ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE
March 21, 2005
2:29 p.m.

MEMBERS PRESENT

Representative Lesil McGuire, Chair
Representative Tom Anderson
Representative John Coghill
Representative Nancy Dahlstrom
Representative Pete Kott
Representative Les Gara
Representative Max Gruenberg

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 136
"An Act restricting the authority of a court to suspend execution of a sentence or grant probation in prosecutions for driving while under the influence and prosecutions for refusal to submit to a chemical test; and allowing a court to suspend up to 75 percent of the minimum fines required for driving while under the influence and for refusal to submit to a chemical test if the defendant successfully completes a court-ordered treatment program."

- MOVED HB 136 OUT OF COMMITTEE

HOUSE BILL NO. 116
"An Act relating to the liability of certain persons for entry and remaining on licensed premises."

- MOVED CSHB 116(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 94
"An Act relating to qualifications of voters, requirements and procedures regarding independent candidates for President and Vice-President of the United States, voter registration and voter registration records, voter registration through a power of attorney, voter registration using scanned documents, voter residence, precinct boundary and polling place designation and modification, recognized political parties, voters unaffiliated

with a political party, early voting, absentee voting, application for absentee ballots through a power of attorney, or by scanned documents, ballot design, ballot counting, voting by mail, voting machines, vote tally systems, initiative, referendum, recall, and definitions in the Alaska Election Code; relating to incorporation elections; and providing for an effective date."

- HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 136
SHORT TITLE: DRUNK DRIVING TREATMENT PROGRAM
SPONSOR(S): REPRESENTATIVE(S) ROKEBERG

02/09/05	(H)	READ THE FIRST TIME - REFERRALS
02/09/05	(H)	JUD, FIN
03/21/05	(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 116
SHORT TITLE: MINORS ON LICENSED PREMISES
SPONSOR(S): REPRESENTATIVE(S) MEYER

01/28/05	(H)	READ THE FIRST TIME - REFERRALS
01/28/05	(H)	STA, JUD
03/01/05	(H)	STA AT 8:00 AM CAPITOL 106
03/01/05	(H)	Moved CSHB 116(STA) Out of Committee
03/01/05	(H)	MINUTE(STA)
03/02/05	(H)	STA RPT CS(STA) NT 3DP 2DNP 1AM
03/02/05	(H)	DP: GARDNER, GATTO, SEATON;
03/02/05	(H)	DNP: RAMRAS, ELKINS;
03/02/05	(H)	AM: GRUENBERG
03/21/05	(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 94
SHORT TITLE: ELECTIONS
SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

01/21/05	(H)	READ THE FIRST TIME - REFERRALS
01/21/05	(H)	STA, JUD, FIN
02/03/05	(H)	STA AT 8:00 AM CAPITOL 106
02/03/05	(H)	Heard & Held
02/03/05	(H)	MINUTE(STA)
02/08/05	(H)	STA AT 8:00 AM CAPITOL 106
02/08/05	(H)	Heard & Held
02/08/05	(H)	MINUTE(STA)

02/10/05	(H)	STA AT 8:00 AM CAPITOL 106
02/10/05	(H)	Heard & Held
02/10/05	(H)	MINUTE(STA)
02/17/05	(H)	STA AT 8:00 AM CAPITOL 106
02/17/05	(H)	Heard & Held
02/17/05	(H)	MINUTE(STA)
02/19/05	(H)	STA AT 10:00 AM CAPITOL 106
02/19/05	(H)	Bill Hearing Canceled
03/08/05	(H)	STA AT 8:00 AM CAPITOL 106
03/08/05	(H)	Heard & Held
03/08/05	(H)	MINUTE(STA)
03/15/05	(H)	STA AT 8:00 AM CAPITOL 106
03/15/05	(H)	Moved CSHB 94(STA) Out of Committee
03/15/05	(H)	MINUTE(STA)
03/18/05	(H)	STA RPT CS(STA) NT 3DP 2NR
03/18/05	(H)	DP: GATTO, GRUENBERG, SEATON;
03/18/05	(H)	NR: GARDNER, LYNN
03/21/05	(H)	JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

HEATHER NOBREGA, Staff
to Representative Norman Rokeberg
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Presented HB 136 on behalf of the sponsor, Representative Rokeberg.

DOUG WOOLIVER, Administrative Attorney
Administrative Staff
Office of the Administrative Director
Alaska Court System (ACS)
Anchorage, Alaska
POSITION STATEMENT: During discussion of HB 136, responded to questions and expressed the ACS's support for the provisions that serve as incentives for people to participate in therapeutic court programs.

JAMES N. WANAMAKER, Director
Alaska Center for Therapeutic Justice
Partners for Progress, Inc. (PFP)
Anchorage, Alaska
POSITION STATEMENT: During discussion of HB 136, provided comments, responded to questions, and said he hopes the bill will be reported from committee with "do pass" recommendations.

WENDY HAMILTON, Coordinator

Juneau Therapeutic Court
Juneau, Alaska
POSITION STATEMENT: Provided comments during discussion of HB 136.

