

**ALASKA STATE LEGISLATURE  
HOUSE JUDICIARY STANDING COMMITTEE**

May 7, 2004

6:40 p.m.

**MEMBERS PRESENT**

Representative Lesil McGuire, Chair  
Representative Tom Anderson, Vice Chair  
Representative Jim Holm  
Representative Dan Ogg  
Representative Ralph Samuels  
Representative Les Gara  
Representative Max Gruenberg

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

CS FOR SENATE BILL NO. 338(STA)

"An Act relating to actionable claims against state employees; and providing for an effective date."

- MOVED CSSB 338(STA) OUT OF COMMITTEE

CS FOR SENATE BILL NO. 179(FIN)

"An Act relating to criminal history records and background checks; allowing persons to teach in the public schools for up to five months without a teaching certificate if the person has applied for a certificate and the application has not been acted upon by the Department of Education and Early Development due to a delay in receiving criminal history records; allowing teacher certification for certain persons based on a criminal history background check without fingerprints; and providing for an effective date."

- MOVED HCS CSSB 179(JUD) OUT OF COMMITTEE; ADOPTED A HOUSE  
CONCURRENT RESOLUTION ALLOWING THE TITLE CHANGE

CS FOR SENATE BILL NO. 217(JUD)

"An Act relating to genetic privacy."

- HEARD AND HELD

CS FOR SENATE BILL NO. 284(FIN) am

"An Act making information on a permanent fund dividend application, other than the applicant's name, confidential, and relating to disclosure of that confidential information; and relating to confidential information in voter registration records."

- MOVED HCS CSSB 284(JUD) OUT OF COMMITTEE

CS FOR SENATE BILL NO. 219(JUD) am

"An Act relating to offenses against unborn children."

- SCHEDULED BUT NOT HEARD

CS FOR SENATE BILL NO. 269(CRA)

"An Act relating to access to library records, including access to the library records of a child by a parent or guardian."

- SCHEDULED BUT NOT HEARD

CS FOR SENATE BILL NO. 354(STA) am(efd fld)

"An Act relating to complaints filed with, and investigations, hearings, and orders of, the State Commission for Human Rights; and making conforming amendments."

- SCHEDULED BUT NOT HEARD

#### **PREVIOUS COMMITTEE ACTION**

BILL: SB 338

SHORT TITLE: CLAIMS AGAINST STATE EMPLOYEES

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

02/16/04	(S)	READ THE FIRST TIME - REFERRALS
02/16/04	(S)	STA, JUD
03/11/04	(S)	STA AT 3:30 PM BELTZ 211
03/11/04	(S)	Heard & Held
03/11/04	(S)	MINUTE(STA)
03/18/04	(S)	STA AT 3:30 PM BELTZ 211
03/18/04	(S)	Moved CSSB 338(STA) Out of Committee
03/18/04	(S)	MINUTE(STA)
03/19/04	(S)	STA RPT CS 4NR NEW TITLE
03/19/04	(S)	NR: STEVENS G, HOFFMAN, COWDERY, GUESS
03/24/04	(S)	JUD AT 8:00 AM BUTROVICH 205
03/24/04	(S)	Moved CSSB 338(STA) Out of Committee
03/24/04	(S)	MINUTE(JUD)
03/24/04	(S)	JUD RPT CS(STA) 3DP 2NR
03/24/04	(S)	DP: SEEKINS, THERRIAULT, ELLIS;

03/24/04 (S) NR: FRENCH, OGAN  
 04/13/04 (S) TRANSMITTED TO (H)  
 04/13/04 (S) VERSION: CSSB 338(STA)  
 04/14/04 (H) READ THE FIRST TIME - REFERRALS  
 04/14/04 (H) JUD  
 04/26/04 (H) JUD AT 1:00 PM CAPITOL 120  
 04/26/04 (H) -- Meeting Canceled --  
 04/28/04 (H) JUD AT 1:00 PM CAPITOL 120  
 04/28/04 (H) -- Meeting Canceled --  
 05/03/04 (H) JUD AT 1:00 PM CAPITOL 120  
 05/03/04 (H) Scheduled But Not Heard  
 05/05/04 (H) JUD AT 1:00 PM CAPITOL 120  
 05/05/04 (H) Scheduled But Not Heard  
 05/06/04 (H) JUD AT 3:00 PM CAPITOL 120  
 05/06/04 (H) Scheduled But Not Heard  
 05/07/04 (H) JUD AT 6:15 PM CAPITOL 120

