

ALASKA STATE LEGISLATURE
SENATE STATE AFFAIRS COMMITTEE

May 3, 2001
3:55 p.m.

MEMBERS PRESENT

Senator Gene Therriault, Chair
Senator Randy Phillips, Vice Chair
Senator Bettye Davis

MEMBERS ABSENT

Senator Rick Halford
Senator Drue Pearce

COMMITTEE CALENDAR

CS FOR HOUSE BILL NO. 96(HES)

"An Act relating to acquisition and development of the Jesse Lee Home; and providing for an effective date."

MOVED SCS CSHB 96 (STA) OUT OF COMMITTEE

CS FOR HOUSE JOINT RESOLUTION NO. 23(STA)

Advocating the retention of the Electoral College system in its present form.

MOVED SCS CSHJR 23(STA) OUT OF COMMITTEE

HOUSE BILL NO. 189

"An Act repealing statutory provisions relating to term limits and term limit pledges."

MOVED HB 189 OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 228(FIN)

"An Act relating to the accounting of fees from business license endorsements for tobacco products, to the disclosure of certain confidential cigarette and tobacco product information, to notification regarding a cigarette manufacturer's noncompliance with the tobacco product Master Settlement Agreement, to business license endorsements for sale of tobacco products, to citations and penalties for illegal sales of tobacco products; and providing for an effective date."

MOVED CSHB 228(FIN) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

HB 96 - No previous action recorded.

HJR 23- No previous action recorded.

HB 189- No previous action recorded.

HB 228- No previous action recorded.

WITNESS REGISTER

Representative Lancaster
Alaska State Capitol, Room 421
Juneau, AK 99801-1182
POSITION STATEMENT: Sponsor of HB 96

Jim Stratton
Director
Division of Parks & Outdoor Recreation
Department of Natural Resources
550 W. 7th Ave, Ste 1380
Anchorage, AK 99501-3561
POSITION STATEMENT: Answered questions on HB 96

Ray Gillespie
PO Box 593
Seward, AK 99664
POSITION STATEMENT: Supports HB 96

Tim Rogers
Alaska Children Services
No address provided
POSITION STATEMENT: Supports HB 96

Representative Coghill
Alaska State Capitol, Room 102
Juneau, AK 99801-1182
POSITION STATEMENT: Sponsor of HJR 23

Representative Rokeburg
Alaska State Capitol, Room 118
Juneau, AK 99801-1182
POSITION STATEMENT: Sponsor of HB 189

John Manly
Staff to Representative Harris
Alaska State Capitol, Room 513
Juneau, AK 99801-1182
POSITION STATEMENT: Introduced HB 228

Elmer Lindstrom
Special Assistant to the Commissioner
Department of Health &

Social Services
PO Box 110601
Juneau, AK 99801-0601
POSITION STATEMENT: Answered questions on HB 228

Ed Sasser
Department of Health &
Social Services
PO Box 110630
Juneau, AK 99801-0630
POSITION STATEMENT: Answered questions on HB 228

Helen Donohue
Staff to Representative Lancaster
Alaska State Capitol, Room 421
Juneau, AK 99801-1182
POSITION STATEMENT: Answered questions on HB 96

ACTION NARRATIVE

TAPE 01-25, SIDE A
Number 001

CHAIRMAN GENE THERRIAULT called the Senate State Affairs Committee meeting to order at 3:55 p.m. Present were Senators Davis, Phillips and Chairman Therriault.

The first order of business was HB 96

#HB 96

HB 96-ACQUIRING JESSE LEE HOME

REPRESENTATIVE LANCASTER explained that HB 96 would establish a task force within the Department of Natural Resources to look at the site and structure of the Jesse Lee Home in Seward to determine what can be saved and what the proper management structure should be to protect both the site and facility.

This home in Seward was built in 1925 as a children's facility and played a critical role in serving health care and educational needs of Alaska's orphaned children. A number of the children who grew up in the home went on to distinguish themselves in a wide variety of fields. The most notable is Benny Benson Jr. who designed Alaska's State flag while living at the home. The flag was first officially raised there on July 9, 1927.

A private party purchased the site and facility in 1964 and the

Kenai Peninsula Borough has recently foreclosed upon it and intends to deed the property to the City of Seward. The task force should be able to recommend what should be done with the structure and will hopefully recommend that the City of Seward take over management and receive grant donations from private entities to develop the site and provide a state cultural and historical site.

