

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

April 1, 2004
8:02 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. 476

"An Act establishing the Alaska Statehood Celebration Commission; and providing for an effective date."

- HEARD AND HELD

HOUSE BILL NO. 527

"An Act relating to the Alaska Securities Act, including reports, proxies, consents, authorizations, proxy statements, and other materials, civil penalties, refunds of proceeds from violations, restitution, and investment adviser representatives; and providing for an effective date."

- HEARD AND HELD

HOUSE BILL NO. 459

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

- MOVED CSHB 459(STA) OUT OF COMMITTEE

HOUSE BILL NO. 460

"An Act relating to absences to provide care for certain relatives for purposes of permanent fund dividend eligibility; and providing for an effective date."

- HEARD AND HELD

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."

- SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: HB 476

SHORT TITLE: AK STATEHOOD CELEBRATION COMMISSION

SPONSOR(S): REPRESENTATIVE(S) ANDERSON

02/16/04 (H) READ THE FIRST TIME - REFERRALS
02/16/04 (H) STA, FIN
04/01/04 (H) STA AT 8:00 AM CAPITOL 102

BILL: HB 527

SHORT TITLE: ALASKA SECURITIES ACT

SPONSOR(S): STATE AFFAIRS

03/01/04 (H) READ THE FIRST TIME - REFERRALS
03/01/04 (H) STA, JUD, FIN
03/09/04 (H) STA AT 8:00 AM CAPITOL 102
03/09/04 (H) Heard & Held
03/09/04 (H) MINUTE(STA)
03/26/04 (H) STA AT 8:00 AM CAPITOL 102
03/26/04 (H) Scheduled But Not Heard
04/01/04 (H) STA AT 8:00 AM CAPITOL 102

BILL: HB 459

SHORT TITLE: PAPER TRAIL FOR ELECTRONIC VOTING MACHINE

SPONSOR(S): REPRESENTATIVE(S) GARA

02/16/04 (H) READ THE FIRST TIME - REFERRALS
02/16/04 (H) STA
03/09/04 (H) STA AT 8:00 AM CAPITOL 102
03/09/04 (H) Heard & Held
03/09/04 (H) MINUTE(STA)
03/18/04 (H) STA AT 8:00 AM CAPITOL 102
03/18/04 (H) Heard & Held
03/18/04 (H) MINUTE(STA)
03/30/04 (H) STA AT 8:00 AM CAPITOL 102
03/30/04 (H) Heard & Held

03/30/04 (H) MINUTE(STA)
04/01/04 (H) STA AT 8:00 AM CAPITOL 102

BILL: HB 460

SHORT TITLE: ALLOWABLE ABSENCES AND PFDS

SPONSOR(S): REPRESENTATIVE(S) KERTTULA

02/16/04 (H) READ THE FIRST TIME - REFERRALS
02/16/04 (H) STA, FIN
04/01/04 (H) STA AT 8:00 AM CAPITOL 102

WITNESS REGISTER

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

POSITION STATEMENT: Read the sponsor statement and answered questions during the hearing on HB 476, on behalf of Representative Anderson, sponsor.

GARY R. CONNER, 1st Deputy Bureau Chief
Investment Protection Bureau
Office of New York State Attorney General (AG) Elliot Spitzer
New York, New York

POSITION STATEMENT: Testified during the hearing on HB 527.

VINCE USERA, Senior Securities Examiner
Division of Banking, Securities & Corporations
Department of Community & Economic Development (DCED)
Juneau, Alaska

POSITION STATEMENT: Testified and answered questions on behalf of the division during the hearing on HB 527.

WALTER JOHNS
No address provided.

POSITION STATEMENT: Testified in opposition to HB 527.

REPRESENTATIVE GARA
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: As sponsor of HB 459, introduced amendments to a committee substitute.

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.

SANDRA ZIRNHELD

Fairbanks, Alaska

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

AURORA HAWK, Staff

to Representative Beth Kerttula

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Presented HB 460 on behalf of Representative Kerttula, sponsor.

IRIS MANYA PUNGOWIYI-REED

Juneau, Alaska

POSITION STATEMENT: Testified during the hearing on HB 460.

ACTION NARRATIVE

TAPE 04-52, SIDE A

Number 0001

CHAIR BRUCE WEYHRAUCH called the House State Affairs Standing Committee meeting to order at 8:02 a.m. Representatives Holm, Seaton, Coghill, Berkowitz, and Weyhrauch were present at the call to order. Representatives Lynn and Gruenberg arrived as the meeting was in progress.

HB 476-AK STATEHOOD CELEBRATION COMMISSION

Number 0043

CHAIR WEYHRAUCH announced that the first order of business was HOUSE BILL NO. 476, "An Act establishing the Alaska Statehood Celebration Commission; and providing for an effective date."

Number 0052

JIM SHINE, Staff to Representative Tom Anderson, Alaska State Legislature, on behalf of Representative Anderson, sponsor, read the sponsor statement as follows:

January 2009 will mark the 50th anniversary of Alaska's admission as the 49th state of the United

States of America. It is important the State of Alaska recognize this landmark with a celebration of the state's magnificent heritage and to reflect upon the opportunities that 50 years of statehood have brought to the state.

House Bill 476 will establish the Alaska Statehood Celebration Commission. This commission shall consist of 17 members; 12 public members [shall be] appointed by the governor. ... At least two shall be residents of and be appointed from each of the four judicial districts in Alaska. The presiding officer from the Alaska House of Representatives and the Alaska Senate will appoint a majority and minority member from each body. The governor ... or a designee ... will occupy the 17th seat.

The Alaska Statehood Celebration Commission shall plan and administer all official state activities leading up to the 50th anniversary of Alaska statehood. The commission will initiate the public process to solicit ideas about the celebration.

In addition, the commemorative quarter honoring the State of Alaska ... will be issued in the same calendar year in which the Alaska Statehood Celebration occurs.

MR. SHINE told the committee that through his own research he has discovered that other states have [drafted] similar legislation. For example, legislators in Wyoming and Utah have created commissions to celebrate their centennial celebrations. In response to a question from Chair Weyhrauch, he said he believes Alaska did something like this for its 25th anniversary.

Number 0249

REPRESENTATIVE COGHILL asked how many years would be spanned with the commission.

MR. SHINE answered that the effective date would be January 1, 2005, so there would be up to four years of planning. He indicated that other states have decided it's important to plan ahead for a 50th anniversary, and he mentioned including a public process for initiating ideas.

REPRESENTATIVE COGHILL turned to page 2 of the proposed legislation. He noted that there would be at least two legislatures involved, and he asked how that would work.

