more Alaskans can stay in their homes and communities and maintain their dignity and independence. It also provides improved stability for the direct-care workforce. I hope you'll join me in supporting SB 183.

[2:16:00 PM](#)

BESSE ODOM, Staff, Senator Elvi Gray-Jackson, Alaska State Legislature, Juneau, Alaska, presented the sectional analysis for SB 183 reading the following:

Sec. 1: Amends AS 47.07.045(a) Home and community-based services for provisions in the section to apply also to Community First Choice and Medicaid personal care services programs.

Sec. 2: Amends AS 47.07.045(a) Home and community-based services by:

- Introducing a process in statute for reducing hours or payment for home and community-based services provided under 1915(k) state plan option and Medicaid personal care services that mirrors the process for terminating services.
- Adding "and live independently" as a condition for terminating services.
- Requiring the department to continue following notice requirements provided in later sections.

Sec. 3: Amends AS 47.07.045(d) Home and community-based services by:

- Moving definitions for "independent qualified health care professional" and "independent qualified waiver" to this section. It does not create any new definitions.
- "Independent qualified health care professional" for an intellectual or developmental disability waiver is defined as a qualified intellectual disability professional under 42 C.F.R. 483.430.
- For other allowable waivers, "Independent health care professional" is defined as a person who can provide personal care services under the 1915(k) state plan or a registered nurse with specific qualifications relevant to the waivers.

Sec. 4: Adds a new subsection to AS 47.07.045 Home and community-based services that:

- Establishes that once the department receives the results of an assessment they have 10 days to notify, in writing, the recipients or individuals with legal authority to act on the recipient's behalf of the assessment results.
- Establishes that after the department decides if there will be a change in levels of services or payments for services, they have 10 days after the decision is made to notify the recipient or individuals with legal authority to act on the recipient's behalf of the decision. This notice must be done in writing and 30 days before the new determination goes into effect. The department must also inform them they have a right to appeal the decision.

- Allows legally responsible persons to provide personal care services to an individual eligible for home and community-based services waivers and Community First Choice.

Sec. 5: Adds a new section that creates a path for hours to be restored through the proposed reassessment process for recipients of care whose payment for services were reduced between January 1, 2019 and January 1, 2022.

Sec. 6: Adds a new section to instruct the Department of Health and Social Services to amend and submit a state plan for medical services to the Centers for Medicare and Medicaid Services (CMS).

Sec. 7: Makes section 5 retroactive to January 1, 2019.

Sec. 8: Establishes the act will take effect only upon federal approval of the state plan for medical assistance, and that if approved, the Commissioner of the Department of Health and Social Services must notify the revisor of statute not later than 30 days after receiving notice.

Sec. 9-10: Create two effective dates:

- For sections 1 - 4, effective date will be the day after the revisor of statutes receives notification from the Commissioner of Health and Social Services of federal approval of state plan amendments.
- Sections 5 and 7 take effect immediately upon passage.

[2:20:42 PM](#)

CHAIR WILSON listed the individuals available to answer questions.

[2:21:00 PM](#)

SENATOR BEGICH mentioned a memorandum he received that discusses the incentive mechanism the [Department of Health and Social Services (DHSS)] uses and the concern it has with the legislation that there is an expectation that individuals gain skills to take better care of themselves. He said his concern is that some people are never going to gain new skills because they are permanently disabled. He called the requirement to show

continued progress when it's not possible a loophole in the law. He asked whether the bill rectified that conundrum.

[2:23:19 PM](#)

SENATOR GRAY-JACKSON answered that she believes SB 183 does rectify that situation because it allows a repeal process. She suggested that the department could give a more in-depth response.

[2:23:41 PM](#)

JOHN LEE, Director, Division of Senior and Disability Services, Department of Health and Social Services (DHSS), Anchorage, Alaska, said he believes the discussion is about a Center for Medicare and Medicaid Services (CMS) concept called fading that applies to individuals who have the capacity to obtain new skills or competencies to perform certain tasks. He acknowledged that this isn't available for many individuals that the department supports because their conditions will not get better. However, for supportive employment there is a CMS requirement that as skills and competencies are developed, the supportive process in place will fade.

SENATOR BEGICH referenced page 4 of the memorandum from the department that indicates that SB 183 would negatively affect the federal policy called fading.

