

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

March 18, 2004
8:03 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. 431

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

- MOVED CSHB 431(STA) OUT OF COMMITTEE

HOUSE BILL NO. 459

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

- HEARD AND HELD

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."

- SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

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
03/09/04 (H) Heard & Held
03/09/04 (H) MINUTE(STA)
03/18/04 (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
03/09/04 (H) Heard & Held
03/09/04 (H) MINUTE(STA)
03/18/04 (H) STA AT 8:00 AM CAPITOL 102

WITNESS REGISTER

ADAM BERG, Staff
to Representative Carl Moses
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Answered questions and discussed the sectional for HB 431, on behalf of Representative Moses, sponsor.

JIM COOPER, Mayor
for the City of Palmer;
President, Alaska Municipal League
Palmer, Alaska

POSITION STATEMENT: Testified in support of HB 431.

KEVIN RITCHIE, Executive Director
Alaska Municipal League and Alaska Conference of Mayors
Juneau, Alaska

POSITION STATEMENT: Answered questions during the hearing on HB 431.

JACK SHAY, Member

Alaska Municipal League (AML) board of directors
Ketchikan, Alaska

POSITION STATEMENT: Testified on behalf of AML in support of HB 431.

WALTER HICKEL

Anchorage, Alaska

POSITION STATEMENT: Related his past involvement in regard to the issues surrounding HB 431.

BOB BARTHOLOMEW, Chief Operating Officer

Alaska Permanent Fund Corporation

Department of Revenue

Juneau, Alaska

POSITION STATEMENT: Answered questions on behalf of the corporation during the hearing on HB 431.

BILL ROLFZEN

State Revenue Sharing, Municipal Assistance, National Forest Receipts, Fish Tax, PILT

Juneau Office

Division Of Community Advocacy

Department of Community & Economic Development (DCED)

Juneau, Alaska

POSITION STATEMENT: Answered questions on behalf of DCED during the hearing on HB 431.

REPRESENTATIVE CARL MOSES

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Encouraged the committee to pass HB 431.

REPRESENTATIVE LES GARA

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: As sponsor of HB 459, discussed the purpose of the bill.

WILLIAM COLE, M.D.

Juneau, Alaska

POSITION STATEMENT: Testified on behalf of himself in support of the basic aspects of HB 459.

MARILYN RUSSELL

Fairbanks, Alaska

POSITION STATEMENT: Testified on behalf of herself to discuss Alaska's voting system, during the hearing on HB 459.

SANDRA ZIRNHELD

Fairbanks, Alaska

POSITION STATEMENT: Testified on behalf of herself to cite five examples of recent malfunctions in voting machine software, during the hearing on HB 459.

LUKE HOPKINS

Fairbanks, Alaska

POSITION STATEMENT: Testified on behalf of himself in support of HB 459.

DORIS PFALMER

Fairbanks, Alaska

POSITION STATEMENT: Testified on behalf of herself in support of HB 459.

JENNIFER RUDINGER, Executive Director

Alaska Civil Liberties Union (AkCLU)

Anchorage, Alaska

POSITION STATEMENT: Testified that AkCLU cautiously endorses HB 459.

JOHN DUNKER

Juneau, Alaska

POSITION STATEMENT: Testified on behalf of himself in support of HB 459 and mandatory testing and random recounts.

ACTION NARRATIVE

TAPE 04-38, SIDE A

Number 0001

CHAIR BRUCE WEYHRAUCH called the House State Affairs Standing Committee meeting to order at 8:03 a.m. Representatives Holm, Seaton, Coghill, Lynn, and Weyhrauch were present at the call to order. Representatives Berkowitz and Gruenberg arrived as the meeting was in progress.

HB 431-MUNICIPAL DIVIDEND PROGRAM

Number 0100

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

Number 0130

ADAM BERG, Staff to Representative Carl Moses, Alaska State Legislature, testifying on behalf of Representative Moses, sponsor, offered the committee a brief sectional analysis on the bill. Section 1, he said, establishes the municipal dividend; it sets the amount given to each municipality at \$250 per person.

Number 0162

REPRESENTATIVE SEATON, in response to a request from Chair Weyhrauch, moved to adopt HB 431 for discussion purposes.

Number 0179

CHAIR WEYHRAUCH objected "for discussion purposes."

MR. BERG said that [the bill] would give the borough "the dividend," based on the total population of the borough, minus the population of all the incorporated cities within the borough. He explained that it gives the boroughs the chance to apply some of their funding to their unincorporated communities. In response to a question from Chair Weyhrauch, he confirmed that [HB 431] is a scaled-down "resurrection" of a bill introduced formerly in the legislature. He explained that [HB 431, as opposed to the formerly proposed legislation] does not give any direction to the municipalities regarding how to spend the money.

CHAIR WEYHRAUCH said one of the questions people always seem to have regarding [changes to] the permanent fund is how it will affect their individual permanent fund dividend (PFD). He asked if the sponsor might have discussed how the bill might effect the PFD.

MR. BERG answered yes. He pointed to [a page entitled "Analysis of current statutory payout versus HB 431," by the Alaska Permanent Fund Corporation], which is included in the committee packet. He noted that the bottom two lines show the difference in the PFD with and without HB 431.

Number 0293

CHAIR WEYHRAUCH asked how the bill would affect the inflation-proofing of the permanent fund.

MR. BERG said it does not affect [it]. He turned to Section 2 of the bill, which he explained [ensures] that the transfer of money from the earnings reserve account happens only after PFDs and inflation-proofing have been "taken care of."

CHAIR WEYHRAUCH asked how [HB 431] would affect the growth of the corpus of the permanent fund.

MR. BERG turned again to the handout and pointed out that the two lines above the bottom two lines show "the difference and how it affects the total value of the permanent fund." He noted the amounts on those lines of \$45,644 and \$48,165.

Number 0416

REPRESENTATIVE HOLM asked if the sponsor has given any thought to the fact that the population is going to grow.

MR. BERG indicated that some consideration had been given to that issue; however, he stated that the main intent of the bill is to attempt to help municipalities.

REPRESENTATIVE HOLM noted that since the first PFD in 1982, the state of Alaska has grown by 200,000 people. He asked what would happen to "this program" when the population grows by another 200,000 people in the next 20 years.

MR. BERG replied that the amounts can be changed by statute. Furthermore, if the municipal dividend fund grew to the point that it was "getting huge," Section 2 [ensures] that the amount that can be transferred can never be more than the balance of the earnings reserve account after dividends and inflation-proofing have taken place.

Number 0512

REPRESENTATIVE HOLM opined that population growth isn't factored in well, which doesn't give a fair analysis of what will truly happen. He said, "I know it's all theoretical anyway, but it gives us a little better idea of what the true picture is." He questioned whether the huge growth pattern over the last 20 years has been based upon the fact that [the state] provides "these services" or upon the fact that "we have the right reason for people to move to Alaska."

