

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

May 6, 2004
9:08 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

CONFIRMATION HEARING(S)

Commissioner of Administration

Ray Matiashowski, Deputy Commissioner - Douglas

- CONFIRMATION(S) ADVANCED

HOUSE BILL NO. 544

"An Act providing that public members of the Board of Trustees of the Alaska Permanent Fund Corporation may be removed only for cause; and providing for an effective date."

- MOVED CSHB 544(STA) OUT OF COMMITTEE

CS FOR SENATE BILL NO. 354(STA) am(efd fld)

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

- HEARD AND HELD

CS FOR SENATE JOINT RESOLUTION NO. 33(STA)

Urging our United States Senators to work to allow a timely vote on the floor on all judicial nominations.

- WAIVED OUT OF COMMITTEE

CS FOR SENATE BILL NO. 379(FIN)

"An Act providing that public members of the Board of Trustees of the Alaska Permanent Fund Corporation may be removed only for cause; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: HB 544

SHORT TITLE: PERM FUND BOARD PUBLIC MEMBER REMOVAL

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

03/25/04	(H)	READ THE FIRST TIME - REFERRALS
03/25/04	(H)	STA
04/22/04	(H)	STA AT 8:00 AM CAPITOL 102
04/22/04	(H)	Heard & Held
04/22/04	(H)	MINUTE(STA)
05/06/04	(H)	STA AT 8:00 AM CAPITOL 102

BILL: SB 354

SHORT TITLE: HUMAN RIGHTS COMMISSION PROCEDURES

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

02/27/04	(S)	READ THE FIRST TIME - REFERRALS
02/27/04	(S)	STA, JUD
03/23/04	(S)	STA AT 3:30 PM BELTZ 211
03/23/04	(S)	Heard & Held
03/23/04	(S)	MINUTE(STA)
04/01/04	(S)	STA AT 3:30 PM BELTZ 211
04/01/04	(S)	Moved CSSB 354(STA) Out of Committee
04/01/04	(S)	MINUTE(STA)
04/02/04	(S)	STA RPT CS FORTHCOMING 1DP 2NR
04/02/04	(S)	NR: STEVENS G, STEDMAN; DP: COWDERY
04/05/04	(S)	STA CS RECEIVED SAME TITLE
04/14/04	(S)	JUD AT 5:30 PM BUTROVICH 205
04/14/04	(S)	Scheduled But Not Heard
04/20/04	(S)	JUD RPT CS(STA) 1DP 3NR
04/20/04	(S)	DP: SEEKINS
04/20/04	(S)	NR: THERRIAULT, OGAN, FRENCH
04/20/04	(S)	JUD AT 8:00 AM BUTROVICH 205
04/20/04	(S)	Moved CSSB 354(STA) Out of Committee
04/20/04	(S)	MINUTE(JUD)
05/02/04	(S)	TRANSMITTED TO (H)
05/02/04	(S)	VERSION: CSSB 354(STA) AM(EFD FLD)

05/03/04	(H)	READ THE FIRST TIME - REFERRALS
05/03/04	(H)	STA, JUD
05/04/04	(H)	STA AT 8:00 AM CAPITOL 102
05/04/04	(H)	Heard & Held
05/04/04	(H)	MINUTE(STA)
05/05/04	(H)	STA AT 8:00 AM CAPITOL 102
05/05/04	(H)	Heard & Held
05/05/04	(H)	MINUTE(STA)
05/05/04	(H)	JUD AT 1:00 PM CAPITOL 120
05/05/04	(H)	Scheduled But Not Heard
05/06/04	(H)	STA AT 8:00 AM CAPITOL 102
05/06/04	(H)	JUD AT 3:00 PM CAPITOL 120

WITNESS REGISTER

RAY MATIASHOWSKI, Acting Commissioner
Office of the Commissioner
Department of Administration
Juneau, Alaska

POSITION STATEMENT: Testified as appointed commissioner of the Department of Administration.

MICHAEL BARNHILL, Assistant Attorney General
Commercial/Fair Business Section
Civil Division (Juneau)
Department of Law
Juneau, Alaska

POSITION STATEMENT: Testified on behalf of the department during the hearing on HB 544.

LISA FITZPATRICK, Chair
Human Rights Commission
Office of the Governor
Anchorage, Alaska

POSITION STATEMENT: Responded to committee questions on behalf of the commission during the hearing on SB 354.

