

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

April 20, 2004

8:03 a.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE CONCURRENT RESOLUTION NO. 26

Relating to investments in Alaska by corporate America in which the permanent fund invests.

- MOVED CSHCR 26(STA) OUT OF COMMITTEE

CS FOR SENATE BILL NO. 327(STA)

"An Act relating to pedestrians using rollerblades, roller skates, and rollerskis."

- MOVED CSSB 327(STA) OUT OF COMMITTEE

HOUSE BILL NO. 520

"An Act relating to the expenses of investigation, hearing, or public advocacy before the Regulatory Commission of Alaska, to calculation of the regulatory cost charge for public utilities and pipeline carriers to include the Department of Law's costs of its public advocacy function, to inspection of certain books and records by the attorney general when participating as a party in a matter before the Regulatory Commission of Alaska; and providing for an effective date."

- HEARD AND HELD

HOUSE JOINT RESOLUTION NO. 45

Requesting the United States Congress to propose an amendment to the Constitution of the United States to provide that a vacancy in the office of United States Representative may be filled by appointment until an election can be held.

- MOVED CSHJR 45(STA) OUT OF COMMITTEE

HOUSE BILL NO. 411

"An Act relating to an optional election to prevent the name and address of a permanent fund dividend applicant from being disclosed, except to a state or federal agency."

- MOVED CSHB 411(STA) OUT OF COMMITTEE

CS FOR SENATE JOINT RESOLUTION NO. 31(STA)

Relating to urging the United States Congress to compensate the State of Alaska for the effect of federal land ownership on the state's ability to fund public education.

- BILL HEARING POSTPONED to 4/22/04

PREVIOUS COMMITTEE ACTION

BILL: HCR 26

SHORT TITLE:PFUND: ENCOURAGE INVESTMENTS IN ALASKA

SPONSOR(S): REPRESENTATIVE(S) WOLF

Jrn-Date	Jrn-Page		Action
01/20/04	2340	(H)	READ THE FIRST TIME - REFERRALS
01/20/04	2340	(H)	STA
04/08/04		(H)	STA AT 8:00 AM CAPITOL 102
04/08/04		(H)	Heard & Held MINUTE(STA)
04/15/04		(H)	STA AT 8:00 AM CAPITOL 102
04/15/04		(H)	Heard & Held MINUTE(STA)
04/20/04		(H)	STA AT 8:00 AM CAPITOL 102

BILL: SB 327

SHORT TITLE:ROLLERBLADES,ROLLER SKATES, ROLLER SKIS

SPONSOR(S): SENATOR(S) SEEKINS

Jrn-Date	Jrn-Page		Action
02/13/04	2157	(S)	READ THE FIRST TIME - REFERRALS

02/13/04	2157	(S)	STA, FIN
02/26/04		(S)	STA AT 3:30 PM BELTZ 211
02/26/04		(S)	Moved CSSB 327(STA) Out of Committee
02/26/04		(S)	MINUTE(STA)
02/27/04	2312	(S)	STA RPT 3DP 1NR NEW TITLE
02/27/04	2312	(S)	DP: STEVENS G, COWDERY, STEDMAN;
02/27/04	2312	(S)	NR: HOFFMAN
02/27/04	2312	(S)	FN1: ZERO(DPS)
03/17/04	2545	(S)	FIN REFERRAL WAIVED
03/19/04	2571	(S)	RULES TO CALENDAR 3/19/2004
03/19/04	2571	(S)	READ THE SECOND TIME
03/19/04	2571	(S)	STA CS ADOPTED UNAN CONSENT
03/19/04	2571	(S)	ADVANCED TO THIRD READING UNAN CONSENT
03/19/04	2571	(S)	READ THE THIRD TIME CSSB 327(STA)
03/19/04	2571	(S)	COSPONSOR(S): WILKEN, GREEN, STEVENS B,
03/19/04	2571	(S)	FRENCH, DYSON, ELTON
03/19/04	2571	(S)	PASSED Y17 N1 E2
03/19/04	2578	(S)	TRANSMITTED TO (H)
03/19/04	2578	(S)	VERSION: CSSB 327(STA)
03/22/04	3015	(H)	READ THE FIRST TIME - REFERRALS
03/22/04	3015	(H)	TRA, STA
03/22/04	3035	(H)	CROSS SPONSOR(S): GUTTENBERG
03/30/04		(H)	TRA AT 1:30 PM CAPITOL 17
03/30/04		(H)	Moved CSSB 327(STA) Out of Committee
			MINUTE(TRA)
03/31/04	3136	(H)	TRA RPT 4DP 3NR
03/31/04	3136	(H)	DP: MASEK, OGG, STEPOVICH, HOLM;
03/31/04	3136	(H)	NR: KOOKESH, KAPSNER, KOHRING
03/31/04	3136	(H)	FN1: ZERO(DPS)
04/13/04		(H)	STA AT 8:00 AM CAPITOL 102
04/13/04		(H)	Heard & Held MINUTE(STA)
04/20/04		(H)	STA AT 8:00 AM CAPITOL 102

BILL: HB 520

SHORT TITLE:REGULATORY COMMISSION OF ALASKA

SPONSOR(S): STATE AFFAIRS

Jrn-Date	Jrn-Page	Action
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02/23/04	2693	(H)	READ THE FIRST TIME - REFERRALS
02/23/04	2693	(H)	STA, L&C, FIN
03/05/04		(H)	STA AT 8:00 AM CAPITOL 102
03/05/04		(H)	<Bill Hearing Postponed to Mon. 3/8/04>
03/05/04		(H)	MINUTE(STA)
03/08/04		(H)	STA AT 8:00 AM CAPITOL 102
03/08/04		(H)	Heard & Held
03/08/04		(H)	MINUTE(STA)
04/20/04		(H)	STA AT 8:00 AM CAPITOL 102