MR. BERG responded, "Actually, ... the people know it's coming from the permanent fund." He noted that "they" do estimate an

annual municipal population growth of approximately 1.15 percent. He said the fiscal note does reflect the population growth.

REPRESENTATIVE HOLM stated that he realizes what the number is, but he suggests that that number is "not even close to being reality." He said, "If you go back the last 20 years, 1.15 percent doesn't get us there."

Number 0618

REPRESENTATIVE SEATON said:

As I look at this ... your projections are that ... in ... fiscal year 2015, the permanent fund itself would be \$2.52 billion less with this program, and that if the ... personal dividends were still calculated the same, there'd be basically a \$250 per person dividend given to the communities and \$90 of that would come out of each person's personal dividend. Is that the way I interpret this?

MR. BERG answered yes; the estimated effect on people's dividend would be \$90 [less]. In response to a follow-up question from Representative Seaton, he confirmed, "Our numbers aren't based on performance of the fund, except for in the event [that] the fund wasn't paying dividends - obviously there would be no municipal dividends going out either."

Number 0868

REPRESENTATIVE SEATON turned to the last page of the five-page handout entitled "HB 431 Municipal Dividend Estimates," [included in the committee packet], which shows a yearly municipal dividend [payment] of \$157,195,000. He also turned attention to a graph [entitled "Funding History for State Revenue Sharing and Safe Communities Program," included in the committee packet]. He said, "I'm just wanting to make sure that that's what the proposal is, is to have the ... revenue sharing in safe communities - not only [to] reinstate some of that, but [to] expand it by three times what it's been in the last eight years." He referred to the back page of the previously mentioned handout with the chart on it and noted that it shows a total for 1998 of \$50 million [comprised of] "revenue sharing" and "safe communities."

MR. BERG said he doesn't have that copy.

CHAIR WEYHRAUCH said copies would be made available.

Number 0918

JIM COOPER, Mayor for the City of Palmer; President, Alaska Municipal League, testified in support of HB 431. He stated that without this type of legislation, communities will be facing serious consequences. He said HB 431 would provide money where it is actually needed at the local level where it can be used to the best advantage of the people, while bypassing the red tape associated with the monies typically received as grants from the state or the federal government.

MR. COOPER told the committee that "we" performed a survey in February, which was based on 73 communities. At that point, he said, more than half of the communities said that they didn't have the financial resources to provide the minimum, basic public services. Three of the four communities reported facing economic downturn, which Mr. Cooper said is obviously made more difficult due to the elimination of state revenue-sharing payments. He stated his belief that in the mid 80s the revenue sharing safe communities [total] was \$136 million, which then declined to \$50 million, and now is rising to \$157 million. He said, "So, we're basically in the ball park if we had continued to raise the monies from the 1986 time frame."

MR. COOPER revealed that five of the six communities said that they anticipate significant revenue shortfall this year, while two of the municipalities will be making cuts in public services. Half [of the municipalities] report that they have already laid off workers, while two out of three report that they need to raise fees, such as the rates for water and sewage, harbor fees, and land fills, to counteract the loss of money. He posited that it's obvious that [the proposed legislation] is a necessary step because doing nothing could result in a strong potential that 30 communities will be phased out this next year, which would have a compounding effect on other communities.

MR. COOPER noted, "Approximately one in three jobs in the urban areas depend on providing goods, services, and transportation in the rural communities." If the smaller communities close, then the onus will fall to the larger communities to provide services to all the people who will have moved to the larger communities. He stated, "I think we have to remember that the municipal government is the best deal in the state; we're the ones that provide, typically, a lot of the essential services which are:

revenue collection, grants administration, ... elections, ... road maintenance, [and] property liability insurance." He concluded, "I think that we need to look at what we want to do and what we're trying to do for our communities, and this is definitely a step in the right direction."

Number 1111

CHAIR WEYHRAUCH asked Mr. Cooper to clarify what "closure of communities" means.

MR. COOPER explained that communities without revenue sharing will not have monies with which to be able to function and will literally "turn the key, turn off the lights, shut off the water, and walk away." He said the revenue sharing of last year ranged from 4 percent of some of the communities' budgets up to 90-plus percent.

Number 1150

REPRESENTATIVE SEATON turned to a handout [showing the revenue sharing totals of Alaska municipalities for fiscal year 2003]. He noted that the total for Anchorage was [\$10,403,815]. He then turned back to the previously cited ["HB 431 Municipal Dividend Estimates"] page and pointed to where it shows that Anchorage would receive \$67,267,500. He noted other examples. He asked, "Is that your estimate of how this would go, as well?"

MR. BERG surmised that he is "speaking in general to the program, per se." He said he is not certain he agrees with the figures. He said he thinks the Alaska Municipal League has said that it would like to have revenue sharing and safe communities at a level not to go below "what we had three years ago."

Number 1230

CHAIR WEYHRAUCH said he has a question about one of the terms in the bill. He stated, "It says the amount transferred to the fund shall be distributed to the department as dividends to the municipalities." He asked how municipalities would be defined.

Number 1258

KEVIN RITCHIE, Executive Director, Alaska Municipal League and Alaska Conference of Mayors, defined a municipality as "any municipal political subdivision, be it a city, a borough, a unified municipality."

CHAIR WEYHRAUCH asked if Elfin Cove, as a community association, [would be a municipality].

MR. RITCHIE answered that unless it is specifically chartered as a municipality under state law, it would not be considered one.

MR. RITCHIE confirmed that revenue sharing is proposed for elimination in "this budget," and there are a number of small communities around the state that will not be able to provide services without some base of revenue sharing. He echoed Mr. Cooper's estimation that municipalities really are a good deal. He said a municipality can exist with a municipal budget of \$150,000 to \$300,000 - a small amount of money. Beyond that, he stated, even though there is limited tax authority in communities, the ability was created to provide services, apply for and administer grants, and administer utility systems, for example. He explained that there really is no other money for providing the base services.

CHAIR WEYHRAUCH observed that so far, the testimony has shown that this [proposed legislation] is critical to small communities. He turned to larger communities, such as Anchorage and Fairbanks, and he asked how much revenue sharing those two large municipalities receive and what they would receive under [HB 431].

Number 1349

MR. RITCHIE said he thinks that the last revenue sharing number was about \$30 million. He added, "And also, municipal capital matching grants were also proposed for elimination - so about \$45 million." He said, "This is looking at about \$150 million, so approximately three times the amount of money." In terms of what that means to a large community, he said huge things are happening every day, for example, the issues surrounding the retirement for public employees and teachers. He continued as follows:

It's not entirely -- I mean I couldn't say that this is a direct offset to local taxes and local taxes would go down, because there [are] so many things happening in the world; but, in fact, this would create the kind of stabilization ... of taxation that will really benefit communities. And in some communities they may decide to lower taxes and, in fact, in all reality the state may decide to have

municipalities do more in some cases. For example, the governor is recommending municipalities handle all of the match for [the Department of Transportation and Public Facilities (DOT&PF)] projects. You know, those types of things -- obviously there's a sorting out process that has to happen, because the state and the municipalities are partners in all of this.

