

ALASKA STATE LEGISLATURE
HOUSE LABOR AND COMMERCE STANDING COMMITTEE

February 27, 2002

3:25 p.m.

MEMBERS PRESENT

Representative Lisa Murkowski, Chair
Representative Andrew Halcro, Vice Chair
Representative Kevin Meyer
Representative Pete Kott
Representative Norman Rokeberg
Representative Harry Crawford
Representative Joe Hayes

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 393

"An Act relating to unfair and deceptive trade practices and to the sale of business opportunities; amending Rules 4 and 73, Alaska Rules of Civil Procedure; and providing for an effective date."

- MOVED HB 393 OUT OF COMMITTEE

HOUSE BILL NO. 377

"An Act relating to the establishment of an additional southcentral panel to the Alaska Workers' Compensation Board and to appointments to that panel; and providing for an effective date."

- MOVED HB 377 OUT OF COMMITTEE

HOUSE BILL NO. 418

"An Act amending the Alaska Corporations Code as it relates to delivery of annual reports, notice of shareholders' meetings, proxy statements, and other information to shareholders, and providing for electronic proxy voting."

- HEARD AND HELD

PREVIOUS ACTION

BILL: HB 393

SHORT TITLE: SALES OF BUSINESS OPPORTUNITIES

SPONSOR(S): REPRESENTATIVE(S) STEVENS

Jrn-Date	Jrn-Page		Action
02/08/02	2182	(H)	READ THE FIRST TIME - REFERRALS
02/08/02	2182	(H)	L&C, JUD
02/25/02		(H)	L&C AT 3:15 PM CAPITOL 17
02/25/02		(H)	Heard & Held MINUTE(L&C)
02/27/02		(H)	L&C AT 3:15 PM CAPITOL 17

BILL: HB 377

SHORT TITLE: WORKERS' COMPENSATION BOARD PANELS

SPONSOR(S): REPRESENTATIVE(S) HARRIS

Jrn-Date	Jrn-Page		Action
02/01/02	2122	(H)	READ THE FIRST TIME - REFERRALS
02/01/02	2122	(H)	L&C, FIN
02/27/02		(H)	L&C AT 3:15 PM CAPITOL 17

BILL: HB 418

SHORT TITLE: ELECTRONIC PROXY VOTING & NOTIFICATION

SPONSOR(S): LABOR & COMMERCE BY REQUEST

Jrn-Date	Jrn-Page		Action
02/13/02	2242	(H)	READ THE FIRST TIME - REFERRALS
02/13/02	2242	(H)	L&C
02/27/02		(H)	L&C AT 3:15 PM CAPITOL 17

WITNESS REGISTER

REPRESENTATIVE GARY STEVENS

Alaska State Legislature

Capitol Building, Room 428

Juneau, Alaska 99801

POSITION STATEMENT: Testified as the sponsor of HB 393 and answered questions.

JULIA COSTER, Assistant Attorney General

Fair Business Practices Section

Civil Division (Anchorage)

Department of Law

1031 West 4th Avenue, Suite 200

Anchorage, Alaska 99501-1994

POSITION STATEMENT: Answered questions regarding HB 393.

JOHN MANLY, Staff

to Representative John Harris

Alaska State Legislature

Capitol Building, Room 513

Juneau, Alaska 99801

POSITION STATEMENT: Presented HB 377 on behalf of Representative Harris, sponsor, and answered questions.

PAUL GROSSI, Director

Division of Workers' Compensation

Department of Labor & Workforce Development

PO Box 25512

Juneau, Alaska 99802-5512

POSITION STATEMENT: Answered questions relating to HB 377.

AMY ERICKSON, Staff

to Representative Lisa Murkowski

Alaska State Legislature

Capitol Building, Room 408

Juneau, Alaska 99801

POSITION STATEMENT: Presented HB 418 on behalf of the House Labor and Commerce Standing Committee.

BUDD SIMPSON, Attorney

Simpson Tillinghast Sorensen & Longenbaugh

One Sealaska Plaza, Suite 300

Juneau, Alaska

POSITION STATEMENT: Testified on HB 418 on behalf of Sealaska Corporation.

TERRY ELDER, Director

Division of Banking, Securities & Corporations

Department of Community and Economic Development

PO Box 110807

Juneau, Alaska 99811-0807

POSITION STATEMENT: Testified and answered questions on HB 418.

ACTION NARRATIVE

TAPE 02-25, SIDE A

Number 001

CHAIR LISA MURKOWSKI called the House Labor and Commerce Standing Committee meeting to order at 3:25 p.m.

Representatives Murkowski, Kott, Rokeberg, Crawford, and Hayes were present at the call to order. Representatives Halcro and Meyer arrived as the meeting was in progress.

HB 393-SALES OF BUSINESS OPPORTUNITIES

Number 026

CHAIR MURKOWSKI announced that the first order of business would be HOUSE BILL NO. 393, "An Act relating to unfair and deceptive trade practices and to the sale of business opportunities; amending Rules 4 and 73, Alaska Rules of Civil Procedure; and providing for an effective date."

CHAIR MURKOWSKI noted that public testimony was closed after the last hearing. She had indicated then that she had some concerns with regard to the definition of business opportunity; that concern stemmed from the letter in members' packets dated February 21, 2002, from Bryan Harrison at Alticor, relating to the Direct Selling Association's request for an amendment that would do two things: put a higher threshold in the exemption category, and include that higher threshold within the definition of business opportunity. She expressed concern about requiring a relatively substantial bond and the registration and regulation on smaller, legitimate enterprises such as Amway.