BILL: HJR 45

SHORT TITLE: APPOINTMENT OF U.S. REPRESENTATIVES

SPONSOR(S): JUDICIARY

Jrn-Date	Jrn-Page		Action
04/05/04	3207	(H)	READ THE FIRST TIME - REFERRALS
04/05/04	3207	(H)	STA, JUD, FIN
04/06/04	3239	(H)	FIN REFERRAL REMOVED
04/07/04		(H)	JUD AT 1:00 PM CAPITOL 120
04/07/04		(H)	Scheduled But Not Heard
04/20/04		(H)	STA AT 8:00 AM CAPITOL 102

BILL: HB 411

SHORT TITLE: PF DIVIDEND APPLICATION RECORDS PRIVATE

SPONSOR(S): REPRESENTATIVE(S) CROFT

Jrn-Date	Jrn-Page		Action
01/28/04	2421	(H)	READ THE FIRST TIME - REFERRALS
01/28/04	2421	(H)	STA, JUD
04/13/04		(H)	STA AT 8:00 AM CAPITOL 102
04/13/04		(H)	Heard & Held MINUTE(STA)
04/20/04		(H)	STA AT 8:00 AM CAPITOL 102

WITNESS REGISTER

DANIEL PATRICK O'TIERNEY, Senior Assistant Attorney General
Commercial/Fair Business Section
Civil Division (Anchorage)
Department of Law (DOL)

POSITION STATEMENT: Testified on behalf of the attorney general
during the hearing on HB 520.

PAT LUBY, Advocacy Director
AARP in Alaska
Anchorage, Alaska

POSITION STATEMENT: Testified on behalf of AARP in support of Version D, during the hearing on HB 520.

JIM ROWE, Executive Director
Alaska Telephone Association (ATA)
Anchorage, Alaska

POSITION STATEMENT: Testified on behalf of the ATA during the hearing on HB 520.

MARK K. JOHNSON, Chair
Regulatory Commission of Alaska (RCA)
Anchorage, Alaska

POSITION STATEMENT: Testified during the hearing on HB 520.

REPRESENTATIVE ERIC CROFT
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: As sponsor of HB 411, discussed the differences between a House and Senate committee substitute.

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

POSITION STATEMENT: Testified, on behalf of the division, that HB 411 was acceptable as amended, but suggested possible areas of improvement.

ACTION NARRATIVE

TAPE 04-64, SIDE A

Number 0001

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

HCR 26-PFUND: ENCOURAGE INVESTMENTS IN ALASKA

Number 0056

CHAIR WEYHRAUCH announced that the first order of business was HOUSE CONCURRENT RESOLUTION NO. 26, Relating to investments in Alaska by corporate America in which the permanent fund invests.

[The committee treated Version 23-LS1469\S, Cook, 4/19/04, as adopted and before the committee.]

Number 0073

REPRESENTATIVE SEATON moved to report CSHCR 26, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHCR 26(STA) was reported out of the House State Affairs Standing Committee.

SB 327-ROLLERBLADES,ROLLER SKATES, ROLLER SKIS

Number 0132

CHAIR WEYHRAUCH announced that the next order of business was CS FOR SENATE BILL NO. 327(STA), "An Act relating to pedestrians using rollerblades, roller skates, and rollerskis."

Number 0172

REPRESENTATIVE HOLM moved to report CSSB 327(STA) out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, it was so ordered.

HB 520-REGULATORY COMMISSION OF ALASKA

Number 0229

CHAIR WEYHRAUCH announced that the next order of business was HOUSE BILL NO. 520, "An Act relating to the expenses of investigation, hearing, or public advocacy before the Regulatory Commission of Alaska, to calculation of the regulatory cost charge for public utilities and pipeline carriers to include the Department of Law's costs of its public advocacy function, to inspection of certain books and records by the attorney general when participating as a party in a matter before the Regulatory Commission of Alaska; and providing for an effective date."

Number 0260

REPRESENTATIVE HOLM moved to adopt the committee substitute (CS) for HB 520, Version 23-LS1785\D, Craver, 4/20/04, [as a work draft]. No objection was stated; therefore, it was so ordered.

Number 0288

DANIEL PATRICK O'TIERNEY, Senior Assistant Attorney General, Commercial/Fair Business Section, Civil Division (Anchorage), Department of Law (DOL), testifying on behalf of the attorney general, stated that [HB 520] is a "follow on" to last year's Executive Order 111 [EO 111] and gives the authority that was transferred the opportunity to be implemented responsibly. He offered a summary as follows:

Last year, EO 111 transferred the responsibility for advocacy on behalf of the public in utility matters before the Regulatory Commission of Alaska [RCA], from the RCA to the attorney general, and it established the public advocacy function within the Department of Law. As a result, RCA personnel that were historically responsible for that advocacy now act under the authority and direction of the Department of Law. The attorney general is, if you will, the public advocate for the purposes of utility issues before the RCA.

So, this bill completes the transfer, because it expressly provides for various aspects of execution, and it does the following four things: It clarifies that regulatory cost charge receipts, and not general [funds], will continue to pay for the general cost of public advocacy that's now administered by the DOL, just as those receipts historically paid for public advocacy costs when the function was performed by the RCA. Second of all, and related, the bill also modifies the regulatory cost charge ceiling, and it creates two distinct percentages of that total ceiling to separately fund the RCA and the DOL public advocacy function, respectively. That provides each entity with budgetary independence, which is appropriate, because, in this instance, essentially, the commission functions as the adjudicator; it's appropriate, if you will, [that] parties before it not have an appearance of anything other than independence, and this provides that.

... This bill ... provides the Department of Law's public advocacy function with qualified access to utility or pipeline carrier records similar to that afforded the RCA's former public advocacy staff. And the purpose is, of course, to maintain an efficient and economical access to information, and those are instances where the RCA [has] determined that a comprehensive review and hearing is appropriate, in those instances only - adjudicatory matters.

