

ALASKA STATE LEGISLATURE
SENATE STATE AFFAIRS COMMITTEE

April 23, 2002
3:45 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

CS FOR HOUSE BILL NO. 331(STA)

"An Act relating to appointment of persons to positions that require confirmation by the legislature; and providing for an effective date."

MOVED CSHB 331(STA) OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 344(STA)

"An Act increasing fees for driver's licenses, instruction permits, and identification cards; and providing for an effective date."

MOVED CSHB 334(STA) OUT OF COMMITTEE

SENATE BILL NO. 361

"An Act relating to coordination of the application, review, decision, and appeal process for certain project permits, leases, plans, notices, disposals, licenses, preferences, grants, reservations, approvals, and sales; relating to the Alaska Coastal Policy Council and the Alaska Coastal Management Program; relocating certain functions of the office of management and budget to a statutorily created division of project assistance in the Office of the Governor; repealing the Environmental Procedures Coordination Act; and providing for an effective date."

HEARD AND HELD

SENATE BILL NO. 363

"An Act relating to electioneering communications and communications intended to influence the outcome of an election and to campaign misconduct in the second degree; and providing

for an effective date."

HEARD AND HELD

PREVIOUS COMMITTEE ACTION

HB 331 - See State Affairs minutes dated 4/2/02.

HB 344 - No previous action to record.

SB 361 - No previous action to record.

SB 363 - No previous action to record.

WITNESS REGISTER

Linda Sylvester

Aide to Representative Pete Kott

Alaska State Capitol, Room 204

Juneau, AK 99801-1182

POSITION STATEMENT: Introduced HB 331 and HB 344

Mary Marshburn

Director

Department of Administration

PO Box 110200

Juneau, AK 99811-0200

POSITION STATEMENT: Testified on HB 344

Marty Rutherford

Deputy Commissioner

Department of Natural Resources

400 Willoughby Ave.

Juneau, AK 99801-1724

POSITION STATEMENT: Testified on SB 361

Patrick Galvin

Director

Division of Governmental Coordination

P.O. Box 110030

Juneau, AK 99811-0030

POSITION STATEMENT: Testified on SB 361

Kurt Fredriksson

Deputy Commissioner

Department of Environmental Conservation

410 Willoughby Suite 303

Juneau, AK 99801-1795

POSITION STATEMENT: Testified on SB 361

Joe Balash

Staff to Senate State Affairs Committee

Alaska State Capitol, Room 121
Juneau, AK 99801-1182

POSITION STATEMENT: Explained provisions of SB 363

Dana Olson
Box 5438
Wasilla, AK 99654

POSITION STATEMENT: Testified on SB 361

Bonnie Jack
1063 W. 20TH Ave
Anchorage 99503-1714

POSITION STATEMENT: Testified on SB 363

Brooke Miles
Director
Alaska Public Offices Commission
2221 E. Northern Lights Rm 128
Anchorage, AK 99508-4149

POSITION STATEMENT: Testified on SB 363

ACTION NARRATIVE

TAPE 02-24, SIDE A

CHAIRMAN GENE THERRIAULT called the Senate State Affairs Committee meeting to order at 3:45 p.m. Present were Senators Davis, Phillips, Stevens and Chairman Therriault.

#HB 331

HB 331-PRESENTMENT OF GOVERNOR'S APPOINTEES

CHAIRMAN THERRIAULT took up HB 331.

MS. LINDA SYLVESTER, Aide to Representative Pete Kott, said that the statute was drafted in a convoluted way. She explained the color-coded statute in the packet before the Committee. The yellow highlighted information was general language dealing with initial presentments made by the Governor to the Legislature. The blue highlighted information deals with the specific situation of presentments that follow later in the session, typically when the Legislature fails to confirm a presentment. The pink highlighted information is the general discussion about how presentments and confirmations are to be handled. HB 331 seeks to clarify and clean up ambiguities in the statute. It is unclear whether the Legislature can confirm an appointment during a special session. Based on opinions from the legislative legal

department and other procedures from the statute, it is believed that the intent of the statute is that all presentments and confirmations occur during the regular session. HB 331 has cleaned that up and changed some timeframes that are in the current statute that put the confirmations outside of the regular session.

CHAIRMAN THERRIAULT asked if there were any questions from committee members.

SENATOR BEN STEVENS asked if the blue highlighted section was the only one being changed.