SCOTT J. NORDSTRAND, Deputy Attorney General
Civil Division
Office of the Attorney General
Department of Law
Anchorage, Alaska

POSITION STATEMENT: Answered questions during the hearing on SB 354.

ACTION NARRATIVE

TAPE 04-80, SIDE A

Number 0001

CHAIR BRUCE WEYHRAUCH called the House State Affairs Standing Committee meeting to order at 9:08 a.m. Representatives Holm, Seaton, Lynn, and Weyhrauch were present at the call to order. Representatives Coghill, Berkowitz, and Gruenberg arrived as the meeting was in progress.

CONFIRMATION HEARING(S)

Commissioner of Administration

Number 0066

CHAIR WEYHRAUCH announced the first order of business, the confirmation hearing on the appointment of Ray Matiashowski as Commissioner of Administration. He noted that Mr. Matiashowski's appointment follows the resignation of Commissioner Mike Miller.

Number 0089

RAY MATIASHOWSKI, Acting Commissioner, Office of the Commissioner, Department of Administration, testifying as appointed commissioner of the Department of Administration, told the committee that he has been the Deputy Commissioner at the department for the last 14 months. He also noted that he is a lifelong Alaskan, born and raised in Ketchikan, who owns a real estate firm in Ketchikan that he started in 1985.

ACTING COMMISSIONER MATIASHOWSKI revealed that the department has several significant initiatives underway. He stated his goal is to complete those projects. He mentioned information technology integration and an ongoing consolidation of human resource managers. He described the department as a catchall agency which is primarily charged with the responsibility to manage state government. The department conducts the back office operations for state government; it writes payroll checks and warrants for purchases, leases and procures items, manages and provides the information technology for state government and retirement and benefits for state employees. He noted that there is another side of the department which "touches upon the public more." He said that side includes: the Public Defender, the Office of Public Advocacy, and the Division of Motor Vehicles. Acting Commissioner Matiashowski said he finds the assignment fun, exciting, challenging, and "fairly interesting."

Number 0243

CHAIR WEYHRAUCH asked, "Where are we on employee contracts?"

ACTING COMMISSIONER MATIASHOWSKI replied that he thinks the department is doing well; it has signed six bargaining units, and two of those have ratified, while the others remain. He listed the bargaining units signed. He explained that as [each bargaining unit] is signed, it is forwarded to the legislature and to the Office of Management & Budget. He listed the remaining [bargaining units].

Number 0333

REPRESENTATIVE HOLM asked, "Where are we in our negotiations with the unions and employees, with regards to the [Public Employees' Retirement System (PERS)] difficulties that we have?"

ACTING COMMISSIONER MATIASHOWSKI answered that the department doesn't bargain on PERS and [the Teachers' Retirement System (TRS)]. He said those are set up in statute. He added, "What we are doing with the PERS and TRS boards right now is undertaking a process where we are reviewing whether or not we should set up an additional tier - a Tier IV for PERS and a Tier III for TRS - which would lessen the liability that the employers - the State of Alaska, the municipalities, and the school districts have going forward." He explained that with the defined benefit plan of PERS, the employer takes all the risk regarding investment loss and increasing costs, such as health care. He added, "So, we're kind of upside down on it right now, trying to catch up." He said that's a stark contrast to where things were in the late 1990s when "we" were going into an over-funded status and were cutting employer contribution rates.

Number 0430

REPRESENTATIVE SEATON noted that he had had a conversation the other day with Acting Commissioner Matiashowski regarding attempting to offer employees the option of a defined contribution plan, such as the University of Alaska has. He asked Acting Commissioner Matiashowski to comment on that.

ACTING COMMISSIONER MATIASHOWSKI said he appreciated a prior conversation with Representative Seaton, as well as a letter Representative Seaton had sent along with backup information

describing what the University of Alaska had done. For the benefit of the committee, he explained that if a Tier IV is designed, it may be a defined contribution plan, which puts the investment risk on the employee. If a Tier IV is chosen as a vehicle to move forward for all state employees, that can only be done prospectively "going forward for new hires." He noted that [in their prior conversation], Representative Seaton had indicated the possibility of making a defined contribution plan an elective benefit that current employees may be able to select. He stated that that [possibility] has been analyzed more than he realized and he is close to having a response regarding whether or not that would be an option.

