ALASKA STATE LEGISLATURE
HOUSE STATE AFFAIRS STANDING COMMITTEE
March 24, 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 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.

- MOVED CSHJR 31(STA) OUT OF COMMITTEE

HOUSE BILL NO. 132
"An Act relating to the duties of the attorney general; requiring the attorney general to participate in all actions affecting the management and jurisdiction of the natural resources of the state; amending Rule 24(c), Alaska Rules of Civil Procedure; and amending Rule 514, Alaska Rules of Appellate Procedure."

- HEARD AND HELD

HOUSE BILL NO. 496
"An Act creating the Youth Vote Ambassador Program and relating to that program; authorizing the members of the program to be appointed to serve on election boards; relating to qualifications for appointment to election boards; and providing for an effective date."

- HEARD AND HELD

PREVIOUS COMMITTEE ACTION

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
03/09/04	(H)	Heard & Held
03/09/04	(H)	MINUTE(STA)
03/19/04	(H)	STA AT 8:00 AM CAPITOL 102
03/19/04	(H)	Heard & Held
03/19/04	(H)	MINUTE(STA)
03/24/04	(H)	STA AT 8:00 AM CAPITOL 102

BILL: HB 132
SHORT TITLE: AG INTERVENE IN NATURAL RESOURCES ACTIONS
SPONSOR(S): REPRESENTATIVE(S) WEYHRAUCH

02/26/03	(H)	READ THE FIRST TIME - REFERRALS
02/26/03	(H)	STA, RES, JUD
03/13/03	(H)	STA AT 8:00 AM CAPITOL 102
03/13/03	(H)	Scheduled But Not Heard
03/24/04	(H)	STA AT 8:00 AM CAPITOL 102

BILL: HB 496
SHORT TITLE: YOUTH VOTE AMBASSADOR PROG/ELECTION BDS
SPONSOR(S): REPRESENTATIVE(S) DAHLSTROM

02/16/04	(H)	READ THE FIRST TIME - REFERRALS
02/16/04	(H)	STA
03/24/04	(H)	STA AT 8:00 AM CAPITOL 102

WITNESS REGISTER

SUSAN TAYLOR, Director
Administrative Services Division
Department of Revenue
Juneau, Alaska
POSITION STATEMENT: Addressed the fiscal note with the component labeled, "Commissioner's Office" [affecting the Department of Revenue], during the hearing on HJR 31.

LANCE NELSON, Senior Assistant Attorney General
Natural Resources Section
Civil Division (Anchorage)
Department of Law
Anchorage, Alaska
POSITION STATEMENT: Testified on behalf of the department and answered questions during the hearing on HB 132.

DAVID W. MARQUEZ, Chief Assistant Attorney General
Legislation & Regulations Section
Office of the Attorney General
Department of Law
Anchorage, Alaska
POSITION STATEMENT: Testified and answered questions on behalf of the department during the hearing on HB 132.

KELLY HUBER, Staff
to Representative Nancy Dahlstrom
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Presented HB 496 on behalf of Representative Dahlstrom, sponsor.

LEONARD JONES
Elections Special Assistant
Division of Elections
Office of the Lieutenant Governor
Juneau, Alaska
POSITION STATEMENT: Answered questions on behalf of the division, during the hearing on HB 496.

ACTION NARRATIVE

TAPE 04-45, 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.

HJR 31-CONST AM: PERMANENT FUND

Number 0048

CHAIR WEYHRAUCH announced that the first 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 0067

SUSAN TAYLOR, Director, Administrative Services Division, Department of Revenue, directed the committee's attention to the fiscal note with the component labeled, "Commissioner's Office" [affecting the Department of Revenue]. She reminded the committee that testimony had been given at the previous hearing on HJR 31 [on March 19, 2004], stating that the Permanent Fund Dividend Division would be phased out, but there would be continuing work that would be picked up by the Office of the Commissioner [in the Department of Revenue]. She listed that continuing work as: formal appeals and court appeals of denied decisions; collections of dividends fraudulently received or paid in error; continuing work regarding the 18-year-old filers; and fraud investigation. She stated that because the stakes would be so high, it would be expected that fraud would possibly increase; therefore, a fraud investigator would [work] for three years. Because of the increase in the formal hearings, she said, another hearing examiner would be hired, as well as two legal office assistants. The other position that would be maintained for quite awhile would be an Administrative Clerk III, which would deal with the 18-year-old filers and work with anyone on repayment plans.

Number 0250

CHAIR WEYHRAUCH announced that public testimony was closed. He offered his understanding that [CSHJR 31(W&M)] was before the committee.

Number 0303

REPRESENTATIVE HOLM moved to adopt Amendment 1, which read as follows [original punctuation provided]:

> Pg. 2, line 12, after the word "dividend." Insert: **Payments under this subsection shall be distributed by April 1, 2005.**
>
> This amendment is a practical fix to the problem of moving billions of dollars out of the market and other investments of the fund without negative effects to the fund value or the markets. The Fund managers have said that this date will be sufficient.

CHAIR WEYHRAUCH objected for discussion purposes.

Number 0375

REPRESENTATIVE LYNN suggested that making the payout over two years, instead of one, might be an advantage, because people wouldn't have such a large tax [amount].

