

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

April 21, 2004

8:05 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. 523

"An Act relating to qualifications of voters, voter registration, voter residence, precinct boundary modification, recognized political parties, voters unaffiliated with political parties, early voting, absentee voting, ballot counting, voting by mail, initiative, referendum, recall, and definitions; and providing for an effective date."

- HEARD AND HELD

HOUSE BILL NO. 525

"An Act relating to complaints filed with, and investigations, hearings, and orders of, the State Commission for Human Rights; making conforming amendments; and providing for an effective date."

- HEARD AND HELD

HOUSE BILL NO. 541

"An Act relating to consideration by the legislature of the executive budget and other bills affecting appropriations; and providing for an effective date."

- HEARD AND HELD

**PREVIOUS COMMITTEE ACTION**

BILL: HB 523

SHORT TITLE:VOTERS/VOTING/POLITICAL PARTIES/ELECTIONS

SPONSOR(S): RLS BY REQUEST OF THE GOVERNOR

Jrn-Date	Jrn-Page		Action
02/26/04	2748	(H)	READ THE FIRST TIME - REFERRALS
02/26/04	2748	(H)	STA, JUD, FIN
02/26/04	2748	(H)	FN1: ZERO(LAW)
02/26/04	2748	(H)	FN2: (GOV)
02/26/04	2748	(H)	GOVERNOR'S TRANSMITTAL LETTER
04/08/04		(H)	STA AT 8:00 AM CAPITOL 102
04/08/04		(H)	Heard & Held MINUTE(STA)
04/13/04		(H)	STA AT 8:00 AM CAPITOL 102
04/13/04		(H)	Heard & Held MINUTE(STA)
04/21/04		(H)	STA AT 8:00 AM CAPITOL 102

BILL: HB 525

SHORT TITLE:HUMAN RIGHTS COMMISSION PROCEDURES

SPONSOR(S): RLS BY REQUEST OF THE GOVERNOR

Jrn-Date	Jrn-Page		Action
02/26/04	2757	(H)	READ THE FIRST TIME - REFERRALS
02/26/04	2757	(H)	STA, JUD
02/26/04	2757	(H)	FN1: ZERO(GOV)
02/26/04	2757	(H)	GOVERNOR'S TRANSMITTAL LETTER
02/26/04	2757	(H)	REFERRED TO STATE AFFAIRS
04/21/04		(H)	STA AT 8:00 AM CAPITOL 102

BILL: HB 541

SHORT TITLE:INCREASED APPROPRIATIONS REQUIRE OFFSET

SPONSOR(S): RLS BY REQUEST OF THE GOVERNOR

Jrn-Date	Jrn-Page		Action
03/24/04	3058	(H)	READ THE FIRST TIME - REFERRALS
03/24/04	3058	(H)	STA, W&M, FIN
03/24/04	3058	(H)	FN1: INDETERMINATE(GOV/ALL DEPTS)
03/24/04	3058	(H)	GOVERNOR'S TRANSMITTAL LETTER
03/24/04	3058	(H)	REFERRED TO STATE AFFAIRS
04/21/04		(H)	STA AT 8:00 AM CAPITOL 102

**WITNESS REGISTER**

LAURA GLAISER, Director  
Division of Elections  
Office of the Lieutenant Governor  
Juneau, Alaska  
POSITION STATEMENT: Answered questions regarding Version U of  
HB 523, on behalf of the division.

JIM SYKES, Election Specialist  
Green Party of Alaska  
Wasilla, Alaska  
POSITION STATEMENT: Offered testimony regarding proposed  
amendments to Version U of HB 523.

JOE SONNEMAN  
Juneau, Alaska  
POSITION STATEMENT: Testified on his own behalf during the  
hearing on HB 523.

DAVID W. MARQUEZ, Chief Assistant Attorney General  
Legislation & Regulations Section  
Office of the Attorney General  
Department of Law  
Juneau, Alaska  
POSITION STATEMENT: Presented HB 525 on behalf of the House  
Rules Committee, sponsor by request of the governor.

LISA FITZPATRICK, Chair  
Alaska Human Rights Commission  
Anchorage, Alaska  
POSITION STATEMENT: Testified during the hearing on HB 525.

CHERYL FRASCA, Director  
Office of the Director  
Office of Management & Budget (OMB)  
Office of the Governor  
Juneau, Alaska  
POSITION STATEMENT: Presented a summary of HB 541 on behalf of  
OMB.

**ACTION NARRATIVE**

**TAPE 04-65, SIDE A**  
Number 0001

**CHAIR BRUCE WEYHRAUCH** called the House State Affairs Standing  
Committee meeting to order at 8:05 a.m. Representatives Holm,

Seaton, Gruenberg, and Weyhrauch were present at the call to order. Representatives Coghill and Lynn arrived as the meeting was in progress.

HB 523-VOTERS/VOTING/POLITICAL PARTIES/ELECTIONS

Number 0088

CHAIR WEYHRAUCH announced that the first order of business was HOUSE BILL NO. 523, "An Act relating to qualifications of voters, voter registration, voter residence, precinct boundary modification, recognized political parties, voters unaffiliated with political parties, early voting, absentee voting, ballot counting, voting by mail, initiative, referendum, recall, and definitions; and providing for an effective date."

Number 0102

CHAIR WEYHRAUCH moved to adopt the committee substitute (CS) for HB 523, Version 23-GH2021\U, Kurtz, 4/19/04, as a work draft.

REPRESENTATIVE HOLM objected for discussion purposes.

Number 0148

LAURA GLAISER, Director, Division of Elections, Office of the Lieutenant Governor, informed the committee that when talking with the division's regional supervisors, they suggested the best way to notify a voter is in writing. She noted that it is possible that some papers in general circulation may not reach certain people; therefore, perhaps the best way to reach people would be to require the division do so in writing.

