

ALASKA STATE LEGISLATURE
HOUSE STATE AFFAIRS STANDING COMMITTEE

March 30, 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. 459

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

- HEARD AND HELD

HOUSE BILL NO. 547

"An Act relating to the dividends of individuals claiming allowable absences; and providing for an effective date."

- HEARD AND HELD

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."

- MOVED CSHB 132(STA) OUT OF COMMITTEE

HOUSE BILL NO. 331

"An Act relating to federal requirements for governmental plan and other qualifications for the teachers' retirement system,

the public employees' retirement system, and the judicial retirement system; and providing for an effective date."

- BILL HEARING POSTPONED TO 4/1/04

PREVIOUS COMMITTEE ACTION

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
03/18/04	(H)	Heard & Held
03/18/04	(H)	MINUTE(STA)
03/30/04	(H)	STA AT 8:00 AM CAPITOL 102

BILL: HB 547

SHORT TITLE: PFD: DELAY PAYMENT FOR ALLOWABLE ABSENCES

SPONSOR(S): STATE AFFAIRS

03/29/04	(H)	READ THE FIRST TIME - REFERRALS
03/29/04	(H)	STA, FIN
03/30/04	(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
03/24/04	(H)	Heard & Held
03/24/04	(H)	MINUTE(STA)
03/30/04	(H)	STA AT 8:00 AM CAPITOL 102

WITNESS REGISTER

REPRESENTATIVE LES GARA
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Testified as sponsor of HB 459.

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

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

ROGER GAY

Big Lake, Alaska

POSITION STATEMENT: testified on behalf of himself during the hearing on HB 459.

JOHN DAVID RAGAN

Ester, Alaska

POSITION STATEMENT: Testified during the hearing on HB 459.

LYNN KORAL

Alaska Independent Blind

Juneau, Alaska

POSITION STATEMENT: Testified on behalf of Alaska Independent Blind during the hearing on HB 459.

JIM SYKES

Palmer, Alaska

POSITION STATEMENT: Testified during the hearing on HB 459.

CHRIS KNIGHT, Staff

to Representative Paul Seaton

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Introduced HB 547 on behalf of Representative Seaton, sponsor.

PAUL DICK, Chief, PFD Operations

Central Office

Permanent Fund Dividend Division

Department of Revenue

Juneau, Alaska

POSITION STATEMENT: Answered questions on behalf of the division during the hearing on HB 547.

SHARON BARTON, Director

Central Office

Permanent Fund Dividend Division

Department of Revenue

Juneau, Alaska

POSITION STATEMENT: Offered supplemental information during the hearing on HB 547.

DAVID W. MARQUEZ, Chief Assistant Attorney General
Legislation & Regulations Section
Office of the Attorney General
Department of Law
Juneau, Alaska

POSITION STATEMENT: Answered questions during the hearing on HB 132.

ACTION NARRATIVE

TAPE 04-50, 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 459-PAPER TRAIL FOR ELECTRONIC VOTING MACHINE

[Contains discussion of HB 320.]

Number 0025

CHAIR WEYHRAUCH announced that the first 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 0110

REPRESENTATIVE HOLM moved to adopt the committee substitute (CS) for HB 459, Version 23-LS1686\Q, Kurtz, 3/29/04, as a work draft.

Number 0140

CHAIR WEYHRAUCH objected for discussion purposes.

CHAIR WEYHRAUCH offered a brief review of the bill. He noted that [Version Q] would add Section 2, which would make the electronic voting machine be a backup to "the scanner version."

He mentioned Section 3, regarding the use of electronically generated ballots, and Section 4, which defines the terms [electronically generated ballot and optically scanned ballot]. He deferred to Representative Les Gara.

Number 0270

REPRESENTATIVE LES GARA, Alaska State Legislature, as sponsor of HB 459, noted the original idea [behind the bill] was to ensure that there is a paper trail for all ballots. However, it was then realized that touch screen voting machines needed to be available for those with visual disabilities. He explained that that was provided for by federal law. He indicated the desire to keep the [touch screen voting] machines as back-up only and reminded the committee of the discussion during a previous meeting regarding all the problems that would be associated with those machines if they were to become the statewide machine. He noted that people don't have to prove they need to use a touch screen voting machine; they can simply ask to do so. He said, "To the extent technologically feasible and to the extent that there's ... federal funding available, those machines shall be - as soon as possible - also retrofitted to create a paper trail." He said the technology is close; it will be available by 2006. California will require that those machines have a paper trail by 2005. He explained that the language in the bill referring to federal funding being expended only when available was used so that there would be no fiscal note.

Number 0411

REPRESENTATIVE SEATON asked if the current AccuVote machines would be the default machines, even after the paper trail additions are made to the [touch screen voting] machines.

REPRESENTATIVE GARA replied that even after [touch screen voting] machines are retrofitted with a paper trail, they still would have problems regarding the computer code; therefore, they would be kept as the secondary machine. He noted that in other states there have been problems with [touch screen voting] machines. He revealed that the only way to ensure that these machines are accurate is to do a recount every time they are used.

Number 0533

REPRESENTATIVE BERKOWITZ asked Representative Gara to discuss access to the software.

REPRESENTATIVE GARA noted that there has been litigation in states that have used the [touch screen voting] machines; when people have tried to call for a recount, the response has been that there is no paper trail to do a recount. The only way to find out if those machines perform properly, he said, is to review the software code. However, when people have asked to see the software code, the company who produces it has responded that it is a trade secret.

REPRESENTATIVE BERKOWITZ asked, "And that trade secret has higher legal value than the secrecy of the ballot box?"

REPRESENTATIVE GARA replied that he doesn't personally believe so, but [the company that owns the software code] will argue that the trade secrets that it holds are federally recognized and preempt the state's rights in that regard.

REPRESENTATIVE BERKOWITZ asked if there is anything that would contractually prohibit [the State of Alaska] from getting access to that software as part of a purchase agreement.

REPRESENTATIVE GARA suggested that the company may just decide not to sell the machines, which would make it difficult for [the State of Alaska] to provide the machines to those with disabilities. He suggested asking that question of the Division of Elections.

Number 0650

CHAIR WEYHRAUCH turned to Section 3, [subsection (b), on page 2, beginning on line 14], which read as follows:

(b) Before permitting a voter to vote an electronically generated ballot, the director shall certify that any software used in creating, recording, and counting the ballot is reliable and secure, and that any machine used in casting the ballot will accurately record votes cast.

