

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

April 6, 2004
8:01 a.m.

MEMBERS PRESENT

Representative Bruce Weyhrauch, Chair
Representative Jim Holm, Vice Chair
Representative John Coghill
Representative Bob Lynn
Representative Paul Seaton
Representative Max Gruenberg

MEMBERS ABSENT

Representative Ethan Berkowitz

COMMITTEE CALENDAR

HOUSE BILL NO. 547

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

- MOVED HB 547 OUT OF COMMITTEE

HOUSE BILL NO. 476

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

- MOVED CSHB 476(STA) OUT OF COMMITTEE

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."

- MOVED CSHB 527(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."

- HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 547

SHORT TITLE: PFD: DELAY PAYMENT FOR ALLOWABLE ABSENCES

SPONSOR(S): STATE AFFAIRS

Jrn-Date	Jrn-Page		Action
03/29/04	3110	(H)	READ THE FIRST TIME - REFERRALS
03/29/04	3110	(H)	STA, FIN
03/30/04		(H)	STA AT 8:00 AM CAPITOL 102
03/30/04		(H)	Heard & Held MINUTE(STA)
04/06/04		(H)	STA AT 8:00 AM CAPITOL 102

BILL: HB 476

SHORT TITLE: AK STATEHOOD CELEBRATION COMMISSION

SPONSOR(S): REPRESENTATIVE(S) ANDERSON

Jrn-Date	Jrn-Page		Action
02/16/04	2600	(H)	READ THE FIRST TIME - REFERRALS
02/16/04	2600	(H)	STA, FIN
04/01/04		(H)	STA AT 8:00 AM CAPITOL 102
04/01/04		(H)	Heard & Held MINUTE(STA)
04/06/04		(H)	STA AT 8:00 AM CAPITOL 102

BILL: HB 527

SHORT TITLE: ALASKA SECURITIES ACT

SPONSOR(S): STATE AFFAIRS

Jrn-Date	Jrn-Page		Action
03/01/04	2790	(H)	READ THE FIRST TIME - REFERRALS
03/01/04	2790	(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
04/01/04		(H)	Heard & Held
04/01/04		(H)	MINUTE(STA)
04/06/04		(H)	STA AT 8:00 AM CAPITOL 102

BILL: HB 331

SHORT TITLE: RETIREMENT: TEACHERS/JUDGES/PUB EMPLOYEES

SPONSOR(S): RLS BY REQUEST OF THE GOVERNOR

Jrn-Date	Jrn-Page		Action
05/21/03	2070	(H)	READ THE FIRST TIME - REFERRALS
05/21/03	2070	(H)	STA, L&C, FIN
05/21/03	2070	(H)	FN1: ZERO(ADM)
05/21/03	2070	(H)	GOVERNOR'S TRANSMITTAL LETTER
03/30/04		(H)	STA AT 8:00 AM CAPITOL 102
03/30/04		(H)	<Bill Hearing Postponed to Thurs. 4/1/04>
04/01/04		(H)	STA AT 8:00 AM CAPITOL 102
04/01/04		(H)	Scheduled But Not Heard
04/06/04		(H)	STA AT 8:00 AM CAPITOL 102

WITNESS REGISTER

SHARON BARTON, Director
Central Office
Permanent Fund Dividend Division
Department of Revenue (DOR)
Juneau, Alaska

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

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

POSITION STATEMENT: Reviewed committee substitute (CS) to HB
476, Version LS-1744\D, Utermohle, 4/2/04, on behalf of
Representative Anderson, sponsor.

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

POSITION STATEMENT: Answered questions on behalf of the
division during the hearing on HB 527.

TERRY ELDER, Alaska Representative
Investment Company Institute (ICI)
Juneau, Alaska

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

ANSELM STAACK, Chief Financial Officer
Division of Retirement & Benefits
Department of Administration (DOA)
Juneau, Alaska

POSITION STATEMENT: Testified and answered questions on behalf of the division during the hearing on HB 331.

ACTION NARRATIVE

TAPE 04-54, SIDE A

Number 0001

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

HB 547-PFD: DELAY PAYMENT FOR ALLOWABLE ABSENCES

Number 0147

CHAIR WEYHRAUCH announced that the first order of business would be HOUSE BILL NO. 547, "An Act relating to the dividends of individuals claiming allowable absences; and providing for an effective date."

Number 0160

REPRESENTATIVE SEATON referred to a [two-page chart] listing allowable absences from the years 1999 to 2003 [included in the committee packet]. He noted some of the amounts of absences on the chart, for categories such as "accompanied," "enrolled college," "active duty," and "medical." In response to a question from Chair Weyhrauch, he confirmed that the chart was prepared by the [Permanent Fund Dividend] Division.

Number 0245

REPRESENTATIVE SEATON moved to adopt HB 547 as a work draft.

CHAIR WEYHRAUCH objected for discussion purposes.

Number 0265

SHARON BARTON, Director, Central Office, Permanent Fund Dividend Division, Department of Revenue (DOR), offered a brief overview of the previously mentioned chart. She noted that the chart is an initial response to a request from the committee to see a breakdown in the numbers involved in the allowable absences. She reminded the committee that it had requested information regarding "behavior patterns beyond that," including how long people are staying out [of Alaska] and whether or not they are returning. She explained that the division has that information stored, but because of the age of its computers, it would be labor intensive to retrieve the information. Notwithstanding that, she said the division would carry out the committee's request "if it ends up being pivotal ... to decision-making here."