And then, finally, the bill clarifies, for the purposes of the RCA, ... the Department of Law, and other state agencies, that state agencies are exempt from paying the allocated costs of RCA proceedings. And the purpose for that is: Because there is no net fiscal benefit to the state in doing so, currently the statute is unclear. The RCA, in its wisdom, has actually allocated the state in an instance, but not required payment until after the legislative session, in order to allow the Department of Law to come before the legislature to have the law clarified, so that they have more specific guidance.

MR. O'TIERNEY stated that the benefits of Version D are that it would: complete the consolidation of public advocacy; give the advocacy function budgetary independence from the RCA; provide the Department of Law qualified access to utility records, to facilitate efficient investigation; and eliminate the inefficiency involved with state agencies being subject to paying allocated costs for RCA proceedings.

Number 0565

CHAIR WEYHRAUCH described a scenario where one of the highly competitive telecommunications companies is involved in a rate proceeding. The cost of the public advocacy that is incurred by the State of Alaska and its consultants and experts is then passed through the industry to the consumer. Chair Weyhrauch stated that some of the telecommunication companies may not be involved in that particular rate hearing and the concern has been voiced that the cost will be passed through to all of the companies, as opposed to the one company that was involved in the rate proceeding. He indicated it is a question of fairness and asked Mr. O'Tierney how this issue is addressed in the bill.

MR. O'TIERNEY replied that the bill doesn't change the way in which the regulatory cost charge receipt mechanism works. He

said, "The workload that goes on in the course of the year is tracked and assigned to various sectors of the industry, and that's how their portion of regulatory cost charge receipts are determined. That's the way the statute works ... since it's been established by the legislature. This bill doesn't change that, whatsoever." He clarified that [HB 520] recognizes that the same costs that historically have been paid for out of regulatory cost charge receipts will continue to be so paid, now that the function has moved to [the Department of Law].

CHAIR WEYHRAUCH surmised that if he were to hear from a company that's complaining about the aforementioned scenario, then that company is talking about the process, as opposed to the bill.

MR. O'TIERNEY answered that's correct. He indicated that that company would be talking about the entire regulatory cost charge mechanism and the way it's enshrined in statute "as we speak."

Number 0723

PAT LUBY, Advocacy Director, AARP in Alaska, told the committee that AARP has 76,000 members in Alaska, all of whom [are consumers]. He stated that the RCA is often viewed as a referee between competing utility companies in the battle for market shares; however, AARP views the RCA as its voice, consumer watch dog, and public advocate in the utility market place. He stated that the responsibilities for the RCA for public advocacy are now placed in the Office of the Attorney General (AG). Consumers depend on the AG and the RCA public advocacy staff to look after its interest on issues before the regulatory commission. Mr. Luby stated that the budget of the AG's office is limited. He noted that one of the AARP's favorite sections of [Version D] is that it would allow the AG's office to recoup its expenses involved in regulatory investigations. He concluded that, from a consumer perspective, that makes sense. Mr. Luby stated that AARP supports [Version D].

Number 0817

REPRESENTATIVE HOLM noted that the consultants in many of the cases are "hugely expensive." He asked who is present to keep the pricing down.

MR. LUBY responded that this area of government is complex, expensive, and requires experts. He noted that AARP has two attorneys who deal solely with utility issues. He stated his belief that [Version D] has "some of those controls built in

there." In response to a follow-up question from Representative Holm, he stated that the AARP is satisfied with [the language as it appears in Version D].

Number 0928

JIM ROWE, Executive Director, Alaska Telephone Association (ATA), noted his support of the committee substitute (CS). In response to a question from Chair Weyhrauch, he stated that he did not have the current [Version D] in front of him, but had a working draft that "we've worked with the Department of Law on." He added, "The testimony I've heard, so far, seems to go very much with what I have here, sir." He said ATA is in support of "this" and appreciates having worked with the Department of Law. He noted that "the initial 520" exhibited tendencies that would have caused customer costs to accelerate dramatically. He said the version he holds specifies a budget that "will be there for the advocacy section." Mr. Rowe continued as follows:

We appreciate that it has a specified budget, because we've pushed the Alaska Telephone Association for quite awhile for separation between the advocacy and advisory parts of the regulatory commission of Alaska. And I think this committee substitute goes far to making that separation so that we can have an advocacy group that will be on record in opposition or perhaps in concert with the utility in front of the adjudicatory body. We think that's very important.

CHAIR WEYHRAUCH asked what the distinction is between "advocacy" and "advisory," in regard to recouping expenses by the Department of Law.

MR. ROWE answered that the advisory works directly for the commission. The advisory staff helps the adjudicatory body and cannot be cross-examined, whereas the advocacy staff goes on record and can be cross-examined. He said, "We've been frustrated in the past when it was unclear that there was a party on record representing the public, other than just the commissioners who were making the decisions. And with just commissioners and their advisory staff doing research and coming up with positions, there's no opportunity for a record; there's no opportunity to cross-examine So, we're pleased with the separation that this bill is giving us."

Number 1159

MARK K. JOHNSON, Chair, Regulatory Commission of Alaska (RCA), stated his belief that that Mr. O'Tierney's "description" is accurate, and he said he doesn't need to correct anything that's been said so far. He offered to answer questions.

Number 1174

MR. O'TIERNEY responded to Representative Holm's previous question regarding what "sideboards" are on the Department of Law's public advocacy expenditure. He continued as follows:

The original bill had a provision which would have "costed" utilities directly for expenditures related to the Department of Law's consultants in a given case. That provision is ... no longer a part of the bill And what has substituted [it] ... is a provision which simply amends existing statute, which ... has a ... cap on the amount of funds available from regulatory costs charge for RCA and advocacy purposes. That's still in the statute, and that exists as a matter of law now.