BILL: SB 179

SHORT TITLE: CRIMINAL BACKGROUND CHECKS/TEACHERS

SPONSOR(S): SENATOR(S) THERRIAULT

04/08/03 (S) READ THE FIRST TIME - REFERRALS  
 04/08/03 (S) HES, FIN  
 04/16/03 (S) HES AT 1:30 PM BUTROVICH 205  
 04/16/03 (S) Moved CSSB 179(HES) Out of Committee  
 04/16/03 (S) MINUTE(HES)  
 05/10/03 (S) HES RPT CS 2DP 1NR NEW TITLE  
 05/10/03 (S) DP: DYSON, WILKEN; NR: DAVIS  
 05/13/03 (S) FIN AT 8:00 AM SENATE FINANCE 532  
 05/13/03 (S) <Above Item Removed from Agenda>  
 03/08/04 (S) FIN AT 9:00 AM SENATE FINANCE 532  
 03/08/04 (S) Moved CSSB 179(FIN) Out of Committee  
 03/08/04 (S) MINUTE(FIN)  
 03/08/04 (S) FIN RPT CS 5DP 2NR NEW TITLE  
 03/08/04 (S) DP: GREEN, WILKEN, DYSON, BUNDE,  
 03/08/04 (S) STEVENS B; NR: HOFFMAN, OLSON  
 03/15/04 (S) TRANSMITTED TO (H)  
 03/15/04 (S) VERSION: CSSB 179(FIN)  
 03/16/04 (H) READ THE FIRST TIME - REFERRALS  
 03/16/04 (H) EDU, HES, JUD  
 03/23/04 (H) EDU AT 11:00 AM CAPITOL 124  
 03/23/04 (H) Moved Out of Committee  
 03/23/04 (H) MINUTE(EDU)  
 03/24/04 (H) EDU RPT 4DP 1NR 1AM  
 03/24/04 (H) DP: WILSON, OGG, SEATON, GATTO;  
 03/24/04 (H) NR: KAPSNER; AM: WOLF  
 04/20/04 (H) HES AT 2:00 PM CAPITOL 106

04/20/04 (H) Moved HCS CSSB 179(HES) Out of  
Committee  
04/20/04 (H) MINUTE(HES)  
04/27/04 (H) HES AT 3:00 PM CAPITOL 106  
04/27/04 (H) Moved CSSB 179(FIN) Out of Committee  
04/27/04 (H) MINUTE(HES)  
04/28/04 (H) HES RPT 2DP 3NR  
04/28/04 (H) DP: SEATON, GATTO; NR: COGHILL, WOLF,  
04/28/04 (H) WILSON  
05/03/04 (H) JUD AT 1:00 PM CAPITOL 120  
05/03/04 (H) Heard & Held  
05/03/04 (H) MINUTE(JUD)  
05/05/04 (H) JUD AT 1:00 PM CAPITOL 120  
05/05/04 (H) Scheduled But Not Heard  
05/06/04 (H) JUD AT 3:00 PM CAPITOL 120  
05/06/04 (H) Scheduled But Not Heard  
05/07/04 (H) JUD AT 6:15 PM CAPITOL 120