REPRESENTATIVE HOLM responded that the tax implications are considerably better for a lump sum than they actually are in small amounts. He illustrated that a tax of 23 percent on $20,000 would leave $15,400. He said, "That amount invested identically to the permanent fund is projected to return 8 percent, and if it did, it would create $1,232 per year of income on that amount, and you still would have the $15,400 of capital left in your own account. And so, I think it's a moot point as to whether or not you break it apart in little pieces ...." Furthermore, he observed that $1,100 per year at a conservative 2-percent inflation would result in a net loss of $3,233, if taxes don't go up and a majority of 15-percent tax brackets stay the same. He added, "It will also be a net loss of $2,354." He concluded, "So, your net money, after 18 years, is still only worth $14,412, which is an interesting anomaly."

Number 0500

CHAIR WEYHRAUCH removed his objection. He asked if there was further objection to Amendment 1. There being none, Amendment 1 was adopted.

Number 0518

REPRESENTATIVE HOLM moved to adopt Amendment 2, which read as follows:

> Page 2, line 12, following "dividend":
> Insert ", unless a written rejection of the payment is provided to the State"

CHAIR WEYHRAUCH objected for discussion purposes.

REPRESENTATIVE HOLM explained that Amendment 2 responds to some of the discussion that took place during the [March 19, 2004 meeting on HJR 31], regarding those folks who might lose their hold harmless provisions. He said, "We put this forth to offer to those that didn't want to lose their ability to get welfare payments, the ability to (indisc. - coughing) of the $20,000, if they so desire. So, it's just choice."

Number 0538

CHAIR WEYHRAUCH noted that since Amendment 1 was adopted, a technical amendment to Amendment 2 was necessary to replace "dividend" with "2005".

REPRESENTATIVE HOLM said he would accept that. [The technical amendment to Amendment 2 was treated as adopted.]

Number 0571

REPRESENTATIVE SEATON said he knows that "in some provision the State of Alaska has the ability to apply for dividends, even if people don't want them." He asked, "The effect of this provision, does it allow a participant to not receive it, and ... also ... prevent the State of Alaska from receiving that for child support enforcement?"

REPRESENTATIVE HOLM responded that he would doubt that, because "it would be no different than if someone was incarcerated and chose not to do it."

REPRESENTATIVE SEATON clarified that he wants to ensure that [Amendment 2, as amended] would not be putting in a new

statutory provision that would allow someone to reject the payment "and that has some impact on that."

REPRESENTATIVE HOLM stated for the record that he agrees with Representative Seaton.

Number 0657

CHAIR WEYHRAUCH removed his objection. He asked if there was further objection to Amendment 2 [as amended]. There being none, Amendment 2 [as amended] was adopted.

Number 0688

REPRESENTATIVE HOLM moved to report HJR 31, as amended, out of committee with individual recommendations and the accompanying fiscal notes.

Number 0720

CHAIR WEYHRAUCH objected for discussion purposes.

Number 0728

REPRESENTATIVE SEATON stated that he appreciates the resolution as a means to look at the state fiscal plan; however, he said it seems that it would be transferring from future generations to the current participants what was envisioned to be an ongoing distribution of permanent funds through dividends. He said he would not support the resolution.

Number 0760

REPRESENTATIVE BERKOWITZ stated that he likes the title, but does not like the concept of hashing out the dividend. He said it seems like a surrender strategy; surrendering the responsibility to keep the permanent fund permanent as well as the idea that a solution to the fiscal gap can be achieved without going to excessive means.

REPRESENTATIVE BERKOWITZ, regarding the reason that he likes the title, observed that [legislators] spend a lot of time talking about the fiscal gap and outflow of the permanent fund, regarding whether there will be percent of market value (POMV) or a dedicated amount to dividends, for example. With the existing title, he said, "We can start talking a little bit more about what's coming in." He mentioned the "Cremo plan" [after

Roger Cremo]. He announced that he will not object to moving HJR 31 out of committee, because he thinks it's important to "carry the conversation further into the building than we are right now," but he will be voting "do not pass." He stated his intention to propose amendments based upon the Cremo plan. Representative Berkowitz concluded, "I think we can do a better job about filling Alaska's coffers into the future by structurally changing the fiscal system than [by] just simply cashing out today."

Number 0853

REPRESENTATIVE LYNN stated that he thinks this resolution is a good example of thinking outside the box. He said that obviously a payout of this type would benefit anyone over 60, because "one would have to gamble on living until you're 80 years old" to receive that amount if it were paid over the next 20 years. He said others have expressed concern to him that if people are paid $20,000 all at once they might blow the money. He said he thinks it isn't anybody's business what other people do with their own money. He indicated that such a payout would be an economic boon to Alaska. He said he thinks [HJR 31] is worthy of debate, and he stated his intent to vote it out of committee, with "no recommendation," because he wants to see the resolution debated further along with other alternatives.

Number 0968

CHAIR WEYHRAUCH characterized the permanent fund as a conceptualization of a shining city on a hill. He spoke of vast oil wealth put into a permanent fund and of giving an annual payout to people so they would ensure that politicians would stay honest with the state's money. He recollected that in 1982, when the "permanent fund payout" was being debated, the state hired high-priced experts from around the world to look at the influx of vast amounts of capital into countries like Nigeria, where money came in and was simply squandered. He related that those experts said [the state] would be better off making statues out of gold that could be melted down and used later, rather than "building other kinds of monuments that simply do the public no good." He said that as oil prices declined, the tenor of debate has become quite uncivil and has frozen the ability of the public and legislators to look at a long-term fiscal solution.