Number 1418

REPRESENTATIVE LYNN asked how this would relate to maintaining the senior property tax exemption throughout the state.

MR. RITCHIE responded that the Alaska Municipal League's long-held position has been that it's a good program, which it wants funded. He said, "This would be an avenue for permanently funding the senior citizen property tax exemption; you wouldn't hear from us again on that."

Number 1443

REPRESENTATIVE HOLM asked Mr. Ritchie if he would consider that all municipalities have a reason to exist.

MR. RITCHIE noted that yesterday, in the House Special Committee on Ways and Means, the issue was raised that 50 years ago, before there was revenue sharing, there were still communities throughout Alaska. Many of these are viable communities that have been in existence for thousands of years. However, 50 to 100 years ago, infant mortality was at an unacceptable rate, access to doctors was unacceptable, education was not good, health facilities were basically nonexistent, and electricity [was not available]. "In today's world," he said, "it's not fair, and people probably won't accept those same types of conditions, even though that's the way it was a hundred years ago." Without the services that are currently available, people in smaller communities would start moving away to urban areas and the small communities would probably collapse. Mr. Ritchie asked, "Can all communities be saved?" He answered no, there's probably economic pressures that will make people move away from communities. However, he opined that many of the small communities that don't have much of a tax base but have existed on the same site for years are certainly viable and deserve to exist.

Number 1529

REPRESENTATIVE HOLM pointed out that after the gold rush some towns didn't exist any more. He questioned whether [HB 431] would artificially extend the length and duration of a municipality's lifetime.

MR. RITCHIE characterized that that as an excellent question. He said, "This program alone will take a community that might have to close out as a municipal government, lower the quality of life for its citizens, not be able to provide the services that are required, and [have] that cause people to move away." However, if there is a major industry in a community, such as a mine that closes down, and the only reason the people are there is for mining, then the people will move away because they don't have jobs, not because the programming exists or doesn't exist. He told Representative Holm, "I don't think - in the sense that you're talking about - that it's going to significantly extend the lives of communities where their employment base moves away. But, especially in communities that have ... a viable subsistence base, this will allow them to operate a municipal government and continue to exist."

REPRESENTATIVE HOLM said he is trying to find the balance here.

Number 1637

REPRESENTATIVE BERKOWITZ asked if the Alaska Municipal League has done any analysis regarding what the impact of [HB 431] on local property tax or local sales tax rates across the state.

MR. RITCHIE answered no, adding there are "so many unknowns out there." He said this year there are issues regarding economies; most of the communities around the state are in trouble as well as the fishing, mining, and timber industries. In addition to that economic struggle, Mr. Ritchie listed the following state cuts: the proposed elimination of revenue sharing; municipal capital matching grants; assumption of greater responsibility for "DOT match"; and a five-percent salary increase mandated by the state for funding a state retirement system, which most of the municipalities are in and cannot avoid. He said, "If this were to be adopted, I could say with somewhat great certainty that it would ... at least stabilize the increase of taxes, and in some cases could either reduce taxes or, again, if this were to pass it's very possible the state would say, 'Well, now that you've got all this money, we'd like you to do a few extra things.'"

REPRESENTATIVE BERKOWITZ stated:

This is one of the things that is really intriguing to me about the notion of a community dividend. And we're in a transitional period in Alaska's history. When we created the state and when we devised the system we have now, it was done with the idea that you needed to do things through Juneau, because most of the communities didn't have the ability to be sufficient, and that the state would provide a lot of the services and take over a lot of the responsibilities.

It seems that we've reached the point where many of the communities now are in a position to take care of themselves to a greater degree than was possible in the past - not all the communities, but particularly the major communities. And that there should be, as companion to this type of legislation, some investigation as to [which] state services are being provided could be provided better at the local level. And if there's any analysis that's been done on that, I'd be really interested to see it.

MR. RITCHIE replied that "we've" actually proposed that study a number of times and would gladly participate with the state in it. He said "we" feel that on a local level in government, people in communities can - without a state program and state administration - decide what things are really needed to make the community better. He stated the reality is that taxes are not really that low around the state. Most of the larger communities are above \$1,000 per capita in local tax generation.

MR. RITCHIE said former Governor Walter Hickel would speak to an issue regarding a concept of the PFD that he said the public may think is "really good." For example, when services are needed at the local level, one possibility is to give people a higher dividend. The federal government would take a portion of it and then the municipal government would tax, as well. He said, "And so, by taking the federal government out of the tax loop by providing some assistance directly to a municipality - which is not taxed by the government and would be a good public purpose - you've ... given your local taxpayers sort of a tax break from federal taxes on providing local services." He opined that that concept is probably pretty viable and sellable to the public.

Number 1818

REPRESENTATIVE SEATON noted that the proposed program would provide basically 38 percent of the budget of the Municipality of Anchorage. He asked if that revenue sharing would affect the municipal tax cap.

MR. RITCHIE stated his understanding that the answer to that is no. He noted that one of the things that has been a significant problem to a number of communities with locally imposed tax caps is that they did not anticipate or count reductions in state funding. Therefore, when the state takes services away that has to be replaced, or takes revenue sharing away, there is no mechanism within the tax cap to adjust for that.

Number 1867

JACK SHAY, Member, Alaska Municipal League (AML) board of directors, testifying on behalf of AML, told the committee that the AML represents approximately 60 percent of the organized municipalities in the state, and probably over 98 percent of the population. He admonished the committee to listen carefully to former Governor Walter Hickel, who he said, "planted the seeds that have resulted in this plan." Mr. Shay said [HB 431] addresses some important elements. He said the municipalities are in trouble. He stated that [Version D before the committee] is simplified and excellent, because it protects the PFD and protects the inflation-proofing of the fund in very bad times, in case of extreme growth and falling markets.

MR. SHAY said every state gives fiscal aide to cities, towns, and counties, "and so forth," and it is a well-recognized principle of our republic that [Alaska] does this. He emphasized that [AML] endorses and urges passage of [HB 431].

CHAIR WEYHRAUCH called upon former Governor Walter Hickel to testify.

Number 2000

WALTER HICKEL, former Governor of Alaska, testifying on behalf of himself, commended the committee for working on HB 431. He offered his background regarding the issue: Mr. Hickel said he came up with "this idea" many years ago and presented it in many places throughout the state, and "people were really for it." He expressed that Alaska is a different state with a government structure, rather than the private structure of many of the Lower 48 states. He indicated his involvement over 50 years ago. The resources, he said, were not given to the people

directly, but were given to the future state, so that it could pay the bills the federal government had been paying.