BILL: SB 217

SHORT TITLE: GENETIC PRIVACY

SPONSOR(S): SENATOR(S) OLSON

05/09/03 (S) READ THE FIRST TIME - REFERRALS  
05/09/03 (S) HES, JUD  
01/28/04 (S) HES AT 1:30 PM BUTROVICH 205  
01/28/04 (S) Moved CSSB 217 (HES) Out of Committee  
01/28/04 (S) MINUTE(HES)  
01/30/04 (S) HES RPT CS 1DP 1NR 2AM NEW TITLE  
01/30/04 (S) DP: DYSON; NR: GUESS;  
01/30/04 (S) AM: GREEN, WILKEN  
02/06/04 (S) JUD AT 8:00 AM BUTROVICH 205  
02/06/04 (S) Heard & Held  
02/06/04 (S) MINUTE(JUD)  
02/18/04 (S) JUD AT 8:00 AM BUTROVICH 205  
02/18/04 (S) Scheduled But Not Heard  
02/25/04 (S) JUD AT 8:00 AM BUTROVICH 205  
02/25/04 (S) Heard & Held  
02/25/04 (S) MINUTE(JUD)  
03/03/04 (S) JUD AT 8:00 AM BUTROVICH 205  
03/03/04 (S) Moved CSSB 217(JUD) Out of Committee  
03/03/04 (S) MINUTE(JUD)  
03/04/04 (S) JUD RPT CS 1DP 3NR NEW TITLE  
03/04/04 (S) LETTER OF INTENT WITH JUD REPORT  
03/04/04 (S) NR: SEEKINS, THERRIAULT, OGAN;  
03/04/04 (S) DP: FRENCH  
05/03/04 (S) TRANSMITTED TO (H)  
05/03/04 (S) VERSION: CSSB 217(JUD)

05/04/04 (H) READ THE FIRST TIME - REFERRALS  
 05/04/04 (H) JUD  
 05/05/04 (H) JUD AT 1:00 PM CAPITOL 120  
 05/05/04 (H) Scheduled But Not Heard  
 05/06/04 (H) JUD AT 3:00 PM CAPITOL 120  
 05/06/04 (H) Scheduled But Not Heard  
 05/07/04 (H) JUD AT 6:15 PM CAPITOL 120

**BILL: SB 284**

SHORT TITLE: VOTER AND PERM FUND APP RECORDS PRIVATE  
 SPONSOR(S): SENATOR(S) GUESS

01/28/04 (S) READ THE FIRST TIME - REFERRALS  
 01/28/04 (S) STA, FIN  
 02/17/04 (S) STA AT 3:30 PM BELTZ 211  
 02/17/04 (S) Moved CSSB 284(STA) Out of Committee  
 02/17/04 (S) MINUTE(STA)  
 02/18/04 (S) STA RPT CS 3DP NEW TITLE  
 02/18/04 (S) DP: STEVENS G, GUESS, HOFFMAN  
 04/29/04 (S) FIN AT 9:00 AM SENATE FINANCE 532  
 04/29/04 (S) Heard & Held  
 04/29/04 (S) MINUTE(FIN)  
 05/02/04 (S) FIN AT 12:00 AM SENATE FINANCE 532  
 05/02/04 (S) Moved CSSB 284(FIN) Out of Committee  
 05/02/04 (S) MINUTE(FIN)  
 05/02/04 (S) FIN RPT CS 5DP NEW TITLE  
 05/02/04 (S) DP: GREEN, WILKEN, DYSON,  
 05/02/04 (S) BUNDE, STEVENS B  
 05/05/04 (S) TRANSMITTED TO (H)  
 05/05/04 (S) VERSION: CSSB 284(FIN) AM  
 05/05/04 (H) READ THE FIRST TIME - REFERRALS  
 05/05/04 (H) JUD  
 05/05/04 (H) JUD AT 1:00 PM CAPITOL 120  
 05/05/04 (H) Scheduled But Not Heard  
 05/06/04 (H) JUD AT 3:00 PM CAPITOL 120  
 05/06/04 (H) Scheduled But Not Heard  
 05/07/04 (H) JUD AT 6:15 PM CAPITOL 120

**WITNESS REGISTER**

GAIL VOIGTLANDER, Chief Assistant Attorney General  
 Statewide Section Supervisor  
 Torts and Worker's Compensation Section  
 Civil Division (Anchorage)  
 Department of Law (DOL)  
 Anchorage, Alaska

POSITION STATEMENT: Presented SB 338 on behalf of the administration.

ZACH WARWICK, Staff  
to Senator Gene Therriault  
Alaska State Legislature  
Juneau, Alaska

POSITION STATEMENT: During discussion of SB 179, responded to questions on behalf of the sponsor, Senator Therriault.

SENATOR DONNY OLSON  
Alaska State Legislature  
Juneau, Alaska

POSITION STATEMENT: Sponsor of SB 217.

SENATOR GRETCHEN GUESS  
Alaska State Legislature  
Juneau, Alaska

POSITION STATEMENT: Sponsor of SB 284.