[2:25:42 PM](#)

MR. LEE answered yes; the department would need federal approval to remove the requirement for fading to be part of the department's program.

SENATOR BEGICH noted that the memorandum said, "The department is eager to work with the sponsor to better understand the goal of the bill." He asked Mr. Lee if he'd met with the sponsor to discuss the concern.

MR. LEE answered yes and he appreciated that Senator Gray-Jackson participated in the dialog and was open to potential changes. The department also met with the sponsor of the House companion bill who agreed to some positive changes. The department looks forward to continuing conversations with both sponsors to improve the legislation and reduce the concerns articulated in the fiscal note.

SENATOR HUGHES asked if CMS would have to issue a formal waiver to eliminate the requirement for a person to be developing their skills to progress towards employment. She also asked whether

individuals who lose eligibility because their skills and competencies aren't improving are eligible for help under a different type of funding.

[2:28:18 PM](#)

MR. LEE said the bill affects the department's Personal Care Services Program and the Home and Community Based waiver programs. To implement the changes the bill calls for, these three programs would have to make changes to the regulations and potentially get approval from the Center for Medicare and Medicaid Services. The department is currently receiving the American Rescue Plan enhanced federal match for HCBS and because some of the provisions in the proposed statute would be more restrictive, it may be necessary to delay implementing the changes until after March 31, 2024. To the question about funding, he said the lack of progress toward employment doesn't typically trigger the loss of that aspect of the person's waiver. He asked if she could give specific examples of that happening so he could give a more precise response.

[2:30:04 PM](#)

SENATOR HUGHES suggested he follow up with the Governor's Council on Disabilities and Special Education because she recalled testimony from people with severe disabilities who have lost services because they were not progressing. She also asked whether the regulation changes he mentioned earlier referred to state or federal regulations.

MR. LEE answered that the waiver and state plan amendments would require approval from CMS, but he saw no need to change either federal statutes or federal regulations.

SENATOR HUGHES shared her personal experience when her father was in a recovery center receiving therapy after hip surgery. For Medicare to pay, he had to show he was making progress. When he stopped making progress, he lost the therapy and declined rapidly. She offered her belief that the requirement to continue to show progress to stay on a program needs to be revisited with CMS.

[2:33:48 PM](#)

SENATOR BEGICH asked if the two retroactive clauses were due to COVID-19.

SENATOR GRAY-JACKSON deferred to Ms. Odom.

MS. ODOM answered yes.

SENATOR BEGICH elaborated that it returns to the standard prior to the COVID-19 pandemic.

SENATOR GRAY-JACKSON agreed.

SENATOR REINBOLD asked for further clarification because January 1, 2019 was before the pandemic.

SENATOR BEGICH said it's set for the beginning of the calendar year. He suggested the department comment.

CHAIR WILSON noted that the department declined to comment on a policy call.

[2:36:20 PM](#)

CHAIR WILSON turned to invited testimony.

[2:36:37 PM](#)

KATHERINE BACON, representing self, Palmer, Alaska, stated that she has been a special needs caregiver for 25 years, starting with her medically fragile granddaughter. She is now the primary caregiver to her late husband's grandson Michael who has a traumatic brain injury. Countless caregivers have come and gone because the pay isn't very good. She is fortunate to be paid to care for Michael, but the process to get qualified to retain a caregiver let alone to qualify to be a caregiver is too difficult for a lot of families. Many of the paid and unpaid people doing this work are struggling and reaching the breaking point.

MS. BACON described SB 183 as the first small step towards the urgently needed repair of a broken system by reducing barriers to access to care and restoring client hours. These two changes will help keep vulnerable Alaskans like Michael safer.

[2:41:09 PM](#)

DEBBIE MULHOLLAND, representing self, Anchorage, Alaska, stated that she has been a caregiver for nearly 10 years. SB 183 is important to her clients, most of whom are seniors. They are in need of care and often can't get it. She shared the following story from her prepared testimony:

I have one client who is bed ridden and his daughter has been taking care of him. I only see him five hours per day, four days per week. I can see that it is very hard on her mental and physical health because of

physical abuse due to her father's dementia. She doesn't get any breaks or help from other caregivers besides me. It worries me that caregivers are experiencing these kinds of hardships on a daily basis because there is simply not enough funding for caregiving.