MR. SHINE said he doesn't know, but suggested that it would be left to the discretion of the governor. He stated his assumption that two new members would be appointed to the commission.

REPRESENTATIVE COGHILL highlighted [paragraph] (2), on page 2, beginning on line 8, which read as follows:

(2) the speaker of the house of representatives shall appoint one member of the house of representatives who is a member of the majority caucus and one member of the house of representatives who is a member of the minority caucus, in consultation with the leadership of that caucus;

REPRESENTATIVE COGHILL noted that the same applied to the Senate. He said he wonders if a provision for transition from one legislature to the other should be included.

Number 0432

CHAIR WEYHRAUCH asked Mr. Shine to take those concerns under advisement. [HB 476 was heard and held.]

HB 527-ALASKA SECURITIES ACT

Number 0450

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

CHAIR WEYHRAUCH informed the committee that he had invited Warren Buffet, Berkshire Hathaway, Inc., to testify and Mr. Buffet's office responded with issues related to the bill. He indicated that the issues that were brought forth were those relating to the tension between corporate governments, the desire to maintain a flourishing capitalist system in [the United States], and the role of state government in the oversight of corporations.

CHAIR WEYHRAUCH expressed the need to ensure that Alaska maintains a healthy oversight through its public policies enacted by the legislature and a system of laws that invite participation by the private sector into the state. Conversely, he expressed the need to ensure that those corporations doing business in Alaska do so in an honest and ethical way that profits both the corporation and the people of Alaska. He also indicated the need to ensure that the State of Alaska has the appropriate tools to enforce the public policies it enacts and exact some sort of retribution to cover the cost of state government's action in enforcing its laws while ensuring that those harmed by improper corporate actions are fully compensated.

CHAIR WEYHRAUCH mentioned communicating through the office of New York's attorney general, Elliot Spitzer. He noted that Mr. Spitzer is known for his aggressive activities in enforcing state policies against mutual funds and other corporations that have charged exorbitant or hidden fees, for example, and for attempting to recover those [fees]. He opined that some of the actions of that attorney general's office have been admirable. Chair Weyhrauch noted that the first person to testify was associated with the New York attorney general's office.

Number 0689

GARY R. CONNER, 1st Deputy Bureau Chief, Investment Protection Bureau, Office of New York State Attorney General (AG) Elliot Spitzer, indicated he would explain the New York statutory scheme and describe some of the approaches and corporate responses. He revealed that he is not familiar with Alaska statutes and would only be addressing the New York system, which he characterized as "somewhat different than most all states."

MR. CONNER stated that New York has never adopted the "Uniform Security Tax"; therefore, it does not hold administrative hearings or issue orders. He noted that the State of New York's securities laws were enacted in 1921, well before the federal statutes. He said, "We issue the issuers of securities, not the securities themselves." He offered examples. Mr. Conner explained that the statute is largely an anti-fraud statute, designed to prevent fraud in the offer of securities and commodities. New York's definition of fraud is: "Any act tending to deceive or mislead the purchasing public." The Act, which is to be construed liberally, is designed to protect the inexperienced investor.

MR. CONNER said, "One of the advantages we have in New York is that, in any civil action we may bring - or misdemeanor prosecution, we do not have to show intent, ... proof of a sale, [or] ... damages. It's a per se liability statute, meaning a violation - whether knowing or not - can get you in jeopardy in terms of a civil action." Mr. Conner noted that the statute also provides that any violation may result in either a criminal or civil penalty. He explained the distinction between the two. He said that the main tool [the New York AG's office] uses is its ability to issue subpoenas and request information prior to bringing any action. The penalty for refusing to respond, testify, or show up is a misdemeanor.

MR. CONNER said that the investigations can be conducted based on any source of information, as well as based on any allegation of fraud or merely because it's in the public interest. He noted that the basic investigations [the AG's office] conducts are kept confidential. He explained, "Although we are investigating something, we do not know at the beginning whether or not there actually is wrongdoing, so we believe that those we are looking at need protection there." He offered examples. At the end of the investigation, he said, a choice can be made in how to proceed: "One way is civil, one way is criminal, or we can do both."

MR. CONNER noted that one of the tools [the AG's office] has is to obtain ex parte orders from the court, prior to commencing an action. Those orders direct the witnesses to appear and to produce documents. He added, "And we can also get ex parte injunctive relief, based upon a standard of what is proper and expedient." He clarified that it's not the normal preliminary injunction standard, but is a much lower standard. The ex parte orders result in public testimony; the public can attend and hear whatever is being said by the witnesses. Because it is an investigation, there is not cross-examination.

MR. CONNER said that if the decision is made to bring a civil action, the remedy in that civil action is a permanent injunction from the securities business. He said, "The statute is all or nothing; a judge has no discretion." He offered an example. He continued, "In those actions we can also get restitution, we can get damages, and we can have receivers appointed, as well as other types of creative injunctive relief." Mr. Conner noted that the criminal provisions prohibit fraud, deception, and concealment, among other things. He offered examples. He said, "If we have any criminal violation

that we are proceeding on, we can also use the state's penal laws"

MR. CONNER stated that, besides the main securities laws, New York has other statutes. For example, under the state's business corporation law, directors can be removed from offices in corporations. There is also a broad statute under the executive law, in which any fraud or illegality in the course of business is actionable.

Number 1098

MR. CONNER stated that he would next offer a brief overview of analyst and IPO [initial public offering] investigations, as well as talk about the mutual fund investigation. He noted that 30 years ago, [the New York AG's office] began an investigation of Merrill Lynch, based upon newspaper articles indicating that research reports by analysts for the various companies were not really accurate. He noted that it was a difficult subject to address, because it's a complex financial analysis that the analysts go through. He offered two cases, both of which were covered by a man named Henry Blodgett (ph) at Merrill Lynch. In the first case, the stock was propped up with high ratings while the stock prices plummeted, and the ratings were kept high until a merger and acquisition deal was consummated. In another instance, the ratings for the stock were downgraded on the day it was publicly announced that Merrill Lynch would not be the banker for the deal. Mr. Conner related that through investigation, e-mails "revealed a corporate culture where the analysts and many other people at Merrill Lynch were very much aware that the ratings were not accurate." He offered further details regarding the e-mails. He stated that the heart of the case was that the public was told one thing about what the ratings meant, while Merrill Lynch knew that information was inaccurate.

