

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

April 9, 2003
1:30 p.m.

MEMBERS PRESENT

Senator Ralph Seekins, Chair
Senator Scott Ogan, Vice Chair
Senator Gene Therriault
Senator Johnny Ellis
Senator Hollis French

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 97

"An Act relating to public interest litigants and to attorney fees; and amending Rule 82, Alaska Rules of Civil Procedure."

SCHEDULED BUT NOT HEARD

SENATE BILL NO. 59

"An Act relating to permanent fund dividend program notice requirements and to the ineligibility for permanent fund dividends of certain persons sentenced for driving while under the influence of an alcoholic beverage, inhalant, or controlled substance, or for refusal to submit to a chemical test."

MOVED CSSB 59(JUD) OUT OF COMMITTEE

SENATE BILL NO. 53

"An Act relating to disposition of a traffic offense involving the death of a person; providing for the revocation of driving privileges by a court for a driver convicted of a violation of traffic laws in connection with a fatal motor vehicle or commercial motor vehicle accident; amending Rules 43 and 43.1, Alaska Rules of Administration; and providing for an effective date."

MOVED SB 53 OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 23(JUD)

"An Act relating to court-ordered restitution and compensation following a criminal conviction."

MOVED CSHB 23(JUD) OUT OF COMMITTEE

SENATE BILL NO. 24

"An Act providing special absentee ballots for voters in remote areas."

HEARD AND HELD

CS FOR HOUSE BILL NO. 46(STA)

"An Act relating to printing of ballot titles and propositions on primary election ballots."

HEARD AND HELD

PREVIOUS ACTION

SB 59 - See Judiciary minutes dated 2/19/03 and 4/2/03.

SB 53 - See Transportation minutes dated 2/18/03 and Judiciary minutes dated 4/7/03.

HB 23 - See Judiciary minutes dated 4/7/03.

SB 24 - See State Affairs minutes dated 3/18/03.

HB 46 - See State Affairs minutes dated 3/18/03.

WITNESS REGISTER

Ms. Crystal Moore
Staff to Senator Cowdery
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Commented on SB 59.

Ms. Tam Cook
Legislative Legal and Research Services Division
Legislative Affairs Agency
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Commented on SB 59.

Ms. Linda Sylvester
Staff to Representative Weyhrauch
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Commented on HB 23 for the sponsor.

Senator Lincoln
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Sponsor of SB 24.

Ms. Sarah Boraio

Staff to Senator Lincoln
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Commented on SB 24 for the sponsor.

Ms. Virginia Breeze, Legislative Liaison
Division of Elections
Office of the Lieutenant Governor
PO Box 110017
Juneau AK 99811-0017

POSITION STATEMENT: Supported SB 24 and commented on HB 46.

ACTION NARRATIVE

TAPE 03-20, SIDE A

CHAIR RALPH SEEKINS called the Senate Judiciary Standing Committee meeting to order at 1:30 p.m. Present were Senators Ellis, French and Chair Seekins. He announced that SB 97 was being held for more work.

SB 59-PERMANENT FUND INELIGIBILITY FOR DUI

CHAIR SEEKINS announced SB 59, version \H, to be up for consideration.

MS. CRYSTAL MOORE, staff to Senator Cowdery, said she had nothing to add and would answer questions.

SENATOR OGAN arrived and asked if language on page 3, line 21, means the bill is retroactive.

CHAIR SEEKINS replied that it is not retroactive from the effective date; but further on, if a person is convicted of a second offense within the previous four years, it would count then.

MS. TAM COOK, Legislative Legal and Research Division, said that was correct.

SENATOR THERRIAULT moved to pass SB 59, [version \H], from committee with individual recommendations and attached fiscal notes. There was no objection and it was so ordered.

SB 53-REVOKE DRIVER'S LIC. FOR FATAL ACCIDENT

CHAIR SEEKINS announced SB 53, version A, to be up for consideration.

SENATOR FRENCH asked Senator Ogan, sponsor, whether he wanted to add "serious physical injury" since that is frequently a result of an automobile accident of the sort this bill envisions. The drawback is that the bill would be less clear-cut, because you could argue about how serious a physical injury really is versus someone suffering a fatality.