MR. HICKEL said he thinks the state has paid out about \$5 or \$6 billion in dividends. He opined, "If half of that [had] gone to the villages and cities ..., we'd probably have the greatest public system on earth; we'd have the finest schools, the finest roads, the finest public buildings." Consequently, he observed, it isn't the individual's obligation to do a lot of things; it's the collective obligation, which is why Alaska is called the "owners' state." He continued as follows:

I was trying to keep it quite simple. The dividend would [have] just kept on going, but half of that dividend would have gone to the area in which the person lived, even if it wasn't an organized municipality. And I was thinking that the money that went to those villages or those cities, that it would be -- at least 90 percent of it had to go to capital, because pioneering countries need capital. And once they get capital, the local economy moves up and does different things. And so, ... your program is a start in the right direction, but I think somehow, some day, it should be tied to what the individual gets: [If he gets] \$100 dividend a year, the area in which he lives gets \$50; if he gets \$1,000, they get \$500. They just split it, whatever it is. And so, it's just not tied into something.

Do whatever you want to do. I think the state supports you. I know the [Alaska] Municipal League, the times I took it to them - even the last time about a year ago in Valdez - they voted unanimously for a community dividend.

MR. HICKEL said he knows a lot of people say that the government isn't efficient, for example, but he reiterated that [in Alaska], the government has an obligation of ownership, and has a responsibility to do things that other state governments do not. He concluded, "I'd like to invite all Alaskans to participate because it's for their benefit." He offered to answer questions from the committee.

REPRESENTATIVE BERKOWITZ noted his appreciation of Mr. Hickel's presentation of his ideas.

Number 2284

BOB BARTHOLOMEW, Chief Operating Officer, Alaska Permanent Fund Corporation, Department of Revenue, in response to a question by Chair Weyhrauch, explained what "(b) and (c)" refer to [from page 2, line 10 of HB 431], as follows: "'(b)' is the amount transferred for the dividend, and '(c)' is the amount transferred for inflation-proofing." He explained that half of the amount available goes to the dividend, while the amount designated to offset the effects of inflation is transferred from the earnings reserve to principle. Whatever money is left in the earnings reserve would be used to "make the transfer under (e)" [in Section 2 of the bill]. In response to a question from Chair Weyhrauch, he revealed that the calculations are all based on the financial statements and are estimated up until June 30, and it's usually some time in July that the accounting records are closed and the final numbers are available. The amount of the dividend is announced in September.

CHAIR WEYHRAUCH asked what timing would be on the announcement of the municipal dividend. He added, "Because you could calculate backwards, then, and people could figure out the dividend"

MR. BARTHOLOMEW responded, "Yes, and the Permanent Fund usually announces in July what the amount of the transfer to the Permanent Fund Division will be. So, we've already made our decision in July if you're going to get "x" dollars. They have to complete the application process, determine how many people are going to be eligible, [and] do the actual math." In response to a follow-up question from Chair Weyhrauch, he confirmed that it would be July when the municipalities would know "what the actual amount would be."

CHAIR WEYHRAUCH asked when the transfers would take place.

TAPE 04-38, SIDE B

Number 2358

MR. BARTHOLOMEW indicated it could take place any time after "our" agreement with the Department of Revenue, which he said he thinks is the 20th business day of July.

CHAIR WEYHRAUCH asked if the time that the transfers under [subsections] (b) and (c) take place is defined in statute.

MR. BARTHOLOMEW answered no. He explained as follows:

What they'd say is at the end of the year, and we have taken that to be June 30th. And then, we did just go through with the attorney general's office last year, to [ask], ... "What's a defensible position for us to take on when we should make that transfer?" And that's what led us to adopt that approximately 20th business day.

CHAIR WEYHRAUCH asked Mr. Bartholomew, "If we were to adopt this, there would be no reason to put a date certain as to when these transfers would occur under the municipal dividend program?"

MR. BARTHOLOMEW replied that if there wasn't a date certain, then "we" would probably follow what has been done regarding the transfer to the dividend fund. Unless a later date was given, he added, "we" probably would be ready to make the transfer in late July.

CHAIR WEYHRAUCH offered his understanding that if there was a situation where the municipality was facing a dire financial situation and potential bankruptcy, it wouldn't file an injunction to get "this money" in advance, because it would be distributed in a normal course and the state would have to bridge any fiscal impact to that municipality. He asked if that was Mr. Bartholomew's position.

MR. BARTHOLOMEW answered that's right. He said he thinks "we" have good legal ground to say that, based on how the statutes are currently written, "we" have the obligation of the 20th business day. He said, "I think if you were trying to get it sooner, we would just say, 'We don't have any authority to make that transfer.'"

CHAIR WEYHRAUCH said this is what would be called, in a "fisheries" situation, an allocated decision by the legislature. He stated his assumption that the corporation has no position on the bill.

MR. BARTHOLOMEW answered that's correct. He said [the corporation] tries to provide information regarding amounts, but stays neutral in regard to the allocation or use of what's available.

Number 2274

REPRESENTATIVE SEATON noted, "All of our other transfers are based on the earnings and the success of the fund and this is a flat \$250 per person." He asked Mr. Bartholomew if he could offer any insight regarding whether there would be "any positives or any negatives to that proposed allocation method."

MR. BARTHOLOMEW said he thinks the only difference is that "we" would have to rely on external sources for determining "that population amount, or whatever the calculation was going to be." He opined, "As long as it's clearly defined who's responsible to determine population and then help us come up with a dollar amount, I think we can make it work just as well as a formula or a set dollar amount."

Number 2232

REPRESENTATIVE BERKOWITZ asked if it would be easier, from an administrative perspective were the state to adopt a percent of market value (POMV), and then, perhaps, through some percentage on that POMV, make an allocation to the municipalities.

MR. BARTHOLOMEW said the [Alaska Permanent Fund Corporation Board of Trustees] definitely has recommended its preference to get away from the current way of accounting for realized income and having a volatile payment stream that is high some years and low others. The board recommends that the way all payouts from the permanent fund are determined is changed. He noted that HB 431 uses the current formula. He said he thinks the board would recommend any distribution plan - to the extent that it can - work toward adopting a POMV approach, and then, through the legislative decision-making, decide how the money is to be allocated.

REPRESENTATIVE BERKOWITZ asked what the differences are between taking a portion from the permanent fund and allocating it "this way," as opposed to, for example, taxing that portion back, which he said he thinks would allow the taxation of nonresident workers. He clarified as follows:

So, here we're talking about \$250 per person. If we were to allocate the full amount, tax \$250 back per person, would that have individual tax consequences, and [if we] have \$250 back per Alaskan, would that allow us to tax \$250 to nonresident workers?

