ALASKA STATE LEGISLATURE
HOUSE STATE AFFAIRS STANDING COMMITTEE
March 8, 2004
8:07 a.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

Representative Jim Holm, Vice Chair

COMMITTEE CALENDAR

HOUSE BILL NO. 466
"An Act relating to investments of Alaska permanent fund assets; and providing for an effective date."

- MOVED CSHB 466(STA) OUT OF COMMITTEE

HOUSE BILL NO. 439
"An Act relating to the authority to take oaths, affirmations, and acknowledgments in the state; relating to notaries public; relating to fees for issuing certificates with the seal of the state affixed; and providing for an effective date."

- HEARD AND HELD

HOUSE BILL NO. 520
"An Act relating to the expenses of investigation, hearing, or public advocacy before the Regulatory Commission of Alaska, to calculation of the regulatory cost charge for public utilities and pipeline carriers to include the Department of Law's costs of its public advocacy function, to inspection of certain books and records by the attorney general when participating as a party in a matter before the Regulatory Commission of Alaska; and providing for an effective date."

- HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 466
SHORT TITLE: PERMANENT FUND INVESTMENTS
SPONSOR(S): RULES BY REQUEST OF LEG BUDGET & AUDIT

02/16/04	(H)	READ THE FIRST TIME - REFERRALS
02/16/04	(H)	STA, FIN
02/26/04	(H)	STA AT 8:00 AM CAPITOL 102
02/26/04	(H)	Scheduled But Not Heard
03/02/04	(H)	STA AT 8:00 AM CAPITOL 102
03/02/04	(H)	Heard & Held
03/02/04	(H)	MINUTE(STA)
03/08/04	(H)	STA AT 8:00 AM CAPITOL 102

BILL: HB 439
SHORT TITLE: OATHS; NOTARIES PUBLIC; STATE SEAL
SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

02/05/04	(H)	READ THE FIRST TIME - REFERRALS
02/05/04	(H)	STA, JUD, FIN
03/04/04	(H)	STA AT 8:00 AM CAPITOL 102
03/04/04	(H)	<Bill Hearing Postponed to Mon. 3/8/04>
03/08/04	(H)	STA AT 8:00 AM CAPITOL 102

BILL: HB 520
SHORT TITLE: REGULATORY COMMISSION OF ALASKA
SPONSOR(S): STATE AFFAIRS

02/23/04	(H)	READ THE FIRST TIME - REFERRALS
02/23/04	(H)	STA, L&C, FIN
03/05/04	(H)	STA AT 8:00 AM CAPITOL 102
03/05/04	(H)	<Bill Hearing Postponed to Mon. 3/8/04>
03/08/04	(H)	STA AT 8:00 AM CAPITOL 102

WITNESS REGISTER

ROBERT D. STORER, Executive Director
Alaska Permanent Fund Corporation (APFC)
Department of Revenue
Juneau, Alaska
POSITION STATEMENT: Testified on behalf of the department during the hearing on HB 466.

RONALD W. LORENSEN, Attorney at Law
Simpson, Tillinghast, Sorensen & Longenbaugh, P.C.
Juneau, Alaska
POSITION STATEMENT: Testified during the hearing on HB 466.

ANNETTE KREITZER, Chief of Staff
Office of the Lieutenant Governor
Juneau, Alaska
POSITION STATEMENT: Outlined the sectional analysis and its relation to a committee substitute to HB 439.

SCOTT CLARK, Notary Commission Administrator
Office of the Lieutenant Governor
Juneau, Alaska
POSITION STATEMENT: Discussed changes to HB 439 and answered questions from the committee.

DANIEL PATRICK O'TIERNEY, Senior Assistant Attorney General
Commercial/Fair Business Section
Civil Division (Anchorage)
Department Of Law
Anchorage, Alaska
POSITION STATEMENT: Addressed changes proposed in the committee substitute during the hearing on HB 520.

ACTION NARRATIVE

TAPE 04-31, SIDE A
Number 0001

CHAIR BRUCE WEYHRAUCH called the House State Affairs Standing Committee meeting to order at 8:07 a.m. Representatives Seaton, Coghill, Lynn, Gruenberg, and Weyhrauch were present at the call to order. Representative Berkowitz arrived as the meeting was in progress.

HB 466-PERMANENT FUND INVESTMENTS

Number 0080

CHAIR WEYHRAUCH announced that the first order of business was HOUSE BILL NO. 466, "An Act relating to investments of Alaska permanent fund assets; and providing for an effective date."

CHAIR WEYHRAUCH mentioned an amendment regarding allowing the [Alaska Permanent Fund Corporation (APFC)] board to make loans of fund assets to the Alaska Natural Gas Development Authority. He asked Mr. Storer for his feedback.

Number 0144

ROBERT D. STORER, Executive Director, Alaska Permanent Fund Corporation (APFC), Department of Revenue, responded as follows:

> ... The board has not discussed the merits of this issue, so I would just make a couple observations. One is [that], if in fact the amendment were to go through, it would definably be a less liquid asset; but how liquid or how the instrument [would] look ..., I couldn't speak to right now. But one of the things that we discussed, Mr. Chair, was the fact that as we diversify portfolios, we own a lot of stocks. We had discussion weeks ago about ... filling the basket. And we own over 4,000 stocks. And I mention this because, in our publicly traded equity portfolio - very liquid, large company names - our largest holding's probably Pfizer or [General Electric Company], and it's probably around $250 million in value; that's in a $28 billion fund. So, you can see the less liquid the ... investment instrument, the less money one would be willing to commit to. So, it's a practical matter. If it met the prudent investor rule, if it met our diversification criteria, probably the most we would be able to invest in passing those hurdles would be $50 maybe $100 million - tops. We do have other ability to make that type [of] investment, if it's appropriate for the permanent fund, but that would, of course -- the difference being giving us explicit direction to at least consider such an investment.

Number 0290

CHAIR WEYHRAUCH asked if the [APFC] makes investments in mortgages.

MR. STORER responded that [APFC's] only real mortgage exposure currently is through the publicly traded mortgage-backed security market. He noted that in the 80s, the permanent fund did have a direct mortgage program, perhaps exclusively, through Alaska banks for Alaska mortgages. However, those securities were packaged and sold to the banking industry. Mr. Storer said there are some loans that are made on Alaska property, where the [APFC] has invested. He cited the Frontier Building in Anchorage as an example. He concluded, "So, there are some loans made to real estate assets here in Alaska."

