

ALASKA STATE LEGISLATURE
SENATE STATE AFFAIRS STANDING COMMITTEE

February 12, 2004

3:35 p.m.

TAPE (S) 04-5&6

MEMBERS PRESENT

Senator Gary Stevens, Chair
Senator John Cowdery, Vice Chair
Senator Bert Stedman
Senator Gretchen Guess
Senator Lyman Hoffman

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 279

"An Act authorizing and relating to the issuance of bonds by the Alaska Housing Finance Corporation for safe and clean water and hygienic sewage disposal facility capital projects and other capital projects; providing for the repayment of the bonds and bond costs; relating to the dividend paid to the state by the Alaska Housing Finance Corporation; and providing for an effective date."

MOVED CSSB 279(STA) OUT OF COMMITTEE

SENATE BILL NO. 255

"An Act relating to traffic preemption devices."

HEARD AND HELD

OVERVIEW ON "HELP AMERICA VOTE ACT": DIVISION OF ELECTION

CS FOR HOUSE BILL NO. 230(STA)

"An Act relating to political signs on private property."

HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 279

SHORT TITLE: AHFC WATER & SEWER BONDS

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

01/23/04 (S) READ THE FIRST TIME - REFERRALS

01/23/04 (S) STA, FIN
 02/03/04 (S) STA AT 3:30 PM BELTZ 211
 02/03/04 (S) Heard & Held
 02/03/04 (S) MINUTE(STA)
 02/12/04 (S) STA AT 3:30 PM BELTZ 211

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

BILL: HB 230

SHORT TITLE: POLITICAL SIGNS ON PRIVATE PROPERTY
 SPONSOR(s): REPRESENTATIVE(s) HOLM

03/31/03 (H) READ THE FIRST TIME - REFERRALS
 03/31/03 (H) TRA, STA
 04/29/03 (H) TRA AT 1:30 PM CAPITOL 17
 04/29/03 (H) Heard & Held
 04/29/03 (H) MINUTE(TRA)
 05/06/03 (H) STA AT 8:00 AM CAPITOL 102
 05/06/03 (H) Scheduled But Not Heard
 05/06/03 (H) TRA AT 1:30 PM CAPITOL 17
 05/06/03 (H) Moved CSHB 230(TRA) Out of Committee
 05/06/03 (H) MINUTE(TRA)
 05/07/03 (H) TRA RPT CS(TRA) 4DP 2NR
 05/07/03 (H) DP: OGG, KOOKESH, FATE, HOLM;
 05/07/03 (H) NR: KOHRING, MASEK
 05/07/03 (H) STA AT 8:00 AM CAPITOL 102
 05/07/03 (H) Scheduled But Not Heard
 05/08/03 (H) STA AT 8:00 AM CAPITOL 102
 05/08/03 (H) Heard & Held
 05/08/03 (H) MINUTE(STA)
 05/09/03 (H) STA AT 8:00 AM CAPITOL 102
 05/09/03 (H) Moved CSHB 230(STA) Out of Committee
 05/09/03 (H) MINUTE(STA)
 05/12/03 (H) STA RPT CS(STA) 3DP 3NR
 05/12/03 (H) DP: GRUENBERG, HOLM, LYNN; NR: SEATON,
 05/12/03 (H) DAHLSTROM, WEYHRAUCH
 05/17/03 (H) CORRECTED CS(STA) RECEIVED
 05/17/03 (H) TRANSMITTED TO (S)
 05/17/03 (H) VERSION: CSHB 230(STA)
 05/18/03 (S) READ THE FIRST TIME - REFERRALS

05/18/03 (S) STA, JUD
02/12/04 (S) STA AT 3:30 PM BELTZ 211

WITNESS REGISTER

Bryan Butcher
Legislative Liaison
Alaska Housing Finance Corporation
4300 Boniface
Anchorage, Alaska
POSITION STATEMENT: Testified on SB 279

Dennis Michel
Legislative Aide to Senator Gene Therriault
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Spoke to the CS for SB 255 for the sponsor

Gary Powell
Alaska State Fire Marshall
Department of Public Safety
PO Box 111200
Juneau, AK 99811-1200
POSITION STATEMENT: Answered questions regarding SB 255

Dave Tyler
Alaska Fire Chiefs Association
Fairbanks, AK 99707
POSITION STATEMENT: Testified on SB 255

Laura A. Glaiser
Director
Division of Elections
Office of the Lieutenant Governor
P.O Box 110017
Juneau, AK 99811-0017
POSITION STATEMENT: Gave Division of Elections Overview

Todd Larkin
Staff to Representative Jim Holm
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Introduced CSHB 230(STA) for the sponsor

Nona Wilson
Legislative Liaison
Department of Transportation &

Public Facilities
3132 Channel Dr.
Juneau, AK 99801-7898

POSITION STATEMENT: Testified on CHHB 230(STA)

ACTION NARRATIVE

TAPE 04-5, SIDE A

CHAIR GARY STEVENS called the Senate State Affairs Standing Committee meeting to order at 3:35 p.m. Present were Senators Stedman, Cowdery and Chair Gary Stevens. Senator Guess attended via teleconference and Senator Hoffman arrived several minutes after the meeting was convened.