The House Finance Committee did not adopt the fiscal note for some reason but there is a \$65,000 fiscal note that is matched. He then read the following e-mail from Jim Stratton, Director of Parks:

In 2001 the capital budget here appropriated federal funds to the Division of Parks and Outdoor Recreation for the National Historic Preservation Fund and Federal Grants Program, \$640,000. The office of history and archeology administers this grant program, which is made available to local governments and non-profits as well as the state for restoration and preservation projects like the Jesse Lee Home. All grants from this program must be matched 50-50. With the \$35,000 general fund matching fund request in our fiscal note for HB 96, we'll be able to secure, through a match, an additional \$35,000 for our existing 2001 grant program. We had set aside a portion of the total 2001 National Historic Preservation Fund in the federal grants program for state opportunities for this one.

The Department of Natural Resources (DNR) is willing to work with the program and provide the match for the general fund of \$35,000.

SENATOR PHILLIPS said language in the bill said DNR should determine the costs and set up some options. He referred to a letter in his bill packet that said a commission would determine the costs and set up options and wondered whether the commission concept had been abandoned.

REPRESENTATIVE LANCASTER said there was no commission established.

SENATOR PHILLIPS asked why the date for recommendations to be sent to the governor was set for November 1, 2002.

JIM STRATTON, Director of the Division of Parks & Outdoor Recreation responded that if the commission could be established and the process completed prior to the 2002 deadline they would. However, he did not see that there could be a full archeological review of the structure and a full round of discussions with the community completed by the end of this year and ready for the next legislative session so he asked for a year's extension. The department would like to have the conclusions and move on as

quickly as possible.

CHAIRMAN THERRIAULT said Senator Phillips' question came from section 2, which reads, "The Department of Natural Resources shall determine the costs and procedures" and it doesn't talk about the formation of a commission. He asked whether that was still the intent.

MR. STRATTON said yes, their intent is to establish a commission.

SENATOR PHILLIPS said the sponsor said no commission.

REPRESENTATIVE LANCASTER said to Mr. Stratton, "I thought we'd talked about just establishing a committee to hire an architect to take a look at this facility. A committee of interested persons and someone from the department and the architect would actually tell us the valuation of the site and then we'd make recommendations."

MR. STRATTON said they were both talking about the same thing; the terminology is just mixed up. A committee would be established to hire the architect who will make recommendations about what can and cannot be done with the structure itself. In terms of recommendations of what to do with the property, the committee would work with DNR to make those determinations. DNR would not work independently; they want to work with the committee Representative Lancaster mentioned.

SENATOR PHILLIPS questioned that it would take 18 months. He also wanted to know whether the building would be restored to its 1926 condition.

MR. STRATTON wasn't sure the building could be restored or if the amount of money it would take to restore it would be worth the investment. That's the investigation that needs to be done. He thought it could be done in less than 18 months but not in six.

REPRESENTATIVE LANCASTER said there was a study of the building done in 1999 and the condition was marginal. It was not a complete study though so there is need for further investigation. The goal is to restore the building if that is possible and money is available.

CHAIRMAN THERRIAULT asked why there is a movement toward the state owning and being responsible for maintenance and ongoing operation, rather than the state participating in helping the local government to renovate the facility and then having the local government responsible for coming up with the operational plan and operating it.

REPRESENTATIVE LANCASTER thought it was because the borough was the automatic entity to receive the property through the foreclosure

process. Since the city did not have sufficient funds for the evaluation process, Mr. Stratton thought DNR could help in the evaluation process.

CHAIRMAN THERRIAULT said there was money in the capital budget or they could pass a separate appropriation bill they could have come up with money to underwrite the effort but not to assume control of the property in perpetuity. He asked whether that was necessary at this point.

REPRESENTATIVE LANCASTER didn't know that it was necessary or even the goal. The committee and the DNR commissioner would decide who should control and manage it in the future. This is a first step.

CHAIRMAN THERRIAULT pointed out that section 2 says, "The Department of Natural Resources shall determine the costs and procedures necessary for the state to acquire,".

REPRESENTATIVE LANCASTER said he didn't know that there was any goal for the state to acquire and own the property. The committee needs to determine who can best manage the facilities.

CHAIRMAN THERRIAULT said he wasn't interested in the state paying the city to take on the responsibility and wanted to know what Representative Lancaster had in mind as far as that was concerned.

REPRESENTATIVE LANCASTER didn't think anyone had that in mind. They would like to get the department's recommendation about how it should be managed.

CHAIRMAN THERRIAULT asked Mr. Stratton whether he envisioned the state taking ownership of the property.

MR. STRATTON said no, he would like to facilitate the discussion and figure out what to do with the property and set up the management scheme. He is very interested in the City of Seward retaining ownership.

CHAIRMAN THERRIAULT asked if there was any reason for the bill being written so that the state was responsible for acquiring, developing and managing the property.