MR. BARTHOLOMEW answered he doesn't know.

Number 2128

CHAIR WEYHRAUCH turned to Amendment 1, which read as follows:

On page 1, line 11
Between "**Amount of**" and "**dividends**"
Insert "**municipal**"
Change "**dividends**" to "**dividend**"

Number 2114

REPRESENTATIVE GRUENBERG objected. He opined that dividends should still be plural, because otherwise it would be considered just one dividend, when it really will be a number of dividends to the various municipalities.

CHAIR WEYHRAUCH asked if there was objection to just inserting the word "**municipal**". There being none, Amendment 1 [as amended] was adopted.

Number 2080

CHAIR WEYHRAUCH turned to Amendment 2, which read as follows:

From page 1, line 14
Through page 2, line 1
Delete "or other population data that, in the judgment of the department, is reliable"
Insert "that reside in the boundaries of that municipality"

CHAIR WEYHRAUCH stated his reasons for Amendment 2: First, he said he wants the legislature to be specific that "we" rely on the permanent fund recipient. Second, he said he wants to specify that those recipients would reside in the boundaries of the municipality. He opined, "If we're going to address community impacts and impacts in [the] municipality, it should be contingent on the people living there." He noted that almost \$17 million in dividends is sent out of state. He indicated that if people aren't residing in the state, then the municipalities won't experience the impact of that resident and "they should not be increased by that amount of money for that municipal dividend."

Number 2025

REPRESENTATIVE BERKOWITZ suggested that everything after line 12 [on page 1] be deleted.

CHAIR WEYHRAUCH concurred with that suggestion, "because that does get to the person residing in the municipality."

Number 2001

REPRESENTATIVE SEATON mentioned permanent fund dividend applications and asked, "How does the nexus of ... that other data set occur?"

REPRESENTATIVE BERKOWITZ said he doesn't think "we" should be the ones to figure it out. He said if [the legislature] were to specify in statute how the department or division "figures it out," that might tie their hands in some way that could conceivably be constitutionally impermissible. He mentioned that U.S. Census data is available, as well as tax information. He said, "At a basic level, you get down to a certain point and it's guess work, but in the smaller communities, it's not guess work. I think you can probably just have a pretty straightforward knowledge of how many people are living there."

CHAIR WEYHRAUCH proffered that there's a rational basis from which to draw between a person residing in a municipality and one who does not reside there. He noted that the resident uses roads, medical services, schools, and water and sewer. He said, "You probably could even discriminate on that basis."

Number 1928

REPRESENTATIVE SEATON expressed the need to clarify the definition of resident.

CHAIR WEYHRAUCH responded that his use of the word resident refers to one who is "domiciled in and living in the community, using the municipal services and affecting that community directly."

Number 1884

REPRESENTATIVE HOLM asked if it is to be anticipated that "all municipalities will give us the straight scoop." He asked if there would be some specific oversight by the State of Alaska to make sure that it isn't "getting duped" by certain municipalities.

CHAIR WEYHRAUCH said, "I would hope there would be."

REPRESENTATIVE HOLM questioned whether the result would be another audit function. He mentioned the fiscal note.

Number 1843

BILL ROLFZEN, State Revenue Sharing, Municipal Assistance, National Forest Receipts, Fish Tax, PILT; Juneau Office; Division Of Community Advocacy; Department of Community & Economic Development (DCED), testified as follows:

This language was pulled out of our existing statutory language for the revenue sharing program. For the past, at least, 30 or 40 years now, it's been the department's responsibility to come up with an annual municipal population determination. We work closely with the state demographer and the Department of Labor, who annually comes up with the statewide population for all the communities, using permanent fund dividend applications. In fact, several years ago, we had the application amended so that applicants had to put their physical address on their application versus their [post office box] or mailing address.

Annually, we receive ... that data from the state demographer in the fall. On January 15th, we send out municipal populations to all the municipalities. They have until April 1 to appeal that determination, based on a local head count census. We've found, over the last few years, based on this change in the application, that very few municipalities appeal our numbers, because they're very reliable. But we do allow them that opportunity, but it has to be based on local counts. And the requirement is that a resident has to live in that municipality at least six months out of that calendar year.

MR. ROLFZEN noted that currently the department is in the middle of a population appeal process, which will conclude on April 1. The numbers will be certified on June 1.

CHAIR WEYHRAUCH asked Mr. Rolfzen, "When you said 'this language,' what language did you refer to?"

MR. ROLFZEN answered, "Population data that, in the judgment of the department, is reliable."

CHAIR WEYHRAUCH asked, "The state already has some experience with this language and its applicability in the state?"

MR. ROLFZEN answered, "Exactly."

Number 1742

CHAIR WEYHRAUCH suggested adding the word "physically" between the words "residing" and "in", on page 1, line 12 of the bill.

MR. ROLFZEN responded that that would work for [DCED].

CHAIR WEYHRAUCH said, "I'm going to move that as [a new] Amendment 2, to add the word physically."

REPRESENTATIVE GRUENBERG referred to the original Amendment 2 [text provided previously] and asked if the committee was going to adopt it.

CHAIR WEYHRAUCH responded, "No, I withdrew that amendment."

Number 1729

CHAIR WEYHRAUCH asked if there was any objection to [the new] Amendment 2. There being none, [the new] Amendment 2 was adopted.

Number 1719

REPRESENTATIVE SEATON asked if "with that" there is a full enough definition of six months. He said, "I mean, that's accepted now, and ... you don't see any problems if this definition's here (indisc. - coughing) testifying that in (indisc. - coughing) leaving that up to determination?"

MR. ROLFZEN responded, "That's correct. We have regulations in place to implement population determinations on an annual basis, and our requirement is six months out of the year."

Number 1700

CHAIR WEYHRAUCH noted the language on page 2, [lines 6-8], which read:

(c) If the amount appropriated is not sufficient to fully fund municipal dividends for a fiscal year,

the amount of each dividend shall be reduced on a pro-rata basis.

CHAIR WEYHRAUCH introduced Conceptual Amendment 3, which would make the following changes:

On page 2, line 6
Between "amount" and "appropriated"
Insert "that would be"
Between "appropriated" and "is"
Insert "under subsections (a) and (b) of this section"

CHAIR WEYHRAUCH, in response to a question from Representative Seaton, clarified that (a) and (b) refer to [Section 2] and not to "the transfers."

Number 1635

CHAIR WEYHRAUCH asked if there was any objection to Conceptual Amendment 3. There being none, Conceptual Amendment 3 was adopted.

Number 1628

CHAIR WEYHRAUCH turned to Amendment 4, which read as follows:

On page 2, line 12
Delete "fully"

CHAIR WEYHRAUCH explained that the word "fully" may be a matter of argument.