Number 0359

CHAIR WEYHRAUCH [moved to adopt] Amendment 1, which read as follows:

> Page ____, line ____:
> Insert new bill sections to read:
> "*** Sec.____.** AS 37.13.120 is amended by adding a new subsection to read:
> (q) In addition to investments made under (g) of this section, the board may make loans of fund assets to the Alaska Natural Gas Development Authority for use in developing North Slope natural gas resources and in transporting the natural gas. The amount and terms of each loan made under this subsection shall be established by the board.
> *** Sec.____.** AS 41.41 is amended by adding a new section to article 2 to read:
> **Sec. 41.41.205. Loans from permanent fund.** The authority may enter into loan agreements with the Alaska Permanent Fund Corporation under AS 37.13.120(q). Money from a loan may be used only to carry out one or more of the purposes listed in AS 41.41.010(a)(1) - (4)."

Number 0363

REPRESENTATIVE SEATON objected for discussion purposes.

CHAIR WEYHRAUCH explained that the first section of Amendment 1 would allow the [APFC] board to make loans of fund assets to the Alaska Natural Gas Development Authority, while the second section of Amendment 1 would allow the authority to have loan agreements with the [APFC] "only if money so loaned by the fund would meet the fund's fiduciary duties and obligations currently in statute." He indicated that the amendment would provide some "legal comfort" to the authority. He interpreted Mr. Storer's testimony to mean that the [APFC] board has not taken a position for or against [Amendment 1]. He continued:

> It may be a less ... amount of money that could be available to the fund if it needed those liquid cash assets, but it still would subject any loan application to its own fiduciary needs and its own investment criteria.
>
> And I believe that, in making the amendment, what I wanted to do is simply have that pool of funds

available to the authority if it can meet the statutory obligations that the fund already has to obtain funds. And that's what's behind the amendment.

Number 0558

REPRESENTATIVE LYNN stated that although he understands that the investments in the fund need diversification, he thinks that investing in Alaska is really "investing in ourselves." He said he thinks that "needs to be included in the list of things that [are] possible where the permanent fund can invest in."

CHAIR WEYHRAUCH responded that there's no clear prohibition on the ability of the Alaska Natural Gas Development Authority "to already apply for funds." [Amendment 1] simply clarifies in statute that the authority may apply "as a source of funds." He explained that there would be no obligation; [Amendment 1] provides "a legal path to do it."

Number 0608

REPRESENTATIVE GRUENBERG asked if Amendment 1 would provide any additional authority to [the APFC's existing authority].

MR. STORER stated his assumption that any loan to the authority would be illiquid and below investment grade. He stated, "We do have that authority now through our 5-percent basket clause. If we were given ... explicit direction by statute, then we would not need to apply the basket clause to that investment."

REPRESENTATIVE GRUENBERG directed Mr. Storer's attention to the first part of Amendment 1. He asked Mr. Storer if that would "take this out of the basket clause."

MR. STORER answered that's correct.

REPRESENTATIVE GRUENBERG noted that [part of AS 37.13.120(g)] read as follows:

> (g) Subject to the limitations contained in this section, the board may invest fund assets at the competitive national market rates or prices that are applicable to each investment only in

REPRESENTATIVE GRUENBERG asked, "Would this make this particular loan an exception to that requirement?"

MR. STORER answered that the prudent investor rule would still have to be followed. He noted, "We also have other statutes that say ... invest in Alaska if the rate of return is comparable for that same level of risk found elsewhere." He stated that the [APFC] would use those standards in evaluating any investment. He suggested, "The difficulty in this may or may not be to find a comparable investment opportunity to evaluate it, but we would strive to compare this opportunity against other alternatives in our analysis."

CHAIR WEYHRAUCH told Representative Gruenberg that it was not his intent to "force the hand of the fund to invest in the authority," but simply to provide legal clarity.

REPRESENTATIVE GRUENBERG indicated that the current limit is 5 percent under the basket clause, but [Amendment 1] would allow a loan to the authority in excess of that. He clarified, "It would be in addition to the 5 percent."

MR. STORER said that's correct.

REPRESENTATIVE GRUENBERG asked how that would affect the present policies of the board, regarding the amount they loan out.

MR. STORER responded that that is a difficult question to answer, because he is not certain what "the nature of the loan would look like." He continued as follows:

> Unless it fell within our real estate policies in some way, it would probably be a stand-alone policy, which would mean that we would have to develop unique criteria and ... qualities to ... identify the investment.
>
> If what I stated was true, and ... it was $50 million to $100 million, my assumption [is that] it would be significantly less liquid than other alternatives, perhaps, but that it would ... have a nominal effect on the return. If it was $50 million in a $28 billion portfolio, it would have, probably, a nominal affect - good or bad - on the return for the fund.

Number 0965

REPRESENTATIVE SEATON noted that Mr. Storer had previously stated that "it would be below investment grade." He said he is trying to figure out the basis for that.

MR. STORER prefaced his response by stating that it is a little difficult [to explain], without evaluating what the specific loan would be. He said investment grade securities typically are publicly traded securities, but they receive a rating from the nationally recognized rating agencies. He gave some examples. He said the [APFC] buys "investment grade," which must be rated as such from Moody's or Standard & Poor's [bond rating agencies]. He stated his assumption that "one would not seek a rating from Moody's or Standard & Poor's, because you're not taking it out on the market." He noted that there's a cost associated to that rating. He added, "You're simply coming to the permanent fund to make an evaluation on its own merit."

CHAIR WEYHRAUCH stated his understanding that "this is not the same kind of a structural investment the fund would make; this would be simply the ... legal ability to analyze a loan agreement from the authority to develop whatever the authority believes it needs to get developed, and look to the fund for a potential source of cash, and not obligate either one to invest in it."

Number 1061

REPRESENTATIVE SEATON removed his objection [to Amendment 1].

CHAIR WEYHRAUCH announced that, there being no further objection, Amendment 1 was adopted.

Number 1094

REPRESENTATIVE GRUENBERG indicated that he had sent a letter containing questions to Mr. Storer. He asked Mr. Storer if he would supply the answers to those questions in writing to the members of the committee.

MR. STORER answered yes. In response to a request from Chair Weyhrauch, he agreed to also supply those answers to the House Finance Committee.