SENATOR OGAN responded that he had seriously considered that, but since this bill has taken eight years so far, he would like to work on that as a separate issue.

SENATOR OGAN moved to pass SB 53, version \A, from committee with individual recommendations. There were no objections and it was so ordered.

HB 23-RESTITUTION FOR CRIME VICTIMS

CHAIR SEEKINS announced CSHB 23(JUD), version \U, to be up for consideration.

SENATOR THERRIAULT said with regard to the concern he expressed at a previous meeting, he understands the rationale between the two groups and is willing to go forward.

CHAIR SEEKINS said he understands that this would allow non-profits to be able to collect for volunteer labor. For profit corporations are able to seek recovery for labor required to clean up after a crime, but a private individual would still not be able to collect for time volunteers might spend cleaning up after a crime.

MS. LINDA SYLVESTER, staff to Representative Bruce Weyhrauch, said she would answer questions.

SENATOR OGAN asked what they were trying to fix with this legislation.

MS. SYLVESTER replied that the bill was written in response to an incident that happened in Juneau with the Alaska State Folk Festival when the treasurer embezzled funds. The case was prosecuted and the festival board and six volunteers spent over 200 hours providing evidence for the police department. During the restitution hearing the court determined that state law

didn't clearly envision that the efforts of a volunteer board could be included in the restitution.

SENATOR OGAN asked if the non-profit had recourse for damages in civil court.

MS. SYLVESTER replied that they would have, but restitution is in a criminal proceeding and is an avenue that is available to a victim so that they can be made whole in an expedited way without going to civil court.

CHAIR SEEKINS said it clarifies that these are not actual damages that have been paid to someone to perform auditing services to determine the amount of the embezzlement, but rather actual hours of time spent by volunteers.

SENATOR OGAN said he is a little troubled by the direction the bill is going. He is concerned whether it is an appropriate role to award what would typically be a civil damage in a criminal case.

SENATOR FRENCH said he shares that concern and he also has issues with how a court would value the services, especially in the folk festival case where they didn't spend any money.

So the \$5,000 they are getting is what you might call unjust enrichment. I think on balance, we should fall on the side of the non-profit. And, I think on balance, courts will be aware of where you can fairly assign a dollar value and where they can't. They'll deny a request in criminal court still leaving the victim free to run straight over to civil court and file a claim. I don't think anyone should look at this as a free for all for crime victims to get paid back because they never will be...

CHAIR SEEKINS agreed with Senator French.

SENATOR THERRIAULT said his concern is that they are carving the non-profits out for this little extra treatment that is not available to individual citizens. He then acknowledged that you have to recognize the good that non-profits provide in society.

They're not going to be able to unfairly enrich themselves. I think the courts will step in and prevent that from happening. It doesn't guarantee them to be made whole, because a lot of times the

individuals that perpetrate the crimes don't have the means...

MS. SYLVESTER said this is okay because the people in the non-profits are not getting paid and it's difficult for a group to come up with a monetary award. Also, most often these situations are dealing with embezzlement and the way our criminal justice system is set up, they are not going to investigate and spend the time and effort reconstructing books that have been completely destroyed or don't exist. It's a similar situation to asking a rape victim to go out and hunt down the perpetrator and pay for the testing and then turn the situation over to the police.

She said that narrowing this down to just non-profits corrected an indeterminate fiscal note to a zero fiscal note. That means that public defenders won't be involved in defending individual defendants from claims of many individuals.

SENATOR OGAN said he is still concerned that this carved out special treatment for a group of people.

SENATOR THERRIault made a motion to pass CSHB 23(JUD), version\U, from committee with individual recommendations. There was no objection and it was so ordered.

1:56 - 1:57 - at ease

SB 24-SPECIAL ABSENTEE BALLOTS

CHAIR SEEKINS announced SB 24 to be up for consideration.

SENATOR LINCOLN, sponsor of SB 24, said she had another meeting to attend, but her chief of staff, Sarah Boraio, was available to answer questions. She explained that this was introduced in the last session and made it through the system, but didn't get passed. She hopes it will make it through this time so that people in remote areas will have the opportunity to vote.