CHAIR WEYHRAUCH explained that the director has to go through a certification process that he/she feels is legally and technically reliable. He said he doesn't think the director will be in a position to be able to certify "without some expertise." He continued, "And they say, you know, 'If you won't let us do this, then we may not be able to use your

software, ... because we have to go through the certification process, and I can't do that without that accountability.'"

REPRESENTATIVE BERKOWITZ responded, "I don't know how you'd get admission of the evidence if you couldn't prove that the software was accurate."

CHAIR WEYHRAUCH suggested there may have to be some sort of confidentiality agreement that is waived in the event of litigation over the validity of the software.

Number 0713

REPRESENTATIVE GARA, in response to a question from Representative Seaton, indicated that touch screen voting machines are called DREs [direct recording electronic voting machines].

Number 0766

CHAIR WEYHRAUCH informed the committee that Laura Glaiser had sent an e-mail addressing concerns she had, indicating that she wants to confer with the lieutenant governor's office before the House State Affairs Standing Committee takes action on HB 459. He invited Ms. Glaiser to testify.

LAURA GLAISER, Director, Division of Elections, Office of the Lieutenant Governor, said she has a couple of concerns: Her first concern, she related, is how the division would not allow certain people to use the touch screen voting. She surmised that, since it's a state law and voter outreach is done, people would learn that "there's a piece of technology in a polling booth that they can't use." She clarified that she is not saying it can't be done, but that she is concerned that the poll workers will be "wrestling people and telling them, 'You can't vote on that machine, you can only vote on the other machine - that's the law.'" She said she doesn't have an immediate answer, but it is something that can be addressed.

MS. GLAISER turned to Section 3, regarding having the director certify software. She recommended the director not be put in that position. She suggested the term, "independently certified" might be used. She mentioned the National Association of [State] Election Directors (NASED), a group that has a "certification means." She also mentioned the Federal Election Commission. She stated that the division has the same concerns that the committee has expressed about the software and

wants everything certified before it's used. She noted that a couple of years ago "they" changed the software for the optical scan. She clarified, "The software that drives the touch screen is the same software that drives the optical scan. But, to be fair, the difference is, with optical scanning, you have a marked ballot that you can use to check and counter check." She noted that the certification currently takes place by the SEC [U.S. Securities and Exchange Commission]. She added, "If you want an additional layer, that may take some research." Ms. Glaiser clarified that the programming of the software for an election takes place at the Division of Elections, by division employees.

Number 0938

MS. GLAISER turned to Section 3 [subsection (c), on page 2, beginning on line 18], which read as follows:

- (c) The director shall provide for a paper record of each electronically generated ballot that can be
- (1) reviewed and corrected by the voter at the time the vote is cast; and
 - (2) used for a recount of the votes cast at an election in which electronically generated ballots were used.

MS. GLAISER said she doesn't know where technology is right now, but she explained that the touch screen machine prints a receipt next to the voter. In response to a question from Chair Weyhrauch, she confirmed that the machine is similar to those used to check in at airports. She added, "And it would be an addendum to the machines that we've already bought. ... You have that port to be able to put ... additional hardware on there." She said the idea is to keep the receipt safe so that somebody doesn't accidentally pull the receipt off and put it in their pocket and walk off; therefore, [the receipt] would be generated and then "dropped into its own box." She continued as follows:

Our concern, again, not having any of this equipment before us is: If you ... see it, it's already printed, and then you say, "Oh no, that wasn't what I wanted." ... How do you get that piece of paper back? How does it not get dropped? Again, we don't have the technology before us. [I'm] not saying that it can't be done, but [it] concerns people that run elections - you know, the staff that's been with the

division for years. These are the concerns that they've brought up. How do we get what's best?

... And if we're only letting the disabled, ... blind, and visually impaired, then how do they review and correct? Right now, they believe that the audio count -- I mean, as they ... review the ballot, that's what happens for a blind person is everything's audio and it goes through and says, "You cast this vote for President, this vote for U.S. Senate, this vote for House - would you like to change any of those votes?" And then it provides a way for them to go back and change it. ... Are you asking for another system - a separate system that gives them an audio? Because ... there's an audio ... in the current touch screen that we have. Are you asking for something that double-checks the system?

MS. GLAISER said she isn't trying to "creates walls," but just wants [the proposed legislation] to be fair and true, so that the division doesn't find out after it becomes law that it can't implement [the provisions], and so that the new law doesn't block the division from doing something "where everybody's intentions were good."

Number 1078

REPRESENTATIVE BERKOWITZ commented that he experienced a recount and appreciated that all the ballots were there. He emphasized that people shouldn't be able to identify which ballot came from which voter, but when there is an ability to look at all the ballots, there is also the ability to recount them. He offered his understanding that that is the gist of the proposed legislation; that there is a physical record of votes, so that "if all the software fizzles out and burns up, you've got a piece of paper that you can say, 'This is a ballot that was cast.'"

Number 1128

REPRESENTATIVE SEATON stated that he has a problem with the point just made by Representative Berkowitz, because if there is software generating an inaccurate count and an inaccurate ballot that is not reviewed by anybody, then nothing has been gained. He said, "I think that where everybody's trying to get to is that if there's questions and if there's been problems elsewhere with the software generating ... incorrect votes - other than what people get on the screen - ... there needs to be a

correction point in there." He offered his understanding that the reason that 2006 has been discussed is that the technology may not be available [until then].

Number 1187

CHAIR WEYHRAUCH stated that the committee wants to have some practical applications of what it does. He emphasized that it cannot create a mess.

Number 1299

MS. GLAISER noted that Georgia, for example, has only touch screens for voting. She clarified that the State of Alaska's Division of Elections has never planned for "a sweep and replace of optical scans and the paper ballots." She said, "In this state, with our power and all the things that can happen on an election day, there will always be a paper ballot available."

MS. GLAISER returned to the subject of allowing only the blind and handicapped to use the [touch screen] machine. She pointed out that there will most likely only be one or two votes recorded on that machine in some polling places, which may jeopardize the privacy of those votes.

Number 1326

REPRESENTATIVE GRUENBERG related a story about some friends of his. He said, "Apparently, in the last year or two, there is a new law that helps them vote. And they want to be sure that, pending the implementation of this, they don't lose the right they have acquired under the new law."