CHAIR MURKOWSKI indicated she'd been informed by the Department of Law that these Direct Selling Association entities would be covered under the exemption, but said it wasn't clear what raising the threshold would do. She asked Representative Stevens to update the committee on this issue.

Number 061

REPRESENTATIVE GARY STEVENS, Alaska State Legislature, sponsor of HB 393, responded, "You're absolutely right." He referred to exemption (5) on page 12, lines 28-30, which read:

(5) sales demonstration equipment, materials, or samples for use in sales demonstrations and not for resale, or product inventory sold to the buyer at a bona fide wholesale price;

REPRESENTATIVE STEVENS offered that this exemption covers all the legitimate organizations that Representative Murkowski was concerned about, such as Amway, Avon, or Mary Kay. He explained that [HB 393] would allow legitimate businesses to continue

operating, and also tries to protect those people who might get caught up in some kind of consumer fraud. In regard to the dollar amount, he expressed a preference for keeping it where it is and not raising it too high. The goal is to protect people from being fraudulently treated and still allow legitimate businesses to continue operation.

Number 088

CHAIR MURKOWSKI recalled that at the last hearing, she'd indicated she would try to contact some of these entities to find out if someone has to pay an upfront cost to get the product - not to get the product itself necessarily, but to become an Amway distributor, for example. She reported her understanding that those upfront costs are relatively minimal. She voiced that this goes back to exemption (5). Because they sell this product inventory, they will be covered under that.

CHAIR MURKOWSKI referred to the threshold in exemption (1) [page 12] and suggested that entities or individuals offering this perhaps-questionable business opportunity - so long as they keep it under \$200 - could continue to "slip through the cracks and conduct their scams." She said there is just no way to get to them. She recalled testimony that this is "kind of a de minimis level" and suggested it is above the \$200 threshold that oversight should be ensured.

Number 114

REPRESENTATIVE STEVENS agreed \$200 is a fairly small amount, and said if that amount were lowered, it would be "enormously hard to police." The real problem for those people around the country who have lost thousands of dollars is trying to protect against such fraud.

CHAIR MURKOWSKI noted that Representative Stevens had cleared up the problem she'd had with the definition and the threshold.

Number 132

REPRESENTATIVE ROKEBERG commented that he is uncomfortable leaving the \$200 threshold in there. He said he isn't concerned with dropping below that threshold, but would rather see it raised. He referred to a letter from Alticor that recommends a \$500 threshold. He asked Representative Stevens why a threshold of \$200 is better than \$500.

REPRESENTATIVE STEVENS replied that it is a policy call. He asked, "How far do we want to go in protecting the public?" He offered that he doesn't know the answer. He said, "It just seems that we can protect people at a certain level. It's a compromise, I think, to come to \$200, but I think that was the figure we felt was correct." He offered that the question might be better answered by Cindy Drinkwater or Julia [Coster] who were online and had done some study on this issue.

REPRESENTATIVE ROKEBERG referred to some software that was \$459 to basically start a business. He asked, "They had to have that software?"

Number 163

REPRESENTATIVE STEVENS responded in the affirmative, and said if one looks at these "horror stories" of various people getting caught up in these [fraudulent] systems, they truly spent a lot more than the "\$200 level or even the \$500 level." These [fraudulent business opportunities] have been very costly to people.

REPRESENTATIVE ROKEBERG suggested this is the problem. He asked: If someone spent a lot more than \$200 or \$500, then what's wrong with the \$500 threshold?

REPRESENTATIVE STEVENS responded that this is "a question of how far do you want to go in protecting the public." He said he can't imagine a legitimate business being concerned about this [threshold]; rather, illegitimate businesses that are taking advantage of people need to be stopped. He added, "I don't think you'll find legitimate businesses that would say \$200 is the wrong figure and \$500 is the right figure."

CHAIR MURKOWSKI offered that maybe "the hammer" with [HB 393] is that Alaska has something in place to keep track of the legitimate operators through the registration process. She said this might make illegitimate operators think twice about advertising their scams in Alaska because they are being watched closely. Currently, nobody is watching these operations other than reading the classifieds and trying to follow through.

Number 193

REPRESENTATIVE STEVENS agreed with Representative Murkowski and said, "And we can't find them." After the fact, it's pretty hard for law enforcement to locate these [illegitimate]

companies because they don't have a permanent address or any officers that one can find. He offered that he thinks the registration process will do the majority of the job to find out who these operators are and how to contact them. He added, "It'll allow us to follow through." He explained that this is an attempt to prevent [any dispute] before it goes to the final step of trying to enforce the law, a much more expensive step.

Number 207

REPRESENTATIVE ROKEBERG asked if sellers of franchises are exempt.

REPRESENTATIVE STEVENS responded in the affirmative and explained that they are covered under exemption (2) [page 12].

CHAIR MURKOWSKI mentioned that she had in her notes that the Federal Trade Commission (FTC) franchise rule has a \$500 limit. She asked Ms. Coster to address this issue.

Number 216

JULIA COSTER, Assistant Attorney General, Fair Business Practices Section, Civil Division (Anchorage), Department of Law, testified via teleconference. She explained that a franchise rule administered by the FTC is similar to [HB 393], but doesn't require registration. It requires the types of disclosures required under [HB 393], and the limit is \$500.

CHAIR MURKOWSKI asked why [HB 393] has a \$200 threshold when the federal threshold is \$500.

