

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

February 5, 2004  
8:05 a.m.

**MEMBERS PRESENT**

Representative Bruce Weyhrauch, Chair  
Representative Jim Holm, Vice Chair  
Representative John Coghill  
Representative Bob Lynn  
Representative Paul Seaton  
Representative Ethan Berkowitz  
Representative Max Gruenberg

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

HOUSE BILL NO. 241

"An Act relating to optional exemptions from municipal property taxes on residential property."

- MOVED CSHB 241(STA) OUT OF COMMITTEE

HOUSE BILL NO. 414

"An Act relating to filling the vacancy in the office of United States senator, and to the definition of 'political party.'"

- MOVED CSHB 414(STA) OUT OF COMMITTEE

HOUSE BILL NO. 366

"An Act relating to rat racing charitable gaming; and providing for an effective date."

- MOVED HB 366 OUT OF COMMITTEE

HOUSE BILL NO. 297

"An Act relating to wildfires and other natural disasters."

- HEARD AND HELD

HOUSE BILL NO. 322

"An Act requiring a municipal initiative or municipal referendum to be submitted to the voters at the next regular election"

occurring not sooner than 60 days after certification of the initiative or referendum petition."

- MOVED HB 322 OUT OF COMMITTEE

**PREVIOUS ACTION**

BILL: HB 241

SHORT TITLE: MUNICIPAL PROPERTY TAX EXEMPTION

SPONSOR(S): REPRESENTATIVE(S) CHENAULT

04/04/03	(H)	READ THE FIRST TIME - REFERRALS
04/04/03	(H)	CRA, STA
05/06/03	(H)	CRA AT 8:00 AM CAPITOL 124
05/06/03	(H)	-- Meeting Canceled --
05/08/03	(H)	CRA AT 9:00 AM CAPITOL 124
05/08/03	(H)	Moved Out of Committee
05/08/03	(H)	MINUTE(CRA)
05/12/03	(H)	CRA RPT 3DP 1NR
05/12/03	(H)	DP: KOTT, WOLF, MORGAN; NR: CISSNA
01/13/04	(H)	STA AT 8:00 AM CAPITOL 102
01/13/04	(H)	<Bill Hearing Postponed>
01/20/04	(H)	STA AT 8:00 AM CAPITOL 102
01/20/04	(H)	Heard & Held
01/20/04	(H)	MINUTE(STA)
01/27/04	(H)	STA AT 8:00 AM CAPITOL 102
01/27/04	(H)	Heard & Held
01/27/04	(H)	MINUTE(STA)
02/03/04	(H)	STA AT 8:00 AM CAPITOL 102
02/03/04	(H)	Heard & Held
02/03/04	(H)	MINUTE(STA)
02/05/04	(H)	STA AT 8:00 AM CAPITOL 102

BILL: HB 414

SHORT TITLE: U.S.SENATE VACANCY/DEF OF POLITICAL PARTY

SPONSOR(S): JUDICIARY

01/28/04	(H)	READ THE FIRST TIME - REFERRALS
01/28/04	(H)	STA, JUD
02/03/04	(H)	STA AT 8:00 AM CAPITOL 102
02/03/04	(H)	Heard & Held
02/03/04	(H)	MINUTE(STA)
02/04/04	(H)	JUD AT 1:00 PM CAPITOL 120
02/04/04	(H)	-- Meeting Canceled --
02/05/04	(H)	STA AT 8:00 AM CAPITOL 102

BILL: HB 366

SHORT TITLE: RAT RACING CHARITABLE GAMING  
SPONSOR(S): REPRESENTATIVE(S) STOLTZE

01/12/04 (H) PREFILE RELEASED 1/9/04  
01/12/04 (H) READ THE FIRST TIME - REFERRALS  
01/12/04 (H) STA, FIN  
01/29/04 (H) STA AT 8:00 AM CAPITOL 102  
01/29/04 (H) Heard & Held  
01/29/04 (H) MINUTE(STA)  
02/05/04 (H) STA AT 8:00 AM CAPITOL 102