MS. SYLVESTER answered yes. The bill takes out the timeframes, substitutes "five days" with "immediately" and removes a twenty-day provision saying the Legislature has to confirm a presentment within 20 days of receipt from the Governor.

SENATOR STEVENS said that in AS 39.05.080(1)(B) the words "on or before" were being added and asked when the boards expired.

CHAIRMAN THERRIAULT said they expire all throughout the year.

MS. SYLVESTER explained that when the process was set up at statehood, each appointee was put on a schedule. Since then, the timeline was determined by when vacancies occurred. The only timeline that is in the statute pertains to presentment and confirmation.

SENATOR STEVENS said the bill stated, "persons to be appointed to fill a position or membership, the term of which will expire on or before March 1 during that session of the legislature."

MS. SYLVESTER said the statute encourages the Legislature to address the presentments during the session as early as possible. This includes all of the positions the Governor filled during the interim and all the positions that will expire before March 1.

CHAIRMAN THERRIAULT asked if there were other questions. He said that he had not prepared a CS and asked if there were any amendments from committee members. He made note of the zero fiscal note.

SENATOR RANDY PHILLIPS moved to pass CS HB 331 (STA) from the committee with individual recommendations and the accompanying fiscal note.

CHAIRMAN THERRIAULT noted that the CS was the House State Affairs

version of the bill.

CSHB 331(STA) moved from committee with attached fiscal note and individual recommendations.

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#HB 344

HB 344-INCREASE DRIVER'S LICENSE/PERMIT FEES

MS. SYLVESTER said that HB 344 was introduced by the House Rules Committee at the request of the Division of Motor Vehicles (DMV). HB 344 increases the fees for drivers' licenses and ID cards by \$5.00 and learners' permits by \$10.00. It allows DMV to implement a conversion to a digital drivers' licensing system. Examples of what a drivers' license might look like were in the packets. She pointed out that the information on the drivers' licenses is stipulated in statute and this bill would not have any impact on that. The back of the license would have a barcode that would allow the police to scan and protect the licensee from having their private details broadcast.

She said the fee increase would go into the General Fund and is expected to increase revenues by \$750,000 to \$900,000. The cost of implementing the conversion is expected to be \$500,000, which is for the computer systems only. DMV already has the funds for the equipment.

She said that Alaska is one of the three remaining states still using the old Polaroid personal identification system. By converting, Alaska will step up its efforts to ensure the integrity of this nation's individual identification system. Since September 11, there has been focus on the need to harden the drivers' license system as a security measure. There was discussion about switching to a national identification system, but that idea was abandoned. However, there is still a need for increased security and Alaska's identification system is a weak point. She explained that the ID card is considered to be a "breeder document," which can be parlayed into other documents such as airline tickets, passports, checking accounts, firearms permits, credit cards, etc. The drivers' license is the cornerstone of the identity theft phenomenon, which resulted in \$7 billion in losses last year.

She said another problem with the current system is underage individuals obtaining or manufacturing fraudulent identification cards. The packet contains resolutions and comments from restricted sales individuals who support the conversion of the

system.

MS. SYLVESTER explained that the drivers' license has become a critical component in our society's security, both personal and financial. The State of Alaska has a responsibility to ensure the integrity of that system. Yet there is a lot of anecdotal information about how the identification cards can be fraudulently obtained. DMV doesn't have the ability to pull up photographs. Someone can easily steal your Social Security Number or mail and go into the DMV and if they match your biometric data, they can walk out with your identification. If you travel and you lose your license or have it stolen, DMV is also unable to replace your lost identification with your photograph. This makes it very difficult to get back to Alaska without one of the only proofs that the airline will consider as an identification form.

She said Polaroid is in Chapter 11 bankruptcy and has sold their personal identification business to a company called Digimark, who will only supply Alaska with film until the end of the year. The other two states that still use the Polaroid system, Oklahoma and Rhode Island, have already put out RFP's for digital systems. This will also impair Alaska's ability to get commercial-grade Polaroid film. She said that when digital cameras came onto the market, it was the death knell of the old Polaroid drivers' license system.

CHAIRMAN THERRIAULT asked Mary Marshburn to speak.

MS. MARY MARSHBURN, Director of DMV, said that when DMV started pursuing a digital system, there were seven "photo states," meaning states that still use the instant photograph process. At the beginning of the session, there were only three "photo states." Now Alaska is the only state without even a RFP out for services for a digital licensing system.

