

SENATE FINANCE COMMITTEE

May 3, 2023

1:34 p.m.

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CALL TO ORDER

Co-Chair Olson called the Senate Finance Committee meeting to order at 1:34 p.m.

MEMBERS PRESENT

Senator Lyman Hoffman, Co-Chair
Senator Donny Olson, Co-Chair
Senator Bert Stedman, Co-Chair
Senator Click Bishop
Senator Jesse Kiehl
Senator Kelly Merrick
Senator David Wilson

MEMBERS ABSENT

None

ALSO PRESENT

Senator Cathy Giessel, Sponsor; Jane Conway, Staff, Senator Cathy Giessel; Representative Justin Ruffridge; Brandy Seignemartin, Executive Director, Alaska Pharmacists Association; Sylvan Robb, Director, Division of Corporations, Business and Professional Licensing, Department of Commerce, Community and Economic Development; Senator Bill Wielechowski, Sponsor; Ken Alper, Staff, Senator Donny Olson; David Dunsmore, Staff, Senator Bill Wielechowski.

PRESENT VIA TELECONFERENCE

Ashley Schaber, Chair, Board of Pharmacy; Barry Christiansen, Chair, Alaska Pharmacists Association; Desiree Molina, Self, Palmer; Vince Hanks, Baxter Health Care, Illinois; Brandon Spanos, Deputy Director, Tax Division, Department of Revenue; Melissa Patack, Vice President and Senior Counsel for State Government Affairs, Motion Picture Association.

SUMMARY

SB 53 FIVE-YEAR INVOLUNTARY COMMITMENTS

SB 53 was SCHEDULED but not HEARD.

SB 94 PROFESSION OF PHARMACY

SB 94 was HEARD and HELD in committee for further consideration.

SB 122 APPORTION TAXABLE INCOME; DIGITAL BUSINESS

SB 122 was HEARD and HELD in committee for further consideration.

#sb94

SENATE BILL NO. 94

"An Act relating to the Board of Pharmacy; relating to the practice of pharmacy; relating to pharmacies; relating to prescription drug manufacturers; relating to prescriptions for epinephrine; relating to the administration of epinephrine; and providing for an effective date."

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SENATOR CATHY GIESSEL, SPONSOR, explained that the bill was related to the profession of pharmacy and the Board of Pharmacy. She reminded that the goal of regulatory boards was to protect the public. She relayed that the bill proposed to update outdated statutes related to the profession of pharmacy. She highlighted that the bill was a multi-year collaboration between multiple board iterations and multiple chairs of the Board of Pharmacy, working along with the Alaska Pharmacists Association, students, retirees, and the Alaska Tribal Health Organization. She cited a great deal of change in the practice of pharmacy over the previous 20 years. She described that during the Covid-19 pandemic, pharmacists had played a critical role in healthcare delivery and filling service gaps.

Senator Giessel relayed that SB 94 covered statute areas including the board's composition; the prescribing of epinephrine auto-injectors (epi-pens); and the licensing and inspection of out-of-state pharmacies, internet

pharmacies, wholesalers and distribution centers. The bill clarified board powers, added a national background check for pharmacists and pharmacy technicians, and repealed obsolete language from the statutes. She noted that her staff would identify the changes to the bill made in the Senate Labor and Commerce Committee. She discussed additional invited testimony.

Co-Chair Olson asked about Senator Giessel's reference to epi-pens.

Senator Giessel clarified that the bill would allow a pharmacist to prescribe the epi-pen.

Co-Chair Olson asked if pharmacists would be able to dispense epi-pens.

Senator Giessel answered affirmatively and noted that there would be a required education program prior to authorization.

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JANE CONWAY, STAFF, SENATOR CATHY GIESSEL, addressed a Sectional Analysis document (copy on file):

Section 1. Amends AS 08.80.010(a) Creation and membership of board; officers Alters composition of the seven-member Board of Pharmacy by designating one member to be a licensed pharmacy technician, and one to be an individual with no financial interest in the healthcare industry.

Section 2. Amends AS 08.80.030(b) Powers and Duties of Board

(b)(10) Separates out the licensing/regulating entities relating to manufacturing and distributing of drugs and devices by use of the word "or"

(b)(12) adds an epinephrine auto-injector training program. (b)(14) Clarifies that only pharmacists who dispense federally scheduled controlled substances be required to register with the Prescription Drug Monitoring Program (PDMP). (b)(16) Adds pharmacies and manufacturers from out-of-state to list of entities to be licensed and inspected.