SB 279-AHFC WATER & SEWER BONDS

CHAIR GARY STEVENS announced SB 279 to be up for consideration. He asked for a motion to adopt the committee substitute (CS).

SENATOR JOHN COWDERY made a motion to adopt CSSB 279 \D version as the working document. There was no objection and it was so ordered.

CHAIR GARY STEVENS explained that the only change between the original bill and the committee substitute relates to the specific provisions of the bond authorization. On page 5, line 7, the Alaska Housing Finance Corporation is authorized to issue bonds to finance "\$19,818,300 in capital improvements for village safe and clean water and hygienic sewage disposal facilities either directly or as a matching money required by grants for those purposes, and \$5,181,700 to finance other capital projects."

SENATOR COWDERY requested verification that the only change is to identify the projects that the money would be used for.

CHAIR GARY STEVENS replied, "That is exactly true." The projects were previously identified in the attached fiscal note so this change provides clarification. He asked Mr. Butcher to speak to that.

BRYON BUTCHER, legislative liaison, AHFC, participated via teleconference to say he agreed with what had been said. The CS specifies, in the bill, the amount of money allocated for village safe water projects in the FY05 capital budget as well as the funds for non-specific other capital projects.

CHAIR GARY STEVENS inquired whether he had any objection to specifying the amounts in the bill.

MR. BUTCHER replied, "We are fine with the bill."

JOE DUBLER, finance director with AHFC, identified himself via teleconference and said he had no comments to add.

SENATOR GRETCHEN GUESS, commenting via teleconference, thanked Mr. Butcher for agreeing to the changes in the bill. She had no further comments.

CHAIR GARY STEVENS asked for a motion.

SENATOR COWDERY made a motion to move CSSB 279(STA) from committee with the attached fiscal note.

CHAIR GARY STEVENS clarified that the fiscal note was revised and it shows \$3 million for the bond issue. There being no objection, the bill moved from committee.

SB 255-ILLEGAL USE TRAFFIC PREEMPTION DEVICE

CHAIR GARY STEVENS announced SB 255 to be up for consideration. He noted a committee substitute (CS) had been prepared and he would like a motion to adopt it as the working document.

SENATOR JOHN COWDERY made a motion to adopt CSSB 255, \D version. There was no objection and it was so ordered.

CHAIR GARY STEVENS asked Mr. Michel to step forward and speak to the bill.

DENNIS MICHEL, legislative aide to Senator Gene Therriault, explained that the CS pertains to splitting Section 1, subsection (b) into two parts. Added is a second section, (2), which includes authorized employees of the Department of Transportation and Public Facilities to the group of people that may possess or use traffic preemption devices for official road maintenance related purposes.

CHAIR GARY STEVENS noted the committee hadn't heard the bill previously and it would be helpful if Mr. Michel would give a brief synopsis to highlight its importance.

MR. MICHEL began by informing members that traffic preemption devices are readily available over the Internet to anyone with

the money to buy one. The purchaser must check a box stating they are an emergency service provider, but there's no follow up so you won't be caught if you lie. As a result, a growing number of civilians own and use these devices.

SB 255 makes it unlawful to possess or use a traffic preemption device if you aren't operating an emergency vehicle. Those who may use the devices include authorized state or municipal employees who are installing, repairing, or maintaining the devices. As previously stated, the CS includes DOT/PF employees in the group that may possess or use the devices for authorized, road maintenance related purposes.

SENATOR COWDERY asked if this would include private businesses that put out cones for traffic control.

MR. MICHEL replied as long as the company is conducting road maintenance type work authorized by the DOT/PF they would be allowed to use the devices. He noted, however, that emergency vehicles such as police, fire and ambulances use the devices more frequently.

SENATOR COWDERY questioned whether wrecking trucks would be included.

MR. MICHEL acknowledged he wasn't able to answer the question, but would be happy to find out.

SENATOR COWDERY then inquired about getting radio stations that use horns and sirens in their on-air advertising to stop doing so. A constituent, in all seriousness, asked him to pose the question, he said.

MR. MICHEL conceded that it would overstep his bounds to give an answer, but he would make an inquiry.