She said the current system is a manual process; it uses preprinted forms, instant photographs and a laminated security pouch. It is subject to theft, fraud and alteration. Security is the biggest advantage to a digital system. It is more difficult to alter or replicate because it does not use preprinted forms or pouches or instant photos. The information is computer generated and fused onto a chip. Computer generation and flexibility enables DMV to place more and more complex security features into the license. The photo can be stored on a server, which allows DMV personnel to access it to verify your identity the next time you need a license or when you travel.

MS. MARSHBURN said the biggest benefactor of a conversion would be law enforcement. HB 344 enjoys the support of law enforcement, including the Alaska State Troopers and the Municipality of Anchorage Police Department, which is computerizing its cars and are looking forward to the change. Alcohol and tobacco sellers are also in support of HB 344 because a new system can help them with their underage problem.

CHAIRMAN THERRIAULT asked if people regularly came up to the counter at DMV to commit license fraud and alteration.

MS. MARSHBURN said that in the past four months in one Anchorage office alone they have had five arrests.

CHAIRMAN THERRIAULT asked if there would be an embedded chip or just a barcode.

MS. MARSHBURN said that although the disc upon which the image and license data is fused is referred to as a "chip," it is not a "chip" as we think of a computer chip.

CHAIRMAN THERRIAULT asked whether the barcode contained the information or if it contained the license number that would access the information through the computer system.

MS. MARSHBURN asked if he was looking at the example in the packet.

CHAIRMAN THERRIAULT said yes.

MS. MARSHBURN said that the barcode would contain all of the information required by law, such as name, address, date of birth, sex, hair, eyes and weight, along with any driving restrictions, but not the Social Security Number.

CHAIRMAN THERRIAULT pointed out that the underage license examples in the packet were laid out vertically. He asked if this was the intention of DMV to do this.

MS. MARSHBURN said she was excited to have the licenses be formatted that way. DMV wants to keep the adult licenses in a horizontal format and the underage licenses in a vertical format. It helps everyone who has to deal with the age group. She noted that the vertical license says "under 21 until" along the top. With the current system, the alcohol or tobacco salesperson has to look at the birth date and calculate the age, which can be difficult and time consuming. Using the "under 21 until" system would be much easier for them.

CHAIRMAN THERRIAULT asked if there were other questions for Ms. Marshburn from the committee members. He asked if Del Smith had comments or if he was just there to answer questions.

DEPUTY COMMISSIONER DEL SMITH, Department of Public Safety, said he was there to answer questions.

SENATOR PHILLIPS asked if Social Security Numbers were off the drivers' license now.

MS. MARSHBURN said they were. As of last year, Social Security Numbers were not allowed on the face of the drivers' licenses, nor would they be in the barcode.

CHAIRMAN THERRIAULT pointed out that the increased fees would cause increased revenues of \$900,000 and the contractual IT system cost would be \$500,000 the first year.

SENATOR PHILLIPS asked Ms. Marshburn if DMV would take responsibility for the fees being raised and not tell complaining customers that the Legislature did this.

MS. MARSHBURN said yes. The fees are equal to \$1.00 per year, and they were last raised eleven years ago. She has no qualms saying it is well worth it.

SENATOR PHILLIPS said he'd been through this before where the employees said the Legislature did it.

MS. MARSHBURN promised that wouldn't happen.

CHAIRMAN THERRIAULT asked if there was anyone else that wished to testify on HB 344. There was no one. He asked if there were any amendments from committee members.

SENATOR BETTYE DAVIS moved to pass CS HB 334 (STA) from the committee with individual recommendations and the accompanying fiscal note.

CHAIRMAN THERRIAULT asked if there were any objections.

CSHB 334(STA) moved from committee with attached fiscal note and individual recommendations.

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#SB 361

SB 361-PERMIT COORDINATION & COASTAL ZONE MGMT

CHAIRMAN THERRIAULT announced that the committee would now take up SB 361.

