

**ALASKA STATE LEGISLATURE
HOUSE STATE AFFAIRS STANDING COMMITTEE**

April 24, 2001

8:06 a.m.

MEMBERS PRESENT

Representative John Coghill, Chair
Representative Jeannette James
Representative Hugh Fate
Representative Gary Stevens
Representative Peggy Wilson
Representative Harry Crawford
Representative Joe Hayes

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 53

"An Act establishing the Alaska Seismic Hazards Safety Commission."

- MOVED CSHB 53(STA) OUT OF COMMITTEE

HOUSE JOINT RESOLUTION NO. 23

Advocating the retention of the electoral college system in its present form.

- MOVED CSHJR 23(STA) OUT OF COMMITTEE

HOUSE BILL NO. 87

"An Act establishing the Alaska Veterans Advisory Council; and providing for an effective date."

- MOVED CSHB 87(MLV) OUT OF COMMITTEE

HOUSE BILL NO. 213

"An Act relating to initiative and referendum petitions; and providing for an effective date."

- BILL HEARING POSTPONED

HOUSE JOINT RESOLUTION NO. 25

Proposing an amendment to the Constitution of the State of Alaska relating to initiative and referendum petitions.

- BILL HEARING POSTPONED

PREVIOUS ACTION

BILL: HB 53

SHORT TITLE:SEISMIC HAZARDS SAFETY COMMISSION

SPONSOR(S): REPRESENTATIVE(S)DAVIES

Jrn-Date	Jrn-Page		Action
01/10/01	0054	(H)	READ THE FIRST TIME - REFERRALS
01/10/01	0054	(H)	MLV, STA, FIN
03/13/01		(H)	MLV AT 3:30 PM CAPITOL 120
03/13/01		(H)	-- Meeting Canceled --
03/27/01		(H)	MLV AT 5:00 PM CAPITOL 120
03/27/01		(H)	Moved CSHB 53(MLV) Out of Committee MINUTE(MLV)
03/28/01	0761	(H)	COSPONSOR(S): GREEN
03/30/01	0786	(H)	MLV RPT CS(MLV) 6DP
03/30/01	0786	(H)	DP: MURKOWSKI, HAYES, GREEN, KOTT,
03/30/01	0786	(H)	CISSNA, CHENAULT
03/30/01	0786	(H)	FN1: (GOV)
03/30/01	0786	(H)	FN2: (DNR)
04/24/01		(H)	STA AT 8:00 AM CAPITOL 102

BILL: HJR 23

SHORT TITLE:MAINTAIN ELECTORAL COLLEGE SYSTEM

SPONSOR(S): STATE AFFAIRS

Jrn-Date	Jrn-Page		Action
03/20/01	0662	(H)	READ THE FIRST TIME - REFERRALS
03/20/01	0662	(H)	STA
04/12/01		(H)	STA AT 8:00 AM CAPITOL 102
04/12/01		(H)	<Bill Postponed to 4/17>
04/17/01		(H)	STA AT 8:00 AM CAPITOL 102
04/17/01		(H)	Scheduled But Not Heard
04/24/01		(H)	STA AT 8:00 AM CAPITOL 102

BILL: HB 87

SHORT TITLE:ALASKA VETERANS ADVISORY COUNCIL

SPONSOR(S): RLS BY REQUEST OF THE GOVERNOR

Jrn-Date	Jrn-Page		Action
01/24/01	0154	(H)	READ THE FIRST TIME - REFERRALS
01/24/01	0154	(H)	MLV, STA, FIN
01/24/01	0154	(H)	FN1: (MVA)
01/24/01	0155	(H)	GOVERNOR'S TRANSMITTAL LETTER
02/20/01		(H)	MLV AT 3:30 PM CAPITOL 120
02/20/01		(H)	<Bill Canceled>
02/27/01		(H)	MLV AT 3:30 PM CAPITOL 120
02/27/01		(H)	Moved CSHB 87(MLV) Out of Committee MINUTE(MLV)
03/22/01	0684	(H)	MLV RPT CS(MLV) 6DP
03/22/01	0685	(H)	DP: KOTT, MASEK, GREEN, HAYES,
03/22/01	0685	(H)	CISSNA, CHENAULT
03/22/01	0685	(H)	FN1: (MVA)
04/21/01		(H)	STA AT 9:00 AM CAPITOL 102
04/21/01		(H)	Scheduled But Not Heard -- Time Change --
04/24/01		(H)	STA AT 8:00 AM CAPITOL 102

WITNESS REGISTER

REPRESENTATIVE JOHN DAVIES
Alaska State Legislature
Capitol Building, Room 415
Juneau, Alaska 99801
POSITION STATEMENT: Sponsor of HB 53.

SHELDON E. WINTERS, Attorney at Law
Lessmeier & Winters
Lobbyist for State Farm Insurance Company
431 North Franklin Street, Suite 400
Juneau, Alaska 99801
POSITION STATEMENT: Testified in support of HB 53 and responded
to questions.

MILT WILTSE, Director
Central Office
Division of Geological & Geophysical Surveys (DGGS)
Department of Natural Resources (DNR)
794 University Ave, Suite 200
Fairbanks, Alaska 99707-3645
POSITION STATEMENT: Testified in support of HB 53 and responded
to questions.

CAROL CARROLL, Director
Administrative Services Division
Department of Military & Veterans Affairs (DMVA)
400 Willoughby Avenue, Suite 500
Juneau, Alaska 99811

POSITION STATEMENT: Presented HB 87 on behalf of the administration.

JOHN GAGUINE, Assistant Attorney General
Civil Division (Juneau)
Department of Law (DOL)
PO Box 110300

Juneau, Alaska 99811-0300
POSITION STATEMENT: During discussion of HB 87, voiced the DOL's concerns and responded to questions.

MG PHILLIP E. OATES, Adjutant General/Commissioner
Department of Military and Veterans Affairs (DMVA)
PO Box 5800

Fort Richardson, Alaska 99505 0800
POSITION STATEMENT: During discussion of HB 87, responded to questions.