CHAIR WEYHRAUCH turned attention to Section 4 of Version U, on page4, [lines 15-16], which read as follows:

(1) whenever possible, sending written notice of the change to each affected registered voter in the precinct;

CHAIR WEYHRAUCH asked if it wouldn't always be possible to send written notice.

MS. GLAISER answered yes. She said a voter gets written notice, because the division sends that voter a new voter card when it changes the precinct boundary or polling place location.

CHAIR WEYHRAUCH asked if it is necessary to use the phrase "whenever possible". He asked, "Isn't it always possible?"

MS. GLAISER answered yes.

Number 0340

REPRESENTATIVE SEATON suggested there may not be sufficient length of time in which to get out a notice regarding moving a polling place.

MS. GLAISER explained that a lasting change means written notice to the voter, whereas as much notice as possible is given in the case of emergency polling place changes, for example.

Number 0381

REPRESENTATIVE GRUENBERG explained that the "whenever possible" language was added for the reason that Representative Seaton had just suggested. In response to remarks from Chair Weyhrauch, he emphasized that the only changes in Version U are from the adopted amendments that were incorporated into it.

Number 0458

REPRESENTATIVE SEATON moved to adopt Amendment 1, labeled 23-GH2021\U.11, Kurtz, 4/20/04, which read as follows:

Page 18, lines 21 - 27:

Delete all material and insert:

"(3) meets the definition of a political party in AS 15.60.010."

Page 18, line 29, following the second use of "party":

Insert "meets the definition of a political party in AS 15.60.010."

Page 18, line 30, through page 19, line 4:

Delete all material.

Page 19, line 7:

Delete "(b)(2)"

Insert "(b)"

Page 19, lines 11 - 26:

Delete all material and insert:

"(d) Within 10 days after a verification under (c) of this section, the director shall provide to a political group seeking recognized political party status under (a) of this section written notification when the political group has obtained recognized political party status.

(e) The director may not withdraw recognized political party status from a political group that no longer meets the definition of political party except following the verification immediately after a general election at which a governor was elected. The director shall provide written notification to the political party of the withdrawal of recognized political party status."

Number 0462

CHAIR WEYHRAUCH objected for discussion purposes.

Number 0500

REPRESENTATIVE SEATON explained that Sections 41 and 42 were incongruous. [Amendment 1] would ensure those two sections are compatible.

CHAIR WEYHRAUCH noted that the first three changes proposed in Amendment 1 address the political party issue. The next change proposed by Amendment 1, on page 19, line 7, is a conforming part of the amendment. He asked if the proposed change to page 19, lines 11-26, was suggested by Legislative Legal and Research Services.

REPRESENTATIVE SEATON answered yes and pointed to a memorandum from Kathryn Kurtz, Legislative Counsel, Legislative Legal and Research Services, [included in the committee packet], which describes the differences between Sections 41 and 42.

MS. GLAISER directed attention to page 1, line 21 of Amendment 1, [as numbered on the amendment], and suggested that political party status cannot be withdrawn from a political group, because a group was never a political party; therefore, it should be changed to "political party that no longer meets the definition of political party".

Number 0745

REPRESENTATIVE GRUENBERG suggested a conceptual amendment to Amendment 1, to authorize Legislative Legal and Research Services to do what's necessary to make a technical correction in subsection (e).

REPRESENTATIVE SEATON indicated that he thinks if political party status is withdrawn, what is left is a political group. He said he doesn't know if there is a definition for political group.

MS. GLAISER explained that the party status is withdrawn from a group. She reminded the committee that she is not an [attorney].

Number 0832

REPRESENTATIVE COGHILL recommended turning over the drafting to Legislative Legal and Research Services, but not before the committee hammers out the meaning.

CHAIR WEYHRAUCH said the current language of subsection (e) does seem convoluted.

MS. GLAISER explained:

We were trying to say that if you're a party - if you qualified to be a party by this date - you remain a party until after the verification of the votes at the end of the election. So, that's why I'm talking in terms of party and not group ....

REPRESENTATIVE COGHILL offered his understanding that the status could not be changed until "the verification of numbers." He asked Ms. Glaiser to give a hypothetical example for clarification.

MS. GLAISER offered the following:

Say, for instance, ... the Republican party qualified as a party, I think, by June 1 of an election year - they ... hadn't nominated a candidate who gained 3 percent, but they had 3 percent of the voters. That's the verification numbers we're talking about. ... All this section says is, "You are a party."

We ... look at the party numbers monthly. If, say, in July, the Republican party went under 3 percent - you

know, the voters became undeclared, nonpartisan, changed their voter registration, and the numbers dropped below 3 percent - this is saying ... they are still a recognized political party until after the elections are certified, after the November general election. ... Because in the current law right now, there's no provision for that, but we have candidates filing, and they expect to be part of a party. If the party lost status, what does that do to the candidate, to the voter? So, that was what our attempt was in putting this language into law.

Number 1211

REPRESENTATIVE SEATON observed that political party status would not be withdrawn, except following the verification immediately following the general election at which the governor was elected, thus the political party would have status through the next gubernatorial election. He gave some examples and explained that the intent of this language is to get rid of skullduggery to get rid of the worry that people will play with party status. He explained that Ms. Kurtz noted that there was a conflict between "what we were saying before and what we ... had in Section 42."

Number 1115

REPRESENTATIVE COGHILL stated his understanding that the verification would really be after the general election, even [the division] is still required to verify monthly. He asked, "If the real verification is after the general election, do we need to have that other mechanism?"

MS. GLAISER responded that the new language added by the committee may provide that "you get locked in with your gubernatorial candidate." She said that if that's the case, then what Representative Coghill says is true. She mentioned the way the law is written and said [the division] was going to follow the normal policy, which was that "you had the 3 percent with your candidate or you had the numbers." She explained that the verification isn't a timely process; it's an ongoing process of looking at numbers.