CHAIR WEYHRAUCH said it will be with some resignation that he will support moving [HJR 31] out of committee, because it is an

acknowledgement that "maybe, ... instead of a permanent fund to guide our state into the future, we've got a $28-billion millstone around our collective necks; that we've frozen our ability to come up with long-term reasoned solutions to problems in the state." He observed that the government is a different entity than the private sector and the individual, and government can't and should not operate the same as the private sector. He said that rather seeing [HJR 31] as an abrogation of [the legislature's] responsibility, he sees a "payout of a large sum now." He said he thinks Representative Holm has made the case that this is a way to capitalize individual initiative and dreams and perhaps put wheels under people who would have left the state anyway, and "to finance that aspect of this payout." He said he certainly sees [HJR 31] would be keeping a significant amount of money available for the state government to operate itself in the future. He said, "And to that respect, we do honor our future generations of Alaska that rely on state government, and the present generations that may be able to build certain needs of future generations through private sector initiative." He said he wants to follow Representative Berkowitz's suggestion regarding the Cremo plan and structural changes to deal with finances, and he agrees with both Representatives Lynn and Berkowitz that this debate should move forward. He stated his intention to vote "do pass."

Number 1174

REPRESENTATIVE HOLM thanked his fellow committee members for their deliberation on the issue. He agreed with Representative Berkowitz that there are structural problems regarding wanting to have a perfect government, in the sense that the government and the people respond appropriately regarding what is demanded, received, and paid for. He clarified that there is a disconnect in Alaska between "those of us who ask for services from the government and those of us who pay for services for the government." He said he thinks [HJR 31] would settle part of that problem by putting into perspective that there is going to be only so much money available from the permanent fund that is left for government to utilize. The resolution would not take away the need for the legislature to be careful regarding how the state's assets are spent.

REPRESENTATIVE HOLM stated his belief that it's important that the people of Alaska understand that [$28 billion] of the state's assets are in the New York Stock Exchange, and because they're there, they do absolutely nothing to create the wealth in Alaska. He noted that $700 million dollars coming back out

of [$28 billion] is a small amount. Taking $10 billion to give to the people of Alaska, he said, is putting that capital into the people of Alaska's pockets. He asked the committee to consider what effect it would have on a person to have his/her mortgage cut from 30 years to 15 years, for example. He offered more examples of how [the $20,00 payout] could benefit Alaskans. He said, "This is not a perfect scenario, it is just an idea. But we could retain over half of it and still have enough earnings to provide for the governmental needs of Alaska, without fighting the process that we're doing today." He remarked that under any other kind of scenario, the problem would still have to be solved. He opined that [HJR 31] is a structural fix that will solve the dilemma of Alaska [not] having enough money. He asked the committee to remember, "When you have [$16 billion] left ..., 8 percent of that amount of money is enough money to pay for all of the needs of the State of Alaska's government." He indicated that there would still be money to put back into the CBR.

Number 1393

CHAIR WEYHRAUCH removed his objection.

Number 1397

REPRESENTATIVE COGHILL objected.

Number 1400

A roll call vote was taken. Representatives Berkowitz, Holm, Lynn, and Weyhrauch voted in favor of reporting HJR 31, as amended, with individual recommendations and the attached fiscal notes, out of committee. Representatives Gruenberg, Seaton, and Coghill voted against it. Therefore, CSHJR 31(STA) was reported out of the House State Affairs Standing Committee by a vote of 4-3.

HB 132-AG INTERVENE IN NATURAL RESOURCES ACTIONS

Number 1463

CHAIR WEYHRAUCH announced that the next order of business was HOUSE BILL NO. 132, "An Act relating to the duties of the attorney general; requiring the attorney general to participate in all actions affecting the management and jurisdiction of the natural resources of the state; amending Rule 24(c), Alaska

Rules of Civil Procedure; and amending Rule 514, Alaska Rules of Appellate Procedure."

Number 1473

REPRESENTATIVE SEATON moved to adopt HB 132.

Number 1490

CHAIR WEYHRAUCH explained that HB 132 would require the attorney general to participate as a party in lawsuits that affect the management and jurisdiction of the natural resources of the state. He noted that that language appears [as an amendment to AS 44.23.020(b)], on page 2, [lines 18-25], paragraph (10). He explained that this proposed legislation came about because of concern that currently the State of Alaska, through the executive branch, and specifically the attorney general, is not involving itself in cases affecting fisheries, jurisdiction, or management of natural resources.

CHAIR WEYHRAUCH offered a timely example of the state's inability to involve itself in the wilderness waters issues. He noted that the state passed a resolution asking the [U.S.] Department of the Interior to appeal a case that affected Alaska's fisheries. Soon after that resolution was adopted, the attorney general did become involved. Chair Weyhrauch said, "It did take a legislative goosing to get the state involved in that." He said he thinks the State of Alaska has a fundamental interest in joining these types of lawsuits where the state's management and jurisdiction of natural resources is put at risk.

CHAIR WEYHRAUCH noted that the second part of the aforementioned language would allow the attorney general to enter into agreements with other governments or sovereigns if the agreement benefits [the management of a natural resource of the state].

CHAIR WEYHRAUCH revealed that he had been advised that the Office of the Attorney General opposes [HB 132], and he said he's had concerns voiced to him that [HB 132] would infringe upon the prerogatives of the executive branch by the legislative branch. He pointed out that the statute already dictates what the attorney general "is going to do." He read some examples. He stated that what really drove this proposed legislation initially was the Katie Johns v. United States case.