Number 1151

REPRESENTATIVE GRUENBERG pointed to the language beginning on [page 1, line 14] of the bill, which read as follows:

> Notwithstanding (g)**, (h), and (j)** of this section or the percentage investment limitations under (i) of

this section and so long as doing so satisfies the prudent-investor rule under (a) of this section, the board may invest up to **15** [FIVE] percent of the total assets of the fund in either or a combination of the following:

REPRESENTATIVE GRUENBERG, regarding subsections (h) and (j), asked Mr. Storer to describe the meaning and implication of "that."

MR. STORER paraphrased subsection (h), which read as follows:

(h) The board may enter into future contracts for the sale of investments purchased under (g) of this section, or for the sale of nondomestic currencies, only for the purpose of hedging an existing equivalent ownership position in these investments or as a means of implementing asset allocation strategies.

Number 1249

MR. STORER stated that there are some strategies within the hedge fund investment arena, where "you may enter into futures contracts or forward contracts." He stated, "We believe that ... cleaning it up or acknowledging this is consistent with the original intent of the basket clause." He qualified that that does not mean that the [APFC] would accept considerably more risk. He explained, "In fact, going before the board this week, we're recommending a policy that's very conservative, that will have the targeted risk of a bond portfolio, or less."

MR. STORER paraphrased subsection (j), which read as follows:

(j) The assets of the fund may not be used for the purchase of debt instruments of a corporation or other entity upon which any regular interest payment has been defaulted within five years before purchase, except debt instruments never in default but which have been outstanding for less than five years.

MR. STORER continued as follows:

This, actually, is a piece of legislation that you saw a lot in the 70s when the permanent fund statutes were created. My prior employer in the 70s and early 80s -

> the [Los Angeles] County Employees' Retirement System - had that same criteria. Virtually everyone has gone away from that approach. How ... a corporation uses debt is different than how corporations use the bank (indisc.), because courts are a lot different than they were 25 years ago. But, embedded in both, perhaps, hedge funds, but more likely in a private equity portfolio is a subclass called "buyouts." And buyouts are where you go in and invest in a distressed company, and then you financially engineer the company to earn significant returns in the future. And so, this is a case where that would probably apply, within a private equity discipline.

Number 1468

REPRESENTATIVE GRUENBERG asked, "But I don't think you're planning on doing that with the permanent fund, are you?"

MR. STORER replied as follows:

> We are ... about to implement a small private equity portfolio. So, embedded in that policy is the potential for investing in a company that may have not paid debt in the last five years. But it's very possible that there's investment-grade debt, that by virtue of upgrades would meet the fund's criteria, but was in some form of distress and managed to work its way out where we could potentially take advantage of that, as well. And there, you have a bond that would be an investment grade rated by national rating agencies and still not be applicable to our fund.

Number 1518

REPRESENTATIVE GRUENBERG directed the committee's attention to page 2, line 3. He mentioned that he and Representative Lynn had conversed regarding the percentage.

CHAIR WEYHRAUCH questioned whether 15 percent would be an adequate amount.

MR. STORER responded that the [APFC] has held a number of discussions with the Department of Law regarding how much the basket clause can be increased. He said, "While not seeking a legal opinion, we're under the impression they're comfortable with increasing the basket clause to 15 percent, but any more

might create a look ... at the constitution, which says designated by law." He said the [APFC's] ultimate goal would be to "look like other public funds" and follow the prudent-investor rule.

Number 1584

REPRESENTATIVE LYNN suggested that 10 percent would be more conservative than 15 percent, and he asked Mr. Storer how the 15 percent was chosen.

MR. STORER responded as follows:

> Even with the 15 percent constraint, ... by statute and constitution, that would make us one of the most conservatively public funds in the country. So, I've suggested even increasing the limits of 15 percent would still put limitations on the fund.
>
> In the [Senate State Affairs Standing Committee], I was asked a question about 10 percent, and the answer is: If we remove the 15 percent down to 10, that would give the fund the flexibility probably over the next couple years to manage the assets in the direction that we would like to go; but we would be back to ask for an extension beyond that point.
>
> Keep in mind there's two reasons for this objective. One is the immediate one, which is ... [that] there are limits in equities in using the basket clause, so if ... the strategies are as successful as we hope, we will be forced to arbitrarily liquidate securities, not because of the markets ... [or] asset allocations, but because of statute. Increasing from 5 [percent] to 10 [percent] would expand that flexibility over the next couple years.
>
> The other reason to go to 15 percent, or even more, ultimately, is just to give future administrators the flexibility to address [the] ever-changing dynamic investment world.

Number 1700

CHAIR WEYHRAUCH asked how [the legislature] would know whether 15 percent was the appropriate figure, without specifically

asking. He asked if the public would be advised through the [APFC's] annual reports.

MR. STORER described the [APFC's] process as a rigorous one. The investment process begins with the asset allocation decision. There are investment policies that develop the standard, which are actually tighter than statutes, and ... they are publicly passed by resolutions, after public debate. Next, the strategies are implemented.

MR. STORER indicated that the APFC produces an annual report and reports to the legislature its investment returns quarterly. There is a website listing all [the APFC's] policies and its minutes, once they're adopted. He noted that the APFC posts its returns on a monthly basis, not only by asset class, but also by every discipline and every manager. He added, "And so, one could follow as closely as they wanted to."

REPRESENTATIVE LYNN suggested examining "that figure" in two years.

Number 1792

REPRESENTATIVE SEATON noted that Mr. Storer had said that "you would be having to get out of investments, not by asset allocation, but by statute." He said, "If we're increasing your flexibility to add some to your asset allocations, I'm not quite understanding how that allocation isn't causing you to redistribute your funds."

MR. STORER explained:

> If the board adopts a recommended asset allocation, we will be very close to our statutory constraint, which means that as the assets appreciate, we will have to reduce our exposure - not because of an asset allocation [decision] ... [or] market decision, but simply because, by virtue of success, we will have reached our statutory limitations, which then will force us to rebalance.

Number 1871

REPRESENTATIVE SEATON asked if the current fund allocation - which he said he thinks has total equities of "53 percent, plus or minus 5 percent" - includes the 5 percent basket [clause].

MR. STORER responded, "That's the target, and ... our statutory limit is 55 percent on equities, and we are about 58 percent right now, so we are currently using some of the basket clause that's remaining within our target." He continued as follows:

> I don't know if they provided a bar chart of how we propose to implement the use of the basket clause, but if you have that before you, you'll see that right now we're not using all of the basket clause, and the only degree we are using it, it's in publicly traded equities. Recommending that we start investing ... 1 percent of our assets in a hedge-fund program - that can be a bit controversial. I'll note that ... early in this presentation ... we're actually going to make it very conservative so it has a targeted risk of below the bond market. And we are in the throes of finalizing our private equity policies; at this board meeting we'll start implementing that strategy. That will take a few years to put to work. So, probably by sometime [in] the next year to year and a half, we will have essentially ... used all of the basket clause, with some cushion for appreciation of the assets.