CHAIRMAN THERRIAULT, sponsor of SB 361, said that his intention was solely to introduce the bill; he didn't expect final action this year. He said that the regulators and the regulated felt that the regulatory system that had come together over the years was cumbersome in areas. He pointed out that there were processes that were not coordinated amongst state agencies and there was some duplication in the processes. The problems had been dealt with over the years through a piece-meal system. He thought that it was time for the Legislature to look at the entire system and see if it was time to start from scratch and put together a better-coordinated system. He has been involved in this overall issue for a number of years and has talked to division directors and commissioners and found that there is a lot of interest from state employees that the Legislature look at changes. The Governor introduced a bill a few years ago that was used as a basis for SB 361. He doesn't propose that this is a perfect bill at this stage. He wanted to get some input from the state agencies, the regulated communities and the citizen watchdogs as to what was beneficial in the bill and what areas of the bill might have pitfalls so that he can work on the bill with those groups during the interim. He announced that he wanted to aim for better coordination amongst the agencies so that an appellant who is appealing one issue didn't have different appeal timelines in different agencies. He wants to create a more streamlined and uniform permitting system.

MS. MARTY RUTHERFORD, Deputy Commissioner of the Department of Natural Resources (DNR), said that Pat Galvin would be the lead spokesperson for the State.

MR. PATRICK GALVIN, Director of Division of Governmental Coordination in the Office of the Governor, said his division is responsible for the implementation of the Alaska Coastal Management Program. SB 361 is very similar to SB 186, which was introduced at the Governor's request in 1997. They are looking for an efficient decision making process that eliminates obstacles to development while allowing the public to influence those decisions, provides for easier and fewer applications, allows coordinated review of all agency permit requirements for a particular project, consolidates public notices and provides for a more efficient appeal process. In September 1997 after the Governor's bill was introduced, the Administration had a

streamlining workshop with participants from industries, conservation groups, local governments and state agencies to talk about the principles in the context of the bill that was in front of the Legislature at that time. A majority of the group agreed that these were important issues that needed work, but could not agree on an approach to achieve them. Although the bill didn't move through the Legislature, the Administration has since continued to look at ways to achieve the goals without legislation.

MR. GALVIN said they looked at ways in which the individual agencies can better use the general permitting process and other such vehicles to concentrate the efforts of permittees and the public on those projects that have the greatest impact or occur in the most sensitive locations. They have undertaken a variety of projects to improve and simplify the permit applications, including increasing the use of the Internet. They have also increased the level of coordination of the agencies in the public notice process. In the area of coastal management, they have drafted guidance to staff on process-related issues to improve the level of permit coordination that occurs in the consistency review process. They are in the final stages of a revision to the coastal management consistency review regulations to provide for more efficient coordination in the process. There are also more specific things they have done.

He said while they've made progress in the past few years, they recognize that there is still a lot of room for improvement. They believe this is a timely issue, but given the amount of time left in the Session and the complexity of the issues involved, they agree that it's not reasonable to expect a solution in the next few weeks.

He wanted to point out a few areas of concern in SB 361. There is a lack of specificity regarding the authority of the coordinating agency in relation to the permitting agencies. This is particularly troublesome in the non-coastal areas where the coordinated approach hasn't been used before. It will raise an issue when the coordinating agency doesn't have a decision to make on its own and they are only doing the administrative process in coordinating the decisions of the other agencies. This may cause a problem when some of the permit decisions conflict with each other. Currently, through the consistency review process, they have a common set of guidelines that they can use to resolve the disputes. The current bill may create an undue burden on smaller projects by the need for project-specific negotiations with regard to some timelines that may not be necessary for smaller projects. There is a lack of specificity in the bill regarding timelines and time requirements. The timeline that is designed to satisfy the aims of the bill might interfere with other statutory requirements. The bill limits the

role of coastal districts and local governments as compared to the current process in the Coastal Management Program. He noted that there would be a fiscal impact in bringing the coordinating review outside of the coastal zone because the work has never been done before.

CHAIRMAN THERRIAULT asked if DNR was acting as a lead agency on large mining projects. If so, there had been some experience.

MR. GALVIN affirmed that a handful of large mining projects have gone through a coordinated review outside of the coastal zone. They were referring to the rest of the projects, which have not gone through a coordinated review. The section dealing with administrative appeals needs some specificity with regard to who decides the issue when there are multiple permits that might be implicated by an appeal. They are encouraged to hear that both leading major party gubernatorial candidates have expressed an interest in resolving this issue and the Division would like to work with the Committee during the interim and encouraged participation of the other major stakeholders, such as local governments, project applicants, conservation groups and tribes.

CHAIRMAN THERRIAULT asked if Mr. Galvin had looked at the list of licensing permits that would be covered under SB 361 on page 3 and 4. He asked if there was anything that needed to be added or omitted.