Number 1350

MS. GLAISER stated her belief that the language that has been deleted from page 1, Section 1 of the bill is related to the law to which Representative Gruenberg's friends referred. She explained that that was a piece of legislation carried by then Senator Loran Leman and Representative Joe Green, in 2002. She said Senator Leman worked with Sandy Sanderson and Lynn Koral. Ms. Glaiser remarked that Ms. Koral worked hard on "this language."

REPRESENTATIVE GRUENBERG noted that Section 6 of the bill would make the bill effective immediately and Section 1 repeals the present law. He asked if [the division] would still legally be

able to use the current equipment if it takes a period of time before the new equipment is ready.

MS. GLAISER responded that she is not an attorney and would therefore have to check that answer. In response to a comment by Representative Gruenberg that it is an important issue to many people, she replied that it is also important to the lieutenant governor, which is why he asked her to write to "the chairman" to let him know that "we" have concerns. She indicated the importance of meeting the intent of the Help America Vote Act, because the funds that would be used to purchase additional equipment are tied to the proper implementation of the federal law.

Number 1390

CHAIR WEYHRAUCH promised, "We'll work on this bill 'til we get it right."

Number 1404

REPRESENTATIVE GRUENBERG asked what about the current system is broken, such that something new, which might cause problems, is being considered.

Number 1414

MS. GLAISER explained that the Help America Vote Act requires that one of the touch screen machines be in every polling place by 2006. When that Act was passed, the machines had not been tested in elections to drive other concerns. She said she decided to purchase 100 machines to use in the 2004 elections for two reasons: First, to make good on an honorable promise to the disabled, blind, and visually impaired, that they could cast an independent ballot. Second, to learn the needs regarding shipping, transport, and storage [before the 2006 deadline].

Number 1485

CHAIR WEYHRAUCH suggested that it might be worthwhile to put a sunset date on the bill, so that if HB 459 passes, it would have to come back before the legislature next year for fine-tuning.

Number 1505

MS. GLAISER, in response to a question from Representative Gruenberg, noted that in addition to the previously stated

reasons for the touch screen machines, there is also a state law in the books. She cited AS 15.15.030 [paragraph (13)], which read as follows:

(13) Notwithstanding any other provision of this title, the director may provide for voting by use of electronic balloting equipment or optically scanned ballots where the requisite equipment is available. If the director provides for voting by use of electronic balloting equipment, the director shall provide electronic balloting equipment that would allow voters with disabilities, including those who are blind or visually impaired, to cast private, independent, and verifiable ballots.

REPRESENTATIVE GRUENBERG asked what the basis is for the federal law and what the penalty is if the State of Alaska does not meet the [federal] requirement.

MS. GLAISER offered her understanding that the intent of having [a touch screen machine] in each polling place is to reach the blind, disabled, and visually impaired. She said the Help America Vote Act was born as a result of the problems in Florida [during the presidential election of 2000] and to replace the punch card system. She expressed that it was never the intent of the sponsors of the Help America Vote Act for touch screen voting machines to completely replace [other forms of voting], but rather that their intent was to have one touch screen machine in every polling place.

REPRESENTATIVE GRUENBERG asked, "How about if there's a polling place that doesn't have a visually impaired voter?"

MS. GLAISER said that's not addressed in the federal Act. She said that as the division meets with the regional supervisors and the division staff, it has those concerns. She stated that [the machines] will go out to rural Alaska, which is why she wants to bring them into use during the 2004 elections. She commented that shipping the machines is like shipping a laptop [computer].

REPRESENTATIVE GRUENBERG asked if it would be a violation of the federal Act to limit [the distribution of touch screen machines] to only those precincts in which somebody has requested them.

MS. GLAISER reiterated that she is not an attorney, but suggested that perhaps some research could be done on the issue. She added that it's certainly a reasonable [idea] and one that has been discussed within the division.

Number 1673

ROGER GAY, testifying on behalf of himself, stated his belief that voting has to be verifiable for the purpose of a recount. He said he doesn't trust electronics or programmers, because "they are subject to all sorts of mischief by hackers and other people with computer skills." He opined that paper trails are a lot easier to verify than electronic voting. Mr. Gay recommended that the committee be cautious in its implementation of "this procedure."

Number 1721

JOHN DAVID RAGAN told the committee that he is a Democrat, a member of the Laborer's Union Local 942 in Fairbanks, an Alaskan resident since 1975, a firefighter with the Ester Volunteer Fire Department, and a former elected board member of the Ester Community Association. He noted that he is also a writer for the Fairbanks area's progressive newspaper, The Ester Republic. He read a selection from an article he wrote in that publication [available in the committee packet], regarding the controversy surrounding the electronic voting machines.

Number 1822

MR. RAGAN characterized as most troubling of all an article by Thom Hartmann entitled, "If You Want To Win An Election, Just Control The Voting Machines." The article, he said, reports that the respective Washington D.C. publication, The Hill has confirmed "that former conservative talk-show host and now Republican U.S. Senator Chuck Hagel was [the] head of, and continues to own part interest in, the company that owns the company that installed, programmed, and largely ran the voting machines that were used by most of the citizens of Nebraska." He continued as follows:

The article says that when Hagel first ran there for the U.S. Senate in 1996, his company's computer-controlled voting machine showed he'd won stunning upsets in both the primary and the general election. The Washington Post said Hagel's Senate victory against the incumbent Democratic governor was the major Republican upset in the November election.

According to Bev Harris of www.blackboxvoting.com, Hagel won virtually every demographic group, including

many large Black communities that had never before voted Republican. Hagel was the first Republican in 24 years to win a Senate seat in Nebraska. Hartman says that six years later, Hagel ran again and won in a landslide. About 80 percent of those votes were counted by computer-controlled voting machines put in place by the company affiliated with Hagel, built by that company, programmed by that company. "This is a big story - bigger than Watergate ever was," said Hagel's Democratic opponent in the 2002 Senate race, Charlie Matulka.

Number 1877

MR. RAGAN said the article goes on to detail election problems in Georgia. He said he has citations of all the articles that he quoted. He clarified, "This is part of a larger article which discusses the lawsuit brought by the [National Association for the Advancement of Colored People] (NAACP) and the U.S. Commission on Civil Rights in the 2000 elections, against the Florida secretary of state's office - which they won." He explained that the article details that in the Florida election, nearly 200,000 qualified Democratic voters had their constitutional rights to vote in the election denied through "purges" of the voting records and "a number of other tactics" that were declared illegal after the election. He stated that millions of Democrats believe that President Bush is in office due to a rigged election in Florida. He opined that if that election looks bad, the next one will "really look bad," given the allegations against the computer-controlled voting machines. He explained that "this information" has been widely circulated on the Internet, as well as to all members of the "Interior Democrats." He offered his understanding that there probably will be litigations and challenges in every election in which these voting machines are used. He said he thinks that people, no matter their party affiliation, have the responsibility to ensure that the voting system is absolutely transparent and that there's no question that the vote is being programmed or tampered with.