(b)(17) Adds internet-based pharmacies to list of entities to be licensed if they are servicing Alaskans.

(b)(18) adds language allowing the board to adopt regulations pertaining to retired pharmacist status.

Section 3. Amends 08.80.145 Reciprocity; license transfer (3) removes character requirement - "of good moral character" (4) removes internship details - this is a national standard among schools of pharmacy. Renumbering of statute items

Section 4. Amends AS 08.80.157(h) Licensing of facilities (7)(A) allows the direct shipping of dialysate and supplies from a wholesale drug distributor to home dialysis patients that are FDA-approved and meet the guidelines to do so set out by the AK Board of Pharmacy.

Section 5. Amends AS 08.80.157 Licensing and inspection of facilities outside the state (k) this adds out-of-state pharmacies and manufacturers to the list of entities that must be licensed.

Section 6. Amends AS 08.80.159 Licensing and inspection of facilities outside the state (a) Adds "distributor, pharmacy, manufacturer" to those out-of-state entities that must be licensed and inspected.

Section 7. Amends AS 08.80.159 Licensing and inspection of facilities outside the state (c) adds pharmacies and manufacturers to list of those required to be inspected to gain Alaska licensure.

Section 8. Amends AS 08.80.160 Fees (10) Removes the word "registration" since the bill mandates licensure of a facility.

Section 9. Amends 08.80.168 and adds a new subsection - Administration of vaccines and related emergencies (e) Allows a pharmacist to administer epinephrine to a person or prescribe an epinephrine auto-injector to someone who has completed the epinephrine auto-injector training.

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Ms. Conway continued to address the Sectional Analysis:

Section 10. Amends AS 08.80.270 Executive administrator of the board

(a) Adds an additional salary range option for the executive administrator, allowing flexibility for the Division to select a pharmacist for the role.

Section 11. Amends AS 08.80.420 Certain advertising prohibited (a) adds the term "apothecary" to list of those that cannot be used in media or advertising unless the store employs a licensed pharmacist with regular hours.

Section 12. Amends AS 12.62.400 National criminal history record check (a)(23) adds pharmacist and pharmacy technician to list of professions where a background check is required. Aligns with State of Alaska's nursing requirements and pharmacy requirements typical in other states. This adds a national level background check.

Section 13. Amends AS 17.22.010 Prescription, purchase, administration of epinephrine by a trained individual Allows anyone over 18 to purchase or be prescribed an epinephrine autoinjector, and to administer epinephrine shot in an emergency to another person if they have completed an epinephrine auto-injector training program approved by the board. It removes very outdated language from this section.

Section 14. Amends AS 17.22.020(a) Approval of training programs (a) Allows the board, rather than the department, to adopt standards for the epinephrine auto-injector training program and deletes outdated language.

Section 15. Amends AS 17.22.020(b) Approval of training programs (b) Allows the board, rather than the department, to approve an epinephrine auto-injector training program that meets the board's standards.

Section 16. Amends AS 17.22.030 Applicability States that this chapter does not apply to someone currently authorized under another law to administer

epinephrine, such as a nurse or doctor, or some other authorized professional.

Section 17. Amends AS 17.22.040 Liability of certified individual Outlines that a person may not be sued who administers epinephrine to another in an emergency, and in good faith, if he or she has completed the epinephrine auto-injector training program approved by the board.

Section 18. Amends AS 17.22.090 Definitions (3) defines the "board" as the Board of Pharmacy

Section 19. Repealers

- Repeals 08.80.110(2) furnish the board with at least two affidavits from reputable citizens that the applicant has known for at least one year attesting to the applicant's good moral character. This is not required in medical, dentistry, or nursing statutes.
- Repeals 08.80.158 Registration of pharmacies located outside the state since this bill would now require licensure.
- Repeals AS 17.22.020(c) which is the Department's epinephrine auto-injector training program.
- Repeals AS 17.22.090(1) that defines the department as the Dept of Health since it will no longer be the approving entity of the epinephrine auto-injector training program.

Section 20. TRANSITION LANGUAGE for currently registered pharmacies A new section that would allow pharmacies previously registered to continue to ship, mail or deliver prescription drugs to its customers in Alaska until their registration expires. At that time, they will then have to apply for licensure.

Section 21. TRANSITION: REGULATIONS Allows the Board of Pharmacy and DCCED to adopt regulations to carry out the changes laid out in this legislation.

Section 22. Sections 4 and 21 an immediate effective date under AS 01.10.070(c)

Section 23: Effective date is set to coincide with the Drug Supply Chain and Security Act that will go into effect on November 26, 2023.

