

ALASKA STATE LEGISLATURE
SENATE JUDICIARY COMMITTEE

April 30, 2001
4:49 p.m.

MEMBERS PRESENT

Senator Robin Taylor, Chair
Senator Dave Donley, Vice Chair
Senator John Cowdery
Senator Gene Therriault
Senator Johnny Ellis

MEMBERS ABSENT

All Members Present

COMMITTEE CALENDAR

CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 16(CRA)
"An Act relating to cities incorporated under state law that are home rule communities; and providing for an effective date."
MOVED SCS CSHB 16(JUD) OUT OF COMMITTEE

SENATE BILL NO. 169
"An Act relating to the nonapplicability of the delinquency laws to certain minors accused of certain crimes against persons directed at certain victims."
MOVED SB 169 OUT OF COMMITTEE

SENATE BILL NO. 204
"An Act relating to wildfires and other natural disasters."
HEARD AND HELD

HOUSE BILL NO. 230
"An Act relating to wage and hour protections for employees of the Alaska Railroad Corporation; and providing for an effective date."
MOVED HB 230 OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 193(FIN)
"An Act relating to the primary election and to the nomination of candidates for the general election; and providing for an effective date."
MOVED SCS CSHB 193(JUD) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

HB 16 - See Community and Regional Affairs minutes dated 4/4/01.

WITNESS REGISTER

Mr. Robert Buttane, Legislative & Administrative Liaison
Division of Juvenile Justice
Department of Health &
Social Services
PO Box 110601
Juneau, AK 99801-0601
POSITION STATEMENT: Testified on SB 169

Mr. Hans Neidig
Staff to Senator Green
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Introduced SB 204

Mr. Joe Balash
Staff to Senator Therriault
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Testified on HB 193

Mr. Avrum Gross
424 North Franklin
Juneau, AK 99801
POSITION STATEMENT: Testified on HB 193

Representative Coghill
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Testified on HB 193

Ms. Janet Kowalski, Director
Division of Elections
Office of the Lieutenant Governor
PO Box 110017
Juneau, Alaska 99811-0017
POSITION STATEMENT: Testified on HB 193

ACTION NARRATIVE

TAPE 01-26, SIDE A
Number 001

CHAIRMAN ROBIN TAYLOR called the Senate Judiciary Committee meeting to order at 4:49 p.m. Senator Donley, Senator Cowdery, and

Chairman Taylor were present. Senator Ellis arrived at 4:53 and Senator Therriault arrived at 4:54. Chairman Taylor announced the first order of business would be HB 16.

#HB 16

HB 16-HOME RULE COMMUNITIES

SENATOR DONLEY moved the L version of the Judiciary Committee substitute out of committee with individual recommendations. There were no objections and it was so ordered.

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#SB 169

SB 169-HATE CRIMES: AUTOMATIC WAIVER OF MINORS

SENATOR DONLEY noted this was legislation sponsored by himself and co-sponsored by Chairman Taylor. SB 169 amends AS 47.12.030(a) "to include a crime that is a felony or Class A misdemeanor crime against a person directed at a victim because of that person's race, sex, color, creed, physical or mental disability, ancestry or national origin." The addition would require a minor accused of such a hate crime to be tried as an adult.

CHAIRMAN TAYLOR thanked Senator Donley for introducing the legislation and called Mr. Buttane forward to testify.

MR. ROBERT BUTTANE, Department of Health & Social Services Division of Juvenile Justice, testified that the department would like the committee to consider use of the dual sentencing provisions in the delinquency statute for crimes of bias. This would allow such cases to be prosecuted in the adult court. If the juvenile was convicted they would be referred back to the delinquency system under a delinquency disposition order. If they completed the delinquency disposition order, the case would be closed. If they failed to complete that order, they could be returned to court and the pronounced sentence could then be imposed.

Research indicates that waiver of juveniles is not an effective response and that is why the Division of Juvenile Justice would like the committee to consider this option. Juveniles who are handled in the adult system are eight times more likely to commit suicide, five times more likely to be sexually assaulted, and when they are released they tend to offend more quickly and be more

predatory in nature than those who are processed through the delinquency system. This is particularly so if misdemeanor crimes are included in the automatic waiver. In addition, individuals sentenced for low level felonies and misdemeanors would endure fewer sanctions than they would if they were in the juvenile system.

Finally, crime bias legislation not including the class category dealing with the perceived or actual sexual orientation of the victim would be incomplete. For these reasons, the department would like the committee to amend the bill.

CHAIRMAN TAYLOR asked Senator Donley to comment.

Number 329

SENATOR DONLEY questioned the credibility of comparing the juvenile system with the adult system. Additionally, he said the language in the bill is the same as that currently used by the courts and that language should be adhered to.