MS. COSTER explained that many states that have registration laws similar to what [HB 393] is proposing have found that a large number of scams fall under the \$500 level to avoid being affected by the \$500 threshold. Having communicated with these states, Ms. Coster said they all urged [Alaska] to keep [the threshold] as low as possible, as a preventative measure for the scams under \$500. She conveyed the hope of picking those scams up by having the lower level.

Number 241

CHAIR MURKOWSKI asked if she is understanding exemption (2) correctly, that if [a business opportunity is] a franchise, then it will be governed under the FTC limit. So even if there is an

Alaskan exemption that says the threshold is \$200, the threshold is \$500 for a franchise.

MS. COSTER said that is correct. She offered that it may be a business opportunity and not a franchise, so it wouldn't necessarily fall under the FTC's rule. She explained, "The franchise rule has a slightly different definition because it does govern franchises as opposed to just business opportunities."

Number 251

REPRESENTATIVE MEYER asked: Since [HB 393] is only meant to deal with illegitimate or fraudulent businesses, why couldn't the threshold be \$100? He then recalled testimony from the state chamber that said it wanted the threshold at \$500. He said it sounds as though other states that have had [the threshold] at \$500 have been [lowering] that level. He asked, "Do you remember what the testimony was from the state chamber as to why they wanted it the higher level?"

CHAIR MURKOWSKI recalled that Ms. LaBolle had explained that [the state chamber] didn't want to have a chilling effect on smaller, legitimate businesses. Representative Murkowski said she didn't want to speak for Ms. LaBolle, but it seems Ms. LaBolle "was confused in the same way that I was, ... that the Amways of the world would not be covered under ... exemption (5), and so therefore you needed to have a higher threshold to take care of them."

REPRESENTATIVE STEVENS reported that he has learned that at least two of the states that have a higher limit are attempting to return to a \$200 figure. He said he's not sure the Department of Law can give specifics on which two states those are, but that there is a tendency to move to that lower limit.

Number 277

REPRESENTATIVE MEYER asked why the threshold shouldn't be at \$50 or \$100 because, [HB 393] is trying to prevent companies that [Alaska doesn't want around] anyway.

REPRESENTATIVE STEVENS responded that it was just a compromise figure because the [state] chamber and others voiced that they wanted it higher. He stated, "I'm not certain there'd be any objection to lowering, if you should so choose."

CHAIR MURKOWSKI offered that she was somewhat concerned about the threshold amount being as low as it is, and said she doesn't necessarily agree with Representative Meyer that it makes sense to go much lower. She stated, "I think there is a de minimis point where it just doesn't make sense anymore." On the other hand, to people getting scammed - for instance, the single mom who has a young baby and needs to stay at home and needs some income - a couple hundred dollars is a lot of money to lose.

Number 299

REPRESENTATIVE CRAWFORD said he believes the exemptions are sufficient, and that he is "real comfortable" with leaving [the threshold] at \$200.

REPRESENTATIVE ROKEBERG voiced concern relating to criminal penalties, asking, "What is ... the crime for stealing \$200 from somebody?" He offered that the House Judiciary Standing Committee [which he chairs] can look into that issue.

Number 317

REPRESENTATIVE HAYES moved to report HB 393 out of committee with individual recommendations and the accompanying indeterminate fiscal note. There being no objection, HB 393 was moved from the House Labor and Commerce Standing Committee.

HB 377-WORKERS' COMPENSATION BOARD PANELS

Number 330

CHAIR MURKOWSKI announced that the next item on the agenda would be HOUSE BILL NO. 377, "An Act relating to the establishment of an additional southcentral panel to the Alaska Workers' Compensation Board and to appointments to that panel; and providing for an effective date."

Number 337

JOHN MANLY, Staff to Representative John Harris, Alaska State Legislature, presented HB 377 on behalf of Representative Harris, sponsor. He told the committee that [the Department of Labor & Workforce Development (DLWD)] has workers' compensation boards throughout the state that try to resolve issues that come up in workers' compensation claims when they cannot be solved administratively. There is a huge backlog in the Southcentral area. House Bill 377 adds one board - a fourth board - to that

area that would allow the backlog to be worked on and claims processed a lot quicker than they currently are. He mentioned that HB 377 has a \$5,000 fiscal note.

Number 346

CHAIR MURKOWSKI asked if the backlog in the Southcentral area is much greater than in other areas of the state, and if this is the reason HB 377 focuses on that area.

MR. MANLY said, "That's my impression, but Mr. Grossi could probably answer that more specifically."

Number 353

PAUL GROSSI, Director, Division of Workers' Compensation, Department of Labor & Workforce Development, testified before the committee. He said, "The answer is basically yes." The Juneau board and the Fairbanks board are managing to keep within a reasonable period of time getting the cases to the hearing. The main portion of the backlog is coming from the Anchorage area, and that's also where the increased caseload is occurring. He speculated that it could be a result of population growth. The Southcentral panel covers not only Anchorage, but also the Kenai Peninsula, the Matanuska-Susitna area, Cordova, Valdez, and Kodiak Island.

CHAIR MURKOWSKI referred to the Workers' Compensation Budget Request Unit (BRU), and noted "an increment in the FY 02 budget." She reported that there was an additional hearing officer hired last September. She asked, "So, you've got additional hearings that are being scheduled, and so now you need the board to ... review those hearings; is that how it's proceeding?"

Number 373

MR. GROSSI explained that the panel of the Workers' Compensation Board consists of the following members: the commissioner of [the Department of Labor and Workforce Development] or his/her designee - the hearing officer in most cases - and two lay members: a labor member, who is usually a business manager from a union; and an industry member, who is an executive of a corporation or a business owner. These people sit together and decide cases that can't be resolved any other way, and make a final decision on workers' compensation cases.

