

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

March 9, 2004

8:01 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. 438

"An Act relating to motorists moving over or slowing down for emergency vehicles."

- MOVED CSHB 438(STA) OUT OF COMMITTEE

HOUSE BILL NO. 423

"An Act relating to accidents involving the vehicle of a person under the influence of an alcoholic beverage; and providing for an effective date."

- MOVED CSHB 423(STA) OUT OF COMMITTEE

HOUSE JOINT RESOLUTION NO. 31

Proposing amendments to the Constitution of the State of Alaska relating to the Alaska permanent fund and to payments to certain state residents from the Alaska permanent fund; and providing for an effective date for the amendments.

- HEARD AND HELD

HOUSE BILL NO. 527

"An Act relating to the Alaska Securities Act, including reports, proxies, consents, authorizations, proxy statements, and other materials, civil penalties, refunds of proceeds from

violations, restitution, and investment adviser representatives; and providing for an effective date."

- HEARD AND HELD

HOUSE BILL NO. 431

"An Act relating to the municipal dividend program; and providing for an effective date."

- HEARD AND HELD

HOUSE BILL NO. 459

"An Act requiring an auditable paper trail for electronic voting machines; and providing for an effective date."

- HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 438

SHORT TITLE: MOVE OVER LAW FOR DRIVERS

SPONSOR(S): REPRESENTATIVE(S) HOLM

02/05/04	(H)	READ THE FIRST TIME - REFERRALS
02/05/04	(H)	TRA, STA, JUD
02/17/04	(H)	TRA AT 1:30 PM CAPITOL 17
02/17/04	(H)	Scheduled But Not Heard
02/24/04	(H)	TRA AT 1:30 PM CAPITOL 17
02/24/04	(H)	Moved Out of Committee
02/24/04	(H)	MINUTE(TRA)
02/26/04	(H)	TRA RPT 3DP 2NR
02/26/04	(H)	DP: OGG, STEPOVICH, HOLM; NR: MASEK,
02/26/04	(H)	KOHRING
03/09/04	(H)	STA AT 8:00 AM CAPITOL 102

BILL: HB 423

SHORT TITLE: TAXICAB DRIVER LIABILITY

SPONSOR(S): REPRESENTATIVE(S) ANDERSON

02/02/04	(H)	READ THE FIRST TIME - REFERRALS
02/02/04	(H)	JUD
02/02/04	(H)	STA REFERRAL ADDED AFTER JUD
02/09/04	(H)	REFERRAL ORDER CHANGED
02/09/04	(H)	STA, JUD
02/10/04	(H)	STA AT 8:00 AM CAPITOL 102
02/10/04	(H)	<Bill Hearing Postponed>
03/02/04	(H)	STA AT 8:00 AM CAPITOL 102

03/02/04 (H) Heard & Held
03/02/04 (H) MINUTE(STA)
03/05/04 (H) STA AT 8:00 AM CAPITOL 102
03/05/04 (H) Heard & Held
03/05/04 (H) MINUTE(STA)
03/09/04 (H) STA AT 8:00 AM CAPITOL 102

BILL: HJR 31

SHORT TITLE: CONST AM: PERMANENT FUND

SPONSOR(S): REPRESENTATIVE(S) HOLM

01/02/04 (H) PREFILE RELEASED 1/2/04
01/12/04 (H) READ THE FIRST TIME - REFERRALS
01/12/04 (H) W&M, STA, JUD, FIN
01/23/04 (H) W&M AT 8:00 AM HOUSE FINANCE 519
01/23/04 (H) Heard & Held
01/23/04 (H) MINUTE(W&M)
02/04/04 (H) W&M AT 8:00 AM HOUSE FINANCE 519
02/04/04 (H) Heard & Held
02/04/04 (H) MINUTE(W&M)
02/18/04 (H) W&M AT 7:00 AM HOUSE FINANCE 519
02/18/04 (H) Moved CSHJR 31(W&M) Out of Committee
02/18/04 (H) MINUTE(W&M)
02/19/04 (H) W&M RPT CS(W&M) NT 6NR
02/19/04 (H) NR: WEYHRAUCH, SAMUELS, WILSON, OGG,
02/19/04 (H) MOSES, HAWKER
03/04/04 (H) STA AT 8:00 AM CAPITOL 102
03/04/04 (H) Heard & Held
03/04/04 (H) MINUTE(STA)
03/09/04 (H) STA AT 8:00 AM CAPITOL 102

BILL: HB 527

SHORT TITLE: ALASKA SECURITIES ACT

SPONSOR(S): STATE AFFAIRS

03/01/04 (H) READ THE FIRST TIME - REFERRALS
03/01/04 (H) STA, JUD, FIN
03/09/04 (H) STA AT 8:00 AM CAPITOL 102

BILL: HB 431

SHORT TITLE: MUNICIPAL DIVIDEND PROGRAM

SPONSOR(S): REPRESENTATIVE(S) MOSES

02/04/04 (H) READ THE FIRST TIME - REFERRALS
02/04/04 (H) CRA, STA, FIN
02/26/04 (H) CRA RPT 3DP 2NR
02/26/04 (H) DP: KOTT, CISSNA, MORGAN;

02/26/04 (H) NR: SAMUELS, WOLF
02/26/04 (H) CRA AT 8:00 AM CAPITOL 124
02/26/04 (H) Moved Out of Committee
02/26/04 (H) MINUTE(CRA)
03/09/04 (H) STA AT 8:00 AM CAPITOL 102

BILL: HB 459

SHORT TITLE: PAPER TRAIL FOR ELECTRONIC VOTING MACHINE
SPONSOR(S): REPRESENTATIVE(S) GARA

02/16/04 (H) READ THE FIRST TIME - REFERRALS
02/16/04 (H) STA
03/09/04 (H) STA AT 8:00 AM CAPITOL 102

WITNESS REGISTER

MATTHEW RUDIG, Staff
to Representative Jim Holm
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 438 on behalf of
Representative Holm, sponsor.

KELLY NICOLELLO, Assistant State Fire Marshall
Division of Fire Prevention
Department of Public Safety
Anchorage, Alaska

POSITION STATEMENT: Addressed the committee's previously stated
questions during the hearing on HB 438.

SHELLEY OWENS, Health Program Manager
Community Health & Emergency Medical Services
Division of Public Health
Department of Health & Social Services (DHSS)
Juneau, Alaska

POSITION STATEMENT: Testified on behalf of the department in
support of HB 438.

JIM SHINE, Staff
to Representative Tom Anderson
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Provided comment on behalf of
Representative Anderson, sponsor, during the hearing one HB 423.

JOHN MALLONEE, Acting Director
Central Office

Child Support Enforcement Division (CSED)
Department of Revenue
Anchorage, Alaska
POSITION STATEMENT: Answered questions on behalf of the CSED during the hearing on HJR 31.

DONALD ANDERSON
Anchorage, Alaska
POSITION STATEMENT: testifying on behalf of himself, commented on the effect of the federal income tax on the PFD, and the \$20,000 payout proposed in HJR 31.