MR. STORER, in response to a question from Representative Seaton, clarified that "theoretically, one could have a maximum exposure to 70 percent in the publicly traded equity market"; however, as a practical matter, he said that won't happen. He revealed that no fund that he has ever overseen has ever invested more than 60 percent in the U.S. equity market.

Number 1983

REPRESENTATIVE GRUENBERG offered his understanding that the [Senate State Affairs Standing Committee] "passed it out with a 10 percent, rather than a 15 percent."

MR. STORER said that's correct.

REPRESENTATIVE GRUENBERG offered his understanding that the history of AS 37.13.120 is that over the last 20-25 years, the legislature has slowly eased the restrictions incrementally.

MR. STORER concurred. He mentioned the changes that have occurred over time to allow more investment flexibility to the permanent fund. He continued as follows:

> In ... July of '83, we funded our first equity manager; that was the product of increased investment flexibility prior to that. And so, the ... legislature has given increased flexibility when we've asked for it, and I believe that the permanent fund has always used that flexibility judiciously. I would note that we were given permission four years ago to use the basket clause, and, in fact, we are only just now beginning to use the basket clause. So, when we are given permission, the history of the permanent fund is that you use that privilege or that authority very judiciously and make informed decisions.

Number 2056

REPRESENTATIVE GRUENBERG indicated he wanted Mr. Storer to confirm that the history of the fund was that it had been "slowly loosened to provide you with flexibility."

MR. STORER answered that's correct. He directed the committee's attention to page 4 of "that initial presentation" that shows how the asset allocation of the permanent fund has changed over time, beginning with the pure bond fund in the late 70s and early 80s. He offered his understanding that in 1980, the fund didn't hold a bond with a maturity greater than 2 years. The asset allocation has been incrementally increased over time in various asset classes. He stated, "The history of the permanent fund is one of caution and conservatism."

Number 2127

REPRESENTATIVE LYNN [moved to adopt] Amendment 2, which read as follows:

> Page 2, line 3
> Delete "**15**"
> Insert "10"

CHAIR WEYHRAUCH objected.

REPRESENTATIVE LYNN reiterated his previous comment that it is a conservative fund and he thinks that [changing to 10 percent] follows the history of incremental changes. He stated that he has no problem with [the idea of] revisiting the issue in the future. He concluded, "So, I would recommend also, to go along with the other body, that we change it to 10 percent."

Number 2188

REPRESENTATIVE BERKOWITZ said, "We revisit this thing all the time." He explained the reason why is that putting a specific number in statute is inherently not a conservative method of investment, because any specific number is a deviation from the reasonably prudent investor rule; it takes away the flexibility that a reasonably prudent investor would normally exercise. He offered his understanding that the statutes that govern private investments are in Title 13, and he noted that in those statutes there are no numerical restrictions on the amount or type of investment - they just outline the prudent-investor rule. He stated that it's only in Title 37 that false conditions are imposed on the [APFC] that are restrictive in a way that works against reasonably prudent investment.

Number 2200

REPRESENTATIVE BERKOWITZ spoke against Amendment 2. He said, "I think the more we can do to expand the basket, the more we allow the fund the flexibility to get closer and closer to what a reasonably prudent investor would truly do, instead of restricting, based on some arbitrary number."

Number 2220

RONALD W. LORENSEN, Attorney at Law, Simpson, Tillinghast, Sorensen & Longenbaugh, P.C., opined that Mr. Storer had accurately and succinctly described the issue regarding the basket clause. He suggested that there may be a potential maximum size that the basket clause could not exceed, but [that size] is yet to be determined. He indicated that the Department of Law seemed comfortable with the notion that the 15 percent hasn't "pushed that limit."

MR. LORENSEN referred to the aforementioned comments made by Representative Berkowitz regarding the prudent-investor rule. He said, "Certainly it's the way I know the board ... and also ... the investment staff looks at the issue, is that any limitations that are expressed actually operate to reduce flexibility that would otherwise be available under the prudent investor rule, as stated in subsection (a)."

Number 2278

REPRESENTATIVE SEATON stated his concern that "we" are the gate keepers of the fund, as well, and, although Mr. Storer is saying

that he wouldn't be at 70 percent of equities for any fund he managed, that's what would be allowed "with this." Regarding [Amendment 2], he stated the following:

> If they haven't used the 3 percent of the basket clause to this point in time, after several years, I think the 5 percent - or a doubling of the basket clause - has been ample opportunity to look at a number of different investment ways and let's us come back to the ways. I mean, we're talking about future markets here, which are ... a little bit outside of what we normally think the permanent fund would normally be investing in and what we historically said we wanted to invest in. And we are talking about $2.7 billion of available money in that 10 percent.

Number 2327

REPRESENTATIVE COGHILL noted that it had already been stated that the 15 percent is still a limit on flexibility. He said the [APFC] has shown it has a steady handed management style. He stated, "I think to be fearful that they would step outside - especially since they're still under the auspice of the prudent-investor rule - speaks to giving them the 15 percent." He concluded that he has no problem with the 15 percent.

Number 2366

REPRESENTATIVE BERKOWITZ stated that when the legislature puts numbers into statutes affecting the permanent fund, in essence it's substituting its judgment for that of the fund managers, which is a bad step to take. He said he realizes that the statutory restrictions already exist.

TAPE 04-31, SIDE B
Number 2381

REPRESENTATIVE BERKOWITZ [suggested] stripping out the numbers and going straight to the reasonable prudent-investor rule. He said, "We hire professional managers to manage the fund; we ought to let the professionals do their job." He expressed that one of the government trends he finds problematic is the micro-management of people hired. He reiterated that he would take all the numbers out; however, notwithstanding that, he opined that 15 percent is far preferable to 5 or 10 [percent].

Number 2343

REPRESENTATIVE GRUENBERG said that most Alaskans consider the permanent fund to be theirs and do not want the legislature changing "anything with the fund" unless it's done carefully and conservatively. He indicated that because of the history of conservative management of the fund, not only by the [APFC] but by the elected legislators as well, the public confidence in that management remains high. Representative Gruenberg said that adopting Amendment 1, and thereby allowing the investment in the gas pipeline, will effect significant change in the way the fund is being managed. He emphasized the importance of keeping the public's confidence, which he explained is why he is in support of [Amendment 2].