REPRESENTATIVE HOLM asked if the language on page 2, lines 2-5, addressed that.

MR. O'TIERNEY answered that's correct. He clarified that the committee substitute provides the RCA and the advocacy with "subcomponent caps." He noted that the budget will be carried by the Department of Law, before the legislature, on an annual basis, subject to the cap and subject to [the legislature's] review and approval.

Number 1269

REPRESENTATIVE GRUENBERG noted that the phrase, "reasonable access" is on page 3, line 15, and on page 5, line 10. He asked who determines what's reasonable.

MR. O'TIERNEY answered that, ultimately, if there's a dispute about what's reasonable, the RCA will make that call. He pointed to the sentence on page 3, lines 21-22, which read: "This access is subject to reasonable notice to all parties with an opportunity to object before the commission."

REPRESENTATIVE GRUENBERG said the purpose of his question was to establish a record that that's what the legislative intent is.

MR. O'TIERNEY stated, "In fact, this was a point that was negotiated between all the parties to make sure that there was an opportunity to object." In response to a follow-up question from Representative Gruenberg, he confirmed that, to his knowledge, "it was agreeable with the parties."

REPRESENTATIVE GRUENBERG asked what the scope of judicial review is in regard to abuse of discretion.

MR. O'TIERNEY responded that, for the purposes of a commission decision as to whether or not a certain form of access is reasonable, it would be subject first to a motion for reconsideration before the commission. In further response to Representative Gruenberg, he confirmed that there is no requirement of a reconsideration motion.

REPRESENTATIVE GRUENBERG asked, "Is the scope, generally, of judicial review in this area an abuse of discretion by the commission? Is that the standard of review?"

REPRESENTATIVE GRUENBERG directed attention to a sentence on page 5, lines 19-22, which read as follows:

Costs incurred in complying with a request to review the records referred to in this subsection or to maintain those records in such a manner as to make them conveniently available for review shall be borne by the party controlling the records.

REPRESENTATIVE GRUENBERG noted that that language does not appear in Section 5. He asked why.

Number 1438

MR. O'TIERNEY explained that the [Section 5] relates to AS 42.05, which is related to utility matters, while [Section 11] relates to AS 42.06, which is "the pipeline statute." He stated, "The omission or the existence of that phrase is not a function of this amendment before you in the CS."

REPRESENTATIVE GRUENBERG asked if there is an historical reason or a policy reason "for one and not the other."

MR. O'TIERNEY said he is not aware of any such reason.

REPRESENTATIVE GRUENBERG turned to [Sections 14 and 15], regarding retroactivity and applicability. He asked what the

reason is "for making those things retroactive or applicable." He noted that the retroactivity on page 6, line 13, was set for "May 30, 2003." He asked why that date was chosen.

MR. O'TIERNEY explained that the language speaks to Sections 6 and 13, which are provisions that indicate that there will be no payment of cost allocations by state agencies to the RCA. The provisions that Representative Gruenberg had previously noted in Sections 14 and 15 were meant to capture previous cost allocations by the RCA of the state; therefore, having them apply retroactively means that "those cost allocations will not need to be paid on a going-forward basis." He explained that the reason for that is that the commission has indicated that it's cost allocating, but it's not requiring payment until after the legislative session, which would provide the opportunity for the legislature to address the lack of clarity in the statute. He concluded, "And so, these provisions would retroactively apply to the prior cost allocations that have occurred."

MR. O'TIERNEY, in response to Representative Gruenberg, explained that the applicability and retroactivity provisions really only cover the state, because utilities are not subject to cost allocation. The reason for that, he explained, is because the commission does not cost allocate entities that are already paying the regulatory cost charge into the regulatory cost charge receipt mechanism.

REPRESENTATIVE GRUENBERG asked, "So, the commission itself would absorb the cost?"

MR. O'TIERNEY answered that's correct.

Number 1649

REPRESENTATIVE HOLM asked if there would be an additional fiscal note to accompany Version D.

MR. O'TIERNEY answered that there could be, but stated his belief that it would be a zero fiscal note, once again. He added, "What we're talking about is, basically, a non-general fund, off-budget set of numbers"

Number 1699

MR. JOHNSON stated the following:

There was a question there at the end about the fiscal note, and I'm not quite sure if that's the way we would have it reflected. I don't anticipate a problem here, but I believe I want to have my administrative people and my fiscal people take a look at that. I'm not sure if that's the way we reflect the [RCA]. I'm not saying that Mr. O'Tierney's wrong; I'm just saying I'm just not certain. So, we might be making a submission.

I do agree with him that the long and short of this is that it is not a general fund impact. But just in terms of some of the base-level accounting, it might be a little bit more involved than that. But, like I said, I don't think there's any general fund impact here.

CHAIR WEYHRAUCH announced that HB 520 was heard and held.

HJR 45-APPOINTMENT OF U.S. REPRESENTATIVES

Number 1749

CHAIR WEYHRAUCH announced that the next order of business was HOUSE JOINT RESOLUTION NO. 45, Requesting the United States Congress to propose an amendment to the Constitution of the United States to provide that a vacancy in the office of United States Representative may be filled by appointment until an election can be held.

Number 1765

REPRESENTATIVE GRUENBERG, as a member of the House Judiciary Standing Committee, sponsor of HJR 45, presented the proposed resolution. He explained that [HJR 45] was an outgrowth of legislation regarding the interim election of U.S. Senators. He referred to [a multiple page handout entitled, "Legislative Research Report," included in the committee packet]. Page 35 of the report is about Relevant Constitutional Provisions, and [the first paragraph at the top of the second column] read as follows [original punctuation provided, with some change in formatting]:

When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: Provided, that the legislature of any State may empower the executive thereof to make

temporary appointments until the people fill the vacancies by election as the legislature may direct.