MARK DAVIS, Director
Division of Banking, Securities & Corporations
Department of Community & Regional Development (DCED)
Juneau, Alaska
POSITION STATEMENT: Testified on behalf of DCED to outline three things HB 527 would accomplish that the division thinks are important.

VINCE USERA, Senior Securities Examiner
Division of Banking Securities & Corporations
Department of Community & Economic Development (DCED)
Juneau, Alaska
POSITION STATEMENT: Responded to questions during the hearing on HB 527.

FRED TRIEM, Attorney at Law
Petersburg, Alaska
POSITION STATEMENT: Testified on his own behalf in support of [HB 527], but with two qualifications.

ADAM BERG, Staff
to Representative Carl Moses
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Testified on behalf of Representative Moses, sponsor of HB 431.

DOUG STARK, Ph.D., Council Member
City of Homer
Homer, Alaska
POSITION STATEMENT: Testified on behalf of the City of Homer in support of HB 431.

REPRESENTATIVE LES GARA
Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Testified as sponsor of HB 459.

LEONARD JONES, Elections Special Assistant

Central Office

Division of Elections

Office of the Lieutenant Governor

POSITION STATEMENT: Answered questions on behalf of the division during the hearing on HB 459.

ACTION NARRATIVE

TAPE 04-33, SIDE A

Number 0001

[Due to technical difficulty, there are approximately two minutes of blank tape. The following is reconstructed from the committee secretary's log notes.]

CHAIR BRUCE WEYHRAUCH called the House State Affairs Standing Committee meeting to order at 8:01 a.m. Representatives Holm, Seaton, Coghill, and Weyhrauch were present at the call to order. Representatives Lynn, Berkowitz, and Gruenberg arrived as the meeting was in progress.

HB 438-MOVE OVER LAW FOR DRIVERS

CHAIR WEYHRAUCH announced that the first order of business was HOUSE BILL NO. 438, "An Act relating to motorists moving over or slowing down for emergency vehicles."

REPRESENTATIVE HOLM moved to adopt HB 438 as a work draft. There being no objection, it was so ordered.

[Tape recording begins here.]

Number 0165

MATTHEW RUDIG, Staff to Representative Jim Holm, Alaska State Legislature, presented HB 438 on behalf of Representative Holm, sponsor. He emphasized the danger to emergency personnel working along the shoulder of a roadway. According to the National Memorial Officers' Fund, from 1997 through 2002, 93 law enforcement officers were struck and killed by motorists, while working along the sides of a roadway. Many more were injured, he noted, while substantially more experienced "close calls." The bill would require drivers to slow down to 20 miles per hour

(mph) below the posted speed limit, or to 5 mph in speed zones of 25 mph or less. He said this proposed change is an attempt to ensure safety on the roadways.

MR. RUDIG said that establishing [HB 438] in statute encourages the public to recognize the precaution needed while passing emergency vehicles and provides a penalty for those who refuse to obey the law, thereby causing harm. He noted that 30 other states have enacted similar legislation.

MR. RUDIG pointed to testimonials given by police officers in Fairbanks, included in the committee packet. Those testimonials state how HB 438 would [positively] affect their lives and job safety. He encouraged the committee to read those testimonials. He concluded as follows:

These people fight for our lives every day, and I believe that this legislation is an opportunity for the legislature to fight for theirs.

Number 0376

MR. RUDIG, in response to questions from Chair Weyhrauch, clarified that the intent of the bill is to get drivers to leave the lane closest to the emergency vehicle and move over into the lane [farthest away from the stopped emergency vehicle]. He added that if there were only one lane, the intent of the bill would then be to get the driver to slow down.

Number 0446

CHAIR WEYHRAUCH said sometimes an emergency vehicle will be driving 5-10 mph on the shoulder of a road. He asked if that would be considered stationary, for purposes of "this statute."

MR. RUDIG proffered that stationary means still, not moving; however, he suggested asking that question of the Department of Public Safety.

Number 0504

REPRESENTATIVE COGHILL noted that towing vehicles also display flashing lights. He asked if there has been any discussion regarding [including tow trucks in the legislation].

MR. RUDIG replied that there are other state statutes that address that, and he said that issue was discussed by the House

Transportation Standing Committee. However, he indicated that after considering the issue, a decision was made to include those vehicles that the public recognizes as [operated by] emergency personnel.

Number 0588

REPRESENTATIVE HOLM stated that "we" could not find a definition of emergency vehicle in statute. He mentioned blue flashing [lights], and he said he doesn't know if the committee wants to consider "anything that has any kind of flashing vehicle beacon." He suggested the committee could define that [in the proposed legislation].

REPRESENTATIVE COGHILL noted that volunteer fire [fighters] have blue lights [they put on their vehicles], generally in transit to a fire. He questioned whether they would actually pull over on the side of the road, unless it was at the site of the fire, in which case, a fire truck would probably be there, too. He related that he has seen [tow truck drivers] pulled over on the side of highways, where if he had been that driver, he would have felt nervous, even with the flashing lights in use.

CHAIR WEYHRAUCH said he wonders if a volunteer firefighter's vehicle, with a blue light on its dash, would qualify as a fire vehicle under "this statute."

Number 0690

CHAIR WEYHRAUCH turned to [subsection] (a), [paragraph] (2), which lists the requirements to slow to certain speeds. He said there wouldn't be a problem with slowing more than the amounts specified in the bill; therefore, he suggested that the language say "at least" a certain speed.

MR. RUDIG responded that that would be fine. He said the intent is to make people aware, so that they slow down at least to those speeds indicated.

Number 0752

KELLY NICOLELLO, Assistant State Fire Marshall, Division of Fire Prevention, Department of Public Safety, stated that the department is in favor of the proposed legislation. He addressed questions previously asked by the committee, as follows: In response to the question about the inclusion of vehicles moving slowly on the side of the road, he clarified

that [HB 438] is intended to cover vehicles that are at a standstill, where the driver is outside of the vehicle and assisting a victim, for example. He indicated that there are different traffic laws for vehicles that are "rolling."

MR. NICOLELLO, in response to the question regarding towing vehicles, noted that there are laws on the books stating that different types of vehicles will have different colored lights. For example, yellow lights will be on a tow truck or service vehicle. He added, "That could extend to any number of different people who provide services, that have to travel on the road, but are not considered to be emergency." An emergency vehicle normally has a multi-colored red and white flashing light. In response to the question regarding the blue lights [used by volunteer fire fighters], he said, "We" have discussed whether or not "they ought to be included in this." He explained that those who use blue lights do not have any "emergency powers"; they can't go faster than the speed limit, for example. He added, "So, we kind of put that in the same perspective as the service lights, and wanted to just keep with the public perception of the flashing red and white lights that you find on police and fire trucks."

Number 0898

CHAIR WEYHRAUCH asked if that meant a vehicle with a combination of lights, including the color blue, would be "excluded from the coverage of this statute."

MR. NICOLELLO answered that he doesn't think so. He said a person injured while performing duties for an emergency organization and using the light established by that organization would be covered.

Number 1005

REPRESENTATIVE SEATON asked Mr. Nicolello:

Is your feeling that just saying "emergency lights", when we've got all these different colored lights and different jurisdictions is actually going to advise the motoring public with definitive enough regulations to allow them to adequately respond to this statute?