MR. CONNER said that the AG could have brought a criminal prosecution. However, the AG was clear that he did not want to bring Merrill Lynch down. He clarified that what the AG was trying to achieve was not so much punishment as trying to get the system to work - to be honest. The solution was to ultimately get Merrill Lynch to agree to certain reforms. He said, "The company itself seemed to be dumbfounded about what we were talking about. And one of the ways the AG got their attention was by bringing one of these X party orders, in which the e-mails and other documents were attached to the court papers, and then the public became aware of what was really

going on." Mr. Conner offered details regarding some of the reforms that resulted.

MR. CONNER said the settlement, which was \$100 million, resulted in New York giving half of the money to the North American Securities Administrators Association. That association, he noted, represents the 50 states, as well as Canada and Mexico. He said, "From that moment on, we started working with all the states, and we commenced a much larger analyst investigation, which eventually led to the \$1.4 billion Wall Street reform, with 10 of the biggest investment banking institutions in the country." He described the effort on the Wall Street investigations and settlements as "a broad investor regulatory system looking at an industry." He noted it was discovered that "the companies themselves were very jealous about being at a disadvantage from their competitors, and fairly early on they took the position they would go for the reforms, but they wanted other banking institutions involved." Mr. Conner noted that that ultimately happened.

Number 1395

MR. CONNER stated that part of the analyst investigations involved looking at the issue of IPOs. Regarding the inaccurate ratings system, it was found that the executives that were being covered with the ratings were given advantageous IPOs, more or less as favors for turning over banking business to the investment banking house. He said, "We then commenced an action in which we thought to get the return of the monies that the executives received from their IPO allocations. We felt that those monies belonged to the corporations - that these were not the individuals who should benefit. And ultimately the shareholders were to benefit." He noted that part of the settlement was funding law school arbitration clinics to help the investors.

Number 1450

MR. CONNER noted that the current issue on the table is the mutual fund investigation. He said it was found that many companies were disclosing in their prospectuses that investors could only make trades at a certain rate, and they could not time their trades after the market closed, "or otherwise to go in and out of the market and get an advantage over the long-term investors, which is what the mutual fund industry was designed for." He also noted that late trading - trading done after 4

p.m. - is prohibited by the federal U.S. Securities and Exchange Commission (SEC).

MR. CONNER gave some examples of cases and reiterated that the AG's policy was not to bring down the companies, but rather to clean up the issues, make the public aware, and to [hold the company to what it said]. He noted that the settlements in the mutual fund cases have also brought other types of remedies. For example, in one case, eight directors of the board are agreeing to resign because of their conduct. He stated that [the AG] has also addressed the fees that are being charged and, in many of the settlements, the fees are being reduced over a five-year period. He said the fee issue comes from the fact that the average investor doesn't really know what the fee is for a mutual fund. By not knowing, investors cannot fairly make a choice between different funds, as to where to invest the money. He stated that the issue really comes down to disclosure. If the investor was not told what was going on then that was wrongdoing.

Number 1559

MR. CONNER said there is an alleged perception that the federal government and the states are at odds over some of the investigations. That simply is not true, he stated. Except for the first mutual fund investigation, he noted, [the New York AG's office] has worked with the SEC and other states. The same is true regarding the analyst investigations. He clarified as follows:

The issues sometimes come down to the fact that we have criminal jurisdiction in New York, which the SEC does not have. And when you have criminal jurisdiction, there are various safeguards that play to the investigation. Certainly, when one is in the grand jury, we cannot talk about that. And some of our cases, it looks like we spring them, but really there are certain prohibitions on us.

MR. CONNER said that the overall policy the AG has adopted is to have honesty in the business place. He remarked that no one is against businesses or against making profits.

Number 1628

CHAIR WEYHRAUCH told Mr. Conner that the State of Alaska manages a \$28 billion fund and is charged with following prudent

investor rules and returning investment on that fund to help fund government, provide dividends to the people, and preserve the fund for future generations. He asked if Mr. Conner's office handles merger and acquisition issues.

MR. CONNER answered no, but said the office might get involved from an anti-trust viewpoint, as opposed to a securities issue. In response to further questions from Chair Weyhrauch, he clarified that the Act he had previously mentioned was the "Martin Act", which was effective in 1921. He said it did not come about necessarily because of Wall Street, but just because of general investments. He mentioned "boiler rooms" and "fly-by-night" deals that occurred in the early 1920s, which prompted the legislature to consider different bills. In response to another question from Chair Weyhrauch, he said [the New York AG] doesn't give out notice to all the states' AGs, but rather it gives a heads up to the North American Securities Administrative Association. He gave examples, including trading off cases with other states and working with other states. An exception is criminal cases, he said.

Number 1801

CHAIR WEYHRAUCH noted that Alaska is far removed from New York, both in time zone and distance. He asked Mr. Conner, "What are the ... practical impediments or benefits to ... a state like [Alaska's] adopting such a pervasive, aggressive securities investigation scheme ... such as New York has?"

MR. CONNER opined that the advantage that New York has is in having the criminal jurisdiction. Criminal jurisdiction is a powerful tool because someone coming in to give testimony or produce documents never knows what [the New York AG's office] is going to do. He said, "Our policy is not to make a determination on, ultimately, how we're going to proceed until towards the end of an investigation, when we have a handle on the facts." He added that he thinks it's that criminal threat and the X party order that acts as a deterrent and certainly "moves us to settlement quicker than we might normally move."

Number 1858

REPRESENTATIVE GRUENBERG indicated that [the Alaska AG's] staff is small compared to that of New York's.

MR. CONNER interjected that "most people don't know that we only have about 12 lawyers working on these big Wall Street cases."

In response to a question from Representative Gruenberg regarding the legislature's role in the current investigations, Mr. Conner said that although the New York State Legislature has not really been involved, it submits different bills that attempt to improve its statutory scheme. He offered his understanding that the other elected official in New York who has been very active is the state comptroller. He explained that the state comptroller's office, which governs the state pensions funds, has been active in [encouraging] other states to develop principles that companies must follow if they wish to have the state investments. The aforementioned is a different way of approaching the problem, he commented. In response to Representative Gruenberg, he explained that the comptroller's office does this by informal policy rather than by regulation. Some of the comptrollers have put out a statement of principles, which are guidelines for investing the state's money.

Number 1975

REPRESENTATIVE GRUENBERG noted that Alaska does not have a comptroller, but has independent pension boards and a board of trustees for the Alaska permanent fund. The guidelines for those boards are statutorily general. However, Mr. Conner is discussing detailed guidelines, he opined.

MR. CONNER clarified that they are not that detailed because the comptroller decides where the investments go and he/she has the authority to set conditions regarding where to put the money. He offered his understanding that "the principles ... are only a few pages long, but they do make certain requirements of companies." He added, "Now, whether or not they're more detailed guidelines and positions in other documents that have not been made public - that I don't know."