TERRI LAUTERBACH, Attorney
Legislative Legal Counsel
Legislative Legal and Research Services
Legislative Affairs Agency
Terry Miller Building, Room 329

Juneau, Alaska 99801-1182
POSITION STATEMENT: During discussion of HB 87, responded to questions as the drafter.

ACTION NARRATIVE

TAPE 01-47, SIDE A
Number 0001

CHAIR JOHN COGHILL called the House State Affairs Standing Committee meeting to order at 8:06 a.m. Representatives Coghill, Fate, Stevens, Crawford, and Hayes were present at the call to order. Representatives James and Wilson arrived as the meeting was in progress.

HB 53 - SEISMIC HAZARDS SAFETY COMMISSION

Number 0035

CHAIR COGHILL announced that the first order of business would be HOUSE BILL NO. 53, "An Act establishing the Alaska Seismic Hazards Safety Commission." [Before the committee was CSHB 53(MLV).]

Number 0070

REPRESENTATIVE JOHN DAVIES, Alaska State Legislature, sponsor, explained that HB 53 would establish the Alaska Seismic Hazards Safety Commission (ASHSC), which would work out of the Office of the Governor. The ASHSC would consist of a number of people who are expert in earthquake issues and who would provide oversight for the entire state of Alaska regarding mitigation of earthquake hazards. With regard to the difference between [earthquake] mitigation and [earthquake] response, he explained that mitigation involves ensuring that the loss of life and property are minimized to begin with, whereas response involves rescue and cleanup after an earthquake occurs. Fundamentally, the goal of the ASHSC would be to focus on prevention.

REPRESENTATIVE DAVIES noted that in the United States and other "more advanced" countries, building codes/standards do much to mitigate the loss of life and property. When there is a "magnitude 5" earthquake in a country that does not have such codes - where un-reinforced masonry is the standard - tens of thousands of people lose their lives. By comparison, when there is a magnitude 5 earthquake in the United States, it generally results in very little damage and simply becomes another news item. Building codes are the fundamental reason for this difference. However, he added, "our" knowledge is not perfect; there is still room for significant advances in building codes. In Alaska, building codes are adopted municipality by municipality; it's up to the individual municipalities to decide whether they want to adopt various parts of the seismic code or not. Much of Alaska, even the Fairbanks North Star Borough, for example, has not adopted such a code. The building standards are largely enforced indirectly through the insurance industry: when a person applies for a mortgage, he/she is often required to have an inspector look at the house to see whether it is built according to codes.

REPRESENTATIVE DAVIES said that since there are many areas in Alaska that don't have building codes, he believes that having the ASHSC in place to look at the state's building practices will continue to advance the safety [levels] of Alaska's buildings and hence, Alaska's citizens. He noted that even in a fairly dramatic earthquake, about 80 percent of the loss is

actually just structural loss inside the buildings. Thus, from a financial point of view, designing buildings so that lighting and plumbing fixtures are attached correctly can become a huge issue in terms of the building being functional right after an earthquake. Taking care of things like computer systems - making sure that computer systems are backed up offsite - are very important in terms of a business plan, in terms of people being able to function the next day after a large earthquake.

Number 0479

REPRESENTATIVE DAVIES explained that the fundamental problem that HB 53 is attempting to address is that large damaging earthquakes occur very infrequently, hence, many people go through their entire lives without experiencing one, which is good, but this creates a tendency to ignore the hazards. "What we're trying to do here is have a group that, over the long haul, puts a little bit of time and energy into addressing these issues so that when the event inevitably does occur, ... the losses are minimized." He opined that spending a little bit of money now [on HB 53], would save a huge amount of money later. He added the ironic note that the "Good Friday earthquake" in 1964 in Alaska acted as a wakeup call for most of the western United States; in the wake of that earthquake, those other states established seismic hazard commissions, whereas Alaska, which experienced that earthquake, didn't. He offered that he is merely trying to catch up via HB 53.

CHAIR COGHILL asked whether any state [agencies] or municipalities have come forward with any advice, counsel, or information.

REPRESENTATIVE DAVIES noted that there are currently a number of resources in the state: the Division of Emergency Services (DES) under Department of Military & Veterans Affairs (DMVA) is probably the most statewide in its focus, he opined, and does some work with various communities along the lines of mitigation via tsunami warnings, and actually receives small amounts of federal money for this purpose. He said he considers this sort of activity to be "mitigation work" because it allows people to plan ahead and possibly avoid loss, which in turn avoids the necessity for recovery efforts. He noted that there are other resources at the federal level as well; the United States Geological Survey (USGS) has some folks in Alaska who are helping to run the seismic networks and volcano warning systems, and who do provide some advice and counseling when issues

relating to hazards mitigation come along, although that is not their primary focus.

Number 0687

REPRESENTATIVE DAVIES also noted that there is a state seismologist at the Geophysical Institute, University of Alaska, who provides the primary impetus for recording earthquake information, which is the basic data upon which decisions regarding earthquake mitigation and hazard reduction are made. At the municipal level, he added, Anchorage has a geo-technical advisory commission that also provides comments on these types of issues. He noted that the "state survey," primarily through Rod Combellick, has done a great deal of work in the Anchorage area aimed at understanding the frequency with which "Good Friday type earthquakes" occur there. So there are already a number of resources in the state, he said, but the [ASHSC] established via HB 53 would be "the umbrella" that would coordinate those resources and bring a little more focus to the issue of mitigation.

CHAIR COGHILL mentioned that the Uniform Building Code is always in the "upgrade" mode, and he opined that building with earthquakes in mind has certainly been a part of that [process]. He asked whether there is any way of bringing the Uniform Building Code to bear, other than through municipalities.