MR. NICOLELLO responded that he believes so. He said the public responds adequately most of the time to emergency vehicles on the roadway and "they pretty much know what's ahead of them if

they see it." He stated that the proposed legislation is "only in the event that either an officer or firefighter, or emergency operations person assisting somebody on the side of the road is injured by another car."

REPRESENTATIVE SEATON reiterated his concern that "a little more standardization" may be needed in order for the public to understand what "emergency lights" means.

Number 1116

REPRESENTATIVE COGHILL said he is curious as to how this proposed legislation would be enforced. He said he knows the bill will be heard in the House Judiciary Standing Committee, but he wants "some comfort on that."

Number 1174

REPRESENTATIVE HOLM told Representative Coghill that he has considered the issue. He offered his understanding that there are cases where two officers work in tandem; they drive separate vehicles and one officer tickets drivers who don't slow down for the other officer [working on the side of the road]. He remarked that he doesn't envision that that will be a common [practice].

REPRESENTATIVE HOLM stated that when the phrase "stationary emergency, fire, or law enforcement vehicle" is used, it brings to his mind three types of vehicles: ambulances, fire vehicles, and police vehicles. He suggested that perhaps the committee is getting too wrapped up with the subject of the lights, when the real intent of the bill is to educate the public regarding slowing down.

REPRESENTATIVE COGHILL concurred, and he said he is actually supportive of the bill. Notwithstanding that, he offered an example of a person driving and talking to a child in the vehicle and not vacating the lane soon enough, or a situation in which [a police officer, for example] thinks a driver is going over the speed allowed by the proposed legislation. He questioned whether some kind of video machine or speed gun would be used. He clarified that he agrees with the concept, but is just trying to picture [how it will be enforced].

REPRESENTATIVE HOLM noted that many of the similar laws in other states don't define numbers in miles per hour, but instead use language regarding "a prudent and reasonable manner." He

opined, "By not defining it, of course, it leaves a lot up to subjection." He concluded, "I don't know, this is what was suggested as the method for Alaska, by the folks that suggested the bill."

Number 1343

REPRESENTATIVE SEATON said he supports the concept of the bill. He reiterated that he just wants to make sure the public is able to distinguish "what we're talking about." He asked about penalties.

REPRESENTATIVE HOLM noted that it would be an infraction if the person [violates the proposed law].

Number 1402

SHELLEY OWENS, Health Program Manager, Community Health & Emergency Medical Services, Division of Public Health, Department of Health & Social Services (DHSS), testified on behalf of the department in support of HB 438. In response to a question from Chair Weyhrauch, she also noted that she is a volunteer firefighter and EMT [emergency medical technician]. She continued as follows:

It's estimated that there's 12,000 emergency medical vehicle collisions each year, although we don't know how many of these are secondary collisions. The U.S. Fire Administration report said emergency vehicle crashes are the second leading cause of death for firefighters, after heart attacks.

The International Association of Chiefs of Police reported that, in 1997, nearly 40 percent of all law enforcement officers who died in the line of duty died in traffic. The longer an incident is in place, the greater the exposure to additional crashes.

A 1995 analysis of collision statistics in California showed an increased risk by 600 percent for secondary collision, and, in addition, the severity of secondary crashes is often greater than the original incident.

A study in Washington by their Department of Transportation found that over a seven-year period, over 3,000 shoulder collisions resulted [in] 40 deaths. And in Florida, in the period [from] 1996 to

2000, there were ... 1,793 collisions, resulting in 5 police officers being killed and 419 others injured.

In Alaska, in the four-year period from 1998 to 2001, 386 emergency response - defined as police, fire, and ambulance - vehicles were involved in accidents. Of the 386 crashes, 46 incidents involved a parked emergency response vehicle.

The Department of Health & Social Services supports efforts to reduce the number and severity of injuries to fire, EMS, and law enforcement personnel at emergency scenes. Equipping rescuers so that they're more visible on scenes, providing training to motorists about their responsibilities regarding emergency vehicles in scenes, and enacting legislation that increases the safety of rescuers, patients, and bystanders, are all important means of achieving this goal. Consequently, the department supports HB 438.

Number 1510

CHAIR WEYHRAUCH asked Ms. Owens if other states have data to show the number of injuries and fatalities that occurred before and after the enactment of this kind of statute.

MS. OWENS answered she doesn't know. In response to a follow-up question from Chair Weyhrauch, she explained that a secondary crash is referred to as a shoulder crash in California, and it means that a stationary vehicle was on the side of the road and a secondary impact occurred.

Number 1552

CHAIR WEYHRAUCH announced that public testimony was closed.

Number 1575

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

Page 1, line 8
Between "shall" and "vacate"
Insert "safely"

REPRESENTATIVE HOLM said he thinks that would be a good addition to the language.

Number 1594

CHAIR WEYHRAUCH asked if there was any objection to [Amendment 1]. There being none, it was so ordered.

Number 1600

REPRESENTATIVE SEATON asked if vacating the lane would mean that a driver could pull his/her vehicle onto the shoulder of the road.

CHAIR WEYHRAUCH responded that perhaps the safest thing to do [in some circumstances] would be to pull over to the shoulder or to "cut the line between the accident." He offered his understanding that the intent of the bill is to have drivers move their vehicles away, so that secondary crashes do not occur, and to do so as safely as possible, which "links into the speed you have to go on the second Section."

Number 1657

CHAIR WEYHRAUCH noted that [Amendment 2] read as follows:

Page 1, line 11
Between "shall slow to" and "20 miles an hour"
Insert "at most"

Page 1, line 12
Between "or to" and "5 miles an hour"
Insert "at most"

CHAIR WEYHRAUCH noted that he had originally thought to insert "at least", but now is suggesting "at most".

Number 1670

REPRESENTATIVE HOLM explained why the phrase "at least" would be better than using the phrase "at most" on line 11.

CHAIR WEYHRAUCH asked [if that would also apply to line 12].

Number 1689

REPRESENTATIVE GRUENBERG commented that he had just looked at the other state laws [regarding select states and provided in the committee packet]. He observed that they all are written similarly to each other, but dissimilarly to the proposed [HB 438]. He clarified that those other states' laws do not list a firm speed. He read an example from the Iowa law. He said he tends to favor that approach, because Alaska roads are so diverse in their conditions.

Number 1759

REPRESENTATIVE HOLM noted that [HB 438] was patterned after a Texas law, which is not included in the packet. He said he somewhat concurs with [Representative Gruenberg]. He explained that "we were promoting this because it was what was asked of us" He said he would not have any angst over changing it.

Number 1782

REPRESENTATIVE GRUENBERG suggested the committee consider [some of the other states' laws]. He indicated parts of the Georgia law as an example of a common sense approach. Representative Gruenberg pointed out that another circumstance, besides that of a person on the side of the road rendering assistance, might be a road block situation set up to check for people driving under the influence (DUI). He said a bomb scare situation is another example.

Number 1907

CHAIR WEYHRAUCH stated his intent is to move the bill from committee today. He said he had planned to consider [Section 1, paragraph (2)] in more detail; however, he would like the House Judiciary Standing Committee to address that part of the bill.