BILL: HB 297

SHORT TITLE: WILDFIRES AND NATURAL DISASTERS  
SPONSOR(S): REPRESENTATIVE(S) STOLTZE

05/05/03 (H) READ THE FIRST TIME - REFERRALS  
05/05/03 (H) STA, RES  
01/13/04 (H) STA AT 8:00 AM CAPITOL 102  
01/13/04 (H) <Bill Hearing Postponed>  
02/03/04 (H) STA AT 8:00 AM CAPITOL 102  
02/03/04 (H) Scheduled But Not Heard  
02/05/04 (H) STA AT 8:00 AM CAPITOL 102

BILL: HB 322

SHORT TITLE: MUNI INITIATIVE AND REFERENDUM ELECTIONS  
SPONSOR(S): REPRESENTATIVE(S) SEATON

05/15/03 (H) READ THE FIRST TIME - REFERRALS  
05/15/03 (H) CRA, STA  
01/28/04 (H) REFERRALS REVERSED  
01/28/04 (H) STA, CRA  
02/05/04 (H) STA AT 8:00 AM CAPITOL 102

**WITNESS REGISTER**

LAURA GLAISER, Director  
Division of Elections  
Office of the Lieutenant Governor  
Juneau, Alaska

POSITION STATEMENT: Explained the definition of "political party" as it applied to HB 414.

REPRESENTATIVE BILL STOLTZE  
Alaska State Legislature  
Juneau, Alaska

POSITION STATEMENT: Testified as the sponsor of HB 366, and HB 297.

GAIL VOIGTLANDER

Chief Assistant Attorney General - Statewide Section Supervisor  
Torts and Worker's Compensation Section  
Civil Division (Anchorage)

Department of Law  
Anchorage, Alaska

POSITION STATEMENT: Testified on HB 297 and answered questions.

LINDA MURPHY

Borough Clerk  
Kenai Peninsula Borough  
Soldotna, Alaska

POSITION STATEMENT: Testified in support of HB 322

MONA LISA DREXLER, CMC

Borough Municipal Clerk  
Fairbanks North Star Borough  
Fairbanks, Alaska

POSITION STATEMENT: Testified in support of HB 322

#### **ACTION NARRATIVE**

#### **TAPE 04-13, SIDE A**

Number 0001

**CHAIR BRUCE WEYHRAUCH** called the House State Affairs Standing Committee meeting to order at 8:05 a.m. Representatives Seaton, Lynn, Berkowitz, and Weyhrauch were present at the call to order. Representatives Holm, Coghill, and Gruenberg arrived as the meeting was in progress.

#### HB 241-MUNICIPAL PROPERTY TAX EXEMPTION

CHAIR WEYHRAUCH announced that the first order of business was HOUSE BILL NO. 241, "An Act relating to optional exemptions from municipal property taxes on residential property."

[Before the committee, adopted as a work draft on January 27, 2004, was the committee substitute (CS) for HB 241, Version 23-LS0851\D, Cook, 1/22/04.]

Number 0200

REPRESENTATIVE SEATON, at the request of Chair Weyhrauch, moved to withdraw Version D and place Version A back before the committee.

Number 0214

CHAIR WEYHRAUCH asked if there was any objection. There being none, he clarified that HB 241, Version A [the original bill version] was before the committee.

Number 0235

REPRESENTATIVE SEATON [moved to adopt] Amendment 1, which read [original punctuation provided]:

Page 1 Line 7

After the word "**subsection,**" add the words "**may or**"

Page 1 Line 11

**Delete Sec. 2**

REPRESENTATIVE SEATON explained that the new wording would allow the municipality or borough to have the option of applying or not applying for the exemption to the tax base for special taxing areas.

Number 0322

CHAIR WEYHRAUCH objected [to the motion], for discussion purposes.

Number 0340

REPRESENTATIVE BERKOWITZ suggested the wording, "subsection may be implied", implies that it "may or may not." He said it was implicit in "may" that it "may or may not."

Number 0389

REPRESENTATIVE SEATON accepted Representative Berkowitz's suggestion as a friendly amendment.

Number 0483

CHAIR WEYHRAUCH stated that Amendment 1, as amended, would read, "In [page 1], line 7, delete the word 'not'."

CHAIR WEYHRAUCH withdrew his objection and asked for further objections. There being none, Amendment 1 [as amended] was adopted.

Number 0533

REPRESENTATIVE GRUENBERG turned to Amendment 2, labeled 23-LS0851\A.1, Cook, 2/4/04, which read:

Page 2, following line 4:

Insert a new bill section to read:

"\* **Sec. 3.** AS 29.45.050 is amended by adding a new subsection to read:

(s) A municipality may by ordinance designate an area within its boundaries as a high crime area and exempt from taxation an amount not to exceed \$10,000 of the assessed value of real property within the area that is owned and occupied as a permanent place of abode by a peace officer."