REPRESENTATIVE DAVIES said, "We do it through state agencies when they contract for buildings or [are] having buildings built; we usually require as part of that, that the buildings be built according to that code." In response to a question, he said he anticipates that the [ASHSC] would look at what the state is doing in terms of its own "building stock" to ensure that the state adopts the newest provisions in the code.

REPRESENTATIVE STEVENS, after noting that he was not present when Kodiak had a big earthquake, said that Kodiak already has an extensive planning process: emergency preparedness teams coordinate with fire departments and emergency shelters. The equipment is all there, including beds provided by the Red Cross, for the time period after an emergency occurs. He added that Kodiak has adopted the Uniform Building Code. He said he has never heard anyone clamoring for "more supervision on this." He opined that although Representative Davies anticipates that the ASHSC would simply coordinate agencies and activities statewide, he is not sure that [lack of coordination] is a problem at this point.

Number 0969

REPRESENTATIVE DAVIES responded: "The purpose of this bill is to do stuff that people aren't clamoring for." The problem, he offered, is that people, during the course of their daily lives, really don't deal with issues of building codes. He noted that in his area, for example, very few people who are building a house actually tie the two stories together with bolts in the way that they should because it is not part of the building code or practice; it's not that they're negligent, they just don't know that this is the single most cost effective thing they can do to mitigate problems. He explained that there are a variety of things like that that are hidden from the ordinary citizen's daily life because earthquakes are not experienced everyday. "We have raincoats and we tend to put them on because we experience rain on a fairly frequent basis; we don't worry about earthquake hazards ... when ... designing a house, ... most people don't have earthquake insurance, even."

REPRESENTATIVE DAVIES noted that earthquake insurance is very expensive relative to the hazards in most areas of the state. He opined that by having the right information, the cost of earthquake insurance in Alaska could be reduced significantly while still being actuarially sound from the insurance industry's point of view. "It's those things that we don't look at. A lot of the things that [Representative Stevens] talked about are in that preparing-for-response [category], as opposed to mitigation; mitigation ... primarily works through upgrading the building code." Unless a person is a building contractor, he/she really doesn't pay much attention to the code. He opined that it is really important as a state to have a small group of people who do pay attention to it. Representative Davies mentioned that when he was the state's seismologist, there was a proposed change to the seismic hazard map suggested by some people out of southern California that was egregious and would have cost the state over \$10 million per year in unnecessary building expense had he not prevented that change from occurring.

REPRESENTATIVE DAVIES stated that he is not trying to create a big bureaucracy or a regulatory agency with HB 53; he is just trying to "create a group of people" that look out for the best interest of the citizens of Alaska by providing good information regarding building codes, so that when people go about their daily business, it is done in a more cost-effective way.

Number 1191

REPRESENTATIVE JAMES asked what kind of information the ASHSC would provide to the public. She opined that a lack of knowledge is a big part of why people are resistant to complying with building codes. She noted that HB 53 is proposing to include people who are very knowledgeable about "these" issues. She suggested that there should be opportunities for the ASHSC to have "regular responses to the people," not only about how they can build their buildings but also about how they can protect themselves in the case of an earthquake. She asked if such would be part of the ASHSC's duties or if its only purpose would be to look at building code issues.

REPRESENTATIVE DAVIES replied that there is inevitable overlap between mitigation and response activities, and while it is his intent that the ASHSC focus on the mitigation part, where it is appropriate it could also be a forum for providing response information. He opined that the nexus would be strongest in the area of preparing homeowners for things that they should look for and tend to [before an earthquake] and things that they can do [after an earthquake]. There are some very simple things that people can do when looking through their own homes, especially in Fairbanks where there are a lot of cabins built on pilings, which enable a homeowner to get under the house and look at everything and ensure that the main structure is attached to the pilings. He noted another thing to look for is that the furnace is secured so that during an earthquake, fires don't start because of a loose furnace. He said that information about these and other simple cost-effective steps could be disseminated by the ASHSC via the Cooperative Extension Service.

REPRESENTATIVE DAVIES noted that a lot of people in Alaska build their own houses, and therefore incorporating information about earthquake standards into the building courses offered by the university would be another way of getting this information out to the public.

CHAIR COGHILL remarked that he received a lot of helpful information from the Cooperative Extension Service when he built his own house.

Number 1449

REPRESENTATIVE JAMES noted that creating awareness is a good idea. She also mentioned that even though it was reported that

Fairbanks did not sustain any damage during a recent earthquake, some damage did occur but was not noticed until later; for example, her well pipe broke away from her well pump and both had to be replaced.

REPRESENTATIVE FATE said that although he applauds Representative Davies for bringing forth this issue, he still has concerns about the fiscal notes. He pointed out that although there is an extensive program with a complex administration outlined in HB 53, the fiscal notes don't illustrate this. He said he really has to question whether "you're going to get away with one part-time [position] at \$13,400" in fiscal year (FY) 2003. He said he expects to see [the ASHSC] coming back to the legislature in future years asking for more money.

REPRESENTATIVE DAVIES noted that if future legislatures believe that [the ASHSC] has proved its merit and that it would be cost effective to provide more money, then "that would be up to them." He said his intent is that they rely heavily on the existing expertise available in the state, and that that aforementioned position would be a quarter-time position within the governor's office - an existing staff person who, under "other duties assigned," would have the job of coordinating the meetings of the ASHSC. He added that there is a small amount of travel [expense] anticipated: he expects that the ASHSC would meet four times a year, twice via teleconference to keep the costs down. He explained that most of the people involved would be people like the person at the state geological survey and the person at the geophysical institute, whose jobs, in part, are to focus on these kinds of issues, and which is why he feels that [the ASHSC] can get by with a fairly small budget; "because we have a cadre of experts," both in the public sector and the private sector, who are dedicated to and concerned with these issues.