Number 1925

REPRESENTATIVE LYNN noted that in some construction areas there are signs posted that warn drivers that the penalty for exceeding the speed limit is double what it would normally be in that zone. He asked if Section 1, [paragraph] (2), would be a good place to add language doubling whatever penalty there might be.

REPRESENTATIVE GRUENBERG said, "I don't see any of these having a Class A misdemeanor and being based on injury." He turned to [paragraph] (b) and noted that an infraction, as defined in AS

11.81.900, is something that is not punishable by imprisonment, but by a fine of up to \$500. He mentioned a step increase.

REPRESENTATIVE LYNN reiterated his idea of mirroring the fines used in construction zones.

REPRESENTATIVE SEATON responded, "We're going from nothing to an infraction, and now we're talking about doubling it." He pointed out that doubling [fines] in a construction zone works, because "you have advertisement over a long period of time that tells people." He pointed out that there wouldn't be a notice on the back of every [emergency] vehicle letting drivers know that if they don't move over they will be issued a double fine.

Number 2017

REPRESENTATIVE GRUENBERG asked, "Isn't there something on the books already about this, in this state?"

REPRESENTATIVE HOLM answered he does not believe so.

REPRESENTATIVE GRUENBERG offered his understanding that there is something called the Uniform Traffic Act in the regulations. He added, "I'm surprised that that's not covered."

Number 2004

REPRESENTATIVE COGHILL noted that under basic speed laws, there are "some things they can do," but he said he thinks it's "a higher level of proof." He also pointed out that road etiquette is taught, but, to his knowledge, there is no enforcement mechanism.

Number 2048

REPRESENTATIVE SEATON said having this specific requirement draws a very much heightened awareness, so people taking driver's tests can see that there is a different circumstance when there is an emergency vehicle than the basic speed law under which a driver is supposed to use due caution. Therefore, he said he thinks it's beneficial.

REPRESENTATIVE COGHILL said he doesn't know if there's a penalty even for [not] pulling over for an emergency vehicle that is coming up behind a driver. He suggested there could also be a heightened awareness of that.

Number 2097

REPRESENTATIVE GRUENBERG noted that Alaska does not have many roads with two lanes in each direction. He said he is concerned about people pulling over into an oncoming lane during icy winter conditions and causing an accident.

Number 2136

CHAIR WEYHRAUCH clarified for the record that Amendment 2 had not been adopted; the discussion held regarding [paragraph] (2) would be held for the House Judiciary Standing Committee.

REPRESENTATIVE COGHILL referred members carrying the bill [to the House Judiciary Standing Committee] to "13AAC04090," which he said is [in regard to] authorized emergency vehicles and lights.

Number 2149

REPRESENTATIVE COGHILL moved to report HB 438, as amended, with individual recommendations, and the accompanying fiscal notes. There being no objection, CSHB 438(STA) was reported out of the House State Affairs Standing Committee.

HB 423-TAXICAB DRIVER LIABILITY

Number 2221

CHAIR WEYHRAUCH announced the next order of business was HOUSE BILL NO. 423, "An Act relating to accidents involving the vehicle of a person under the influence of an alcoholic beverage; and providing for an effective date."

Number 2227

REPRESENTATIVE GRUENBERG moved to adopt the committee substitute (CS) for HB 423, Version 23-LS1600\H, Luckhaupt, 3/8/04, as a work draft. There being no objection, Version H was before the committee.

Number 2245

REPRESENTATIVE GRUENBERG pointed out the following changes that had been incorporated into Version H: On page 2, line 4, after the phrase "motor vehicle owner", the words "or operator" had been added; and a sunset clause was added [on page 2, line 26].

He remarked that the effective date, which had been Section 3 of Version D, was no longer there.

[The effective date, which was Section 3 of Version D, had inadvertently been removed.]

REPRESENTATIVE GRUENBERG indicated that any other work that needs to be done on HB 423 should be done in the House Judiciary Standing Committee.

REPRESENTATIVE SEATON stated that his notes do not reflect that the effective date had been removed by the committee at a previous meeting.

CHAIR WEYHRAUCH said that although he does not see notations regarding the removal of the effective date in his notes, he has no problem with its removal.

REPRESENTATIVE GRUENBERG asked the sponsor's staff whether or not he wants the effective date in the bill.

CHAIR WEYHRAUCH said [the effective date] would be 90 days after "signature or passage" of the bill.

Number 2360

JIM SHINE, Staff to Representative Tom Anderson, Alaska State Legislature, on behalf of Representative Anderson, sponsor, stated that although he doesn't remember discussion regarding the removal of the effective date, he agrees with Chair Weyhrauch.

Number 2370

REPRESENTATIVE GRUENBERG suggested an amendment to ratify the removal of the effective date clause. There being no objection, it was so ordered.

Number 2375

REPRESENTATIVE GRUENBERG moved to report CSHB 423, [Version 23-LS1600\H, Luckhaupt, 3/8/04, as amended, with individual recommendations and the accompanying fiscal notes]. There being no objection, CSHB 423(STA) was reported out of the House State Affairs Standing Committee.

TAPE 04-33, SIDE B

Number 2380

CHAIR WEYHRAUCH restated the motion [in case it had been cut off by the end of the tape].

HJR 31-CONST AM: PERMANENT FUND

[Contains brief mention of HB 514.]

Number 2354

CHAIR WEYHRAUCH announced that the next order of business was HOUSE JOINT RESOLUTION NO. 31, Proposing amendments to the Constitution of the State of Alaska relating to the Alaska permanent fund and to payments to certain state residents from the Alaska permanent fund; and providing for an effective date for the amendments.

Number 2292

JOHN MALLONEE, Acting Director, Central Office, Child Support Enforcement Division (CSED), Department of Revenue, in response to a question from Chair Weyhrauch asking why the department has an interest in [HJR 31], offered the following:

With the distribution of \$20,000 in this payout, child support would collect ... - if everyone who was eligible filed for their dividend - about \$240 million in child support. Of that \$240 million, about \$180 million of it would go to custodial parents and children in the state of Alaska, and then a sixty additional million would be reimbursement for past welfare payments: \$30 million, which would be retained by the State of Alaska, and about \$30 million, which would go to the federal government.

CHAIR WEYHRAUCH asked if the money would go to the federal government anyway, or if it would go simply because of the large amount of the payout.

MR. MALLONEE answered it would go to the federal government regardless of how [the division] collected it. He explained that since the government pays a portion of public assistance, when money is collected to reimburse public assistance, that money is split between the state and the federal government.

CHAIR WEYHRAUCH asked if the large amount of money Mr. Mallonee previously referred to is a result of there being "that much arrearage in child support payments by ... residents of the state."

MR. MALLONEE answered that's correct. He stated that there currently is approximately \$583 million in child support owed in the state of Alaska. In response to a follow-up question from Chair Weyhrauch, he confirmed that that amount is owed by noncustodial parents in Alaska.

CHAIR WEYHRAUCH asked what the long-term implication would be from no permanent fund dividend (PFD) being paid out on an annual basis.