MR. STRATTON said, from his perspective, there was no reason for it to be written that way.

SENATOR DAVIS asked whether anyone had a copy of the 1997 study that indicated the building was marginal. She asked for an interpretation of "marginal."

REPRESENTATIVE LANCASTER said he would make a copy available. He used the term "marginal" because it was more a walk through rather

than a complete and professional evaluation.

SENATOR DAVIS asked the question because she had received several personal opinion messages (POMs) stating that a study had been done by the City of Seward.

REPRESENTATIVE LANCASTER responded an independent party who was thinking of purchasing the home from the previous owner had the study done.

RAY GILLESPE testified that he was representing himself and his family. He was born and raised in Seward and is familiar with the history of the Jesse Lee Home. He went to school with the orphans and his wife's mother grew up in the orphanage when it was in Unalaska. She then became one of the house parents when the home was moved to Seward and she raised her family there.

The facility has historical significance and he hopes a plan is developed to preserve it.

CHAIRMAN THERRIAULT asked whether he had interest in the state acquiring the facility since that is the way the bill is written.

MR. GILLESPE said he was familiar with a number of individuals who are interested in preserving the site and none of them think it's a foregone conclusion that the state will own and operate the facility. That could be explored but he didn't believe the state would obligate itself to purchase the facility if it passed the legislation. He suggested the wording could be changed prior to moving the bill.

CHAIRMAN THERRIAULT said he would be more comfortable if the wording said the state would assist the City of Seward in developing a plan. If the local government can't handle the project without state involvement that's a future decision but he doesn't want to obligate the state from the beginning.

MR. GILLESPIE said that wording is closer to the community expectations.

TIM ROGERS, Alaska Children's Services Board Member, testified in support of the efforts to renovate the Jessie Lee campus. They are willing to work with DNR, the City of Seward and any other parties to facilitate the project.

CHAIRMAN THERRIAULT said HB 96 would be set aside. An amendment would be drafted during the meeting break so the legislation could be considered for final action that day.

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Number 1265

#HJR 23

HJR 23-MAINTAIN ELECTORAL COLLEGE SYSTEM

REPRESENTATIVE COGHILL, bill sponsor, said the resolution encourages Congress to retain the Electoral College without modification as it is in the constitution. There will be a national debate on the subject and he thought it wise to take a stand. To him, it is an issue of the difference between a republic and a democracy.

CHAIRMAN THERRIault commented that although the recent national election caused some to charge the Electoral College is outdated, he views it as a protection for states with smaller populations.

He asked whether anyone else wanted to testify. There was no one.

CHAIRMAN THERRIault said his "eagle eye staff" pointed out a missing word.

He moved amendment 1. On page 1, line 6 insert "in" after "provided for" and before "the constitution". There was no objection.

He asked for other amendments. There were none.

He asked for the will of the committee.

SENATOR PHILLIPS moved SCS CSHJR 23 (STA) from committee. There was no objection.

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#HB 189

HB 189-REPEAL TERM LIMITS/TERM LIMITS PLEDGES

REPRESENTATIVE ROKEBURG, bill sponsor, described the bill as a simple bill that needs caution because it is repealing a citizen's initiative that was passed by voters several years ago.

On February 28, 2001, in Cook v. Gralike, the United States Supreme Court found that the scarlet letter or gold star type term limit pledges placed next to candidates names were unconstitutional as it related to members of the United States Congress and Senate and based on the election clause theory. The court did not specifically take up freedom of speech in terms of this type of pledge being unconstitutional but the concurring opinion of Justices Rehnquist and O'Connor did bring that issue forward indicating they believe any term limit pledge would be an abridgement of freedom of speech.

"Since the Alaska Statutes are so similar to those of Cook v. Gralike, this United States Supreme Court ruling suggests that our statutes are unconstitutional. This bill will repeal these unconstitutional statutes."

SENATOR PHILLIPS asked whether the Supreme Court strikes down the state provision.

REPRESENTATIVE ROKEBURG said it just spoke to the congressional provisions. It didn't take up freedom of speech but the concurring opinion did. The Idaho Supreme Court and a federal district court in South Dakota both found these labels affect free speech.

There is a supporting letter from former Attorney General John Havelock in the committee packets. He has been asked to challenge this on a state level but he would prefer to have the legislature enact the bill.

CHAIRMAN THERRIAULT said the third page of the legislative counsel memo talks about severability. The application of the Supreme Court case probably renders half of the sections in the Alaska Statutes moot. It's now a question of whether a state challenge would affect the rest.

REPRESENTATIVE ROKEBURG agreed that the legal theory, as expressed in Gralike and other case law, would strongly support that position.