Number 1689

SHELDON E. WINTERS, Attorney at Law, Lessmeier & Winters, Lobbyist for State Farm Insurance Company ("State Farm"), said that State Farm strongly supports HB 53, particularly since a representative of the insurance industry would be on the ASHSC. He noted that the insurance industry participates "hand in hand" with similar commissions in other states. He said he believes that this type of commission is very beneficial to the public for the reasons that Representative Davies has already stated. In response to questions, he said that within the industry,

there are already catastrophe committees made up of representatives from different insurance companies, so while he has not thought out the details of such an appointment, he does not foresee any problems with the governor choosing an experienced representative from the insurance industry.

Number 1824

MILT WILTSE, Director, Central Office, Division of Geological & Geophysical Surveys (DGGs), Department of Natural Resources (DNR), testified via teleconference and noted that Rod Combellick, mentioned earlier, is one of the DGGs's senior geologists. Mr. Wiltse added that Mr. Combellick is extremely knowledgeable; has professional connections with many people working in the seismic hazards fields in Washington, Oregon, and California; and is the lead person in the DGGs dealing with seismic issues. Mr. Wiltse relayed that through Mr. Combellick's tutelage, he is now more aware of the complexity of dealing with disaster mitigation and recovery response. He noted that the ASHSC could give conscious focus to the myriad of things that could be done to mitigate earthquake damage, in addition to coordinating the state's efforts on this issue.

MR. WILTSE noted that there are many people in Alaska working in the [seismic hazards] field who focus on specific pieces of the response problem, which is one of the reasons why Alaska's disaster response team is so effective: there is a consortium of people who focus on how to respond to a disaster. He added, however, that Alaska doesn't have the same sort of consortium tasked with putting together a comprehensive set of mitigation measures - a strategic plan that could be followed year to year throughout the state. He opined that putting a commission of this sort in place and tasking them with coming up with that strategic plan and focusing and coordinating the efforts across the various agencies would move the state a great distance down the road toward vastly decreasing the effects of any future massive seismic event. He also opined that [HB 53] is a tremendous idea and will pay tremendous dividends by formalizing coordination efforts, getting people to recognize the responsibility for thinking broadly, and bringing together the efforts of the DMVA, Geological Survey, utility companies, insurance industry, contractors, architects, engineers, and other people involved in this issue. He added that he heartily supports HB 53 both personally and as a state geologist.

CHAIR COGHILL noted that he is simply concerned that [the ASHSC] might come in and say, "You've got to do all these things,"

which would cost the state millions of dollars. He asked Mr. Wiltse how he envisions the ASHSC interacting with the DGGs.

MR. WILTSE posited that it would be an "interchange type of setup"; the DGGs would bring the ASHSC the fundamental data needed for its deliberations, such as strong motion seismic measurements and geological data. This type of information could then be forwarded to engineers so that they can design and analyze the design of buildings and other structures such as bridges, transmission lines, pipelines, et cetera, in order to include the types of safety factors needed to mitigate damage from ground motions. He noted that [HB 53] sets the foundation for trying to assess risk. In response to questions, he noted that mitigation takes a conscious effort, which is currently not made. He added that some people might focus on another "Good Friday" type of earthquake, but the real risk could come from a completely different type of more localized earthquake.

Number 2280

REPRESENTATIVE STEVENS noted that it seems like "we've come a long way" in terms of prediction of earthquakes. He asked Mr. Wiltse if it is the DGGs that works on earthquake prediction issues.

MR. WILTSE responded that the DGGs works on those issues to the extent that it can, and it also coordinates those activities with the university and to some extent with the USGS. He noted that the DGGs doesn't have as good a tectonic model for Alaska as is available for other states. He detailed, as an example, some of the similar geological features between Los Angeles and Anchorage, but pointed out that there is not as clear a picture of Anchorage's features.

CHAIR COGHILL mentioned that the concept of HB 53 looks like a pretty good idea.

REPRESENTATIVE STEVENS surmised then that if anyone is ever going to begin coordinating the prediction of earthquakes, it would probably be the ASHSC. He asked if that would indeed be the case.

REPRESENTATIVE DAVIES said that he envisions the ASHSC, not so much doing the predicting themselves, but remaining knowledgeable about the state of the art and encouraging those activities within Alaska wherever it might be fruitful. He added that another role of the ASHSC is to evaluate "charlatan"

predictions because local governments don't always have the ability to do so. Earthquake prediction is not yet fully developed to the point of being able to pinpoint exactly where and when an earthquake will occur; currently, predictions can be made only with regard to the probability of an earthquake happening in any given zone. And yet, he noted, just knowing even those probabilities can be very helpful in terms of focusing mitigation efforts.

CHAIR COGHILL asked whether the ASHSC would have any representation from the "private building area."

REPRESENTATIVE DAVIES offered that such representation is [authorized by language on page 2, line 19, subsection (c)(7)], which says: "three members from members of the public who are knowledgeable in the fields of geology, seismology, hydrology, geotechnical engineering, structural engineering, emergency services, or planning." He relayed, however, that members of the oil and pipeline industries have suggested to him that the word "expert" should replace "knowledgeable".

Number 2542

REPRESENTATIVE JAMES made a motion to adopt Amendment 1, deleting "knowledgeable" and replacing it with "expert" on page 2, line 19.

CHAIR COGHILL objected for the purpose of discussion. He noted that it is pretty well lined out in paragraph (7) that these three public members would be "professional" members. He asked whether "expert" would denote some sort of certification.

REPRESENTATIVE DAVIES replied that it is just a question of the level of expertise or knowledge; he did not have a specific definition in mind for the word "expert". He relayed that the concern of the industries suggesting the change is that members should not simply be people who are trained in some other field of science and just happen to have a little bit of knowledge in the aforementioned fields; rather, the members should be people, like structural engineers, for example, who are focused on earthquake design, not just structural engineers who have taken a course on earthquake design 25 years ago.

REPRESENTATIVE JAMES asked how it is determined that someone is an "expert".

REPRESENTATIVE DAVIES suggested that the word "expert" would merely offer the governor some guidance when choosing the public members. He added that the distinction is that, "We want somebody that really has some expertise," not somebody who just has some casual knowledge.