MR. GROSSI said the number of hearing officers has been increasing, but the lay members are busy people who are executives of corporations or business managers of unions who can volunteer [just] a certain amount of time. He said, "We've gotten to that point where we actually need more hearing time, and we need some more lay members to be able to hear those increased hearings." This is a relatively inexpensive way to handle it.

MR. GROSSI explained that the \$5,000 fiscal note is a result of the stipend the board members are paid. Lay members, who are volunteers, are paid a \$50-a-day stipend for the time they're there, usually two to four days a month. He stated, "The \$5,000 would come out of our ... workers' safety and compensation account, which is our fees-driven payment system for the agency." There wouldn't be any additional fees to the employers or the insurance companies.

Number 401

REPRESENTATIVE ROKEBERG asked how long the \$50 stipend has been in effect.

MR. GROSSI answered, "Since statehood." He added that at the time it was a significant amount, but today "it's kind of ... an embarrassment." In response to a question from Representative Rokeberg, he specified that there would be four Southcentral panels, one panel in Fairbanks, one panel in Juneau, and an at-large panel.

REPRESENTATIVE ROKEBERG asked if there are two [lay] members on each panel.

MR. GROSSI replied in the affirmative.

REPRESENTATIVE ROKEBERG said that's 14 people. He asked what the impact on the fiscal note would be if the stipend were raised to \$100.

Number 420

MR. GROSSI, noting that the board meets two to four times a month, replied, "\$14,000. I think that would be the approximate number."

Number 436

CHAIR MURKOWSKI mentioned new regulations that require the hearings to be scheduled in a more expedited manner, within the 60-day time period. She asked what impact this will have on the respective workloads for the various panels.

MR. GROSSI responded that it will be a little problematic if [the new panel] isn't approved. But if it does go through, "I think we'll be fine."

CHAIR MURKOWSKI offered that [the Workers' Compensation Board] will be fine because there will be an additional panel. She asked if this will require more of the panel members by having a requirement that hearings must be scheduled.

Number 444

MR. GROSSI explained that there isn't a problem in Juneau or Fairbanks, and offered that an additional panel in Anchorage will increase productivity by 25 percent. He stated, "We're focusing on the area of the problem."

REPRESENTATIVE ROKEBERG asked if raising the stipend would help productivity.

MR. GROSSI expressed that members sit on the board for volunteer reasons, but he thinks it would be a nice gesture [to raise the stipend].

REPRESENTATIVE ROKEBERG said he'd calculated that if there are 14 people meeting four days a month, that is 56 days; he'd rounded that figure down to 50 days. He said with a \$100 stipend, that's only \$5,000. He asked about the source of the workers' compensation account.

MR. GROSSI said, "It's a statutory designated-program-receipts account. ... Basically, it's an account that's ... general funds program receipts." He explained that it's paid out of a portion of premium tax; for self-insurers, it's off of a percentage of indemnity benefits or workers' compensation benefits.

REPRESENTATIVE ROKEBERG commented that the \$5,000 figure is denoted for travel.

Number 468

MR. GROSSI replied that that's the way [the Division of Workers' Compensation] accounts for the per diem, because there isn't another line item to deal with it.

REPRESENTATIVE ROKEBERG asked if the fiscal gap would be affected if the stipend was raised.

MR. GROSSI replied, "It would not affect the fiscal gap."

REPRESENTATIVE ROKEBERG asked if Mr. Grossi had any idea what other boards around the state are being paid, either through a per diem or a stipend.

Number 480

MR. GROSSI replied that some don't get any payments, but "some of them get hundreds [of dollars]."

REPRESENTATIVE CRAWFORD asked, "I understand this would come from program receipts, but would that take program receipts away from some other program?"

MR. GROSSI explained that the only two programs that these funds are available to are administration of workers' compensation and workers' safety - OSHA [Occupational Safety and Health Administration].

Number 489

REPRESENTATIVE CRAWFORD asked, "Would that take away from enforcement of OSHA?"

MR. GROSSI offered that he thinks there are sufficient funds available. Even if it's \$15,000, it's not going to make a significant difference.

CHAIR MURKOWSKI asked whether the \$50 stipend is all the compensation the board members receive, or if travel is included.

MR. GROSSI replied that the board members are entitled to their travel. He mentioned the at-large panel and said that panel's travel costs are paid for.

CHAIR MURKOWSKI inquired as to whether the board members are reimbursed for overnight expenses while traveling.

MR. GROSSI replied in the affirmative.

REPRESENTATIVE MEYER asked if food costs are covered also.

MR. GROSSI offered that he thinks the board members are entitled to the \$40-a-day food allowance that the state has.

REPRESENTATIVE MEYER asked if he was correct that the board members receive a \$50 stipend, travel costs, overnight expenses, and \$40 for food.

Number 506

MR. GROSSI explained that if the board member is from Anchorage and is hearing a case in Anchorage, then he/she isn't entitled to travel costs. He added, "They're entitled to travel [costs] when they actually travel."

REPRESENTATIVE MEYER asked whether someone traveling from Wasilla to Anchorage would get a mileage reimbursement.

MR. GROSSI responded in the affirmative.

REPRESENTATIVE MEYER asked about babysitting costs.

MR. GROSSI replied in the negative.

Number 510

REPRESENTATIVE ROKEBERG calculated the cost to be about \$5,000 a month, which would be an annual cost of \$60,000. He asked, "Would the \$60,000 make an impact on the account?"