MR. MALLONEE replied that the smaller amount of the checks would be approximately \$1.7 million that the state would lose, or about \$3.4 million that it would lose from collections that would reimburse public assistance. Approximately another \$6 million would be lost to the custodial parents of the state. He noted that CSED has collected "right at a little more than \$9 million in permanent fund since October."

Number 2156

REPRESENTATIVE GRUENBERG turned to the committee substitute (CS) for HJR 31, Version 23-LS1282\W. He offered his understanding that the payments would end after fiscal year (FY) 2010. He asked if that would make the collection of child support after that date more problematic in some cases.

MR. MALLONEE responded that it [would] make child support "somewhat more problematic to collect" if there is no permanent fund. He said, "We do, in fact, receive quite a bit of money on cases that we would not otherwise receive during the year. [For] many of the cases [for] which there's a minimum \$50 order, the entire order gets paid for the entire year out of the permanent fund."

REPRESENTATIVE GRUENBERG stated his recollection that there is a provision in HB 514 that would allow CSED to access people's PFDs, "even if they are reluctant or refuse to apply for them themselves."

MR. MALLONEE confirmed that is true.

REPRESENTATIVE GRUENBERG said that, in some cases, [the PFD] is the only source of child support payments. He remarked that sometimes people are reluctant to apply because they are embittered, for example, and don't want to support their children. He asked, "So, this may, in fact, after 2010 make it impossible to get child support from these people, right?"

MR. MALLONEE answered that's correct. He stated that there is a possibility that if there were no annual permanent fund payouts, "there would be some cases of which we would not get payments."

Number 2069

REPRESENTATIVE HOLM, on that point, asked how many people that would affect.

MR. MALLONEE responded, "We usually get approximately 10,000 to 12,000 PFDs in a year." He estimated that, of that number, perhaps as much as 30 percent of those are "cases of which we get no other payment during the year."

REPRESENTATIVE HOLM responded that he would "take issue with that," unless Mr. Mallonee can give the committee some empirical data. He suggested the percentage could vary greatly.

MR. MALLONEE told Representative Holm that he is correct. Furthermore, he said he doesn't have empirical data with him; however, in response to Chair Weyhrauch, he said he would supply that data as soon as possible.

Number 2020

REPRESENTATIVE SEATON asked when the one-time payout to individuals occurs. In response to a question by Representative Holm, he clarified that he was referring to page 2, line 23 through page 3, line 6, which read as follows:

(c) Section 15 of Article IX as it read on June 30, 2004, applies to appropriations for fiscal year 2005. Notwithstanding Section 15(b) of Article IX, appropriations from the permanent fund may not exceed the following amounts for the following fiscal years:

(1) fiscal year 2006 - five percent of the market value of the fund on June 30, 2005;

(2) fiscal year 2007 - five percent of the average of the market values of the fund on June 30, 2005, and June 30, 2006;

(3) fiscal year 2008 - five percent of the average of the market values of the fund on June 30, 2004, June 30, 2006, and June 30, 2007;

(4) fiscal year 2009 - five percent of the average of the market values of the fund on June 30, 2005, June 30, 2006, June 30, 2007, and June 30, 2008.

(5) fiscal year 2010 - five percent of the average of the market values of the fund on June 30, 2005, June 30, 2006, June 30, 2007, June 30, 2008, and June 30, 2009.

REPRESENTATIVE HOLM explained, "Those are in reference to the percent of market value [POMV] (indisc. - coughing) of the fund after it's been split." In response to a follow-up question from Representative Seaton, he clarified that there would be a one-time payout and, in addition to that, there also would be a payout for the year 2004.

Number 1962

REPRESENTATIVE LYNN reminded the committee that at a previous meeting he had asked for information on how "this" would affect eligibility for public assistance programs, in terms of welfare, Medicaid, and low income housing, for example. He asked if there had been a response to that request.

REPRESENTATIVE WEYHRAUCH asked if Mr. Mallonee could address that question.

MR. MALLONEE said no, but suggested the question could be deferred to someone from the Division of Public Assistance.

REPRESENTATIVE LYNN clarified that he wants information regarding any program where a person's yearly income might effect the benefit he/she might get. He explained that a person's getting "all this money at one time" would change that person's yearly income, obviously.

Number 1914

REPRESENTATIVE HOLM noted that if "the PFD folks go away," that would save \$5.2 million a year in dissolving that department. The cost of managing what would then be a slightly smaller fund would be reduced by \$8.2 million a year. Child support would get approximately \$240 million in additional revenue, while student loan arrears would be paid "to the tune of about \$50

million," he stated. He said there would be positive outcomes to the state's budget.

REPRESENTATIVE LYNN stated that he thinks the [resolution] is a good concept that needs consideration. He said he is anxious to see [HJR 31] move forward.

Number 1791

REPRESENTATIVE GRUENBERG recalled that there is case law from the supreme court that allows judges in certain child support cases to require that part of a fund [from a large payout, such as an inheritance] be sequestered and set aside in a trust fund to ensure that the child would be supported.

MR. MALLONEE noted that on several occasions where there has been a history of poor payments and an individual has come into a large sum of money, the court has taken that money "through the majority of the child" and placed it in trust. He added, "In a couple of those cases, we've actually handled the trust account for it."

Number 1812

REPRESENTATIVE GRUENBERG said that, if this constitutional amendment is put before the voters and ratified, virtually everyone in the state will be receiving a large sum of money, including people who have poor histories of child support payments. He asked if the CSED would plan to vigorously implement a program to sequester those funds in appropriate cases before the large payouts are received.

MR. MALLONEE responded that "we" have discussed the issue with the attorney general's office, and he indicated that [if] the payout takes place, "we" would attempt to see if the court would allow [CSED] to sequester the money through the majority of the child.

REPRESENTATIVE GRUENBERG asked if [CSED] has the necessary statutes in place "to do that now on a large scale." He clarified that he is concerned that if the issue is put before the voters later this year, "these people" could get the money before [CSED] could get the program in place.

MR. MALLONEE replied that he is not certain that there currently is a statute in place that would cover a program "that would do

this." He said he thinks it would have to be "made as an individual case by case, based on that poor payment."

REPRESENTATIVE GRUENBERG asked Mr. Mallonee to consider the issue, in order to avoid an opportunity being lost to children forever.

Number 1703

CHAIR WEYHRAUCH asked if [CSED] has the ability to adopt regulations on an emergency basis to handle an outflow of funds "like this."

MR. MALLONEE said he would have to check with the attorney general's office on that. He clarified, "We can, obviously, make emergency regulations, as can any agency under certain circumstances; I'm just not sure under what statute that would fall"

Number 1665

REPRESENTATIVE SEATON asked Mr. Mallonee if he is aware of any other programs, other than the state student loan program and child support enforcement, that would be recouping money "if someone's circumstance changed because they came into a large amount of money."

MR. MALLONEE said he doesn't have that information.

REPRESENTATIVE GRUENBERG noted that a certain percentage of the funding for the Violent Crimes Compensation board comes from the PFDs of felons. He indicated that there might be state, federal, and private creditors that would "really have first goal on this money."

REPRESENTATIVE SEATON said he thinks the committee needs to consider this issue further.