CHAIR GARY STEVENS gleaned that the intent is for these devices to be used in an official capacity only and inquired where the CS states that a legal and authorized preemption device may not be used if there is no emergency.

MR. MICHEL read subsection (c) (1) on page 2 where an emergency vehicle is defined.

CHAIR GARY STEVENS replied the definition of an emergency vehicle is clear. However, it isn't clear that they intend that the emergency vehicle be on an emergency mission for it to be

authorized to have and use a traffic preemption device. He asked Mr. Michel whether he thought that might be at all confusing.

MR. MICHEL admitted it is a bit confusing and he could look at the wording.

SENATOR COWDERY brought up the traffic control issue again. "There's a lot of traffic control [that] goes on here, under contract to the private sector... I don't know if that would be a description of an emergency, but the fact is they're out there in high traffic zones." He used a hockey game at the Sullivan Arena as an example.

CHAIR GARY STEVENS agreed that is one of several important questions that must be addressed.

SENATOR COWDERY stated he would take advice from the Department of Transportation (DOT) and the Alaska State Troopers or police.

MR. MICHEL said he previously contacted the troopers, North Star Volunteer Fire Department and the Department of Public Safety (DPS) and he would take the questions raised back for further discussion.

MR. MICHEL had no additional comments.

GARY POWELL, Alaska State Fire Marshall and director of the Division of Fire Prevention, DPS, testified that, "In a number of Alaskan communities, traffic preemption is very important to safe and efficient response to a genuine emergency."

The integrity of the system is important for the public to support the system, he said. Because the devices are readily available on the Internet, it's reasonable to assume that private use will proliferate and traffic controls will be manipulated unnecessarily. To maintain public support for the system they feel this is a timely piece of legislation. He noted the commissioner sent a letter of support.

SENATOR LYMAN HOFFMAN questioned how private users would be apprehended.

MR. POWELL reported that in the system he is familiar with, a log is maintained, which makes it easy to determine when someone other than an authorized emergency responder has manipulated a traffic signal. Locating the unauthorized user would be difficult however.

SENATOR HOFFMAN pointed out that it's unlikely that unauthorized use would be noted if there isn't conflicting use at a traffic signal.

MR. POWELL responded that in the course of a normal stop, police observe the equipment in a car so it's not impossible for the police to notice unauthorized possession.

SENATOR HOFFMAN wasn't convinced and noted, "Many people are not stopped for five and ten years."

MR. POWELL agreed.

SENATOR COWDERY found nothing to indicate that enforcement would be successful.

MR. POWELL acknowledged it would be difficult to pinpoint unauthorized use without technology to capture transmissions from the devices. Although he wasn't sure, he said, "They operate on a receiver basis so I would expect, if it became a real problem something could be set up..."

CHAIR GARY STEVENS noted the bill doesn't say it's illegal to use, "It says unlawful possession is a class A misdemeanor."

SENATOR STEDMAN asked for verification that there is a log kept when a law officer changes a signal.

MR. POWELL said that is correct. The system he is familiar with logs the time a particular unit preempts a signal.

SENATOR STEDMAN commented it appears that police would know if repetitive unauthorized use occurred in a particular area.

MR. POWELL thought that would be correct.

SENATOR COWDERY commented he would like to follow up on the issue of possession.

MR. POWELL added he would like to see the bill include language such as, "possession with the intent to use."

SENATOR COWDERY thought it was confusing and asked for the committee to work with the sponsor.

CHAIR GARY STEVENS asked Senator Guess if she had any questions.

SENATOR GRETCHEN GUESS, participating via teleconference, replied her questions had already been asked.

DAVE TYLER, Alaska Fire Chiefs Association, spoke via teleconference to describe the system. Traffic signals have a device mounted on top that receives a signal from the strobe light on an emergency vehicle. Unless the preemption device is very high end, the user will have a strobe light on their vehicle that is visible to police and others.

He referred to page 1, line 6 of the original bill and noted that the original bill addressed both users and people that possess a traffic preemption device.

CHAIR GARY STEVENS thanked him for pointing that out and said his staff also pointed that out. In the proposed CS, Sec. 11.56.825 addresses both possession and use.

MR. TYLER then answered Senator Hoffman's question about other traffic control situations saying this only works at intersections that have a red/green control light. The strobe on the emergency vehicle turns that lane green and all the other lanes red so the emergency vehicle has control of the intersection. If more than one vehicle with a strobe is at an intersection, the vehicle that arrived first has control. The idea is to create a safer environment at the intersection not to clear the intersection so you can go through at top speed.

MR. TYLER said he would like to ask Mr. Michel a question. It was his understanding that the CS would include city buses as a local decision, but that wasn't done. He noted that air quality and DOT grants were available to expand these systems and the Municipality of Anchorage was interested. With regard to including buses, he explained that the system is actually a two-tier priority system so that fire and emergency vehicles would always have priority over a bus or other maintenance vehicle.