Number 0388

REPRESENTATIVE SEATON offered his understanding that the request had been for the division to take the applications at "six years and ten years," and follow those applications to see if the allowable absences ended with a permanent fund granted without allowable absences or [if they were] terminated.

MS. BARTON confirmed that was true, but clarified that is what would be "terribly labor intensive for us to dig out for you." She illustrated that it would mean taking staff away from important work in order to complete this request.

REPRESENTATIVE SEATON asked if following a single year instead of two years would cut the work in half.

MS. BARTON answered that it wouldn't matter. She specified that it's a matter of asking the computer to track each individual applicant through some 12 million records, using an inefficient system. Manual effort would be used to program each individual [search]. She clarified, "So, it doesn't really matter how far back we go; once we get into each individual record, [we] can go back as far as that record goes."

Number 0505

REPRESENTATIVE HOLM noted [on the chart] that in 1999, only two people were listed under the category of "secondary education," and since then there have been close to 1,000. He asked what caused the change.

MS. BARTON answered that she suspects that's an error in the data.

Number 0569

CHAIR WEYHRAUCH closed public testimony on HB 547.

REPRESENTATIVE SEATON asked Ms. Barton if the fiscal note is accurate, or if the division would be filing a more detailed one.

MS. BARTON confirmed that more work needs to be done on the fiscal note because the one before the committee was done quickly for the last hearing.

Number 0608

REPRESENTATIVE HOLM said it bothered him that approximately \$7 million is being given away and Ms. Barton had said that the division has an inefficient computer system with which to work.

MS. BARTON said she thinks the inefficiency is a result of different pieces of [the computer system] being built at various times and not working well together. She indicated that the division has submitted a request for funds to change the system to a more cohesive one. She offered details.

REPRESENTATIVE HOLM asked how the processing of permanent fund dividend (PFD) checks is paid for.

MS. BARTON replied that the division's operations are fully funded out of the PFD fund. In response to another question, she relayed that updating the division's computer system is now the department's number one priority, as well as her own.

Number 0860

CHAIR WEYHRAUCH offered his understanding that "this assumes a \$50,000 expenditure ... in 2005." He noted that the fiscal note does not clarify "what that would be going for."

MS. BARTON confirmed that is the assumption and explained that it was the staff's quick estimate at the programming costs if the research was handled as a special project - a one-time event. She explained that the division is working on what the cost would be "if we weave it in to this upgrade we're doing

right now." She added, "We believe we can hone it down from the \$50,000."

CHAIR WEYHRAUCH asked if one possible impact of passage of HB 527 would be a decline in the applications and payments, and if that would be reflected in the fiscal note.

MS. BARTON surmised that there would be an indeterminate amount of people who, because of the bill, would be discouraged from filling out an application for a PFD because they know that they will not be coming back to Alaska. Out of the 625,000 applications received every year, she said, the division probably won't notice a change in workload.

CHAIR WEYHRAUCH asked what kind of authorization the division would need to print on the checks the total amount of PFD checks that are mailed to out-of-state addresses.

MS. BARTON responded that the division could do that as a matter of procedural policy; it does not need statutory authority to do so. The [lack of] room on the check would be a limiting factor, although the division could find room.

Number 1006

REPRESENTATIVE SEATON noted that there is a discrepancy between the number of checks mailed and the amount of money sent [out of state], and asked why.

MS. BARTON answered that some of the people who would have applied for the allowable absence PFD check would have returned to Alaska and received the check at their home address. She confirmed that another reason could be that they are students and the check was mailed to their parents' Alaska address.

Number 1061

REPRESENTATIVE COGHILL, regarding checks that are mailed out [of state], asked how the division is presently set up to discover fraudulent applications.

MS. BARTON answered that the division has just reorganized its "fraud unit" and has reestablished working relationships with fraud enforcement people across the state, as well as with the federal government. She revealed that the division is probably most successful discovering fraud through tips from the public. She stated that the division gets hundreds of tips from the

public and investigates each one. Additionally, the division performs focused audits. For example, all applications with an out-of-state postmark are audited, as well as those applications submitted by people who have refused jury duty because they claimed not to be residents of the state. Ms. Barton reported the findings of the fraud investigator for the past year. She noted that the office of the inspector general in Seattle, Washington, has agreed to take all of the division's identity theft cases, of which there are presently three.

Number 1217

REPRESENTATIVE COGHILL said he is trying to decide: "Is this huge policy call worth the effort of those very, very few?"

Number 1250

CHAIR WEYHRAUCH asked if the identity theft arose from electronically generated applications, or paper [applications].

MS. BARTON answered she doesn't have that information.

Number 1330

CHAIR WEYHRAUCH turned attention to [Section 1, subsection (a)] of the bill, which read as follows:

***Section 1.** AS 43.23 is amended by adding a new section to read:

Sec. 43.23.009. Dividends of individuals with allowable absences. (a) Notwithstanding other provisions regarding payment of dividends, the dividend of an individual who was absent from the state during the qualifying year as allowed in AS 43.23.008(a)(1)-(8) or (10)-(13) shall be paid to that individual on the first subsequent year that the individual is eligible for a dividend without claiming an allowable absence under AS 43.23.008(a)(1)-(8) or (10)-(13). A dividend that has not become payable under this subsection may not be paid under AS 43.23.005(h).