REPRESENTATIVE FATE, after noting that paragraph (4) of the "Powers and duties" section on page 3 says that the ASHSC shall "gather, analyze, and disseminate information of general interest on seismic hazard mitigation", asked how the dissemination aspect of these duties would be accomplished unless one of the public members is an expert in the media field.

REPRESENTATIVE DAVIES explained that the "Powers and duties" section were drawn fairly broadly so as not to constrain the ASHSC. He added that the primary dissemination of information would be done through professional channels as well as through existing channels in the university's cooperative extension service and the DMVA's DES.

Number 2704

REPRESENTATIVE JAMES withdrew Amendment 1, saying she likes HB 53 the way it is.

Number 2712

REPRESENTATIVE STEVENS then made the motion to adopt Amendment 1, deleting "knowledgeable" and replacing it with "expert" on page 2, line 19.

REPRESENTATIVE FATE objected.

REPRESENTATIVE STEVENS said it makes perfectly good sense to change the language from "knowledgeable" to "expert"; after noting that he has read a couple of books on Alaska geology, he said that while he is knowledgeable on the subject, it would be foolish to put him on the ASHSC. "What we need are people who truly understand and have experience working in the field," he stated.

REPRESENTATIVE FATE withdrew his objection.

Number 2745

CHAIR COGHILL noted that there were no other objections to Amendment 1. Therefore, Amendment 1 was adopted.

Number 2753

REPRESENTATIVE JAMES moved to report CSHB 53(MLV), as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 53(STA) was reported from the House State Affairs Standing Committee.

HJR 23 - MAINTAIN ELECTORAL COLLEGE SYSTEM

Number 2781

CHAIR COGHILL announced that the next order of business would be HOUSE JOINT RESOLUTION NO. 23, Advocating the retention of the electoral college system in its present form.

Number 2813

CHAIR COGHILL noted that he brought HJR 23 forward in its present form as a House State Affairs Standing Committee bill. He suggested that there is one area in HJR 23 that the committee might consider changing: on page 1, line 12, delete "while guaranteeing that the voices of this nation's minorities are heard" and insert "while protecting the voice of this nation's minority vote". He opined that the former language raises a lot of questions. He mentioned that he is bringing forth HJR 23 at the request of leadership.

REPRESENTATIVE JAMES said that she is in favor of maintaining the electoral college, but noted that she is not sure that the language on lines 11-12 is a good statement to have at all. She opined that minorities have a louder voice in this system than in any other system. She added, however, that to her, the electoral college is almost a state's rights issue. "I understand the argument that we ought to have the will of the majority of the people, [but] quite frankly I'm not convinced that when we have completed an election, that we always have the will of the majority of the people, because many of those people don't even vote." She also noted that since many people outside of Alaska don't have a clear understanding of some of the issues specific to Alaska, the only way to ensure that Alaska has a voice is through the electoral college. Therefore, when speaking about minorities, she surmised that the discussion really pertains to the "minority states" that have smaller

populations. She said she is not convinced that the language saying, "ensures that the will of the majority is carried out while guaranteeing that the voices of this nation's minority" is a very good statement, period. She suggested that this language should be removed altogether.

CHAIR COGHILL noted that he "stumbled over that very thought."

REPRESENTATIVE STEVENS, as a college teacher, noted that the hardest part of teaching U.S. history is dealing with the electoral college. He opined that one of the strongest arguments for the electoral college system is that at some point, it does reach a conclusion, which is a real advantage - at some point the election is over and someone becomes president.

TAPE 01-47, SIDE B
Number 2956

REPRESENTATIVE FATE said that he agrees with Representative James that it would be better to leave out [lines 11-12] on page 1, and that he would like to see the point made by Representative Stevens added to HJR 23.

Number 2930

CHAIR COGHILL made motion to adopt [Amendment 1], striking lines 11-12 on page 1. There being no objection, [Amendment 1] was adopted.

Number 2903

REPRESENTATIVE STEVENS made a motion to adopt Conceptual Amendment 2, adding to page 2 [line 4], wording to the effect: "WHEREAS the electoral college brings a conclusion to the electoral process." [Although the chair did not specifically announce that Conceptual Amendment 2 was adopted, the drafter treated Conceptual Amendment 2 as having been adopted and thus incorporated it into the House State Affairs Standing Committee Substitute.]

REPRESENTATIVE CRAWFORD said that although he believes in the electoral system and wants to see it preserved, he has some problems with the electors: the way it is set up now, an elector, once he/she is selected, can vote for whomever he/she pleases. He posited that a number of times in the past, electors have been pledged to one candidate but voted for

another. He suggested that there should be steps taken to ensure that once chosen, an elector votes as pledged.

CHAIR COGHILL said that such could be done statutorily since each state is responsible for determining how its electors are handled. He added that although such a change is outside the scope of HJR 23, it is within the scope of the legislature.

REPRESENTATIVE HAYES said that he has never liked the electoral college system; he opined that it disenfranchises voters by taking away the whole concept of "one man/one vote." When people are told to go out and vote, then told that their vote counts but it doesn't really count, it is problematic. Half the time, no one knows who the people are who are going to vote to make the final decision. He relayed that when he's spoken to people this year about the presidential election, a response he receives is: "Why should I vote? Somebody else is going to make this decision for me." He opined that the electoral college is as politicized as any other system, referring to the presidential election of 2000 as an example. He said his understanding of the intent of the Founding Fathers when they developed the electoral college system was based on the fear that the average person who didn't own land didn't necessarily understand politics. But after 200 years, he opined, the average citizen has gone beyond that point; therefore, the use of a one man/one vote system for electing the president makes perfectly good sense. He added that his objection to [HJR 23] has nothing to do with the 2000 presidential election, rather, he simply has a fundamental problem with the electoral college system.

CHAIR COGHILL posited that HJR 23 would bring the debate regarding the electoral college system to congress.

