

**ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE**

March 19, 2004
8:05 a.m.

TAPE(S) 04-22

MEMBERS PRESENT

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

MEMBERS ABSENT

Senator Johnny Ellis

COMMITTEE CALENDAR

SENATE BILL NO. 255

"An Act relating to traffic preemption devices."

MOVED CSSB 225(STA) OUT OF COMMITTEE

SENATE BILL NO. 302

"An Act relating to the authority to take oaths, affirmations, and acknowledgments in the state; relating to notaries public; relating to fees for issuing certificates with the seal of the state affixed; and providing for an effective date."

MOVED CSSB 302(JUD) OUT OF COMMITTEE

SENATE BILL NO. 340

"An Act relating to the detention of delinquent minors in correctional facilities; relating to emergency detention of minors for evaluation for involuntary admission for mental health treatment; relating to detention of intoxicated minors and minors incapacitated by alcohol or drugs; and providing for an effective date."

HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 255

SHORT TITLE: ILLEGAL USE TRAFFIC PREEMPTION DEVICE

SPONSOR(s): SENATOR(s) THERRIAULT

01/12/04 (S) PREFILE RELEASED 1/9/04
01/12/04 (S) READ THE FIRST TIME - REFERRALS
01/12/04 (S) STA, JUD, FIN
02/12/04 (S) STA AT 3:30 PM BELTZ 211
02/12/04 (S) Heard & Held
02/12/04 (S) MINUTE (STA)
03/02/04 (S) STA AT 3:30 PM BELTZ 211
03/02/04 (S) Heard & Held
03/02/04 (S) MINUTE (STA)
03/04/04 (S) STA AT 3:30 PM BELTZ 211
03/04/04 (S) Moved CSSB 255(STA) Out of Committee
03/04/04 (S) MINUTE (STA)
03/05/04 (S) STA RPT CS 3DP SAME TITLE
03/05/04 (S) DP: STEVENS G, COWDERY, STEDMAN
03/19/04 (S) JUD AT 8:00 AM BUTROVICH 205

BILL: SB 302

SHORT TITLE: OATHS; NOTARIES PUBLIC; STATE SEAL

SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

02/06/04 (S) READ THE FIRST TIME - REFERRALS
02/06/04 (S) STA, JUD
02/19/04 (S) STA AT 3:30 PM BELTZ 211
02/19/04 (S) Moved CSSB 302(STA) Out of Committee
02/19/04 (S) MINUTE (STA)
02/20/04 (S) STA RPT CS FORTHCOMING 3DP 1NR
02/20/04 (S) DP: STEVENS G, COWDERY, STEDMAN;
02/20/04 (S) NR: GUESS
02/20/04 (S) FIN REFERRAL ADDED AFTER JUD
02/23/04 (S) STA CS RECEIVED NEW TITLE
03/19/04 (S) JUD AT 8:00 AM BUTROVICH 205

BILL: SB 340

SHORT TITLE: DETENTION OF MINORS

SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

02/16/04 (S) READ THE FIRST TIME - REFERRALS
02/16/04 (S) HES, JUD
03/03/04 (S) HES AT 1:30 PM BUTROVICH 205
03/03/04 (S) Moved SB 340 Out of Committee
03/03/04 (S) MINUTE (HES)
03/04/04 (S) HES RPT 3DP
03/04/04 (S) DP: DYSON, GREEN, WILKEN
03/19/04 (S) JUD AT 8:00 AM BUTROVICH 205

WITNESS REGISTER

Dennis Michel
Staff to Senator Therriault
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Testified for the sponsor of SB 255

David Tyler
President, Alaska Fire Chiefs Association
North Pole, AK
POSITION STATEMENT: Supports SB 255

Shelly Owens
Health Program Manager
Department of Health &
Social Services
PO Box 110601
Juneau, AK 99801-0601
POSITION STATEMENT: Supports SB 255

Lieutenant Al Storey
Division of Alaska State Troopers
Department of Public Safety
3700 East Tudor Road
Anchorage, Alaska 99507
POSITION STATEMENT:

Mr. Scott Clark
Office of the Lieutenant Governor
PO Box 110015
Juneau, AK 99811-0015
POSITION STATEMENT: Presented SB 302 for the Administration

Ms. Annette Kreitzer
Chief of Staff
Office of the Lieutenant Governor
PO Box 110015
Juneau, AK 99811-0015
POSITION STATEMENT: Answered questions pertaining to SB 302

Ms. Patty Ware
Division of Juvenile Justice
Department of Health &
Social Services
PO Box 110601
Juneau, AK 99801-0601

POSITION STATEMENT: Presented SB 340 for the Administration

ACTION NARRATIVE

TAPE 04-22, SIDE A

CHAIR RALPH SEEKINS called the Senate Judiciary Standing Committee meeting to order at 8:05 a.m. Senators Ogan, French and Chair Seekins were present. The committee took up SB 255.