Number 1583

CHAIR WEYHRAUCH asked if there was any objection to Amendment 4. There being none, Amendment 4 was adopted.

Number 1565

REPRESENTATIVE GRUENBERG asked if it is constitutional for money to be transferred from the corporation to the department without an appropriation.

Number 1512

MR. BARTHOLOMEW answered that he does not believe so. He stated his belief that all money remains in the earnings reserve of the permanent fund, until appropriated by the legislature.

REPRESENTATIVE GRUENBERG suggested that to make "this" constitutional, the committee would need to offer an amendment. He noted that the language on page 2 looks like an appropriation would not be required. He asked if language should be added to say, "Subject to an appropriation for that purpose."

MR. BARTHOLOMEW replied that the new subsection (e) that is being added in AS 37.13.145 is in the same section that deals with inflation-proofing and dividends, and those are based on appropriations that are in the annual operating budget, "or some appropriation bill." He said, "I believe by having it within that subsection, you're going to have it subject to the same requirements, and I think there is AG work stating it will not transfer without an appropriation."

REPRESENTATIVE GRUENBERG said he doesn't want to draw a lawsuit; therefore, he asked Mr. Bartholomew if it would increase his comfort level or eliminate a possible question if the committee put a technical amendment in "to that effect."

Number 1449

REPRESENTATIVE BERKOWITZ stated that Section 1 "says it clearly." He noted that the language in Section 1 specifies, "Subject to appropriations".

MR. BARTHOLOMEW said, "And that would be in Title 29." In response to a comment by Representative Gruenberg, he said, "Having it stated in Title 29 and then following the legal guidance we have for 37.13.145, I think you have a clear record requiring appropriations."

REPRESENTATIVE GRUENBERG explained that he had thought the phrase "Subject to appropriations" referred to the second transfer of money from the department to the municipalities.

MR. BARTHOLOMEW, in response to a question from Representative Gruenberg, said he is comfortable that there will be good guidance.

Number 1354

CHAIR WEYHRAUCH closed public testimony.

Number 1342

REPRESENTATIVE CARL MOSES, Alaska State Legislature, as sponsor of HB 431, stated that this legislation is badly needed by the communities in Alaska. He said the health of the state depends upon the health of communities. He opined that HB 431 is a politically correct way to use the PFDs. He said, "It's the people's money, as far as I'm concerned, and this gives the money back to the local level where it can be administered and spent as they see fit." He stated that he thinks this will go a long way in improving the quality of life in Alaska. He encouraged the committee to move [HB 431].

CHAIR WEYHRAUCH said that no matter what happens with the bill, Representative Moses' service to the state is appreciated.

Number 1279

REPRESENTATIVE SEATON referred to previous discussion regarding the \$67 million that would go to Anchorage, whose current budget is [roughly] \$248 [million]. He said he wanted to correct for the record that it's 27 percent, not 38 percent.

Number 1260

CHAIR WEYHRAUCH removed his previous objection to [the original bill version].

Number 1248

REPRESENTATIVE GRUENBERG moved to report HB 431 [as amended, with individual recommendations and the accompanying fiscal notes]. There being no objection, CSHB 431(STA) was reported out of the House State Affairs Standing Committee.

HB 459-PAPER TRAIL FOR ELECTRONIC VOTING MACHINE

Number 1199

CHAIR WEYHRAUCH announced that the next 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 1180

REPRESENTATIVE LES GARA, Alaska State Legislature, as sponsor of HB 459, stated that the one cross check that the United States has had for 200 years is that, after somebody votes, there is a paper record of how that person voted. He said that machines are now being used - the State of Alaska having recently purchased 55 of them - that leave no paper record of votes. He called it a radical departure from anything the state has ever done. He emphasized the importance of having a paper record. Representative Gara reported that in Alaska, many elections have been close.

REPRESENTATIVE GARA offered an example of an election where a candidate lost by 16 percent of the vote and someone asked for a recount, but the Division of Elections said no. The reason the recount couldn't be made was because there was no available paper trail. At that point, he explained, the only way to tell whether the vote was accurate would be to check the computer code that was used to calculate and tally the vote. However, across the country, when people ask to look at the computer code, they are being told by the computer companies that the code is a trade secret. The outcome is that the [true] result [of the election] is never known.

REPRESENTATIVE GARA stated that these [voting] machines are needed for people with certain handicaps. He said HB 459 will require that when Alaska starts using the machines, those machines must produce a paper trail. He noted that in California, that requirement is going to go into effect in 2005. He said the Division of Elections in Alaska reports that the technology to make the new machines produce a paper trail will be available by "the 2006 election."

Number 1048

CHAIR WEYHRAUCH opened public testimony.

Number 1000

WILLIAM COLE, M.D., testifying on behalf of himself, opined that a reliable voting system is essential to a democratic process. Furthermore, confidence in the system is also essential. He noted that many have cited that electronic systems have been easily hacked into and outcomes have been changed. Dr. Cole related an article in The New York Times, dated January 31, 2004, which reported that the State of Maryland contracted with a computer security firm to check out a [voting] system, and

"they" easily were able to hack into the machine, change votes, and "take over the process."

Number 0952

DR. COLE stated that obviously this issue is nonpartisan. Notwithstanding that, he said it didn't aide his confidence in the system when he heard that the manufacturer named Diebold [Election Systems ("Diebold")] said that the Maryland security study validates the Diebold election systems equipment for the north's primary. He added that it also didn't help that the head of the company has been "quoted to be able to deliver Ohio to the current sitting President in the next election."

DR. COLE stated he would support the basic aspects of [HB 459], that any system must have a physically verifiable paper trail - verifiable by the voter at the time of the vote and later at a recount. He stated his belief that a public process, "such as this," should have access to the proprietary software involved in the machines proposed by the private companies. He said he thinks a generous recount requirement "is involved." He remarked that it does no good to have a paper trail if it prohibits having a count to a mere 1 percent difference. Dr. Cole also stated his belief that this issue is so important that it must go into effect immediately as opposed to some date in the future.

Number 0869

DR. COLE concluded that he has been proud of the system that Alaska has had [to date], and he said he feels that helping handicapped [voters] would certainly not be insurmountable with the present system.

Number 0851

CHAIR WEYHRAUCH asked Dr. Cole if he has any knowledge in regard to the current accessibility to voting available to handicapped individuals.

DR. COLE answered he doesn't. He added, "It's yet to be shown to me how you could use the electronic system without assistance."