SENATOR PHILLIPS gave a recap.

CHAIRMAN THERRIAULT said certainly the Supreme Court has ruled on the congressional delegation but the question is still out on the state portion.

SENATOR PHILLIPS said he doesn't believe in term limits but this was a citizen's initiative that was approved by the voters and he's reluctant to go against their wishes unless the state supreme court rules under the Cook v. Gralike ruling.

REPRESENTATIVE ROKEBURG pointed out the Idaho Supreme Court ruling. CHAIRMAN THERRIAULT confirmed that was a state supreme court ruling on a state statute.

SENATOR PHILLIPS asked whether the American Civil Liberties Union (ACLU) was now challenging it.

REPRESENTATIVE ROKEBURG responded they were planning to but would rather have the bill pass then there wouldn't be the need for the

challenge.

Because of the specific way the Alaska statute is drafted and the type of term limit pledge that must be taken, it makes a very strong case against it because if you deviate from the drafters' proposal you are breaking the term limit pledge. If he supports an eight year term limit in one body and a four year term in another that's a total of 12 years. State statute says eight years within a period of 16 years and he doesn't agree with that. Putting a scarlet letter next to his name on the ballot is an abridgement of his free speech; it's also compromising the fundamental right of voting.

CHAIRMAN THERRIAULT said he supported the language proposing a term limit and for him "it's a close call." He understands Senator Phillips reluctance to change a voter initiative but the constitution specifically says the legislature may modify a voter initiative within two years.

It is also bothersome because this is electioneering at the polling place.

REPRESENTATIVE ROKEBURG stated the Idaho case said this effectively grants the candidate a state endorsement.

CHAIRMAN THERRIAULT commented it would be nice if there were a clear decision from the Alaska Supreme Court.

He asked for further testimony. No one came forward.

There was no prepared CS and no amendments from committee members. There was a zero fiscal note.

He asked for the will of the committee.

SENATOR DAVIS moved HB 189 and zero fiscal note from committee with individual recommendations. There was no objection.

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#HB 228

HB 228-SALE OF TOBACCO PRODUCTS

JOHN MANLY, staff to Representative Harris, introduced the bill. Under the federal Synar amendment, the state is being penalized \$1.5 million in federal drug and alcohol grants because it is not in compliance with the limits set for the sale of tobacco to minors. In a recent DHSS initiated survey of tobacco retailers, it was determined that nearly 2/3 of vendors in rural Alaska sold

tobacco products to minors, while more than 1/3 of those in urban Alaska did. Both are well above the 20 percent federal allowable limit indicating far too many minors are buying and presumably using tobacco products.

The state has agreed to invest an additional \$481,687 in the tobacco abatement and enforcement programs in an effort to meet federal compliance limits and qualify for the \$1.5 million in federal drug and alcohol grants.

HB 228 has an attached \$487,900 Department of Health and Social Services (DHSS) fiscal note and a zero fiscal note from the Department of Revenue. There are also fiscal notes from the Department of Law and the Department of Community and Economic Development that are funded with a reimbursable services agreement (RSA) from the DHSS fiscal note.

This bill increases the penalties to businesses that sell tobacco to minors. For a first offense businesses would be fined \$300 and receive a 20 day suspension of their tobacco endorsement, a second offense within a two year period would bring a \$500 fine and a 45 day suspension of the tobacco endorsement. For a third offense and a fourth offense within a two year period there would be a \$1,000 fine and a 90 day suspension and a \$2,500 fine and a one year suspension of the tobacco endorsement respectively.

In addition, the bill would increase the fee for a tobacco endorsement on a business license from the current \$25 for a two-year period to \$100 for that same period. An individual endorsement would be required for each location at which a chain sells tobacco products, which would make it easier for DHSS to track where violations occur.

CHAIRMAN THERRIAULT asked whether the \$100 endorsement was yearly.

MR. MANLY responded it was for two years.

CHAIRMAN THERRIAULT asked for a recap of the penalties for the offenses and Mr. Manly obliged. [They are outlined above and fully described in section 6 of the bill.]

CHAIRMAN THERRIAULT asked whether there was any position paper or feedback from vendors.

MR. MANLY replied they had not gotten any feedback from vendors.

ELMER LINDSTROM, Special Assistant to Department of Health and Social Services Commissioner Perdue, said he was happy to answer

any questions.

CHAIRMAN THERRIAULT asked whether businesses ever defend sales to minors by charging that the minors used false identification (ID) and if so, what kind of protection does the vendor have in that type of situation?