Number 2234

REPRESENTATIVE BERKOWITZ said the question is, in essence, "Who do you want making your investment decisions: the legislature, or the [APFC]?" He reiterated that he would choose the latter. He posited that including Amendment 1 in this discussion is a "red herring," because the decision whether or not to make investments in the natural gas pipeline will be based on a reasonably prudent investor analysis. He stated that he was sorry he missed discussion regarding Amendment 1, because if the [APFC] is going to make investments, it will do so based on its own analysis of what's in the fund's best interest. He reiterated his opinion regarding leaving the job to the professionals.

Number 2180

REPRESENTATIVE SEATON clarified:

> Our investors didn't tell us 15 percent was where they wanted to go; they wanted to have all limits off. And they say that 15 percent is the maximum that they think they could go, without violating the constitution. ... In a prudent-investor rule, ... there are funds all around that are 100 percent invested in equities, and that can be prudent investing, depending on the type of fund. So, the [prudent-investor rule] doesn't necessarily fix the diversification you have; you can have a very diverse stock portfolio and it is fully managed for stocks and equities. So, the idea that we're fixed at 55 percent or that a prudent investor is only going to be 55- or

only going to be 60-percent invested in stocks - that's not the case.

Number 2142

REPRESENTATIVE LYNN stated, "One of our principal jobs here is to oversee what is going on in departments and functions that professionals manage."

REPRESENTATIVE BERKOWITZ brought attention to AS 13.36.235, which read as follows:

> Sec. 13.36.235. Diversification.
> A trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying.

REPRESENTATIVE BERKOWITZ said the idea that the [APFC] would want to invest 100 percent in equities, real estate, bonds, or any other type of asset, flies in the face of the legal description of what a reasonably prudent investor would do. He listed some of the other components of what a reasonably prudent investor is required to take into account as follows: general economic conditions, expected tax consequences, the role that each investment plays with the overall trust portfolio, expected total return, other resources of the beneficiary, the need for liquidity, and the special relationship or special value to the beneficiary. Representative Berkowitz stated that the prudent-investor rule guards strongly against the notion that the fund's monies could or would be inducted in a single place. He concluded, "To the extent that this committee might have any concerns that we might wind up with 100 percent in equities, I think that that would not be ... the course that a prudent investor would follow. And I think that, again, it's sort of a phantom concern."

Number 2025

REPRESENTATIVE GRUENBERG noted that the [prudent-investor rule] for the fund is in subsections (a) through (c) of AS 37.13.120. He said it largely mirrors what Representative Berkowitz just said, but "they have their own mini prudent-investment standard right in this statute."

Number 2009

CHAIR WEYHRAUCH reminded the committee that earlier testimony had revealed that 15 percent would still make the fund one of the most conservatively managed in the country. The other reason to go to 15 percent is because it gives more ability [to the APFC] to invest to benefit the fund. He said he hasn't heard any reason for the 10 percent, other than to go incrementally up to the 15 percent. He explained that's why he will vote against [Amendment 2].

Number 1970

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

Number 1934

REPRESENTATIVE GRUENBERG moved [to report HB 466, as amended, out of committee with individual recommendations and the accompanying fiscal note.] There being no objection, CSHB 466(STA) was reported out of the House State Affairs Standing Committee.

HB 439-OATHS; NOTARIES PUBLIC; STATE SEAL

Number 1900

CHAIR WEYHRAUCH announced that the next order of business was HOUSE BILL NO. 439, "An Act relating to the authority to take oaths, affirmations, and acknowledgments in the state; relating to notaries public; relating to fees for issuing certificates with the seal of the state affixed; and providing for an effective date."

Number 1873

REPRESENTATIVE GRUENBERG moved to adopt the committee substitute (CS) [for HB 439, Version 23-GH2022\D, Bannister, 3/6/04], as a work draft. There being no objection, it was so ordered.

Number 1850

ANNETTE KREITZER, Chief of Staff, Office of the Lieutenant Governor, noted that Version D is the CS that was requested to put the bill in the form of legislative drafting. She noted

that there are many small changes that resulted; the first most notable change is the title change.

MS. KREITZER read the description of Section 1 in the sectional analysis [see analysis included in committee packet]. She said, "When Lieutenant Governor Leman came into the lieutenant governor's office, this was a surprise to us the first time we went through the business of administering the oath to folks who are new to the legislature [and] returning members. So, that's been added."

MS. KREITZER noted that Sections 2, 3, 4, and 5 are conforming sections of the Alaska Civil Procedure concerning notarial acts. She noted that this is where the sectional deviates from [Version D]. She stated that there is a new Section 4, which was added by attorneys in [Legislative Legal and Research Services] as a necessary measure to make the bill conform to legislative drafting standards. She said an explanation of that can be found in the Legislative Legal and Research Services memo dated March 6, 2004, written by Theresa Bannister [included in the committee packet].

Number 1773

CHAIR WEYHRAUCH asked when the last time "this statutory scheme was amended."

MS. KREITZER answered 1961.

CHAIR WEYHRAUCH asked, "So, is this sort of an omnibus amendment bill to notary statute?"

MS. KREITZER answered yes.

CHAIR WEYHRAUCH said he would like to get "a bigger picture."

Number 1748

REPRESENTATIVE GRUENBERG noted that when he served [in the legislature] before, he "tried to amend this." He said he had introduced HB 394 in the Seventeenth Alaska State Legislature. He said that because of one senator, "we couldn't get this thing updated." He commented that this has been a long time in coming.

Number 1733

MS. KREITZER stated that [the proposed legislation] is important to the 12,000 notaries in the state, as well as to the banks and insurance companies. She said [HB 439] will fix statutes.

MS. KREITZER returned to outlining the sectional analysis. Regarding [Section 5 of the sectional analysis, which is Section 6 in Version D], she said the fee per notarial certificate will be increased and the outdated term "folio" will not be used. Ms. Kreitzer noted that [Section 6 of the sectional analysis, which is Section 7 in Version D] specifies there will be two categories of notaries: a notary public without limitation and a limited governmental notary public. She noted that [Section 7 of the sectional analysis, which is Section 8 in Version D] will make changes to qualifications. She reviewed the changes [see Section 7 of the sectional analysis].