MR. GALVIN said that they had looked at the list but hadn't yet come to an official position. The list is different from that which had been presented by the Governor in SB 186. There are certain DNR authorizations that weren't in the previous bill but are in this bill and vice versa. They haven't had the discussion as to the appropriate way to handle that. They noted that there are some Department of Transportation authorizations that are included in the bill but are currently not subject to a coordinated review through the Coastal Management Program. The list would need more work and would require looking at each individual authorization and thinking about whether or not a coordinated approach was required.

CHAIRMAN THERRIAULT asked if the allowance for public input into the process was sufficient.

MR. GALVIN said there are a number of people who could better answer that question. The principle behind the original bill was that if the processes could be clarified and more easily understood, then those could be brought together and create a single review that would make it easier for the public to participate in the process. To the extent that SB 361 is able to achieve that, they would feel that there was no decrease in the public's opportunity to participate.

CHAIRMAN THERRIAULT asked if there were questions from other committee members.

MS. RUTHERFORD added that DNR had been pursuing some efficiencies since the Governor's bill had been introduced in 1997. She explained that permitting efficiency is not only about coordinated notices and reviews, but also about making information accessible to the public and easy to use and eliminating the number of times the public must apply for permits and how they paid for their fees. Those are some of the areas where DNR has made improvements.

She said amendments to the oil and gas leasing statutes allow them to offer unleased oil and gas properties on an annual basis within large geographical areas. They have undertaken a large mine coordinated review process which has been very effective in bringing the agencies and the public into an integrated process.

She said there have been many other lesser streamlining improvements. For instance, mining claims are now being reviewed in 160-acre blocks. These blocks also facilitate online permitting, which will be available next year. She noted that DNR now allows payment of mining rents online. Starting next fiscal year, they will allow miners to file and pay for claims at the recorders office only without having to go to another counter to make rent payments.

In the area of land-use permits, she said commercial recreational permits for spike camps can now be applied for over the counter. By the end of this calendar year, DNR will have land-use permit applications, processing and permit issuance online.

She said that in the area of material sales, DNR has increased the allowable over-the-counter contract from 100 cubic yards to 200 cubic yards, which decreased the workload associated with negotiating contracts and the number of times they had to negotiate a contract.

In the area of land sales, she said DNR now has a website of lands that are available over-the-counter or are going to be offered in land sales. Although it has increased their workload significantly, it is good for the public. By the end of 2002, the public will be able to purchase over-the-counter parcels online. The public will also be able to make a sealed bid offer for a parcel online. Data from land purchases will automatically be entered into the state land records system, which will eliminate some double entry.

MS. RUTHERFORD said DNR has other areas of improvements, such as online access to publications, land title information, records

research and park cabin reservations. The efficiencies are important to the public and to how the agency does business. She believes the improvements that have happened and the improvements that are in the early stages will effect how a permit-streamlining bill is crafted.

CHAIRMAN THERRIAULT asked if there were any questions from committee members. He asked Ms. Rutherford if there was anything specific to DNR in SB 361 that concerned her.

MS. RUTHERFORD said that the list on pages 3 and 4 was of concern. They would like to look at it in the future in terms of what the bill will eventually do. There are some on the list they felt needed to be eliminated. Some of the improvements they've made will change how they approach various permitting processes and thus may not be necessary as part of the larger process.

CHAIRMAN THERRIAULT asked if she felt that the process should be determined before deciding what it should apply to.

MS. RUTHERFORD said that some of details of the various permits would be appropriate in the overall discussion of the bill.

KURT FREDRICKSSON, Deputy Commissioner of the Department of Environmental Conservation (DEC), said that DEC was one of the primary permitting agencies in the state and SB 361 would have a large impact on DEC. Permit streamlining and simplification has been a topic of concern in DEC's effort to do a better job with permit development while allowing public participation and carrying out their mission of protecting public health and the environment. DEC has taken a number of initiatives, such as working with stakeholder groups in their water program. Some of the products of that have been seen before the Legislature this year.

He said DEC has worked with workgroups on how they can use general permits to streamline some of the permits while protecting the environment. Where and how general permits are applied is the key. He said that DEC has general permits for log transfer facilities, seafood processing facilities and storm water discharges. DEC is automating the general permits so that they will be available over the Internet. DEC is also making progress in their air programs. They undertook a benchmarking study to look at how other states used the general permitting process and looked to see how they can take advantage of the experience of other states and apply it in Alaska. They have entertained ideas such as permit by rule and standard permit conditions and are moving ahead on that. They have taken steps to make things easier electronically. He wanted to caution the committee that coordinated project permitting should not be

applied to all cases. For large mines and coastal management, it does make sense.