Senator Wilson referenced Section 2, page 3, line 21 relating to adopting regulations regarding retired pharmacist status. He asked if the provision was intended for retired pharmacists to be able to return to work. He asked for more details.

Ms. Conway relayed that currently if a pharmacist retired, the license lapsed, while other professions typically had a designated retirement status that provided more dignity, importance, and recognition in the profession.

Co-Chair Olson asked if the retired pharmacist's Drug Enforcement Agency (DEA) number automatically expired.

Senator Giessel suggested that invited testimony could address Co-Chair Olson's question.

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REPRESENTATIVE JUSTIN RUFFRIDGE, shared that he was the previous chair of the Board of Pharmacy and had worked on the bill in that role. He affirmed that the bill was a multi-year effort for multiple boards and multiple chairs of the board. He thought it was important to know that the board chair had worked on "right touch regulations" at the request of the governor to update and modernize the regulatory framework across all boards and commissions. He asserted that the board had taken the charge very seriously and had found that there were items that could not be changed without legislative action. He supported the bill.

Co-Chair Olson referenced working in Barrow and mentioned that the pharmacist there had been working on the legislation. He asked about retired pharmacists and the expiration of DEA numbers. He asked about the necessary steps for a pharmacist to come out of retirement.

Representative Ruffridge explained that pharmacists were not allowed to hold a DEA registration, and a change of the practice had been considered at the federal and state level. He mentioned pharmacists being a part of medication-assisted treatment for opioid addiction, which would require a DEA number. The topic would not be outlined in the bill.

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Co-Chair Olson understood there was a school of pharmacy that was out of state but had a facility in Alaska. He asked about an internship, and whether it was mandatory.

Representative Ruffridge was excited about the opportunity for kids in the state to be educated as doctors in pharmacy, and he thought that the program was the only doctorate level medical degree that could be obtained in the state. He cited that the program was a joint and collaborative effort between the University of Alaska and Idaho State University (ISU). He described modern technology and distance delivery methods to have classes at the University of Alaska Anchorage (UAA) and at ISU.

Representative Ruffridge described that the education profile for pharmacy education was a four-year undergraduate degree usually in science, and an additional four years for a doctoral degree. During the four years, students were allowed to work as a licensed pharmacy intern in order to gain experience. A number of intern hours were required to qualify for licensure and sit for the exam. Alaska required 1,500 hours, and the number differed by state. He continued that at the end of four years of schooling, a pharmacy student could enter a one- or two-year residency program in specialized pharmacy practice. He estimated that it could be from 8 to 10 years to become licensed, depending upon the specialty.

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Co-Chair Olson referenced Section 13 and training of pharmacists to dispense epi-pens. He mentioned detrimental effects of mis-application of epinephrine, and asked about the required training. He mentioned the danger of anaphylactic shock.

Representative Ruffridge relayed that the ability to provide epinephrine in the case of anaphylaxis had always been a pharmacy statute as part of pharmacists' ability to prescribe and give vaccinations. Pharmacists were permitted to administer epinephrine in the case of anaphylaxis due to a vaccination. He explained that the training referenced in Section 13 of the bill referenced a program that already existed in the state. The bill proposed to move the training program from the Department of Health to under the purview of the Board of Pharmacy. The training would be open to the public and would provide a certificate after

one day, after which a person could be provided epinephrine. He listed individuals such as camp counselors and flight attendants as examples of people who might need access to epi-pens.

Co-Chair Olson asked about the difference in training for epinephrine and the training for naloxone.

Representative Ruffridge relayed that the model for language in the bill was the same that was already in place for naloxone.

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ASHLEY SCHABER, CHAIR, BOARD OF PHARMACY (via teleconference), relayed that she became the chair of the pharmacy board in December and had served on the board for almost two years. She had practiced as a pharmacist in the state for almost 16 years.

Ms. Schaber discussed a presentation entitled "Senate Bill 94: Profession of Pharmacy" (copy on file). She turned to slide 2, which showed the Alaska Board of Pharmacy 2023 Strategic Plan. She read the mission of the Board of Pharmacy. She highlighted that the bill had been in the works for several years and cited goal 4 - to grow the economy while promoting community health and safety. She highlighted strategies listed under the strategic plan including to routinely review effectiveness of regulations that reduce barriers to licensure, advocating for legislation, and anticipating changes relating to the Drug Supply and Security Act. She reviewed board membership positions.