Number 1575

MR. MALLONEE, in response to a question from Representative Gruenberg, confirmed that [the CSED] is allowed to collect spousal support, but only in connection with a child support order.

REPRESENTATIVE GRUENBERG added to his previous request and asked Mr. Mallonee to also include [instances where spousal support is collected].

Number 1515

CHAIR WEYHRAUCH opined that the current discussion "goes to the impact of this resolution."

Number 1499

REPRESENTATIVE LYNN indicated that this is a policy matter. He said he knows many people who really suffer because child support has not been paid. He also stated that he thinks [the \$20,000 payout] would be a good thing for seniors who would not otherwise live long enough to accrue the whole amount.

Number 1458

REPRESENTATIVE GRUENBERG opined that there needs to be consideration of legislation to ensure that "this can't be used on a massive scale to defraud a lot of creditors."

Number 1422

DONALD ANDERSON told the committee that although he is the manager of the Software North Company, he is testifying on behalf of himself to address the federal income tax effects of the PFD and the proposed \$20,000 distribution. He said he has been a computer programmer for 39 years and his specialty is the development of computer models to simulate "real world events." He stated his intent today is to comment on the effect of the federal income tax on the PFD, and its effect on the extraordinary distribution, such as the \$20,000 proposed in HJR 31. The simulations, he explained, involve a [Microsoft] Excel spreadsheet and a program such as TurboTax. He said the Internal Revenue Service (IRS) only releases tax income statistics as an overall state average and in 12 categories of income; however, he explained that this uncertainty is not large enough to change the general effect of what he is currently reporting to the committee.

MR. ANDERSON stated that he believes everyone who prepares federal tax returns for a PFD recipient is familiar with line 21 of form 1040, which is the "other income" line. He said it feeds, without modification, into each taxpayers adjusted gross income. Thus, for anyone above the standard or itemized

deduction, it directly affects the tax paid. Mr. Anderson noted that the most recent tax year for which the IRS summary sheets are available for Alaska taxpayers is 2001. He said he calculated the effects of the \$1,850 PFD paid in that year, for that year's recipient, and he simulated the effect of a \$20,000 payout.

MR. ANDERSON stated that, in 2001, Alaskans paid about \$186 million in federal taxes on their PFDs, which was 17 percent of the total amount distributed. Had a \$20,000 payout been in effect that year, Alaskans would have paid about \$2.9 billion extra in federal taxes - approximately 23 percent of the amount paid out.

MR. ANDERSON explained that this is important when considering enacting a state sales tax or income tax to provide a portion of the funding for state government. He continued to read his testimony [included in the committee packet] as follows:

If the state, on one hand, distributes money on which our citizens pay a hefty federal income tax, and then charges those citizens an equivalent tax to support state government, the big winner is the federal government.

The state and its citizens are impoverished to the tune of as much as \$186 million a year for the PFD and would have to endure the departure of \$2.9 billion more if this extraordinary payment were to occur.

I've rerun this simulation with the lower tax rates in effect for the 2003 tax year and have found that Alaskans would lose about 15 percent of any "tax back" - up to \$115 million - if the entire \$1,108 PFD was pulled back to the state by taxation.

If the \$20,000 payout had been attempted in 2003, about 23 percent would depart in federal taxes. Any part of this that was taxed back to the state in future years would unnecessarily suffer from this 23 percent shrinkage.

The foregoing comments apply directly to former Governor Hammond's new PFD and tax plan - but that's another topic. Attempting to bribe our citizens into relinquishing the PFD by subsidizing the federal treasury is a poor strategy. Using the minimum PFD

earnings necessary to fund state government is the only viable, long-term strategy producing minimum damage to the state.

MR. ANDERSON - with apologies to Representative Holm, whom he said has benefited the state greatly by focusing serious attention "on this area" - stated his belief that HJR 31 should be retitled the "IRS enrichment resolution of 2004." He encouraged the committee to give the [resolution] a "do not pass" recommendation.

MR. ANDERSON supplied the committee with his e-mail address and offered to send his Excel spreadsheet [included in the committee packet]. In response to a request made by Representative Gruenberg, he agreed to send his updated testimony, not only to the House State Affairs Standing Committee, but also to the House Special Committee on Ways and Means [included in the committee packet].

Number 1095

CHAIR WEYHRAUCH announced that HJR 31 was heard and held.

HB 527-ALASKA SECURITIES ACT

Number 1015

CHAIR WEYHRAUCH announced that the next order of business was HOUSE BILL NO. 527, "An Act relating to the Alaska Securities Act, including reports, proxies, consents, authorizations, proxy statements, and other materials, civil penalties, refunds of proceeds from violations, restitution, and investment adviser representatives; and providing for an effective date."

Number 1020

MARK DAVIS, Director, Division of Banking, Securities & Corporations, Department of Community & Regional Development (DCED), testified on behalf of DCED to outline three things [HB 527] would accomplish that the division thinks are important. He continued as follows:

First, we are proposing lowering the jurisdictional threshold for the reporting (indisc.) corporation "proximators," from 500 shareholders to 250 shareholders, and [eliminating] the assets threshold of \$1 million. Currently, the book value of the

corporations is somewhat at issue, and we're proposing just going on the number of shareholders. We've received some complaints from smaller corporation shareholders that they are not sensitive to shareholder rights. We're proposing lowering the threshold to bring those smaller corporations within the division's proxy jurisdiction. I would emphasize, however, that it only affects proxy matters.

MR. DAVIS, in response to a question from Representative Gruenberg, clarified that [the corporations being discussed] are only Native corporations. He continued his testimony as follows:

Second, the bill would raise the maximum level of fines the division has the authority to impose under the Alaska Securities Act. Presently, the upper limit of fining authority is \$25,000 for multiple knowing offences, and we're proposing an increase to \$100,000. That would bring it in line with the federal law, which is 15 U.S.C. 771(a), which allows for a maximum fine of \$100,000.

I would note that the states are all over the map on this issue. One state - Montana - shows \$5,000. Other states, such as Missouri, are as high as a half a million dollars. But we're proposing \$100,000 so that we're in line with the federal securities law. There's been no change to the civil penalties since 1988, and we would be able to bring more significant enforcement actions, we think. We have added investigators to the division, and we are in line with doing more investigations in conjunction with the SEC [U.S. Securities and Exchange Commission].

Number 0901

CHAIR WEYHRAUCH noted that Eliot Spitzer, the attorney general of New York, often "leads the curve" on corporate misdeeds and wrongdoing investigations. He revealed that Mr. Spitzer's aggressive advocacy for consumers and residents of New York, in bringing to light misdeeds by mutual funds and other corporations, has effected his own personal decisions on how he invests his money. He also expressed outrage that "some of these activities occurred." He asked Mr. Davis if there is an incentive for the attorney general of New York to bring those kinds of enforcement actions - because of the enforcement

penalties that he may bring to bear - that could benefit Alaska and provide an incentive for Mr. Davis's office or [an incentive for] the attorney general's office to be the kind of attorney general that Mr. Spitzer seems to be.

