

ALASKA STATE LEGISLATURE
SENATE STATE AFFAIRS COMMITTEE

February 12, 2002
3:40 p.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

Senator Rick Halford

COMMITTEE CALENDAR

SENATE BILL NO. 267

"An Act establishing the Alaska veterans' memorial endowment fund and providing for credits against certain taxes for contributions to that fund; relating to other tax credits for certain contributions; and providing for an effective date."

MOVED SB 267 OUT OF COMMITTEE

SENATE BILL NO. 268

"An Act relating to the issuance of state-guaranteed revenue bonds by the Alaska Housing Finance Corporation to finance mortgages for qualifying veterans; and providing for an effective date."

MOVED SB 268 OUT OF COMMITTEE

SENATE BILL NO. 236

"An Act making supplemental and other appropriations for homeland security; and providing for an effective date."

SCHEDULED BUT NOT HEARD

SENATE BILL NO. 238

"An Act relating to state plans and programs for the safety and security of facilities and systems in the state; and providing for an effective date."

MOVED CSSB 238(STA) OUT OF COMMITTEE

SENATE BILL NO. 240

"An Act relating to the crimes of damaging an oil or gas pipeline or supporting facility, criminal mischief, and terroristic threatening; making conforming amendments; and

providing for an effective date."

MOVED CSSB 240(STA) OUT OF COMMITTEE

SENATE JOINT RESOLUTION NO. 31

Urging the United States Congress to permit the use of tax exempt bonds to fund loans for veterans who served after 1976.

MOVED CSSJR 31(STA) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

SB 267 - No previous action to record.

SB 268 - No previous action to record.

SB 236 - See State Affairs minutes dated 1/31/02.

SB 238 - See State Affairs minutes dated 1/24/02, 1/31/02.

SB 240 - See State Affairs minutes dated 1/24/02, 1/31/02.

SJR 31 - See State Affairs minutes dated 2/7/02

WITNESS REGISTER

Senator Jerry Ward
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: SJR 31 sponsor

John Bitney
Alaska Housing Finance Corporation (AHFC)
4300 Boniface Parkway
Anchorage, AK 99510

POSITION STATEMENT: Testified on SB 268

Laddie Shaw
Department of Military &
Veterans Affairs
PO Box 5800
Ft Richardson, AK 99505-0800

POSITION STATEMENT: Testified on SB 267

Pat Carothers
Alaska Veterans Advisory Council
Juneau, AK 99801

POSITION STATEMENT: Testified on SB 267

Neil Slotnick
Deputy Commissioner
Department of Revenue
PO Box 110400
Juneau, AK 99811-0400

Frank Richards
State Maintenance Engineer
Department of Transportation &
Public Facilities
3132 Channel Dr.
Juneau, AK 99801-7898
POSITION STATEMENT: Testified on SB 238

John Steiner
Eagle River, AK 99517
POSITION STATEMENT: Testified via teleconference on SB 238

Joe Balash
Staff to Senate State Affairs Committee
Alaska State Capitol Room 121
Juneau, AK 99801-1182
POSITION STATEMENT: Explained proposed CS for SB 240

Annie Carpeneti
Department of Law
PO Box 110300
Juneau, AK 99811-0300
POSITION STATEMENT: Testified on SB 240

ACTION NARRATIVE

TAPE 02-7, SIDE A

CHAIRMAN GENE THERRIAULT called the Senate State Affairs Committee meeting to order at 3:40 p.m. Present were Senators Davis, Stevens, Phillips and Chairman Therriault.

The first order of business was SJR 31.

#SJR 31

SJR 31-TAX EXEMPT BONDS TO FUND VETERANS LOANS

CHAIRMAN THERRIAULT announced there was a proposed CS in committee member's packets.

SENATOR JERRY WARD, sponsor, explained this resolution urges the United States Congress to support H.R. 959 and S. 615 to amend the Internal Revenue code to allow veteran home loans to be issued to veterans that have served after 1977.

CHAIRMAN THERRIAULT said his staff has spoken with Senator Ward's staff to discuss the proposed CS. First, a reference was corrected and then one "WHEREAS" was deleted. His view is that

they are asking Congress for favorable action on the H.R. 959 and S. 615 so any hint of antagonism should be avoided.

SENATOR WARD endorsed the CS then said:

However, in the eyes of some veterans, I believe that some past Congresses have been very antagonistic and not supportive of veterans. For veterans to place their life on the line and for Congress not to do something as simple as home ownership, yes, I might be a little bit disturbed in their action in the past and many veterans are too. However, I don't mind being polite if it gets the job accomplished.