MR. GROSSI replied that it would be an increase, but that he believes there would be sufficient funds in the account. He said he couldn't answer with absolute certainty until he checked the account.

REPRESENTATIVE ROKEBERG asked about any "fiscal baggage" [the division] might be dealing with right now.

MR. MANLY replied, "We could certainly consider that at the [House] Finance Committee."

REPRESENTATIVE ROKEBERG offered to make an amendment, or said [the House Finance Committee] could take the issue up. He said it might be easier if he offered an amendment, and then [the

House Finance Committee] could remove the amendment if it didn't like the change.

Number 527

REPRESENTATIVE MEYER said although he doesn't disagree with Representative Rokeberg's point, he doesn't think this is the appropriate time or place to raise the stipend.

REPRESENTATIVE CRAWFORD stated that he doesn't disagree with Representative Rokeberg, either, but his main concern is to get extra board right now.

CHAIR MURKOWSKI mentioned testimony that this is essentially a volunteer position, and if the stipend were raised, it wouldn't be to compensate the board members for time spent; rather, it would be a slight recognition of what they've done.

Number 538

REPRESENTATIVE MEYER expressed that at some point, he'd like to look at all the boards and commissions, because it sounds as though some have no stipend, some have a \$50 stipend, and some have a stipend over \$100.

MR. GROSSI said he remembers seeing one [board or commission] that had a \$200 [stipend]. He stated, "I don't know exactly how those are determined."

REPRESENTATIVE MEYER remarked, "I guess I'm a little sympathetic to the fish board too. Perhaps they should get something."

Number 544

CHAIR MURKOWSKI offered that the Department of Labor [and Workforce Development] could summarize its boards, and the Division of Occupational Licensing could also, if [the legislature] wanted that kind of a summary. She stated, "As it's been pointed out, ... this is funded through a mechanism where these folks pay in, and goes for the ... administration of the workers' compensation program."

Number 548

REPRESENTATIVE MEYER moved to report HB 377 out of committee with individual recommendations and the accompanying fiscal

notes. There being no objection, HB 377 was moved from the House Labor and Commerce Standing Committee.

HB 418-ELECTRONIC PROXY VOTING & NOTIFICATION

Number 555

CHAIR MURKOWSKI informed the committee that the next order of business would be HOUSE BILL NO. 418, "An Act amending the Alaska Corporations Code as it relates to delivery of annual reports, notice of shareholders' meetings, proxy statements, and other information to shareholders, and providing for electronic proxy voting."

The committee took an brief at-ease from 4:10 p.m. to 4:11 p.m.

Number 562

AMY ERICKSON, Staff to Representative Lisa Murkowski, Alaska State Legislature, introduced HB 418 on behalf of the House Labor and Commerce Standing Committee, which was sponsoring the bill by request. She explained that HB 418 very generally gives Alaska corporations a more convenient, timely, and efficient method of voting, by giving them the explicit ability to offer electronic proxy voting to their shareholders. Approximately 25 states already offer electronic proxy voting and the process is simple and quick. She explained that a shareholder receives a PIN [personal identification number] electronically, which the shareholder then uses to vote. The bill includes provisions that permit corporations to send one copy of an annual report and proxy materials to multiple shareholders at the same address, and to stop sending annual reports and proxy statements to shareholders whose mailing addresses are invalid.

MS. ERICKSON offered that this will result in cost savings and added convenience for Alaska corporations. Reduction of paper, printing, and postage costs will be substantial - especially for larger corporations. She explained that proxy voting will allow for faster tabulation and higher accuracy of voting results. She said that because households in Alaska have the highest computer ownership and Internet access of any state in the nation, electronic voting will likely increase shareholder participation.

Number 574

REPRESENTATIVE HAYES suggested that since electronic proxy voting has worked so well for shareholders, maybe it should be considered for elections in general in Alaska.

CHAIR MURKOWSKI responded that the title of [HB 418] is tight enough that the committee wouldn't be including Representative Hayes's suggestion in this particular legislation. She thanked Ms. Erickson for presenting HB 418 to the committee.

Number 585

BUDD SIMPSON, Attorney, Simpson Tillinghast Sorensen & Longenbaugh, testified on behalf of Sealaska Corporation. He said HB 418 is not particularly directed at Native corporations, but rather is an amendment to Title 10, "the regular corporations code," and would apply to all Alaskan business corporations. Addressing Representative Hayes's question relating to the application of electronic voting to general elections, he recalled that in 2000 the Republican Party of Alaska had conducted a "straw poll" relating to making electronic voting available to people who wanted it. He said, "It was tried once before ... and I guess it worked out well, with a lot of participation."

TAPE 02-25, SIDE B
Number 595

MR. SIMPSON emphasized that the language in HB 418 is not something [Sealaska Corporation] made up itself. The language has been modeled after various other states' existing statutes. California and Delaware, in particular, are often ahead of other states in corporate law areas. He said, "Everything that we've suggested here has been approved by the federal Securities and Exchange Commission [SEC]," so it already applies to most of the larger, publicly traded business corporations in the country.

Number 583

MR. SIMPSON reported that 25 states have adopted similar legislation relating to electronic voting and electronic delivery of corporate materials. He explained that the "householding" provision is the shorthand term for sending one set of materials to the same address where several shareholders live. Sealaska Corporation has found that in many cases, four or five shareholders are at one address - for example, two parents with two or three children - and "in real life, probably one of those people is reading the materials anyway." He

explained that the parents are custodians for the minor shareholders, and under current law [Sealaska] is sending a five- or six-dollar set of brochures and proxy statements to everybody at the address, which is pointless.