Ms. Schaber advanced to slide 3, "Background of SB 94":

- Result of multi-year, multi-chair review of statutes and regulations to ensure the Alaska Board of Pharmacy can continue to meet its mission
- SB 94 addresses changes by:
 - Streamlining licensure process while improving public safety
 - Compliance with the Drug Supply Chain and Security Act
 - Alignment with other professional boards in Alaska and pharmacy boards in other states

- Clarification of pharmacists' roles in epinephrine access

- Collaborative effort between the Alaska Board of Pharmacy and the Alaska Pharmacists Association

Ms. Schaber referenced important access to critically needed dialysis fluids.

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Ms. Schaber referenced slide 4, "Goal: Streamline licensure process while improving public safety":

- Eliminates unnecessary forms currently required in statute
- Clarifies that only pharmacists who dispense controlled substances are required to register with the Prescription Drug Monitoring Program (PDMP)
- Adds national criminal background check

Ms. Schaber mentioned moral affidavit forms in reference to eliminating unnecessary forms. She discussed the addition of the national background check, which was thought to be an added measure of protection for Alaskans through the licensure process and was in line with 30 other states.

Co-Chair Olson referenced Ms. Schaber's mention of dialysis fluids. He asked if the bill contemplated the shipping of dialysis fluid to rural Alaska.

Ms. Schaber relayed that the changes to SB 94 addressed some of the current statutory barriers to providing home dialysis. It had been identified that there were some changes that could eliminate the requirement for facilities distributing the fluid to be registered as a pharmacy. The board reviewed the changes and felt like the proposed changes were a good balance to ensure there were no barriers to provide service to all areas of the state while maintaining the integrity of the process.

Co-Chair Olson asked if the proposed change only encompassed peritoneal dialysis.

Ms. Schaber answered affirmatively.

Co-Chair Olson asked about hemodialysis.

Ms. Schaber understood that only the peritoneal dialysis fluids for home dialysis would be impacted by the proposed change.

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Ms. Schaber spoke to slide 5, "Goal: Compliance with Drug Supply Chain and Security Act":

- The federal Drug Supply Chain and Security Act (DSCSA) further secures the U.S. drug supply through a system to prevent harmful drugs from entering the supply chain, detect harmful drugs if they do enter, and enable rapid response when such drugs are found
- Boards of Pharmacy play a key role in this process through appropriate licensing of drug distributors and pharmacies
- SB 94 ensures the AK Board of Pharmacy powers and duties support the DSCSA related to manufacturers, out-of-state pharmacies, and internet pharmacies to ensure Alaskans receive safe medications

Ms. Schaber noted that when considering the statute change, there had been very few mail-order pharmacies that were shipping into the state, but the number had exponentially grown in recent years. The change from registration to licensure would give the board jurisdiction. She mentioned that concern had been raised that patients were not receiving the same medication counseling from mail-order pharmacies as they would from an in-state pharmacy.

Ms. Schaber addressed slide 6, "Goal: Alignment":

- Replaces one of the two public member seats with a pharmacy technician seat
- Allows the board to adopt language for retired pharmacist status
- Clarifies the board executive administrator's salary, allowing flexibility for a pharmacist to serve in this role in the future

Ms. Schaber relayed that the proposed change to board seats would modernize the board. She discussed the language for

retired pharmacist status. She discussed the complexity of pharmacy and regulation.

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Co-Chair Olson asked how many pharmacists were in the state.

Ms. Schaber did not have the information at hand.

Co-Chair Olson asked Ms. Schaber to address the difference between a pharmacist and a pharmacy technician.

Ms. Schaber explained that a pharmacist would go through professional pharmacy school as Representative Ruffridge had described. She continued that a pharmacy technician was a licensed individual in the state that helped a pharmacist within a pharmacy practice. She noted that pharmacy technicians could have multiple different roles that included inventory, ordering medications, working through drug shortages, medication histories, and providing immunizations. She noted that the role of pharmacy technicians had grown in previous years.

Co-Chair Olson summarized that the bill did not propose to increase membership on the board, but rather replaced a public member seat with a pharmacy technician member.

Ms. Schaber answered in the affirmative and noted that the bill proposed to replace one of the two public member seats on the board. She explained that up until about one month previously, both of the public member seats had been vacant. She continued that historically the public member seats had been challenging to fill, and she thought the change would help fill the membership as well as bring the technician perspective to the board.

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Ms. Schaber spoke to slide 7, "Goal: Epinephrine Access":

- Moves epinephrine training program under Board of Pharmacy oversight
- Clarifies that a pharmacist can administer epinephrine to a person or prescribe epinephrine auto-

injectors to someone who has completed the training program

- Increases epinephrine access for Alaskans with anaphylactic emergencies

Ms. Schaber commented that access to epinephrine was peculiarly important in rural areas, where access to higher level care might be more challenging. She spoke to the access to dialysis fluids, which was in line with the goal of increasing access. She mentioned the process of changes to the CS and discussed patients receiving dialysis at home.