2:00 p.m.

MS. SARAH BORAIO, staff to Senator Lincoln, said that SB 24 offers voters living in a remote area the opportunity to vote using the 60-day special advance absentee ballot. In current statute, only voters living, working or traveling outside of the United States are eligible for that special advance absentee ballot. However, distance, terrain and natural conditions have

prevented voters in remote areas from reaching a community with a polling place or from receiving by-mail ballots. The current absentee ballot is mailed out 14-15 days in advance. The Division of Elections supports the bill and they already distribute the 60-day ballots to those out of state. This legislation would not impose any administrative difficulties and there is a zero fiscal note.

She said there were some concerns about definitions and she wanted to clarify that Legislative Legal said the way the Division of Elections applies their current regulations in determining absentee voters would apply in determining those eligible for this special advance absentee ballot. One of the criteria the division uses to identify absentee voters is if the voter resides in a remote area in Alaska or where distance, terrain or other natural conditions deny the voter reasonable access to the polling place. The definition of remote is inherent in the regulations and in this bill; a remote area is one where reasonable access to a polling place is denied by those criteria. A key phrase is "reasonable access". Legislative Legal found that in the past, courts have interpreted that to be a matter of degree, which depends on the specific facts of the case, which are usually determined by the division and identified in their system.

SENATOR OGAN said he could see 60 days for someone on a sailboat, but it seemed long for someone in state and asked if there was any place in state where mail wasn't delivered for 14 days.

MS. BORAIIO said right now there is an absentee ballot that goes out 15 days in advance and there is the 60-day ballot. Establishing a 30-day ballot might add more overhead.

MS. VIRGINIA BREEZE, Legislative Liaison, Division of Elections, agreed with Ms. Boraio and said that the division supports the bill. They do everything they can to make it convenient for voters. Those in remote areas often have a difficult time getting their ballots back in time.

SENATOR OGAN asked if she had statistics on how many ballots they get back after the deadline and since they now mail ballots 14 days in advance, what is the longest it takes to get mail in a remote location in Alaska.

MS. BREEZE said she couldn't answer that.

SENATOR THERRIAULT said he knows that some mail systems are notoriously slow, but he didn't know if 60 days was necessary.

CHAIR SEEKINS said he knows some people that live in remote areas and the election season is difficult for them because they have access only by air. Some elections are scheduled when their plane can't be on floats and can't be on wheels either. Unless there is some undue hardship on the division, he would be as lenient as he could be to make sure that people have the opportunity to participate in elections. He didn't want to create a special group, but he also wouldn't want to do anything that would preclude anyone from voting.

He said that they would bring the bill back up under bills already heard and provide anyone the opportunity to ask questions of the sponsor in the meantime.

HB 46-PRIMARY ELECTION BALLOTS

CHAIR SEEKINS announced HB 46 to be up for consideration.

REPRESENTATIVE MIKE HAWKER, sponsor of HB 46, explained that an item that was at issue during his door-to-door campaign was concern about the changes that were made during last session to our primary balloting process. One has to choose a political party ballot in order to vote in that primary election. The concern that was expressed most often was that people did not want to choose a party ballot, but there were initiatives on the ballot that people wanted to vote on. They were very concerned that they were being cornered into having to capriciously declare a preference in order to vote on an issue. He came up with an issues-only ballot for Alaska's voters to choose.

Another element this bill responds to is folks who have a religious conviction and cannot declare a party affiliation. One thing this bill does not do is prejudice any other opinions a legislator might have regarding our balloting process or the initiative process. The bill has a zero fiscal note. The American Civil Liberties Union and the Republican Party of Alaska both testified in favor of this bill.

2:15 p.m.

SENATOR THERRIAULT asked if he explained to his constituents that requesting a particular party ballot is different than declaring affiliation with a party.

REPRESENTATIVE HAWKER replied that he had had some very interesting discussions and was told that it preserves a person's privacy in not having to make any expression in order to participate in the balloting process. He felt it was incumbent upon them to make the balloting process as open as possible to people of all beliefs.

SENATOR THERRIAULT asked if he considered just not allowing any initiatives on a primary ballot.