REPRESENTATIVE GRUENBERG explained Amendment 2 would allow a municipality to pass an ordinance that designates high crime areas and allows a tax exemption for police officers who move into such areas. He said it would be only a small amount of money; therefore, it would be more of a symbolic gesture.

Number 0635

REPRESENTATIVE LYNN asked for the definition of a "high crime area."

REPRESENTATIVE GRUENBERG replied that it would be left to the municipality - if it wishes - to define the high crime area and allow the tax exemption.

Number 0739

REPRESENTATIVE BERKOWITZ, in response to a suggestion by Chair Weyhrauch to add a hold harmless provision by which any municipality that adopts this ordinance would not seek offset from the State of Alaska for any decline in local revenues, said he doesn't believe municipalities receive any [revenue] at this point.

CHAIR WEYHRAUCH explained that such a provision would prevent future legislatures from being assaulted by municipalities for this exemption.

The committee took an at-ease from 8:14 a.m. to 8:18 a.m.

REPRESENTATIVE GRUENBERG moved to adopt Amendment 2 [text provided previously].

CHAIR WEYHRAUCH objected for discussion purposes. He offered a first amendment to Amendment 2, as follows:

A municipality adopting such an ordinance may not seek funding from the state to cover a municipal budget shortfall caused by the adoption of the ordinance.

REPRESENTATIVE GRUENBERG said he had no objection. [The first amendment to Amendment 2 was treated as adopted.]

REPRESENTATIVE BERKOWITZ asked about the cost [of the ordinance]. He inquired if the amount would be \$200 a year [per officer].

REPRESENTATIVE GRUENBERG reiterated that it would be a very small amount - more "symbolic than anything else."

Number 0916

REPRESENTATIVE SEATON asked if the peace officer needed to be employed by the municipality [to qualify for the exemption]. He asked for the definition of peace officer.

REPRESENTATIVE GRUENBERG specified that peace officer would be defined by the ordinance.

REPRESENTATIVE SEATON explained he was trying to clarify who qualified for the exemption.

REPRESENTATIVE GRUENBERG clarified that the ordinance, not state law, would define peace officer. The local municipalities could limit [the exemption] to local peace officers, if they wished, or to local and state peace officers. He explained the intent is to give local municipalities the authority to decide.

REPRESENTATIVE BERKOWITZ pointed out that AS 01.10.060 specifies the definition of peace officer.

REPRESENTATIVE GRUENBERG said he still wants to leave the decision to the municipalities.

Number 1199

REPRESENTATIVE GRUENBERG moved a second amendment to Amendment 2 that read, "by a peace officer, as defined in the ordinance."

REPRESENTATIVE BERKOWITZ pointed out additional definitions of peace officer in Titles 11, 16, and 18.

Number 1230

CHAIR WEYHRAUCH asked if there was any objection to the second amendment to Amendment 2, which he clarified would add, "as defined in the ordinance" after "peace officer" on line 7 of Amendment 2. There being no objection, the second amendment to Amendment 2 was adopted.

Number 1280

CHAIR WEYHRAUCH asked if there was any further discussion of Amendment 2. He maintained his objection to Amendment 2 [as amended] and asked for a roll call.

A roll call vote was taken. Representatives Seaton, Lynn, Berkowitz, and Gruenberg voted in favor of Amendment 2 [as amended]. Representative Weyhrauch voted against it. Therefore, Amendment 2, as amended, was adopted by a vote of 4-1.

Number 1315

REPRESENTATIVE SEATON moved to report CSHB 241, Version 23-LS0851\A, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 241(STA) was reported from the House State Affairs Standing Committee.

HB 414-U.S.SENATE VACANCY/DEF OF POLITICAL PARTY

Number 1330

CHAIR WEYHRAUCH announced that the next order of business was HOUSE BILL NO. 414, "An Act relating to filling the vacancy in the office of United States senator, and to the definition of 'political party.'"

Number 1380

REPRESENTATIVE SEATON moved to adopt [Conceptual] Amendment 1, which read, [original punctuation provided, some formatting changed]:

(Delete existing Section 7 starting at page 3, line 15 and insert new Sec. 7.)