Ms. Schaber highlighted slide 8, "Support":

- The Board of Pharmacy respectfully requests your support of SB 94, allowing us to further promote, preserve, and protect the public health, safety, and welfare of Alaskans by and through the effective control and regulation of the practice of pharmacy.
- Thank you for your time!

Ms. Schaber thanked the committee for its time.

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BRANDY SEIGNEMARTIN, EXECUTIVE DIRECTOR, ALASKA PHARMACISTS ASSOCIATION, testified in support of the bill. She was a licensed pharmacist and was there to speak on behalf of the Alaska Pharmacists Association. She asserted that some of the provisions of greatest concern were related to patient safety. She mentioned the proposed background checks for all licensees coming into the state, which she thought would protect Alaskans. She pointed out that licensing out-of-state pharmacies, internet pharmacies, and other entities would give the board direct oversight if medication errors occurred. She mentioned that the drug supply chain had been a target of attacks by criminals, and without strong protections Alaskans could be at risk for unsafe or counterfeit medications. She considered that by giving full authority to the board to regulate the entities, protections would be strengthened.

Ms. Seignemartin discussed epinephrine auto-injectors and the ability of pharmacists to dispense them to qualified

individuals. She thought Representative Ruffridge had done a good job in describing the training and requirements. She discussed the importance of access to epi-pens in certain circumstances and the importance of the drug in live-saving care. She expressed appreciation for the change in allowing a pharmacist to serve as the executive administrator of the board, and adding a pharmacy technician to a seat on the board. She mentioned and supported provisions related to retired pharmacists.

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Co-Chair Olson OPENED public testimony.

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BARRY CHRISTIANSEN, CHAIR, ALASKA PHARMACISTS ASSOCIATION (via teleconference), testified in support of the bill. He relayed that he had been a practicing pharmacist for 35 years. He recognized that the bill represented years of work by previous boards. He cited that there were currently 1,000 licensed pharmacists in the state.

Co-Chair Olson asked how many pharmacy technicians were licensed in the state.

Mr. Christiansen estimated that there were perhaps four to five times the number of technicians than pharmacists. He offered to follow up with more information.

Co-Chair Olson asked what kind of improvements or additions to the bill would create additional benefits to the end user, including people in remote areas with limited access.

Mr. Christiansen thought the bill helped to modernize pharmacies. He cited that there were a dozen graduates in pharmacy per year in Anchorage. He thought having a modern statute base with provisions like the epinephrine prescribing program was important for getting pharmacists where they were needed. He did not have additional ideas to offer.

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DESIREE MOLINA, SELF, PALMER (via teleconference), spoke in support of SB 94. She relayed that she was a fourth year student in the UAA/ISU Doctor of Pharmacy program and a

recent graduate of a masters of business administration program. She was employed as a pharmacist intern and was an executive intern for the Alaska Pharmacists Association. She thought the bill created efficiencies in licensing and increased public safety. She planned to continue practicing in Alaska after graduation. She supported increased access to epinephrine.

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VINCE HANKS, BAXTER HEALTH CARE, ILLINOIS (via teleconference), spoke in support of the bill and was available for questions. He thought the bill was important for all aspects of pharmacy in Alaska. He supported the testimony of previous testifiers.

Co-Chair Olson asked about Mr. Hanks' knowledge of the state.

Mr. Hanks relayed that he travelled to the state often and had a distribution center in Anchorage.

Senator Merrick asked about the training courses for administration of the epi-pen and if a person would have to purchase the medication.

Senator Giessel suggested asking the question of Dr. Schaber.

Ms. Schaber thought some insurance companies would pay for the medication. She offered to follow up in greater detail as to how other states handled the matter.

Senator Merrick recalled that Narcan was being supplied to the public.

Ms. Schaber thought Naloxone was more widely available than epinephrine, and recalled that there were various sites around the state that provided the drug to have on hand. She mentioned Project Hope, which was a program through the state. She hoped the bill would increase access to epinephrine.

Co-Chair Olson asked about the shelf life for an epi-pen.

Ms. Schaber replied "usually a year or two," and noted that the time varied by manufacturer.