CHAIR WEYHRAUCH - noting that currently, [paragraph (9)] of AS 43.23.008(a) pertains to members of the United States Congress - brought attention to a possible Amendment 1, to insert [existing paragraph (9) of statute] in Section 1, thus having the bill apply to paragraphs (1)-(13) of the current statute. Chair

Weyhrauch explained that he thinks it would be unfair to treat members of the U.S. Congress differently.

REPRESENTATIVE GRUENBERG stated opposition to Amendment 1. He indicated that he had been on a naval ship and he considers that part of the United States. He said he thinks an Alaskan congressman's turf in Washington, D.C., is part of the state of Alaska.

REPRESENTATIVE SEATON noted that he has received 17 e-mails that have raised concerns about the bill, and 15 e-mails that were in favor of it. One of the e-mails in support expressed the point of view that everyone should be treated equally.

Number 1448

CHAIR WEYHRAUCH stated he understands Representative Gruenberg's point, but thinks of this issue as a policy statement and thus looks at the definition of what would be considered part of the state a little more tightly. He said, "It looks fair, to me, to treat them like everybody else, including those who have to care for a dying family member or going to school or the military; once they come back, they'll receive a large payment of dividends that indicate their leave out of the state."

REPRESENTATIVE GRUENBERG responded that [members of the U.S. Congress] represent the state; they don't just represent one person, as in the case of someone caring for a relative. He offered more examples. He said, "Frankly, I don't think any of us do as much for the state as our congressional delegation does, and I think it's just as symbolic to give them the dividend, even if you don't give it to anybody else."

Number 1533

REPRESENTATIVE SEATON pointed out that, currently, the bill does not include congressional "staffers" for exemptions.

REPRESENTATIVE GRUENBERG said the only people exempted in the bill are the three members of U.S. Congress, and "they're the people who push the button on the floor (indisc. - voice faded out)."

Number 1579

REPRESENTATIVE COGHILL commented that given the longevity of Alaska's congressional delegation, its members may never get [the PFD].

REPRESENTATIVE HOLM remarked that "you could argue this on both sides."

Number 1600

CHAIR WEYHRAUCH withdrew Amendment 1.

REPRESENTATIVE SEATON emphasized that the proposed legislation is not so much concentrated on fraud as it is on offering an incentive for people to return from outside the state. He indicated that the system is the creation of the state and there is nothing inherently right or wrong about it; the state just needs to figure out how it wants to run the system. He indicated that most of the comments sent in opposition to the bill were [from those in] the military or college students. He said the comments from the military seemed to be a misinterpretation that the dividends would be cut off. Representative Seaton emphasized that's not the intent of the bill. Conversely, the bill just states that if a person who is out of the state qualifies for the dividend, he/she will get the dividends upon his/her return to the state. He pointed out that several [e-mails] from people in the military state support of that concept.

Number 1729

REPRESENTATIVE HOLM noted that in Fairbanks, military people don't have to get a state license plate, but they receive a PFD. He stated that he finds it bizarre that "we would allow that to happen." He characterized the bill as "an interesting differential," and applauded Representative Seaton for taking it on; however, he stated that he is not convinced that it's the right program to have for Alaska. He said he thinks it [sends] a bad message that people somehow deserve a "welfare check" just for being citizens of Alaska."

REPRESENTATIVE SEATON referred to a memorandum from Legislative Legal and Research Services [included in the committee packet], and said Legislative Legal and Research Services was asked to address the issues regarding due process and equal protection. He focused attention on the end of the first paragraph on the second page of the memorandum showing examples of cases in which a regulation permitting absences from Alaska - if the absence

was no longer than the time physically present in the state - was upheld. He added, "But apparently that's no longer in effect."

Number 1856

REPRESENTATIVE GRUENBERG offered his understanding that that referred to the 180-day provision - that a person cannot be out of the state for over half of the year - but added that he is not certain of that.

MS. BARTON, regarding the length of time for an allowable absence not exceeding the time a person is a resident in the state, said she doesn't know if that was ever a regulation, but it is not one now. She continued as follows:

I know in looking at these extended absences at the five-year point where we do review them more carefully, we certainly look at that as one factor. ... If they were only a resident of the state for 18 months and have been gone for five years, they need to have done many of the other due-diligent kinds of things to establish residency and their intent to return.

Number 1926

REPRESENTATIVE HOLM said he would be interested in finding out what the results would be of getting a second fraud investigator. He noted that the provisions on the PFD are rather specific as to what the penalties are "if some things happen." He asked whether any of the checks sent to fraudulent applicants were recovered.

MS. BARTON replied that the division goes after the money, though, in some cases, it doesn't press criminal charges if the money is paid back, but the person loses the next five dividends. She indicated that it is a little more difficult to retrieve money from those who are out-of-state. She added, "And, of course, to penalize them for five subsequent dividends doesn't mean a thing."

Number 1991

REPRESENTATIVE GRUENBERG read the numbers, from 1999 to 2003, in the active duty category of the chart. He asked if the increase was also consistent prior to 1999.

MS. BARTON answered that she doesn't know, but offered to research it.

REPRESENTATIVE GRUENBERG stated his assumption that, with the exception of 2001 to 2002, the accompanied category has "pretty steadily increased, as well." He stated his assumption that "that reflects those folks who are accompanying military folks."

MS. BARTON stated that category is mainly made up of military spouses and families, although it also includes spouses and families of students and of someone out of the state for medical treatment. In response to a follow-up question from Representative Gruenberg, she stated that she doesn't know how many active duty military people are in Alaska at any given time.