\*Sec.7. AS 15.60.010921) is amended to read:

(21) "political party" means an organized group of voters that represents a political program and that either nominated a candidate for governor who received at least three percent of the total votes cast for governor at the preceding general election; or if the office of United States senator was on the ballot, that nominated a candidate for United States senator who received at least three percent of the total votes cast for United [sic] senator at that general election, or that nominated a candidate for United States representative who received at least three percent of the total votes cast for United States representative at that general election or has registered voters in the state equal in number to at least three percent of the total votes cast for governor at the preceding general election;

Number 1385

REPRESENTATIVE SEATON explained that the purpose of [Conceptual] Amendment 1 is to allow greater flexibility for third parties to qualify [a candidate for governor]. He maintained that HB 414 made it more difficult [for the parties]. He explained that the wording in the old version of the bill says that, if there is a gubernatorial election, there has to be a candidate in that election, and the candidate has to have [received] 3 percent [of the total votes cast for governor at the preceding general election or has registered voters in the state equal in number to at least three percent of the total votes cast in the preceding election]. He said that was true for a Senatorial election, as well, and it didn't matter if [the party] receives "20 percent in the U.S. House race that was conducted at the same time." He stated that when there was not a gubernatorial or Senatorial election, [the party] would have to have a candidate for the U.S. House and would have to garner 3 percent to maintain [its] qualifications. He said he did not think that was the spirit in which [the bill] was offered. He said he had talked to the sponsor of HB 414 [House Judiciary Chair, Lesil McGuire], who supports proposed [Conceptual] Amendment 1.

REPRESENTATIVE SEATON explained that [Conceptual] Amendment 1 makes it so that at a gubernatorial election, a [party] with 3 percent, either in the governor's race, the Senatorial race, or the House of Representatives race, would qualify as a political party. He said he believes that is the spirit of [the bill], as offered in the current legal opinion.

Number 1512

REPRESENTATIVE GRUENBERG referred to the memo from Laura Glaiser, [Director, Division of Elections], and asked Representative Seaton if it provided clarification.

REPRESENTATIVE SEATON replied that he did not have the memo.

Number 1563

LAURA GLAISER, Director, Division of Elections, Office of the Lieutenant Governor, asked for clarification on [Conceptual] Amendment 1. She wondered who chooses which of the three [races] to use. She asked if only one of the 3 percent [numbers] was allowed. As the Director, she felt the language was vague and would be hard to administer.

Number 1607

REPRESENTATIVE SEATON replied:

The intent of having the "ors" in [Amendment 1] is that it is 3 percent of the governor's race, or 3 percent of the U.S. Senator race, if that's on the ballot at the same time, or 3 percent of the U.S. Representative race, if that's on the ballot. You wouldn't have to have all three; those are "ors," not "ands."

Number 1647

MS. GLAISER said that was fine as long as it was clear enough to administer and did not hurt the intent, which is to help a party seeking to gain status.

Number 1668

REPRESENTATIVE BERKOWITZ said he thought Representative McGuire indicated that the "Trust the People" initiative had been certified. He wondered if Ms. Glaiser knew if that was true.

MS. GLAISER replied that the Division of Elections has begun verifying signatures, but the process has not been completed and, therefore, cannot be certified by the lieutenant governor.

CHAIR WEYHRAUCH stated that Representative Berkowitz's question was not related to [Conceptual] Amendment 1.

REPRESENTATIVE BERKOWITZ asked if [Conceptual] Amendment 1 would have any impact on when parties get certified.

MS. GLAISER replied that it could. She gave an example of when the Green Party lost its status.

Number 1760

CHAIR WEYHRAUCH withdrew his objection to [Conceptual] Amendment 1. He asked if there were any further objections. There being none, [Conceptual] Amendment 1 was adopted.

Number 1784

REPRESENTATIVE GRUENBERG moved to adopt Amendment 2, labeled 23-LS1514\H.1, Kurtz, 2/4/04, which read:

Page 1, following line 3:

Insert a new bill section to read:

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

LEGISLATIVE INTENT. It is the desire of this legislature that the provisions of this Act, which is substantially similar to that proposed in an initiative petition, not be repealed for at least two years after the Act's effective date."

Page 1, line 4:

Delete "**Section 1**"

Insert "**Sec. 2**"

Renumber the following bill sections accordingly.