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SYLVAN ROBB, DIRECTOR, DIVISION OF CORPORATIONS, BUSINESS AND PROFESSIONAL LICENSING, DEPARTMENT OF COMMERCE, COMMUNITY AND ECONOMIC DEVELOPMENT, cited that in FY 22, there were 1,130 licensed pharmacists and 1,649 licensed pharmacy technicians.

Ms. Robb addressed a new fiscal note from the Department of Commerce, Community and Economic Development, OMB Component 2360. She cited a cost of \$751,200 in FY 25 into the out years, and noted that only \$269,000 of the amount was General Fund and was related to the addition of five staff members. She listed the positions as one full-time Administrative Assistant, one full-time Records and Licensing Supervisor, two full-time Occupational Licensing Examiners, and one full-time Investigator 3.

Ms. Robb discussed changes that were the source of the additional cost. She noted that the bill proposed to move out-of-state pharmacies from registering to being licensed, and the previous year there were over 1,400 out-of-state pharmacies. Additionally, the bill required internet pharmacies to be licensed and inspected.

Co-Chair Olson asked if a patient in the state could send out a prescription to an out-of-state pharmacy that would send the prescription.

Ms. Robb informed that out-of-state pharmacies would have to be licensed in Alaska in order to send medications to Alaskans.

SB 94 was HEARD and HELD in committee for further consideration.

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#sb122

SENATE BILL NO. 122

"An Act relating to the Multistate Tax Compact; relating to apportionment of income to the state; relating to highly digitized businesses subject to the Alaska Net Income Tax Act; and providing for an effective date."

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Co-Chair Olson relayed that the committee had heard SB 122 on April 17, at which time the committee had taken public testimony. The committee had worked with the sponsor and the Department of Revenue (DOR) and had a Committee Substitute (CS) to consider.

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SENATOR BILL WIELECHOWSKI, SPONSOR, relayed that he was in support of the changes in the CS.

Senator Kiehl MOVED to ADOPT proposed committee substitute for SB 122, Work Draft 33-LS0663\H (Nauman, 5/2/23).

Co-Chair Olson OBJECTED for discussion.

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KEN ALPER, STAFF, SENATOR DONNY OLSON, explained that the CS had taken a portion of SB 14, an oil and gas tax bill that was heard earlier in the week, and put it within SB 122. The portion put into SB 122 was related to non-corporations and the requirement to pay something comparable to corporate income tax for all oil and gas business entities. The section was put within SB 122, which was also a corporate income tax bill and related to internet businesses. He noted that the rest of the changes proposed in the CS conformed to the larger change and made some technical corrections that had been brought to light by DOR.

Mr. Alper noted that the first 20 pages of the bill were amendments to the multi-state tax compact and were the same as the original version of the bill. The content had to do with the market-based sourcing provisions, which made sure that the location of the sale in Alaska was what was used for the purpose of the sales factor of a corporate portion.

Mr. Alper addressed a Summary of Changes document (copy on file):

- 1) Adds Section 2, new AS 43.20.019, which establishes a 9.4% tax on income over \$4 million per year on "oil and gas entities" other than corporations.
- 2) Adds Section 3, amending AS 43.20.030(a), the filing requirement in the current corporate income tax, to add other oil and gas entities.
- 3) Adds Section 4, amending AS 43.20.031(i), describing the accounting method used for companies with activity both inside and outside the state, to add other oil and gas entities.
- 4) Adds Section 9, amending AS 43.20.144(h)(2), to add other oil and gas entities to the definition of a "consolidated business."

Mr. Alper noted that he had inadvertently omitted a description of new language added to Section 11(e) on page 25, line 9. The so-called single-factor apportionment, which was a core portion of the original bill, stated that highly digitized entities would use a sales factor rather than the payroll or property factor. It had been clarified that the section would not apply to a public utility or telecommunications company. The companies would continue to use the three-factor apportionment in current law. He noted that he would make an amended version of the document for public record.

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Mr. Alper continued to address the Summary of Changes document:

- 5) Adds Section 12, amending AS 43.20.340 to add two new definitions for "entity" and "oil and gas entity."
- 6) Adds a new subsection to Section 13, an uncodified applicability section, to confirm that the new tax sections apply to an oil and gas entity with taxable income over \$4 million from a source in the state, for a tax year beginning on or after January 1, 2023.
- 7) Adds Section 14, an uncodified transition section, to confirm that the 2023 taxes are not due until the regular due date for 2023 taxes, October 1, 2024. Because of the retroactivity, any penalties and interest for late payment are waived.

8) Adds Section 15, an uncodified regulations section, to authorize the Department of Revenue to draft regulations that are retroactive to the effective date.