Number 1648

LANCE NELSON, Senior Assistant Attorney General, Natural Resources Section, Civil Division (Anchorage), Department of Law, told the committee that he has held his position in the department for about 19 years. He read his testimony as follows:

> House Bill No. 132 requires the attorney general to participate as a party in a judicial proceeding that affects the management and jurisdiction of the natural resources of the state, and to ensure by that participation that the management and jurisdiction of the natural resources are not diminished or ceded to another government or sovereign. The bill ... also amends the rules of Civil Procedure and the Rules of Appellate Procedure to require the court to notify the attorney general when a case arises that may fall within that category.
>
> We're concerned that it will harm Alaska's interest to take away the attorney general's discretion to decide whether to participate as a party in particular litigation. We acknowledge that the bill is clearly intended to protect the state's jurisdiction, but it may hinder the attorney general's ability to preserve state authority over natural resources, because it is very broad and it applies indiscriminately. It takes from the attorney general the ability to [ensure] that important issues are presented to a court in the manner most advantageous to the state. While the attorney general may well determine that intervention in an existing case is the best way to protect state interests, under HB 132, he cannot consider other options. With no ability to make strategic decisions, the attorney general may be forced to litigate an important issue under less than ideal circumstances, with negative precedential consequences.
>
> For example, cases that affect the management and jurisdiction of natural resources frequently raise state sovereignty issues. Strategically, the state is ill advised to litigate these issues before the Court of Appeals for the Ninth Circuit, because, in Alaska's experience, this court seems to apply a presumption against state sovereignty. In a reactive mode, however, forced to intervene in a case brought by others, the state may have no choice. In a proactive mode, the state can raise the issue itself by filing

suit in a court more likely to give serious consideration to Alaska's interests.

Number 1750

Other strategic decisions are also important to the state's chance of success in litigation. Often cases will turn on the underlying facts, and good legal strategy dictates that an important issue be based on a factual situation that tends to highlight the justice of the state's position. Facts that invoke sympathy for the state's opponent, on the other hand, will harm the state's chance of success, even if the state is correct on the law. Under HB 132, the state will be forced to litigate an issue regardless of whether the underlying facts support the wisdom of the state's position. And once the state litigates a legal issue, it generally will be bound to the outcome in future cases involving that issue.

Timing is also a consideration in litigating state sovereignty issues. Some say that the United States Supreme Court is gradually increasing its recognition of the inherent authority that states have under the United States Constitution. It's a gradual increase, however; the Supreme Court does not completely reverse years of case law at once. The state has been careful in all cases it brings, trying to gauge how far it can push certain issues, and how best to raise them. If the state tries to make huge gains in a single case, it may lose on everything. Yet the state may be forced into that position if the attorney general cannot choose the litigation in which he participates.

The bill also raises concerns about the best use of Department of Law resources. The department often declines to intervene in private litigation because, although the state's interest in natural resources jurisdiction is arguably involved, the financial resources required to participate don't justify the potential benefit to the public. For example, private landowners or leaseholders sometimes bring trespass actions against guides or fishermen for fishing on their property. The fishermen answer that they were fishing below ordinary high water on a navigable waterway, and therefore they were on state land, not private land. The state may have an interest, because

the outcome may depend on whether the waterway is navigable, or on precisely where ordinary high water ends and private upland begins. The state generally declines to participate in this type of case, however. While the private defendants want the state's help in preparing their defense, the cost to the state can be enormous. Determining navigability or the limits of ordinary high water requires historians, hydrologists, and other experts, and lots of attorney time. The cases rarely raise a purely legal issue; generally the cases are the culmination of long-running disputes that turn on the facts, that are personal and raise messy credibility issues. The overall payoff for state participation can be insignificant. For example, at best a case might establish that at one particular place, the public has a right to stand and fish, provided they don't wander above ordinary high water onto the plaintiff's property. If the state does not participate, it is not bound by the decision and can litigate the issue in the future.

Number 1869

When a case raises this type of management or jurisdictional issue, the attorney general needs the discretion to decline participation. The attorney general has to be able to decide how to use scarce litigation resources to maximize the return to Alaska's citizens. And we do have scarce resources. The Natural Resources Section that I serve in is about one half the size it was in the early '90s because of budget cuts over the years. We are not sufficiently staffed to handle this level of mandatory litigation burden. We believe we are doing a good job of protecting the state's interest in intervening in lawsuits when appropriate. We have filed in a number of timber sale cases, the "Bristol Bay antitrust" lawsuit, the "Tustumena Lake" case, and the ["National Petroleum Reserve-Alaska" (NPR-A)] litigation. We are taking an active role in many important natural resources cases.

In short, the legislative branch may not agree with every litigation decision the attorney general makes, but it shouldn't try to take away his ability to make them. The attorney general needs the discretion to determine the best litigation strategy to advance

important state sovereignty issues and to decline to participate in cases where the cost is not justified by the potential benefit. HB 132 makes an all-encompassing decision that the state must always participate in litigation in a broad category of cases, but we do not see, at this point looking into the future, that this will turn out to be a good decision.

Number 1939

CHAIR WEYHRAUCH asked Mr. Nelson how many cases per year involve an issue relating to diminishment of the state's ability to manage its resource to another government or sovereign.

MR. NELSON answered he doesn't know. He said, "We have some concerns about what that would show if we started actively looking, and I think the bill would put on us, basically, an affirmative duty to start doing that."