REPRESENTATIVE SEATON noted that last year the legislature moved the Alaska Vocational Technical Center (AVTEC) in Seward from the Department of Education and Early Development to the Department of Labor & Workforce Development. Furthermore, the legislature allowed anyone who was in TRS continue in that system. He offered his understanding that current negotiations are saying that someone who has a teaching degree who goes to AVTEC would be required to change from TRS to PERS, because the job doesn't require a teaching degree. He asked for an explanation.

ACTING COMMISSIONER MATIASHOWSKI said he doesn't know what the ultimate resolution to that is, but he will look into that.

Number 0674

CHAIR WEYHRAUCH asked what the worst thing is about the Department of Administration.

ACTING COMMISSIONER MATIASHOWSKI responded that he couldn't reply negatively about the department. He stated that it has been intriguing for him to go from being a private business owner to being a government employee again. He said when he is in private business, he can change his mind and do something, and by the end of the day it's happening. Conversely, when running a department with hundreds of employees, the process of implementing ideas takes much longer. He said he finds the department interesting because it is so diverse.

Number 0758

REPRESENTATIVE SEATON, in regard to the consolidation of human resources, asked if the department has looked at an analysis of the dollars that are being charged to all the different

departments, versus the dollars that those departments were individually expending prior to [the consolidation]. He noted that some budget subcommittees have been charged by the Department of Administration more than the service had cost previously.

ACTING COMMISSIONER MATIASHOWSKI answered that money is being saved "on a consolidated view"; the department had to show a savings or the Office of Management & Budget would never have allowed [the consolidation] to happen. He noted that Kevin Jardell has been "bird-dogging" the consolidation. He offered his recollection that the savings has been between \$500,000-\$700,000 annually. He explained that all the different agencies were brought in to the department under the Division of Personnel. He noted that the current administration has chosen to look at state government with an enterprise perspective, statewide, rather than department-by-department. With the statewide view, he explained, sometimes cost savings is achieved as a whole, but in unique circumstances one agency may "go up because of unique needs." He noted another consolidation has been to centralize mail operations to within the facility in the State Office Building. He said the department has to prove its fiscal and financial case to each department when it undertakes a consolidation.

Number 0888

REPRESENTATIVE SEATON asked Acting Commissioner Matiashowski to return during the next legislative session with part of an overview with a specific breakdown on the actual charges that are being made to all the departments and the savings.

ACTING COMMISSIONER MATIASHOWSKI said he would love to do that.

Number 0925

REPRESENTATIVE HOLM noted that the current regulatory reform occurring in both the House and Senate is an attempt to bring the control for the regulatory process back to the legislature. He asked for Acting Commissioner Matiashowski's comments with regard to his acceptance or resistance to that move.

ACTING COMMISSIONER MATIASHOWSKI responded that he is not familiar with that issue and would therefore have an open mind to it.

REPRESENTATIVE HOLM surmised that the thought process is that the Administrative Procedures Act gives too much "control for the administration versus legislative intent."

CHAIR WEYHRAUCH asked, "If you can only do one thing while you're commissioner, what do you want to do?"

ACTING COMMISSIONER MATIASHOWSKI answered, "If I could walk out the door with successfully signed labor contracts ... that clearly show that we respect and appreciate the great value that state employees give the State of Alaska, while recognizing the fiscal constraints (indisc. - coughing), I would feel very, very good about that." He emphasized that there is so much more that he wants to address, but that is "the current fire burning" that he is "anxious to have a successful conclusion to."

Number 1049

REPRESENTATIVE GRUENBERG asked if Acting Commissioner Matiashowski, whose experience has primarily been in Southeast Alaska, will be sensitive to the needs of all parts of Alaska.

ACTING COMMISSIONER MATIASHOWSKI answered "Yes, without question." He said it is a great honor to be in a seat that truly transcends where he comes from.

REPRESENTATIVE GRUENBERG asked if Acting Commissioner Matiashowski will attempt to be sensitive and bipartisan and work with people from both parties.

ACTING COMMISSIONER MATIASHOWSKI again answered, "Yes, without question."

REPRESENTATIVE GRUENBERG asked Acting Commissioner Matiashowski to reconfirm that he would be as sensitive to the needs of labor as well as management.