MR. LINDSTROM said the DHSS sting operations are conducted using local law enforcement and there is an extensive protocol on how the operations will be conducted. One of the primary requirements is that if a minor is asked for an ID they produce their ID that shows they are underage.

CHAIRMAN THERRIAULT asked whether the provisions in section 6 are applied only through the state conducted sting operations.

MR. LINDSTROM didn't believe so but he couldn't think of any enforcement activity that was not sponsored by local law enforcement or DHSS, which is the agency that trains local law enforcement on protocol.

ED SASSOR, Tobacco Enforcement Coordinator for Public Health, added that theoretically it could be possible. Just as a minor can be cited for smoking, a vendor could be cited for selling tobacco products to a minor. Enforcement is carried out with local law enforcement using established protocols that involve the use of real ID cards and in no way tries to trick the vendor. Even with that protocol in place there is up to 60 percent non-compliance in rural areas and 34 percent in urban areas.

Side B

CHAIRMAN THERRIAULT asked whether the section 6 provisions would apply if a minor used a fake ID to purchase tobacco and alcohol and was subsequently apprehended.

MR. SASSOR said that scenario is the same as under current law and this bill doesn't affect current statutes. The magistrate or judge would have discretion to determine whether the clerk had sufficient knowledge or should have known that the ID was false.

SENATOR PHILLIPS requested an explanation of the \$1.5 million loss in federal grants.

MR. SASSOR explained there is federal law referred to as the Synar amendment that holds hostage the federal block grant for substance abuse treatment. If the compliance checks are conducted and if youth are successful in purchasing tobacco products more than 20 percent of the time, the state is in non-compliance and the penalty is \$1.4 million, 40 percent of the state block grant. Several months ago, Congress passed a law that provided for an alternative

penalty and that is that if you are a state that is in non-compliance and you put in an amount of money for the tobacco enforcement program that will be accepted in lieu of the \$1.5 million penalty. Therefore, for the amount of the fiscal note the \$1.5 million penalty is avoided.

This makes sense as a business expense because a \$487,000 cost to the state is less than a \$1.5 million cost. From the department's perspective, this bill will provide an enforcement program that will make it possible to avoid the penalties in the future.

SENATOR PHILLIPS asked how the 20 percent is measured and who does the measuring.

MR. LINDSTROM responded that compliance checks were mandatory as a condition of receiving the block grant and they have to select a random sample of retail businesses that sell tobacco. There are about 1,700 existing endorsements for selling tobacco and about 400 of those outlets had to be randomly selected and sampled and that becomes the basis for the annual sample.

CHAIRMAN THERRIAULT asked how the bill interacts with the proposed operating budget because the loss of the grant funds were made up in the operating budget and through the passage of this legislation the \$1.5 wouldn't be lost. He asked if those funds would be put back in general fund.

MR. LINDSTROM said neither the House nor the Senate included the request from DHSS of the additional \$1.5 million to offset the loss in the budget. Instead, Representative Harris brought forward this legislation and in the absence of this legislation and the fiscal note there would be a reduction to the program base of \$1.5 million. There is no increment in the House or Senate version of the budget to replace these dollars.

CHAIRMAN THERRIAULT asked whether there were any more questions or anyone else to testify. There was no response.

There was no prepared CS and no amendments from the committee.

He asked for the will of the committee.

SENATOR DAVIS moved HB 28 and four attached fiscal notes from committee with individual recommendations. There was no objection.
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CHAIRMAN THERRIAULT anticipated taking final action on HB 96 after the floor session.

The meeting was recessed to the call of the Chair at 4:50.

#HB 96

HB 96-ACQUIRING JESSE LEE HOME

CHAIRMAN THERRIAULT called the meeting back to order at 6:45 p.m. Present were Senators Davis, Phillips and Chairman Therriault.

He explained that the original bill as it come to the committee, presupposed that the state would acquire the home and develop it for historic value. The redrafting does not presuppose that the state would purchase the home. It does ask for the state to be involved in the assessment of how the home can be preserved, developed and managed in the future.

Page 2, section 2(b) is not needed because it asks for options if the state did not purchase. It is unneeded because there is no longer any presupposition the state will purchase the home.

He noted the presence of staff for the prime sponsor.

HELEN DONOHUE, staff to Representative Lancaster, said they have reviewed the changes to the bill and have no objections.

CHAIRMAN THERRIAULT asked for questions or other amendments. There were none.

He noted the fiscal note from DNR dated April 1, 2001.

He asked for the will of the committee.

SENATOR DAVIS moved CS CSHB 96(STA) and fiscal note from committee with individual recommendations. There were no objections.

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CHAIRMAN THERRIAULT adjourned the meeting at 6:45 p.m.