REPRESENTATIVE GRUENBERG asked what Alaska can do to participate.

MR. CONNER answered that one of the things that helps is when certain companies are located in the state. In that case, often the state securities administrators are more knowledgeable about those companies and their activity. Still, because a lot of trading goes through New York, he said, "we generally have jurisdiction, somehow." He suggested, "I think one thing that could be done is for other states to contact us to see what assistance we can provide and help with, and just generally get whatever knowledge we have about the industries."

REPRESENTATIVE GRUENBERG said, "We are developing, with a small group of other states ..., a group that's very competitive state to state in trust administration, and we are constantly revising our trust laws to be more competitive." He added that "this group" includes bankers and estate planning lawyers and it can move fairly quickly; however, he offered his understanding that there is not any oversight of the group at the state level. He asked Mr. Conner if he has had any indication of "anything going on there."

MR. CONNER responded that he is not really aware of that whole area, in terms of trust administration. He stated that how New York really works is through the North American Securities Administrative Association.

Number 2136

REPRESENTATIVE COGHILL referred to Mr. Conner's previous remark about holding criminal penalty over an investigation. He stated that one of the things "we are always looking for here" is how to keep government from being intimidating, while still being able to produce good results. He asked Mr. Conner to give some idea of the accountability structure "there."

MR. CONNER answered that, in terms of the accountability within [the New York AG's office], decisions regarding whether to bring a criminal case or not are made at the very highest levels. He said there are many levels of supervisory review. He said, "The accountability at the end of the day - it's the attorney general to the public. And he has that trust of the public, and if he misuses that trust, then the public has a way of dealing with that during the next election."

MR. CONNER, in response to a request by Representative Coghill to explain the process by which the New York attorney general is selected, stated that the AG is a public official who runs for office at the same time as the governor, lieutenant governor, and comptroller. Each political party puts up its candidate, and it's a statewide election separate from the presidential election or the election for the mayor of New York. In further response to Representative Coghill, he confirmed that has been true since the beginning of New York's securities law.

CHAIR WEYHRAUCH noted that the House State Affairs Standing Committee is made up of representatives from all across the state, with a wide variety of viewpoints. He welcomed Mr. Conner and his staff to come to Alaska some time.

Number 2237

REPRESENTATIVE SEATON asked Mr. Conner if it is his opinion that if [New York] had adopted the Uniform Securities Act, it wouldn't have been able to proceed in "any of these investigations."

MR. CONNER answered that New York's Martin Act gives "us" more power than the Uniform Securities Act, but he added that he couldn't say whether the Uniform Securities Act would have "absolutely precluded us from doing what we're doing."

REPRESENTATIVE SEATON noted that Mr. Conner had said that a person who's guilty under "the civil portion" is simply barred from further security action, instead of having a "variable time." He asked Mr. Conner, "Do you think that that's been important so that it's all or nothing?"

MR. CONNER replied as follows:

I think that is important, because whenever one goes into the judicial system, quite honestly, every lawyer thinks they have the greatest case in the world, and someone's not going to come out happy. So, you're always taking a chance; even though you may evaluate your case one way, the courts can view it a different way. So, I think the fact that if you pushed this before a judge, the possibility that you're going to get permanently barred from the industry, and all the implications that has, is a great deterrent.

Of course, what I didn't explain now, and what I will now, is that we, as an agency and institution, ... can consent on our own to a less than permanent bar, but if it's put to a judge, that judge is all or nothing.

Number 2329

REPRESENTATIVE HOLM recalled Mr. Conner's previous comment that due process rights do not kick in during an investigative process.

MR. CONNER noted that, under a U.S. Supreme Court decision, an investigation is viewed differently than an adjudicatory proceeding. When something is being adjudicated and a determination is being made based upon the facts present, the

witnesses have rights to lawyers, there is a regular cross-examination, and transcripts are provided. However, in an investigation, those particular rights don't apply. He said:

In New York ... we generally take the position an attorney may be present during testimony for the purpose of advising a witness as to his or her rights and privileges, but it's not a participatory type of session; it's really an investigation for us to try and determine what the facts are through the means that we think are best available. So, that is a distinction.

REPRESENTATIVE HOLM asked if Mr. Conner is maintaining that the Fifth Amendment rights don't apply during an investigative process.

MR. CONNER specified that the Fifth Amendment rights apply during the investigative process, it's just some of the other traditional things - such as [formal hearings in which there's cross] examination and a determination made by the agency - that don't apply in an investigation.

TAPE 04-52, SIDE B

Number 2375

MR. CONNER said, "If we, at the end of an investigation, believe there's wrong doing, we can't, on our own, do anything; we have to go to the court system. That's where the due process rights fully kick in, and the courts will protect both parties in that situation."

Number 2344

REPRESENTATIVE GRUENBERG, with respect to the provision that does not give the judge the authority to issue less than a permanent injunction, asked if that has ever been challenged on a separation of powers basis.

MR. CONNER answered that he is not aware of that. He clarified, "The New York Court of Appeals, which is the highest court, has interpreted the statute in New York as being that way - that it's an all or nothing statute - but I don't believe it's been challenged on a separation of powers situation."

Number 2311

REPRESENTATIVE LYNN asked if a person can be forced to talk during an investigative case; he asked what would happen if that person said he/she didn't want to talk.

MR. CONNER replied as follows:

If a person doesn't want to talk to us, we usually have issued a subpoena already, and our options are two: One is to go into the civil part of the state supreme court, which is New York's trial court, and seek a court order directing the witness to appear and to testify. Obviously, during the testimony they can take the Fifth Amendment. The other route we have is we can go in through the criminal system in state supreme court and seek a misdemeanor determination, and, obviously, with a misdemeanor there are certain penalties that the judge can impose on the witness, whether it's incarceration, fines, or whatever. And then, under both systems, we do have the powers of contempt that the court can use. So, that's how the approach would go if a witness did not want to testify.

REPRESENTATIVE GRUENBERG asked if committees in the state legislature in New York "do any investigatory stuff like they do in Congress," such as issue subpoenas, or put people under oath.

MR. CONNER prefaced his answer by stating that he is not the expert in that [issue]. Notwithstanding that, he proffered that there is some investigatory work that [the legislature] does. He said it certainly holds hearings and questions witnesses.

Number 2200

REPRESENTATIVE HOLM moved to adopt the committee substitute (CS) for HB 527, Version 23-LS1792\H, Bannister, 3/30/04, as a work draft. There being no objection, Version H was before the committee.