Number 2068

REPRESENTATIVE SEATON referred to e-mails in the committee packet. He indicated that some of the e-mails expressed opposition to the fact that college students and others who's PFDs were being held would not be earning interest on those dividends. He shared that another e-mail was in support of the bill because many high school students choose to turn down free tuition [to Alaska's University system] in order to attend colleges out-of-state and so they should also wait for their PFD checks until they return; however, the students should receive a reasonable amount of interest on those checks. Representative Seaton explained that he just wanted it on the record that those comments had been received by e-mail.

REPRESENTATIVE SEATON noted that some people had expressed that college students often don't receive a lot of income, and those people suggested a shorter time period, for example, a "four-year grace."

Number 2154

CHAIR WEYHRAUCH removed his objection [to the previous motion to adopt HB 547 as a work draft].

REPRESENTATIVE LYNN objected. He stated that he thinks the intent of the bill is good, but doesn't think the military needs "this kind of hassle." He noted that [those in the military] go where they are ordered, and "they take Alaska with them when they go somewhere else." He commented that there are many

students who are not born with a silver spoon in their mouths and can use every dollar they can get. He stated that although he knows it is not the intent of the sponsor, "we're inferring that the military and students tend to be cheats, more than the rest of the population." He said he thinks these kinds of things need to be investigated on a case-by-case basis. He concluded, "We need to protect the PFD - it's our obligation to do so - but I'm afraid that this bill throws the baby out with the bathwater, and I cannot support it."

Number 2246

REPRESENTATIVE SEATON responded, "This is a system that the legislature designed to allow extraordinary absences," noting that the conditions that are placed on those extraordinary absences are for the legislature to decide. He continued as follows:

It doesn't mean that anybody is cheating; it just means that we are designing a system that pays people to be outside. And if that is our intention, to pay people to be gone from the state, that is sometimes the outcome of what the system has crept to. And that is the entire purpose of the bill, to give people a reason to become and remain ... physical residents at the end of their extended allowable absence. ... And so there is no intent and there is no action saying that the people that are receiving extended absences that we allow are in any way cheats. So, I want that really clear. Fraud is something that is totally different than a system that we create that allows people to be paid to be gone from the state.

REPRESENTATIVE LYNN said he understands, but stated that the gist of his previous remarks remains.

Number 2314

REPRESENTATIVE GRUENBERG directed the committee's attention to page 3, lines 2-5, which read as follows:

(c) Notwithstanding other provisions, a dividend that has not become payable to an individual under (a) of this section is not subject to levy, execution, garnishment, attachment, or any other remedy for the collection of debt until that dividend becomes payable or is paid to the individual.

REPRESENTATIVE GRUENBERG said if he were a bankruptcy-planning attorney, he might want to use that language to protect somebody who doesn't have a lot of assets but has a fair amount tied up in dividends.

TAPE 04-54, SIDE B

Number 2343

REPRESENTATIVE GRUENBERG continued as follows:

That can be utilized to sequester funds from creditors, in a (indisc.) planning situation, like I would be if I were a JAG [Judge Advocate General] lawyer advising military who have some debts and are about to be transferred from the state. It could sequester a fair amount of money from Alaska creditors. And I haven't really thought about how to deal with that. But if somebody could be gone for 5, 10, [or] 15 years, that could be \$15,000, ultimately, that's sequestered from creditors.

REPRESENTATIVE SEATON clarified that it wouldn't be somebody leaving the state, because he/she doesn't have any future credit for dividends; therefore, it would only be somebody who has left the state and has had allowable absences, and was not in Alaska for an extended period of time, but then declared bankruptcy or something else outside of the state.

REPRESENTATIVE GRUENBERG concurred.

Number 2292

REPRESENTATIVE COGHILL noted that what first appealed to him regarding the bill was "the draw to bring people back into Alaska to receive their benefit"; however, the more he thought about the practical "outplay" of the bill, the more problems he had with it. He said he appreciates Representative Lynn's comments. He stated that the check distribution would almost become "a banking of sorts," where money has to be held in account for people. He indicated that he is not certain whether he wants that [additional work] given to the [division]. He suggested that the intended consequences may be getting outweighed by the unintended consequences. He also mentioned that there might be an inherent unfairness. He noted that less than 5 percent of [Alaska's] overall population has been outside of the state with allowable absences. He estimated that about

1-2 percent may be military. He stated that he knows there is fraud, but said he doesn't know that it would be worth "having a big bureaucratic system and delayed recipients for all that."

REPRESENTATIVE LYNN said Alaska has no problem attracting military to the state with or without "this program."

REPRESENTATIVE SEATON offered his understanding that the division already had an accounting system for holding checks.

MS. BARTON stated that the division currently has to account for 18-year-old filers [whose parents or guardians did not file for their PFDs] and for estates [where someone has died]. She said she doesn't think [HB 547] will create a huge accounting burden. She explained that the applications will be processed and pended, so in any given year, the division will know what the possible liability is and those funds will be retained in the fund until such time as they can be released.

MS. BARTON, responding to previous remarks regarding possible interest on [the withheld dividend] monies, said the division would have to think through the process she just described differently if interest were a part of the equation.

Number 2053

REPRESENTATIVE GRUENBERG offered his understanding that as the bill is currently written, the interest would remain with the fund.

MS. BARTON said that's correct. In response to a follow-up question from Representative Gruenberg, she said she did not know how much that would be per year, but offered to research that.