CHAIR GARY STEVENS stopped Mr. Tyler to say page 2, line 3, the definition of an emergency vehicle excludes buses so he wasn't sure what he was asking.

MR. TYLER replied the municipalities wanted buses to be included because of the funding that is available if buses are part of the system.

His final comments were to advise that wreckers and vehicle removal equipment wouldn't have access to traffic preemption devices and that he too finds some radio station advertizements to be distracting.

CHAIR GARY STEVENS said the issue Senator Cowdery raised was whether the vehicles that move the traffic cones to direct traffic after an accident would have the preemption devices. He understands Mr. Tyler to say they would not be included.

MR. TYLER repeated he understands vehicle wreckers would not be included.

SENATOR COWDERY asked how school buses fit into the picture.

MR. TYLER said they don't fit in the picture. Municipal buses were the only buses discussed.

CHAIR GARY STEVENS asked Mr. Michel to step forward and clarify the following:

- The definition of official capacity.
- Are vehicles that put out cones to divert traffic included?
- The issue of enforcement
- Buses

MR. MICHEL dealt with Senator Cowdery's question first and told members that the vehicles that put down and pick up traffic cones don't use traffic preemptory devices so they don't need to be addressed in the bill. They were considered and the decision was that it wouldn't be safe for those vehicles to use preemption devices.

He asked if buses were the next issue.

CHAIR GARY STEVENS replied Mr. Tyler from the Alaska Fire Chiefs Association asked the question about buses.

MR. MICHEL read Department of Transportation and Public Facilities from page 1, line 15, and said, "Under there I would see a bus being a vehicle of that public facility and therefore..."

CHAIR GARY STEVENS told him that refers to the state agency so it wouldn't include municipal buses.

MR. MICHEL said, "Okay."

SENATOR HOFFMAN said he thought the testimony was that buses should be eligible to carry the devices, but emergency vehicles would take precedence in the two-tier priority system.

MR. MICHEL agreed.

SENATOR HOFFMAN added Mr. Tyler's point was that the agreement was that buses were to be included, but that didn't happen.

CHAIR GARY STEVENS asked if he was talking about the definition on page 2, line 3 and that it doesn't include buses.

SENATOR HOFFMAN said, "He's saying there should be another section in here that buses are included, but they do not preempt emergency vehicles."

CHAIR GARY STEVENS asked Mr. Michel if he knew why Mr. Tyler wanted to include buses.

MR. MICHEL replied, "The best way to describe it is you're trying to get traffic to flow as easily as possible and by civilians using these traffic preemption devices - they can disrupt traffic patterns because all these lights are timed. As a bus using it - that's a bus filled with 50 people instead of 50 cars so that helps facilitate traffic flowing."

CHAIR GARY STEVENS asked if that means that a bus would be able to use a traffic preemption device at any time along its route.

MR. MICHEL said, "That is correct sir."

CHAIR GARY STEVENS observed that might raise havoc in Anchorage.

MR. MICHEL suggested a different approach might be better. Emergency vehicles were established as the primary group to use the devices and exemptions were listed subsequently.

Perhaps, he proposed, clarifying how the buses work is in order. "In other states, buses are allowed to use car pool lanes, allowed to go through right turn only lanes. So this would just be another way for a bus to use traffic to facilitate transportation."

CHAIR GARY STEVENS asked if he had any other clarification. He then noted Senator Cowdery had a question.

SENATOR COWDERY said he would like to clear the constitutional problem of possession before the bill was heard again.

SENATOR HOFFMAN added the wording should be, "possession with intent to use."

CHAIR GARY STEVENS commented the idea is sound and good intentioned, but a number of questions were raised and he didn't intend to move the bill that day. He asked Mr. Michel if he had any more comments.

MR. MICHEL replied he would address the questions next time.

CHAIR GARY STEVENS said it was his intention to hear the bill next week if the schedule permitted. He thanked Mr. Michel and held SB 255 in committee.

4:10 pm

OVERVIEW HELP AMERICA VOTE ACT - DIVISION OF ELECTIONS

LAURA GLASIER, director of the Division of Elections, handed out written copies of the overview and responded to questions after the review of HAVA.