REPRESENTATIVE HAWKER replied that he had considered that, but he found a diversity of opinions on that subject and felt that that would create more controversy and would detract from the simple mission of his bill.

SENATOR OGAN said he didn't think they needed another ballot printed, but initiatives should be on a general election ballot only.

Supporting this bill does not - it is not my intention that it in any way - causes you to prejudice any opinions you may hold on that subject in particular, whether we do or do not have referendum measures, ballot issues, appearing on a primary ballot. I would personally be very receptive to discussing with you that issue as a separate piece of legislation, sir.

TAPE 03-20, SIDE B

SENATOR THERRIAULT asked about an initiative only ballot in a general election.

REPRESENTATIVE HAWKER replied he doesn't envision this as making any changes to the general election balloting.

CHAIR SEEKINS asked if the Division of Elections had an opinion.

MS. BREEZE said they had no policy position on this issue, but they would be able to implement the bill's language.

CHAIR SEEKINS said one suggestion was to have an additional ballot in the primary and another to limit these issues to the general election. He asked which would be easier.

MS. BREEZE replied that is a policy call.

CHAIR SEEKINS asked if either one of them would be cheaper than the other.

MS. BREEZE replied that she didn't know what the costs would be at this time.

SENATOR ELLIS told Representative Hawker that he appreciated his bringing up the issue and that he heard the same concerns. There were a lot of upset people, especially in the religious community. He said that this issue was raised by the minority and brushed aside during debate on the closed Republican primary.

REPRESENTATIVE HAWKER appreciated his observations, but it is his true desire to have this legislation stand on its own merits and not in light of any other contentious issues that may have happened in previous sessions.

SENATOR ELLIS said he understands Representative Hawker's point, but they can't divorce themselves from history. Some of the same members here were there then and:

It's undeniable that we are here at this point with your bill because of what happened previously with closing the primary - beyond what the court required, in my opinion. So here we are. I'm just saying you've got to convince people who didn't care about this concern, the religious folks and the folks who didn't want to declare - you've got to convince those and many of those same folks are still here. They're going to vote on your bill, I hope, in the affirmative, but you've got to change their minds that you're representing the legitimate interests...I wish you luck.

SENATOR THERRIAULT asked Ms. Breeze how many times in the last 20 years initiatives have shown up on primary ballots.

MS. BREEZE replied hardly at all. "This last one was the first time it's happened since I've been with the division, which is about seven years."

SENATOR OGAN said he thought this was bad policy and asked if the statutes were clear on what election an issue can show up on or do they specifically have to ban it.

MS. BREEZE responded that it is a matter of timing. If a petition is submitted the day the Legislature convenes, it will appear on the general election ballot. If it appears at another time, because of timing, it could appear on the primary election ballot and that's what happened this time. Most people that submit petitions would prefer to have them on the general election ballot because voter turn out is larger. That didn't happen with this particular initiative. She said that the division was bombarded with questions from people who didn't have the chance to vote on a separate ballot because more than half of the state's voters are not registered with a party.

SENATOR THERRIAULT asked what the division's official response was.

MS. BREEZE replied the people were told they would have to choose a ballot; that was the law and the division was following it.

SENATOR THERRIAULT asked if she clarified that they didn't have to vote for the party candidate.

MS. BREEZE said yes.

SENATOR OGAN said that having to select a ballot is an issue that is ripe for litigation, based on having to be a member of the party to vote. He understands Senator Therriault's point, but he didn't think the average public is that sophisticated. People want to vote on issues and he thought that there might be a little of denying people's perceived right to vote on something, because they have to pick a party ballot to vote on an initiative that's on the primary.

MS. BREEZE said that it was not appropriate for her to share her thoughts and didn't want her answers to be misleading. She reiterated that they got a lot of phone calls and people asked if they had to vote a certain way.

SENATOR THERRIAULT said he didn't think there was a constitutional problem, because they didn't bar access to the ballot by having voters select a party.

CHAIR SEEKINS noted there were no further comments and said that they would hold the bill.

2:32 p.m. - 2:35 p.m. - at ease

CHAIR SEEKINS adjourned the meeting at 2:35 p.m.