9) Adds Sections 16 and 17, which have the retroactive January 1, 2023 effective date for the "oil and gas entity" tax and an immediate effective date for the uncodified sections.

Mr. Alper commented that the underlying bill and single factor apportionment was for the most part unchanged, with the exception of adding the piece about telecommunications companies. The main change was adding the oil and gas entity tax to the legislation.

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Co-Chair Olson invited the sponsor to comment on the CS.

Senator Wielechowski commented that he supported the CS as it was written.

Senator Wilson spoke to the original bill, which was related to the multi-state compact. He thought oil and gas taxes were different, and wondered if the subjects were related enough.

Senator Wielechowski explained that the bill related to corporate income tax, and he thought it was more important for the S-corporation provision to be added. He thought some would agree with the addition, and some would disagree. He noted that the committee was discussing the bill rather than discussing passage of the bill.

Senator Wilson felt that the provision should be separate item from the original bill.

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BRANDON SPANOS, DEPUTY DIRECTOR, TAX DIVISION, DEPARTMENT OF REVENUE (via teleconference), thought the CS seemed to do what the sponsor had stated.

Co-Chair Stedman thought it would be nice to know if the department supported the bill.

Mr. Spanos had not been informed whether the bill was supported by the governor and therefore the Tax Division of DOR was neutral on the bill.

Co-Chair Olson WITHDREW his OBJECTION.

Senator Merrick OBJECTED. A roll call vote was taken on the motion.

IN FAVOR: Bishop, Kiehl, Hoffman, Olson, Stedman

OPPOSED: Merrick, Wilson.

The MOTION PASSED (5/2). The CS for SB 122 was ADOPTED.

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MELISSA PATAK, VICE PRESIDENT AND SENIOR COUNSEL FOR STATE GOVERNMENT AFFAIRS, MOTION PICTURE ASSOCIATION (via teleconference), explained that the members of the Motion Picture Association (MPA) were the major producers and distributors of movies, television programs, and streaming series; and were the owners of most of the national broadcast and cable networks. She emphasized that she was speaking about the issue of how income was apportioned for national broadcast and cable networks was about the way to tax the networks rather than the amount paid. She explained that market-based sourcing, as proposed in SB 122, taxed companies on their revenue from customers.

Ms. Patak cited that broadcast and cable networks had three types of customers and sources of revenue: individuals that were subscribers to streaming services, licensing customers, and advertising customers. She explained that revenue from the customers would go into the Alaska sales tax factor. She contended that the direct relationships between the broadcasting cable networks and customers could be verified and made it easier to administer the system for the taxpayer and DOR. She noted that Mr. Alper had described market sourcing as taxing on the basis of the location of the sale.

Ms. Patak continued her testimony. She considered that the taxing of broadcast and cable networks on the income earned from direct customers was consistent with SB 122's market-

based sourcing. She thought the method was the modern approach that many states had adopted through statute, such as Illinois and Tennessee. She referenced the "audience" method of taxing broadcast networks, which had been adopted in the 1990s. She asserted that the industry had undergone significant changes since the adoption of the audience method and that the method would lead to uncertainty in the administration of the tax system. She relayed that MPA had provided suggested language to be added to the bill.

Senator Bishop asked about the recommended changes submitted by Ms. Patack.

2:46:30 PM

AT EASE

2:49:26 PM

RECONVENED

Co-Chair Olson requested that Mr. Spanos comment on the testimony offered by Ms. Patack.

Mr. Spanos affirmed that he listened to Ms. Patack's testimony.

Co-Chair Olson asked Ms. Patack to restate her concern.

Ms. Patack referenced submitting amendment language in a document from the Motion Picture Association dated April 17, 2023 (copy on file). The language would allow for market sourcing by customer location for broadcast and cable networks.

Co-Chair Olson asked Mr. Spanos if he had a copy of the letter with the suggested amendment language.

Mr. Spanos affirmed that he had seen the letter. He relayed that the division's position was that nuances had previously been handled in regulation, which allowed for pivoting quickly with changes in industry. He thought that the issue could be handled through regulation. He thought the regulations Ms. Patack mentioned could be a starting point and could be modernized. He did not identify anything in the letter that was problematic.

Co-Chair Olson summarized that Mr. Spanos was indicating there was nothing in the MPA letter that could not be handled with regulation.

Mr. Spanos answered affirmatively.

[2:52:16 PM](#)

Co-Chair Stedman thought it was possible that regulations could result in the different implementation than contemplated in the statute. He suggested that the committee consider modified language in the bill to ensure the regulations were in line with what the committee was thinking.