CHAIR WEYHRAUCH objected for discussion purposes.

REPRESENTATIVE GRUENBERG explained he had discussed Amendment 2 with Representative McGuire, who had no objections to the amendment. He said it provides legislative intent that the provisions of the Act, which are substantially similar to the

initiative, not be repealed for at least two years after the Act's effective date. He stated that he knows, technically, [the bill] could not bind future legislatures, but he wants to state the intent.

Number 1860

CHAIR WEYHRAUCH stated his reluctance to include a provision that might be illegal. He said he feels the public maintains a distrust for legislators who take such actions.

Number 1898

REPRESENTATIVE BERKOWITZ maintained there was nothing illegal about including a statement of intent.

CHAIR WEYHRAUCH said he understands where Representative Berkowitz is coming from, but he disagrees.

Number 1934

REPRESENTATIVE SEATON said he would object if the amendment was incorporated [within] the law, but emphasized he is not concerned about sending this bill to the floor with the intent included.

Number 1982

REPRESENTATIVE COGHILL said he objects to the amendment because he does not want to put anything into statute without the intent for it to be followed.

CHAIR WEYHRAUCH further explained his objection to binding future legislators by adding intent language to a bill instead of binding statutory language.

Number 2103

REPRESENTATIVE GRUENBERG further explained that his intent language was written to provide comfort to the general public, in an effort to show [the current] legislature's good faith. He said it is an important piece of legislation, whether it comes through the initiative or as a bill. The purpose was to assure the public that [this legislature] does not intend to repeal [this law] for at least two years after the Act's effective date.

CHAIR WEYHRAUCH asked for further discussion of [Amendment 2]. He maintained his objection and asked for a roll call.

A roll call vote was taken. Representatives Seaton, Lynn, Berkowitz, and Gruenberg voted in favor of Amendment 2. Representatives Coghill, Holm, and Weyhrauch voted against it. Therefore, Amendment 2 passed by a vote of 4-3.

Number 2200

CHAIR WEYHRAUCH referred to the memo from Ms. Glaiser and asked if there were further questions for her. There were none, so Chair Weyhrauch thanked her for her participation.

Number 2248

CHAIR WEYHRAUCH asked if there was any objection to moving HB 414, as amended, out of committee with individual recommendations [and the accompanying fiscal notes].

REPRESENTATIVE BERKOWITZ objected, stating that the bill usurps the initiative that 50,000 Alaskans signed. He said he believes [the bill] is based on political motivation, and he hopes that this legislature will show some integrity and consistency, and not pass legislation that many of the members have repeatedly voted against in the past. He emphasized that the matter "has been taken from our hands and now belongs to the people."

CHAIR WEYHRAUCH renewed the offer [he made previously at the January 27, 2004 meeting to hear Representative Berkowitz's bill, which is also on this issue].

REPRESENTATIVE BERKOWITZ said he appreciates Chair Weyhrauch's offer but doesn't care whether his bill moves or not. He stated for the record that, in the past, he has asked for hearings on this particular issue many times, only to have the requests denied. He repeated again that the issue "belongs to the 50,000 people."

Number 2411

REPRESENTATIVE SEATON objected to [Representative Berkowitz's] characterization, saying that this is a new legislature and the majority of the members of the committee are new. He said that past actions do not bind [the current committee from] considering good public policy. He stated that the bill is perfectly in alignment with the statutes and the Constitution of

the State of Alaska, and that it is within the purview [of the committee] to pursue good public policy. He stated he believes this bill is good public policy, and he supports it for that reason.

Number 2444

REPRESENTATIVE COGHILL reiterated that it is well within [the committee's] right. He said, "To characterize it as losing our right, I think, is a mischaracterization." He stated that public policy could be "hammered out here," and said he thought that that was what was going on.

Number 2475

A roll call vote was taken. Representatives Coghill, Lynn, Holm, Seaton, and Weyhrauch voted in favor of HB 414, as amended. Representatives Berkowitz and Gruenberg voted against it. Therefore, CSHB 414(STA) was reported out of the House State Affairs Standing Committee by a vote of 5-2.

HB 366-RAT RACING CHARITABLE GAMING

Number 2532

CHAIR WEYHRAUCH announced that the next order of business was HOUSE BILL NO. 366, "An Act relating to rat racing charitable gaming; and providing for an effective date."