TAPE 02-24, SIDE B

4:30 p.m.

DEPUTY COMMISSIONER FREDRICKSSON said that the pipeline office was a good example where agencies came together to streamline the permitting process for TAPS. However, if you are only dealing with a small project, a coordinated review is not necessary as it is just as effective for the applicant to go through the coursework with the agencies. He said that there are times when it is more efficient for DEC to focus on a DEC issue rather than being brought into a larger debate. He noted that sometimes permitting is made easier when you have good information. When they have good ambient water and air quality data in site-specific information, it can go a long ways to resolving conflicts and answering questions. The lack of such information can delay a project. DEC thinks that workgroups are the best way to deal with issues and as this issue moves forward they suggest that all the other stakeholders should be involved in the process.

He said he hasn't had the chance to go over the list in detail, but DEC will do so. One item that concerned him subsection (b) on page 6 addressing project application and listing the various parties that the applications would be available to or would be notified when applications were received. They have come across this issue when they do an oil spill prevention and response contingency plan when they also alert the Prince William Sound and Cook Inlet Regional Citizens' Advisory Council. He thinks that the agency should make an effort to contact local governments when dealing with development or permitted activity. He didn't notice local governments in the list, although the coastal districts in the coastal context are one in the same as local governments.

He said that DEC has looked at their appeal procedures and have been working on updating their regulations. One of the more important updated regulations deals with allowing the parties to settle their differences in an informal process when the parties are willing to work together to resolve issues. He feels the appeals process section of the bill is something he would like to explore to make it a rigid and formal process when necessary, but still have a way for parties to come together through a mediated effort to find a way of resolving conflict.

CHAIRMAN THERRIault asked if there were questions from committee members.

MS. DANA OLSON said she appreciated that this bill was being held to get further input. She feels that the issue needs more time to be looked at. She feels it would be important to get input from people who are affected and that they be allowed to participate in the planning process. This would allow the Committee insight into things that aren't generally considered in permits and their affects on people. She noted that Title 39 was not in SB 361. In 1987, the Legislature made a quasi-judicial decision requiring that the 1984 Chase Agricultural Homestead Lottery undergo a provision under Title 38, which was not funded. This has left her in limbo for years. She would like the Committee to address the issue with her as a go-between between her and DNR because the system is broken. Her property entrance is still valid but she is required to do something that she can't do by herself. The court case is an enforceable policy of the Coastal Management Act. This could affect other interests beside herself. She would like it resolved one way or another by the Committee. She feels this should be codified in law and it requires some consideration of her interests and DNR's and the State's interests. She would like some means to participate in the process.

CHAIRMAN THERRIAULT asked if she was part of a coastal service area.

MS. OLSON said that she lives in the coastal community of Knik.

CHAIRMAN THERRIAULT asked if she was part of their service district.

MS. OLSON said that she was in the Mat-Su Borough coastal district but the Mat-Su coastal district had been ineffective in addressing the community's concerns. The district has been cited in a federal lawsuit in the past and is a system that needs to be looked at. She pointed out that they were not here today and thus she can only assume that they weren't interested. She lives there and she is interested. She is willing to volunteer her time and effort to provide input if the Committee is willing to listen.

CHAIRMAN THERRIAULT asked if there was anyone else who wished to testify.

SB 361 was held in committee.

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#SB 363

SB 363-CAMPAIGN FINANCE PROVISIONS

CHAIRMAN THERIAULT said that the committee would now take up SB 363 regarding issue ads and what is taking place in Congress in regards to soft-money issue ads. SB 363 tries to achieve a better understanding of issue ads and express advocacy and the line between them. He said that he is trying to come up with a workable definition of an "electioneering communication." This moves towards express advocacy and has a clear intent to shape the outcome of an election.

MR. JOE BALASH, staff to Senate State Affairs Committee, pointed out that on page 1, line 11 in the section describing the "paid for by" statement that all communications are supposed to have, the language "and the total production costs of the advertising" was added. He said that section was intended to be part of the overall disclosure in Sec. 2 dealing with when a communication is made by a group.

SENATOR PHILLIPS asked if that was a drafting error.

MR. BALASH said yes.

SENATOR PHILLIPS asked if Mr. Balash was proposing to delete that language and add it in Section 2.