REPRESENTATIVE LYNN said, "It would seem to me that if we were ... paying interest on money being withheld, this interest would belong to the person that this money would eventually belong to when they return to the state, rather than to the state. You'd be getting interest on somebody else's money - a pretty good deal."

Number 2018

CHAIR WEYHRAUCH said, "All right, there's a motion on HB 547 and an objection." [Although the motion pending was whether to adopt HB 547 as a work draft, the committee treated the

following roll call vote as if it pertained to a motion to move the bill from committee.]

A roll call vote was taken. Representatives Gruenberg, Holm, Seaton, and Weyhrauch voted in favor of HB 547. Representatives Coghill and Lynn voted against it. Therefore, HB 547 was reported out of the House State Affairs Standing Committee by a vote of 4-2.

HB 476-AK STATEHOOD CELEBRATION COMMISSION

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

Number 1953

CHAIR WEYHRAUCH moved to adopt the proposed committee substitute (CS) for HB 476, Version 23-LS1744\D, Utermohle, 4/2/04, as a work draft.

REPRESENTATIVE HOLM objected.

Number 1942

JIM SHINE, Staff to Representative Tom Anderson, Alaska State Legislature, reviewed Version D on behalf of Representative Anderson, sponsor. He noted that Version D would reduce the number of members on the commission from 17 to 9, would reduce the number of public members on the commission from 12 to 4, would provide for one member from each judicial district, and would eliminate the four "at-large" members.

MR. SHINE directed the committee's attention to page 2, lines 18-19, of Version D, which read in part: "or if a legislative member of the commission is no longer a member of the legislative body from which the member was appointed, the officer responsible for appointing that member shall appoint a replacement member as soon as possible."

CHAIR WEYHRAUCH closed public testimony.

Number 1886

REPRESENTATIVE HOLM asked Mr. Shine if going to 9 members would affect the fiscal note.

MR. SHINE responded that although a new fiscal note has not been received, he anticipates that there will be a reduction in the fiscal note. He noted that the next committee of referral would be the House Finance Committee.

REPRESENTATIVE HOLM removed his objection.

Number 1847

REPRESENTATIVE HOLM moved to report the proposed CS for HB 476, Version 23-LS1744\D, Utermohle, 4/2/04, out of committee with individual recommendations and the [forthcoming] fiscal note. There being no objection, CSHB 476(STA) was reported out of the House State Affairs Standing Committee.

HB 527-ALASKA SECURITIES ACT

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

Number 1793

REPRESENTATIVE LYNN moved [to adopt] the proposed committee substitute (CS) for HB 527, Version 23-LS1792\Q, Bannister, 4/5/04, [as a work draft].

CHAIR WEYHRAUCH objected for discussion purposes.

CHAIR WEYHRAUCH reviewed that at the last hearing on HB 527, a representative of the New York attorney general's office had testified. He also reminded the committee of the correspondence in the committee packet from [Warren E. Buffet, Chairman], Berkshire Hathaway. He stated that he is not certain that HB 527 does what he would like it to do. He said his inclination is to "get into this with both feet," but thinks there isn't time, nor is there the inclination by the committee to do that. He said, "I just think that we have an obligation to equip our state with the means to do those kind of things the public sector is normally charged to do, without the public sector paying for it when there's wrong-doing."

CHAIR WEYHRAUCH noted that there were concerns raised by other members of the administration regarding some portions of the bill, which he said have been addressed in Version Q.

Number 1715

VINCE USERA, Senior Securities Manager, Division of Banking, Securities & Corporations, Department of Community & Economic Development (DCED), described his involvement working with [Legislative Legal and Research Services] to come up with Version Q.

Number 1690

REPRESENTATIVE GRUENBERG stated that he also wanted to proceed as Chair Weyhrauch did. He said, "There are lots of securities problems in the state, but I think this is an area that has some troubling aspects on a national scale, and I'd like to see our state in the forefront of protecting our consumers. We're basically a consumer state, in this area." He expressed his appreciation of Mr. Usera's willingness to look at "the Takeover Bid Disclosure Act." He stated for the record that he thinks "we" probably all agree that the Alaska Takeover Bid Disclosure Act is probably unconstitutional and needs to be repealed. He mentioned working in the House Judiciary Standing Committee to develop a new Act to add to the bill. He asked Mr. Usera, "Is that not correct?"

MR. USERA answered, "That's correct."

REPRESENTATIVE GRUENBERG directed attention to page 3, [line 17-19], which read in part as follows:

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

REPRESENTATIVE GRUENBERG commented that's almost a kind of punitive damage, except that it goes to the victim, not to the state. He asked how "two times" became established.

CHAIR WEYHRAUCH said he added that language. He explained that it's intended to deter wrongful conduct, to pay those who have been harmed, and to give notice to those potential offenders that "if they're going to do business here, ... they have to cut square corners with the consumer and, if they don't, they have to pay a penalty." He revealed that he had received

confirmation from the drafters of the bill that "this would pass muster if it were challenged." He noted that this is similar to "the wage and hour statutes."

REPRESENTATIVE GRUENBERG asked, "Was it a policy call for 'two times', or was it more of a recognition of the maximum extent constitutionally permissible?"

CHAIR WEYHRAUCH responded, "There's a tension there, because the idea embodied in the statute is 'two times', but that's to the maximum extent allowed by the constitution."

REPRESENTATIVE GRUENBERG asked Chair Weyhrauch how he would feel about allowing the amount of a recovery to be determined by the administrator to the maximum extent constitutionally permissible, thus "leaving it to that person's discretion to that extent."