ACTING COMMISSIONER MATIASHOWSKI responded, "Certainly, without question." He stated that he feels good about the fact that six contracts are already signed. He added, "I believe that's a great ... show of our willingness to bargain in good faith, which we will continue to do."

REPRESENTATIVE GRUENBERG asked Acting Commissioner Matiashowski to remember the aforementioned questions and his answers to them, because "the people of the state depend on you."

Number 1132

REPRESENTATIVE COGHILL thanked Acting Commissioner Matiashowski for being willing to step up and fill the position. He emphasized the importance of "the face of government" and making the public comfortable with engaging its government. He mentioned the [Division] of Motor Vehicles (DMV) and said he would like "to see us become more consumer friendly." He asked Acting Commissioner Matiashowski to be aware that government tends to be difficult to engage.

ACTING COMMISSIONER MATIASHOWSKI spoke of taking great strides towards user access so that people can interface with the government online. For example, he mentioned applying for driver's licenses and fishing licenses online. He acknowledged that [the face of government] also pertains to cleaner buildings and smiling faces, for example. He stated, "We want to make it easy. I mean, we're here for them - for the public."

Number 1289

CHAIR WEYHRAUCH noted that Acting Commissioner Matiashowski is a Ketchikan native with ties in that city in the real estate market and the political scene. He mirrored Representative Gruenberg's concern by asking the acting commissioner to confirm that he understands clearly that he is representing the state. He said, "Sometimes you're going to have to make decisions that don't benefit Ketchikan and your friends and your business." He said Acting Commissioner Matiashowski may actually have to make decisions that may harm them and it would be difficult to do.

ACTING COMMISSIONER MATIASHOWSKI agreed that it would be hard to do, but he stated that he takes the position of commissioner quite seriously. He said, "I'm painfully aware of the responsibility I take on as becoming commissioner of the department.

CHAIR WEYHRAUCH explained that he asked because there was a contentious issue that occurred this year in moving the Alaska Marine Highway System [to Ketchikan]. He mentioned leases that the department had to sign and real estate issues. He said, "I imagine there's a lot of people in Ketchikan that may believe now they have a friend in the Department of Administration and ... you may have to say no."

ACTING COMMISSIONER MATIASHOWSKI responded that he can only hope that everyone, no matter where in the state he/she is from,

would feel there is someone to call at the department that will respond courteously and efficiently to his/her request. He said his intent is not to serve only the people of Ketchikan. He remarked that he appreciates the comments [from the committee], and he said that clearly it's a sensitive issue. He concluded, "You can expect and take comfort in the fact that I will deal with that professionally and transparently."

Number 1338

REPRESENTATIVE LYNN remarked, "We're all from someplace; we all look for the greater good of Alaska."

Number 1385

REPRESENTATIVE GRUENBERG clarified that he certainly didn't mean to single out Acting Commissioner Matiashowski. He said he intends to ask future commissioner designees the same question.

Number 1414

REPRESENTATIVE COGHILL moved to forward the name of Acting Commissioner Matiashowski to the joint session of the House and Senate for confirmation. There being no objection, the confirmation of Acting Commissioner Matiashowski was advanced from the House State Affairs Standing Committee.

HB 544-PERM FUND BOARD PUBLIC MEMBER REMOVAL

Number 1450

CHAIR WEYHRAUCH announced that the next order of business was HOUSE BILL NO. 544, "An Act providing that public members of the Board of Trustees of the Alaska Permanent Fund Corporation may be removed only for cause; and providing for an effective date."

Number 1465

REPRESENTATIVE SEATON moved to adopt the committee substitute (CS) for HB 544, Version 23-GH2142\H, Cook, 5/4/04, as a work draft. [No objection was stated and Version H was treated as before the committee.]