Number 1980

REPRESENTATIVE BERKOWITZ revealed that when he worked in the Department of Law, Mr. Nelson was one of the people who oversaw some of his work. He stated, "We're really lucky we have people like him working for us. I think it's one of the reasons why the legislature's been able to cut the budget for the Department of Law for so long, because we have a lot of really fine people working those sections." He reminded the committee that there are half the number of people there that were there in the early '90s and the issues are as great or even greater than they were at that point.

Number 2014

MR. NELSON, in response to a question from Chair Weyhrauch, clarified that by "proactive mode" he meant that [HB 132] would put an affirmative duty on "us" to go out and search out every single case. Currently, most of the important cases come to the fore and the option of intervention is discussed and evaluated. However, he stated that there may be a lot of other cases out there that don't have the notoriety of the cases that have been looked at, and those less noted cases may have to be examined, too. He said, "Once the public is aware of this duty, I'm sure we're going to get all kinds of requests for private litigants to come in and get the state on their side."

CHAIR WEYHRAUCH noted that the last section of the bill would put permanent duty on parties to notify the state when the management or jurisdiction of a natural resource of the state may be affected. He suggested that would seem to take it away from the state duty to "run around and find these cases" and "put it on the party litigating that they must notify the state."

MR. NELSON responded that that may be true, but the end result would be that there would be more cases to review and it would certainly take a lot of time.

CHAIR WEYHRAUCH asked Mr. Nelson if he could think of any case in which it's not the interest of the State of Alaska to involve itself when that case involves the diminishment or [cession] of the state's management and jurisdiction to another sovereign.

MR. NELSON answered yes. He explained as follows:

> For example, if somebody challenges a federal subsistence regulation because they think the federal government is overreaching in its authority, it may well be that, because of the facts of the case or maybe someone's being deprived of an opportunity because of the facts of the case, "we" would prefer to challenge a selective challenge on regulations where the facts of the situation [point] out the justice of the state's case, as opposed to making the state look like we're anti-subsistence. You're probably aware of the decision from the Ninth Circuit that have listed things we do as one more example of the state's denigration of the subsistence rights of Alaskans.
>
> And we would want to be able to mount a challenge on our own, and not be forced to become involved where we couldn't really steer the proceedings and the litigation and limit the issues to the ones that we thought had some chance of success, and paint the state's legal positions in the best light. And that's maybe not the best example, but there are a lot of cases out there where people are arguing about the federal government's ability to do things, where the litigation could go on and on forever, because ... even if we intervene, we would not be able to control the scope of the litigation at that. I think it would be not to our advantage where law would be made, and

because we're a party, we'd be bound by it to be involved in that kind of litigation.

Number 2164

CHAIR WEYHRAUCH asked if the Department of Law would be opposed to the legislature's requesting through a resolution, for example, that the Office of the Attorney General become involved in a case it judges as important.

MR. NELSON replied that he cannot speak for the department on that; however, he expressed his belief that, as has happened in the past, he doesn't think that the attorney general would object to the legislature expressing its policy views in that manner.

Number 2219

REPRESENTATIVE GRUENBERG turned attention to Section 3 of the bill. He asked Mr. Nelson if he believes that there may be some merit in requiring the notification of the Department of Law in certain kinds of natural resource cases or any other kinds of cases. He explained the reason for his question is because he thinks that the requirement in Rule 24 that the attorney general be notified when the constitutionality of a law is called into question is an important one. He suggested that there may be some types of natural resource cases that the attorney general ought to be notified about. He said he wonders whether Rule 24(c) and the equivalent appellate rule ought to be expanded in some way to require the notification of the state in "certain types of other cases." He pointed to the language on page [3], beginning on lines 3 and 12, regarding the constitutionality of state statute being drawn into question. He noted that the phrase "affecting the public interest" appears in the first reference beginning on line 3, but not in the second reference having to do with the equivalent appellate rule. He questioned whether that appellate rule should be amended to include the same phrase.

REPRESENTATIVE GRUENBERG questioned "whether that ought to be expanded to include regulations affecting the public interest." He also noted, "If it's a regulation, it's not just a question of the constitutionality, but the legality of a regulation affecting the public interest."

Number 2345

DAVID W. MARQUEZ, Chief Assistant Attorney General, Legislation & Regulations Section, Office of the Attorney General, Department of Law, echoed Mr. Nelson's previous remark that it could take quite a bit of effort to scan all the court records - which may be in several jurisdictions - to find out what cases might be affecting natural resources, regarding constitutionality and diminishment of sovereignty, for example. He said he thinks there may be merit in receiving notices of cases that might "affect us." He added that he is sure that the legislature might also like to know about "those kind of cases that might be out there."

TAPE 04-45, SIDE B
Number 2378

MR. MARQUEZ revealed that he has only been with the department a little over a year and he doesn't know what resources would be available to "scan" those notices.

Number 2355

REPRESENTATIVE GRUENBERG indicated that there is an equivalent federal provision that requires the U.S. attorney general to be notified when the constitutionality of a federal statute is called into question. He stated that he doesn't know if there is an equivalent provision in the federal rules of appellate procedure. He observed there is nothing in Rule 24(c) that requires, in a state preceding, that the U.S. attorney general must be notified if the constitutionality of a federal statute is called into question, because the federal rules don't apply in state court. He said he thinks that if the constitutionality of a federal statute is called into question, a U.S. attorney general should be notified, because one issue that would immediately become of interest to the U.S. attorney general's office would be whether that case ought to be removed from state court to federal court. He stated, "Mr. Chair, I have some of the same problems that the attorneys have already expressed on this bill, and I see this as an important potential vehicle for providing some really good amendments to ... Civil Rule 24(c) and possibly Appellate Rule 514, and I'm wondering if the chair would be willing to have this bill looked at from that point of view."