CHAIR WEYHRAUCH responded that the problem with the constitutional issue and punitive damages cases is that they're subject to "what ... seems right to a judge." He said:

This is a tension between attracting business capital in the state and wanting to do business here, and having a certainty for businesses in order to do their work here. By spelling out in statute, as opposed to allowing an ambiguous judge-made sanction, you do provide that ... level of certainty to businesses, which I think they need, as opposed to a judge-made fine.

Number 1395

REPRESENTATIVE GRUENBERG stated that "these ... administrative actions" sometimes involve brokerage houses, and the amount to an individual investor may be small. He noted that the number of investors in [Alaska] in a given corporation may be small and [so the bill would] hardly provide any deterrence at all. He suggested that it might be constitutionally permissible and a wise policy to allow discretion by the administrator to award more damages.

MR. USERA noted that the consumer protection statutes in Title 45 allow for treble damages. He continued as follows:

The way we've administered the statute in the past has been to try to levy enough fines to convince the

wrongdoer to make the victim whole. If it is egregious and we can double that amount, that would be an excellent outcome. I don't have any experience with levying two times the fine or things of that nature, ... but I don't see any harm coming from this.

CHAIR WEYHRAUCH pointed out that the language reads that [the restitution paid] "may" be two times - it's discretionary.

MR. USERA said [the double amount] would only be implemented in the case of an egregious wrong, and then it may be in place of a fine. He concluded, "This would give us the ability to make the victim whole, and perhaps a little bit more than whole."

REPRESENTATIVE GRUENBERG asked how the department would feel "if this were allowed to be treble damages, to be consistent with the unfair trade factor?"

MR. USERA replied that he would like the ability to do that, but he only sees that coming about in an unusual situation.

REPRESENTATIVE GRUENBERG said, "At least you'd have the discretion."

REPRESENTATIVE GRUENBERG asked Chair Weyhrauch if he would consider that a friendly amendment.

CHAIR WEYHRAUCH suggested that the House Judiciary Standing Committee could decide to make that change when it hears the bill.

Number 1145

TERRY ELDER, Alaska Representative for the Investment Company Institute (ICI), told the committee that the ICI is the professional organization whose members are the mutual fund industry. Because many of the mutual funds have investment advisors that are federally registered, [the ICI] is also interested in issues that affect those advisors and their representatives. He noted that the ICI is active both at the federal level and at the state level, and has historically been cooperative with Alaska's state regulations. Mr. Elder said the ICI has always supported both state and federal regulations of the security industry and works closely with all the states and the North American Securities Administrators Association, for example, regarding common language that is in the Uniform Securities Act.

MR. ELDER turned attention to Section 1 [of Version Q]. He explained that Section 1 would exempt the Securities Act from [AS] 37.10.050, which deals with fees that are set by regulation. He stated that the ICI's position would be to encourage the committee to delete Section 1 before moving the bill out of committee. He explained that when executive branch agencies set fees by regulation and those fees have no relationship to the cost of regulation, that becomes an issue for the ICI. He continued as follows:

We think [that] to exempt the Securities Act almost all by itself there, sort of jumps out at you. It's one of fairness; you're singling out the securities industry for exemption from that limitation, which the ICI doesn't think is fair. The ICI already provides a sea of revenue to the State of Alaska that exceeds the total cost of the Division of Banking, Securities & Corporations, and so we would argue from a fairness standpoint that ... industries shouldn't be singled out for exemption

MR. ELDER, on the subject of delegating legislative power to the executive branch, said [the ICI] doesn't have any problem with legislatures setting fees in statutes. The problem, he explained, is allowing the executive branch to set fees by regulation. He said AS 37.10.050 makes sense if the legislature were to say, "Okay go ahead and do that by regulation and we aren't going to get involved in that or worry about that, as long as you're covering your costs." He said he doesn't think anybody would disagree with that. For example, he said, "If you spent \$10 million in regulation and you wanted to bring in \$50 million of revenue, that would be more of a legislative issue than we think should be delegated to an agency through regulation."

Number 0831

CHAIR WEYHRAUCH said [Section 1 of Version Q] was added to allow the executive branch to collect fees, because of the volume of work that it does through the securities area. He added, "Certainly that's subject to any review and comment period by the industry on that regulation." He remarked that the legislature is always troubled when the executive branch implements regulations that stray from what [the legislature intends].

MR. ELDER noted that a lot of discussion when [AS 37.10.050] was last amended was focused around resource agencies and not other agencies such as the securities division. That's another reason it would be "more appropriate to do it as a general look at that issue and deal with all of them," he said, adding, "Our position is that they should reflect costs, unless they're set by the legislature."

CHAIR WEYHRAUCH told Mr. Elder that the bill would "pick up" issues more related to the securities area when it is heard in the House Judiciary Standing Committee, so "it may be even more relative in the next committee."

Number 0652

MR. ELDER clarified:

The fees that we're talking about here that are paid by the mutual fund for this are not paid by large Wall Street companies. These are fees that are paid by the shareholders; they're expenses of the fund and so they're passed on directly to the individual shareholders. And ... that's another concern that everybody has; if you're concerned about the fees charged within the mutual fund industry, then that would show up as one of those fees.

Number 0592

REPRESENTATIVE GRUENBERG asked how much the fees are for [state notice].