Senator Wielechowski understood that the department could fix the problem referenced by Ms. Patack if it chose. He referenced the question regarding the administration's support of the bill. He could not speak to whether the administration supported the bill, but could speak to the fact that the the highly digitized part of the bill was a provision suggested by former DOR Commissioner Lucinda Mohoney to the Fiscal Policy Working Group. The sponsor had worked with the department to craft the bill language. He recounted that the former commissioner had testified to the working group that the governor would support the provision.

Senator Wielechowski referenced committee discussions regarding the S-corporation change, and recalled that former Commissioner Mahoney had testified to the Senate Finance Committee that the administration was planning to introduce changes to fix the "S Corp loophole." He recounted that the loophole was created when Hilcorp had acquired BP's assets. He recalled that the administration had a similar provision to what was in the bill. He summarized that there had been indications of support for both provisions in the bill.

[2:55:12 PM](#)

Senator Wilson asked about S-corporations, and commented that the committee had not heard testimony or presentations from industry or the Regulatory Commission of Alaska regarding whether the costs would be passed on and cause rate changes.

Senator Wielechowski understood that Hilcorp would testify on Friday, and suggested that Senator Wilson query the company. He stressed that Hilcorp was currently threatening to withhold production or development or exploration in Cook Inlet. He furthered that the state had contracts that were expiring because Hilcorp was refusing to invest, develop and produce under the terms of the contract it was legally obligated to do in Cook Inlet. He thought Hilcorp should be questioned about whether it would continue to invest on the North Slope and why investment was reduced from \$847 million in 2014 to \$220 million the previous year. He pondered why the state was providing over \$500 million in oil tax credits when Hilcorp was only investing \$220 million. He queried factors such as Hilcorp's rate of return, internal rate of return, and net present value. He stressed not basing decisions based on hyperbole and statements that had no foundation.

Senator Wilson clarified his statements were not in defense of any entity. Rather, he wanted to know the effects on users of the system if the S-corporation statutes were changed.

Senator Bishop suggested that the commissioner or a designee addressed questions when the bill was considered in committee in the future. He referenced a fiscal plan that had been discussed by the administrator. He wanted to know whether the administration was committed or not. He was not interested in passing more tax legislation without a commitment from the administration.

Senator Wielechowski thought Senator Bishop had posed a great question, and would love to see the administration come out in support of the bill after previously expressing support for the provisions. He noted that Hilcorp was not a utility and therefore was not regulated by the RCA.

[3:00:31 PM](#)

DAVID DUNSMORE, STAFF, SENATOR BILL WIELECHOWSKI, wanted to follow up on Senator Wielechowski's comments addressing Senator Wilson's concerns. He understood that there were no regulated utilities that would be non-corporation oil and gas entities. He cited that the RCA did have oversight over gas sales agreements between regulated utilities. He furthered that it would not be possible for the RCA to pre-judge a proposed contract. In the past the RCA had looked

at market price conditions, and he thought it was unlikely that the changes proposed in the bill would be a factor in deliberations.

Senator Wilson understood that Hilcorp was not a utility, but shared a concern that contractual gas of sales to providers could change rates of service.

Senator Wielechowski emphasized that Hilcorp had taken out a lease with terms that required it to explore, develop, produce, and market gas. He continued that Hilcorp had an obligation to do so if it could make a reasonable profit. He noted that gas prices in Cook Inlet went from the lowest in North America to the highest in North America in the span of the last decade. He asserted that if Hilcorp was put in a position of being impacted in the ability to make a profit, it had the ability to go before the department and ask for royalty relief. He thought the royalties and production tax in Cook Inlet were probably the lowest in the world. He emphasized that Hilcorp should be asked for specific details.

Senator Merrick was curious if there were any other entities aside from Hilcorp that would be affected by the S corporation portion of the bill.

Senator Wielechowski could not answer Senator Merrick's question because of what he considered "some of the worst financial transparency laws" for oil and gas companies in the world. He mentioned testimony pertaining to the financial transparency laws. He made note of the inability to determine the companies' profits.

Senator Kiehl referenced removing all impact of corporate income tax from downstream ratepayers, and noted that he had two C-corporations that provided regulated utility service in his district. He thought the idea would be a much bigger statewide change than what was contemplated in the bill.

Co-Chair Olson noted that the bill would be back up for consideration later in the week, and there would be an amendment deadline for Thursday at 6 o'clock.

SB 122 was HEARD and HELD in committee for further consideration.

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ADJOURNMENT

3:05:31 PM

The meeting was adjourned at 3:05 p.m.