SENATOR THERRIAULT said that is what he is trying to keep in mind.

He asked whether members had questions for John Bitney of AHFC regarding the housing loan method and there were none.

He extended his apologies to Senator Ward for not giving him a copy of the CS earlier but the draft amendment was finished just before the meeting convened. The CS simply changes the tone of the "WHEREAS" on page 2 lines 15 through 18. The amendment reads as follows:

BE IT RESOLVED that the Alaska State Legislature respectfully urges the 107th United States Congress to support H.R. 959 and S. 615 to remove the portion of the Internal Revenue Code which restricts access to state veterans' home loan programs for veterans who served after 1976 so they and their families may enjoy the same benefits as their earlier counterparts.

SENATOR PHILLIPS made a motion to adopt the committee substitute 22-LS097\C Cook 2/12/02 as the working document. There being no objection, the motion was adopted.

SENATOR PHILLIPS made a motion to adopt the proposed amendment #1. There being no objection, amendment #1 was adopted.

There was no additional testimony.

CHAIRMAN THERRIAULT called attention to the zero fiscal note. There were no further questions or amendments.

He asked for the will of the committee.

SENATOR PHILLIPS made a motion to move CSSJR 31(STA) and zero fiscal note from committee with individual recommendations.

There being no objection, CSSJR 31(STA) and fiscal note moved from committee with individual recommendations.

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#SB 268

SB 268-GUARANTEED REVENUE BONDS FOR VETERANS

JOHN BITNEY from the Alaska Housing Finance Corporation explained that Alaska is one of five states that qualifies to issue tax-exempt bonds under the IRS code. The bonds are issued to provide home mortgages for qualified veterans. This program defines a qualified veteran as someone who served in the United States Armed Services prior to January 1, 1977. Because there is a diminishing pool of qualified veterans, they anticipate that the next requested \$500 million bond authorization will be the last unless Congress takes action as requested by SJR 31. The nature of the tax exemption in the IRS code requires that the state provide a guarantee behind the bonds. SB 268 takes that question to the general election ballot for the voters to approve as a general obligation of the state. As a matter of record, he stated this does not cost the state money from the treasury. The structure is such that the mortgages that the bond proceeds purchase are pledged against the debt and are used to repay that debt. This guarantee helps the state to qualify for the tax exemption but it does not cost the state. In the view of the rating agencies, this structure does not limit the state's general obligation bond capacity.

He said it is a good program and he asked the committee to take favorable action.

CHAIRMAN THERRIAULT asked if he would be back to ask for increased authorization if Congress acts favorably on H.R. 959 and S. 615 because this bill wouldn't cover the expected demand.

MR. BITNEY replied he would probably be back in 2004 if the bills pass, but if Congress did not take action, this authorization would last until about 2010 when the program would most probably end.

CHAIRMAN THERRIAULT noted the fiscal notes from the Division of Elections and AHFC.

There was no further testimony and no amendments were offered. He asked for the will of the committee.

SENATOR PHILLIPS asked to be exempt from voting to move the bill because he works for the state's largest mortgage company and it might be perceived that he is benefiting.

CHAIRMAN THERRIAULT thanked him for his disclosure but objected to his exemption.

SENATOR PHILLIPS made a motion to move SB 268 and attached fiscal notes from committee with individual recommendations.

There being no objection, SB 268 moved from committee.

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#SB 267

SB 267-ALASKA VETERANS' MEM.ENDOWMENT FUND

LADDY SHAW, state director for the Department of Military and Veterans Affairs, described the bill as a grant program for maintenance, repair, replacement, enhancement of and addition to any veteran's memorials or monuments to veterans and the military in the state.

The bill proposes to finance the fund through appropriations as well as contributions that will be eligible for certain state corporate tax credits.

Presently they have \$125,000.00 in the bank and are working to collect another \$20,000.00 that is already pledged. They have offered that \$20,000.00 to the Vietnam Veteran's Moving Wall for coming to Alaska and as a part of a nationwide non-profit program to provide information about Vietnam veterans.

He said he represents 68,000 veterans and about 30,000 military members in the state. They are asking the committee to pass SB 267 thus giving these people the honor and recognition they deserve.

SENATOR PHILLIPS commented it meant a lot to him personally to see the Moving Vietnam Wall at the Parks Strip in August.