LORI DAVEY, President  
Motznik Information Services, Inc.  
Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to SB 284.

#### **ACTION NARRATIVE**

#### **TAPE 04-80, SIDE A**

Number 0001

**CHAIR LESIL MCGUIRE** called the House Judiciary Standing Committee meeting, which had been recessed on 5/6/04, back to order at [6:40 p.m., stated as 6:50 p.m.]. Representatives McGuire, Ogg, Samuels, and Gara were present at the call back to order. Representatives Anderson, Holm, and Gruenberg arrived as the meeting was in progress.

#### **SB 338 - CLAIMS AGAINST STATE EMPLOYEES**

Number 0039

CHAIR MCGUIRE announced that the first order of business would be CS FOR SENATE BILL NO. 338(STA), "An Act relating to actionable claims against state employees; and providing for an effective date."

Number 0073

GAIL VOIGTLANDER, Chief Assistant Attorney General, Statewide Section Supervisor, Torts and Worker's Compensation Section, Civil Division (Anchorage), Department of Law (DOL), explained that CSSB 338(STA) provides [the state] the ability, at the start of a lawsuit, to dismiss individually named state employees and substitute the state as the defendant. As a result, individual state employees would no longer be defendants in an action, and so they won't have to be concerned that their personal assets will be placed in jeopardy because of litigation that arises out of the scope of their employment. She noted that the Public Safety Employees Association (PSEA) has provided a letter of support for CSSB 338(STA).

MS. VOIGTLANDER offered her belief that CSSB 338(STA) will be good for state government because it allows lawsuits to be filed against the state for injuries allegedly caused by state employees in the scope of their employment, but ensures that state government is less bogged down by the litigation process. She used as an example a situation wherein a claim filed by an inmate arises out of some action taken by the Department of Corrections (DOC). Typically, the inmate might sue several state employees as well as the DOC, and claim that the employees were negligent. Under CSSB 338(STA), once such a lawsuit is filed, the state can substitute itself as the defendant in place of the individually named employees if the attorney general certifies that they were acting in the course of their employment. The individual employees would be automatically dismissed from the lawsuit, they would no longer be a party in the lawsuit, and they could instead resume their duties without fear of repercussions stemming from that lawsuit.

MS. VOIGTLANDER opined that the public will be well served by the change proposed via CSSB 338(STA) because state employees will no longer be distracted by any such pending litigation. She mentioned that currently, at any given point in time, the DOL is defending in excess of 100 state employees who are individually named in lawsuits [against the state] stemming from actions they took in the course of their employment. In addition to DOC employees, other state employees that have been individually named in lawsuits include Department of Transportation & Public Facilities (DOT&PF) employees, various divisional managers on up through commissioners, and retired state employees.

Number 0580

REPRESENTATIVE GARA offered his belief, though, that when state employees are named in such lawsuits, they are "covered" by the state.

MS. VOIGTLANDER acknowledged that that is typically the case, sometimes through the employee's bargaining unit; however, notwithstanding this point, currently an employee named in such a lawsuit remains an individually sued state employee and retains the burden of such.

[Following was a brief discussion regarding which version was before the committee, and in which committees it and the House companion bill were amended.]

REPRESENTATIVE GARA said that according to his reading of CSSB 338(STA), it doesn't change the scope of the state's liability to the public in a tort action.

MS. VOIGTLANDER concurred with Representative Gara's understanding. Once the state is substituted as the defendant, whatever defense the state has can be pled in the case. She noted that there is a category of cases that do not go through the aforementioned certification process, and those include cases involving civil rights claims pursuant to federal law under [42 U.S.C. Sec. 1983].

REPRESENTATIVE GARA said he thinks CSSB 338(STA) is a good bill. He mentioned that he is considering offering an amendment on the House floor that would reinstate the right of U.S. military personnel to recovery against state employees.

CHAIR McGUIRE, after ascertaining that no one else wished to testify, closed public testimony on the bill.

Number 0910

REPRESENTATIVE GARA moved to report CSSB 338(STA) out of committee with individual recommendations and the accompanying zero fiscal note. There being no objection, CSSB 338(STA) was reported from the House Judiciary Standing Committee.

The committee took an at-ease from 6:55 p.m. to 6:59 p.m.