Number 2188

CHAIR WEYHRAUCH moved [to adopt] Conceptual Amendment 1, which read as follows [original punctuation provided]:

The division is exempt from AS 37.10,050(a). Fees collected by the division shall be accounted for in a sub account used to implement the programs and

activities of the division and to maintain an aggressive program of investigation, prosecution, and all other actions necessary to prevent harm to persons by violations of AS 45.55 and to seek recovery of damages, costs, and fees for those harmed by a violator, and to cover the costs of the division of its programs, investigations, and proceedings.

CHAIR WEYHRAUCH turned attention to Version H. He pointed out the changes made in Version H, including changing the number from 500 to 250 as well as the changes in [Section 3] regarding the penalties for single and multiple violations.

Number 2140

VINCE USERA, Senior Securities Examiner, Division of Banking, Securities & Corporations, Department of Community & Economic Development (DCED), noted that most of the fines [the division] levies are in the smaller range and are meant to be corrective. He related scenarios in which the [division] has had to find people [who have moved] out of state and obtain a judgment. The aforementioned takes a lot of effort and if [the division] were to do that with every perpetrator, \$1 million would be difficult to collect. "But it would be nice to be able to assess a penalty where that is reasonable and warranted," he added.

CHAIR WEYHRAUCH noted that changes were also made regarding the penalties in Section 4 of Version H. Section 5, he noted, would provide the ability to collect restitution, plus attorneys' fees and cost. He clarified that if the division has to employ attorneys' fees or use its own attorney general, those fees and costs should not be borne by the general public "through its treasury," but should be borne by the wrongdoers.

MR. USERA said that's correct. He noted that one change was made where restitution must be doubled [page 3, line 12]. However, that may be difficult to negotiate at times.

Number 2014

CHAIR WEYHRAUCH turned to Sections 6 and 7. He noted the last sentence in Section 6, [subsection (f), on page 3, beginning on line 11] which read as follows:

The amount of the restitution paid to the harmed person must be two times the amount of loss caused to the person by the violator.

MR. USERA stated his preference would be to change the word "must" to "may". He explained, "There are some people who, through benign neglect, do wrong. We can get them to pay back, but they don't warrant being punished. And this would put us in a difficult situation there."

CHAIR WEYHRAUCH noted that [subsection (g)] in Section 6 would also transfer the burden from the public to the perpetrator.

MR. USERA responded that he thinks the concept is fine, though he added that he's not quite certain how that would work in terms of the actual logistics. He explained, "Something's got to go some place; it can't just come back into our coffers."

Number 1923

CHAIR WEYHRAUCH returned to Conceptual Amendment 1. He explained that it would exempt the division from AS 37.10.050(a), [a statute] which limits the fees that may be collected.

MR. USERA said [AS 37.10.050(a)] was enacted in 1990 and "sort of laid dormant for a long time," until somebody recently rediscovered it. The statute says that fees cannot be collected over the actual cost of doing business. He reflected as follows:

Quite honestly, that really limits us. We don't use all the fees that we receive, but it costs us about \$2.5 million to do our business, and we bring in somewhere in the range of \$10-\$12 million. So, there's a generous contribution to a general fund there that would be taken away from us if this statute were to be adhered to. And I think an exemption is warranted in this case, and especially if you're going to give us back some of our fines so that we can do the job that we're empowered to do.

CHAIR WEYHRAUCH said that was the point. He turned to the previous comments of Mr. Conner, regarding "\$15 million settlements, the North American Securities, and efforts on Wall Street, and money coming back - distributed to the state." He asked Mr. Usera what Alaska's share of that has been.

MR. USERA answered that Alaska's total share of the global settlement was about \$4.6 million. In response to a follow-up

question from Chair Weyhrauch, he confirmed that was receipts to the general fund.

Number 1835

REPRESENTATIVE GRUENBERG mentioned the Takeover Bid Disclosure Act. He told Mr. Usera that he wants to update that Act, and he asked for Mr. Usera's assistance in doing so. He offered a brief history of the Act.

Number 1776

MR. USERA, in response to a question from Representative Gruenberg, stated that in order to fix the Act it would have to be gutted. He said there wouldn't be much harm in repealing it. He noted that [the Act] "came in" in 1976 and has never been invoked, so "it doesn't seem to be of any utility." He noted that Alaska is not a hotbed of merger activity. He noted there is the federal Williams Act, which requires certain disclosures. He added, "And that's where ... our Act runs afoul of the Williams Act and also runs afoul of the commerce clause."

Number 1740

CHAIR WEYHRAUCH asked the committee to return focus to HB 527.

Number 1729

CHAIR WEYHRAUCH asked if there was any objection to Conceptual Amendment 1. There being no objection, [Conceptual] Amendment 1 was adopted.

Number 1719

REPRESENTATIVE GRUENBERG suggested that Mr. Usera's previous recommendation to change the word "must" to "may" be considered by the committee.

Number 1690

CHAIR WEYHRAUCH [moved to adopt Amendment 2 to Version H], as follows:

On page 3, line 12
Between "person" and "be"
Delete "must"
Insert "may"

CHAIR WEYHRAUCH asked if there was any objection to [Amendment 2]. There being no objection, Amendment 2 was adopted.

Number 1679

REPRESENTATIVE GRUENBERG turned to page 3, line 1, and suggested [Amendment 3], to change the word "or" to "and". In response to a comment by Mr. Usera, he noted that the [petition by the administrator] is discretionary, thus using the word "and" would allow either option.

Number 1637

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

Number 1628

REPRESENTATIVE GRUENBERG turned attention to subsection (g), regarding "actual reasonable attorney fees and actual reasonable costs". He said he thinks the court should have discretion, because, for example, there may be a case where it's appropriate to award less. He suggested [Amendment 4], to change the word "shall" to "may".

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

Number 1594

CHAIR WEYHRAUCH, in response to a comment by Representative Gruenberg, said he added the provision in Section 7. He reiterated that Section 7 is intended to "get all those wrongdoers, no matter where they are, if they're doing business in this state."

REPRESENTATIVE GRUENBERG said, "It expands the concept of nexus."

Number 1546

WALTER JOHNS shared his Native Alaskan name with the committee and revealed that he is a shareholder of the Sealaska Corporation and Goldbelt, Inc, and he lives in Colorado. He stated that he has been involved with corporations since they first started. He admitted he has not had time yet to analyze

the proposed legislation, but he said he always gets concerned when the state gets involved with Native companies. He noted that he has been involved with five elections, "against Sealaska Corporation on ... three of them." He noted that he has also worked for the Sealaska Corporation and "during the time I worked for them we won the election process." He stated, "I am currently serving on a board for one of our corporations through the election process."