Number 1968

MR. RAGAN noted that there already exists an optical scanner system. He concluded as follows:

If we're going to use these electronic machines, the central point is: ... There must be a paper ballot

generated; it must be verifiable by the voter as corresponding to the election vote and ended by that voter; the paper ballot must be the legal ballot, for purposes of a recount; and, in every election, even when there's no recount, there must be random checks of at least five percent of the precincts to ensure that the paper ballots generated by the electronic machine correspond to the number of votes counted in that precinct by the electronic machine.

Number 2022

REPRESENTATIVE LYNN asked Mr. Ragan to define the word "progressive," which he noted Mr. Ragan used in his testimony.

MR. RAGAN offered his understanding that "progressive" is currently used by the Democratic party to correspond to the left wing of that party, which sees itself as continuing the New Deal and the progressive movement in the Midwest and in Democratic politics.

Number 2073

REPRESENTATIVE GRUENBERG expressed that he doesn't want anybody's political views to influence the factual statements that Mr. Ragan made. He said if there are problems with the machines, they are problems, no matter how a person casts his/her vote.

Number 2099

LYNN KORAL, testifying on behalf of Alaska Independent Blind, told the committee that she appreciates "the problem with the machine," but she also doesn't want the legislature to break the promise it made to the blind and disabled population regarding voting machines. She explained that Alaska Independent Blind is a grass roots advocacy organization that fought hard to have the electronic machines. She indicated that the late Frank Haas had worked to get access to the voting ballot, but that did not occur before his death.

MS. KORAL agreed that there can be problems with hackers, but she said previous testifiers helped make her point, because "there certainly wasn't any guarantee with the paper ballot." She reiterated that she wants to know that the legislature is not going to break its promise. She said, "We've waited far too long, ... and I think it's about time that you start allowing us

to vote independently, secretly, and verifiably, so that people can't judge us by the votes we cast."

Number 2140

CHAIR WEYHRAUCH asked Ms. Koral to explain what she meant by the promise made by the legislature.

MS. KORAL explained that it's a promise that [Alaska Independent Blind] believes the legislature made when it passed HB 320. She noted that Frank Haas was a Republican who died in 1990, and she said he had wanted private, verifiable balloting, "especially because we're a small state." She said, "It's a promise that I believe you will break if you delay this implementation of the Help America Vote Act and the Frank Haas Act." In response to a question from Chair Weyhrauch, she explained that [the Frank Haas Act] is Alaska State law.

Number 2185

REPRESENTATIVE SEATON said the bill "eliminates that language" in Section 1, but reinstates it in another Section on page 2, beginning on line 10. He explained, "It wouldn't change the status of that law at all."

MS. KORAL asked why the language was moved.

CHAIR WEYHRAUCH explained that it was moved around to try to implement the provisions of the bill to make any software associated with electronic voting verifiable by the division. He explained that it was more of a drafting issue than a policy issue.

MS. KORAL asked, "How am I going to verify it in the voting booth as a blind person?"

CHAIR WEYHRAUCH responded, "Well, you wouldn't."

MS. KORAL asked, "What are you going to do about that?"

CHAIR WEYHRAUCH told Ms. Koral that the committee is working on that.

Number 2233

REPRESENTATIVE GARA stated the whole intent of the bill is to say, "While we're a little bit worried about the technology

associated with the [touch screen voting] machines, we're going to leave the other machines as the default machine for people who don't have visual impairments." He emphasized that there's no intention to delay the implementation of the [touch screen voting] machines; they will be available in the 2004 election.

MS. KORAL said she wants to know that others understand that "if we have to verify the ballot, it doesn't mean that somebody has to be there in the voting booth to verify it with us, because obviously ... I'm not going to be able to read paper unless you have a scanner in there with me."

REPRESENTATIVE GARA responded that that's fair. He said, "Actually, you don't have to verify the ballot. You'll get a paper ballot, and whether you want to have somebody there with you to verify it or not - that's totally up to you."

Number 2370

JIM SYKES testified that he has been involved in many voting issues in the last 14 years, and he has "made" his professional life in the area of technology - mainly with audio and video.

TAPE 04-50, SIDE B

Number 2375

MR. SYKES said new technologies generally have some "down sides" that are not always considered and, until the bugs are worked out, the technology can actually be detrimental in some cases. He said this is what concerns him about electronic voting. He noted that he has had many discussions with the director of the Division of Elections since December, regarding many articles and problems that have arisen "with these varying machines."

MR. SYKES agreed with the previous comments of Mr. Gay that there needs to be a paper trail. He opined that an election needs to be auditable; there has to be a way of proving the vote. He said, "If a machine spits out a result, someone can say, 'Well, the machine has given us the result.' But there is no way to prove one way or the other if that is the result of what the voter intended." He revealed that he is neither a Democrat nor a Republican, but he wants to ensure that everybody's vote counts.

MR. SYKES stated he was disturbed about a previous comment made by Representative Berkowitz. He offered his understanding that Representative Berkowitz had said that it isn't important to be

able to have the voter verify his/her ballot. He admitted that perhaps he had misunderstood. Mr. Sykes said, "We have the optical scan ballot - the AccuVote; you can take a look at the ballot and verify those." He stated his concern with implementing a technology that is not proven and not auditable "for anybody, regardless of whether it is the blind or not." He said it's risky and "we oughtn't go there." However, he stated his belief that technology offers a solution.

MR. SYKES continued as follows:

If we're going to use these machines, there can be an audio playback for the ballot for a blind person that votes on [a] touch screen. There's also technology - and it's easily available - to print out the results of the ballot in Braille, so that the person can independently verify - without the presence of another person in the voting booth - that this is the way they cast their vote. And that's the way that can be verified: you've got audio; you've got Braille; and the paper ballot is generated.