Number 574

MR. SIMPSON said Sealaska Corporation has done some scientific surveying and found that over 60 percent of its shareholders have either a computer or access to the Internet. These results show that there is a big possibility that a lot of people would actually use [electronic proxy voting]. Sealaska Corporation also found that 29 percent to 30 percent of those polled indicated an interest in both receiving corporate information electronically and being able to vote through electronic media. He said [Sealaska Corporation] thinks that not only will [HB 418] save money, but it will increase participation in voting. Mr. Simpson noted that contrary to what some people think, "corporations do like to get a big turnout for their elections and get as much participation as possible."

Number 557

MR. SIMPSON said he'd had a chance to briefly review a fiscal note and comments provided by the Division of Banking, Securities & Corporations (DBSC). He said he disagreed with nearly everything in the comments provided by DBSC. He noted that there are basically two areas where [DBSC] anticipates additional cost. The first is the supposed need to revise the regulation pertaining to Native corporations. Mr. Simpson offered that he doesn't view [HB 418] as particularly a Native corporation bill. He said that after reading the regulations, he didn't see any one place that needs to be revised if HB 418 is passed.

MR. SIMPSON offered that second, the fiscal note anticipates a lot more adjudicative proceedings and shareholder complaints. Mr. Simpson said he doesn't understand why this would be, and suggested it is at least as likely there would be fewer complaints filed and less problems [if HB 418 passes]. He also suggested the division would actually have an easier time dealing with these issues if it is dealing with things like electronic proxies, rather than having to manually sift through thousands of written paper proxies to check signatures. Concluding that the DBSC is wrong about the fiscal note, Mr. Simpson said he thinks the fiscal note should represent zero.

Number 533

MR. SIMPSON addressed another big concern of DBSC, that electronic voting will benefit the corporations unfairly, to the detriment of independent shareholders who are trying to run for the board or trying to pass a resolution. He disagreed, saying electronic voting will allow independent candidates to take advantage of this process at least as much as the corporation can. The ability to send materials to a large number of shareholders electronically, without having to print something or having to pay for postage, is a tremendous advantage to whoever is doing it; corporations will save tens of thousands of dollars a year. Mr. Simpson suggested that individual shareholders are the ones that these kinds of costs really "kill" in an election process. He concluded, "I think that this will open up the process even more to independent candidates and individual shareholders."

Number 510

CHAIR MURKOWSKI remarked that members of her family are shareholders in several Alaskan corporations, and get too much proxy information in the mail from the corporations. She indicated the "householding" provision is a wonderful advantage, not only for the corporation, but also for the shareholder. Representative Murkowski asked: If her sons decided to get independent and vote on their own, is there a process through which they could notify the corporation that they want their own statements to come to them individually?

MR. SIMPSON said that particular issue is addressed. He explained how way this process would work: before a corporation could use the householding provision, it would have to notify the shareholders in writing and give them the opportunity to either consent to that [or not], or advise them of the opportunity. The shareholder could opt out easily at any time by, for example, calling an 800 number or mailing a postcard to the corporation. He said the corporation would be required to make the changes within 30 days.

CHAIR MURKOWSKI asked Mr. Simpson how the SEC comes into play with this type of legislation, because Native corporations in Alaska are Alaska Native Claims Settlement Act (ANCSA) corporations, which puts a different twist on things.

Number 480

MR. SIMPSON responded that he doesn't want to leave the impression that the SEC has approved this exact bill [HB 418]. The SEC has adopted similar provisions on a national level, and Sealaska Corporation hasn't been in touch with the SEC on this particular legislation. He explained that the Native corporations are exempt from regulation by the SEC with the intent that the State of Alaska corporate code will control Alaska Native corporations. The reason for that was so that the corporations wouldn't be burdened by excessive regulation when they were getting started up. While the SEC has approved of this exact type of provision, it doesn't apply to Alaska Native corporations. It would already apply to Alaskan corporations that are publicly traded, which would make them subject to SEC regulations; he added that he doesn't know if there even are any of these corporations in Alaska.

Number 463

REPRESENTATIVE ROKEBERG asked Mr. Simpson if he could provide the committee copies of the appropriate documents pertaining to California and Delaware's statutes that "mirror" [HB 418].

MR. SIMPSON said he would do that.

REPRESENTATIVE ROKEBERG addressed the issue of how many times "undeliverable mail" needs to be re-sent to shareholders. He said currently [HB 418] requires that mail to be sent and returned as undeliverable two times before ceasing to mail any longer. He asked Mr. Simpson if two attempts is consistent with what other states have enacted.

Number 447

MR. SIMPSON responded that currently, the corporations keep sending mail to an address where a shareholder used to live and has left no forwarding address. He noted that many times, the U.S. Postal Service will forward mail; this wouldn't apply to something that is actually forwarded to the shareholder. He said the "two-times requirement" is from other state's statutes, and is about right in terms of how often the mailings go out. He mentioned that when dividend checks are returned as undeliverable, that usually tells the corporation that nobody is there.

Number 436

REPRESENTATIVE ROKEBERG asked if [Sealaska Corporation] would be in compliance with state law if it continued sending out the proxy statements and annual reports to an address where nobody lives.

MR. SIMPSON said yes.

REPRESENTATIVE ROKEBERG asked Mr. Simpson what Sealaska Corporation does with dividend checks that are returned as undeliverable.