MR. JOHNS stated his concern that the changes [proposed in HB 527] could have a detrimental effect on Native corporations. He said, "I know that right now there are many ... Native people that are against discretionary voting, because they really don't understand the application and how you can use it for your benefit." He offered an example. He clarified that his major concern is not actually the wording of the bill, but its interpretation and application. He offered another example. Mr. Johns stated his opposition to [HB 527] and offered to answer questions from the committee.

Number 1359

REPRESENTATIVE HOLM asked if Mr. Johns considers that corporations in Alaska are of equal value to the state, in the sense that they fall under an umbrella of equal laws.

MR. JOHNS responded that he guesses they do, but reiterated his concern is in regard to the interpretation and application of law.

REPRESENTATIVE HOLM asked Mr. Johns if he is aware of "the number of cases that we've heard of people that have indicated that they weren't given due process in the corporate (indisc. - overlapping voices)."

MR. JOHNS answered yes. He stated, "I can tell you right now that 30 percent of the people, no matter what you do, will be against a corporation." He offered an example.

REPRESENTATIVE HOLM offered his belief that "our responsibility is to make sure it's an even playing field for all the people who are members of corporations."

MR. JOHNS questioned what the additional cost would be to the corporation in the process of making [the playing field] level.

REPRESENTATIVE HOLM suggested, "It may be immaterial whether or not you appreciate what the state is trying to do, if we believe, as the legislature, that as a policy it's in the best interest of all the people of Alaska to have the same rules to live by."

MR. JOHNS responded, "As far as I can see, we have the same rules." He reiterated that he has both run and won elections by using the existing laws. He concluded, "If it's equally applied to all the corporations and not just Native corporations, that would be one thing, too."

REPRESENTATIVE HOLM clarified that that is what he is suggesting.

Number 1161

REPRESENTATIVE SEATON asked Mr. Johns to clarify what he means by discretionary voting.

MR. JOHNS answered that "through the election process people can, under proxy, find discretionary voting, and then the corporation can use that to vote and distribute the votes of candidates." He reiterated that those who speak against discretionary voting are those who do not know how to use it. He added, "But it's the best tool that you could have for a dissident, if they know how to use that tool."

REPRESENTATIVE SEATON noted the change from 500 to 250 in Section 1 and asked Mr. Johns if he objects to that provision.

MR. JOHNS answered no. He indicated that his concern is for the Native corporations that are struggling financially. He noted, for example, that it cost Goldbelt, Inc., approximately \$50,000 to hold an election. He concluded as follows:

If the company's struggling financially, a handful of people could come into the state and say ..., "We want this," and then they have to go through the process and, you know, maybe they can't afford to distribute. If you're broke and don't have money, what [are] you going to do? And then what would the state do? I mean, that's my concern right now, because there are some companies that are in that predicament today.

Number 1061

CHAIR WEYHRAUCH suggested that it may be time to look at an omnibus act, but, with 41 days left in the session, it wouldn't be done this year.

Number 1038

CHAIR WEYHRAUCH closed public testimony.

[HB 527 was heard and held.]

[A fictitious HB 690 was presented as an April Fool's joke.]

HB 459-PAPER TRAIL FOR ELECTRONIC VOTING MACHINE

Number 0962

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

Number 0950

REPRESENTATIVE GARA, Alaska State Legislature, as sponsor of HB 459, told the committee that last night he spoke with representatives of the Division of Elections in the lieutenant governor's office. He said their concerns are addressed in three amendments.

CHAIR WEYHRAUCH announced that before the committee was the committee substitute (CS) for HB 459, [Version 23-LS1686\Q, Kurtz, 3/29/04.]

REPRESENTATIVE GARA turned to Conceptual Amendment 1, which read as follows [original punctuation provided]:

Insert at p.2 line 9:

"(15) No more than one machine that produces electronically generated ballots may be used at a precinct, except that the Division may utilize more than one machine in places where it determines additional machines are needed to accommodate the needs of persons with disabilities, physical limitations or visual impairments."

REPRESENTATIVE GARA stated that one of the concerns has been how wide spread the [touch screen voting] machines are going to become. He said the lieutenant governor's office explained that it has no intention of using more than one of these machines in any precinct. He said Conceptual Amendment 1 confirms that intention. He proffered that one exception might be to have a special polling place for people with visual impairments in Anchorage.

Number 0890

CHAIR WEYHRAUCH moved to adopt Conceptual Amendment 1 [text provided previously]. There being no objection, Conceptual Amendment 1 was adopted.

Number 0857

CHAIR WEYHRAUCH moved to adopt Amendment 2, which read as follows [original punctuation provided]:

Delete page 2 lines 14-17.

Insert at page 2 line 14 as follows:

"(b) Any software for such equipment shall be tested and certified pursuant to AS 15.20.900."

REPRESENTATIVE GARA explained that the director of the Division of Elections was scared that she would be given certification duties that she wouldn't be able to undertake. He noted that the current law, AS 15.20.900, provides that election equipment, including software and computer equipment, needs to be certified and tested before every election. He explained that [Amendment 2] emphasizes that that rule applies to the software of the Direct Recording Electronic voting machines (DREs) and provides a new subsection (b).

Number 0800

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

Number 0785

CHAIR WEYHRAUCH moved to adopt Amendment 3, which read as follows [original punctuation provided]:

Delete page 2 lines 4-8.

Insert at page 2 line 3 after "only" as follows:

"by a voter who requests use of a voting machine that produces such ballots."

REPRESENTATIVE GARA noted that Amendment 3 is the only amendment that involves a policy call by the committee. He said the bill is written to limit the use of DRE machines as much as possible, until "the evidence helps us develop a better comfort level with them." Currently, the bill states that if someone needs to use [a touch screen machine] he/she just needs to ask. The Division of Elections responded that if someone with a visual impairment is made to say he/she needs to use the machine, that would be unfair, because it would highlight the handicap. Therefore, Amendment 3 would change the language so that the voter only has to request the use of the machine [without proving the need to do so]. He pointed out that this may allow the machines to be used a little more frequently.

Number 0723

REPRESENTATIVE SEATON, in response to a request made by the chair, objected to Amendment 3.