This must be a requirement before these machines can be used, in my opinion, because how are you going to offer equal protection? Let's say, for example, that someone cast their vote on ... the touch screen machines and the vote is in question. How do you prove the vote, unless you can audit that? I believe that the suggestion that you recount 5 percent of the precincts - or perhaps even 10 percent - is a good one. This should be done with the AccuVote machines, as well. Currently, only three precincts are recounted. The AccuVote machines can also be hacked and that's another issue for another bill.

MR. SYKES encouraged the committee to require that a printout can be independently verified by the voter on the touch screen machines, and to ensure that there is a paper trail in the event of a recount. He stated that he doesn't want anyone who is visually impaired and uses one of the touch screen machines to have his/her rights violated by a machine that might be tampered with or might not be recording the vote appropriately, as has been demonstrated in other states. He expressed appreciation for the committee's consideration of the bill. He noted that the federal law doesn't have to be implemented until 2006, and he opined that [the division] should accommodate as early an

implementation as possible, but not at the expense of questioning anybody's vote.

Number 2210

REPRESENTATIVE BERKOWITZ [regarding Mr. Sykes' interpretation of what he had previously stated] clarified that what he doesn't want is for the state to have access to his individual ballot to verify how he votes, for example. He said, "It's one thing for me to be able to look at my ballot and determine that ... the vote is recorded the way I want to do it, but I think it's an entirely separate thing for the state to be able to come in and look at individual voters and say they voted accurately or they didn't vote accurately."

MR. SYKES thanked Representative Berkowitz for his clarification.

Number 2179

MS. GLAISER, for purposes of clarification, informed the committee that the current touch screen does have a tape running inside which records the votes. She said she understands "all the nuances" and where the concerns are regarding problems and hacking. She continued as follows:

But just so you know what the machines really do: ... By taking that card with the chip in it out of each individual machine that's been locked up and reinserting it in the GEMS [Global Election Management System] computer here, a ballot can be printed from that card. Again, I'm not saying that you still don't have concerns, but I want you to know that there is an auditable trail that was required by the federal government. The machines we have do meet federal certification. That may not address all of your concerns, but I just want to be real fair so that you all understand ... what the system's capable of doing - that it does have an auditable trail now. It does allow a blind or visually impaired person - through an audio - to verify that, yes, that is that ballot they want to cast. Our current system does that.

Number 2126

REPRESENTATIVE BERKOWITZ mentioned a bill by Congressman [Rush] Holt. He said he wonders what the status is regarding that

bill. He observed that that bill seems to have a fairly detailed description of voter verification and audit capacity, "which goes to what I think is the heart of what we're trying to get at here."

Number 2112

MS. GLAISER responded that she has not received an update regarding that piece of legislation.

Number 2098

REPRESENTATIVE GRUENBERG said he is concerned after listening to the testimony from both hearings on HB 459 thus far. He continued as follows:

I have heard nothing good about this system, no good policy reason for implementing it, a large cost involved, possible fraud. I am not unmindful of the quite important U.S. Senate race that is coming up and the effect this might have on ... the integrity of that race. And I have yet to be convinced that there is, in fact, a legal requirement that we do it, and the penalties if we don't do it - particularly this next election.

And I ... would request that the committee seek a legal opinion on this issue and ... maybe from [Legislative Legal and Research Services], a quick audit of the problems that they've had, because unless this Representative is convinced that we must do it and - number two - that this is not going to cause more problems than it will fix, I can't support ... the whole concept of this thing.

MS. GLAISER stated her belief that the promise to the disabled, blind, and visually impaired is the part that really drove everybody's hearts on the implementation of "this," certainly in Alaska, but also in the federal legislation. She said, "We're trying to find a way to make it work so that we can still protect the integrity of elections."

Number 2026

REPRESENTATIVE SEATON stated he has a problem with the idea that there may be only two or three people in a community who [use the touch screens] to vote. He said a report of what is done

will be made and "all of a sudden we have a way of knowing how ... those three people that were blind in that district voted." He said that if the legislature is building enough safeguards in [the proposed legislation] to make it work so that it's verifiable and there's a paper trail, he is concerned that the legislature also make it so that "everybody else has to use the other system." He said he would like the committee to consider that as it continues forward with the bill.

Number 1974

CHAIR WEYHRAUCH said, "When issues touch across our democratic spectrum of politics, it effects all [of] us, and we're all interested in ensuring a fundamentally fair and safe voting process." He said he gets offended when people attach some sort of political motive to "this."

Number 1933

REPRESENTATIVE GARA returned to Ms. Glaiser's previously stated concern about the provision in the bill stating that the software code has to be verified for accuracy by the director. He explained that "director" means the director or his/her designee, as long as the director gives the final approval. He suggested an amendment could be made to that effect.

REPRESENTATIVE GARA responded to a previously expressed concern regarding how a voter would prove that he/she is entitled to use these machines. He said he doesn't want somebody to have to show proof, that essentially they just have to ask. He suggested that an option for the division would be to have a form that would certify that somebody has a disability that requires them to use the touch screen machine. He said Ms. Glaiser estimated that there won't be that many people using the machines.

REPRESENTATIVE GARA noted that Ms. Glaiser had said that the software that is used now is the same as the software that is used in touch screen machines. He clarified that part of the software is the same, while part is not. He explained that the current machines don't have software that tells the machine how to "translate what somebody touches into an internal computer vote." He said that's the part that people have complained about nationwide regarding the DRE machines. The optical scanning machine tells the machine how to translate what it scans on a paper ballot.

Number 1855

REPRESENTATIVE GARA, in response to previous comments made by Representative Seaton, stated that the technology is not there right now. He said there's one company that produces a paper record "right there for the voter." He clarified that Ms. Glaiser spoke about the fact that "we" have a machine that doesn't produce the paper record right there for the voter, but produces it for the Division of Elections later on. He continued as follows:

Ultimately, in a number of years, if everybody becomes comfortable with these DRE machines and the glitches are worked out, ... maybe they do become the default machine. Right now, if you read the articles, the part of the software that translates the thing that you touch to an actual vote inside the machine is manipulatable. And people have questions about these machines. And, even if they produce a paper ballot for you as you're sitting there - let's say the election is over and the machine has "misrecorded" every tenth vote ... - the only way the paper trail helps you is if you then do the recount. ... We don't want to have to do a recount every single election.

I would say that, for now, we know the AccuVote machines work very well. Let's make the DREs available to people with handicaps and visual impairments. Let's leave the other as the default machine and, if some day the facts change and everybody becomes very comfortable with the DREs with the paper trail, then we can authorize the Division of Elections to go ahead and make that ... the default machine.