MS. MULHOLLAND stressed that families are struggling because they can't find caregivers and caregivers are struggling because their clients only qualify for two hours of care per day a few times a week so they leave to find more stable employment. This often leaves the families to fill the gap. [Audio was indiscernible.]

CHAIR WILSON advised that the committee could not hear the testimony.

[2:43:33 PM](#)

MS. MULHOLLAND stated that the cuts to the caregiver programs have gone too far. Some seniors are no longer able to get help for their most basic needs. She urged the committee to pass SB 183.

[2:45:29 PM](#)

CHAIR WILSON opened public on SB 183.

SENATOR HUGHES thanked the caregivers who gave testimony for the work they do.

CHAIR WILSON asked Mariana Morante if she wanted to provide testimony or comment on the bill and she declined.

[2:46:55 PM](#)

CHAIR WILSON closed public testimony on SB 183.

SENATOR GRAY-JACKSON suggested Ms. Morante address the concerns DHSS articulated.

[2:47:36 PM](#)

MARIANA MORANTE, Research & Policy Manager, Service Employees International Union (SEIU) 775, Seattle, Washington, stated that SB 183 seeks to prevent caregiver hours from being cut for clients who need those services. The bill mirrors the existing process for terminating services. That involves an independent health provider conducting an assessment to verify that the client would be able to function in a home and live independently. The bill ensures that what the caregivers

provided in testimony today does not happen, so everyone receives the level of care needed to function in a home and live independently.

CHAIR WILSON offered his view on indeterminate fiscal notes, and asked Mr. Lee to discuss how the bill would work, how it would be implemented, and what it would cost the state.

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MR. LEE stated that SB 183 would fundamentally change nearly every aspect of processing and managing the department's portfolio of businesses. It would also require extensive consultation with CMS on how to implement the bill. He justified the indeterminate fiscal note saying that the number of processes that would need to be changed and the number of additional staff that would be needed and managed would vary depending on whether the Senate or House version of the bill passed. He opined that it would take weeks of concerted effort with the entire leadership team to provide a guestimate of the actual costs to hire additional staff, to contract for third-party reviews, and to determine what assessments would be required and when. A final determination would likely be after public comment and consultation with CSM.

[2:51:41 PM](#)

CHAIR WILSON said he appreciates that but legislators rely on good faith estimates from the departments to make the best decisions possible.

CHAIR WILSON asked if the bill could be implemented given the changes the federal government has made to Medicaid, including the moratorium on enrollment.

MR. LEE opined that certain aspects of the bill would be problematic and need to be delayed given that the department is taking advantage of the American Rescue American Rescue Plan enhanced federal match for certain programs. There may also be required assessments that aren't currently required and those would need to be delayed until after March 31, 2024.

SENATOR HUGHES pointed out that the department would also need to get any waiver applications approved by CMS. She asked if he agreed that it's more involved than simply passing the bill.

[2:53:57 PM](#)

MR. LEE said that's correct.

SENATOR BEGICH commented that he was pleased that the Chair was on the Finance Committee because the questions about the fiscal note will be significantly more difficult to answer in that venue. He also observed that the administration appears to have no interest in this legislation moving forward. He asked if he was hearing that correctly.

MR. LEE responded that the department has worked hard and has had multiple meetings with the sponsors of both the Senate and House bills. He apologized for giving the impression of no interest because that was not the intent. There is a lot of interest in making a better bill, he said.

SENATOR REINBOLD commented that she doesn't have a lot of compassion for a department that can't come up with a fiscal note when it's now two departments with addition staff. She said this is an important issue for the people who need care, the families, and the caregivers. She added that her problem with public assistance relates to the expansion of Medicaid. It's made the budget too large.

[2:57:52 PM](#)

SENATOR GRAY-JACKSON stated that this bill is very important and she appreciates the support. She also agreed with the comment about the two departments and the indeterminate fiscal note, and expressed appreciation for Senator Begich's comments.

CHAIR WILSON asked the sponsor if she had any closing comments.

SENATOR GRAY-JACKSON thanked the committee for considering the bill

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CHAIR WILSON held SB 183 in committee.

[3:00:14 PM](#)

There being no further business to come before the committee, Chair Wilson adjourned the Senate Health and Social Services Standing Committee meeting at 3:00 p.m.