Number 2290

CHAIR WEYHRAUCH responded that he has a number of amendments and the bill will be brought back before the committee.

Number 2274

REPRESENTATIVE HOLM offered his sense that part of the solution being focused on for development is based upon the fact that [Alaska] doesn't have an elected attorney general. He clarified that by that he means that there is no direct relationship between who the attorney general is and what is in the best interest of the people of Alaska, necessarily. He cited [Glacier Bay National Park and Preserve] as an example of when the federal government comes in and takes a piece of Alaska and no one fights them. He said there have been many cases where the state has gotten involved in the best interest of the people of Alaska. He indicated that he somewhat thinks it is appropriate to exercise some legislative control over the attorney general's office in "this way." He stated that "all of us here" are concerned with the state's rights for its sovereignty and want to demand that the attorney general take the appropriate action. He indicated that [HB 132] is a good starting point.

Number 2208

CHAIR WEYHRAUCH remarked that it seems like a bill calling for an elected attorney general is introduced almost every session. He suggested that an elected attorney general might consider whether pursuing an issue was in his/her best political interest. He indicated that the legislature would still have to impose on [the attorney general] an obligation to do what's best for the [state], whether that attorney general was elected or not.

Number 2175

REPRESENTATIVE GRUENBERG questioned whether, constitutionally, the legislature can order the attorney general to participate in a case or to take a certain position. He said he is aware of at least two cases that say that "the judiciary" cannot do so. He gave some examples of cases that deal with violations of separation of powers. He said is not aware of any case determining whether the attorney general can be ordered by the legislature to participate or prosecute any case or a given type of case. He told Mr. Marquez that he would like to see some legal research on that.

Number 2070

MR. NELSON clarified that "our" objections are based on Sections 1 and 2, rather than Sections 3 and 4. More specifically, he said he doesn't think "we" have any serious problems with the notice requirements that are in Sections 3 and 4. He continued as follows:

> I think the bill does raise serious separation of powers issues, because the Alaska [State] Constitution does give the governor the authority right now to basically steer the legal participation by the state and the courts. And the bill raised the question of, "Does this overstep policy-making authority of the legislature to ... set policy for the state and go beyond that and basically direct an executive function in a more detailed way ... that would be inconsistent with the separation of powers doctrine?" ... We haven't chosen to ... highlight those issue as the main concern for the bill at this point in time, but we do recognize those as serious issues.

CHAIR WEYHRAUCH said he thinks he pointed that out when he introduced the bill.

Number 2000

REPRESENTATIVE SEATON, regarding Sections 3 and 4, said it seems like, currently, under both those rules, notice is given by the court to the attorney general of anything challenging the constitutionality. Representative Seaton turned attention to the added language on [page 3, lines 4-5], which read as follows:

> **, or (2) the management or jurisdiction of the natural resources of the state may be affected,**

REPRESENTATIVE SEATON said it seems like every case that's taken by a fisherman is talking about the management of a fisheries resource. He said he wants to get a handle on whether the requirement on lines 4 and 5 would mean that "you would have to get notification of almost every fisheries case that goes forward." He interjected that he is not as familiar with timber cases, but he stated his concern that "this is broadening the ... noted provisions so much that it might be kind of plowed when the constitutionality notifications are coming."

CHAIR WEYHRAUCH responded that it seems that if there is some other entity rather than the State of Alaska managing or having

jurisdiction over the state's fisheries, the state better know about that case. He asked Mr. Nelson to respond.

MR. NELSON reiterated that [the department] doesn't really have a concern with Sections 3 and 4. He said:

> I think that would place a burden on the court system and parties, as opposed to the state. I think that ... there's a potential, I guess; any time state law or a state regulation is challenged or a narrow interpretation of that is urged, then that might implicate those sections and require some kind [of] notice. And so, there probably would be a pretty big grey area where the courts would probably err on the side of ... wanting to comply with the requirements of the rules and the parties too, and it may be broader than you'd wish to see.

Number 1900

REPRESENTATIVE SEATON noted that the aforementioned lines 4 and 5 don't just relate to those cases in which there's another sovereign or anybody asserting jurisdiction; it says that the management of natural resources may be affected. He said it seems like [in] every case there is a challenge of regulation "or something there." He asked [Mr. Nelson] if he agreed with his interpretation of the language on lines 4 and 5.

Number 1872

MR. NELSON responded that it is broad language and may have the potential to result in notices of a lot more cases than what is really intended by the bill.

CHAIR WEYHRAUCH said it seems to him that if that were an issue then it could be resolved by inserting the word "state" in between "the" and "management".

Number 1844

REPRESENTATIVE GRUENBERG responded that he doesn't think that would [solve the issue], because "this is very, very broad," and it will really require some careful drafting. He said he hopes the department will consider the comments that have been uttered today and "figure on a policy basis what we ought to do with those two rules." He stated that he also sees some impact on

two other groups of people who are not represented at the hearing: all the members of the bar, and the court system.

Number 1809

CHAIR WEYHRAUCH announced that [HB 132 was heard and held].