Number 426

MR. SIMPSON stated that Sealaska Corporation is required to send the check to the shareholder's last known address. He said Sealaska Corporation doesn't keep sending the "same ones over and over again, but when new stuff comes out, we send it." He said it's possible there are corporations out there that are not doing this.

REPRESENTATIVE ROKEBERG asked Mr. Simpson if Sealaska Corporation has around 17,000 shareholders.

MR. SIMPSON replied, "Almost [17,000], yes."

REPRESENTATIVE ROKEBERG said other than major "Fortune 500" companies, 17,000 is a very large number of shareholders.

MR. SIMPSON said Sealaska Corporation is the largest in Alaska.

REPRESENTATIVE ROKEBERG asked Mr. Simpson if he has any idea what the [national] average is.

MR. SIMPSON said no.

Number 407

CHAIR MURKOWSKI said she is "shocked and appalled" at the fiscal note, which she'd been led to believe would represent zero, and then "at 12:30 p.m., we find out that not only is it not a zero fiscal note, but it's one of those 'oh, my gosh' fiscal notes." She said she has been impressed by DBSC's attempt to get the rest of Alaska online to do things like file a business license. She asked why the fiscal note represents that it is "impossible" for the corporations to come online like other businesses have.

Number 397

TERRY ELDER, Director, Division of Banking, Securities & Corporations, Department of Community and Economic Development, offered to meet with Mr. Simpson at some point and work through some details pertaining to HB 418. He said Mr. Simpson had indicated to DBSC what Mr. Simpson's interest was, but that wasn't forwarded to him. He added that if there weren't ANCSA corporations in Alaska, then he "wouldn't be here." He said Alaska is the only state in the country that has responsibility for "monitoring the director of proxy elections." He'd learned through conversations with the corporate finance section of the SEC that its experience dealing with proxy issues is totally different from [Alaska's] experience. He said, "That's, in fact, the reason why it is exempt from the SEC rules."

Number 368

MR. ELDER said the idea at the time was that the proxy regulations should be closer to home and be done in Alaska, rather than having people in Alaska always having to deal with people in Washington, D.C. He said, "When we look at something that otherwise would be fine and would appear to be innocuous in corporation rules, we have to view them with the thought of what impact does this have on the one program which is unique in Alaska - ANCSA." He said [HB 418] doesn't deal specifically with the corporation code but rather with proxy materials.

Number 354

MR. ELDER addressed the issue of the fiscal note and said when "the program" was first started, the responsibility was first given to Alaska. He continued by saying that later on when the securities Act rules were changed to include enforcement, the division at that time submitted a fiscal note that the legislature "zeroed out." He said, "The fact is that it has had - and does have - a fiscal impact."

Number 339

MR. ELDER said the DBSC has a number of concerns. He offered that maybe some language could be worked out that would allay the division's concerns. He noted that in a phone conversation that day, he'd told Mr. Simpson that the division would want to expand [the language] to make sure that other corporations and shareholders had some input into this issue, which is, in fact, their election.

MR. ELDER explained that "what makes [ANCSA corporations] so different from anything the SEC does is the fact that ... the shares aren't transferable." If a typical shareholder in a "tradable" company were upset about something, it would be fairly unusual for that person to wage a proxy war; more likely, the person would sell his/her shares. However, because ANCSA corporation shares aren't tradable or transferable, a shareholder with a problem might attempt to have changes made through proxy contests. Therefore, a lot of independent candidates file and seek election, and some are successful.

Number 313

MR. ELDER informed the committee that [DBSC] gets a lot more complaints expressed both from a corporation against [individual] candidates and from those candidates against a corporation. The division also receives a lot of complaints about "mailing lists and other things which are covered in Title 10." He reported that it has always been the DBSC's position to not enforce those complaints. He said there is a private right of action in Title 10 whereby shareholders hire their own attorneys and sue a corporation if they feel somehow that the corporation has taken advantage of them or has violated Title 10. Mr. Elder remarked that the division's role is to bring to the committee's attention another view that needs to be heard.

Number 280

REPRESENTATIVE HAYES asked why the figure for travel costs is \$26,000.

MR. ELDER said, "That is the total cost of both ... one Investigator III, with \$10,000 of travel, ... and with public hearings to meet with shareholders around the state." He said the division's regulations haven't changed much in the last 10 or 12 years, whereas the dynamics of corporations and their elections have changed substantially. He said that when the regulations are opened up for review, [the division is] going to have first solicit comments from everybody - more than just three newspapers in the state, because these corporations are statewide. Therefore, the division's fiscal note includes a higher level of running notices and actually obtaining input, rather than relying on the mail. He explained that this is expensive and that the division has never done it.

Number 256

CHAIR MURKOWSKI asked why the division would do it now.

MR. ELDER answered that it's time to update the regulations. When the regulations were drafted 25 or 26 years ago - looking at the record - it appears that most of the conversation was between corporate executives and corporations. He explained that since the ANCSA corporations had only been in existence for 5 to 7 years at that point, that was probably reasonable; a sizeable percentage of minority shareholders weren't at that table forming the regulations. He said these are their elections for their corporations, and it's a mistake to ignore them. Mr. Elder offered that it would be nice to make everybody feel he/she had input in adopting regulations, as opposed to feeling forever excluded from that process.

Number 215

MR. ELDER noted that the division has had a lot of complaints in the past from individual shareholders about the shareholder lists that they'd obtained from the corporation in order to conduct their own proxy contest. Examples of complaints are that the corporation wasn't responsive or timely enough, or that people don't think the corporation gave them the latest list, because they got a lot of returned mail. He said the corporation has always responded by explaining that it gets a lot of returned mail, also, and that it's hard to keep up a list that doesn't have a high percentage of returned mail.