SB 179 - CRIMINAL BACKGROUND CHECKS/TEACHERS

[Contains adoption of what would become known as HCR 42 for the purpose of changing the title of SB 179.]

Number 0950

CHAIR McGUIRE announced that the next order of business would be CS FOR SENATE BILL NO. 179(FIN), "An Act relating to criminal history records and background checks; allowing persons to teach in the public schools for up to five months without a teaching certificate if the person has applied for a certificate and the application has not been acted upon by the Department of Education and Early Development due to a delay in receiving criminal history records; allowing teacher certification for certain persons based on a criminal history background check without fingerprints; and providing for an effective date."

CHAIR McGUIRE noted that the bill has already been heard in committee and was being held over for the purpose of investigating some issues that had been raised during the bill's last hearing.

Number 0988

ZACH WARWICK, Staff to Senator Gene Therriault, Alaska State Legislature, sponsor, on behalf of Senator Therriault, in response to a comment, said that rather than simply altering statute such that a person who has made an application for a teaching certificate can teach five months without a certificate, the bill was changed so that the statute would maintain the original three-month period and provide for a possible 60-day extension. This change came at the suggestion of the Department of Education and Early Development (DEED). The way the bill is currently written, if there is a delay in getting back the results of a criminal history background check within three months, the DEED may consider granting the aforementioned extension. He mentioned that the DEED has indicated to him that this extension would only be granted in extreme circumstances.

MR. WARWICK said that without this provision, what is currently happening is that once the three-month period has elapsed, either teachers are laid off and rehired as substitute teachers, which requires no background check, or they must resubmit their application and be granted another three-month period in which to teach without a certificate. He acknowledged members' concerns expressed at the bill's last hearing that perhaps the law should be changed so that no one may teach until the results of the criminal history background check are received. He

indicated that [the sponsor] is willing to research that possibility during the interim.

CHAIR MCGUIRE said she is not yet convinced that the timeframe in which the results of criminal history background checks are returned has been shortened to six or seven weeks as was testified to at the bill's last hearing. She relayed that according to her understanding of discussions she's had with the DEED, because of liability issues it is very unlikely that the DEED would ever grant the 60-day extension. In light of this, she said, she doesn't see any reason to put language in a bill that gives the DEED discretion that won't be utilized, adding that she would rather see folks work during the interim to see, first of all, what the problem is, and second, how to fix it. She remarked that electronic fingerprint scanners might be a worthwhile investment in the future, but relayed that at this point, she is not comfortable including the 60-day extension in the bill.

MR. WARWICK remarked that it is not yet known whether electronic fingerprint scanners have approval from the U.S. Department of Justice (DOJ) such that they could fulfill the DEED's requirements. He reiterated his belief that Section 8 will be of assistance in situations where the results of a criminal history background check are delayed simply because of a work backlog.

REPRESENTATIVE HOLM indicated that his main concern is the safety of the children, and thus allowing someone to be in the classroom before the results of a criminal history background check are known doesn't satisfy his concern.

MR. WARWICK ventured that Section 8 would ensure that someone who's results are delayed by just a few days wouldn't simply be allowed in the classroom as a substitute teacher.

Number 1354

REPRESENTATIVE GARA made a motion to adopt Amendment 1, to delete the proposed new language in Section 8 - the language beginning on page 5, line 1, through page 5, line 7. There being no objection, Amendment 1 was adopted.

CHAIR MCGUIRE pondered whether a title amendment would be necessary.

MR. WARWICK [suggested adopting] a House Concurrent Resolution (HCR) for that purpose.

Number 1479

CHAIR MCGUIRE moved to report CSSB 179(FIN), as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HCS CSSB 179(JUD) was reported from House Judiciary Standing Committee.

Number 1488

REPRESENTATIVE SAMUELS [although no motion had been made to adopt the following as a work draft] moved to report the proposed House Concurrent Resolution (HCR), Version 23-LS1942\A, Luckhaupt, 4/16/04, out of committee with individual recommendations. There being no objection, the House Concurrent Resolution [which later became HCR 42] was reported from the House Judiciary Standing Committee.