HAVA - "The Help America Vote Act of 2002." Implementation to Date - Overview

Since the last meeting:

- They adopted the State Plan, drafted by the Division of Elections
- Sponsored HB 266, it was signed into law and the Department of Justice pre-cleared Alaska's election reform law
- The division submitted the plan to the FEC and is waiting for the FEC to publish it in the federal register
- Administrative Complaint regulations were drafted and pre-cleared by the Department of Justice
- Alaska received \$5 million in Title I money and \$1.139 million reimbursed funds for early investment in the Accu-Vote Optical Scan machines in 1998. Received \$100,000 grant to improve accessibility studies
- Met to discuss plan for adopting the "Touch Screen" voting systems

HAVA 2003 State Legislation

- Registrants are required to provide an identifier of either social security number, last 4 digits of social security number, Alaska driver's license number or state ID number when registering to vote
- Registrants are required to provide their date of birth when registering to vote
- Registrants' identification options when registering to vote were expanded to include state ID card and current and valid photo ID
- Establishes that registrants, when initially registering to vote by mail or by fax, must provide proof of identity. They may provide a copy of either their driver's license, state ID, current and valid photo ID, birth certificate, passport or hunting and fishing license to prove their identity. If a voter, initially registering to vote by mail or fax, does not provide a copy of his/her proof of identity, the Division of Elections will attempt to verify a voter's identity through the Division of Motor Vehicles
- Requires a "free access" system for questioned voter to learn whether their ballot was counted and if not, why.

HAVA Technology 2004

The director and regional supervisors discussed a plan for implementing the Touch Screen units. A pilot project is planned in a limited number of locations in the 2004 election cycle.

Just like the Accu-Vote Optical Scan units, the Accu-Vote Touch Screen units have a verifiable audit capacity. The units record the votes, not only on the memory card, but also on a redundant memory built into the system. They also have the ability to generate ballots for recount purposes.

HAVA requires one Touch Screen unit in each precinct by 2006. If the Legislature requires voter verifiable printed receipts, the division cannot implement the Touch Screen units in 2004 because the required modification has yet to be certified by the FEC/FEAC Standards Board. If the division is able to implement the touch screen units in 2004, the following reflects the locations the equipment will be used:

- Four regional office absentee voting stations
- Certain absentee voting stations
- Select polling locations such as senior centers to reach voters with a disability

2004 Legislation

The division will introduce legislation to the Legislature to:

- Expand Early Voting to other absentee voting locations in addition to the regional offices
- Reduce witnessing requirements for absentee mail voting
- Vote tallying equipment must meet standards approved by the Federal Election Commission
- Define requirements, procedures and accountability for initiative, referendum and recall processes
- Define process on how a political group may gain recognized political party status

HAVA and the Future

Division of Elections must accomplish the following by 2006

- Implement one Touch Screen unit in each precinct for those with disabilities
- Purchase and implement a new statewide voter registration system to replace the 1985 mainframe system
- Survey polling locations in 2005 to determine additional accessibility needs
- Establish an interactive statewide voter list

The following are questions that were asked during and after the overview.

CHAIR GARY STEVENS asked whether voters are able to find out whether their questioned ballot was counted.

MS. GLASSIER said the State of Alaska was ahead of the curve and questioned ballot voters have been able to receive a letter telling them the part of their ballot that was counted, but they aren't notified of that fact at the polling station. The new requirement is that the election worker must give the voter instructions on how to find out about their ballot as well as providing an 800 number that they can call.

CHAIR GARY STEVENS asked Ms. Glassier to explain a voter verifiable printed receipt.

TAPE 04-5, SIDE B

4:20 pm

MS. GLASSIER replied there are different systems in the development stage. Some people believe a voter verifiable

receipt means that there's something similar to a register tape that's protected under Plexiglas, printing alongside as you're working on the Touch Screen equipment. The voter verifies that whatever they touch on the screen is printed on a separate receipt.

CHAIR GARY STEVENS commented that the voter wouldn't walk away with that type receipt.

MS. GLASSIER responded some believe an in-hand receipt is an option, but that could cause confusion if the voter was supposed to put that receipt in a box outside the booth and they put the receipt in his/her pocket instead. The vote total from the screen would be different than the one in the box.

CHAIR GARY STEVENS remarked that if someone walked away with a receipt showing how they voted, that would raise questions about a secret ballot and he hopes Alaskan voters will never have a printed receipt.

MS. GLASSIER said that discussion hasn't taken place in Alaska, but other states are wrestling with that question. She added there is technology that provides a marked ballot at the same time a voter uses the Touch Screen. The voter would place the marked ballot in the optical scan machine. The benefit to that system is that there are ballots to count if a recount is called for. The question with that system is whether it provides voters with disabilities the ability to cast a private and independent vote.

SENATOR HOFFMAN pointed out that the governor's B plan calls for voting by mail and he questioned how that complies with the Help America Vote Act.

MS. GLASSIER honestly stated that she didn't know, but she said she would inquire if he would like her to do so.

SENATOR HOFFMAN said he thought that should be discussed because plan B is a possibility.