MR. ELDER offered his understanding that currently there is a flat fee of \$600 for [a] one-year notice and \$1,100 for two years, so right now it's a flat fee. And it's a notice filing, not a registration, because in 1996, when the National Securities Market Improvement Act was passed, Congress established what it called "federal covered securities." He explained that mutual fund shares are considered a federal covered security. He explained what that means is that since 1996, states can't require registration of the securities and can't regulate what's in the prospectus, for example, but they retain enforcement authority, with respect to fraud. He added, "And so, it's limited to fraud on the state level, and the Securities Act reflects that now, because it was amended in 1999 and we also changed to a flat fee."

MR. ELDER, in response to a question from Representative Gruenberg, explained the difference between a registration and a notice filing as follows:

When you register, you can also be denied. [When] you register, you have to meet a whole laundry list of criteria that would be in the statute in terms of whatever you're registering for, and usually those things would be listed and disclosed to investors in prospectuses and things like that. And they would submit that to a state under a registration concept, and the state would review that and say, "Yes, it meets it" or "No, it doesn't," and either allow it or disallow it.

In a notice filing, it is recognized that what Congress did was essentially take the registration authority away from the state. They are now federally registered; they're registered with the SEC [U.S. Securities and Exchange Commission]. And so, what the state gets is in fact a notice filing ... for two reasons: One is to sort of let the state know that we're ... going to be selling this security in your state, and two, it was a way for the state to continue to receive fees. Because obviously, one of the big issues in 1996, when the federal government made that change, was, "If we take the registration authority away from the states, won't that have a big fee impact on them?" And they decided to make that revenue neutral, to the extent they could; it wasn't totally revenue neutral, but they tried to do that. And so, one way to do that was to allow notices to the states for federally covered securities. The state can't say, "No, I don't want you to sell XYZ in Alaska," but the state can say, "This is what we charge for this notice."

REPRESENTATIVE GRUENBERG stated that he thinks that Section 1 is an issue that the House State Affairs Standing Committee should address.

Number 0268

REPRESENTATIVE HOLM asked how many companies "this" would involve.

MR. ELDER answered he isn't certain. He explained that the ICI represents 95 percent of the industry, and the industry registers at the federal level and notices at the state level, by fund. He surmised that approximately 8,000 funds are noticed in Alaska. He clarified that in terms of "mother companies," there would be fewer than that, because, for example, a company may have a number of funds and will notice each one of the funds that they want to sell in Alaska. Each of the funds are separate securities that have their own management.

Number 0161

REPRESENTATIVE HOLM stated that the intent [of the bill] is to ensure that there's no skullduggery going on with the funds to the detriment of the investors from Alaska. He added: "Which leads me to my thought as to why we're having a notice of filing other than for the purpose of oversight. It appears to me that if we don't really have much oversight other than the fact we know you're here."

MR. ELDER said that's correct. He noted that there are two reasons for the notice filing, and one is simply to "make it revenue neutral to the state." He said, "You can maintain your fee income by having this notice filing and charging for the notice. That's why one must be careful not to slip and use "registration" instead of "notice," because it means two different things. He concurred that there is much more oversight involved with registration than with [notice]. Notwithstanding that, he said, "Where you do have authority, however, in terms of ... oversight, is in enforcement issues related to fraud." He reiterated that the ICI has never been against that idea.

TAPE 04-55, SIDE A

Number 0001

REPRESENTATIVE HOLM directed attention to Section 6, and asked Mr. Elder if [the amount of restitution that may be paid] was of concern.

MR. ELDER responded that the only thing he is concerned about is Section 1. Notwithstanding that, he added the following:

The only thing that you might want to think about with the others is whether or not you want to differentiate between fines and potential fines related to intentional violations, versus unintentional

violations. But the ICI is not taking that position; I'm just offering that as a friendly suggestion.

MR. ELDER, in response to a question from Representative Gruenberg, revealed that he worked in the Division [of Banking, Securities & Corporations] for eight years and was director for the last four years, before his retirement.

Number 0102

REPRESENTATIVE GRUENBERG asked Mr. Elder if he, personally, had any other suggestions for the committee to consider.

MR. ELDER, specifying that he was responding with his personal opinions, noted that the State of Alaska has a long history of using uniform language, and stated that he personally supports that as useful because it's good for industry to know what to expect from one state to another. He noted that there is a new Uniform Securities Act of 2002, which was recently passed, and both the North American Securities Administrative Association and the ICI support it. He also suggested that it might be appropriate to look at the Uniform [Securities] Act, or at the statute in total, rather than doing something piece meal.

MR. ELDER noted that currently, there is a substantial differentiation between intentional and unintentional violations; for example, he said, he has seen violations that are bad and violations that are technical, and so he thinks they should be differentiated in the way they are fined.

Number 0455

CHAIR WEYHRAUCH asked Mr. Usera to address Section 1.

MR. USERA noted, "Section 1 of the bill allows us to charge what we're charging now, plus any increases that may come along." He said he has estimated that the fees that are charged now "would add something in the range of .0000006 of a cent to the dollar amount of a mutual fund." He clarified that if somebody owns 50 shares, he/she is not even going to see a penny added to their fees. He admitted that this is one area where the state takes in more than it spends. He said it's always been that way. He noted that currently the amount taken in is approximately \$10 million. Doing away with Section 1 probably would have the effect of losing \$10 million to the general fund, which he said would be a "pretty strong hit." He said, "We're one of the

profit centers of state government and I personally don't see anything wrong with making a profit."