REPRESENTATIVE SEATON explained that there are two ways to qualify as a political party. One is to get 3 percent at an election, and the other is in regard to how many people are registered in the party. He added, "And this isn't meant to

knock out one way of qualifying or another." He explained as follows:

The part about the gubernatorial election is based on if you got 3 percent of the vote at the previous gubernatorial election, then you're a party through the next gubernatorial election. The verification of the number of voters is for a party that didn't have somebody get 3 percent but ... has the requisite number of voters that ... have registered. So, there's two different ways, and what this is doing is saying that if you got 3 percent of the vote in the gubernatorial election, you're qualified through the next gubernatorial election. The other process is the number of voters who have actually signed up a voter card and have specified whatever political party.

Number 1283

REPRESENTATIVE COGHILL explained that his confusion had been that he didn't want two standards that would be working against each other, but he said he thinks Representative Seaton clarified that issue.

REPRESENTATIVE SEATON replied that that had been his problem with the last amendment that the committee had made (in a prior hearing), because the committee had not seen that there was a conflict between Section 41 and Section 42.

Number 1325

REPRESENTATIVE GRUENBERG read subsection (e) in Amendment 1. He remarked that Ms. Kurtz was suggesting that the language [on line 22 as numbered on Amendment 1] be changed from "group" to "party", then it ought to also be changed [on page 2, line 1, as numbered in Amendment 1], in order to be consistent.

MS. GLAISER responded that that is what had thrown her. She stated, "You can only withdraw political party status from a political party." She deferred to legal counsel [of Legislative Legal and Research Services] for further comment. She added, "I know how to administer it and I know who we're supposed to verify." In response to a request for clarification from Chair Weyhrauch, she said she knows who [the division] sends the letters to; it's to the party. She said, "It's legally correct to refer to them as a group because they've lost the status."

REPRESENTATIVE COGHILL said, "We know if they've lost their status, they're technically a group, but they've applied to be a party."

REPRESENTATIVE GRUENBERG asked if [Ms. Glaiser] wants the entity to be a party until notified, or to be a group as soon as it doesn't meet its criteria, whether it has been notified or not.

MS. GLAISER said she thinks the parties want to be a party until they are told they are not. She indicated that there has been some confusion as to how to administer situations in which the party has lost status "by straight numbers." She said she thinks it's fair that a party remains a party until it is told it's not.

Number 1500

REPRESENTATIVE GRUENBERG moved to adopt a conceptual amendment to Amendment 1, to change the word "group" to "party" on page 1, line 22 [as numbered on Amendment 1]. He offered his understanding that "they won't be a party until you notify them."

MS. GLAISER clarified, "They will be a party until they're told they're not a party." She said [the division] wants to protect the party status through the election cycle.

Number 1578

CHAIR WEYHRAUCH said he thinks the committee will adopt Amendment 1, "with the caveat that we need to talk with Ms. Kurtz and the director, and then look at this language when it comes back for the next committee meeting."

CHAIR WEYHRAUCH said, "I had an objection to that amendment; I'm going to withdraw the objection."

[The committee treated Amendment 1 as adopted.]

Number 1590

REPRESENTATIVE GRUENBERG brought attention to Amendment 2, labeled 23-GH2021\U.9, Kurtz, 4/20/04, which read as follows:

Page 18, line 26:  
Delete "three"  
Insert "one"

Page 19, line 2:  
Delete "three"  
Insert "one"

Page 20, line 11:  
Delete "three"  
Insert "one [THREE]"

Number 1607

CHAIR WEYHRAUCH asked Representative Gruenberg to move Amendment 2.

REPRESENTATIVE GRUENBERG said, "I will."

CHAIR WEYHRAUCH said, "And I object."

REPRESENTATIVE GRUENBERG indicated that, because of Amendment 1, the part of Amendment 2 addressing page 18, line 26, and page 19, line 2, is no longer necessary; therefore, he said that part of Amendment 2 should be deleted.

CHAIR WEYHRAUCH announced that the amendment to Amendment 2 was adopted without objection.

Number 1700

REPRESENTATIVE GRUENBERG explained that the remaining part of Amendment 2 would eliminate the 3-percent requirement and changes it to 1 percent, which would allow a group to achieve party status if they have registered voters in the state equal in number to at least 1 percent of the total votes cast per governor at the proceeding general election at which the governor was elected. He directed attention to a letter from Mr. Sykes, which lists several states, none of which have as high as a 3-percent requirement. He mentioned they have alternative methods of reaching ballot status. He concluded, "This is just a very, very difficult hurdle for the Green party to overcome."

Number 1778

JIM SYKES, Election Specialist, Green Party of Alaska, told the committee that he has been dealing with these election issues for approximately 15 years. In regard to Amendment 2 [as amended], he stated that it is well recognized that it is many

times more difficult to register people to a political party than it is to attract people to a candidate at the polls. He offered his belief that there are presently only five states that have requirements that speak to both a ballot test, where a certain number of votes are required, and a registration test, where there has to be a certain number of people registered to a particular political party. He said, "In no case is the registration test anywhere near the level of the ballot test, except in Alaska." He offered examples from the previously mentioned handout.

MR. SYKES said it's not just the Green party that is concerned with this issue; the Libertarian party actually gained ballot status in 1982 and retained that status for three general elections. He added that he doesn't think anybody was particularly hurt by the fact that Libertarians had access to the ballot during that time. He continued as follows:

In this particular election, they lost ballot status temporarily; they had to register a few more voters, because they were right on that percentage. And I think that if you take a look at what is required statistically to show that you're registering people through a given political party, 1 percent is a much more reasonable standard.