Number 2537

The committee took an at-ease from 8:48 a.m. to 8:49 a.m.

Number 2590

REPRESENTATIVE BILL STOLTZE, Alaska State Legislature, sponsor of HB 366, said [HB 366] is an important issue to Palmer, the community he represents. He said, from the time he was a kid, he remembers the rat race at the [Alaska] State Fair. He mentioned, as member of the Elks, he has learned that "good things can come from gambling, if done the right way." He said the bill legitimizes historical gambling.

Number 2704

REPRESENTATIVE GRUENBERG moved to report HB 366 out of committee with individual recommendations and the accompanying fiscal

note. There being no objection, HB 366 was moved out of the House State Affairs Standing Committee.

HB 297-WILDFIRES AND NATURAL DISASTERS

Number 2735

CHAIR WEYHRAUCH announced that the next order of business was HOUSE BILL NO. 297, "An Act relating to wildfires and other natural disasters."

Number 2746

REPRESENTATIVE SEATON moved to adopt HB 297, for discussion purposes. There being no objection, it was so ordered.

Number 2750

REPRESENTATIVE BILL STOLTZE, Alaska State Legislature, testified as the sponsor of HB 297. He said the issue of wildfires and other natural disasters was brought about because of occurrences in the Matanuska-Susitna (Mat-Su) Valley: Miller's Reach Fire, Lazy Mountain [wildfire], and other natural disasters. He said people were put in the position of not being able to protect their homes. He said his goal is to try to provide some mechanism to allow people to protect their property, knowing that they accept risks and responsibilities while doing so. He mentioned many areas that need protection.

Number 2862

CHAIR WEYHRAUCH announced that he does not intend to move the bill today.

Number 2888

REPRESENTATIVE HOLM questioned why there is an indeterminate fiscal note from the Office of Public Advocacy.

REPRESENTATIVE STOLTZE said he doesn't understand why it happened.

Number 2941

CHAIR WEYHRAUCH voiced a concern that the bill be referred to [the House Judiciary Standing Committee] because it does create a crime. He explained that often when a crime is committed, the

Office of Public Advocacy is brought in to defend the accused. He asked for testimony from the Department of Law on this issue.

**TAPE 04-13, SIDE B**

Number 2948

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

Number 2932

REPRESENTATIVE GRUENBERG asked Ms. Voigtlander to speak about the wording in the fiscal note from the Department of Law, referring to the sentence, "The bill also does not speak to any risk transferring to the resident in the event of property damage rather than injury or death to other persons or responders endangered by a resident's entry or reentry into an area threatened by wildfire or natural disaster." He asked that the language be considered for an amendment to the bill.

Number 2910

MS. VOIGTLANDER said she would speak about Section 2 of the bill, and not Section 1, because she represents the Civil Division of the Department of Law. She addressed the liability issues of the bill. The first issue was about the way the bill sets out a test for the emergency provider to use to determine whether the person seeking to remain in a area being evacuated or wanting to reenter an area being evacuated is capable of making a reasonable and informed decision. The bill also requires that the person reentering or evacuating be advised of certain risks, she said. She noted that, from a liability standpoint, a problem could arise if there were to be a question later on about whether someone had been capable of making a reasonable or informed decision, or had been advised of the statute requirements. She said paperwork would be needed to provide this information in the form of a written report by the emergency provider. The emergency provider would need something to refresh his/her recollection, if there was a lawsuit two or three years down the road. She mentioned the statute of limitations for such a lawsuit would probably be two years.

Number 2787

MS. VOIGTLANDER stated that "the test that is applied here" is not unlike what law enforcement [officers] face when there's a challenge to Miranda Rights with a criminal defendant. The question is whether the person was capable at the time of waiving his/her Miranda Rights and whether they were advised of their rights. The police use a written form for this information.

Number 2750

MS. VOIGTLANDER stated that the breadth of immunity in Section 2 (b) needs to be broader. She said this section only includes bodily injury or death, but omits property damage. There are concerns about claims from a neighbor property owner who might claim, at a later date, that a person who was let back into an evacuated area did damage to the neighbor's property. She recommended the breadth of immunity be expanded to include property damage.

MS. VOIGTLANDER said the expansion [of immunities] would be more compatible with language in AS 41.15.045, AS 41.17.081, and AS 26.20.140, which have to do with firefighting immunities and civil defense immunities.