CHAIR GARY STEVENS asked if this is a closed and protected system such that hacking isn't of great concern.

MS. GLASSIER replied the system is protected, but she couldn't testify that anything is completely protected. With regard to secure transmission of information, she explained that a hacker would have to know exactly when the election worker picks up the

phone, which phone they were using, the phone number they call, and the exact 3 to 5 seconds that the transmission is made.

She told members that there is a lot of bi-partisan human process in the election system in Alaska, which makes this system more secure than other states. There are many checks and balances to the system. The server isn't on the Internet and the division is moving toward ensuring that the Gems computers will be in a locked area just as the ballots are locked currently.

She noted that Senator Johnny Ellis has a piece of legislation that deals with the voter verifiable receipts and has an effective date of 2006.

CHAIR GARY STEVENS verified that if legislation such as that becomes law, it wouldn't be used until 2006, but the division's Touch Screen pilot program could go forward in 2004.

MS. GLASSIER said she understands that most of those modifications are still in the research and development stage, but Senator Ellis's legislation has a 2006 effective date in part to accommodate the division's pilot program.

CHAIR GARY STEVENS advised Ms. Glassier that the committee would hear Senator Ellis's bill, SB 296, on Thursday, February 19.

SENATOR HOFFMAN asked whether anyone could use a Touch Screen unit or is use limited to the handicapped.

MS. GLASSIER replied the Touch Screen is open to anyone and federal law calls for each precinct to have one machine by 2006.

SENATOR HOFFMAN noted that most small communities in Alaska have just one precinct so that will be expensive. For instance, he represents 75 communities and only four have more than one precinct and Senator Lincoln represents twice as many communities.

MS. GLASSIER reported the good news is that HAVA came with federal funding. Maintenance of effort is required so although the state must provide a 5 percent match, it has already received \$5 million and another \$4 million is due. When the State Plan has gone through the federal register and is reviewed by the FEAC standards board, more money will be available, so with the state match there will be sufficient money available to purchase the equipment.

SENATOR HOFFMAN asked where that state equipment would be stored between elections.

MS. GLASSIER said they are still working on the particulars and she realizes the problems associated with storing sensitive equipment in an unheated, un-insulated building. The Touch Screens were shipped in large boxes that don't work well with bush planes and snowmobiles, but the division is addressing the problems now.

SENATOR HOFFMAN asked if the current system could be streamlined. Because the entire Yukon Delta area has their election district in Nome and it seems as though it would make more sense to have it in either Bethel or Anchorage, he wondered when the system was reviewed.

MS. GLASSIER admitted she has looked at that issue and he makes a good case. The division could make the shift if directed to do so by the Legislature.

SENATOR HOFFMAN replied he believes it is incumbent upon the division to recommend that the system isn't efficient if that's what they have found.

MS. GLASSIER stated that the division believes that they have always served the state well. There were no complaints to the prior administration related to the Division of Elections. This is her first election cycle and with the HAVA monies, the division will be able to provide additional trainers. Because the regional supervisor is currently in Nome and has so many areas in which to train election workers, it takes a lot of time. The division will be looking at the system more after the 2004 election.

SENATOR HOFFMAN emphasized getting from Nome to Bethel is difficult, time consuming and expensive. Starting in Nome, you travel to Kotzebue and then to Anchorage and then to Bethel. Although this may have made sense in 1940, it certainly doesn't today.

CHAIR GARY STEVENS thanked Ms. Glassier for the presentation.

CSHB 230(STA)-POLITICAL SIGNS ON PRIVATE PROPERTY

CHAIR GARY STEVENS announced CSHB 230(STA) to be up for consideration. The bill relates to political signs on private

property. He stated he did not intend to move the bill that day. He asked Mr. Larkin to step forward and introduce the bill.

TODD LARKIN, staff to Representative Jim Holm, described the legislation as follows:

HB 230, we brought it forward because we thought it was an issue of free speech that the state had overlooked in its zeal to keep the federal government happy and comply with what it thought were federal requirements. We've talked to the Federal Highway Administration and we found that we didn't necessarily have to make all the restrictions we were making.

MR. LARKIN read the following from the sponsor statement:

The ability of citizens to express political opinion, even to advocate for the same, is a fundamental right. This basic right becomes even more pronounced when the expression is made on one's own private property.

Currently, state law prohibits the posting of campaign or political signs within road view or 660 feet (whichever is greater). This applies to federally funded roads and state roads. The restriction includes private property. If you or I were to erect a "NO WAR IN IRAQ" or "SUPPORT THE TROOPS" sign today within the distance limits, we would be in violation of state law. The reasoning for this restriction has its genesis in the Federal Highway Beautification Act of '65. It has been interpreted to say that without a sign restriction, political or otherwise, Alaska may lose federal highway funds for being out of compliance. Correspondence with the Federal Highway Administration on this subject shows this to be untrue.