REPRESENTATIVE GRUENBERG stated that there is no similar language with respect to the [U.S.] House of Representatives, thus, there is no way that a vacancy in the U.S. House of Representatives can occur until a special election is held. This means that there are usually months that go by without the congressional district having any representation on the floor of the House. Representative Gruenberg noted that this happened in Alaska. He said the average time that elapses between the date of vacancy and the date of election is 96 days. Since 1977, there have been 105 vacancies in the House. He noted that these statistics are listed in Table 1, which is part of the report. He said U.S. Congress has never proposed a constitutional amendment to address this issue.

Number 1882

REPRESENTATIVE HOLM asked if the reason for that might be because Alaska is probably the only state with only one U.S. House Representative.

REPRESENTATIVE GRUENBERG recalled states that have only one U.S. House Representative: Wyoming, Vermont, Alaska, North Dakota, South Dakota, Montana, Delaware, and New Hampshire.

Number 1937

REPRESENTATIVE GRUENBERG directed attention to page 22 of the report [at the top of the right-hand column], which read as follows: "The democratic character of the House is also found in the fact that the people have elected every member of the House, while many Senators have been appointed." He stated that the people have a right to be represented. He said, "There have been a number of constitutional amendments proposed, but they're only if there are lots of vacancies in the House that those trigger, and that shouldn't be the case."

REPRESENTATIVE GRUENBERG turned to page 2, lines 19-21 and said the language asks to have [copies of the resolution] sent to all members of the U.S. Congress, as well as to the presiding officers of all the state legislatures. He said he hopes the people involved in National Conference of State Legislatures (NCSL) and Council of State Government Western Legislative Conference would "take this back," because he said he thinks it's quite important.

Number 2061

CHAIR WEYHRAUCH [moved to adopt] Amendment 1 as follows:

On page 1, line 13:
Delete "a small state"
Insert "some states"

Number 2110

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

On page 1, line 15:
Delete "small"
Insert "some"

CHAIR WEYHRAUCH said, "Let me back up for the record. [Hearing] no objection, Amendment 1 is adopted."

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

Number 2138

CHAIR WEYHRAUCH [moved to adopt] Amendment 3 as follows:

On page 2, line 2:

Between "for" and "states"
Delete "small"
Insert "those"

Between "states" and ";and"
Insert "with a small delegation in the U.S. House of Representatives"

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

Number 2169

CHAIR WEYHRAUCH [moved to adopt] Amendment 4 as follows:

On page 2, line 5:
Between "even in" and ";and"
Delete "medium-sized and larger states"

Insert "states with medium or large delegations in the U.S. House of Representatives"

CHAIR WEYHRAUCH announced that, there being no objection, Amendment 4 was adopted.

Number 2209

CHAIR WEYHRAUCH [moved to adopt] Amendment 5 as follows:

On page 2, line 15:
Delete "congressional"

Between "vacancies" and "are filled"
Insert "in the U.S. House of Representatives"

CHAIR WEYHRAUCH announced that, there being no objection, Amendment 5 was adopted.

Number 2227

CHAIR WEYHRAUCH [moved to adopt] Amendment 6 as follows:

On page 2, line 16:
Between "sent" and "to"
Insert "electronically"

Number 2265

REPRESENTATIVE LYNN noted that just using the phrase "shall be sent" does not state how it could be sent; therefore, it would not exclude any method.

CHAIR WEYHRAUCH announced, "Without objection, Amendment [6] is adopted."

REPRESENTATIVE GRUENBERG asked if Representative Lynn's comment was an objection to [Amendment 6].

REPRESENTATIVE LYNN answered, "Only for the sake of discussion."

CHAIR WEYHRAUCH remarked, "I think what your intent here is to get it out there so they get it, whether it's electronically or whatever (indisc. - overlapping voices)."

REPRESENTATIVE HOLM said he had heard from Congressman Don Young that paper mail has been slow due to the Anthrax scare and for other security reasons, whereas e-mail is fast.

Number 2295

REPRESENTATIVE LYNN removed his objection.

[Amendment 6 was treated as adopted.]

Number 2300

CHAIR WEYHRAUCH [moved to adopt] Amendment 7 as follows:

On page 2, line 21:
Between "legislatures" and "of all other states."
Insert "and to the executives"

REPRESENTATIVE GRUENBERG suggested the word should be "governors", rather than "executives".

CHAIR WEYHRAUCH concurred. He clarified that Amendment [7] would read:

officers of all houses in the state legislatures and
to the governors of all other states.

CHAIR WEYHRAUCH announced that, [hearing] no objection, Amendment [7] was adopted.

Number 2324

REPRESENTATIVE BERKOWITZ said that the basic premise of [HJR 45] is that congressmen will be appointed, and he stated that he has a "basic disagreement with that notion." He said those in the U.S. House of Representatives have to be elected, and that's the body that's closest to the people. He stated that the people should make the selection, even in the event of a vacancy.

TAPE 04-64, SIDE B

Number 2330

REPRESENTATIVE BERKOWITZ said, "To the extent that we are moving in the direction of allowing people to vote for their legislators, their senators, and their congressmen, this seemed to retreat from that direction."

Number 2320

REPRESENTATIVE GRUENBERG noted that, initially, the U.S. Constitution was consistent for both U.S. House Representatives and U.S. Senators. He observed that, back in the days when the country was much smaller, state legislators could convene to address the issue of a vacant seat, so there was no need for an interim appointment in either body. He stated, "It wasn't until the Seventeenth Amendment was passed in 1912 - and they took the concept of elections by the state legislators and turned it into a popular election for U.S. Senators - that the issue arose." He speculated as follows:

I think, probably, the theory was that, back in those days when the country was much smaller and the states were smaller, they could convene the state legislators to call a special session or deal with it at that point. And so, there was no question of any need for an interim appointment in either body. But once they looked at the issue again in 1912 and made the election of senators by popular vote, they felt that they then had to have a mechanism - or at least the state should be permitted to have a mechanism - for temporary appointments, because it takes a certain amount of time to have a special election. And they cured the problem with respect to the Senate, at that time; they didn't do it, with respect to the House.