He then asked Mr. Buttane whether there was any difference in the public accountability or openness of the criminal justice process between the dual sentencing provision and automatic waiver to adult court.

MR. BUTTCANE did not believe so. Both the automatic waiver and the dual sentencing provisions would be open to the public.

CHAIRMAN TAYLOR called for additional testimony and received no response. He asked for the pleasure of the committee.

SENATOR DONLEY moved SB 169 from committee with individual recommendations. There being no objections, SB 169 moved from committee with individual recommendations.

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SB 204

SB 204-WILDFIRES AND NATURAL DISASTERS

HANS NEIDIG, aide to Senator Lyda Green, testified that SB 204 was introduced to address the concerns of private property owners and residents during the emergency management of wildfires and disaster areas. Language would be placed in statute that more equitably balances the rights of private property owners and residents with the demands of emergency personal to protect life and property. Property owners may choose not to evacuate an area or to enter a threatened area, at their own risk, so long as entry does not interfere with emergency personal. Emergency personal are exempted

from liability if a property owner or resident is injured or killed after choosing not to evacuate or choosing to reenter a threatened area.

CHAIRMAN TAYLOR called for additional testimony. He noted letters in the bill file from interested citizens who had testified at previous meetings. All indicated a desire to see the legislation move forward.

He stated that the legislation reflects current regulates in the affected areas.

MR. NEIDIG, said guidelines have been developed and the legislative language is tied to those guidelines.

CHAIRMAN TAYLOR observed that it was his understanding that work on the legislation would be ongoing during the interim.

Number 649

SENATOR ELLIS asked what would happen to children of property owners and residents who elect not to evacuate an area threatened by wildfire. We wondered whether there would be a duty to evacuate children.

MR. NEIDIG said the legislation provides that only adults may elect to remain in their homes during times of evacuation. Regulations would specifically address the concerns for children and or the disabled and therefore need not be addressed in the legislation.

CHAIRMAN TAYLOR stated that it was his understanding that, at some point, the level of threat might result in mandatory evacuation.

MR. NEIDIG responded that the guidelines outline the levels of evacuation from directive to order of evacuation.

CHAIRMAN TAYLOR asked whether children would be evacuated.

MR. NEIDIG responded that presumably they would.

SENATOR ELLIS remarked that this is a complex issue that needs more work.

CHAIRMAN TAYLOR replied that the sponsor had indicated that leaving the bill in the Judiciary Committee might be advantageous if more hearings were needed during the interim.

SB 204 was held in committee to be addressed during the next session.

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#HB 230

HB 230-RAILROAD EMPLOYEE SALARIES AND WAGES

CHAIRMAN TAYLOR advised that this legislation is identical to SB 170 that was moved from committee but had not yet been read on the floor.

He called for testimony on HB 230 and received no response. He noted that there had been testimony in person and via teleconference from railroad employees representing the union as well as the sponsor.

He asked for the pleasure of the committee.

SENATOR ELLIS moved HB 230 from committee with individual recommendations. There being no objection, HB 230 moved from committee.

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#HB 193

HB 193-MODIFIED BLANKET PRIMARY ELECTION

SENATOR THERRIAULT moved adoption of the Kurtz S 4/30/01 committee substitute for HB 193 as a working document. There was no objection.

SENATOR ELLIS asked whether Senator Therriault's issue with the legislation was access to the ballot by petition.

SENATOR THERRIAULT responded that on the date that party candidates had to make their decision, people that want access to the ballot through the petition process would also have to fill out a form with the Division of Election and would then be given a signature booklet. They would then have until the primary to collect signatures, turn them in and be placed on the general election ballot. They would be required to adhere to all APOC filings for collecting and disbursing money for running a campaign while collecting the signatures. This would keep the reporting standards the same for everyone.

Number 1104

MR. JOE BALASH, staff to Senator Therriault, testified that the amendment adopted by committee was incorporated into the Finance Committee substitute. He then pointed out that wording was not changed on page 3 of CSHB 193(FIN), line 17-20 to make it

consistent with the changed wording of the statute allowing parties to have a single ballot unless they wanted to open it up.

He then restated Senator Terriault's testimony.

Number 1258

MR. AVRUM GROSS testified that, at the request of Lt. Governor Ulmer, he chaired a task force that worked to draft legislation to respond to the Supreme Court case Democratic Party v. Jones. They ruled that the blanket primary in California was illegal because it did not allow parties to limit individuals who could select that parties' candidates.

Prior to the ruling, Alaska had a blanket primary system. Due to the ruling, provisions had to be made so that parties could limit who could vote to select its candidates in a primary.

The resultant draft legislation was as close to existing law as possible. Voters would get a ballot with all the offices and candidates listed unless a particular party decided to limit access to its candidates to only those voters registered as independent or members of their party. In that case, independents and members of the party choosing to limit would get a blanket primary ballot with all candidates listed while voters from other parties would receive a ballot listing all candidates except the candidates from the limiting party.