MR. SHAW agreed that having the wall in the state was very meaningful. He said that although they have had a tremendous amount of volunteer help, a number of memorials are in disrepair and there is no money for their repair or for new memorials such

as one to honor the Alaska Territorial Guard. Some private individuals feel strongly enough that they are going out on their own to ask for donations.

When they came up with the present idea as an initiative they were overwhelmed with the support they received. Any support the committee is able to give would be appreciated.

SENATOR PHILLIPS asked whether the monument for the Lend-Lease Act would qualify.

MR. SHAW said construction or repair of any monument that deals with any area of military and veterans' affairs would be covered.

SENATOR PHILLIPS commented he hopes it would fit because there were a lot of men and women involved in that effort.

CHAIRMAN THERRIAULT said this just adds another option to the existing tax exemption but he wasn't clear which tax types this credit applies against.

MR. SHAW asked that the representative from the Department of Revenue answer those questions.

MR. NEIL SLOTNICK, deputy commissioner of Department of Revenue, informed members the tax credit applies against a number of types. It is the insurance premiums tax AS 21.89, the corporate income tax AS 43.20, oil and gas severance tax AS 43.55, oil and gas property tax AS 43.56, mining and license tax AS 43.65, fisheries business tax AS 43.75 and the fish landing tax AS 43.77.

CHAIRMAN THERRIAULT explained that you get 50 percent of your first \$100,000.00 and 100 percent of your second \$100,000.00 for a total of \$150,000.00. You may only get this once in any tax year from any of the sources. Basically, this allows people to direct their tax dollars to a specific purpose. This is allowed in education as well and now the corporations will be able to choose between the two options.

There were no further questions on the technical mechanisms of the bill.

PAT CAROTHERS, Chairman of the Alaska Veterans Advisory Council, said he was present to solicit support to move the bill forward.

There was no further testimony.

CHAIRMAN THERRIAULT noted there was no prepared CS and he had no amendments.

SENATOR PHILLIPS made a motion to move SB 267 and fiscal notes from committee with individual recommendations.

There being no objection, SB 267 move from committee.

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#SB 238

SB 238-SECURITY OF FACILITIES AND SYSTEMS

CHAIRMAN THERRIAULT announced there was a proposed CS. In the original bill there was discussion in Section 1 regarding granting the Department of Transportation and Public Facilities (DOT/PF) the power to levy fines at airport facilities. This section was dropped. In Section 3 there was concern about the language exempting orders from the Administrative Procedures Act (APA) to boards and commissions that have regulation adoption authority. Language granting the authority to exempt orders from APA was dropped.

FRANK RICHARDS, maintenance engineer for the DOT/PF, apologized for the confusion within the DOT/PF for not providing clarification to some of the questions raised at the last hearing of the bill.

He said he would like to address Sections 1 and 3 as they were written in the original bill and perhaps provide clarification to Section 1 so members could understand, from the department's perspective, where they have had difficulties administering the Federal Aviation Administration (FAA) mandated security programs.

The FAA requires 18 airports in Alaska to have security programs. Two of those airports are in Anchorage and Fairbanks and the remaining 16 make up the rural system. There is not an on site FAA security coordinator at these rural airports so the airport operator is responsible for administering the security programs. When there are violations of the programs, the airport is held responsible. Under the new revisions to part 107, which went into effect in November 2001, the FAA now has the ability to cite the airport and individual violators.

Although the DOT/PF is charged with administering the security programs, they have no enforcement abilities. If they observe a violation they have no ability to deter those violations in the future.

Where law enforcement officers are available, they are able to charge violators with a misdemeanor with a maximum \$500.00 criminal violation. SB 238 would allow them to impose civil administrative penalties of up to \$1,100.00 per incident. Currently, the FAA may assess a civil penalty of up to \$1,100.00 against the DOT/PF for violating any of the security programs. Although the FAA considers the DOT/PF to be the violator, nearly all violations are the result of action by an employee of a tenant or contractor. At the international airports where they have law enforcement capabilities, they are able to restrict a violator's access badge, but they are not anxious to do this because it essentially takes away their livelihood.

They would like to identify violations and then attach appropriate fines to those violations. The scale would be graduated and the most serious violators would be levied the \$1,100.00 fine.

Rural airports receive security inspections about once a year so for the majority of the time there is no federal oversight. Nonetheless, the requirements are in place at all times. It is their hope that the bill with Section 1 would move forward to help them provide a better operation of the airport system.