Number 1483

MICHAEL BARNHILL, Assistant Attorney General, Commercial/Fair Business Section, Civil Division (Juneau), Department of Law,

said HB 544 would limit removal of permanent fund trustees only for cause. He noted that the last committee substitute (CS) for HB 544 that was adopted before the committee was Version 23-GH2142\D, Cook, 5/4/04, and it included language regarding the types of cause, a provision for a hearing, and filing of a decision with the lieutenant governor. He recollected that, at the last hearing of the bill, Representatives Seaton, Gruenberg, and Holm expressed concerns about "all the bells and whistles in the bill." Subsequently, the bill was trimmed down so that public members of the permanent fund board of trustees could be removed only for cause. He continued as follows:

We took that version to the Senate side. It passed out of [the Senate Finance Committee], went to the floor yesterday, [and] passed out of the Senate floor 20-0. In the mean time, a request for a House CS was sent over to [Legislative Legal and Research Services] and they prepared Version H, which is before you now, and that added this first sentence to clarify that a governor may remove a nonpublic member from the board. That sentence is not in the Senate version that passed out yesterday, and it's my view that that concept is absolutely understood in the Senate version and is not necessary. It can be in there; it doesn't have to be in there. But certainly we've all along intended that the governor may remove nonpublic members - [for example] the commissioner of the Department of Revenue and the other cabinet member - from the board at any time.

Number 1578

CHAIR WEYHRAUCH offered his understanding that the synonym for nonpublic is private.

MR. BARNHILL responded, "I suppose that's one interpretation."

CHAIR WEYHRAUCH concluded that the governor may remove a private member from the board.

MR. BARNHILL replied that that's not what was intended by Legislative Legal and Research Services. He said, "They intended that to refer to the commissioner of the Department of Revenue and the other cabinet members."

REPRESENTATIVE GRUENBERG, in response to a comment from Chair Weyhrauch, said he thinks the term "public" in "this area" is a

term of art which means, "the people who are appointed not from the administration."

Number 1612

REPRESENTATIVE SEATON said he doesn't think that the additional wording that was added is really necessary. He said he thinks when it says the governor may remove a public member that it is fully known what that means.

Number 1637

REPRESENTATIVE COGHILL said he thinks the governor has a constitutional right to move his commissions, at will, and he doesn't know that language needs to be added to reinforce that. He suggested, "Putting it in here might create a chain reaction."

REPRESENTATIVE GRUENBERG suggested deleting the sentence that read: "The governor may remove a nonpublic member from the board."

CHAIR WEYHRAUCH clarified that Version H was before the committee.

Number 1703

CHAIR WEYHRAUCH clarified that Representative Gruenberg's [Amendment 1] would delete the previously stated sentence from page 1, line 6, of Version H. He asked if there was any objection to [Amendment 1]. There being none, it was so ordered.

Number 1725

REPRESENTATIVE SEATON moved to report CSHB 544, Version 23-GH2142\H, Cook, 5/4/04, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 544(STA) was reported out of the House State Affairs Standing Committee.

The committee took an at-ease from 9:39 a.m. to 9:46 a.m.

SB 354-HUMAN RIGHTS COMMISSION PROCEDURES

Number 1749

CHAIR WEYHRAUCH announced that the last order of business was CS FOR SENATE BILL NO. 354(STA) am(efd fld), "An Act relating to complaints filed with, and investigations, hearings, and orders of, the State Commission for Human Rights; and making conforming amendments."

CHAIR WEYHRAUCH reminded the committee that the motion to adopt Amendment 2 on May 5, 2004, had been left pending in order to wait for response from Lisa Fitzpatrick, Human Rights Commission, to questions from the committee. [Amendment 2 would delete paragraphs (4), (6), (8), and (9), on page 3, lines 2, 5, 7, and 8, and renumber accordingly.]

Number 1785

LISA FITZPATRICK, Chair, Human Rights Commission, Office of the Governor, responding to the committee's questions on behalf of the commission, indicated that the commission is concerned about leaving in language [on page 3, paragraphs (6) and (9)]. Paragraph (6) read: "(6) a hearing will not represent the best use of commission resources;". Paragraph (9) read: "(9) proceeding to a hearing will not serve the public interest." She explained that the commission is concerned that its caseload is becoming overwhelming again, to the point of backlog. She offered an example where an individual may only be entitled to a nominal amount of relief and it may not be in the public interest to proceed to a hearing on a case like that. She said the commission would like some latitude to exercise some discretion in the degree to which a caseload is worked, in order to "be successful in housekeeping the caseload."

MS. FITZPATRICK, in response to a request for clarification from Representative Seaton, said the commission would like [paragraph] (6) and either [paragraphs] (8) or (9) [on page 3] to remain in the bill.