Number 1617

REPRESENTATIVE BERKOWITZ asked how many [felons] with notary certificates would lose them due to that provision.

MS. KREITZER answered, "We don't know; we don't track that."

REPRESENTATIVE BERKOWITZ added, "But there's been no indication that there are felons out there who are doing things as notaries that are inappropriate."

Number 1570

SCOTT CLARK, Notary Commission Administrator, Office of the Lieutenant Governor, proffered that he has received a few phone calls from people who indicated that there might be felons serving as notaries. He said "But since it's not against the law right now, we don't follow up on it."

Number 1536

REPRESENTATIVE LYNN turned to [page 5, line 8, paragraph (4), of Version D] where the language states that a notary "shall reside legally in the United States;". He said, "I wonder if anybody on this committee would have any objection to that, considering some of the other legislation that's pending, ... how we determine who is and is not residing legally in the United States, and if we could possibly be putting anybody out of work."

Number 1528

CHAIR WEYHRAUCH asked Representative Lynn to "hold that thought" for later.

Number 1523

REPRESENTATIVE GRUENBERG said this would be a lifetime disqualification [for a convicted felon]. He said a person may have been fully restored to his/her civil liberties and "not to be able to even be a notary public seems pretty harsh."

CHAIR WEYHRAUCH said, "Yet another example why I think we need an expungement statute."

Number 1500

MS. KREITZER named several felony charges. She said, "The question is: These folks who commit these, do you want them being notaries?" She said that's the policy call of the legislature.

REPRESENTATIVE GRUENBERG responded, "Those are the easy cases, let's look at the harder cases." He offered to explore [the issue] with Ms. Kreitzer.

Number 1479

MS. KREITZER returned to her overview of the sectional analysis. She stated that [Section 9 of the sectional analysis, which is Section 10 in Version D] deals with antiquated language, while [Section 10 of the sectional analysis, which is Section 11 in Version D] sets out what a notary public cannot do and specifies the elements that must be present for a notary public to notarize a document. She indicated that new sections in statute [Secs. 44.50.067-.068] would give the lieutenant governor the ability to address the issues regarding complaints. She indicated there was concern that people not be taken advantage of by a notary public.

Number 1411

REPRESENTATIVE BERKOWITZ stated that he is not sure why the state even has notary publics. He said, "If people sign or affirm things independently, that ought to suffice. Am I wrong in that?"

Number 1396

CHAIR WEYHRAUCH revealed that he is currently involved in a case where the notary [public's] signature is the critical element of the case. He added that the case has to do with the government accepting an application and transferring rights.

REPRESENTATIVE BERKOWITZ responded as follows:

> It just strikes me as a very paternalistic type of government, where government says your signature's no good unless it gets an official stamp of approval from somebody, who has a bear minimum of qualification, you paid a fee to. It just seems like another one of these bureaucratic hurdles that government sets up to cause consternation for those of us who have to run around and get notary signatures.

CHAIR WEYHRAUCH responded that in the case in which he is involved, there would have been far less consternation and expense if there had been an original notary. He stated that it's the abhorrent cases that perhaps make it necessary to continue the system.

REPRESENTATIVE BERKOWITZ suggested that the focus should be on the jurisdiction of notaries, instead of "making it uniform." In response to Chair Weyhrauch's suggestion that a person could simply go to the post office to "just get it stamped," Representative Berkowitz remarked that that would still require a person to go somewhere to get somebody else to approve his/her signature. He said he knows his signature is good. He said, "There's this presumption that somehow I'm not telling the truth."

CHAIR WEYHRAUCH said, "It's not a matter of veracity of a statement, it's that you're saying who you say you are."

Number 1283

REPRESENTATIVE LYNN echoed the chair's last statement and added that a person who goes to a notary would have to have some form of identification, such as a driver's license.

Number 1253

REPRESENTATIVE GRUENBERG stated, "This is an Act that really cries out for a uniform Act." He asked Ms. Kreitzer if there is a uniform or model notary public Act.

MS. KREITZER answered yes. She informed Representative Gruenberg that it is "much more bureaucratic than this one."

REPRESENTATIVE GRUENBERG stated that California's process for getting a notary public is complicated and expensive, which he opined is not appropriate for Alaska. He said he has litigated cases involving notarizations. Some of the cases dealt with whether or not the notarization itself was a forgery. He indicated that "it" shouldn't be an impediment. He asked Ms. Kreitzer, "Does this require the keeping of a journal?"

MS. KREITZER answered it does not.

REPRESENTATIVE GRUENBERG noted that that issue was a big deal at the time he had introduced his bill. He asked why [a journal would not be required].

MS. KREITZER indicated that although [the Office of the Lieutenant Governor] thinks it is important to keep a journal, it doesn't have the ability to enforce that people are [keeping] a journal, because it only has one [notary commission administrator]. She explained that one of the things that [the Office of the Lieutenant Governor] is trying to accomplish with "this rewrite" is a move to more of a Web-based, educational system. She said this would be more efficient considering the limited staff.

Number 1111

REPRESENTATIVE GRUENBERG shared that when he introduced his bill in the past, the keeping of the journal was something that the notary public was required to do and didn't require any additional bureaucracy or staff.

REPRESENTATIVE GRUENBERG turned to page 14, [beginning on line 9], which he noted was in regard to acknowledgments. He said acknowledgments are already covered under AS 09.63. He asked, "Why do you have your own separate acknowledgment statute when we already have a perfectly good uniform acknowledgment Act?"

Number 1038

MR. CLARK said Representative Gruenberg is correct in his observation. He noted that some language was amended on page 3, [lines 2-3 of Version D], regarding AS 09.63.090. He stated,

"With that change, it would be fine to remove all acknowledgment sections from the bill."

REPRESENTATIVE GRUENBERG stated his interest in working with [Ms. Kreitzer and Mr. Clark] on the legislation.

Number 1000

REPRESENTATIVE LYNN stated the following:

> If you said to examine the journal part, I can see where it would be appropriate to put it in there, because I'm concerned that we don't mandate someone to have a journal so we can -- if it becomes a problem in the future, then we have something to look at.

Number 0988

REPRESENTATIVE BERKOWITZ surmised that he should declare a conflict, because his wife is a notary public; although he revealed that she doesn't make any money at it and she can't notarize for him. He stated that when the right time comes, he will offer an amendment to do away with the entire notary system.

Number 0963

REPRESENTATIVE GRUENBERG surmised that he too should declare a conflict, because he is a notary public.