Similar restrictions, contained in city/county ordinance or state law, have been struck down in three out of four state supreme courts: Washington, Oregon, Colorado, and California. A U.S. district court in Missouri found in '93 that very few restrictions could be placed on signage erected on private property. The U.S. Supreme court heard a case in '94 concerning private property and upheld the rights of the property owner. Further, there is a landslide of peripheral case law relating to this subject. If AS 19.25.105

stands as currently written, the state of Alaska is in danger of litigation and certain defeat.

We have a country, which is based on the premise that all powers reside in the people and that the government derives its authority from the consent of the governed. Hence, we the people have the right to advocate or choose who governs us. This right should have little or no restriction.

This law needs to be amended, first to save the time and expense to the individual citizen who must challenge the current restriction of free speech, and second to save the state the cost of defense plus the likely legal fees awarded to a victorious citizen.

MR. LARKIN stated that the sponsor had no objection to the two proposed amendments. Federal highways recommended the amendment to tightly define the intent of the statement "political noncommercial sign" so it wouldn't allow indirect commercial advertising. Department of Transportation asked that it be clear in statute that they retain all authority in rights of way and department easements. The bill covers the land from the edge of that line out to 660 feet.

SENATOR COWDERY asked if the state is currently out of compliance and has any federal funding been lost.

MR. LARKIN replied the state has not lost any funding. The one state that did lose funding had the money refunded once they became compliant and it wasn't related to this issue.

SENATOR COWDERY asked if there is a size limitation and used an Acme fence sign as an example.

MR. LARKIN replied he would defer to the Department of Transportation and Public Facilities (DOT/PF), but current statutes deal with that type of example. This issue is something new.

CHAIR GARY STEVENS noted Nona Wilson from DOT/PF was present to answer questions.

SENATOR COWDERY remarked DOT/PF expended little enforcement effort in the last governor's election, but there have always been games associated with the placement of political signs. He

asked what provisions there would be for enforcement and would four small grouped signs be the same as one large sign.

MR. LARKIN reported that one of the first restrictions they set on the new exception to the 660-foot rule is addressed on page 2, line 15-16. It says, "individual or conjoined signs do not exceed 32 square feet total per side;"

SENATOR COWDERY announced he places his political signs on each of his driveways. One sign is placed so that traffic flowing out of Anchorage can view it and the other is placed to accommodate incoming traffic. He asked if this would be illegal since he owns two lots or is it a grey area.

MR. LARKIN called political signs a super protected form of speech. This legislation makes it clear that you may not be on the land that DOT/FP controls, but if you're on your private property from the line where DOT/FP control stops out to the 660 foot beautification margin, his reading and the intent is that the signs are legal.

SENATOR COWDERY then said he would like to have a site identified.

CHAIR GARY STEVENS labeled the proposed amendment \U.3, amendment number 1 and the proposed amendment \U.1, amendment number 2 then asked Mr. Larkin to explain amendment number 1.

23-LS0780\U.3
Utermohle
10/7/04

A M E N D M E N T 1

OFFERED IN THE SENATE

TO: CSHB 230(STA)

Page 2, line 18, following "hazard;":

Insert

**"(C) the signs are located outside of
department easements;"**

Page 2, line 19:

Delete "(C)"

Insert "(D)"

23-LS0780\U.1
Utermohle
10/7/04

A M E N D M E N T 2

OFFERED IN THE SENATE
TO: CSHB 230(STA)

Page 1, following line 2:

Insert a new bill section to read:

"* **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section to read:

INTENT. It is the intent of the Alaska State Legislature that political signs on private property not pose an opportunity for indirect commercial advertising."

Page 1, line 3:

Delete "**Section 1**"

Insert "**Sec. 2**"

ReNUMBER the following bill section accordingly.

MR. LARKIN replied, "The original suggestion from DOT was to say that all of this occurs outside of [the] right-of-way or department easements." He continued to say that AS 19.25.105(a) speaks to outside the right-of-way and they are expanding the language slightly to include easements in an effort to clear any ambiguity regarding easement versus right-of-way because "DOT uses their easements in the exact same fashion."

SENATOR HOFFMAN made a point of clarification saying, "DOT has the right-of-way. They don't own it we own it; the state owns it so we decide what happens there."

MR. LARKIN agreed that Senator Hoffman is correct.

SENATOR COWDERY touched on signs placed in windows in subdivisions to emphasize the point that enforcement might be difficult.

MR. LARKIN noted he included a number of court cases on this detail in the packets. He assured members that there wouldn't be ambiguity when referring to the precedents.