MR. RICHARDS brought up the treatment of Section 3 in the proposed CS.

CHAIRMAN THERRIAULT stated he spoke with Senator Cowdery and advised him that the bill would probably move to the Transportation Committee without Section 3. He recommended that Mr. Richards argue that transportation related issue before that committee.

He then disagreed with the DOT/PF's reluctance to remove an individual's security badge for security violations. This is an effective method of getting compliance and individuals that have compliance difficulties might be better off in a different type of job. He didn't see a problem using that available mechanism.

MR. RICHARDS replied it is a matter of progressive discipline. If an employee is escorting someone without a badge and that person leaves a secure door open, the person with the badge is responsible for that act. Taking that individual's badge away limits their access to a secure area and therefore limits them from doing their job. They felt they that if they were able to levy a civil penalty, that would limit their unacceptable behavior without putting them out of a job. Across the country,

it is those minor violations that are the most prevalent security breaches.

CHAIRMAN THERRIAULT asked whether the state couldn't pass a fine down to the contractor if the violator was an employee of that contractor.

MR. RICHARDS agreed they could do so. Under the new part 107 for airport security, the FAA is able to cite the airport as well as the individual. The individual includes not only the person but the employer.

CHAIRMAN THERRIAULT asked if other committee members had questions regarding the section the proposed CS drops from the bill.

SENATOR STEVENS said he was still unclear why he might want to return to the original version of the bill. Everything is already in place and Section 1 simply gives authority to the state to levy a fine on FAA requirements. This is why he requested that Section 1 be removed originally. It gives authority to levy a fine based on an FAA requirement not a state requirement. The contract the DOT/PF has with the tenant says that if they are in violation of an FAA code they will pay. He's in full agreement with that, but doesn't understand why the DOT/PF still wants the authority to levy a fine when there is already a criminal fine, a civil fine and the ability to remove a violator's badge.

MR. RICHARDS replied the major problems have come from the rural airports that have no law enforcement officers in security positions. Normally, there are just three or four individuals at these small airports and they perform security functions, airport rescue and fire fighting functions and equipment operation. They are charged with administering security programs and at times it is difficult for them when they have airport tenants with badges who have been given security training but they are not complying.

CHAIRMAN THERRIAULT asked if they are state employees.

MR. RICHARDS told him state employees are administering the security program, but it's the tenant or general public that may violate the security plan.

SENATOR STEVENS said that's his point of concern. Each of the regional operators would have the authority to levy a fine based on an FAA regulation not a state regulation. There's already a contract in place with the tenant that says if you violate you will be subject to FAA sanctions. This gives the regional

operator the ability to levy a fine based on his interpretation of a violation of a federal law and circumvents the contract that is already in place. He recommended moving the CS as drafted.

CHAIRMAN THERRIAULT said he drafted the CS so there could be forward movement on parts of the bill they could agree upon. Mr. Richards would have the opportunity to argue his point before the Senate Transportation Committee.

He asked Mr. Steiner from the Anchorage Attorney General's office whether he had something to add to the discussion.

JOHN STEINER testified via teleconference that his priority tasks are to represent the Anchorage and Fairbanks International Airports but he also provides assistance and support to the rural airports. In that capacity, he is very familiar with the security situation. One of the reasons the civil penalties were requested was because the FAA has traditionally penalized the State of Alaska whenever there is a tenant or employee security violation and these violations go down on the state's record.

SIDE B

Even though Senator Stevens was correct in stating that the FAA can now penalize individuals, they believe the airport will also be penalized for any contractor violation because those individuals are carrying out the airport security plan. One of the difficulties with the current situation is that the penalties are either very onerous or very cumbersome. There is no question the airport needs a mechanism to ensure that violations such as security doors being left ajar don't happen; but for someone to lose their job or be thrown in jail because of such an infraction is too harsh. Graduated penalties would be more effective and easier to use.

There were no questions for the witness.

SENATOR STEVENS made a motion to adopt 22-GS2091\C Bannister 2/12/02 as the working document. There was no objection.

CHAIRMAN THERRIAULT stated he had no prepared amendments to either the original bill or the CS and there was a zero fiscal note from the DOT/PF. He noted the title of the bill changed but it is a little broader making it possible for Section 1 to be reinserted in a subsequent hearing in another committee.

He asked for the will of the committee.

SENATOR STEVENS made a motion to move CSSB 238(STA) and the fiscal note from committee with individual recommendations. There being no objection, the bill moved out of committee.