REPRESENTATIVE GRUENBERG indicated that he didn't know the reason for that, but he stated that the real question is whether it's good public policy to allow the state to make that decision. He clarified that the proposed legislation would not make it mandatory for a state to have a temporary appointment mechanism, but it would allow state legislatures to make that determination. He stated that the issue is representation.

Number 2188

REPRESENTATIVE BERKOWITZ opined that the issue is regarding the difference between appointing and electing legislators. He stated, "And I don't think we should ever be in the business of appointing people when an election would suffice." He mentioned that there is currently proposed legislation that supports the move toward elections over appointments. He stated, "The majority of people in our caucus, Representative Gruenberg, believe that election is the preferred course."

REPRESENTATIVE GRUENBERG responded, "That may be the case, and I added a provision to keep a temporary appointment in for the same reason. I may be a minority in my own caucus here, but I think I'm of the majority of the folks in the state."

Number 2140

REPRESENTATIVE GRUENBERG moved to adopt Amendment 8, which read as follows [original punctuation provided]:

Page 2, line 6: Insert new language:

WHEREAS having a method of quickly filling vacancies in the United States House of Representatives would be beneficial to the nation in the event of a large number of vacancies due to the occurrence of a disaster or terrorist attack; and

CHAIR WEYHRAUCH objected.

REPRESENTATIVE GRUENBERG noted that the U.S. Congress has been focusing recently on the issue of dealing with disaster or terrorist attack; however, the issue was not conceived of when the resolution was being drafted.

CHAIR WEYHRAUCH suggested deleting "due to the occurrence of a disaster or terrorist attack".

REPRESENTATIVE GRUENBERG asked what other reason might there be for a large number of vacancies.

CHAIR WEYHRAUCH explained that he was raised under the philosophy that thinking makes it so.

REPRESENTATIVE GRUENBERG responded that he doesn't think putting the language in the amendment will determine whether a terrorist attack will occur.

CHAIR WEYHRAUCH said he thinks "we're going to stop that before it happens," and the committee knows that the purpose of the amendment is "in case something happens." He explained that he just didn't want to put the specific language in the amendment.

Number 2075

REPRESENTATIVE BERKOWITZ directed attention to page 9 of the previously cited report. He continued as follows:

There's mention of several proposal[s] in the House and in the Senate of the U.S. that talk about proposed solutions to the House vacancy problem. This resolution doesn't point to any one of them in particular, and that, to me, is a fatal flaw. If we're encouraging them to do something for the reasons that are specified here, it's got the same fate of any resolution that arrives on our desk. We appreciate the input, but unless there's something substantive or compelling about it, it's just going to be tossed. ... This is too general; it's not specific enough. And the resolutions that are mentioned there talk about the incapacity of substantial portions of Congress and the need to fill ... those vacancies for national emergency purposes. So, it's not the thrust of this resolution.

REPRESENTATIVE GRUENBERG responded that obviously Congress has taken the position that Representative Berkowitz has, that there shouldn't be an interim appointment. He said it seems to him that most people in the country would not want there to be a vacancy in their delegation for any period of time. He said, "And maybe this is going to be a spark that ignites some people to start talking about this issue here in this country."

Number 1989

CHAIR WEYHRAUCH withdrew his objection to Amendment 8. He asked if there was any further objection. There being none, Amendment 8 was adopted.

Number 1962

REPRESENTATIVE GRUENBERG moved to report HJR 45, [as amended], out of committee with individual recommendations [and the accompanying fiscal note].

REPRESENTATIVE BERKOWITZ objected.

Number 1950

A roll call vote was taken. Representatives Gruenberg, Holm, Seaton, and Lynn voted in favor of HJR 45, as amended. Representatives Coghill, Berkowitz, and Weyhrauch voted against it. Therefore, CSHJR 45(STA) was reported out of the House State Affairs Standing Committee by a vote of 4-3.

HB 411-PF DIVIDEND APPLICATION RECORDS PRIVATE

Number 1940

CHAIR WEYHRAUCH announced that the last order of business was HOUSE BILL NO. 411, "An Act relating to an optional election to prevent the name and address of a permanent fund dividend applicant from being disclosed, except to a state or federal agency."

Number 1932

REPRESENTATIVE HOLM moved to adopt the committee substitute (CS) for HB 411, Version 23-LS1568\D, as a work draft.

CHAIR WEYHRAUCH objected for discussion purposes.

Number 1881

REPRESENTATIVE ERIC CROFT, Alaska State Legislature, as sponsor of HB 411, noted that there is another committee substitute, Version 23-LS1596\H, Cook, 4/15/04, which was labeled "CS FOR SENATE BILL NO. 284()", but is in the committee packets with "SENATE" crossed out and changed to "HOUSE" and "284" crossed out and changed to "411". He explained that [Version H] proposes putting the permanent fund dividend (PFD) applicants' names on the web site, but not the applicants' addresses. He explained that there are two approaches to the legislation: a check box method or the approach that includes names, but not addresses.

Number 1794

REPRESENTATIVE BERKOWITZ said the legislation which will most protect people's privacy is the preferred course to follow. He said choosing to receive a PFD shouldn't require that private information be disclosed. He indicated that the version offered in the other body is somewhat preferable.

REPRESENTATIVE CROFT noted that [Version H] addresses the concern stated by Representative Coghill [at a prior hearing on HB 411] regarding opting in and opting out. He explained that [Version H] would "opt everyone out for the address," so people wouldn't have to look for and check a box to prevent their addresses from being listed.

Number 1746

REPRESENTATIVE GRUENBERG stated his preference for [Version D], but he suggested that the committee "walk through the differences" to consider using language from [Version H].