Number 2653

REPRESENTATIVE SEATON wondered if Ms. Voigtlander could provide written comments to the committee.

MS. VOIGTLANDER replied that she would.

REPRESENTATIVE GRUENBERG said these ideas bring up some very important implications for the legislature to consider. He said the general issue in this bill is about what to do concerning residents in the areas of natural disasters. He said that in addition to [the House Judiciary Standing Committee] being interested in this bill, the [Department of Military & Veterans' Affairs (DMVA)] would be interested, because the offices of emergency preparedness are coordinated through DMVA, as well as civil defense issues. He added that the House Special Committee on Military and Veterans' Affairs would also have an interest in the bill. He gave an example of relatives who believed that children were trapped in a rubble and didn't have time to explain - they just wanted to rescue the kids. He said he'd hate to see someone without malicious intent criminalized for a rescue. He repeated that it is an important issue.

Number 2541

CHAIR WEYHRAUCH asked if this bill is connected to the Big Lake Fire.

Number 2530

REPRESENTATIVE STOLTZE said there were probably implications [from Big Lake], but probably more from the Lazy Mountain incident. He noted that he had waited to propose the bill until litigation from the Big Lake-Miller's Reach Fire was over, because he was sensitive to the issues surrounding the litigations.

Number 2460

CHAIR WEYHRAUCH asked if Section 2 (b) would give statutory immunity to [emergency providers] if they are negligent, or if the discretionary function immunity doctrine would still apply. He cited an example of a policeman allowing a teenager into [the evacuated area] and the teenager ending up getting injured.

Number 2410

MS. VOIGTLANDER replied that Representative Weyhrauch's question raises another issue. She explained that the bill does not address the age of the person wanting to enter the evacuation area. She asked how children would be dealt with.

MS. VOIGTLANDER, in response to Representative Weyhrauch's question regarding Section (2) (b), said if there is a statute, such as this one, which "gives you a cookbook" of the officers' duties and obligations, then it may no longer be a discretionary issue. She said it is difficult to anticipate whether or not an individual officer may have discretionary function immunity. The test is whether or not the officer was acting without malice, had no set protocol he/she was supposed to file, and was exercising personal judgment, deliberation, and discretion. The broader test of discretionary function immunity is whether there was a policy decision versus an operational decision. She said the language addresses the local and state government, as well as individuals who would be on the line. She said [as it reads now] it is limited to death or personal injury. She added that people may argue that derivative suits may be independent suits, and a spouse may be able to make a claim if something happened to a family member who was allowed to return [to an evacuated area].

Number 2270

CHAIR WEYHRAUCH questioned if, in Section 1 (a) (2), "makes a false statement" means a "false written or recorded statement" like it appears in Section 1 (a) (1).

Number 2246

MS. VOIGTLANDER reminded Chair Weyhrauch that she could not address issues in Section 1 because she was from the Civil Division. She deferred to the Criminal Division for that answer.

CHAIR WEYHRAUCH stated his belief that the House Judiciary Standing Committee would be a better committee to review this bill. He said he is trying to imagine this bill affecting real life situations and examples where people would need to get into or out of evacuation areas. He said he does not want to subject public officials, who are "trying to do good," to liability.

REPRESENTATIVE STOLTZE agreed that it is an imprecise and awkward process trying to protect people from themselves.

Number 2087

REPRESENTATIVE GRUENBERG mentioned the title of the bill includes many natural disasters, but asked for consideration of other disasters that might occur in a high crime area. He gave an example of an evacuation of a building because of a shootout. He recommended considering these kinds of situations in the bill.

Number 2027

REPRESENTATIVE LYNN gave an example of a terrorist attack evacuation as another kind of unnatural disaster and said it would not be covered under this bill. He added, "This wouldn't cover a World Trade Center-type situation."

REPRESENTATIVE STOLTZE stated the reference to children [being allowed into an evacuation area] needs to be considered. He related feeling a sense of pride as a child when he was allowed to [be available to help] his parents save their house during [a flood].

REPRESENTATIVE GRUENBERG gave an example of when a school needed to be evacuated, and urged consideration of all disasters.

Number 1908

CHAIR WEYHRAUCH announced that HB 297 was heard and held.