SB 217 - GENETIC PRIVACY

Number 1520

CHAIR MCGUIRE indicated that the next order of business would be CS FOR SENATE BILL NO. 217(JUD), "An Act relating to genetic privacy."

Number 1539

SENATOR DONNY OLSON, Alaska State Legislator, sponsor, by way of presenting SB 217, surmised that everyone is familiar with how useful DNA (deoxyribonucleic acid) identification has been for law enforcement and in paternity disputes. He remarked, though, that he is very concerned about genetic privacy because, currently, state laws restrict access to medical records but not to genetic information; SB 217 seeks to curtail exploitation of valuable genetic information. Although there are no federal statutes regarding genetic privacy, 15 states require informed consent before a third party performs or requires a genetic test or obtains genetic information, and 23 states require informed consent before disclosing genetic information. In conclusion, he said that SB 217 gives consideration to advancing biotechnology in DNA analysis while also giving Alaskans the right to keep their genetic information private.

REPRESENTATIVE SAMUELS asked Senator Olson whether there were any possible exceptions that he considered but did not include in the bill.

SENATOR OLSON indicated that there weren't, and highlighted the exceptions currently listed in the bill. He noted that SB 217 requires informed consent before someone can collect, distribute, or use a person's genetic information.

REPRESENTATIVE OGG asked whether SB 217 prevents the use of samples collected from public places such as bathrooms.

SENATOR OLSON reiterated that under the bill, unless one of the listed exceptions applies, informed consent is required before someone can collect, distribute, or use a person's genetic information.

Number 1862

REPRESENTATIVE GARA asked under what circumstances, currently, might someone unknowingly have his/her DNA taken.

SENATOR OLSON ventured that such might occur when a person gives a blood sample or a semen sample.

REPRESENTATIVE GARA said he would not want someone to go to a private medical clinic, for example, sign several large, complex release forms without knowing that one of the forms includes an informed consent release pertaining to the use of genetic information. He suggested that perhaps future consideration might be given to requiring that an informed consent release regarding genetic information be provided for in a separate document.

SENATOR OLSON said he has given that issue consideration, and noted that page 2, line 14, states: "A person may revoke or amend their informed and written consent at any time".

The committee took an at-ease from 7:20 p.m. to 7:21 p.m.

REPRESENTATIVE OGG complimented Senator Olson on a well-crafted bill.

REPRESENTATIVE GARA concurred.

CHAIR McGUIRE indicated that SB 217 would be held over for the purpose of considering a proposed amendment submitted by the insurance industry.

SB 284 - VOTER AND PERM FUND APP RECORDS PRIVATE

Number 2021

CHAIR McGUIRE announced that the final order of business would be CS FOR SENATE BILL NO. 284(FIN) am, "An Act making information on a permanent fund dividend application, other than the applicant's name, confidential, and relating to disclosure of that confidential information; and relating to confidential information in voter registration records."

Number 2048

SENATOR GRETCHEN GUESS, Alaska State Legislature, sponsor, indicated that SB 284 ensures that permanent fund dividend (PFD) application information, except for an applicant's name, is kept private with certain exceptions:

- (1) to a local, state, or federal government agency;
- (2) in compliance with a court order;
- (3) to the individual or agency who files an application on behalf of another;
- (4) to a banking institution to verify the direct deposit of a permanent fund dividend or correct an error in that deposit; and
- (5) as directed to do so by the applicant

SENATOR GUESS relayed that through the committee process, SB 284 was changed such that the current version also makes much of the information on voter registration records confidential, information such as:

- (1) the voter's age or date of birth;
- (2) the voter's social security number, or any part of that number;
- (3) the voter's driver's license number;
- (4) the voter's voter identification number;
- (5) the voter's place of birth;
- (6) the voter's signature

The committee took an at-ease from 7:25 p.m. to 7:26 p.m.

SENATOR GUESS pointed out that the current version of SB 284 also allows a person to request that his/her residential address be kept confidential if he/she provides a different mailing address. The latter will accommodate victims of domestic violence who wish to keep their residential address confidential. She noted, however, that the bill also contains exceptions wherein confidential voter registration information may be disclosed, such as in situations involving elections.