Number 0706

LAURA GLAISER, Director, Division of Elections, Office of the Lieutenant Governor, stated that the division bought 100 [touch screen voting machines] and since then, many concerns have come to the forefront. She mentioned an intent to "back up" implementation. She stated that the machines will be placed in the regional supervisors' offices. She mentioned a piece of legislation that would come before the legislature soon that would allow the increase of "early voting," which would allow the division to "have all 40 ballots available." With the machines in the regional offices, anyone who needs to use them could go vote at a regional office. However, the staff in the division, as well as the lieutenant governor's office had a concern about segregating a group of voters, which is why [Amendment 3] was recommended. She clarified that the division is not going to do voter outreach or "get everybody all excited to use the machine," but if the machine is in the regional office and somebody wants to use it, they will be allowed to do so. She said the division will do the outreach to the people that need to use it.

Number 0584

REPRESENTATIVE GRUENBERG surmised that people may just want to try out the machines.

MS. GLAISER, in response to a question from Representative Gruenberg, confirmed that the division doesn't want to be "in a place of blocking someone" who really wants to use the machines. She told the committee that [the touch screen voting machines] won't be in polling places for the 2004 elections, with the exception of "Access Alaska," and if there is a [request] from the Alaska Pioneers' Home.

Number 0502

REPRESENTATIVE HOLM asked if the division would make it known to everyone that the machines are available.

Number 0480

MS. GLAISER said the division had intended to do so. She mentioned the concern [first discussed at a prior hearing] that not many people use the machines, and she admitted she is a little confused "at what direction is before me." She stated that she has to be true to what she promised the lieutenant governor, which is to ensure that his promise to Sandy Sanderson and Lynn Koral, [made through] the Frank Haas legislation, is honored. That means that the machines have to be made available to the blind, vision impaired, and disabled. She said the division will limit its usage if that's what the legislature decides. Conversely, she stated that if the machine is in a regional office, she is not going to block its use.

Number 0407

MS. GLAISER, in response to a question from Chair Weyhrauch, reiterated that the [touch screen voting] machines are currently located in each of the regional offices throughout the state. In response to a comment made by Chair Weyhrauch, she confirmed that it is the intent of the division to introduce the machines to the legislators. She commented that the division just recently finished its final training.

Number 0321

REPRESENTATIVE GRUENBERG suggested that in letting voters know that the machines are available, the division should also let them know that there is no paper trail and the machines have been known to malfunction.

MS. GLAISER suggested that signage could be used to let the voters know which method of voting provides a paper trail and which does not.

Number 0277

REPRESENTATIVE GRUENBERG suggested that the signage also be in Braille.

REPRESENTATIVE GRUENBERG turned back to Amendment 3, which would delete subsection (a). He questioned whether the division would want to keep subsection (b) in the bill.

MS. GLAISER said that discussion was held last night. She reminded Representative Gruenberg that the major default in every precinct will be a paper ballot; therefore, that language may not be necessary.

Number 0180

CHAIR WEYHRAUCH suggested, in regard to Amendment 3, that on page 2, line 3, after the word "ballots", the phrase "by a voter" be added.

REPRESENTATIVE GARA responded that it would read the same with or without that language. He pointed out that [Amendment 3 would take subparagraphs (A) and (B) out, leaving only one sentence, so that addition wouldn't really be necessary.

Number 0109

REPRESENTATIVE SEATON said, "This goes somewhere towards solving one of my concerns," which he said is that if there are only two people using the machine, because of restrictions placed on others, then the identity of the two people will be exposed.

REPRESENTATIVE SEATON suggested deleting "but only" [on page 2, line 3].

CHAIR WEYHRAUCH asked if there was any further discussion on Amendment 3.

Number 0040

REPRESENTATIVE GRUENBERG suggested that the committee amend Amendment 3 to also delete on line 3, the phrase ", but only".

CHAIR WEYHRAUCH asked if there was objection [to the amendment to Amendment 3]. Without objection it was so ordered.

Number 0029

REPRESENTATIVE SEATON removed his previously stated objection to Amendment 3.

Number 0015

CHAIR WEYHRAUCH asked if there was further objection to Amendment 3, as amended. There being none, Amendment 3, as amended, was adopted.

TAPE 04-53, SIDE A

Number 0001

REPRESENTATIVE GARA indicated that the intent of HB 459 has always been that a person would get to use the [touch screen voting] machine by request.

CHAIR WEYHRAUCH turned to the transitional provisions and ballots cast in 2004. He asked, "Are those all good still?"

Number 0088

MS. GLAISER mentioned "the funding source" and using federal funds. She informed the committee that federal funds do require a 5 percent match; therefore, there will be a limited general fund expense on anything that's related to the Help America Vote Act (HAVA).

Number 0161

REPRESENTATIVE GRUENBERG turned to [subsection (b)] on page 3. He opined that language "could be potentially read to prohibit the use of any state money, even as a match." He questioned whether a few words should be added to say, "including any required state match."

REPRESENTATIVE GARA replied that he doesn't think that is necessary. He suggested that where the language currently

reads, "federal funds", the committee could choose to add "including federal matching funds".

REPRESENTATIVE GRUENBERG said he would like to do that.

Number 0215

CHAIR WEYHRAUCH clarified that [Conceptual] Amendment 4 would read as follows:

On page 3, line 3
After "federal funds"
Insert ", including federal matching funds,"

CHAIR WEYHRAUCH asked if there was any objection [to Conceptual Amendment 4]. There being no objection, [Conceptual Amendment 4] was adopted.

Number 0281

SANDRA ZIRNHELD, testifying on behalf of herself, prefaced her testimony by informing the committee that she doesn't have the current Version Q in front of her. Notwithstanding that, she voiced a major concern by reading an Associated Press article from November 2002, as follows:

A Scurry County - I believe that's in Texas - election error reversed the outcomes in two commissioner races. A defective computer chip in the county's optical scanner misread ballots Tuesday night and incorrectly tallied a landslide victory for Republicans. Democrats actually won by wide margins. "The problem was discovered when poll workers became suspicious of the markings of the vote," Scurry County clerk Joan Bunch said. "A new computer chip was flown to Snyder from Dallas," she said. By Wednesday morning, the votes had been counted twice by hand, and once again by scanner with the replacement chip.