The other thing that I would add is that the Greens had as high as 12.5-percent vote in a statewide race, even though we've never had more than 1 percent of the voters in the party. And I think that we can point to past elections and show that, as a small party, we're perhaps one of the most active in the past 15 years. So, I would encourage you to consider this amendment and to support it.

... The other thing I would mention, since you've just been discussing it, is that on pages 19 and 20, Section 43, I think that the intent of what you're doing here is to provide political party recognition for 4 years, if somebody gets 3 percent in a statewide race. And it does occur to me that ... historically we've done this for four years, and I think it's due to our litigation this past year that recognizes that a statewide race is a statewide race. I think it would be simpler for the Division of Elections and for political parties to be able to have ballot status for four years, regardless of when they obtain it. I can

see somebody saying ..., "We had a candidate at 3 percent in a U.S. House race in a non-governor year. Why is that less valuable than getting 3 percent in the same U.S. House of Representatives race in a governor's year?" And so, I think that, both for consistency and treating everything equally, ... just saying, "To get 3 percent, you got four years from the time that the election is certified that you get 3 percent, until two general elections hence." And that's the change that I would recommend that you make, in terms of what you were talking about on political parties.

In terms of political groups: If somebody loses their ballot status, I think it's reasonable to give them a fairly lengthy period of time to meet the requirements again. If you've got several thousand people that have taken the time to register as a political party, no matter what it is, I don't think that they should have to reregister ... after they've lost their status, if it's a temporary thing - even if it's, say, four years. So, they might be a political group for four years before they regain full ballot recognition, but I don't think that hurts anybody to let the Division of Elections continue to track them, so long as they apply, as is now the law.

MR. SYKES noted that the trend across the nation, both in legislation and in legal interpretation in the court, is to make ballot access more accessible, not less accessible. He stated that he thinks HB 523 "takes a good step in that direction."

Number 1993

REPRESENTATIVE GRUENBERG revealed that during his own race he almost lost the election to a candidate in the Green party; therefore, he said he has somewhat of a conflict on this issue. Notwithstanding that, he said he would not ask to be excused from voting, because, "If it's good policy, it should be good policy, even if it's not good for me personally."

[Chair Weyhrauch turned over the gavel to Vice-Chair Holm.]

Number 2045

REPRESENTATIVE COGHILL said he wants to know the history behind the 3-percent requirement. He offered his understanding that it used to be 10 percent.

Number 2071

REPRESENTATIVE SYKES confirmed that the requirement used to be 10 percent, but was challenged by the Alaska Independent party. He said, "There was no way to reach party registration tests. If I recall correctly, I believe it was 1996 that the legislature brought that rule into effect." He said he doesn't know why the 3-percent level was chosen, but [the Green party] did not support it. He surmised that there was an impetus to provide another avenue to ballot access, but there probably wasn't a lot of discussion about what a number should be."

Number 2120

VICE-CHAIR HOLM mentioned the [most recent] governor's race in California. He said, "I don't think any of us know what the right percentage ought to be to make it reasonable for the choices at the ballot box for the electorate."

REPRESENTATIVE SYKES said he thinks the legal standard that is found in most elections cases of this nature is called, "a modicum of support." Many legislatures have defined this in different ways. He said he thinks a reasonable ballot test and registration test can be established. He noted that, currently, there is a fairly large wave across the country where people are registering away from political parties rather than to political parties. He said, "All we're asking is that this reality be recognized." He concluded, "It's clear that a modicum of support at the registration should be much lower than a ballot test, and that's what I was trying to get across."

REPRESENTATIVE GRUENBERG suggested that the committee table Amendment 2 [as amended], so that Representative Coghill could research the issue.

Number 2199

REPRESENTATIVE COGHILL said one of the things that he will try to reconcile is in regard to petition requirements against the modicum of support issue.

Number 2233

REPRESENTATIVE GRUENBERG offered to withdraw Amendment 2 [as amended].

VICE-CHAIR HOLM suggested Amendment 2 [as amended] just be set aside.

Number 2273

REPRESENTATIVE GRUENBERG indicated that Joe Sonneman would speak to Amendment 3, which read as follows [original punctuation provided]:

Page 1, line 5, following "**absentee voting**,":

Insert "**ballot design**,"

Page 4, following line 29:

Insert new bill section to read:

**\*Sec.** AS 15.15.030(6) is repealed and reenacted to read:

(6) The order in which candidates for each office are placed on the general election ballot shall be randomly determined by the director for the lowest-numbered precinct in which candidates are running. The order of placement shall be rotated for each successively numbered precinct. Absentee ballots in each house shall be printed as though they were the highest-numbered precinct in the house district.

Renumber the following paragraphs accordingly.

Page 21, line 13:

Delete "secs. 18-40"

Insert "secs. 19-41"

Number 2297

JOE SONNEMAN, testifying on his own behalf, told the committee that he is a long-time Juneau resident and studied political science in college and earned a Ph.D. in government. He said he is aware of some of the history of what is called, "name order effect." Mr. Sonneman summarized his written testimony. He

offered a glimpse of political science history and the use of statistics, and explained that, [before rotating ballots], candidates would change their names to be at the top of an alphabetical listing.

MR. SONNEMAN

**TAPE 04-65, SIDE B**

Number 2347

MR. SONNEMAN described a new random system developed by the Division of Elections in about 1995 [as described in Mr. Sonneman's letter]. He related that there was some confusion, because voters would show up at the voting place with a copy of the voting order as published in the newspaper, and they would find a different order at the polling place. Mr. Sonneman said that at that time he tried to get the division to stick with the ballot rotation system, even though it may cost a little bit more, because "it had served Alaska so well for so long." The division declined, and Mr. Sonneman brought the case to superior court, where the court ruled in summary judgment for the State [of Alaska]. On an appeal, the Alaska Supreme Court upheld that ruling by a 3-2 vote. Mr. Sonneman indicated that "the dissenters" agreed that the cost savings [of the random system] was not that much, the importance of elections was substantial, and there was a material factual issue regarding whether there really was a name order effect that the state had not provided any evidence to contradict.