Number 2658

REPRESENTATIVE JAMES, after noting that, "We are the United States and we do have states' rights," opined that who a president is does affect individual states. She said that she refuses to put in a system that allows "that decision" to be made by New York, Seattle, Portland, Chicago, and all those other large cities, which is what would happen with any system other than the electoral college. She voiced agreement with Representative Crawford that there should be parameters around the electors to the effect that once a state "goes in a certain way," its electors follow suit and vote that same way.

CHAIR COGHILL noted that 24 states plus Washington D.C. require the electors, either by statute or by pledge, to vote according to the popular vote of their state.

REPRESENTATIVE FATE pointed out that there are similarities in demographics between the current United States and the United States at the time the Founding Fathers instituted the electoral college system: now, as then, there are some very populated states and some states with very low populations. He offered that the electoral college system protected the elective system so that the highly populated states could not always and forever dominate the election system over those states that did not have large populations.

REPRESENTATIVE HAYES said that he disagrees with Representatives Fate and James. He opined that it is still the most populous states that determine who the president is, even under the electoral college system. The states with only three electoral votes, such as Alaska, don't have the impact that more populous states do. He reiterated that the Founding Fathers were afraid that the common person would not be able to make such a complicated decision as voting for a president; the electoral college system was set up originally so that [only] landowners could vote. He opined that although the electoral college system has been in place for over 200 years, it has run its course and it is now time to eradicate that system.

REPRESENTATIVE STEVENS remarked that even though Tacoma, Washington, has about the same population as Alaska, Tacoma does not have three electoral votes. He then referred to the problems Florida had during the 2000 presidential election and noted that only recently has Florida been able to finalize its election results; without the electoral college system, the United States would have had to wait until now to determine who its president would be. Because the electoral college system is in place, a decision was made - regardless of whether it is right or wrong - and "we now have a president."

Number 2327

CHAIR COGHILL offered that the electoral college system preserves a republican form of government, versus a pure democracy.

REPRESENTATIVE CRAWFORD, on the issue of why neither Bush nor Gore visited Alaska during the 2000 presidential campaign, opined that it is because everyone assumed that Alaska would

vote for the Republican candidate and so "both candidates just wrote our state off as already being decided." He opined that, "if we had a proportional system, we could make them pay more attention to us."

CHAIR COGHILL opined that if it is left to just a popular vote, "we certainly wouldn't get their attention." At least with three votes, Alaska gets some degree of attention, he added.

Number 2215

REPRESENTATIVE JAMES moved to report HJR 23, as amended, out of committee with individual recommendations. There being no objection, CSHJR 23(STA) was reported from the House State Affairs Standing Committee.

HB 87 - ALASKA VETERANS ADVISORY COUNCIL

Number 2170

CHAIR COGHILL announced that the last order of business would be HOUSE BILL NO. 87, "An Act establishing the Alaska Veterans Advisory Council; and providing for an effective date." [Before the committee was CSHB 87(MLV).]

Number 2165

CHAIR COGHILL mentioned that he has a committee substitute (CS) that differs from CSHB 87(MLV), in that language requiring two legislative members to sit on the council has been removed. He opined that members of the legislature should not sit on councils within the executive branch. [This CS was not provided in the committee secretary's packet.]

CHAIR COGHILL called an at-ease from 9:09 a.m. to 9:10 a.m.

REPRESENTATIVE JAMES said she disagrees with that point and that she prefers CSHB 87(MLV). She noted that there are many "committees" within the administration that have members of the legislature appointed to them. "There is an advantage for anyone who is doing an advisory issue," which may result in legislation or otherwise fiscally impact the state, to have someone from the legislature on their council. She opined that having members of the legislature on the Alaska Veterans Advisory Council would provide the council with a "soft pillow" in the discussion process in the event that the council decides

to recommend legislation or otherwise affect a department's budget.

Number 1974

CAROL CARROLL, Director, Administrative Services Division, Department of Military & Veterans Affairs (DMVA), explained that the DMVA would like to see the Alaska Veterans Advisory Council instituted in statute, adding that the council has been of great value to the DMVA in fulfilling its mission of advocating for veterans' issues. The council acts as the eyes and ears of the DMVA for veterans at both the state and national levels. She said that under HB 87, the council would continue the work it currently does, noting that the current administration originally created the council via "Administrative Order." The council makes recommendations on issues of interest to veterans in Alaska to the DMVA, such as benefits for veterans and recognition of veterans' services. She noted that HB 87 stipulates that the council would include the legislature in its discussions regarding any recommendations to the DMVA and the governor. She also mentioned that the chair of the council currently provides all of the council's minutes to the chair of the House Special Committee on Military and Veterans' Affairs. She concluded by saying that the DMVA anticipates that "that sort of activity" will continue, and because the DMVA values what the council does for it, it would like to see the council established in statute.

REPRESENTATIVE JAMES asked how the department felt about including members of the legislature on the council. She noted that in the past, she has served as an appointee on some of the administration's committees, and she found it very helpful in terms of creating a dialog between the administration and the legislature regarding legislation.

REPRESENTATIVE HAYES indicated he agreed with Chair Coghill: having legislative members on the council is not necessary given that the chair of the House Special Committee on Military and Veterans' Affairs currently receives the council's minutes. Having the legislature involved in this advisory council would just make for an additional layer of people who are not needed, he opined.

CHAIR COGHILL mentioned that there is a letter from the attorney general in members' packets. [This letter was not provided in the committee secretary's packet.]

Number 1656

JOHN GAGUINE, Assistant Attorney General, Civil Division (Juneau), Department of Law (DOL), noted that the aforementioned letter, written in March, relayed the DOL's concerns about possible constitutional problems with CSHB 87(MLV). He said that his goal today is to make it clear to the committee that the administration views HB 87 as an important matter. With regard to the points addressed in the letter, he explained that appointing legislators to an executive branch committee would - in the DOL's opinion - violate the "dual office holding prohibition" of the Alaska State Constitution - Article II, Section 5 - and other separation-of-powers issues. When asked about other executive branch committees that have had legislative members appointed to them, he said that the administration has taken the position that, as a matter of comity to the legislature, they were not going to challenge those committees. He added that he could not speak to whether the administration would behave in the same fashion toward CSHB 87(MLV).