Number 1720

REPRESENTATIVE GRUENBERG [moved to adopt] Amendment 1, to replace line 12, on page 1 of Version D, with line 9, on page 1 of Version H. [Page 1, line 12 read as follows:]

(1) to a state or federal agency;

[Page 1, line 9 read as follows:]

(1) to a local, state, or federal government agency;

CHAIR WEYHRAUCH explained, "We have a CS before us for discussion purposes, and there's an objection, and the sponsor has provided a Senate bill, which he's proposing to just supplant the existing House bill before us. Is it your -- you sort of have to have a policy matter here to work off the bill that's before us, or withdraw the motion on that and work off the proposed CS."

Number 1689

REPRESENTATIVE GRUENBERG withdrew his motion.

Number 1679

REPRESENTATIVE SEATON said it seems that it's a much less complicated system to restrict the address information; therefore, he stated that he supports the Senate version.

Number 1948

CHAIR WEYHRAUCH asked if there was any objection to "moving the CS for HB 411" [Version 23-LS1596\H, Cook, 4/15/04, which was labeled "CS FOR SENATE BILL NO. 284() as a work draft].

CHAIR WEYHRAUCH noted that Representative Gruenberg had stated an objection.

Number 1636

REPRESENTATIVE GRUENBERG noted that, in [Version D], both the names and addresses are confidential. He stated that he thinks the names should be confidential.

REPRESENTATIVE HOLM said he disagrees. He said one of the reasons that the names are so important is so that those who live in Alaska can make accusations against those who commit fraud against the system. He referred to [the letter in the committee packet from a woman whose ability to keep her identity private is a matter of life and death] and surmised that people in that sort of situation would generally have changed their names, and he said that he hoped the person who was trying to track them down wouldn't have any way to make a connection.

REPRESENTATIVE GRUENBERG, regarding the name change, stated that [an adult] who changes his/her name "has to publish." A different rule applies to changing the name of a minor; the other parent must be notified.

REPRESENTATIVE HOLM suggested that legislation may need to be enacted, possibly to give people the option of "some type of review under domestic abuse."

Number 1512

CHAIR WEYHRAUCH offered the following consideration:

In my experience as a law clerk, the court took a petition for name change in camera and protected the person who was subjected to potential murder, and had it within their jurisdiction to deal with that without (indisc. -- vocal level dropped).

REPRESENTATIVE HOLM stated, "Were I to face murder or the murder of my children, I can assure you, to perjure myself would not be a problem. And I don't think anyone would argue with it."

CHAIR WEYHRAUCH stated his preference is for [Version H from the Senate]. However, he said he has a philosophical problem, because [the PFD] is the public's resource and he thinks that if people want to claim money, then other people ought to know who is doing the claiming. He surmised that since it's the people's fund, it's fine to let the people review and debate the issue.

Number 1449

REPRESENTATIVE GRUENBERG removed his objection [to adopting the committee substitute (CS) for HB 422, Version 23-LS1596\H, Cook, 4/15/04, which was labeled "CS FOR SENATE BILL NO. 284()" as a work draft]. There being no further objection, Version H was before the committee.

Number 1445

CHAIR WEYHRAUCH [moved to adopt Amendment 1 to Version H] as follows:

On page 1, line 10:
Between "court order" and ";"
Insert "including a rit of execution"

REPRESENTATIVE HOLM objected.

CHAIR WEYHRAUCH explained that, in a situation where someone owes a person money, a writ of execution is required by the Permanent Fund Dividend Division, in order to lay claim on the debtor's PFD to pay off the debt.

REPRESENTATIVE CROFT noted for the record that Ms. Barton, from the Permanent Fund Dividend Division, nodded her head in concurrence.

Number 1350

CHAIR WEYHRAUCH [announced that no objection was stated; therefore, Amendment 1 to Version H was adopted.]

Number 1329

CHAIR WEYHRAUCH moved to adopt HB 411 for discussion purposes and "replace all of HB 411 with this work draft 23-LS1596\H [which was labeled "CS FOR SENATE BILL NO. 284()"] and insert that in lieu of the original HB 411. Is there objection to that?"

REPRESENTATIVE GRUENBERG asked if that would be Amendment 2.

CHAIR WEYHRAUCH announced, "I'm going to back up now." He noted that Representative Holm had withdrawn his motion. He asked Representative Seaton to move [to adopt] Version D again.

Number 1313

REPRESENTATIVE SEATON moved [to adopt the committee substitute (CS)] for HB 411, Version 23-LS1568\D, [as a work draft].

CHAIR WEYHRAUCH announced that there is no objection; [therefore, Version D was before the committee].

Number 1265

CHAIR WEYHRAUCH moved "to replace Version D with the 23-LS1596\H, [which was labeled "CS FOR SENATE BILL NO. 284()"], which the sponsor gave us, and gut 411 and replace it." He asked if there was any objection.

REPRESENTATIVE HOLM noted that the title in both versions is considerably different, and asked what effect that would have.

CHAIR WEYHRAUCH offered his understanding that "we'll have to amend the 411, by replacing both the title and the (indisc. - microphone interference) of 411 with Version -- work draft H."

REPRESENTATIVE HOLM said, "And that's how it should be framed."

CHAIR WEYHRAUCH clarified that his motion was to replace all of Version D with Version H [which was labeled "CS FOR SENATE BILL NO. 284()"], including its title. He asked if there was any objection. There being no objection, it was so ordered.

Number 1250

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

On page 1, line 10:
Between "court order" and ";"
Insert "including a rit of execution"

[Amendment 2 was originally Amendment 1 to Version H.]

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

Number 1238

REPRESENTATIVE COGHILL directed attention to [page 1, line 13], which read as follows: "(4) as directed to do so by the applicant." He noted that that language was clearer in [Version D - the "House version"] and asked the sponsor, "Is that

something that would be instigated by the department or by the individual?"