Number 1770

REPRESENTATIVE WEYHRAUCH announced that HB 459 was [heard and held].

HB 547-PFD: DELAY PAYMENT FOR ALLOWABLE ABSENCES

Number 1748

CHAIR WEYHRAUCH announced that the next order of business was HOUSE BILL NO. 547, "An Act relating to the dividends of

individuals claiming allowable absences; and providing for an effective date."

Number 1723

REPRESENTATIVE GRUENBERG stated his support of HB 547. He stated for the record that his recollection from his previous term as legislator was that a bill had to be noticed [through the Chief Clerk's office] by the bill name and number. That notice had to be made on the Thursday before the week in which the bill would be heard. He said he understands that's no longer the requirement and that, currently, only the subject matter has to be noticed. He said, "I'm just calling that to the committee's attention, because in the final days - particularly in the second session - it's important that the public be fully aware of what we're dealing with."

CHAIR WEYHRAUCH concurred.

Number 1680

CHRIS KNIGHT, Staff to Representative Paul Seaton, Alaska State Legislature, introduced HB 547 on behalf of Representative Seaton, sponsor. He indicated that most people know a story of someone who has committed fraud when applying for the permanent fund dividend (PFD). He revealed that in 2000, approximately \$30 million left the State of Alaska in PFDs paid to people living outside of the state. He noted that the legislature has set up a guideline for allowable absences from the state and a detailed list of those allowable absences is in the committee packet.

MR. KNIGHT said the proposed legislation would not change the current system of allowable absences. He indicated that the intention of the bill is to get people to come back to Alaska and to "remove this ... thought that there might be fraud of the PFD application or the distribution of [the] PFD." He explained, "The thought was that if we created some sort of structural change, in the sense that if you have an allowable absence and you return to the state and actually spend time in the state, then you could receive your PFD." Mr. Knight indicated that HB 547 may reduce that amount of claims that the Permanent Fund Dividend Division has, which would potentially result in putting money back into the state's economy.

Number 1574

REPRESENTATIVE SEATON clarified that the bill takes most allowable absences and "has the person return to the state [and] reestablish residency after that allowable absence, before they receive the past dividend ... that they qualified for." He asked Mr. Knight to indicate which allowable absences are not included in HB 547.

MR. KNIGHT noted that members of Congress are not included in the bill as those who qualify for an allowable absence. He said, "Mainly, the absences we were trying to capture within this bill are people that leave for college." He related having been one of eight or nine men who attended college out of state. He noted that he and one other man returned to Alaska after school, while the rest did not. He predicted that if the dividends [had been held until their return], those who took jobs in the Lower 48 would probably have returned to Alaska to work.

REPRESENTATIVE SEATON said, "This doesn't apply to the 180-day absence that anybody is entitled to, so it doesn't interfere there.

Number 1472

REPRESENTATIVE LYNN asked how [HB 547] would relate to the military.

MR. KNIGHT answered that, currently, military personnel [who claim Alaska residency and file for a PFD] must return to the state for 72 hours, every two years. He offered his understanding that a military person who lives in Alaska for two years and is then transferred to, for instance, Oklahoma can receive his/her dividend for 10 more years, as long as that person's intent is to move back to Alaska, and if that person meets the requirement of returning to the state for 72 hours, every two years. He concluded, "So, realistically, we're not changing the eligibility requirements whatsoever; we're just making it clear that if you are going to live in the state and you're going to continue to claim to be a resident of the state, then you'll receive your dividend."

Number 1413

REPRESENTATIVE LYNN pointed out that no one knows how long a military assignment might be. A person may be assigned for four years and may not be able to afford to come back for 72 hours.

He noted that that's particularly true for the lower ranking individuals. He said it's an area that concerns him.

MR. KNIGHT revealed that he had previously worked in an office that sent out a quarterly publication detailing how a person could continue to be eligible for the PFD while serving in the military. For example, he noted, when not involved in combat, most people have access to cargo planes back to the states, in order to meet the 72-hour requirement. He noted that HB 547 would not change that process. He added, "The only thing that changes is that if you have no intention of returning to the state within 10 years, you're going to lose all your dividends, which is also current statute, except that you're not going to be paid your dividends until you actually come back to the state."

Number 1270

REPRESENTATIVE SEATON revealed that the idea for HB 547 came from a military person who is in the U.S. Coast Guard and is disturbed that many members that he served with have no intention of coming back. He said the man would think that receiving six or eight held back PFDs upon his return to Alaska would serve as a great nest egg. He stated that the point of the proposed legislation is to make people who say they will come back to the state actually do so before they can receive their held dividends.

Number 1181

REPRESENTATIVE HOLM said people have related to him that they know a lot of people [in the military] who never have any intention of staying in Alaska, but still accept the PFD. He noted that he was also told that Alaska is the most asked-for place to go, by military people, because of the PFD. He noted that military people with large families can augment their incomes in this manner.

Number 1080

REPRESENTATIVE SEATON mentioned the "brain drain" [Alaska losing people to other states]. He suggested that the nest egg [PFDs held back while people are out of state] would be a good incentive to people to return to the state. He added that he hasn't seen anything else that has the potential for doing that.

Number 1040

PAUL DICK, Chief, PFD Operations, Central Office, Permanent Fund Dividend Division, Department of Revenue, testifying on behalf of the division, noted that the largest group of people on the 180-day allowable absence are the spouses and children accompanying either military personnel, predominately, or students. He said there have been comments made about these people reestablishing residency upon their return to Alaska; however, Mr. Dick clarified that they never lost their residency, and it's just a matter of them coming back to live in Alaska. They are eligible for the dividend because they have maintained their residency during the period of time [in which they were out of the state].

Number 0973

CHAIR WEYHRAUCH referred to a handout in the committee packet entitled, "Why Applicants Were Absent From the State." He noted that the total for students enrolled full-time in postsecondary education is 5,365. He asked if that number has grown over time or remains stable, and how much the bulk payout would be when those students return.

Number 0950

MR. DICK answered that there is not a dramatic growth in those numbers. He stated that the amount they would get when they get back would obviously be dependent on how much the dividend was for each year. In response to a follow-up question from Chair Weyhrauch, he said [the division] has not analyzed how many years students are out of the state; however, he said he would assume that students would be out for four years.

Number 0905

REPRESENTATIVE HOLM asked what percent of the PFDs are mailed out of the state each year.