HB 322-MUNI INITIATIVE AND REFERENDUM ELECTIONS

CHAIR WEYHRAUCH announced that the final order of business would be HOUSE BILL NO. 322, "An Act requiring a municipal initiative or municipal referendum to be submitted to the voters at the next regular election occurring not sooner than 60 days after certification of the initiative or referendum petition." He stated that Version D was before the committee.

Number 1876

REPRESENTATIVE SEATON, co-sponsor of the bill, moved to adopt HB 322, for discussion purposes. There being no objection, it was so ordered.

REPRESENTATIVE SEATON explained the purpose of HB 322 is to clarify and streamline the [initiative referendum] process for local governments so that they don't have to incur huge expenses. The bill would allow them to hold initiative referendums and elections on the following municipal election. He added that expenses can be extraordinary on Second Class cities and boroughs.

REPRESENTATIVE SEATON explained that recently the Fairbanks North Star Borough held a special election to eliminate emission that cost \$52,000. He said the election could have been held at the next general election without the expense. He said that first class and home rule cities and boroughs would not be affected by this bill. He added that the bill also would provide for an extra 15 days for the city clerks to prepare for the election.

Number 1725

REPRESENTATIVE HOLM, co-sponsor of HB 322, said the issue is much greater than the cost [of \$52,000] and that there are many more factors which [Fairbanks North Star Borough Clerk], Ms. Drexler, will speak to.

Number 1680

LINDA MURPHY, Borough Clerk, Kenai Peninsula Borough, encouraged support of HB 322 as written, removing the mandate that a municipality conduct a special election in response to an initiative or referendum petition. She agreed with Representatives Seaton and Holm that special elections are expensive for municipalities, many of which are experiencing financial difficulties. In addition, she added that it is often difficult to recruit election workers for special elections during certain times of the year. Many workers are retired and spend time outside of Alaska, making it especially difficult to find workers during January and February. She also pointed out that special elections attract fewer voters than regular elections, which increases the possibility that the results do not reflect the true will of the community.

Number 1575

REPRESENTATIVE GRUENBERG said the bill sounds non-controversial and he is prepared to support it.

Number 1536

MONA L. DREXLER, CMC, Borough Municipal Clerk, Fairbanks North Star Borough, spoke strongly in favor of HB 322. She spoke in support of the right of citizens to petition their government to add, change, amend, or repeal any law. With HB 322, this [right] would still occur, it just would not occur in a special election at various times of the year, she said. She spoke about the recent North Star Borough election where the people were not able to get their petition signatures in time to make the October ballot. They had 90 days to get the signatures, which they did, and then they went to ballot on January 27. She explained that in order to conduct that election she had to dedicate one staff member full time for 25 days to seek election workers because of the problem of finding workers at off-times of the year. She said she also had to relocate two precincts and notify all of the registered voters in those precincts. This caused a lot of confusion for the voters, she said.

Number 1381

MS. DREXLER reported that, traditionally, voter turnouts are lower in special elections. She emphasized how angry the voters were about the special election in January. She stated that HB 322 is a simple fix for second class boroughs and general law municipalities. Ms. Drexler concluded by saying that [Jim

Whitaker], the mayor of Fairbanks North Star Borough (FNSB) and Presiding Officer Bartos have sent a letter in support of the bill [included in the committee packet]. She noted that the FNSB and the Alaska Association of Municipal Clerks would both be addressing resolutions in support of HB 322 in the near future.

Number 1265

CHAIR WEYHRAUCH asked whether this bill would thwart the initiative process by delaying the opportunity for voters to vote on an issue. He wondered if, by the election date, the public would forget the issue.

MS. DREXLER replied that October elections [focus on] candidates and other ballot issues, and there is more information all in one place pertaining to the issue. She said it is up to the people who initiate the petition to continue to get their word out. She reiterated how few people actually vote in the special elections.

REPRESENTATIVE GRUENBERG said he is comfortable with this bill. He opined that the initiative process must be balanced with the cost of government.

Number 1078

REPRESENTATIVE SEATON noted that the Alaska Municipal League supports HB 322, as seen by the letter in the committee packet.

Number 1064

REPRESENTATIVE HOLM moved to report HB 322 out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HB 322 was reported from the House State Affairs Standing Committee.

#### **ADJOURNMENT**

There being no further business before the committee, the House State Affairs Standing Committee meeting was adjourned at 9:33 a.m.