MR. SONNEMAN stated that many studies show that name order effect is as high as 6 percent and his concern is that many elections in Alaska are decided by narrower votes. He stated, "When the ballot order is decided by means of a lottery, you could potentially have candidates ... achieving office by means of a lottery, rather than by means of an election."

Number 2192

MR. SONNEMAN offered his understanding that Representative Gruenberg's [Amendment 3] would adopt a middle road between full-blown ballot rotation, where each letter [of the alphabet] gets a different ballot, and the lottery method. [Amendment 3] proposes a lottery by precinct, instead of by House district. He said this method would result in a more random effect than the current method and would probably prevent manipulation and limit or eliminate most of the "lottery effect." It would

probably cost a little more, but not as much as full-blown ballot rotation. In terms of cost, Mr. Sonneman queried, "If this was something that Alaska could afford when the state budget was \$150 million or less ... why can't we afford it now when it's \$2 billion or so?"

MR. SONNEMAN concluded as follows:

So, I think the principle is you really want fair elections. What is fair is to have an election rather than a lottery, and Representative Gruenberg's [amendment] is a middle road that will probably get you most of the way there. I personally still have the preference for the ballot rotation system we used for 70 years.

Number 2107

MR. SONNEMAN, in response to a question from Representative Lynn, he indicated that the results of the study regarding the 6-percent name order effect were found in Ohio. He said he thinks Alaska may have a higher name order effect. He explained that the name order effect is less where parties are important, and in Alaska, parties are not as important.

REPRESENTATIVE LYNN said described the randomness of where a person will be on the ballot as a form of legalized gambling. He asked for clarification regarding "rotating between the precincts."

REPRESENTATIVE GRUENBERG suggested that Amendment 3 should be offered. He noted that there is a typographical error that he wanted to correct before offering Amendment 3. In the last sentence of Amendment 3, the word "district" needs to be added after the word "house".

REPRESENTATIVE GRUENBERG highlighted three types of races in Alaska: statewide, Senate - which involve two house districts, and house district races. Currently, the ballots are set for each house district; therefore, for a statewide race, they rotate through the 40 house districts. He described the order in the Senate race. Representative Gruenberg stated that the place that it's really unfair is in the house races, because the ballots are set for the entire house district. He explained, "If you're on top, you're on top for the whole thing." He said Amendment 3 would rotate by precinct. He offered an example. Representative Gruenberg said the absentees shall be given a

ballot as though the absentees were the last precinct. He offered an example wherein if there were five precincts, there would be six sets of ballots to accommodate the absentee ballot. The candidates would rotate all the way through.

Number 1858

REPRESENTATIVE LYNN said he sees a precinct as a smaller district. He said it's probably true for all candidates that they [have stronger support] in some precincts than in others. He stated, "And so, [Amendment 3] really doesn't solve the problem, ... because if I get in the wrong position in my weakest precinct, I could have a problem." He asked if there would be any way to fix that.

REPRESENTATIVE GRUENBERG suggested that the committee could decide to go back to the "rolling" ballot. He noted that part of Mr. Sonneman's written testimony shows the language of the previous rolling ballot statute. He said he would have no problem with using that language, but he said it seems that it would result in a higher fiscal note.

Number 1772

REPRESENTATIVE LYNN asked how much higher the fiscal note would be. He stated that he thinks money spent on the most fair election possible is money well invested.

Number 1745

MR. SONNEMAN responded that in 1995, the amount "was thought to be about" \$65,000 per election cycle.

Number 1713

MS. GLAISER said the division could look into that and prepare those numbers for the committee. She noted that when SB 5 was heard, the full rolling [ballot] was [estimated to be] between \$100,000 and \$200,000; however, the fiscal notes prepared at that time didn't include an analysis and showed a zero fiscal note. She said, "It depends on how fiscal notes are prepared and what's requested. So, we couldn't get any history on that savings or that total. I can't believe it would be more than that."

MS. GLAISER expressed that from the division's standpoint, the issue of voter confusion is important. She indicated that

voters are often looking for their candidate on the ballot and they often do take a sample ballot or the official election pamphlet with them, which she said can only be printed in one order. She continued as follows:

And they do mark it, and they do go hand in hand with a marked ballot. And when those names aren't in that order, then they've cast the ballot for the wrong person. ... That's a policy discussion for you all, but from our point, I don't know which one has - I don't know whether the right word is - more value. But, ... that confusion, is that a voter that intended to vote for you voted the wrong [ballot], because they took this piece of paper with them and went in and went "third on down," and colored it in? I'm not certain.

Number 1636

VICE-CHAIR HOLM responded, "You know, sometimes I think we try to legislate against people not paying attention, and I don't think it's possible for us to do that." He illustrated how a different ballot order may have affected his own election outcome. He asked how difficult it is for the division to implement changes to the ballot.

MS. GLAISER indicated that it would just mean more ballots programmed into the system and more printing done. She noted that an even distribution of ballots would need to be sent to absentee ballot stations. She explained, "Because if we send an absentee ballot station just the one where 'F' was on top and 'Z' was on the bottom, 'Z' would probably sue the division that we didn't equitably distribute the ballots." She said [Amendment 3] is a concern because it would still be a lottery. The division would choose letters of the alphabet for top and bottom placement and a candidate could say that the division gave him/her the worst precinct [related to how much support that candidate has in the precinct], even though that would not be the intent of the division.

Number 1578

REPRESENTATIVE GRUENBERG responded as follows:

For statewide races, the only decision that's the random choice that the [division] would make would be, in district 1, precinct 1 - whatever Bill William's

lowest numbered precinct [is] - they would set it. And then it would rotate strictly throughout the whole state. And it would be the same for the senate district; the order would be set in the lower numbered house district and it would go through that entire senate district, and then it would be set in each house district for the house race. But you're right - it is random at some point.