^#SB 255

SB 255-ILLEGAL USE TRAFFIC PREEMPTION DEVICE

MR. DENNIS MISCHEL, staff to Senator Gene Therriault, sponsor, explained to members that under current law, it is not illegal to use a traffic preemption device in Alaska. A traffic preemption device can be used by a driver to change a traffic light from red to green. The purpose of SB 255 is to ban these devices, with exceptions, because they disrupt traffic and can cause dangerous intersection conditions. Under SB 255, emergency responders, such as firemen, police officers, ambulance drivers, as well as state maintenance workers and municipal bus drivers, would be exempt. He offered to answer questions.

CHAIR SEEKINS asked how one gets a traffic preemption device.

MR. MISCHEL said they can be directly ordered from the manufacturer and they can be purchased on the Internet. To purchase one on the Internet, the buyer must check a box saying he or she is an emergency response provider but no verification is done. He has also heard they can be purchased on E-bay.

SENATOR FRENCH asked if these devices operate on the same frequency nationwide.

MR. MISCHEL said they do but communities can encrypt their devices, which the [Municipality of Anchorage] does. He noted most of the devices in the Lower 48 are not encrypted.

SENATOR FRENCH asked if a device without an encryption code that was purchased on E-bay could change a traffic signal in a community with encryption codes.

MR. MISCHEL replied, "Originally no, not the ones they buy from the Internet but encryption can be broken and once it's broken, it can get out there and then it reverts back to almost being

un-encrypted. So this will keep them from actually possessing the devices, whether they're encrypted or not."

SENATOR FRENCH pointed out that remote garage door openers are encrypted. He was unsure whether the encryption on traffic preemption devices is as simple or more complex than those devices.

CHAIR SEEKINS took public testimony.

MR. DAVID TYLER, President of the Alaska Fire Chiefs Association, stated support for SB 255. He explained that when approaching an intersection, the device turns the traffic signal green in the driver's direction of travel. He noted that traffic preemption devices in both Anchorage and Fairbanks are encrypted to the extent that the system monitors which device was used.

MS. SHELLY OWENS, Health Program Manager with Community Health and Emergency Medical Services at the Department of Health and Social Services (DHSS), stated support for SB 255. The Federal Highway Administration (FHA) reported that in the year 2000, there were more than 2.8 million intersection related crashes, representing 44 percent of all reported crashes in that year and approximately 8500 fatalities. Although it is not known whether any of those crashes were related to traffic preemption device use, intersection safety has become a focus of several national traffic safety organizations. DHSS supports SB 255 because of the potential for tragic results caused by abuses of the devices by untrained persons.

LIEUTENANT AL STOREY, Alaska State Troopers, Department of Public Safety (DPS), stated support for reasons mentioned in previous testimony. In addition, he noted that cities spend large amounts of money to design proper traffic flow systems, so disrupting a system for one's convenience by using traffic preemption device corrupts that entire process.

SENATOR OGAN asked how traffic preemption devices work.

LT. STOREY said the current technology involves an invisible infrared transmitter on the emergency vehicle. When the transmitter approaches an intersection equipped with a receiver, it activates the light function.

SENATOR OGAN asked how the police could stop a person who is using a device if the transmission is invisible.

LT. STOREY explained that the intent of SB 255 is to prevent people from buying the devices, but if they are used and cause an accident, they would likely be found during an investigation. He noted that some of the receivers in Fairbanks and Anchorage are able to identify which transmitter provides each signal.

CHAIR SEEKINS pointed out the bill applies to a person who possesses or uses a traffic preemption device. He then asked Lt. Storey his opinion of allowing traffic preemption devices to be used for municipal buses and state maintenance vehicles.

LT. STOREY said he understands the need for those vehicles to have them and that the system is able to prioritize transmissions so that an emergency vehicle would have a priority over a maintenance vehicle.

CHAIR SEEKINS asked Lt. Storey if he believes that a private citizen using a device would pose a danger but a municipal bus driver would not.

LT. STOREY said he suspects bus drivers would be municipal employees who are trained in the proper use of the device so as not to create a danger.

SENATOR FRENCH asked if the preemption device overrides the normal green-yellow-red sequence and instantly changes a red light to a green light.