MR. DICK said he doesn't know the percentage, but 18,000 is the total number of PFDs mailed [out of state] out the 620,000 applicants. He noted that approximately \$20 million was sent out of state last year.

Number 0863

REPRESENTATIVE GRUENBERG opined, "If you have these figures, you ought to be able to break down the raw data for us." Referring

to the most recently mentioned handout, he noted that "the largest category are people who have accompanied an Alaska resident who's eligible for a PFD." He asked if [the division] can break down who the Alaska residents are that these people are accompanying to show whether they are students, or military, or other.

MR. DICK said that it would be possible to conduct a study for that information. In response to a question from Representative Gruenberg, he said he believes "the numbers would come out showing that they are mostly military, particularly with the children." In response to follow-up questions from Representative Gruenberg, he said the full-time student category would be adults in a post-secondary education. He stated that adults have to have their own eligibility. Full-time students enrolled in grades 7-12, he confirmed, would predominately not be accompanying their parents.

REPRESENTATIVE GRUENBERG asked how long the various categories remained out of state and how many people eventually returned.

MR. DICK said he believes those numbers could be found.

REPRESENTATIVE GRUENBERG said he thinks this is information that he would like. He offered to work with Mr. Dick to arrive at the best questions to ask.

MR. DICK, in response to a question from Representative Gruenberg, said he could not pin down a time in which he would have that information, but he said [the division] would work diligently to get it.

Number 0660

REPRESENTATIVE HOLM asked what the tax implication might be of extending payments for years. He said he would assume that the tax would be greater on the individual payments, rather than on a grouping of payments.

REPRESENTATIVE HOLM noted that Alaska loves having military here. Notwithstanding that, he observed that it is somewhat curious that Alaska, as a state, has chosen to participate [in] greater payment of the military than the other 49 states, by virtue of the PFD. He said he thinks the legislature should think about those things.

Number 0562

REPRESENTATIVE SEATON offered his understanding that there is currently a program where if someone dies, the PFD is in trust in his or her estate for a certain amount of time. He said, "We have ..., basically, the same kind of a program of holding those checks. Do we have that for any other categories, as well?"

MR. DICK answered, "We would just hold that dividend for that one year only, and once we're notified that the person's deceased, we would ... put the check 'to the estate of'." He clarified that in that circumstance, PFD checks are not held for years.

REPRESENTATIVE SEATON asked if there is any circumstance of disputed checks, for example, where the [PFD] checks are held in abeyance until administrative processes go forward.

MR. DICK replied that there is a denial and appeal process where a dividend would be pended until it's adjudicated and resolved. He stated that [the division] has those resolved within a year of the application deadline.

Number 0471

CHAIR WEYHRAUCH indicated that in some cases, the Alaska Supreme Court has been involved in those disputes. He said, "You still hold the check during the pendency of those litigations."

MR. DICK concurred.

Number 0445

SHARON BARTON, Director, Central Office, Permanent Fund Dividend Division, Department of Revenue, added that when a child reaches the age of 18, if the parents or guardian have not filed for him/her over the years, they can, at that point, file for prior year dividends. She said [the division] reserves an estimate of that amount of money each year for that purpose.

REPRESENTATIVE GRUENBERG suggested a work group or subcommittee be formed to get the information from [the aforementioned testifiers] as efficiently as possible.

CHAIR WEYHRAUCH said Mr. Knight would arrange that.

[HB 547 was heard and held.]

HB 132-AG INTERVENE IN NATURAL RESOURCES ACTIONS

Number 0360

CHAIR WEYHRAUCH announced that the last 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 0348

REPRESENTATIVE SEATON moved to adopt the committee substitute (CS) for HB 132, Version 23-LS0541\H, Luckhaupt, 3/25/04, as a work draft.

CHAIR WEYHRAUCH objected for discussion purposes. He noted that Version H included changes suggested by the testifiers from the Office of the Attorney General at the prior hearing of HB 132 [on 3/24/04]. Chair Weyhrauch indicated that paragraph (10), under the old bill, was moved [in part] under paragraph (7), and a new [subparagraph (C)] was created so that the legislature would know about these cases. He continued as follows:

And then there's both a substantive discussion that took place or a political debate that could take place between the ... executive branch and the legislative branch, to get the attorney general to involve itself in these cases if the legislature felt it was important enough to do so, either [through] a political process, discussions with the attorney general or the executive branch, or through passage of a resolution.

CHAIR WEYHRAUCH asked a representative of the Office of the Attorney General what the department's position might be regarding Version H.

Number 0225

DAVID W. MARQUEZ, Chief Assistant Attorney General, Legislation & Regulations Section, Office of the Attorney General, Department of Law, in response to a question from Chair Weyhrauch, stated that the department has no objection to the bill as restructured in [Version H].

CHAIR WEYHRAUCH revealed that he had asked the Alaska Bar Association to look at "this provision," and they did not perceive any problem with it, either ethically or substantively. He told the committee members that they would find a copy of the e-mailed response from Steve Van Goor of the [Alaska Bar] Association in the committee packets.

Number 0176

REPRESENTATIVE SEATON turned attention to the language added to the bottom of page 2, beginning on line 31, and continuing to page 3, line 1, which read as follows:

, or (2) the state's management or jurisdiction of the natural resources of the state may be affected,

REPRESENTATIVE SEATON asked if that would include all "fish and game-related cases." He clarified that he meant cases where there's any challenge to the management. He said he doesn't think that's the intent of the bill, but he just wants to make sure.

CHAIR WEYHRAUCH responded that there are many issues related to the business end of a fishing activity, which result in a management decision but have to do more with a contractual issue related to the harvest. He stated that disputes related to fishermen or other practical applications of a fishery would not be the kind of disputes "this amendment envisions." He said, "Instead, it would be whether the state - the actual management or jurisdiction of the resource, which is a plenary function of the state under our constitution - would be an issue."

TAPE 04-51, SIDE A

Number 0048

MR. MARQUEZ, in response to a question from Representative Seaton regarding the aforementioned language added in Section 2, explained that litigants will be the ones creating the notice, so it's possible that more notices would be filed and given to the attorney general. He stated that the Office of the Attorney General has limited resources and there may be a lot of notices given that won't present the right facts or will be about a different type of dispute. He noted that the office has very rarely gotten into disputes of private litigants. He stated that he is not too worried about the wording of [Section 2],

because the office will still have discretion [over] which suits it will (indisc.).