REPRESENTATIVE JAMES noted that when she served on the Alaska Seafood Marketing Institute (ASMI) board, although she was not a voting member, she had opportunity to discuss issues. As a member of the Grant Review and Bond Reimbursement Committee of the Department of Education, during drafting of the regulations pertaining to how schools are built and how to be reimbursed for building schools, she did have a vote. With regard to HB 87, she asked whether not allowing the legislative appointees to vote would change [the DOL's opinion].

MR. GAGUINE said he did not think it would change anything since the legislative members would still be members, and, as a mere advisory committee, having a vote may not be that important anyway.

REPRESENTATIVE JAMES, noting that since the administration has chosen not to challenge any of the other executive branch committees that have legislative members, asked Mr. Gaguine why he is challenging CSHB 87(MLV).

MR. GAGUINE replied that he is merely expressing the DOL's concerns regarding CSHB 87(MLV), as is done for any legislation to which the DOL has concerns.

REPRESENTATIVE JAMES posited that having members of the legislature on the Alaska Veterans Advisory Council would reduce

the likelihood of conflict related to legislation arising amongst the various parties involved in veterans' issues.

REPRESENTATIVE HAYES reiterated that the legislature currently receives the council's minutes, thus providing safeguards against conflict.

Number 1342

REPRESENTATIVE JAMES noted that while it is true that the legislature is kept informed of the council's actions, the legislature currently has no voice in the council's discussions and decisions. She continued:

What I'm looking for is a smooth transition between that group of folks and the legislature, as opposed to having any kind of a conflict. And I think that this is an issue which could ensure that we wouldn't have that conflict because you have a viable person in both the House and Senate to support this decision that came out. I'm not saying it would be any different than it currently is, in this recommendation, but I just see that if we do it in other areas, we ought to do it in this one. If we separate this one out, then it tells me you don't want to know what we [think] - you're just going to come and tell us what you want us to do.

CHAIR COGHILL noted that this is a good point; "when people do something in a commission and [then] come to the legislature, we automatically become adversarial rather than inclusive."

REPRESENTATIVE STEVENS said that although he appreciates the separation-of-power concept, he did not see how sitting on an advisory council could be considered a dual-office violation. As an example, he said that he would first and foremost view Representative James as a member of the legislature rather than as a member of a council, board, or committee on which she happens to sit. He said he sees a real advantage in having legislators on various [executive branch] committees because it enables those legislators to come back to the rest of the legislature and explain the committee's decisions, and vice versa. He asked whether the Alaska Veterans Advisory Council could truly be considered an "office."

MR. GAGUINE said that it has been the position of the DOL that the constitutional prohibition against dual office holding

prohibits legislators from holding "any other office or position of profit...." He specified that the word "office" stands alone in this prohibition [as opposed to "position of profit"], and that membership on an executive branch committee, even an advisory committee, is an "office". He admitted that there are probably good policy arguments, both for and against allowing legislators to serve on [executive branch] committees such as the Alaska Veterans Advisory Council, but the Alaska State Constitution, as interpreted by the DOL, prohibits dual office holding regardless of the policy arguments.

Number 1125

REPRESENTATIVE WILSON said she would like to know what the definition of "office" is, and whether it means an elected office or an appointed office.

MR. GAGUINE replied: "In this case it has to be an appointed office because this is a legislator holding an office in the executive branch; the only elected offices are, obviously, governor and lieutenant governor and you can't hold both of those."

REPRESENTATIVE WILSON noted that some other states do allow this; it is not uncommon for legislators [in other states] to be appointed to many different committees.

MR. GAGUINE said that he could not speak to the constitutional framework of those other states.

REPRESENTATIVE WILSON noted that it does help to have the legislative viewpoint on executive branch committees, and it provides continuity when making decisions. She added that obviously, the legislator on any such committee is not going to sway the whole committee when the legislator is only 1 out of 19 or 21 members.

Number 0923

MG PHILLIP E. OATES, Adjutant General/Commissioner, Department of Military and Veterans Affairs (DMVA), explained that there are many ways in which the veteran's voice can be heard. One of the ways is through the DMVA. There are also three main organizations that exist - the Veterans of Foreign Wars of the United States (VFW), the Disabled American Veterans (DAV), and the American Legion. He added that the "federal VA" also has a voice, as well as the many veterans around the state serving as

advocates. Each one of those entities serves a different purpose, and the idea behind the Alaska Veterans Advisory Council is to talk about the overarching policy needs in order to assist the governor and legislature in coming up with the policies that are appropriate for Alaska's veterans.

GENERAL OATES said that he agrees with Representative Hayes's position. The purpose is not to cut anyone out of the discussions or deliberations. "We have one of the most, if not the most, active military and veteran's affairs committees here in our own House of Representatives, probably of any state in the union." He noted that a couple of good points in CSHB 87(MLV) are that the council shall advise the legislature, which is highly appropriate, and shall annually make recommendations to the legislature, along with the governor and the DMVA. He opined, however, that there is value in having a council that does not have himself or someone else from the governor's staff as a member; furthermore, it will still be possible to interact with the council and receive information from them without being a part of the process.

GENERAL OATES noted that by putting the Alaska Veterans Advisory Council in statute, it elevates the importance of veterans and gives them the status by which they can advocate veterans' needs to the legislature, the governor, and the DMVA. He also noted, based on his 32 years of military experience, that neither the military nor the veterans are political activists; he said that one of the strengths of the military is that they have "been raised" to keep out of politics. He added that this thread of reasoning is also appropriate in the establishment of the council; the council and the military should work for the civilian leaders of the military - the legislature and Congress, respectively. To illustrate what the Alaska Veterans Advisory Council has done to date, he said that the council has been very helpful with regard to a number of issues: the bill giving high school diplomas to World War II veterans, arranging for veterans' status for the Alaska Territorial Guardsman, and making recommendations to the governor each year regarding recognition for the veteran who has done the most for all veterans in the state. He concluded by saying that the legislature has a voice in the Alaska Veterans Advisory Council, and that the council will work with the legislature as effectively as with any other body.