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#SB236

SB 236-HOMELAND SECURITY APPROPRIATIONS

CHAIRMAN THERRIAULT announced they have received a series of spreadsheets from legislative finance that separate capital budget items from the 2002 and 2003 budget items. They hadn't had the opportunity to thoroughly analyze them so the bill would not be heard that day.

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#SB240

SB 240-TERRORISTIC THREATENING/PIPELINE DAMAGE

CHAIRMAN THERRIAULT announced there is a proposed CS for SB 240.

JOE BALASH, Staff to Senate State Affairs Committee, explained the work draft does two things. First, it adopts the amendments that the Department of Law recommended in previous hearings. Those have to do with making damaging pipeline or facilities part of the conspiracy statutes. It also incorporated changes to murder in the first degree.

The major change occurs on page 4 where the criminal mischief statutes are discussed. Originally, a separate crime of intentionally damaging a pipeline or an oil or gas facility was created as a class A felony. Under current law, that particular crime is criminal mischief in the first degree and classified as a class B felony. Rather than create a separate law, they made criminal mischief in the first degree a class A felony, accomplishing the same thing. All the other crimes within criminal mischief in the first degree meet the requirements of a class A felony, which made it easier to move that crime up. Problems arose in criminal mischief in the second degree because part of criminal mischief in the second degree is tampering with a pipeline or oil and gas facility. That is something the department wanted to move up in classification to a class B felony. The only way to do that was to pull everything else out of second degree and put them into third degree. This eventually resulted in a cascading effect when third degree became fourth degree and fourth degree became fifth degree. All of the classifications of felonies and misdemeanors also moved down the scale. All the changes in references in various statutes are reflected in the CS.

CHAIRMAN THERRIAULT reminded members that the Attorney General's office had suggested that the original bill structure would avoid the cascading and renumbering effect. However, the result of that troubled the legislative legal counsel because the existing criminal mischief section would have this new law tacked on instead of incorporated into the list. The CS follows the suggestions of the legislative legal drafters to keep the statutory structure as clean as possible.

He asked if members had questions for Mr. Balash on the structure of the CS.

SENATOR STEVENS asked if there are already guidelines for the fourth and fifth degrees.

MR. BALASH said that would be a more appropriate question for Mrs. Carpeneti.

ANNIE CARPENETI from the Department of Law said the crimes are simply being reclassified. She added it does not change the sentencing provisions for the cascading offenses.

SENATOR STEVENS said he can certainly understand bringing in gas pipeline or oil pipeline supporting facility but questioned including an airline or commercial vehicle. He asked if this means that anything that is done to an aircraft that exceeds \$500.00 is automatically a second-degree criminal mischief violation.

He said he was referring to page 5, Section 9 and wondered if the reference to an airplane includes both private and commercial.

MRS. CARPENETI said this is existing law and does include all aircraft. Currently this is a class C felony and she thought the original drafters of the criminal code intended for this to be broad based because of the potential harm to people and property when anyone tampers with aircraft.

SENATOR STEVENS thought there should be varying degrees of punishment based on the size of the aircraft.

CHAIRMAN THERRIAULT offered the thought that whether it is a Cessna or a larger aircraft there is the potential for the loss of life.

SENATOR STEVENS responded one is a catastrophic loss of life and one could be criminal mischief. In his opinion, there is a

difference between the intent to damage an aircraft that is worth \$50,000.00 to \$100,000.00 versus a 60 passenger or larger airline.

MRS. CARPENETI said the scheme of criminal mischief does allow for that. There is charging discretion in the prosecutor's office to account for the differences in harm to people and property.

CHAIRMAN THERRIAULT asked if she agrees that the CS contains the substance of what the Department of Law suggested.

MRS. CARPENETI thanked the Chairman and said they are in support of the substantive changes and understand the rationale behind setting it up this way.

There was no further testimony.

CHAIRMAN THERRIAULT asked for a motion.

SENATOR DAVIS made a motion to adopt the 22-GS2097\F Luckhaupt 2/12/02 version as the working document.

There was no objection.

SENATOR THERRIAULT noted there were no proposed amendments and the fiscal notes from the Department of Law and the Public Defender Agency were zero.

He asked for the will of the committee.

SENATOR DAVIS made a motion to move CSSB 240(STA) and two fiscal notes from committee with individual recommendations.

There being no objection, CSSB 240(STA) moved from committee.

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There being no further business to come before the committee, Chairman Therriault adjourned the meeting at 4:45 p.m.