Number 1400

REPRESENTATIVE COGHILL said huge amounts of money are spent for name recognition. He said, "I think that would overrule name placement. I would have a hard time believing that even that 2-percent number would be higher or even as high as that." He said he would like to see a challenge to that before throwing the ballot into a rotating style that could create the problems that Ms. Glaiser mentioned regarding possible litigation. He said, "To me, I just can't, in my mind, believe that it would trump name recognition." He said he is not a big fan of [Amendment 3], and he revealed that without any study he is not willing to go to the rotating ballot. He stated, "I think consistency in elections brings us to a higher degree of integrity, and I think we need to stay as consistent as possible." He said if a candidate whose last name begins with an "A" is running against a candidate whose last name begins with a "Z," he just doesn't know that "the people in Alaska are going to fall - at a 2-percent rate - into just taking the first name on the ballot."

REPRESENTATIVE LYNN asked if the division has any numbers, statistics, or guesses on what the name order effects might be.

MS. GLAISER answered no. She added that she doesn't think it would be desirable to have the division maintaining [that information]. She said that is a candidate and political consultant awareness; the division just keeps the vote total. She said she thinks the court case studies are in the files, but the division doesn't study them.

REPRESENTATIVE LYNN said he thinks this is an important consideration that needs further examination and appropriate action.

VICE-CHAIR HOLM discussed whether the committee should set Amendment 3 aside until the matter is studied further.

MS. GLAISER asked the committee if it wants the division to do a cost analysis of [the Amendment 3 plan] versus the full rolling [ballot].

Number 1155

REPRESENTATIVE COGHILL said he thinks the committee needs to address policy considerations first and not just decide based upon the cost.

VICE-CHAIR HOLM concurred.

Number 1116

REPRESENTATIVE LYNN offered his understanding that, currently, letters are randomly pulled out and the first letter is put on top. He asked if that is correct.

MS. GLAISER answered yes.

REPRESENTATIVE GRUENBERG asked if there is interest in pursuing [Amendment 3] with the full committee.

VICE-CHAIR HOLM indicated that he would like to give [Amendment 3] a fair hearing when more committee members are present.

Number 1083

REPRESENTATIVE GRUENBERG withdrew Amendment 3 and indicated that he would offer it later with another amendment addressing the issue of a rolling ballot.

Number 0931

REPRESENTATIVE GRUENBERG turned to Amendment 4, labeled 23-GH2021\U.6, Kurtz, 4/20/04, which read as follows:

Page 11, line 21, following "display":  
Insert "at least"

Page 14, line 18, following "display":  
Insert "at least"

Page 17, line 28, following "post":  
Insert "at least"

REPRESENTATIVE GRUENBERG explained that the parts of the bill that Amendment 4 would affect address initiative, referendum, and recall, and where notices are displayed. He indicated that Amendment 4 is a conforming amendment. He said some of the polling places are fairly large and could have more than one notice displayed.

VICE-CHAIR HOLM asked if there were any comments. He announced that Amendment 4, without objection, [was adopted].

Number 0820

REPRESENTATIVE GRUENBERG turned to Amendment 5, labeled 23-GH2021\U.5, Kurtz, 4/20/04, which read as follows:

Page 10, line 6, following "address":

Insert "of each person signing the petition"

Page 12, lines 20 - 21:

Delete "names, dates of birth, signatures, and addresses"

Insert "name, date of birth, signature, and address of each person signing the petition"

Page 12, line 22:

Delete "[,]"

Insert "[SIGNATURES AND ADDRESSES,]"

Page 15, line 27:

Delete "signatures, and addresses; ["

Insert "signature, and address of each person signing the petition; [SIGNATURES AND ADDRESSES]"

REPRESENTATIVE GRUENBERG said Amendment 5 makes it clear that the information required on the petition is that of the person signing the petition.

VICE-CHAIR HOLM questioned whether Amendment 5 was necessary.

REPRESENTATIVE GRUENBERG said he thinks it makes the language a little clearer. In response to comments from Vice-Chair Holm, he indicated that the rest of Amendment 5 is conforming language.

VICE-CHAIR HOLM asked if there was any objection to Amendment 5. [No objection was stated and Amendment 5 was treated as adopted.]

Number 0730

REPRESENTATIVE GRUENBERG turned to Amendment 6, labeled 23-GH2021\U.8, Kurtz, 4/20/04, which read as follows:

Page 20, line 23, following "voter":  
Insert ", as that term is defined in AS 15.60.010,"

REPRESENTATIVE GRUENBERG explained that the part of the bill that Amendment 6 addresses deals with an incorporation election in a municipality. It's a technical amendment that addresses who is able to vote in the incorporation election. He said it was Ms. Kurtz's suggestion to define "voter". In response to a question from Vice-Chair Holm, he explained that [that definition from] AS 15.60.010 is not in Title 29, which is the reason why the reference was necessary.

Number 0605

MS. GLAISER directed attention to page 21, line 4, where "qualified voter" is defined.

REPRESENTATIVE GRUENBERG observed that that meant [Amendment 6] is no longer necessary.

Number 0557

REPRESENTATIVE GRUENBERG withdrew Amendment 6.

[Vice-Chair Holm turned the gavel back over to Chair Weyhrauch.]

Number 0531

REPRESENTATIVE GRUENBERG requested that the amendments that were adopted today be incorporated into a new committee substitute by the next hearing on HB 523.

[HB 523 was heard and held.]

HB 525-HUMAN RIGHTS COMMISSION PROCEDURES

Number 0495

CHAIR WEYHRAUCH announced that the next order of business was HOUSE BILL NO. 525, "An Act relating to complaints filed with, and investigations, hearings, and orders of, the State

Commission for Human Rights; making conforming amendments; and providing for an effective date."