Number 1970

SCOTT J. NORDSTRAND, Deputy Attorney General, Civil Division, Office of the Attorney General, Department of Law, in response to a question from Representative Gruenberg as to whether he sees any benefit in keeping both [paragraphs] (6) and (9), answered that the department would defer to the commission on what it wants in terms of its prosecutorial discretion. He stated that the department agrees with the commission that "the necessity of number (8) is very important."

Number 1980

CHAIR WEYHRAUCH directed attention to Amendment 2 and clarified that the committee is faced with deleting [paragraph] (4), [and is considering] leaving in [paragraph] (8). He said, "Then the committee has a policy decision to make on whether [to] leave in [paragraphs] (6) and (9)."

Number 1995

REPRESENTATIVE GRUENBERG moved [Amendment 1] to Amendment 2, to delete from Amendment 2, [paragraph] (8). He explained that that would keep [paragraph] (8) in the bill.

CHAIR WEYHRAUCH offered his understanding that by leaving in [paragraph] (8) - which read, "(8) the probability of success of the complaint on the merits is low; or" - the concern is that a prejudgment would be made without really hearing the alternative side to the story.

REPRESENTATIVE GRUENBERG interjected, "No, that's not it at all."

CHAIR WEYHRAUCH clarified that that was a concern that had been stated by a previous testifier.

REPRESENTATIVE GRUENBERG stated:

Any litigator needs to weigh the merits of their case, and if they feel they have a very low probability of success, they definitely need to have the discretion not to pursue it or, if they're a defendant, to settle the matter. This is the heart of being an attorney. It's bad policy to force litigation when there's no chance of success; that's just not good.

CHAIR WEYHRAUCH offered his understanding that the executive director would determine the probability of success of the complainants, based on merits.

REPRESENTATIVE GRUENBERG responded, "I would hope ... that this is really a form of litigation, and it may be a legal question, it may be that the facts are weak. And ... if it's a legal question I assume the commission director would be getting advice from the assistant attorney general."

Number 2083

REPRESENTATIVE SEATON told Chair Weyhrauch:

As the bill's originally there, I agreed with you, but now that we've amended it so that there has to be ... concurrence of the commission, I think that we've taken care of the arbitrariness of an executive director. So, there's got to be that concurrence. So, if ... the facts were being ... misjudged, the commission could say, "No, we need to take a look at this anyway." So, I think I'm not uncomfortable leaving that one in with the previous amendment.

Number 2140

CHAIR WEYHRAUCH clarified that [Amendment 1] to Amendment 2 would delete [paragraph] (8) from Amendment 2. He asked if there was any objection to Amendment 1 to Amendment 2. There being none, it was so ordered.

CHAIR WEYHRAUCH stated that the question before the committee now was whether to delete [paragraph] (6) or (9).

Number 2150

REPRESENTATIVE SEATON noted that paragraphs (6) and (9) have subtle differences; the former addresses finance, while the latter addresses the public interest. He suggested that they both be removed from Amendment 2, thereby leaving them in the bill.

Number 2170

REPRESENTATIVE BERKOWITZ stated his preference to leave both paragraphs (6) and (9) in [Amendment 2]. He noted that the cases in question are those brought by an individual; therefore, there could conceivably be instances where the public interest is marginally served. Having been a prosecutor who has dismissed cases because they have been too expensive, he said that doing so is something that must be noted. He indicated that if he had to pick one of the paragraphs to delete from Amendment 2, it would be [paragraph] (6).

CHAIR WEYHRAUCH suggested combining [paragraphs] (6) and (9) with an "or".

REPRESENTATIVE GRUENBERG said he would like to keep [paragraph] (6) in the bill [thus removing it from Amendment 2] for the same reason Representative Berkowitz just stated. He said he would like to further discuss whether to retain or delete [paragraph] (9). He asked if the two paragraphs could be addressed one at a time.

Number 2244

REPRESENTATIVE HOLM concurred with Representative Seaton that there is oversight by the commission. He said, "It would appear to me you'd want to keep this in so that you wouldn't - as Representative Berkowitz says - ... have cases where it would be so terribly [expensive] you couldn't afford to do them." He noted, "The State of Alaska - we don't print the money; the [federal government] prints the money"

REPRESENTATIVE GRUENBERG [moved to adopt Amendment 2 to Amendment 2], to delete "(6)".

CHAIR WEYHRAUCH asked if there was any objection to Amendment 2 to Amendment 2. [No objection was stated and Amendment 2 to Amendment 2 was treated as adopted.]