Number 189

CHAIR MURKOWSKI indicated she objected to the fiscal note. She offered her opinion that [HB 418] is intended to update things to allow for electronic voting. She told Mr. Elder that the division is "socking what I think is a pretty legitimate bill with a fiscal note to underwrite the full-course proxy regulation review." She wanted to know if there is a way the division could submit a fiscal note that applies only to the cost of implementing HB 418. She said, "Here's an effort to really bring about greater participation into the process, and if this fiscal note goes to [the House Finance Committee], which it would have to, even though it was not given a finance referral, ... it's not going to go anywhere."

Number 153

MR. ELDER offered that as far as the regulations are concerned, the division could submit a "scaled-down" version of regulations

that wouldn't include face-to-face meetings. For example, at the committee's option, [the solicitation costs for the regulation review] could be taken out and replaced with "the bare bones." Then, when it comes time to adopt new regulations, the division would do it without face-to-face meetings, if that is how it is funded. He added, "What appears ... to be a narrowly focused change is not going to be narrowly focused, because people are going to be able to make comments on the entire range of regulations."

Number 130

CHAIR MURKOWSKI asked, "By doing this, are we opening up the whole shareholder dissident proxy fight ...?"

MR. ELDER warned that it is impossible to ignore issues like mailing lists because these issues have been around for a couple of decades.

REPRESENTATIVE ROKEBERG asked Mr. Elder if he is indicating that the administrative procedures are such that the division could not refuse to take comments on other provisions that aren't covered by the instructions in the statute.

MR. ELDER replied that [DBSC] would take instructions from the Department of Law.

REPRESENTATIVE ROKEBERG suggested [the committee] might want to look at a legal opinion that would ask whether it could narrow the focus of any regulatory revisions made just to conform to the statute. He stated that he would be "very concerned" if this were not possible. He said he appreciated Mr. Elder's concerns, but that the division is trying to solve a long-term problem, which is not what [HB 418] is trying to address.

Number 085

MR. ELDER said that is only part of the fiscal note. He explained that the other part of the fiscal note is the investigator.

REPRESENTATIVE ROKEBERG said what has him "baffled" is that [the division] says that it doesn't enforce Title 10, and then has to turn around and spend \$100,000 to draft regulations on something it doesn't enforce.

Number 079

MR. ELDER said, "[DBSC] enforces the proxy rules that are part of the securities Act, and those rules go to the delivery of ..."

REPRESENTATIVE ROKEBERG interjected, "You said the private right of action, which is in Title 10, ... so are you changing your testimony now?"

Number 069

MR. ELDER responded that [the division] has regulations that address the delivery of proxy materials, and [HB 418] would affect those regulations. He explained that anyone can file a complaint that goes to the receipt or the failure to send information, but currently the division doesn't get these kinds of complaints. The kinds of complaints [the division] gets most often relate to misstated or fraudulent material. He offered DBSC's opinion that this will open up the opportunity for more kinds of complaints that will require an investigation.

CHAIR MURKOWSKI asked why the division thinks this will generate more complaints.

Number 043

MR. ELDER offered that he doesn't think anyone has claimed that a corporation has failed to make delivery of the required information, the way things are now. However, when several issues like delivery of information, mailing lists, and householding are discussed together, Mr. Elder said he gets nervous because he see the opportunity for complaints requiring an investigation.

REPRESENTATIVE HALCRO said whenever one is given more opportunities to participate in a process, the more opportunities there are to complain about the fairness of the process. He asked if this is similar to what Mr. Elder is describing.

Number 002

MR. ELDER agreed it would certainly be part of the problem. He said it is a good idea to broaden it, but it also changes the methods of sending it.

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Number 001

MR. ELDER said if there is an increase in complaints, some of which may or may not be well-founded, the division still will have to investigate them, because it is the division's responsibility.

Number 010

REPRESENTATIVE ROKEBERG asked, "Even though it's a private right of action?"

MR. ELDER replied, "A private right of action goes to Title 10 itself. And in terms of the regulations that govern proxy contests, that is [the division's] responsibility." He said if something is covered in the proxy rules, then certainly a shareholder can file a complaint with the division, resulting in an investigation.

CHAIR MURKOWSKI said the conversation has hit on the two main topics of discussion: revision of the regulations and an increased number of complaints.

Number 040

REPRESENTATIVE HALCRO suggested that Mr. Elder might want to sit down with the supporters of HB 418 and talk about some of the "sticking points" he has with HB 418.

CHAIR MURKOWSKI said Representative Halcro's suggestion is a sound recommendation because she believes some areas can be ironed out. She encouraged Mr. Elder and Mr. Simpson to meet and work out some details before the committee continues this hearing on Monday, March 4, 2002.

Number 074

MR. ELDER noted that he had a phone conversation with Mr. Simpson and offered to work on any details. He also said he'd be willing to devote a fair amount of time between today and Monday, March 4, to meet with Mr. Simpson.

CHAIR MURKOWSKI said she understands that Mr. Elder has some additional issues with HB 418 that have been documented, and encouraged him to include those issues in his discussion with Mr. Simpson.

Number 101

CHAIR MURKOWSKI announced that the House Labor and Commerce Standing Committee would hold over HB 418 until Monday, March 4, 2002.

ADJOURNMENT

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at 5:05 p.m.