MR. BALASH said yes, it could be inserted into line 2 on page 2.

CHAIRMAN THERIAULT asked if Mr. Balash had spoken to legal drafters about that.

MR. BALASH said yes.

SENATOR PHILLIPS asked if that would be reflected in the committee substitute.

CHAIRMAN THERIAULT said yes. He said that he planned to take public testimony today to figure out areas of concern in SB 363. There might be some additions, deletions or clarifications.

SENATOR PHILLIPS said that he wanted to clarify that for the record.

CHAIRMAN THERIAULT said that was something that should have been caught before it was introduced.

MR. BALASH noted the language on page 3 starting on line 10 dealing with a definition of an electioneering communication, "Must, when read as a whole, and with limited reference to external events, be susceptible of no other reasonable interpretation but as an exhortation to vote for or against a

specific candidate," came directly from a decision in the '80's by the 9th Circuit Court of Appeals. The United States Supreme Court has one major decision saying that express advocacy may be regulated as speech and issue advocacy is in the free zone of political expression. However, the Court didn't provide much guidance as to where to draw the line. The 9th Circuit Court did issue a decision using the language cited in the bill, which wasn't accepted by the United States Supreme Court for further consideration, so Alaska takes that as the rule of law.

CHAIRMAN THERRIAULT asked if the Supreme Court chose not to take the issue up to provide clarification, therefore the 9th Circuit decision became the law.

MR. BALASH said that was correct.

CHAIRMAN THERRIAULT said that case was the *Furgatch* case. He noted that there were a number of examples in the campaign finance paper in the packets of radio or TV advertisements that were clearly issue ads. He said that issue ads can easily become express advocacy with the change of a few words and there is a gray area in between issue ads and express advocacy. Rather than try to draw a clear line between issue ads and express advocacy, SB 363 sought to identify "electioneering communications" and determine what kinds of limitations or disclosure they can have on the gray area between advocacy and expression. The courts had said that if you write a law and it's overly vague and broad and people can't tell what side of the line they fall on, it has a chilling effect on expression. The McCain-Feingold legislation drew a line of 30 days from a primary election and 60 days from a general election so the courts couldn't say that people didn't know and therefore out of fear they are refraining from expressing themselves. He said that SB 363 tries to draw the line between "electioneering communication" and when the person clearly is trying to impact the outcome of an election. In the *Buckley v. Valeo* case, the court put together a list of words that indicated express advocacy, using the phrase "such as." Some of the courts have said that if you don't use the words on that list, then you're okay. However, the language of the decision says "words such as," so he feels that it wasn't the intent of the court to provide a definitive list of words.

CHAIRMAN THERRIAULT said SB 363 attempts to come up with a common sense definition and application of that definition in restrictions and requirements for disclosure of the source of that money as we get closer and closer to an election.

MS. BONNIE JACK said that she is glad that the bill clarifies the location of total production costs of advertising, but she still has a question about that. Most of the time during a campaign it is hard to come up with total production costs when you haven't

completed the project yet. But SB 363 asks for total production costs. She used an example of initial costs of printed material as compared with reprinting costs. She wondered if you included the first time you printed it, or if you only included the reprinting costs. She noted that the same sort of thing would happen if you made a TV commercial, and then used the sound track from the TV commercial and put it in a radio commercial, how do you determine what the total costs were? She wondered if you included in the radio costs the cost of the TV commercial. She said that she is confused and doesn't know what this bill is getting at. She noted that the bill had been introduced on the 18th on April and she would like to see a sponsor letter to explain why this was done. She noted that the Alaska Public Offices Commission (APOC) was all about disclosure, and if you just disclosed everything, including the costs, where the money comes from, what the expenses are, she would think that would take care of it. She cited, the language "a party group, or nongroup entity making a communication" in line 14 on page 1. She asked why you should have to repeat all this. If you're advocating for a candidate, you have to file with APOC. She doesn't understand the purpose behind this. Page 3, line 12 makes reference to a "vote for or against a specific candidate." She wondered about ballot propositions or initiatives? She feels the bill was put together too quickly and the drafting error proves that point. She feels that there was not a lot of thought put into the bill. It bothers her that this type of bill was put together so late in a sine die session. She would like to see SB 363 thrown out.

CHAIRMAN THERRIAULT said that was why there is a committee process.