Number 0112

CHAIR WEYHRAUCH told Representative Seaton that Version H added the word "state's" from the original bill to make it clear that it was the state's management and jurisdiction that was an issue. He continued as follows:

Also, when you have an allocation dispute or a decision by the Board of Fisheries that's subject to litigation, the State of Alaska, the Board of [Fisheries], or the commissioner is always named as a party. So, the state - as a matter of law - ... would have notice of that case. So, any time there's any conservation, or development, or management dispute involving a Board of [Fisheries] action, it is the state at issue, and the state would absolutely have to give notice or have to be joined as the real party and interest in the case.

Number 0166

REPRESENTATIVE GRUENBERG noted that "this sentence" is hidden in the Civil Rule, and very few practitioners are aware of that. He brought attention to Rule 24(C), and he offered his understanding that it is in regard to intervention.

Number 0300

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

Page 2, line 31: Between the words "interest" and "is" insert

"or the constitutionality of a regulation or executive order affecting the public interest"

CHAIR WEYHRAUCH objected for discussion purposes.

Number 0330

MR. MARQUEZ, in response to a question from Representative Gruenberg, said that he thinks that Amendment 1 would be helpful and would bring notice to the Department of Law, "not only the

constitutionality of a statute, but also the constitutionality of a regulation of executive order." He said the current committee substitute would not impose a burden on the attorney general; the state wouldn't necessarily have to intervene as a party. He added, "But it would provide additional notice." He continued as follows:

Of course, at some point, it's difficult to tell what the volume would be, and at some point one could get overwhelmed by data. ... The original legislation certainly seemed to be targeted at natural resources issues, so I'll leave to the committee - the target. But we would have no objection to the amendment.

Number 0398

CHAIR WEYHRAUCH restated his objection to [Amendment 1]. He said [Amendment 1] is so broad, which would create a much more cumbersome process, as opposed to the narrow requirement.

CHAIR WEYHRAUCH referred to Representative Gruenberg's previous statement regarding a part of law that few practitioners know about. Conversely, he stated, "It's an area of law that many practitioners know about who regularly intervene in cases affecting fisheries." He offered examples. He stated that intervention is a powerful tool to use in many procedures. He noted that it's not used much in context with family law. However, in the area of natural resource law, any time there is a private party versus a public entity, all kinds of interests are affected potentially, "and they jump into that case through the intervention process if ... their interests are not being represented by existing litigants." He noted that Representative Gruenberg had, during a previous hearing, discussed amending "the title of the rule in (C)," under procedure and management and jurisdiction of resources. He indicated that that would be preferable to [Amendment 1].

REPRESENTATIVE GRUENBERG explained that the reason he didn't "put that one first" is because he wanted to see what the title should say. He reiterated that he thinks many practitioners are not aware that they have to notify the attorney general. He said [Amendment 1] is not complex, but simply would be a notice to the court for a request to notify the attorney general. He said it's important because, without it, unless the court is sharp enough to "pick it up," which it might not do until the

briefing is almost completed on an issue, it may delay the litigation.

REPRESENTATIVE GRUENBERG said, "I put everything in this amendment I could think of." He clarified there are two issues: executive orders, which he said are probably seldom litigated between private parties, and regulations. He said there are not too many regulations in the field of family law, but there are in other areas of law. He added, "The question of their legality and constitutionality, I think, comes up occasionally." He stated, "I think it's kind of important that the attorney general be notified in these cases."

Number 0685

REPRESENTATIVE SEATON said he could understand if the constitutionality of an executive order or regulation was being challenged, but [Amendment 1] also includes the legality of a regulation or executive order. He stated that means if a regulation is challenged as violating a statute, "then we have to challenge it as well." He said it seems to him that the scope is being broadened tremendously.

REPRESENTATIVE GRUENBERG suggested that the amendment could say "at least the constitutionality of a regulation".

Number 0768

CHAIR WEYHRAUCH responded that he has a problem with that, because "it's already in there when the constitutionality of a state statute affecting the public interest is in question." He clarified that there's always an agent of the state that's generally named in these kinds of cases. He stated, "So, I think your amendment is subsumed in the rule already."

Number 0817

REPRESENTATIVE GRUENBERG withdrew Amendment 1.

REPRESENTATIVE GRUENBERG moved to adopt Conceptual Amendment 2 on page 3, lines 9-11, to "break that final sentence out into a new subsection with a new title."

Number 0872

REPRESENTATIVE HOLM brought attention to page 1, [lines 7-9], which read as follows:

(b) The attorney general shall
(1) defend the Constitution of the State of
Alaska and the Constitution of the United States of
America;

REPRESENTATIVE HOLM stated his opinion that the attorney general has a duty to the State of Alaska first, and the Constitution of the United States second, because of sovereignty. He said he wondered if, by putting the two on the same line, that would result in an untenable situation. He said it seems to him that in the past there have been instances where the attorney general has chosen not to pursue sovereignty issues within the state and the legislature has not been given standing. He questioned where the allegiances should be and whether or not the legislature, through this type of demand of the attorney general's office, isn't trying to exercise a requirement for the attorney general's office to intercede on behalf of the people of the state. He said, "I think the appeal process, when that went forward, that said that the legislature did not have standing, is erroneous, ... and that somehow we have to have the opportunity as a state to demand that our administrative component ... have a ... first duty to protecting the state's sovereignty and a second duty to the United States constitution."

Number 1004

CHAIR WEYHRAUCH said there is a conflict between the policies of the state and the U.S. government, and generally the courts have deemed that the executive branch speaks for the state in enforcing the law in bringing litigation and making litigation decisions on behalf of the state. He noted that that has frustrated legislatures in the past when they have attempted to intervene or gain standing on cases it thinks is important, but that the executive branch thinks is not.

Number 1048

REPRESENTATIVE COGHILL said he would like to pass the bill "as is." He suggested that the House Judiciary Standing Committee could deal with matters regarding the history of the court rules.

Number 1071

CHAIR WEYHRAUCH indicated that he would prefer that [the bill be moved without Conceptual Amendment 2].

Number 1080

REPRESENTATIVE GRUENBERG said, "All right." [Conceptual Amendment 2 was treated as withdrawn.]

Number 1090

REPRESENTATIVE COGHILL moved to report CSHB 132, Version 23-LS0541\H, Luckhaupt, 3/25/04, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 132(STA) was reported out of the House State Affairs Standing Committee.

ADJOURNMENT

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