LT. STOREY said it is his understanding the sequence is the same but it initiates the process quicker.

8:20 a.m.

SENATOR OGAN noted that in some places the lights are timed so that a person can travel at a particular speed and avoid any red lights. He asked if the devices work on those lights and whether they would throw the entire timed system off.

LT. STOREY said he does not know how they would work in those areas. In Anchorage, the devices currently work at the high use, most dangerous intersections that are hazardous to clear.

With no further participants, CHAIR SEEKINS closed public testimony. He then said he is not comfortable with allowing every bus driver to have preemption devices because he fears they will be used if the bus is one minute off schedule.

SENATOR OGAN shared that concern and said he could envision a bus driver using the device to get home by 5:00 p.m. Otherwise, he believes SB 255 is a great bill.

SENATOR FRENCH commented that it appears the municipalities are figuring out ways to prioritize who can override a traffic light and when, yet the bill says operating an emergency vehicle, which precludes snow plows and buses.

CHAIR SEEKINS clarified that Version Q was before committee members. He then noted that anyone authorized by the municipal department of transportation or the Department of Transportation and Public Facilities (DOTPF) can use a traffic preemption device, so a mayor could have one.

SENATOR FRENCH interpreted that language to require the mayor to be operating maintenance equipment or a bus.

SENATOR THERRIAULT referred to the language on page 1, lines 13-15, and agreed with Senator French. In regard to the concern about allowing bus drivers and maintenance workers to use them, he felt comfortable giving the local councils discretion and authority over their particular areas because they are familiar with the traffic systems in their areas.

CHAIR SEEKINS replied:

...I don't have a problem if that's what it is but then I just have to throw a little bit of cold water on the testimony that says that these are dangerous devices because we're going to let every public bus have one. I have some doubt about - then we're going to increase the danger for the public bus to get through on time but that's okay, if that's what we want to do. Some folks say well these are dangerous devices and they should only be used under unusual circumstances. I will bet that in Anchorage they will be used regularly on their buses. But if that's what they want to do, it's fine with me. I don't have a problem with that.

SENATOR FRENCH thought they are used now on buses.

There being no further discussion, SENATOR OGAN moved CSSB 255(STA) from committee with individual recommendations and its zero fiscal notes. Without objection, the motion carried.

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^#SB 302

SB 302-OATHS; NOTARIES PUBLIC; STATE SEAL

CHAIR SEEKINS informed members that version I was before the committee.

SENATOR THERRIAULT moved to adopt the proposed committee substitute, version I, as the working document before the committee. There being no objection, the motion carried.

MR. SCOTT CLARK, Notary Administrator for Lt. Governor Loren Leman, provided members with a chart comparing the current notary statute with the proposed changes.

CHAIR SEEKINS pointed out the current statute has not been updated since 1961.

MR. CLARK highlighted the following changes that SB 302 will make to the current statute:

- The current age requirement of 19 years would be lowered to 18 years.
- The separate definition of residency in the notary statute would be replaced with a reference to AS 01.10.055 [the generic definition of residency].
- Applicants will have to legally reside in the United States, which is a requirement of the National Rotary Association's model act.
- Applicants cannot be convicted/incarcerated felons within 10 years of application.
- The state employee notary term will run for 4 years unless the employee terminates employment with the state, in which case the commission is automatically revoked.
- The state employee notary system will be expanded to include federal and municipal employees.
- The certificate fees will increase from \$2 to \$5.
- Commission revocation is currently addressed via the Administrative Procedures Act. That will be changed to allow the Lt. Governor to institute a system for common sense discipline. Notaries would have a right to appeal under the Administrative Procedures Act.
- Notary data currently includes each notary's name, mailing address, surety information and commission dates. In

addition, e-mail addresses will be obtained but will not be made available to the public.

MR. CLARK explained that obtaining e-mail addresses will facilitate Internet training and services.

CHAIR SEEKINS asked if anyone has ever executed on the \$1,000 notary bond.

MR. CLARK said not during the four years he has been in his position. He then pointed out that a number of states do not require any notary bonds. Some people theorize that the \$1,000 bond is too small to make a claim on. However, he has never received any complaints about the bond being too small.

CHAIR SEEKINS said he was not suggesting the bond is too small. His concern is that those bonds are not available in many places.

MR. CLARK said the Lt. Governor's Office accepts individual surety, which a number of people take advantage of. A person is not forced to purchase a notary bond, although the cost is about \$50.

CHAIR SEEKINS asked Mr. Clark if he is aware of any complaints filed against notaries for misusing their authorities.