MS. ZIRNHELD said she has read countless newspaper articles regarding elections that have been compromised through the use of leading brands of touch screen voting machines. However, she said this is the first article that she has read that documents the glitch with optical scanner tallying systems. She said she thinks this is important for the committee to know about, for two reasons: First, she turned to the fact that the state has purchased 100 Diebold machines in order to be in compliance with

HAVA. She stated that in a conversation last week with an employee of the Division of Elections, she learned that the [the state's] optical scanning system uses the same tallying software as the touch screen voting machine. She said [the touch screen voting machine] has been studied by leading computer security researchers at Johns Hopkins [University] and Rice [University], who found that the security feature on the machine is extremely lax. She indicated that the same touch screen voting machines have been implicated in countless re-election mishaps since 2002. Currently, she said, the state Division of Elections has no check in place for the tallying system used by its optical scanners. She offered her understanding that the division sometimes reruns the ballots and checks the second tally with the first, but she said that would not catch systematic malfunction. She opined that HB 459 needs to include language inserted that "would mandate the prized, post-election manual recount in some subset of precinct with votes cast equaling at least 0.5 percent of votes cast statewide." She explained that the manual tallies can then be compared with the electronic tallies to verify that the entire system is functioning correctly. She added that she thinks this should encompass all systems, whether touch screen or optical scanning.

Number 0506

MS. ZIRNHELD expressed that, as a citizen of the state, she wants to have confidence that the entire election system is functioning correctly. She noted that Alaska receives high marks [for its voting process], and she said she can understand that, since both the legislature and the division take the matter so seriously. "But I think my suggestion is needed to ensure that we're not simply happily voting with a false sense of security in our tallying software," she said.

Number 0527

CHAIR WEYHRAUCH closed public testimony.

Number 0536

REPRESENTATIVE SEATON asked Ms. Glaiser if the division has a "dummy pack" that it knows ahead of time has "50 percent on every ballot" that it can run through the scanner to verify that the scanner [records] that 50 percent, or does the division just double-check ballots, without knowing the distribution, to make certain they have the same results.

MS. GLAISER explained that the division runs a sample ballot through [the scanner] to ensure that it has the marks it ought. This test is done in the director's office, she said. After being tested by the review board, the memory cards are sent to the regional AccuVote boards that run the same test again. Then the machines are sealed and delivered to the precinct. She concluded, "So, I think our chances to find something like that happening in [an] Alaska election are minimal, at best."

Number 0886

REPRESENTATIVE GRUENBERG turned to page 2, lines 27 and 28. He noted that language defines optically scanned ballots in AS 15.60.010. He said he doesn't have that entire statute available and asked if "optical scanning machine" is defined elsewhere in that statute.

MS. GLAISER indicated that it is.

Number 0709

REPRESENTATIVE HOLM moved to report CSHB 459, as amended, out of committee with individual recommendations and the accompanying fiscal notes.

REPRESENTATIVE GRUENBERG, returning to the issue of the definition of optical scanning machine, stated, "It doesn't make ... any sense to define optically scanned ballot if you don't define optical scanning machine." He indicated that [after looking at a copy given to him by the committee aide] that Title 15 is general and "covers the whole thing."

Number 0765

REPRESENTATIVE GARA indicated that optically scanned ballots could only be used in optical scanning machines; therefore, he said, "It's an amendment that I'm not sure gets us anywhere."

REPRESENTATIVE GRUENBERG suggested that this issue could be considered on the House floor, since the House State Affairs Standing Committee is the last committee of referral for HB 459.

Number 0832

CHAIR WEYHRAUCH reminded the committee of the previously stated motion. He asked if there was any objection. There being none,

[CSHB 459 (STA)] was reported from the House State Affairs Standing Committee.

HB 460-ALLOWABLE ABSENCES AND PFDS

Number 0879

CHAIR WEYHRAUCH turned to the last order of business, which was HOUSE BILL NO. 460, "An Act relating to absences to provide care for certain relatives for purposes of permanent fund dividend eligibility; and providing for an effective date."

Number 0900

AURORA HAWK, Staff to Representative Beth Kerttula, Alaska State Legislature, on behalf of Representative Kerttula, sponsor, presented HB 460. She stated that HB 460 would make it possible for an Alaskan to care for a critically ill or injured family member and not lose his/her permanent fund dividend (PFD). She noted that, currently, Alaska statute provides an allowable absence for a person who is caring for a critically ill family member, only if that family member has to travel out of state for treatment. She clarified, "This means that if your child who is living out of state, for instance, in college, is hurt or becomes ill, you will lose your dividend if you are required to spend a long period of time out of state to care for them." She said when a family member is ill or injured, it is a stressful time, and Alaskans should be able to care for a family member, and not have to worry about receiving their dividend, regardless of that family member's residency or where they happen to be when they become ill.

MS. HAWK noted that there is an amendment in the committee packet, but suggested that the committee may wish to listen first to public testimony.

Number 0978

IRIS MANYA PUNGOWIYI-REED testified that she is proud to be a long-time Alaskan. She related having moved to Alaska in 1970, and she shared some of her history as an Alaskan living in various parts of the state. She revealed that her current husband's name is Ron Reed, and they own a home in Juneau.

MS. PUNGOWIYI-REED said her niece, a student of the University of Alaska, Southeast, sustained a knee injury in September 2001, while on an exchange student program in Albuquerque, New Mexico,

and needed surgery. Ms. Reed indicated that she [and her husband] traveled to Albuquerque in December to help take care of the niece's son while the niece had her surgery. Concurrently, her son Bryce, who was living in Denver, Colorado, at the time, also came to Albuquerque. On December 13, 2001, Ms. Reed said, Bryce was involved in an accident. She related the details of that accident and the injuries Bryce received as a result. Bryce was in critical condition at the University of New Mexico Hospital.

MS. PUNGOWIYI-REED stated that as a result of the complications from Bryce's trauma, he is non-verbal, non-mobile, is fed through a tube, and is 100 percent dependent upon others for his care. Ms. Reed said she has explored the possibility of caring for Bryce in Juneau, Alaska. She said she also inquired at the VA [Department of Veterans Affairs] office in Anchorage, Alaska, because her son is eligible to receive "100 percent service-connected disability." She said she was told that Bryce would have to be sent to Seattle, Washington. She stated that she is not comfortable "taking that kind of risk," and she declared that she - as his mother, next-of-kin, and legal guardian - would not abandon him to return home. She related that there has been emotional and financial stress associated with her son's accident. She offered examples.

CHAIR WEYHRAUCH requested that Ms. Reed complete her testimony, because committee members needed to be present at the 10:00 a.m. House floor session. He stated that the committee would come back to the issue. He said, "It's tough when these circumstances happen to a family, and our hearts go out to you."

MS. PUNGOWIYI-REED stated that she is currently prohibited from getting her PFD, and she emphasized that she has not given up her Alaska residency.

[HB 460 was heard and held.]

ADJOURNMENT

Number 1464

There being no further business before the committee, the House State Affairs Standing Committee meeting was adjourned at 10:03 a.m.