CHAIR WEYHRAUCH responded that when the time comes to vote "we can declare those."

Number 0945

MR. CLARK agreed that notary journals are an important aspect of functioning as a notary public and the office has always stressed the need to keep a journal and will continue to do so. He said the notaries are personally liable for everything they do; the notary journal not only protects the public, but also is the only evidence that the notary will have that he/she has performed the act according to the letter of the law. Conversely, he stated that in his four years experience, and after viewing records from the past, he has not found that the lack of a legal requirement to keep a notary journal has caused anybody any problem.

REPRESENTATIVE GRUENBERG stated that [during his involvement with the past legislation] he worked with the [National Notary Association (NNA)], and this issue was a "big deal with them." He offered an example of a child custody case where the children may have benefited from a journal having been available. He said he is quite certain that the national organization would be able to find out whether [the keeping of journals] has been helpful in other states. He observed that "it's mainly an issue of proof." He suggested that if people kept the journal for five years, for example, they would be able to prove that they notarized deeds on certain dates, and that would facilitate lawyers and courts.

Number 0832

REPRESENTATIVE LYNN asked, "When we do a notary here, and then we travel all over the United States, if we did not have a notary public here, would that affect the validity of some kind of a document in one of the other 49 states ...?"

REPRESENTATIVE GRUENBERG answered as follows:

> Let's say you're litigating a will in Nebraska, and it involves an Alaska deed. Under certain Rules of Evidence, if these are notarized, they could be what are called, "self-authenticating," and it would definitely affect litigation in other states - the validity of Alaska documents.

REPRESENTATIVE BERKOWITZ said it seems to him that the government has the ability to authenticate deeds and wills independently from any notary. He noted that a driver's license or birth certificate doesn't have a notary's signature on it. He suggested moving to a system where people could "self-notarize."

REPRESENTATIVE GRUENBERG said that even though he is in the same political party as Representative Berkowitz, his views may be opposite on this issue.

[HB 439 was heard and held.]

HB 520-REGULATORY COMMISSION OF ALASKA

Number 0670

CHAIR WEYHRAUCH announced that the last order of business was HOUSE BILL NO. 520, "An Act relating to the expenses of investigation, hearing, or public advocacy before the Regulatory Commission of Alaska, to calculation of the regulatory cost charge for public utilities and pipeline carriers to include the Department of Law's costs of its public advocacy function, to inspection of certain books and records by the attorney general when participating as a party in a matter before the Regulatory Commission of Alaska; and providing for an effective date."

Number 0646

DANIEL PATRICK O'TIERNEY, Senior Assistant Attorney General, Commercial/Fair Business Section, Civil Division (Anchorage), Department Of Law, stated that he is testifying on behalf of the attorney general. He said he is quite familiar with not only the bill, but also with the Regulatory Commission of Alaska (RCA) in the public advocacy function, having served on the commission under two prior governors from 1989 to 1994. He continued as follows:

> This bill is before you ... as a ... "follow-on" to last year's Executive Order [EO] 111, which transferred the responsibility from the Regulatory Commission of Alaska personnel for public advocacy before the commission, to the attorney general's office. And that executive order also established the public advocacy function within the Department of Law.
>
> RCA personnel were historically responsible for representing the public and the public interest before the commission, and those personnel now act under the authority and the direction of the Department of Law.
>
> So, the bill before you would essentially complete what's already occurred - the prior transfer of authority.

Number 0562

CHAIR WEYHRAUCH asked, "Why not simply do this by another executive order?"

MR. O'TIERNEY replied that that had been considered but was judged as inappropriate, because an executive order has limited applicability and only exists to transfer existent statutory responsibilities. He explained that that transfer has already

occurred. He clarified that [HB 520] would actually provide "some of the wherewithal for execution of the authority that's already been transferred."

MR. O'TIERNEY continued as follows:

> This bill contains, principally, four provisions, the first of which would clarify that regulatory cost charge receipts - not general fund - would continue to pay for the general costs of public advocacy function that's now administered by the Department of Law and by the attorney general as the public advocate, just as those same RCC receipts historically paid for public advocacy costs when the function was performed under the RCA.

MR. O'TIERNEY, in response to a question from Chair Weyhrauch, explained that RCC stands for regulatory cost charge, which is the existent statutory mechanism that funds the regulatory commission of Alaska, and historically also funded the public advocacy function, which was exercised within the commission. He called it "off-budget," and said it's not generally funded. He said he thinks the RCC is premised on a user-fee concept; the utility providers are essentially tied to pay for the regulation that administers the services and the rates that "they provide under their monopoly." In response to a question from Chair Weyhrauch, he said that, under the statute itself, the RCC administers the regulatory cost-charge formula and its applicability. He noted that there is a statutory cap that exists on the total amount of funds that can be administered under the RCC.

Number 0268

CHAIR WEYHRAUCH clarified he wants to know: At what point does the public pay for "every and all costs"; who is it that arbitrates what is reasonable or not; where is the cap set; and why should the public continually "pay this up" when it doesn't know what goes on in the disputes.

MR. O'TIERNEY answered that the statute provides a specific decimal number cap, as well as explicitly providing that any given utility may pass through the regulatory cost charge to its consumers. That charge is shown at the bottom of any given [utility] bill. The consumers are the beneficiaries of the advocacy that's provided on their behalf before the commission. Mr. O'Tierney continued as follows:

> Absent that advocacy ... you would essentially have one hand clapping, for the most part, at any given utility rate proceeding, because the utility comes before the commission and it's generally asking for a rate increase, not a rate decrease, and absent some other party on behalf of the public, there would simply be the utility making its case without any meaningful ... cross-examination or review. So, it seems perfectly logical, and prudent, and appropriate that consumers would ultimately bear the cost; it's consistent with the entire user-fee concept, which is certainly not held in disfavor [at the] current time.

Number 0068

CHAIR WEYHRAUCH stated his belief that the public does need an advocacy position in these hearings, because its interests are seldom represented; therefore, [the public] should have a legitimate role to play and some legitimate costs incurred for that role. However, he noted that simply having that advocacy role may create an adversarial situation for the utilities to be involved, which in turn "ramps up the cost to the public because of the overhead involved with advocating its own interest against the public's interest."

TAPE 04-32, SIDE A
Number 0001

CHAIR WEYHRAUCH indicated that everything would get paid for through the regulatory cost charge. He said it's a conundrum and he is expressing concern. He invited Mr. O'Tierney to continue.