Number 0818

MR. DAVIS responded, "Well, I really can't speak for General Spitzer, but I ... think that if we have the ability to make significant fines, that if we fine violations, then we can make something stick." He stated that [Alaska] suffered from the World Plus Ponzi scheme several years ago, and that case was brought by the SEC. He said he would have preferred that it had been brought by state authorities. He indicated that the goal is for aggressive state enforcement.

MR. DAVIS continued as follows:

That dovetails with this other part of this bill, which is restitution. Federal securities laws in most states have restitution, and restitution orders are an important part of getting the money back to the victims' pockets. There's been criticism in the ... business press of the SEC settlement Act - and that includes [Attorney] General Spitzer - that the SEC put the money back in the federal treasury and not into the pots of the investors. So, our goal here is to add more "enclosurement" and put the money back.

Number 0772

CHAIR WEYHRAUCH said he wonders if [the legislature] could give [the division] any tools to do what needs to be done to anticipate problems that would benefit the Alaska consumer, as well as benefit the state treasury.

MR. DAVIS responded that certainly greater fines would be useful for the treasury. He noted that three employees have been added to the "security section" since he's been appointed. He added, "And I think that we obviously would welcome oversights of our budgetary process."

CHAIR WEYHRAUCH emphasized, "If I can increase the fines and penalty enforcement actions available to the State of Alaska and the state receives a positive revenue benefit from that, while absolutely punishing these people, I'm going to look for every possible way to do it."

REPRESENTATIVE GRUENBERG said he echoes that. He said he thinks [HB 527] is a marvelous bill, and he would like the committee to consider what it can do to provide some "tough on crime protection," particularly for the Alaska consumers. He asked Mr. Davis if his division has authority over the Alaska Takeover Bid Disclosure Act.

MR. DAVIS replied he doesn't know.

Number 0667

VINCE USERA, Senior Securities Examiner, Division of Banking Securities & Corporations, Department of Community & Economic Development (DCED), in response to Representative Gruenberg's question, said, "We do."

REPRESENTATIVE GRUENBERG offered his recollection that [Alaska's] Takeover Bid Disclosure Act is unconstitutional under a U.S. Supreme Court decision. He asked Mr. Usera if he is aware of that decision.

MR. USERA answered yes and added that he agrees with that assessment.

Number 0605

REPRESENTATIVE GRUENBERG said he would like to work with "these folks" and see if an amendment to the bill could be made to cure the constitutional problem with a new Alaska Takeover Bid Disclosure Act.

MR. USERA responded that he would be pleased to work with Representative Gruenberg.

Number 0566

FRED TRIEM, Attorney at Law, testifying on his own behalf, told the committee that his practice focuses almost exclusively on representing individual Alaska Natives who sue their Native corporation on account of mistreatment. He noted that he is involved in a case in Juneau today which involves an impairment of shareholder voting rights.

MR. TRIEM stated he supports [HB 527], but with two qualifications. He stated his first concern that the proposed legislation is underinclusive and will leave behind a large

number of Native people simply by virtue of the arbitrary cutoff of 250 shareholders. He suggested the committee expand the scope of the legislation and protect everybody. He opined that a corporation with 250 shareholders is no more deserving of having its shareholders protected than another corporation with 50-100. He revealed there are some outrageous things that happen in Alaskan Native corporations, for which there is no present protection. He offered an example involving the Tetlin Native Corporation, near Tok, where the land was conveyed from the Native village corporation to the local tribal council, reducing ownership from 125 to 60 people.

MR. TRIEM explained that, "under the current scheme," individual shareholders are not really able to protect their interests, because, "under the doctrine of rationale shareholder apathy, a lot of shareholders - each owning a ... small fraction of the corporation in stock that cannot be alienated ... - have no way to pay for reinforcement action if it's brought privately." They cannot hire an attorney because their stock is worth so little and produces so little income that "a rationale shareholder would be apathetic."

MR. TRIEM suggested that the only protection that "these people" can have is through the Division of Banking Securities & Corporations. He opined that it's arbitrary to cut off the corporations that have fewer than 250 shareholders. For the record, he noted that there are about 270 Alaska Native corporations. The number was approximately 310, but some of them have coalesced by mergers, either among those corporations or between village corporations and the regional corporations, of which there are 12 in Alaska.

Number 0327

MR. TRIEM turned to his second suggestion for amending the proposed legislation, which he said focuses on the issue of penalties. He told the committee about a corporation that held an annual meeting, at which some shareholders brought a petition to recall the directors. He opined that it was a stroke of genius when the directors printed the ballot without any boxes on it; therefore, there was no way for the shareholders to vote yes or no on the recall. He said they almost got away with it, but some shareholders complained. The division found that the conduct was intentionally wrong and "fined them a couple thousand dollars." He first asked the committee to guess who paid the fine, then revealed that it was the shareholders that paid it. He explained that "they" got the corporate treasurer

to write the check. He concluded that, by foiling the recall election, the directors managed to get the corporation to pay for their wrongdoing so they could stay in office. He revealed that that is the theme of the case in which he is presently involved.

MR. TRIEM suggested that the legislation include a provision to allow the division to directly fine the wrongdoers. He asked the committee to consider the salaries made by the directors. He noted that the [U.S.] Census data shows that the average Alaska Native has a cash income of approximately \$10,000-\$11,000 a year. In comparison, he noted that the top three officers at Cook Inlet Region, Inc. have each averaged compensation in excess of \$ 1 million, for the years 1999-2001. He posited that the directors have the money to pay for the crimes themselves if only the law would allow it. He indicated that there should be a "big limit." He added, "We don't want to ... stick with the little one that we've got now, because it has no teeth."

Number 0120

CHAIR WEYHRAUCH emphasized that [HB 527] was not introduced to target Native corporations, shareholders, or officers and directors. He told Mr. Triem, "We want to have as much objective testimony as possible, as well as addressing the concerns that you've raised that sound serious."

Number 0072

REPRESENTATIVE HOLM stated he is curious as to Mr. Triem's concept of unpaid members of boards of directors and their "ability to pay." He opined that those who do not get compensation - unpaid members of boards - certainly should not be fined at the same level as those [who] are enriching themselves. He asked for Mr. Triem's comments.

TAPE 04-34, SIDE A

Number 0001

MR. TRIEM said he doesn't think the division would impose heavy fines on unpaid volunteer directors. Conversely, he clarified that he is suggesting that when the directors do have the financial ability to pay fines, those fines should be in proportion to their personal wealth. He said the current Martha Stewart case is a widely publicized example of balancing financial penalties with wealth.

Number 0069

REPRESENTATIVE BERKOWITZ said that corporate malfeasance seems to be a universal problem. He said he doesn't think any suggestion that it is particular to Native corporations was intended. He said he wants to raise an issue for the committee to address as it contemplates the bill, which is that the penalties, in some ways, when tied just to a straight fine or numerical amount, "don't get to the potential benefit of committing the crime." He suggested some kind of disgorgement of the profits or the benefits ought to be required as part of the criminal penalty. He added, "I don't know how it works in the federal system; I haven't looked around it."

REPRESENTATIVE BERKOWITZ concurred with Mr. Triem's suggestion to hold officers individually liable for acts and allowing for someone to look at securities issues that are "ultra vires." He said, "If you want to deter wrongdoing, then you need to hold people accountable. It's unfortunate when people act outside of the scope of their responsibility and rely on the corporate structure to protect individual wrongdoing, and anything we can do to get at that, we ought to do."