CHAIR WEYHRAUCH announced that before the committee, as a work draft, was Version 23-GH2024\D, Bullock, 4/19/04.

Number 0472

DAVID W. MARQUEZ, Chief Assistant Attorney General, Legislation & Regulations Section, Office of the Attorney General, Department of Law, presented HB 525 on behalf of the House Rules Committee, sponsor by request of the governor. He read portions from his written testimony [included in the committee packet] as follows:

We believe that ... HB 525 enhances the effectiveness of the Alaska State Commission for Human Rights by allowing the commission to evaluate complaints of unlawful discrimination and to allocate its resources to prosecuting those complaints that will best serve the commission's goal of eliminating unlawful discrimination.

MR. MARQUEZ stated that other benefits of HB 525 would be to improve commission procedures, enhance the fairness of the commission's procedures, clarify the remedies that the commission may award to remedy unlawful discrimination, and make certain housekeeping changes.

MR. MARQUEZ noted that, presently, the commission has been bogged down because of a ruling by the Alaska Supreme Court in the Department of Fish & Game v. Meyer. He said the case requires the commission to take to hearing any complaint supported by substantial evidence of unlawful discrimination, without regard to such factors as weakness of the evidence or the strength of an employer's permanent defenses. He explained that, to overcome that burden, "you would have to show that it's completely lacking in merit." The result has been that the commission takes every complaint and doesn't have any real discretion in deciding which cases to take forward.

MR. MARQUEZ stated that HB 525 would allow the executive director [of the commission] to choose the complaints of unlawful discrimination that merit pursuit, based on factors such as strength of evidence, severity of alleged violation, employer's history before the commission, or the complaint's value in establishing precedent. The proposed legislation would

allow the commission to better marshal its resources towards cases it feels are more important. Mr. Marquez indicated that the commission is in favor of this aspect of the bill.

MR. MARQUEZ listed the ways in which HB 525 would improve commission procedures. He said the bill would: permit agreements during the prehearing conciliation phase to compromise damage claims; require that agreements be reduced to writing, and provide that agreements are enforceable as commission orders; require the commission to follow procedures in Administrative Procedure Act; and allow the commission to issue a summary decision, which is similar to a motion for summary judgment in the courts. He added that if the facts are not disputed, the commission can make a ruling without providing a full hearing.

MR. MARQUEZ listed the ways in which HB 525 would enhance commission procedures. He said the bill would: require the charges in the accusation that the executive director issues after deciding to pursue a complaint to hearing be based on the investigator's determination of substantial evidence; require that substantial evidence support any new charges of unlawful discrimination that are added when the accusation is amended; require that respondent have an opportunity to address all charges informally before being required to defend them in a formal hearing; and tie the rate of interest awarded by commission to legal rate in AS 09.30.070, bringing the commission into conformity with other administrative agencies and the courts, in terms of rate of interest.

MR. MARQUEZ, in regard to the remedies that the commission may award to remedy unlawful discrimination, stated the following:

I think that it's important to note that this is not the sole avenue for relief that a complainant would have. The complainant, of course, can, as long as they're within the statute of limitations, pursue a remedy in court, and a court can fashion many remedies that are not available under court decision to the Alaska State Commission for Human Rights.

This is a system that has been instituted where people can go to the commission for human rights and an advocate can be assigned to them and take their case forward. But, certainly at any time they can go to the court. And legally, because of this procedure that's set up, ... it's also reasonable to limit the

remedies that may be available to someone [who] goes before the [commission], and delineating the remedies will help assure certainty for the parties so that they'll know what's ahead of them. ... The remedies that are available are very clear.

What we have done in drafting this legislation is to go through the court decisions and to set forthright in the statute what the courts have decided for the commission ....

MR. MARQUEZ read from his written testimony the ways HB 525 would clarify the remedies that the commission may award. He said it would: prohibit non-economic or punitive damages; limit remedies ... to restoration of actual benefits lost; allow the award of front pay [for a period of up to one year if a return to work is impossible because no vacancy exists, the employer's unlawful discrimination made the employee incapable of work, or the working environment deteriorated intolerable.]

[The above bracketed testimony was not on tape, but was reconstructed from Mr. Marquez's written testimony.]

**TAPE 04-66, SIDE A**

Number 0001

MR. MARQUEZ concluded with the reasons that HB 525 would clarify the remedies that the commission may award. He said it would require any order to pay wages to be reduced by the amount the employee should be able to earn with a "reasonably diligent" effort. In regard to the housekeeping changes effected by HB 520, he noted that the bill would incorporate the current regulation's 180-day limitation period for filing a complaint.

Number 00057

REPRESENTATIVE HOLM stated he is concerned that someone can make an accusation and is instantaneously put into an adversarial position where he/she has to provide for an attorney for defense against accusation, without any kind of Rule 82 compensation - any kind of ability that if the commission is wrong and brought a frivolous case to the person, he/she would still have to pay the expense of the defense. He said he is talking about small business. Because of the standard that provides that [the case] must be completely lacking in standard, all cases are taken. He said it is only reasonable that the commission should have to

pay out of its own budget for cases it loses, to help bring the small business back into a modicum of "where they started from."

REPRESENTATIVE HOLM explained that he is trying to ensure that the commission has "a thumb on top of it that keeps it from just taking on any frivolous case and putting the small business people in the state under a great amount of undue cost." He indicated that this is what has been going on, to date.

Number 0257

MR. MARQUEZ responded that he thinks adopting [HB 525] would go a long way toward solving the problem, because it would eliminate the need for the commission to take every case forward. It would have the discretion to drop some cases that it felt lacked merit or would not provide the state's best interest in pursuing the claim forward.

REPRESENTATIVE HOLM said he appreciates that, but he would "like to have another side board." He asked Mr. Marquez to comment on whether or not he thinks an additional sideboard would be beneficial.