SENATOR GUESS offered her belief that when people fill out a PFD application, they do not realize that their name and address may be disclosed to the public. Although there are instances in which such information should be disclosed, it would be better public policy, she opined, if this information were kept confidential with only few exceptions. She noted that the provisions pertaining to PFD application information will apply to applications for the 2005 PFD. She mentioned that she would be willing to work during the interim with the people who have concerns with the bill, so long as its intent is maintained, that intent being that this information shouldn't be public except that access to it may be part of the governmental process. She indicated that she doesn't have any problems with a proposed amendment that members have before them.

Number 2194

REPRESENTATIVE SAMUELS directed attention to Section 1, subsection (b), and asked whether it could generate problems such as allowing people to vote in one district though they are registered in another.

SENATOR GUESS said she did not think so because although a person has the option of keeping residential address information from the public, it is still required on the voter registration form. The Division of Elections is still going to have the residential addresses of voters, and it will still have to verify where voters live. She mentioned, however, that the bill might impact the information a candidate gets about voters in his/her district.

REPRESENTATIVE GARA mentioned that he'd provided members with information from the Division of Elections which confirms that there is a difference between a voter identification number and a voter ascension number, which many candidates use to correlate voting lists and which is not used to identify a voter. Currently and under the bill, the voter identification number is and will be kept confidential, but it may be helpful, he

suggested, to clarify that a voter's ascension number may be released to the public. He indicated that he would be offering an amendment to that effect.

**TAPE 04-80, SIDE B**

Number 2354

SENATOR GUESS confirmed that the ascension number is randomly generated and is not a unique identifier.

REPRESENTATIVE GRUENBERG directed attention to page 2, line 10, which says, "(3) the subject of a recall election if the voter voted in the recall election".

SENATOR GUESS indicated that this language addresses a concern raised on the Senate floor. Currently, it is a requirement that a person voting in a recall election must reside in the district that is holding the recall election; the aforementioned language enables the subject of a recall election to check on whether the voters who voted in the recall election actually resided in the district.

SENATOR GUESS, in response to a question regarding PFD applications, said that under the bill, the only information that the public will still have access to will be the names of those who submit PFD applications. One reason for this is that a PFD payment is an expenditure, and there should be a public accounting of expenditures. Another reason is to assist in the prevention of fraud. In response to another question, she reiterated that local, state, or federal government agencies would still have access to the confidential information on a person's PFD application, and that that information could still be released in compliance with a court order.

REPRESENTATIVE GRUENBERG, returning to the issue of recall elections, offered his belief that current statute says that where a voter should vote is conclusively determined by his/her voter registration card. In other words, if a person moves, he/she is still considered a member of the district that is listed on his/her voter registration card until he/she submits a change to the division of elections. Because of this, he opined, the language on page 2, line 10, isn't relevant. Additionally, he questioned why the subject of a recall election should be treated differently than the subject of a regular election; in other words, shouldn't any candidate be able to verify that only voters registered in his/her district voted at an election.

SENATOR GUESS opined, however, that recall elections are different than regular elections, since they come about because the people of a district sign a petition that says a person holding office should be recalled; therefore, it is reasonable to allow the subject of a recall election to have access to residential address information.

REPRESENTATIVE GRUENBERG remarked that perhaps the stipulation should be that the person signing such a petition must live in the district.

SENATOR GUESS mentioned that the language currently in the bill pertaining to this issue is what the drafter recommended.

Number 2048

LORI DAVEY, President, Motznik Information Services, Inc., said she would be testifying in opposition to SB 284. She went on to say that although she can sympathize with victims of domestic violence who want to keep their addresses confidential, there are a lot of legitimate businesses that utilize the PFD and voter registration files to verify a person's last know address, for example, for use in process serving, and to provide notification of property foreclosures. Additionally, many private and governmental organizations that utilize address information get it from private databases such as that compiled by Motznik Information Services. As currently worded, the bill precludes companies such as Motznik Information Services from obtaining address information from the PFD and voter registration files, and so her company would be unable to fulfill its current contractual obligations, for example, to attorneys, process servers, and title companies.