Number 0504

REPRESENTATIVE JAMES reiterated her position that having legislators on the Alaska Veterans Advisory Council would help during deliberations, and opined that had there been legislators on the council during discussions regarding the Pioneers' and Veterans' Home, issues could have been resolved in a smoother fashion. She stated that she is in favor of placing the Alaska Veterans Advisory Council in statute, but added that she is distressed because, although there are legislators on other executive branch committees, it appears that this council is not being treated the same way, as if to say that veterans' issues are not as important or that it does not matter what the legislature can bring to the table regarding these issues.

CHAIR COGHILL noted that the current issue is whether the legislature would be included in the discussion at the council level or would simply get the report from the council after decisions are already made; it becomes problematic when the legislature is accused of "playing volley" with issues when they have not been included in the discussion process to begin with.

TAPE 01-48, SIDE A
Number 0001

GENERAL OATES said that it is very shortsighted to think that the legislature is not a full participant in any policy implemented by [the DMVA]; "I will not achieve my goals by having good ideas [if] we don't work cooperatively with the legislature." He promised that [the Alaska Veterans Advisory Council] would work with the legislature in any way it deems fit. He concluded by saying that he just thinks it is better to have the Alaska Veterans Advisory Council work for the legislature, without having a member of the legislature or an executive branch employee as a member of the council.

REPRESENTATIVE CRAWFORD opined that having legislators on the council may "exert undue influence" on the council in its deliberations, and it would be better to just let the council deliberate and then bring its decision to the legislature.

REPRESENTATIVE STEVENS opined that the comments heard from the department of law are "just absolutely silly and contradictory." To illustrate this, he referred to page 2, lines 26-27 of CSHB 87(MLV), which says "The council shall elect a chair from among its members who are not state officers or employees"; according to the DOL, everyone on the council will be considered "an officer" - having been appointed to the "office" - therefore, the implication is that no one can be chair. He suggested: "We

should do what we darned well please, and if the [DOL] wants to sue us over this issue, let them go ahead; let's get this settled in the courts."

Number 0342

TERRI LAUTERBACH, Attorney, Legislative Legal Counsel, Legislative Legal and Research Services, Legislative Affairs Agency, said that although she would not necessarily typify the DOL's comments as "silly, ... I can probably agree that we don't know how the courts would rule" with regard to having legislative members on the council. She added that in its letter, the DOL made some statements that have not yet been confirmed by the courts. With regard to the statement about Article I, Section 5, that the term "office" stands alone and that "of profit" does not pertain to it, she said that it is not certain yet whether "of profit" applies to both "office" and "position", or only to the latter. Therefore, it is not quite fair to say that someone who serves in an office but is not compensated is still covered by this dual office holding prohibition; "the courts haven't told us that." She noted that the other reasons listed in the letter seem to her to be less applicable to an advisory [council] that has no power; there can't be a concentration of power when the [council] itself has no power. Therefore, she surmised, the advisory nature of this council is also something the court would look at when determining whether the purposes for not allowing dual office holding are violated by having legislators on this particular council.

MS. LAUTERBACH, on the DOL's concerns regarding separation of powers, pointed out that council members would not be executive officers: they don't carry out laws, they don't make decisions, they simply serve in an advisory capacity. She added:

While we're not sure whether the court would agree with us or not, in [Legislative Legal and Research Services], we think there's ample room there for the legislature to take this risk, and ample room for the court to decide that in this case - in an advisory commission where no one's paid, or at least the legislators aren't paid for anything other than their [legislative] salaries - ... that this is ok. They're not executive officers, ... they're not making lots of money, [and] they're not exerting power. On the other hand, we don't know for sure, in this case, how a court would come out 'cause there's no precedent. So

it becomes a policy call, both on whether you think legislators would have too much personal power - not executive/legal power, but personal power - to sway the members of the board, and whether you think that's OK; or, whether the advantages of having legislative input are outweighed by the disadvantage of a possible risk of litigation.

MS. LAUTERBACH, on a question regarding the staggered three-year terms for members, responded that this provision applies only to council members who are not state officers or employees; therefore, legislators, being employees of the state, are not affected by this provision. In conclusion, she noted that the DOL has taken the position in the past that advisory councils are probably not covered by the prohibition against dual office holding. In fact, an opinion from the attorney general's office in 1977 pertaining to a temporary advisory commission said that the prohibition did not apply, she noted, and added that some of the DOL's concerns could be alleviated by putting a sunset on the Alaska Veterans Advisory Council. She pointed out that many statutes have sunset dates, which makes those statutes more or less temporary.

REPRESENTATIVE STEVENS asked Ms. Lauterbach whether her interpretation is that serving on this council would constitute dual office holding.

MS. LAUTERBACH reiterated that this is a question that has not yet been decided by the courts and, therefore, she could not foresee how the courts might decide should the question come before them.

Number 0826

CHAIR COGHILL noted that the issue before the House State Affairs Standing Committee is whether to report CSHB 87(MLV) from committee.

REPRESENTATIVE HAYES objected.

Number 0900

A roll call vote was taken. Representatives Fate, James, Stevens, Wilson, and Coghill voted to report CSHB 87(MLV) from House State Affairs Standing Committee. Representatives Crawford and Hayes voted against it. Therefore, CSHB 87(MLV) was reported from the House State Affairs Standing Committee.

ADJOURNMENT

Number 0952

There being no further business before the committee, the House State Affairs Standing Committee meeting was adjourned at 9:52 a.m.