HB 496-YOUTH VOTE AMBASSADOR PROG/ELECTION BDS

Number 1801

CHAIR WEYHRAUCH announced that the last order of business was HOUSE BILL NO. 496, "An Act creating the Youth Vote Ambassador Program and relating to that program; authorizing the members of the program to be appointed to serve on election boards; relating to qualifications for appointment to election boards; and providing for an effective date."

Number 1790

KELLY HUBER, Staff to Representative Nancy Dahlstrom, Alaska State Legislature, presented HB 496 on behalf of Representative Dahlstrom, sponsor. She said that, in an effort to bring young people into the election process, HB 496 would allow high school students 16 years and older to participate at the polls as part of the election boards. The youth will be trained by the election supervisor and be assigned to certain election precincts as deemed necessary by the supervisor. Ms. Huber noted that 74 percent of the United States already does this type of program. She said it's a way to get young voters interested - hopefully for life - in the process.

MS. HUBER noted that the bill would also amend the qualifications for appointment to the precinct election board, by removing the requirement that a person must live in the precinct [in which he/she would be working]. She explained this amendment was added because, many times, there are a lot of interested youth from one precinct, while not so many in another, and this would give the Division of Elections the ability to move people as long as they are qualified in the state.

Number 1731

REPRESENTATIVE GRUENBERG surmised that the reason for an immediate effective date has to do with the upcoming August election. He asked if that is Ms. Huber's thinking.

MS. HUBER replied it is. She added that the youth need to be trained. The effective date makes it possible to let youth know about the opportunity to participate and for them to go through a training process and be available for the upcoming elections.

Number 1702

REPRESENTATIVE GRUENBERG stated that, as a general policy basis, he has never favored legislative findings. He opined that they usually don't add much to the law. He asked if there is a need for legislative findings in the bill.

MS. HUBER responded no. She indicated that the Division of Elections [included findings] as a way of explanation.

REPRESENTATIVE GRUENBERG responded, "We could do that in those bills."

MS. HUBER concurred.

REPRESENTATIVE GRUENBERG said he thinks [HB 496] is a good bill.

Number 1646

MS. HUBER, in response to a question from Chair Weyhrauch, clarified that, typically, a sixteen-year-old would be either a sophomore or junior in high school.

Number 1630

REPRESENTATIVE SEATON asked Ms. Huber to explain the reason for "taking out the precinct and going back to not involving the people in the precinct as the election ... personnel."

MS. HUBER indicated that the bill would not do that. She clarified that the bill would effect a change so that a person would not have to live in the precinct in which he/she works as an election poll worker. She reiterated that this would give the Division of Elections the ability to redirect some qualified personnel from one precinct with many workers, to one with few.

REPRESENTATIVE SEATON asked if part of the reason to have workers from their own precinct was so that they are better able to identify the voters as they sign in to vote.

MS. HUBER responded that she is sure that was one of the original [reasons to do that]; however, [the Division of Elections] is losing people in some areas and needs this tool in order to have qualified workers in all the precincts. [In regard to the question of better identification], she noted that some form of identification is required. She said she doesn't think that [the Division of Elections] would [transfer people] unless it is necessary to do so. She indicated one reason for the loss of [election workers] in some areas is due to attrition.

Number 1531

REPRESENTATIVE SEATON pointed out that the proposed language could result in everyone in Juneau being taken out to run elections in Ketchikan, for example, because the change is to remove the precinct requirement, leaving just the requirement that [the election worker be qualified to work in] the state.

MS. HUBER responded that although that is how the bill reads, she does not believe that the Division of Elections intends to do that. She said she thinks the division just needs a little bit more latitude to ensure that there are qualified poll workers in all precinct areas. She noted that Leonard Jones is available from the Division of Elections to answer questions. She indicated that HB 496 is intended as a management tool.

Number 1469

REPRESENTATIVE COGHILL said his thinking is like that of Representative Seaton's. He stated that one of the goals of the election policy is "to try to keep it as close to the people as possible." He mentioned "broadening it out to the state." He said, "I think there's already some practice going on in this arena, and we might ask the Division of Elections ... if they've actually stepped over this line." He opined, "At the very least, I think we should stay within a district, mainly because of citizen re-participation in their own district." He noted that Representative Carl Morgan's district is "the horseshoe district that takes in the bulk of the land of Alaska." He suggested that district might run into some problems. He concluded that he would "err towards the side of keeping it [as] close to the precinct as possible."

Number 1413

REPRESENTATIVE GRUENBERG turned to a handout [entitled "New Millennium Best Practices Survey," included in the committee packet], which he said shows how other states handle "the youth vote ambassador kind of a concept." Referring to the title of the bill, he said he is not sure that the term "youth vote ambassador program" is the most accurate description. He asked if that is a term that is used in other states.

Number 1374

LEONARD JONES, Elections Special Assistant, Division of Elections, Office of the Lieutenant Governor, answering questions on behalf of the division, told Representative Gruenberg that there are a variety of terms used in various states to name similar programs. He noted some other names that have been considered by the division. The bottom line is to involve the young people of the state of Alaska in the process of voting and in learning the mechanics of the operation within the election process.

Number 1295

REPRESENTATIVE GRUENBERG brought attention to page 2, line 6 of the bill, which requires the youth to be a student age 16 or older. He asked if 16 is the lowest common age chosen by other states.

MR. JONES said 16 is the most common age.