MR. MARQUEZ noted that, currently, the commission has the power, under AS 18.80.130 (e), to order the payment of reasonable expenses, including reasonable attorney's fees, to a private party before the commission, when the commission, in its discretion, determines the allowance is appropriate. He offered his understanding that currently the commission does not use its discretion to award attorneys' fees to the private parties that come as defendants before the commission. He revealed that a regulation exists, 6 AAC 30.492 (b), which read:

An award of attorney's fees and costs will be made against a complainant upon a showing that he or she pursued an action not authorized by the executive director that was frivolous, unreasonable, or groundless, or that an action authorized by the executive director was based upon information furnished in bad faith by complainant.

Number 0453

REPRESENTATIVE HOLM stated that he wants the pressure on the commission to do its footwork first so there's no undue pressure on small businesses to defend themselves. Furthermore, if the commission pursues a case and loses, Representative Holm

stated, the cost of the case should come out of the commission's budget.

MR. MARQUEZ offered his belief that the mechanism that Representative Holm is describing would require a statutory change; the current statute and regulations would not ensure that the commission would award attorney's fees in the kind of situations that Representative Holm is describing.

Number 0649

LISA FITZPATRICK, Chair, Alaska Human Rights Commission, told the committee members that the commission has a "geographical representation," with 7 members. She indicated that the commission has grave concerns regarding the provisions regarding the remedies, of which Mr. Marquez previously spoke. She stated her concern that the remedies would take away the tools the commission presently has that make it an effective commission.

MS. FITZPATRICK offered her understanding that the commission operates on a budget of approximately \$1.4 million. Presently, the staff is comprised of 15 individuals: ten investigators, one director, two supervisors, and two support staff members. She noted that, while there are thousands of inquiries that come to the door, the actual number of cases that get into a file status "where they begin to be worked upon" is between 300-500 a year. She continued as follows:

Of those cases, the way that they are handled is that when a complaint that, at least on its face, has merit - and that is it would have to allege (indisc.) inventory process (indisc.) hit the parameters of the statute - it's assigned to an investigator, and the investigator (indisc.) an investigation to determine whether or not there is initial preferences referring to the standard of substantial evidence to determine whether or not the commission will proceed with the matter further. Now, at every step along the way, the (indisc.) commission and the individual that (indisc.) at this point have the ability to either mediate the case or, at some form of (indisc.) settle the case. Frankly, that happens with great frequency. I would think that probably the (indisc.) of cases are resolved through ...

CHAIR WEYHRAUCH asked Ms. Fitzgerald to try to speak more clearly.

MS. FITZGERALD said she was using a speakerphone at a Legislative Information Office (LIO), but she couldn't tell what the trouble with the sound was.

CHAIR WEYHRAUCH asked Ms. Fitzgerald if she would submit her testimony in writing.

[HB 525 was heard and held.]

HB 541-INCREASED APPROPRIATIONS REQUIRE OFFSET

Number 0912

CHAIR WEYHRAUCH announced that the last order of business was HOUSE BILL NO. 541, "An Act relating to consideration by the legislature of the executive budget and other bills affecting appropriations; and providing for an effective date."

CHAIR WEYHRAUCH mentioned that a committee substitute was expected soon from Legislative Legal and Research Services.

Number 0923

CHERYL FRASCA, Director, Office of the Director, Office of Management & Budget (OMB), Office of the Governor, presented a summary of HB 541 on behalf of OMB. She explained that the proposed legislation would require a legislator or [legislative] committee proposing additional spending to identify either where the revenues will come from to pay for it or an offsetting budget reduction. She revealed that it is an concept to model after the federal Gramm-Rudman-Hollings Act of 1990. She explained that [OMB] envisions that the process would be done through a fiscal note.

Number 0963

REPRESENTATIVE GRUENBERG indicated Section [1], which he said begins, "It is not in order". He stated that he thinks that may require a concurrent resolution to amend the Uniform Rules.

MS. FRASCA offered her understanding that Tamara Cook, Legislative Legal and Research Services and Jim Baldwin, Department of Law have held several discussion regarding HB 541 and she said she's "just getting up to speed on what those have been."

Number 1010

MS. FRASCA, in response to a question from Chair Weyhrauch, noted that the Gramm-Rudman-Hollings Act was originally intended as a budget deficit reduction proposal; it required that the comptroller general have the authority to make reductions if the budget exceeded revenues. However, that was ruled as unconstitutional. As a result, [the Act] has changed in scope and nature. She indicated that "we" could check on what is the current practice and how effective it is. She said [OMB] knows that "this has got some difficult dilemmas," especially in regard to checks and balances of the appropriation process.

MS. FRASCA reiterated that the idea behind the proposed legislation is to look at how increased spending will be paid for. She stated that when [OMB] proposes the governor's budget in December, it has an obligation to outline its spending plan, as well as to identify the revenues proposed to cover that plan.

Number 1089

CHAIR WEYHRAUCH said it's an interesting policy issue to question who is ultimately responsible to have an "income equal out go." He stated that the executive branch of government has line-item veto and the obligation to submit a budget, while the legislature makes "the other policy determination."

MS. FRASCA added, "Then we veto [and] you have the opportunity to override."

Number 1119

REPRESENTATIVE GRUENBERG suggested that [HB 541] may be within the jurisdiction of the House Special Committee on Ways and Means. He also indicated that he has held discussions with the people involved with the Alaska Municipal League to consider whether there should be a municipal fiscal note regarding the impact of legislation on municipalities. He indicated that he would like to discuss whether [HB 541] may be a vehicle to include that issue. Representative Gruenberg stated that [HB 541] is a "great subject to take up" and he commended the administration for his work.

[HB 541 was heard and held.]

**ADJOURNMENT**

Number 1150

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