MR. USERA remarked:

And it just seems to me to be an improvident act to limit state government to what it spends - there's just no rhyme or reason to it. We don't propose raising fees beyond an exorbitant amount. I mean, right now they're \$600. We are proposing a fee change, ... in regulation, basing it on the assets under management: One fee for under \$100 million, another fee for up to \$750 million, and another fee for those who are \$750 million and beyond. That seems to be reasonable. And ... the cost would be passed on to the individual owner. If all 50 states were to charge that, you might add on fifty cents to a customer's mutual fund. ... The mutual fund industry has been discovered to have overcharged fees in the range of \$10, \$12, \$15 per person, and ... the fees that we would charge would pale in comparison to what they're gouging their customers for now.

REPRESENTATIVE GRUENBERG stated, "In view of what Mr. Usera has said and hearing what Mr. Elder has said, I'm not convinced we should delete Section (indisc. - voice trailed off)."

CHAIR WEYHRAUCH closed public testimony.

Number 0775

CHAIR WEYHRAUCH offered his understanding that Representative Lynn had "moved CS for HB 527, Version Q." He asked, "Is there objection to moving this with individual [recommendations] and attached fiscal note?" He said, "Seeing none, so ordered." [Although the committee treated the proposed CS as having moved from committee, the motion that was actually pending was whether to adopt Version Q as a work draft].

HB 331-RETIREMENT:TEACHERS/JUDGES/PUB EMPLOYEES

CHAIR WEYHRAUCH announced that the last order of business would be 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."

Number 0840

REPRESENTATIVE GRUENBERG moved [to adopt the committee substitute (CS) for HB 331, Version 23-GH1009\D, Craver, 4/1/04, as a work draft]. There being no objection, Version D was before the committee.

Number 0865

ANSELM STAACK, Chief Financial Officer, Division of Retirement & Benefits, Department of Administration (DOA), told the committee that the division takes care of the Public Employees Retirement System (PERS), the Teachers Retirement System (TRS), the Judicial Retirement System, the Supplemental Benefit System (SBS), and Deferred Compensation. He offered a history of "how we got here," and stated that PERS, TRS, the Judicial Retirement System, and SBS are all qualified plans. He explained that there are positive aspects to a plan remaining qualified, even for a tax-exempt agency like the State of Alaska. It means that members of the retirement system can "pay their contributions in free tax." He said that's a tremendous benefit, which lowers the cost of the system itself.

CHAIR WEYHRAUCH asked, "Is that the state deferred comp program?"

MR. STAACK answered: "No, that is all of them. For instance, any contributions you make to the public employees', teachers' retirement system, judicial retirement system, and the supplemental benefit system are all pre-tax, in terms of their contribution." He said the SBS is what is called the defined contribution plan, while the PERS, TRS, and the Judicial Retirement System are what are called defined benefit plans. In response to questions from Chair Weyhrauch, he clarified that the basic difference between those types of plans is that in a defined contribution plan, the employer puts in money and the employee makes a match, and the employee directs his/her own investments and walks off with whatever amount is there when he/she terminates. The employer is not responsible for any residual or for paying any money in the future. For the [PERS, TRS, and the Judicial Retirement System], on the other hand, it is required by law that the employee gets paid irrespective of whether the system earns enough money to do it; it is the responsibility of the state to make up the balance.

Number 1029

MR. STAACK, in response to a question from Representative Holm, noted who falls under which systems: Under the PERS, there is the State of Alaska, plus 154 other employers, including municipalities and school districts; under the TRS, there are 62 school districts; under the Judicial Retirement System, there are judges and certain members of the court system; and under SBS, there is the State of Alaska employees and 14 other political subdivisions that are no longer in social security. In response to a follow-up question, he said the University of Alaska has its own separate plan.

Number 1085

CHAIR WEYHRAUCH stated that he would like to have an overview of the PRS and TRS. He noted that the legislature is "funding the shortfalls as a separate line item in the state." He related his understanding of an issue that was brought to his attention regarding why there is a huge debt owed for PERS/TRS. He explained that it is a result of some assumptions of projected contributions during a "bear" market. Now that the market has rebounded, he said, whoever is responsible for making those assumptions that the legislature has to fund it has not met to revisit what the legislature needs to do to fund the program; therefore, the legislature is acting on improper data in planning [the state's] financial future. Chair Weyhrauch said it seems to him that the legislature may be in a position of requiring that the PRS/TRS people who make the estimates meet more often to provide better information to the legislature.

MR. STAACK responded that he could bring information to Chair Weyhrauch and the committee that "we went through with the PERS/TRS board," including an actuarial evaluation and the projections that were done, and including all the earnings up through January 2004 and any projections that were made for the next 25 years that assumed what would happen with "a very rosy scenario."

Number 1203

CHAIR WEYHRAUCH indicated that the committee members needed more information.

MR. STAACK indicated a willingness to help the committee in that regard.

REPRESENTATIVE GRUENBERG mentioned technical problems in the field of family law with respect to the pension plans, and offered an example.

Number 1286

REPRESENTATIVE SEATON asked Mr. Staack to provide scenarios based on the 2004 mortality tables.

MR. STAACK replied that what will be used are the 1994 mortality tables. He explained that those are the mortality tables that are used for the PRS and TRS. He noted that there is a newer mortality table called "RP2000," which will update the mortality [table] that's used in the retirement systems.

[HB 331, Version D, was held over.]

ADJOURNMENT

Number 1337

There being no further business before the committee, the House State Affairs Standing Committee meeting was adjourned at 10:00 a.m.