Number 2305

REPRESENTATIVE GRUENBERG said he would like at least one example of the kind of case that would fall under the category of [paragraph (9)].

Number 2317

MR. NORDSTRAND said he thinks the commission would be in a better position to talk about examples of cases. He said he thinks the administration would be comfortable in keeping either [paragraph] (6) or (9). He said if [paragraph] (6) is more specific and therefore "more palatable," that would be acceptable. He stated, "There may be circumstances ... - and I don't have an example for you - where in the public interest a case should be dismissed. And it might be easy to characterize it as a resource issue, and it might be better to [require] them ... to say, 'Yes, it is, in fact, in the public interest, and here's why.'"

REPRESENTATIVE BERKOWITZ asked, "Why was this section drafted in there?"

MR. NORDSTRAND answered that the Department of Law tried to come up with a list that made sense, in terms of what discretion should be exercised. He noted that some original language said that [cases] may be dismissed for administrative convenience. He said that language was problematic for the Senate and was removed. He explained that there was some thought that there shouldn't be limits, and an effort was made to find "some description of discretion that we could be comfortable with."

REPRESENTATIVE GRUENBERG asked Ms. Fitzpatrick for an example of "something that would fall in that category [that] wouldn't fall in some other category."

TAPE 04-80, SIDE A

Number 2378

MS. FITZPATRICK offered an example where there is no monetary loss to the individual but the situation has been remediated. She said that might be a situation that could conceivably fall under the ambit of [paragraph] 9.

REPRESENTATIVE GRUENBERG said that satisfies him. He asked Representative Berkowitz for his feedback.

Number 2324

REPRESENTATIVE BERKOWITZ responded:

When you are making a prosecutorial decision, I think it's fundamentally incompatible to smith individual justice, which is what we do in our justice system, ... taking a step back and saying, "Well, how does this fit in the best interest of the system?"

I can think of a circumstance ..., for example, where someone has been horribly discriminated against by an institution that's vitally important to the state. And what do [we] say to that person? "Oh no, we're not going to pursue your case, because it might bring injury to an institution that's of vital importance to the state." And so, ... we're going to deny the individual justice, because the state's best interests aren't served. So, I think deletion of [paragraph] 9 from the bill is appropriate.

MR. NORDSTRAND reiterated that the department will support the commission's position.

Number 2274

REPRESENTATIVE COGHILL asked, "If we delete this [paragraph] out, would it take away the discretion for that very scenario that the commissioner brought before us?" He indicated that what is being talked about is "a dismissal without prejudice." He said, "I understand the other extremity of the argument, but there's also a place where satisfaction has been brought and we're still compelled to take action." He indicated that he wouldn't worry about deleting the language if he had comfort from the commissioner that the discretion would still be in place.

Number 2213

CHAIR WEYHRAUCH clarified that the previously stated idea to delete paragraph (9) from Amendment 2 would be called Amendment 3 to Amendment 2. He asked if there was any objection to Amendment 3 to Amendment 2.

REPRESENTATIVE COGHILL responded:

Only with one caveat that if we keep the wording of [paragraph] (6) in there, that it's with the understanding that, if there is remedy found in ... the circumstances given that that's what that applies to. So, I won't object.

REPRESENTATIVE GRUENBERG said, "I think that's the legislative history."

CHAIR WEYHRAUCH asked again if there was any objection to Amendment 3 to Amendment 2.

Number 2176

REPRESENTATIVE BERKOWITZ objected.

Number 2165

A roll call vote was taken. Representatives Holm, Coghill, and Lynn voted in favor of Amendment 3 to Amendment 2. Representatives Berkowitz, Gruenberg, and Weyhrauch voted against it. Therefore, Amendment 3 to Amendment 2 failed by a vote of 3-3.

Number 2132

CHAIR WEYHRAUCH asked if there was objection to adopting Amendment 2, as amended. [The objection to Amendment 2, without amendments, originally stated by Representative Holm during the previous hearing on SB 354, on May 5, 2004, was treated as withdrawn.] There being no objection to Amendment 2, as amended, it was so ordered.

ADJOURNMENT

The House State Affairs Standing Committee meeting was recessed at 10:08 a.m. to a call of the chair. [The meeting was reconvened May 8, 2004.]