MR. CLARK indicated that he has received complaints from phone callers but, under the current statute, the Lt. Governor has no disciplinary authority. He said if the complaint is not of a serious nature, he contacts the notary and explains the error. If the complaint is of a serious nature, he must notify the complainant of the administrative hearing procedure. He does not believe anyone has followed through with that process because it is so cumbersome.

CHAIR SEEKINS stated:

I guess maybe that's the only question I had - why do we continue to charge a notary bond fee or have a notary bond requirement? I'm not aware of, and you're not in four years aware of anybody ever executing on one. It's another piece of paper that everybody has to keep track of. The complaint procedure has no teeth in it, as you said, unless you go to an administrative hearing, which is going to cost whoever is complaining a lot of money. I guess I'm wondering what deterrent

there is and why we wouldn't vote for simplicity rather than something with no deterrent....

MS. ANNETTE KREITZER, Chief of Staff, Office of the Lt. Governor, told members these issues were discussed with everyone who employs notaries and notaries themselves. She explained:

...The notary bonds - there just wasn't a great swell of concern about people saying, as you are, it's just one more piece of paper, it's bureaucracy, why do we have to do this. We just hadn't heard that sentiment to those we vetted this to. So that's what we relied on to guide us in the crafting of the bill - was what are the notaries saying, what are the banks saying that we gave this to. And we, for instance, suggested extending the term of the notaries from four years to six years but the banks didn't like that because notaries last in the banks maybe two years, two and one-half years, so for them it wasn't a good deal to extend the term. We thought we were going to be helpful but we found out that wasn't helpful. So we did get lots of interaction on some of these ideas so that's why we don't have that proposal before you to do away with the bond.

CHAIR SEEKINS said most of his employees who are notaries stay longer than two years. He repeated that he sees the bond as an unnecessary step that is never executed on that only requires more tracking.

MS. KREITZER said she believes it is healthy to question the usual practices, which she did when she moved to the Lt. Governor's Office. Her opinion of the bond is that it makes people think twice when signing up to be a notary and recognize that their actions have consequences.

CHAIR SEEKINS commented that he does not like legislation that contains no teeth.

SENATOR FRENCH asked how many complaints the Lt. Governor's Office receives each year about abuses of the notary seal.

MR. CLARK estimated that he receives about six complaints each year about technical errors; most problems are of that nature. He noted that most complainants do not identify themselves and discuss a situation with him informally.

CHAIR SEEKINS asked the number of notaries in the state.

MR. CLARK replied about 12,100 right now and that figure is consistent.

CHAIR SEEKINS announced that with no further participants, public testimony was closed.

SENATOR OGAN asked why SB 302 contains additional definitions and so many new sections.

MS. KREITZER explained that much of the bill deals with judges, magistrates and postmasters. As the Lieutenant Governor's Office reviewed the statutory provisions that touched on oaths and affirmations, they decided to wrap the corrections to any inconsistencies they found into SB 302. She pointed out, for example, that in the current statute, the Lieutenant Governor, Senate President, and House Speaker cannot sign off on oaths of office.

CHAIR SEEKINS said he saw no reason to hold this bill in committee.

SENATOR OGAN moved CSSB 302(JUD) from committee with individual recommendations and attached fiscal notes.

CHAIR SEEKINS announced without objection, the motion carried.

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^#SB 340

SB 340-DETENTION OF MINORS

MS. PATTY WARE, Director of the Division of Juvenile Justice, Department of Health and Social Services (DHSS), told members that SB 340 proposes changes to the juvenile delinquency and alcohol statutes to align with the federal requirements of the Juvenile Justice and Delinquency Prevention Act (JJDP), with respect to holding juveniles in adult jails and juvenile justice facilities. SB 340 prohibits the state from putting juveniles who have not committed a crime in either an adult or juvenile correctional facility solely for their own correction. Current Alaska statute allows DHSS to place a juvenile in an adult jail when a juvenile is severely intoxicated or mentally ill and might pose a danger to self or others. One concern is that locking up juveniles who have not committed a crime is not best practice. The second concern is that Alaska statute is out of

compliance with federal requirements, which impacts federal funding. She emphasized that SB 340 will not impact DHSS's ability to hold juveniles who have been charged with a delinquent offense while awaiting transportation to an appropriate juvenile facility. DHSS has had a range of non-secure shelters across the state for well over a decade. The non-secure shelters allow DHSS to provide a safe place for a young person until a parent or guardian is located. Non-secure shelters are located in Fairbanks, Juneau, Kenai, Kodiak, Ketchikan, Valdez and Sitka. DHSS is in the midst of expanding the non-secure shelter array to Anchorage, Barrow, Wrangell, Dillingham, Kotzebue, Emmonak, and Hooper Bay and recently signed a provider agreement in the Mat-Su Valley as well.