MS. BROOKE MILES, Director of APOC, said that this bill would make no change to campaign disclosure law except to add additional requirements for all candidates, groups, non-group entities and parties to place the production costs at the end of the "paid for by" disclosure. She pointed out that production costs could be professional services donated, which is permitted as a result of SB 103, and therefore would not be seen in the production costs. There are requirements by the Commission that this information has to be readable and the costs will also have to be readable. FCC costs would also be included in radio and television. All communications that are intended to influence the outcome of an election or a ballot proposition are currently covered by the campaign disclosure law, which requires registration, periodic reports and identification of communications. She said that if Sec. 2 is intended to require a 24-hour expenditure report, which was part of the original campaign disclosure law but was thrown out by *Buckley v. Valeo*, then it should probably be done in the sections that talk about reports, that being Sec. 1 of Sec. 040 of the law.

She said that APOC hasn't had the chance to look at the bill closely yet. She offers her comments on behalf of the Commission staff who have looked at the bill. APOC discussed the question of drawing a line between issue advocacy and express advocacy at length during their meeting in March and determined that it would be best for them to look at each case on a case-by-case basis. She noted that election communications rules are all in AS 15.56 and the enforcement burden of that would fall to the Division of Elections, the Commission has no authority over that. But when people are looking to the campaign disclosure law to get guidance on what's required, they may not fall to the definition of electioneering communications in AS 15.60.

She noted that the fiscal note sent over by the APOC was modest, but SB 363 would impact APOC because approximately 80% of the inquiries pending to move toward complaint actions start with "paid for by" questions and concerns. If SB 363 were to pass, they would have to disclose total production costs, which might be inaccurate or missing, that would have to match what is finally reported on the campaign disclosure reports or they would be subject to a penalty of \$50 per day for a false or inaccurate claim. The fiscal note would include funding for a hearing, some travel to conduct training to help people and printing paper and postage. She noted that this would be the second major campaign disclosure revision and it would occur during the most active election session in over ten years and APOC's budget had already been significantly decreased.

CHAIRMAN THERRIAULT said that he wanted to talk about the 15-5 reports.

MS. MILES asked if he was referring to the contributor reports.

CHAIRMAN THERRIAULT said he understood that this might be a holdover from previous times in which APOC personnel expended time and energy needlessly. He asked if this was something that no longer serves a useful purpose.

5:00 pm

MS. MILES said that it could save a little time by no longer needing to enter the 15-5 reports into their database. The 15-5 report was an evolutionary process in public information. She explained that the 1996 campaign finance revision, the Legislature wanted to delete the requirement to file a 15-5 entirely, but APOC was uncomfortable with that and they came up with a system in which a report is required only when the contribution is more than \$500 and it must be filed within 30 days. This was changed again in SB 103 so that candidates can file the report on behalf of the contributor. At that point

since the candidate is not only filing their own report but also filing the contributor's report, it is no longer a useful check and balance. She feels that the \$500 limit is a little chilling. Campaign disclosure reports show a lot of contributions at \$499 or even \$499.99 to keep the burden of reporting from contributors. She agrees that the report is not of much use anymore, but in the past it provided useful information to the public during the times that campaign disclosure reports aren't filed. It still does that to a degree with respect to large contributions to ballot proposition groups. But other than that, it wasn't needed much.

CHAIRMAN THERRIAULT noted that the original disclosure amount was more than \$500 on the 15-5s.

MS. MILES said that the 15-5s were required when people gave \$250 or more.

CHAIRMAN THERRIAULT said there was still a provision that said as you get close to the election if a person with either one or multiple contributions over \$250, you would still have the 24-hour requirement for filing a report.

MS. MILES said that contributors have never been required to report in 24 hours. Contributors used to have 10 days if they contributed more than \$250. Now they have 30 days when they give \$500. And they can't give more than \$500 to a candidate. Candidates must report a contribution of more than \$250 from a single source during the 9 days that precede the election in an abbreviated format within 24 hours. This information is repeated in further detail in the 10-day-after report. She noted that the contributor reports and 24-hour reports are two different things. She thinks that a lot of discussion came about because APOC at their March meeting directed staff to begin assessing civil penalties at the statutory level of \$50 per day that the contributor reports are late. She feels that many candidates have concerns regarding that.

CHAIRMAN THERRIAULT asked if there were any further comments, questions from committee members, or anybody else who wished to testify.

SB 363 was held in committee.

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ADJOURNMENT

There being no further business before the committee, the Senate State Affairs Committee meeting was adjourned at 5:10 p.m.