Number 0821

MARILYN RUSSELL, testifying on behalf of herself, stated that her goal is to see that Alaska's voting system is competent and reliable, as well as admired and respected, and that it maintain that reputation. She said when many Americans think of Alaska, they think of a beautiful, unique frontier with indigenous people - [a place where people are] independent and think outside the box. Ms. Russell encouraged setting up the voting machines from the beginning to be accurate and dependable. She stated that there should be no chance of possible wrong-doing: no software glitch, no system hacker, no possible fraud, and not even the least bit of doubt in a voter's mind that his/her vote might be skewed.

MS. RUSSELL said she has done some homework and found that even though systems have been checked out by many independent people, the ultimate results of the votes have been dubious. She said, "If there were ever a problem, I cringe to think of the amount of time, effort, anguish, and money that would be needed to fix the problem, let alone the credibility that would cause havoc. We want to have a paper trail for these machines. Our state is on the way up; let's not mar its progress."

Number 0722

REPRESENTATIVE HOLM thanked Ms. Russell for her testimony.

Number 0702

SANDRA ZIRNHELD, testifying on behalf of herself, stated that while there are many assurances from manufacturers that their software works, she would cite five examples out of many recent malfunctions. She continued as follows:

[In] Broward County, Florida, this January, in a single race election, there was only one thing to mark on the ballot. A hundred and thirty four ballots registered no vote. The winner won by only 12 votes and, although Florida law requires a recount, a recount was not possible because there was no paper trail.

[In] Fairfax County, Virginia, November 2003, a republican school board member lost her at-large seat in a tight race. Voter complaints about suspicious behavior of machines led to the testing of some machines, which showed that one suspect machine

subtracted a vote from this candidate in about one of every hundred tries.

[In] Miami, Dade County, Florida, November 2002, several precincts - each with hundreds of voters registered - tallied no votes cast.

[In] Boone County, Indiana, November 2003, in a district with only 19,000 eligible voters, of which only 5,352 voted, the tally came up with 140,000 votes.

[In] Muscogee County, [Georgia], November 4, 2003, citizens who voted no on a referendum issue saw the machine register yes. Officials ended up having to take this machine out of service.

MS. ZIRNHELD stated that this is egregious, and she said she wants to make certain that nothing like this happens in Alaska. She encouraged the committee to look at a June 2003 report by computer security researchers from Johns Hopkins and Rice Universities, that showed that the software on the Diebold machine lacked even the most basic of computer security [capabilities]. She indicated that undergraduates in a computer security class would have failed if they had written that code. She called it, "blatantly inept." She revealed that it scares her that machines are so easily prone to fraud and manipulation.

Number 0506

MS. ZIRNHELD stated that this issue is not and should not be a partisan one. She stated that it is about the fundamental principal which underlies democracy; it's about ensuring the fact that individuals elect the people who serve in governing positions. Those officials are put there by the will of the people, not by random number generators. She indicated her support of the bill, and opined that it should be strengthened with a provision which requires a mandatory spot check on precincts.

MS. ZIRNHELD, in addition to her forgone examples, indicated that there are many examples where many people voting machines have malfunctioned and voting officials had to improvise by asking people to write their votes on slips of paper. She stated she wants the upcoming Senate seat filled by the vote of the people, not by faulty machines.

Number 0425

REPRESENTATIVE GRUENBERG told Ms. Zirnheld that her testimony is causing him to wonder about whether the [electronic voting] systems should be implemented without being thoroughly checked out.

MS. ZIRNHELD responded that all the machines have been checked out. She noted that it is scary, because it is the manufacturers that are checking them out and giving assurances [that the machines are in working order].

REPRESENTATIVE GRUENBERG said that is what is frightening to him.

Number 0325

REPRESENTATIVE LYNN asked Ms. Zirnheld to clarify whether or not the machines are checked out by a third "uninterested" party.

MS. ZIRNHELD offered her "impression" that the manufacturers check out the code, while independent parties "have done other kinds of testing." She added, "There have been other people who have been testing, ... which has proved that there's ... problems with these machines." She offered to do research to further answer Representative Lynn's question.

Number 0233

REPRESENTATIVE GARA, on the same note, said California, for example, requires that only approved software be used on its machines. After making that requirement, the state did an audit and found out that in 17 counties the approved software was not being used. He described the situation as a regulatory nightmare, where it is necessary to have state computer consultants spend their time to ensure that each of the machines is working properly. He said, "We know that that is also an area that can be fraught with error like it was in California."

Number 0155

LUKE HOPKINS, testifying on behalf of himself, encouraged the committee to move [HB 459] out of committee, which he said will allow Alaska's excellent voting system to continue to have the important paper documentation that it has currently. He stated that Alaska's system of vote recording is one of the best in the nation. He said the state has developed the system at great

expense and should continue to maintain its system of electronic counting, transmitting data, and providing a paper record for each vote.

MR. HOPKINS noted that there have been extremely important recounts in Alaska. He indicated the importance of ensuring that all parties are able to oversee a recount that has accurate and valid information. He opined that the added cost to the State of Alaska and, possibly, to the Division of Elections to ensure that there is a paper trail is small, compared to what the state has already spent in developing the AccuVote system that it has [acquired].

TAPE 04-39, SIDE A

Number 0001

DORIS PFALMER, testifying on behalf of herself, opined, "In a time when electronic wizardry is commonplace, ... it's imperative that we have a receipt ... and a paper trail system for these machines." She stated that many people have cited reasons to [pass HB 459] and she cannot think of any reason "why it wouldn't automatically be put in place." She said it seems to be a "no-brainer." She said [the public] has seen "what they can do with movies" and "just about anything electronically." She concluded, "Paper rules, to me."

Number 0147

JENNIFER RUDINGER, Executive Director, Alaska Civil Liberties Union (AkCLU), told the committee that AkCLU met recently and spent a great deal of time deliberating this issue. She said electronic voting and "direct recording equipment" are new technologies. She said, "We are very wary of some of the concerns you've already [heard] from folks who've testified, as well as some of the actual problems that came up on 'super Tuesday' and in previous elections where these machines were implemented." She indicated that she would offer some points on behalf of "a unanimous board of directors."

MS. RUDINGER stated that in 2002, Alaska was recognized as number one in the nation for the best electoral system. She said that begs the question, "If it ain't broke, why are we in such a big hurry to fix it?" She said [AkCLU] shares the concerns of Representative Gruenberg and others, who have suggested that perhaps the machines should not be used until more testing is done, better security is in place, and it is certain that using the machines will not compromise the

integrity of the state's elections. She stated that the integrity of the voting process is fundamental to the operation of the democracy. She said a major component of a valid electoral process is voting technology that honestly and accurately counts every single ballot. She opined, "Because voting technologies have always been susceptible to error, bias, and corruption, we must remain vigilant about new technologies and insist that before they're implemented, they maximize the likelihood of recording what each voter intends, regardless of the voter's race, economic status, or geographic location."