MS. DAVEY, with regard to voter ascension numbers, offered her belief that such numbers are unique identifiers that stay with a person, and asked that the public still be allowed to access ascension numbers. She suggested that more could be done to the bill to satisfy everyone's concerns, and recommended that the legislature wait until next session before adopting such a measure. She said that several of her customers were shocked that this legislation exists, and suggested that there should be time to do a full impact study and come up with fair way for the people that legitimately use these files to still have access to them, while still protecting peoples' privacy. Characterizing the goals of SB 284 as noble, she said she agrees that address information from PFD applications should not be something that

can simply be downloaded from the division's web site; however, she remarked, "I would encourage you to oppose this bill at this point, and give us a chance to work it out and come up with language that's more favorable and fair for everybody." She thanked the committee for the opportunity to testify.

Number 1892

CHAIR MCGUIRE directed attention to what became known as Amendment 1, labeled 23-LS1596\VA.1, Kurtz, 5/6/04, which read:

Page 3, line 1:  
Delete "and"

Page 3, line 2:  
Delete "."  
Insert "; and"

Page 3, following line 2:  
Insert a new paragraph to read:  
"(6) to a contractor who has a contract with a person entitled to obtain the information under (1) - (5) of this section to receive, store, or manage the information on that person's behalf; a contractor receiving data under this paragraph may only use the data as directed by and for the purposes of the person entitled to obtain the information."

CHAIR MCGUIRE indicated that [Amendment 1] would add an exception to the list of those that could still access and make use of confidential PFD application information.

MS. DAVEY offered her belief, however, that [adoption of Amendment 1] would require that her company maintain a separate database for local, state, and federal government agencies, but doing so would not be feasible or cost effective; furthermore, banks, attorneys, title companies, and process servers, for example, would not have access to information that they can currently get from her company.

CHAIR MCGUIRE acknowledged that a few extra steps might be necessary.

MS. DAVEY noted that title companies are required by [federal law] to use a person's last known address when foreclosing on property; as currently written, SB 284 will take away their access to what might possibly be the most recent information.

She also offered her belief that birth, death, and marriage statistics can be gleaned from the PFD application information.

SENATOR GUESS indicated that [Amendment 1] clarifies her intent, and reiterated that she would be willing to work during the interim to address the concerns of interested parties. It becomes a policy call, she remarked, one that will determine who the government can share information with when that information has been given to it by its citizens. Acknowledging that the PFD information database is by far one of the best, she said that she is concerned with keeping victims of domestic violence safe, and so it could be that some entities might no longer have access to this information via that database.

CHAIR McGUIRE asked Senator Guess whether she would have an objection to changing the effective date to either February 1, 2005, or March 1, 2005. Such a change would enable the legislature to address any problems that arise.

SENATOR GUESS said she wouldn't have a problem with such a change, and noted that Section 1 pertains to voter registration information and that Section 2 pertains to the PFD application information, which would entail information provided on the 2005 PFD application. She opined that any potential problems could be fixed by the next legislature before any requested information is made available.

Number 1677

REPRESENTATIVE SAMUELS made a motion to adopt Amendment 1 [text provided previously]. There being no objection, Amendment 1 was adopted.

SENATOR GUESS, in response to a question, indicated that she has no problem with adding language that clarifies that a voter ascension number [may be released].

Number 1621

REPRESENTATIVE GARA made a motion to adopt Amendment 2, a handwritten amendment, which, with corrections, read [original punctuation provided]:

Insert at p. 2 line 23

"(d) Nothing in this section shall prohibit the release of a voter's voter ascension number, provided

that information may be released under other provision of law."

Number 1614

CHAIR MCGUIRE asked whether there were any objections to Amendment 2. There being none, Amendment 2 was adopted.

REPRESENTATIVE ANDERSON, after declaring a potential conflict in that he has used Motznik Information Services, Inc., said he agrees with the concept of trying to keep victims of domestic violence safe, and that he supports SB 284.

REPRESENTATIVE GARA and CHAIR MCGUIRE suggested that all members might have the same potential conflict.

Number 1579

REPRESENTATIVE GARA moved to report CSSB 284(FIN) am, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HCS CSSB 284(JUD) was reported from the House Judiciary Standing Committee.

#### **ADJOURNMENT**

Number 1550

The House Judiciary Standing Committee meeting was recessed at 7:55 p.m., to be continued at 9:00 a.m. on May 8, 2004. [This meeting did not reconvene before the next scheduled House Judiciary Standing Committee meeting.]