REPRESENTATIVE GRUENBERG noted that in some states, there are limits as to what the youth can do. He asked Mr. Jones what he thinks the young people would do and how did the division arrive at its conclusion, rather than perhaps setting a more restrictive role.

Number 1235

MR. JONES said the election board, when set up in the precincts, will be made up of "two possible youth ambassadors." They will be working with other adults and under the supervision of an election supervisor who will be "moving between these areas." He indicated that [the youth] could be serving as runners and helping with the setup, and they may - under supervision of another qualified adult - get to check off names, based on the identification provided by the voter.

REPRESENTATIVE GRUENBERG asked if there is language in the bill that clarifies that.

MR. JONES turned to the new language on [page 2, beginning on line 29], which read as follows:

> **An election supervisor may also appoint not more than two members of the youth vote ambassador program established in AS 15.10.108 to serve on a precinct election board.**

Number 1166

REPRESENTATIVE COGHILL suggested that to clarify that point, perhaps it could be stated what the "combination of people" would be on a precinct board. He asked if [the board] would always be limited to a number, or is "maximized by number." He asked what the rest of the committee's makeup would be if two members of the committee were youth workers.

Number 1154

REPRESENTATIVE GRUENBERG pointed to [page 2], lines 17-18, which read as follows:

> AS.15.10.120. A program member who is appointed to serve on an election board under this subsection serves under the supervision of the chairperson for that board.

REPRESENTATIVE GRUENBERG offered an example that there may be three people, but the adult supervisor takes a bathroom break, leaving the two youths alone. He asked what would prevent that in the bill.

Number 1115

MS. HUBER said she thinks that part of the job of the supervisor at the polling place is to make sure that doesn't happen. She said the supervisors are trained through the Division of Elections. She surmised that there's a trust that the division would not leave two youth "manning" a polling place.

Number 1098

REPRESENTATIVE COGHILL concurred with Ms. Huber. He said, "But it says, 'At least three', so we know that the makeup is going

to be at least five at this point." He explained that he just wants to know whether the general makeup would be six or eight, for example, and would the workers [give each other breaks].

Number 1080

MR. JONES indicated that it would depend. For example, he said that there would be a smaller number of people working in rural areas. He offered to get information to the committee that would show what the division considers when it sets up the "precinct election booklets."

Number 1064

CHAIR WEYHRAUCH noted that, currently, the language of the bill makes compensation of the youth mandatory. He asked if it had to be that way. He surmised that would create a fiscal impact. He noted that [AS] 15.15.380 directs the director to pay each election board member.

Number 1040

MS. HUBER turned to [subsection (c), on page 2], which read:

> (c) An election supervisor may appoint a member of the youth vote ambassador program to serve on a precinct election board appointed under AS 15.19.120. A program member who is appointed to serve on an election board under this subsection serves under the supervision of the chairperson for that board.

MS. HUBER also noted [subsection (e), on page 2], which read as follows:

> (e) A member of the program may provide unpaid volunteer services related to education and outreach on state elections as directed by, and under the supervision of, the director of elections.

CHAIR WEYHRAUCH asked, "So is it to be volunteer or paid?"

MS. HUBER responded, "Good question."

CHAIR WEYHRAUCH told Ms. Huber that the committee likes the bill, but has questions regarding it that may result in amendments.

Number 0990

REPRESENTATIVE COGHILL noted that there is some regulatory authority already regarding selecting people out of precincts, which he said looks like "it goes contrary to statute that's already in existence." He suggested it would be good to find out if that's a practice that has already somehow been written into some regulatory policy. He added, "I'd like to call that in, if that's the case."

Number 0953

REPRESENTATIVE GRUENBERG asked if, by law, there is a minimum number of people on an election board.

Number 0948

MR. JONES said he would have to review the regulations specifically in order to answer that question.

REPRESENTATIVE COGHILL noted that Section 3 designates "at least three qualified voters".

Number 0931

REPRESENTATIVE GRUENBERG turned to page 2, lines [26-31], which read as follows:

> ***Sec.3.** AS 15.10.120(a) is amended to read:
> (a) An election supervisor shall appoint in each precinct within the election supervisor's district an election board composed of at least three qualified voters registered to vote in **this state** [THAT PRECINCT]. **An election supervisor may also appoint not more than two members of the youth vote ambassador program established in AS 15.10.108 to serve on a precinct election board.**

REPRESENTATIVE GRUENBERG said he interprets that language to mean that two of the three people could be youths.

Number 0890

MS. HUBER noted that the language within those lines states that [the election supervisor] "**may also appoint**", and she emphasized the word "**also**". She indicated her understanding of the language is that [the two members of the youth vote ambassador

program would be] in addition to the three [workers over the age of 18]. She suggested that that language could be clarified in a committee substitute.

REPRESENTATIVE GRUENBERG indicated that the language should be clarified to read, "in addition to the other three." He stated his understanding that one of the purposes of the election board people is to determine the qualifications of an individual voter, if there is a challenge "right there." He opined it would not be good public policy to allow youths to be able to make up a majority of the board and maybe determine whether some adult gets to vote or not.

MS. HUBER said she thinks the sponsor will [agree to] most of the changes that the committee has discussed.

Number 0842

CHAIR WEYHRAUCH announced that HB 496 was heard and held.

ADJOURNMENT

Number 0813

There being no further business before the committee, the House State Affairs Standing Committee meeting was adjourned at 9:26 a.m.