MS. WARE asserted that DHSS has been working in close partnership with the Alaska State Troopers and Department of Public Safety (DPS) to address this concern. The changes made at the federal level occurred this past October. She offered to answer questions.

SENATOR FRENCH asked if DHSS currently maintains separate facilities across the state for juveniles who are intoxicated and mentally ill but who have not committed any crimes.

MS. WARE answered that it does; the facilities are run by grantees of DHSS, primarily non-profit organizations.

SENATOR FRENCH asked what happens in communities with no such facilities.

MS. WARE said a juvenile would be held at an adult jail, which is allowed by statute. She noted even if SB 340 passes and it becomes illegal to hold a juvenile in an adult jail, the federal government recognizes that states face significant challenges in meeting the requirements of the federal act. Therefore, each state is allowed a certain number of violations.

TAPE 04-22, SIDE B

SENATOR OGAN noted it is illegal for a minor to use a controlled substance. He expressed concern that the state could be opening itself to liability if a juvenile can't be incarcerated until he or she sobers up and cools off.

MS. WARE responded that law enforcement could charge a juvenile who is violent and acting out with a criminal offense, thereby allowing DHSS to incarcerate the juvenile in an adult jail in a

rural community. SB 340 addresses those juveniles who are intoxicated and in what is referred to as "protective custody hold." They have not acted out to the point they should be held in jail.

SENATOR FRENCH questioned whether a minor in possession offense is a "jailable" offense.

MS. WARE told members that minor in possession and minor consuming offenses are considered to be status offenses that are handled in district court as opposed to superior court.

SENATOR FRENCH acknowledged they are infractions with a \$300 fine.

MS. WARE said, in terms of the federal JJPD Act, that would be a violation because the state would be incarcerating status offenders as opposed to delinquents.

SENATOR FRENCH maintained that SB 340 will help the state retain \$700,000 of federal money but the fiscal note shows no state money will be appropriated to increase the number of non-secure facilities in the state.

MS. WARE indicated that DHSS has requested general funds in the FY 04 budget for non-secure shelters.

CHAIR SEEKINS asked if SB 340 will cause DHSS to change its current procedures.

MS. WARE answered:

Mr. Chairman, yes and no in that we've already been working on this for quite some time. What this will do is cement the fact that our state statutes will be in alignment with federal statutes but we've been working hard on this, frankly, for many, many years. What this does force us to do is be much more pro-active and focused in terms of our alignment with essentially core stakeholders across the state. So, for example, when the change came down, and I think this is probably one of the best examples, in Bethel, for fiscal year 2003, 25 percent of our detention admissions in our own juvenile facility were related to protective custody holds. Once we realized that the feds were going to change the requirement, we worked hard with the Yukon-Kuskokwim Health Corporation. So

now, instead of law enforcement bringing those kids to our juvenile facility, they go to a hospital bed managed by YK, which is both more appropriate for that juvenile and reduces our overcrowding and also means that he or she can be plugged into appropriate behavioral health services. They're also managed by YK. And we've been doing that in other parts of the state as well. So Fairbanks, at the local level, has been working with law enforcement and our staff and other service providers and they've got, I believe this just happened last week, six pre-treatment de-tox beds that FNA Behavioral Health Services is putting on line to address some of the concerns related to loss of alternatives in a juvenile justice setting.

CHAIR SEEKINS affirmed that DHSS already has a process in place that it is following where possible and SB 340 will cause DHSS to follow that procedure in every case.

SENATOR FRENCH asked if DHSS ever uses private homes as safe houses in smaller communities.

MS. WARE said she believes law enforcement gets pretty creative but DHSS does not have specific safe houses in identified communities. She added she does not want to overstate the level of the problem. DHSS has adult jails or lock-ups in about 138 communities. The violation sites number 23. Therefore, while DHSS faces a challenge every day in terms of the sites where alternatives must be provided, the number of those sites is small.

SENATOR FRENCH asked if a violation site has no facility available for juveniles.

MS. WARE replied, "A violation site is a site where yes, there may not be alternatives, but for a range of reasons, either due to turnover at the VPSO level, a whole bunch of factors, we end up fairly regularly putting a kid in an adult jail."

CHAIR SEEKINS announced that we would hold SB 340 in committee and adjourned the meeting at 9:00 a.m.

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