This legislation was drafted to encourage voters to participate in primaries and because Alaska has always had open or blanket primaries, never closed primaries. The more primaries are closed the less participation there is.

HB 193 is unlike the legislation drafted by the task force because it adopts a closed primary for the first time in the history of the state. It allows parties to tell voters who can participate in selecting its candidates and to dictate that voters who vote for its candidates may not vote in any other primary at all. This gives the parties a power never held before because it would prohibit voters from voting in primaries other than the party for which they are registered even if they are allowed to do so. This is not required by the Supreme Court decision and it limits people who can participate in primaries.

CHAIRMAN TAYLOR asked whether the legislation drafted in Mr. Grosses committee allowed an individual to vote for more than one time during the same primary.

MR. GROSS said each voter got just one vote but they could vote for a democratic candidate for governor and a republican candidate for lt. governor unless a party had limited access to their ballot. If

republicans were the only party that limited their ballot then independents and registered republicans could vote for candidates from all parties but voters registered with other parties could vote for all candidates except those on the republican platform.

Number 1709

CHAIRMAN TAYLOR observed that in 1992 or 1994, Jack Coghill was told that. if he closed the republican party ballot, republicans would be able vote in that ballot and also the democratic ballot since the democrats had left their ballot open. This would give them two votes. He thought Mr. Gross was advocating this position.

MR. GROSS said that was not the case and he proceeded to explain his position again. Each voter gets just one vote for each office. A party can limit the people who can vote for their candidates but they can not limit a persons right to vote for other candidates beyond that party if the voter elects to do so. "Republicans do not have to vote for republicans if they don't want to. They can vote for democrats if they want to but democrats can't vote for republicans if republicans don't want them to."

CHAIRMAN TAYLOR responded that it would follow that all the republicans and independents could exercise their right to vote on the republican ballot then vote for democratic candidates on a different ballot.

MR. GROSS said this could all be done on one ballot and each person could only vote once. Individuals would get different ballots depending on their party preference and whether or not the party elected to limit their primary to those voters registered to that party. HB 193 will require independents to pick a party. They will have to vote a straight republican or straight democratic ticket. They can't move back and forth and participate in one primary for governor and another primary for lt. governor. This is what independents want and he could not see the purpose of denying them that right. He could understand republicans not wanting democrats or independents voting in a republican primary but if they did want independents voting in the republican primary, what difference would it make if they voted for state senate in a democratic primary.

CHAIRMAN TAYLOR thought that could easily be set up but would probably not be acceptable to democrats. His preference is that every independent and every republican gets two ballots so they could vote for republican candidates and also democratic ones.

MR. GROSS said that under this bill, if a republican asked for the republican ballot he would be prohibited from participating in the democratic primary whether the democrats wanted him to or not.

CHAIRMAN TAYLOR said he understood that.

MR. GROSS thanked the committee for hearing his testimony. He continued to question why independents should be cut off from participating in a blanket primary. He'd heard no support for that position.

SENATOR THERRIAULT asked Mr. Gross for his opinion on what had been added to the bill.

MR. GROSS replied that wasn't his focus but it sounded reasonable.

SENATOR THERRIAULT expressed his appreciation to the task force and agreed that they had returned recommendations that were as close to original statute as possible. This was appropriate since they were not asked to make a policy call and is what the legislature is now doing.

MR. GROSS stated he came to testify because of the way the legislation has developed not simply because it was changed.

Number 2067

REPRESENTATIVE COGHILL testified that this is a personal priority even though the task force put forward the bill using the parameters set by Lt. Governor Ulmer.

He then read from page 14 of Democratic Party v. Jones which provides him with the logic behind HB 193.

CHAIRMAN TAYLOR called a recess at 5:31 p.m. and called the meeting back to order at 5:35 p.m.

SENATOR THERRIAULT asked that the Director of the Division of Elections come forward to comment on the new section of the bill not considered by the House. (NEW TAPE)

TAPE 01-27, SIDE A

JANET KOWALSKE, Director of the Division of Elections, stated that her staff had worked with Senator Therriault's staff as well as APOC and the Department of Law and determined there are no technical problems with the bill.

CHAIRMAN TAYLOR called for further testimony and received no response. He asked for the pleasure of the committee.

SENATOR THERRIAULT moved the Senate Judiciary version of HB 193 and accompanying fiscal note from committee with individual recommendations.

SENATOR ELLIS objected.

CHAIRMAN TAYLOR called for a roll call vote. The measure passed with Chairman Taylor and Senators Cowdery and Therriault voting yea and Senator Ellis voting nay. The bill moved from committee with individual recommendations.

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The meeting was adjourned at 5:37 p.m.