MR. O'TIERNEY responded that he appreciates Chair Weyhrauch's comments; however, he surmised that the bottom line is that consumer protection has to be funded in some fashion, and under the current scheme ... - as exists in statute and as promulgated by prior legislature - it is paid for by the consumers who benefit. He noted that the vast majority of states have a variation of a regulatory cost charge mechanism.

Number 0117

CHAIR WEYHRAUCH offered his understanding that the attorney general's office defines the public's interest; it doesn't conduct a poll of the representatives of the state in the

legislature, but makes its independent determination of what the public's interest is and then advocates that interest.

MR. O'TIERNEY answered that's correct. He said that's what EO 111 provides for and it is not unlike the existent context in most other states. He noted that he has discussed with Attorney General Renkes the notion of adopting something similar to what exists in Washington State, which is a type of consumer input panel whose members are nominated by the attorney general as a means of having some kind of a consumer representative council that provides ongoing input and can keep the public advocate "on the pulse of consumer interests and concerns." He added that that's not something that necessarily needs to be embodied in statute.

CHAIR WEYHRAUCH said something like that may be critically important to gain the public's trust in the process, whether it's a consumer input panel or whether the department's position is publicly noticed with an opportunity for the public to comment. He said, "I know you need to act and react without having a cumbersome public process. I know that there's a tension here between being able to be involved in these proceedings, yet also representing the public's interest." If the Department of Law purports to represent the public's interest, he said, then the public must necessarily be involved in expressing what those interests are.

MR. O'TIERNEY said he thinks it's useful to recall that, in terms of what the public interest did, "it certainly includes - first and foremost - rate payer interest, consumer interest." He offered his understanding that those interests are generally defined in terms of taking a hard look at whether or not the type of expenses that the utility suggests are legitimate for inclusion in rate base are, in fact, legitimate and can be adequately justified. He explained, "Those are the stuff of which rates are made, and I think most consumers are interested in making sure that rates are ... not higher than they can honestly and legitimately be justified."

CHAIR WEYHRAUCH stated that that too is subject to some debate, because it may be in the public's interest to pay the least amount for the utility services it's obtaining, but it may be also important to pay now in order to pay less later. He illustrated that many companies, particularly in utilities markets, must invest in research and development in order to obtain technology that eventually is going to reduce costs in the long term, which requires a higher investment today for

greater return on the investment tomorrow. He said there's a public process in adequately explaining that to the public so it knows what it's getting.

MR. O'TIERNEY replied that that's part of the balance. He indicated the question of balance is often the focus of the commission. He added, "Ultimately, of course, the commission itself, as the adjudicator, gets to make the call."

Number 0386

REPRESENTATIVE GRUENBERG emphasized that he likes the idea of having a citizen advisory commission to the attorney general, since the citizen protection arm office has been moved "from the agency itself to the attorney general." He stated that he does not support an elected attorney general but likes the idea of an appointed one, even though it's subject to some continuing criticism on the close relationship between the [governor's office] and the attorney general.

REPRESENTATIVE GRUENBERG asked if the commission still regulates garbage disposal.

MR. O'TIERNEY answered yes.

REPRESENTATIVE GRUENBERG noted that part of the City of Anchorage's solid waste services are from the municipality, while part of those services are from [a private company]. He said part of his district is served by one and part by the other. He said the rates are similar; however, he offered his recollection that the municipality will pick up four refuse containers, while [the private company] will only pick up three. He opined that that is unfair and suggested that the commission could consider that issue.

Number 0798

MR. O'TIERNEY continued with his testimony. He stated that the second principal area of the bill addresses providing the Department of Law - in its public advocacy function and with respect to that function only - the same access to utility records that formerly had been obtainable by the RCA's public advocacy staff. He said that although it speaks to a substantive aspect of things, it is not a substantive change, because the intent is to transfer the same access to records previously possessed by the RCA to the Department of Law.

MR. O'TIERNEY stated that the third principal area of the bill is one that "would explicitly exempt state agencies from paying the cost of the RCA - another state agency - its proceedings to which a state agency is a party." The current situation is that the RCA interprets the existing statute, which does not either expressly include or exclude cost allocation of its proceedings to other state agencies. The proposed legislation, he indicated, would explicitly exempt other state agencies from being cost allocated and then paying those costs to the RCA. He continued as follows:

> Not only is there no net fiscal benefit into the current arrangement, but ... it's compounded because, for example, if the Department of Law is cost allocated, it then has to come to the legislature to get a special appropriation in order to pay the cost allocation to another state agency.

Number 0943

MR. O'TIERNEY noted that "the proposed legislation would provide for direct payment, in a specific proceeding, by the utility, of the cost of any expert assistance that may need to be retained by the Department of Law to represent the public in that specific proceeding." He said the utilities could recover that case-specific cost in the same manner as any other rate case expense. He continued:

> It's consistent with the cost-causer principle and user-fee principle that is the basis of the RCC. It's also ... analogous to other existent mechanisms in state statute, those being, in particular, one which exists in the insurance code, which allows the director of insurance to have the insurer being examined pay the costs of any expert that the director needs to retain to do the examination. It's also analogous ... to a mechanism in the Alaska Stranded Gas Development Act, which provides that the commissioner may, essentially, pay an independent contractor expert for a review, and that those expenses would be paid for by the applicant. ... This is also a mechanism that exists in numerous other states, including Connecticut, Iowa, and North Carolina.

Number 1038

CHAIR WEYHRAUCH, reading an excerpt from a comparison by amendment of the original bill version and the proposed committee substitute [included in the committee packet], spoke as follows:

> It says, "the attorney general participates in an adjudicatory proceeding before the commission". If the commission makes a final determination and the attorney general believes it's in the best interest of the public to proceed in superior court, either as an appellant or as party to a proceeding that goes to superior court, can the same costs be passed through? Because this doesn't allow it - it only says "before the commission", not before a superior court.

MR. O'TIERNEY answered that's correct. He said, "It anticipates that that being the fact finding forum, ... anything beyond that would be in an appellate context and would simply be a challenge to some of the findings of fact or the conclusions of law, but it wouldn't be, basically, relitigated."

CHAIR WEYHRAUCH suggested that the issue could be discussed further at the next hearing of HB 520.

[HB 520 was heard and held.]

ADJOURNMENT

Number 1097

There being no further business before the committee, the House State Affairs Standing Committee meeting was adjourned at 10:01 a.m.