SENATOR HOFFMAN asked whether the two proposed amendments might not open the door to legal challenges.

MR. LARKIN replied his office holds the opinion that the State of Alaska and DOT does not and, even with the amendments, will not have the constitutional authority to restrict that specific form of speech.

CHAIR GARY STEVENS asked Senator Guess if she had any questions.

SENATOR GRETCHEN GUESS, attending via teleconference, thanked him for checking and said she had no questions at that time.

5:00 pm

NONA WILSON, legislative liaison with DOT/PF, prefaced her testimony by saying Rick Kauzlarich who handles all rights-of-way and easement issues was in Anchorage and although she would try to answer all questions, she was not an expert.

CHAIR GARY STEVENS asked if the proposed amendments came from the department.

MS. WILSON advised that the department reviewed HB 230 thoroughly and requested including amendment number 1, 23-LS078\U.3, to make a clear line of demarcation where private property stops and the DOT easement or right-of-way starts and who has the say when you have a political sign. She suggested, "This is mostly just a housekeeping point."

CHAIR GARY STEVENS asked for verification that even though it is private property, the intention is that no signs are allowed on the department easement.

MS. WILSON confessed it gets fuzzy for her at this point, so she used Mr. Kauzlarich's example.

Say you're going down Egan Expressway...and it comes up that we [DOT] need to build a sidewalk. It just so

happens that someone's private property abuts right where we want to build. So, I believe, an easement in an agreement between the private property owner and say the Department of Transportation that says okay, you can have this ten feet of my private property to have a sidewalk on it. When that happens, DOT assumes the authority over that ten feet and everything behind it is up to the private property owner.

MS. WILSON said she asked Mr. Kauzlarich whether the property owner could place a sign just beyond the sidewalk and was told the property owner could do that. She admitted she didn't know how many signs would be allowed or the size requirements either.

TAPE 04-6, SIDE A
5:10 pm

SENATOR COWDERY said his comment about signs in windows stemmed from the fact that federal funds might be used on roads in front of a house with a sign in the window.

MS. WILSON said she hasn't considered that problem since his question was the first to raise that point.

SENATOR COWDERY followed up to ask about whether this has anything to do with utility easements that are not owned by DOT.

MS. WILSON didn't care to speculate, but agreed to get an answer for him.

SENATOR COWDERY noted that the property owner pays taxes on a utility easement, but they can't use that portion of the property.

MS. WILSON said that would be a municipal issue.

SENATOR BERT STEDMAN asked if he heard her say that the state would have more authority over an easement than a municipality would have.

MS. WILSON understood that when an easement is granted, the party that is granted the easement has control of that portion of the property. "If DOT had an easement with the utility, that chunk of land would be under DOT's control. That wouldn't say that it would keep maintenance operators and maybe the municipality from going on there and doing their work..." She continued to say that there might be an exception for utilities.

SENATOR STEDMAN said that is a point to clarify and he would appreciate knowing a bit more about the rights granted on the issuance of an easement.

MS. WILSON admitted that was a good question and she would talk to Mr. Kauzlarich.

CHAIR GARY STEVENS announced that even though he didn't intend to move the bill then, he would like to adopt amendment 1 because it offers some clarification.

SENATOR HOFFMAN raised the question of whether or not "department" is defined in the statute.

MR. LARKIN conceded he was wondering whether the amendment should specify the Department of Transportation.

CHAIR GARY STEVENS thought that was an important clarification and asked for a motion.

SENATOR COWDERY said he would move the amendment.

CHAIR GARY STEVENS said that would be as amended, which is, "the signs are located outside of Department of Transportation easements;"

23-LS0780\U.3
Utermohle
10/7/04

A M E N D M E N T 1

[AS AMENDED BY SENATE STATE AFFAIRS COMMITTEE]

OFFERED IN THE SENATE

TO: CSHB 230(STA)

Page 2, line 18, following "hazard":

Insert

**"(C) the signs are located outside of
Department of Transportation easements;"**

Page 2, line 19:

Delete "(C)"

Insert "(D)"

MS. WILSON agreed with the wording.

CHAIR GARY STEVENS asked if there was objection and there was none. He stated he would hold proposed amendment 2 until it could be discussed further.

MR. LARKIN advised that proposed amendment 2 is a clarification requested by both DOT and Federal Highway Administration. It states the Legislature's intent that political signs on private property are not providing an opportunity for indirect commercial advertising.

He reported the sponsor supports that proposed amendment.

CHAIR GARY STEVENS replied the committee would hold that until another hearing.

There were no further questions or comments.

CHAIR GARY STEVENS held CSHB 230 in committee and adjourned the meeting at 5:20 pm