REPRESENTATIVE CROFT replied that part of the goal of the Senate version was to eliminate the check box and "have a default." He said, "I think it would be by letter to the department, saying, 'You can release my information to whoever.'"

REPRESENTATIVE COGHILL suggested that "we're creating a bigger barrier and it needs to be just a cleaner way of doing it." He asked the sponsor to confirm that his intent is that [the release of confidential information] would have to be initiated by the applicant and not requested by the department.

REPRESENTATIVE CROFT answered yes.

REPRESENTATIVE COGHILL said he agrees with that. Notwithstanding that, he pointed out that there are lots of other sources in which to find out confidential information about a person, [such as their name and address].

Number 1133

REPRESENTATIVE SEATON offered an example, whereby a student might be applying for a student loan for college and needed the Permanent Fund Dividend Division to send some sort of verification, so the student would direct the division to release the information. He asked if that is what the intent of the language is [paragraph (4), on page 1, line 13].

REPRESENTATIVE CROFT answered yes. He added that he knew there would be many other examples that he and the committee may not think of ahead of time, and [paragraph (4)] would cover those possibilities by giving the individual the power to release his/her confidential information. Representative Croft suggested that [Version H] may strike the balance between a public resource and the protection of privacy that Chair Weyhrauch had previously indicated he was seeking.

REPRESENTATIVE SEATON asked Representative Croft to confirm that "as directed to do so by the applicant" meant for a specific purpose, not "broadly disseminated to anybody that requests from the department."

REPRESENTATIVE CROFT confirmed that was so.

Number 1048

REPRESENTATIVE GRUENBERG stated his preference for certain confidentiality language in the original [Version D, before it was subsumed by Version H].

Number 1006

REPRESENTATIVE GRUENBERG moved to adopt Amendment 3, to delete line 13 of the current Version D [which is language that was Version H], and replace it with the language with [the original Version D, which was] on page 1, line 14. [With the amendment, paragraph (4) would read: "as directed by the individual who made the confidentiality election."]

CHAIR WEYHRAUCH announced, "There's objection for that."

REPRESENTATIVE CROFT stated that [Amendment 3] would create a problem, because [paragraph (3)] "says who made the confidentiality election, and there was an election in the original version; you made an election to keep it confidential." He indicated that in the version before the committee, there is nobody who's made that election.

Number 0963

REPRESENTATIVE GRUENBERG withdrew Amendment 3.

Number 0957

REPRESENTATIVE GRUENBERG directed attention to language on page 1, line 11, which read "to the individual", and he suggested that should be changed to read "to an individual".

Number 0923

SHARON BARTON, Director, Central Office, Permanent Fund Dividend Division, Department of Revenue, stated that the [new Version D before the committee] would result in a zero fiscal note and would be fine, with one exception. She prefaced her explanation by saying that "as directed to do so by the applicant" may be sufficient, but she stated that the division believes that it will need the ability to give the confidential information to a banking institution if it is trying to correct a direct deposit error. She noted that every year, there are direct deposit errors, because an applicant has transposed a number or the division has keyed a number in incorrectly. In sorting that out with the bank, she explained, the division often needs a social

security number and address in order to get the precise account for deposit.

Number 0800

MS. BARTON suggested a possible amendment to add a paragraph that might read, "to a banking institution to correct direct deposit errors".

Number 0823

REPRESENTATIVE COGHILL said he wonders if the existing proposed language giving authority to the department to release confidential information to local, state, or federal government agencies, or "as directed to do so by the applicant" doesn't already "give you the authority to write that into your disclaimer."

MS. BARTON responded that that might be a possibility, but indicated that there is not much room left on the application form.

Number 0760

REPRESENTATIVE COGHILL, in response to a question from Chair Weyhrauch, said that he doesn't have an objection to Ms. Barton's suggestion for an amendment, but he just doesn't know if it is necessary to add more language to the bill.

CHAIR WEYHRAUCH asked Ms. Barton to clarify what the division needs.

MS. BARTON responded as follows:

Well, under "as directed to do so by the applicant", if we included a waiver ... within the direct deposit they give us, that we may have to do that, I think we would be covered legally in sharing it then. That's another option.

REPRESENTATIVE HOLM stated that the alternative to that is that "they don't get the dividend check." He indicated that the division and the applicant can work it out; therefore, he questioned why the language would be necessary in statute.

MS. BARTON explained that it would take one more step out of the process; the division wouldn't have to write to the applicant to

ask for a letter and then wait to get the letter back from the applicant before it can go to work with the bank to sort it out.

Number 0643

REPRESENTATIVE SEATON said he doesn't have a problem with having another line in the bill so that there is no need to add anything to the application itself.

REPRESENTATIVE GRUENBERG emphasized that, in the past, there have been directors [of the Permanent Fund Dividend Division] who have been difficult to work with. He indicated that he would support adding the necessary language if it would help.

Number 0548

CHAIR WEYHRAUCH indicated that Conceptual Amendment 4 would add a [paragraph (5)], "to a financial institution for the purpose of depositing the permanent fund" or "funds", or "check".

REPRESENTATIVE SEATON moved to adopt [Conceptual Amendment 4].

CHAIR WEYHRAUCH asked what the check would be called.

MS. BARTON replied that it is a dividend.

Number 0499

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

Number 0492

REPRESENTATIVE SEATON moved to report HB 411, as amended, [out of committee with individual recommendations and the accompanying fiscal notes].

CHAIR WEYHRAUCH closed public testimony. He clarified that the motion was to move Version D, as amended. There being no objection, CSHB 411(STA) was reported out of the House State Affairs Standing Committee.

ADJOURNMENT

Number 0428

There being no further business before the committee, the House State Affairs Standing Committee meeting was adjourned at 9:34 a.m.