MS. RUDINGER said [the state] must require that voting machines be accessible to all voters, by reducing barriers to participation erected by language, physical disability, or the complexity of the technology. She emphasized the importance of protecting the confidence of the public in the results of elections, by ensuring that voting technologies may not be rigged in a way that would thwart the true will of the electorate. She said [AkCLU] recognizes that touch-screen voting systems do offer tremendous potential advantages. She noted that, as Representative Gara had previously indicated, electronic voting is helpful to people with disabilities who can't operate a manual lever. Furthermore, for people with visual impairment, there are cards that can be inserted into the machines that will read the ballot to the voter.

Number 0415

MS. RUDINGER noted that the ballots can be made available in other languages, which she said could be helpful to some of the elders in the Native villages of Alaska, whose languages are not even written. Conversely, she noted that an Alaska Native on [the AkCLU's] board of directors raised the point that there is not a familiarity with technology and "these computers" in many of the villages, and people might be more wary of going to vote, even if the machine is promoted as giving the ballot to the voter in his/her language.

MS. RUDINGER pointed out that the existing statutes make using the machine optional; therefore, the state could hold off from their use to do further testing. Notwithstanding that, she stated that if the legislature sees fit to authorize "going ahead with these machines" and the Division of Elections sees fit to use the machines in 2004, then [AkCLU] cautiously endorses HB 459. She said [AkCLU] recognizes that HB 459 may help people feel better about the integrity of the process by giving the voters the opportunity to verify that what prints out

of the machine is the intended vote. However, she stated that voter-verified paper balloting is also untested. She revealed that computer experts have pointed out that "we may find out voter-verified paper balloting doesn't ensure the integrity of the election at all." She said [AkCLU] has serious reservations regarding both the effectiveness and the practicality of the proposal.

Number 0561

MS. RUDINGER continued as follows:

Elections would resort to using a voter-verified paper trail only in the case of a recount or a contest, which a hacker can prevent or deter. In most jurisdictions, recounts are triggered only when an election is close. So, anyone who is savvy enough to hack into a digital system and alter the election results could simply select a margin of victory big enough to prevent a recount or discourage a contest. And, in these jurisdictions, a competent hacker could block the review of any paper ballot.

MS. RUDINGER noted that even in those few jurisdictions that automatically do a recount of a small percentage of ballots as a test, a sophisticated fraud could thwart detection by corrupting the code for the paper printout. She said that brings her to her second point:

The voter-verified paper trail could be used by a sophisticated hacker to give voters a false sense of security that their vote was correctly tallied. If the computer code is genuinely vulnerable to attack, a competent hacker could not only compromise it to make the machined record a fraudulently vote, but could also compromise the code that runs the printer, causing the printer to display the voter's intent, while the machine records something different than what the voter intended.

MS. RUDINGER also pointed out that there's no reason to assume that paper recounts are more accurate than machine tabulations. Paper is notoriously difficult to handle and easy to manipulate. Counting the paper ballots generated by [machine] would be subject to all of the historical problems associated with paper ballots, including human error, fraud, and mishandling.

Number 0672

MS. RUDINGER stated that [AkCLU] believes that voter-verified paper ballots should not be employed until there has been rigorous testing of their reliability. She added that it also feels that way about the electronic voting machines. She suggested that two years from now, everyone might realize that [HB 459] did not protect the election [process] at all.

Number 0700

MS. RUDINGER offered recommendations as follows:

If DREs [Direct Recording Electronic voting machines] are to be employed ... in 2004, ... the computer source code for all security critical functions of the machines should be subjected to thorough, independent review. And when we say independent review, we definitely mean not people who are selected ... by the manufacturers of the machines. ... At a minimum, the full code should be subjected to a review by an independent body, and only open source codes ... should be used for tabulating the results.

Number two, rigorous physical security measures need to be instituted to ensure that the machines and any associated paper ballots are not compromised. Third, election officials need to be thoroughly trained in their use, ... [as well as in] the physical infrastructure necessary to ensure their use. For example, sufficient electrical wiring needs to be "assured." This could be challenging in some parts of rural Alaska where the infrastructure doesn't currently exist to implement these machines.

Fourth, the jurisdiction should have a permanent, broad base security task force or oversight body representing all interested segments of the community, to evaluate the potential for fraud or error in voting systems, and to address the new security challenges that will inevitably arrive in the future. That task force should have complete unrestricted access to the DRE code, and [it] should conduct [its] own independent testing.

Fifth, election officials should select technology that gives them maximum flexibility in taking

advantage of emerging innovation. In other words, whatever we buy today should be adaptable to what we decide we really need to do tomorrow to ensure the integrity of the election. If a jurisdiction chooses to employ optical scan or a method other than DREs for its balloting, it should be required to have a sufficient number of electronic DRE machines available to accommodate the needs of people with disabilities - because we do recognize that that needs to happen - and they should employ systems that can accommodate the needs of language minorities.

Number 0564

CHAIR WEYHRAUCH asked Ms. Rudinger if she would submit the remainder of her testimony in writing.

MS. RUDINGER explained that she was reading "from a white paper," but she offered to create a summary of what her testimony and send it to the committee.

Number 0897

JOHN DUNKER, testifying on behalf of himself, stated he supports [HB 459]; however, he admitted that some of the testimony gives him pause about "employing it rapidly." He said he had hoped it would have an immediate effect and that might prevent the next election cycle from being the only one in "our" history without a paper trail. He added, "And I think that is still a good thing."

MR. DUNKER said he would like to see the bill strengthened to include mandatory testing, "similar to what [the] Division of Elections has described in response to your 9 March questions." He mentioned performing on the AccuVote process. He indicated that he wants mandatory testing and random recounts, either by district or precinct. He said, "I believe those should not hinge on a percentage difference of vote outcomes, which may make sense in a paper voting system. But I think it's evident that that sort of a percentage difference threshold does not make sense with electronic voting."

MR. DUNKER concluded by saying that the process isn't good enough if it only satisfies technocrats. He said [the process] must maintain the confidence of every citizen.

Number 1023

REPRESENTATIVE GRUENBERG reiterated that he is concerned about implementing this system at all until these problems are addressed.

Number 1049

CHAIR WEYHRAUCH told Representative Gruenberg that he would eventually be offering quite a substantial amendment to the bill.

[HB 459 was heard and held.]

Number 1181

CHAIR WEYHRAUCH invited Tony Malacas and his son, Josel Carillo to come before the committee. He noted that Mr. Carillo had recently returned from the war in Iraq, where he was wounded, and that he had been awarded the Purple Heart. He asked Mr. Carillo if there was anything he wished to say.

Number 1200

MR. CARILLO said, "It's great to be back."

CHAIR WEYHRAUCH emphasized that it is great to have Mr. Carillo back alive.

ADJOURNMENT

There being no further business before the committee, the House State Affairs Standing Committee meeting was adjourned at 9:59 a.m.