Number 0194

MR. TRIEM suggested the committee could amend the legislation in another way, which would be to allow the division to sanction directors for their misconduct, not just with a monetary fine, but also to remove them from office, or to prevent them from serving on the board. He added that the SEC has that regulation, and the superior court can do that, because there is a statute that allows it. However, he clarified that there is no administrative authority.

HB 431-MUNICIPAL DIVIDEND PROGRAM

Number 0311

CHAIR WEYHRAUCH announced that the next order of business was HOUSE BILL NO. 431, "An Act relating to the municipal dividend program; and providing for an effective date."

Number 0318

ADAM BERG, Staff to Representative Carl Moses, Alaska State Legislature, testified on behalf of Representative Moses, sponsor. In response to a request from Chair Weyhrauch, he

offered a brief overview of the bill. He stated that, after permanent fund dividends (PFDs) are accounted for and "inflation proofing has been taken care of," a set amount of money would be distributed to each municipality in the state. The amount of money would be set at \$250 per person. Population would be determined by the number of PFD recipients. There would also be a "basement" at \$40,000 to a municipality. He said, "In the event that the earnings reserve account doesn't have enough money to pay the total package of what ... that amount would be, we'd go with the lower amount."

Number 0488

DOUG STARK, Ph.D., City Council member, City of Homer, told the committee that the City of Homer adopted unanimously a recommendation endorsing [HB 431]. He noted that the committee had met yesterday, from 9:00 a.m. to 11:40 p.m., spending the majority of that time trying to determine "what the fiscal possibilities were in the future," because [the City of Homer] has been heavily impacted by the reduction and elimination of state revenue sharing and also the dramatic increase in insurance costs. He said he thinks [HB 431] is an excellent bill, and he offered to answer questions.

[HB 431 was heard and held.]

HB 459-PAPER TRAIL FOR ELECTRONIC VOTING MACHINE

Number 0575

CHAIR WEYHRAUCH announced that the last order of business was HOUSE BILL NO. 459, "An Act requiring an auditable paper trail for electronic voting machines; and providing for an effective date."

Number 0598

REPRESENTATIVE LES GARA, Alaska State Legislature, testifying as sponsor of HB 459, stated that the proposed legislation provides a very easy solution to a potentially significant problem. In the wake of the 2000 [presidential] election, he noted, a lot of debate began regarding how votes should be counted in the future. He mentioned unfair treatment of handicapped voters because of the voting machines used [that were not handicapped accessible]. He said there currently is a move across the country to adopt digital voting machines; the State of Alaska has purchased, roughly, 55 of them.

REPRESENTATIVE GARA stated that these machines opened the door to potential fraud and abuse. He mentioned there have been accidental vote counts around the country. Notwithstanding that, he expressed that the machines will read the ballot to the voter and they are voice activated. Also, the voter can touch a screen to cast his/her ballot. Referring back to the problem with the digital voting machines, he explained that because there is no paper trail, the person's vote is sent elsewhere and is never seen again.

Number 0781

CHAIR WEYHRAUCH offered his understanding that there is a machine called "AccuVote," into which a voter puts his/her "card." That card is never seen again, he said.

REPRESENTATIVE GARA explained the difference between AccuVote and "this next step of electronic voting" as follows:

At the end of the day, with AccuVote, or any other voting mechanism we've used for the last 200 years, ... there's a piece of paper that shows how you voted. And if anybody has any questions as to whether or not the vote count was accurate, you can go look at those pieces of paper and see what the actual vote was, and you can demand a recount.

REPRESENTATIVE GARA revealed that "this next level of technology" leaves no paper trail; a vote is cast and there is nothing left in the system to prove that vote.

CHAIR WEYHRAUCH stated that implicit in a bill like [HB 459] is a mistrust of the system. He opined that voting is "one of the most important and sacred things we do as citizens." He expressed that there is a trust placed in people who handle ballots and do recounts, for example.

REPRESENTATIVE GARA said that is true. He posited that, across the country, voting officials have done an admirable job. However, he pointed out that if there is ever a question, "you always get to go back to a paper record to see how people voted." Representative Gara stated that although he is uncomfortable with "this next level of technology," there is an easy fix to it.

REPRESENTATIVE GARA, returning to the problem again, offered the following example: In Fairfax, Virginia, a couple of candidates in a school board election questioned the results of that election so much that they got a court to require that the division of elections analyze what happened to the voting machines. It was discovered that because of a programming error, one out of every one hundred ballots "were given to the opposing candidate when they were cast for the first candidate." The only reason that could be proved, he said, is because the software glitch was discovered. Representative Gara also offered an example of a glitch that happened in California.

Number 0923

REPRESENTATIVE BERKOWITZ noted that Representative Sharon Cissna once lost an election by one vote, and he said he wants to underscore the importance of having some way to recount votes.

Number 0998

REPRESENTATIVE SEATON asked how difficult it would be to [find] a paper trail on the machines that have been purchased by the State of Alaska.

Number 1006

LEONARD JONES, Elections Special Assistant, Central Office, Division of Elections, Office of the Lieutenant Governor, turned to the fiscal note provided by the division. He indicated that the paper trail is still "in research and development." He mentioned an estimated cost of \$500-\$1,000 per unit. Currently, he noted, there are 441 precincts, and [the division] plans to purchase 441 touch-screen machines, totaling \$441,000. He said there would also be the cost of the special paper the machine takes, which would be \$1,800 [per roll]. Approximately two rolls per precinct would be needed. The total amount needed from HAVA [Help America Vote Act] funds would be \$442,000.

MR. JONES, in response to a question by Representative Berkowitz, confirmed that HAVA funds [are] federal funds. In response to a question from Chair Weyhrauch, he reported that HAVA passed in October 2002.

Number 1060

REPRESENTATIVE BERKOWITZ asked what the administration's position is on the bill.

MR. JONES offered his understanding that [the division] will follow the direction of the legislature. He added that [the division] wants to give the touch-screens it has purchased a chance. He said [the division] understands that there are potentials for problems; however, it is confident its staff will try to avoid those glitches, should they occur. He indicated that a proposed pilot project [which would incorporate the new equipment] may or may not take place in the upcoming elections.

Number 1135

REPRESENTATIVE HOLM said he is "wondering how this specifically works." He pointed out that a paper trail could be abused, as well. Part of the abuse, he explained, could be how the database is accessed. He said, "And so, I would be curious as to how we would have a protection that voters' votes aren't passed on to others through this type of a scenario." He asked Mr. Jones to think about that and provide the committee with "some better information" [at the next hearing on HB 459].

Number 1215

MR. JONES agreed to do so.

Number 1220

CHAIR WEYHRAUCH told Mr. Jones that he would like information from the department regarding hackers and how secure Alaska's electronic voting system is going to be. He said he also wants to know if a paper trail will actually offer more protection.

[HB 459 was heard and held.]

ADJOURNMENT

There being no further business before the committee, the House State Affairs Standing Committee meeting was adjourned at 9:57 a.m.