MATT FELIX, Executive Director
Juneau Affiliate
National Council on Alcoholism and Drug Dependence, Inc. (NCADD)
Juneau, Alaska
POSITION STATEMENT: Provided comments during discussion of HB 136 and responded to questions.

REPRESENTATIVE KEVIN MEYER
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Sponsor of HB 116.

DOUGLAS B. GRIFFIN, Director
Alcoholic Beverage Control Board ("ABC Board")
Department of Public Safety (DPS)
Anchorage, Alaska
POSITION STATEMENT: Provided comments during discussion of HB 116.

JESSICA PARIS, Coordinator
Youth in Action
Juneau Affiliate
National Council on Alcoholism and Drug Dependence, Inc. (NCADD)
Juneau, Alaska
POSITION STATEMENT: Provided comments during discussion of HB 116.

MICHAEL PAWLOWSKI, Staff
to Representative Kevin Meyer
House Finance Committee
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Responded to a comment during discussion of HB 116.

LAURA A. GLAISER, Director
Central Office
Division of Elections
Office of the Lieutenant Governor
Juneau, Alaska
POSITION STATEMENT: Presented HB 94 on behalf of the administration.

JOSEPH A. SONNEMAN, Ph.D.
Juneau, Alaska
POSITION STATEMENT: Provided comments regarding Sections 10 and 19 of HB 94, regarding two proposed amendments, and responded to questions.

MYRL THOMPSON
Wasilla, Alaska
POSITION STATEMENT: During discussion of HB 94, provided comments regarding possible amendments.

KEN JACOBUS
Anchorage, Alaska
POSITION STATEMENT: During discussion of HB 94, provided comments on the bill and possible amendments, and responded to questions.

VANESSA TONDINI, Staff
to Representative Lesil McGuire
House Judiciary Standing Committee
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Responded to a question during discussion of HB 94.

ACTION NARRATIVE

CHAIR LESIL McGUIRE called the House Judiciary Standing Committee meeting to order at 2:29:19 PM. Representatives McGuire, Coghill, Dahlstrom, Gruenberg, and Gara were present at the call to order. Representatives Anderson and Kott arrived as the meeting was in progress.

HB 136 - DRUNK DRIVING TREATMENT PROGRAM

CHAIR McGUIRE announced that the first order of business would be HOUSE BILL NO. 136, "An Act restricting the authority of a court to suspend execution of a sentence or grant probation in prosecutions for driving while under the influence and prosecutions for refusal to submit to a chemical test; and allowing a court to suspend up to 75 percent of the minimum fines required for driving while under the influence and for refusal to submit to a chemical test if the defendant successfully completes a court-ordered treatment program."

2:30:08 PM

HEATHER NOBREGA, Staff to Representative Norman Rokeberg, Alaska State Legislature, sponsor, relayed on behalf of Representative Rokeberg that HB 136 makes three changes. One change will require courts to impose the statutory minimum fines for driving under the influence (DUI) convictions; currently, because courts are not statutorily required to impose those fines, some are suspending the fines. Another change expands the provision regarding court ordered treatment programs so that it also applies to felony DUI cases. And the third change increases - from 50 percent to 75 percent - the percentage of a fine that can be waived if a person successfully completes a court ordered treatment program. With regard to a question about how the minimum fine for a DUI is collected if the person doesn't have the means to pay it, she said that the collection of fines is handled by the Department of Law (DOL), and offered her understanding that the DOL simply garnishes a person's permanent fund dividend (PFD) until the fine is paid off.

REPRESENTATIVE GARA expressed a concern regarding the existing fines, which are listed on page 2 and 3 of the bill and range between $3000 and $7000 for repeat misdemeanor DUI convictions and $10,000 for felony DUI convictions. He said he wonders what kind of message is sent being sent in instances where the person cannot afford such a fine, where the person has to choose between paying the fine and paying for necessities. He offered his understanding that once a person becomes a felon, he/she isn't entitled to a PFD. He suggested that the bill be changed to allow someone to forgo paying the fine if he/she can prove that paying the fine would result in causing [financial] harm to his/her family.

2:34:37 PM

MS. NOBREGA said she understands Representative Gara's concern; however, the legislature put a lot of thought into raising the aforementioned minimum fines to what they currently are today. She said it's a policy call of this legislature as to whether it wants to provide for something different. It is Representative Rokeberg's intent, she relayed, for the courts to abide by what is currently provided for in statute regarding minimum DUI fines.

REPRESENTATIVE GARA questioned why it is more important for a single parent, for example, to give money to the state rather than buy food for his/her children.

REPRESENTATIVE DAHLSTROM said that although she is sympathetic to the struggles that a single parent goes through, there are natural consequences to one's choices, such as choosing to go out and get drunk and then driving. She said she is also sympathetic to those who've been victims of alcohol-related crimes, however, and offered her belief that the money that would have gone towards paying a DUI fine wouldn't have been used to help the family anyway, and that the felony DUI fine of $10,000 could be the wakeup call that someone needs. The current schedule of fines can also send a message to the children of parents who are convicted of DUI, the message that they need to make different choices with regard to alcohol consumption. She said that she is supportive of the current fine schedule and that she is disappointed that the courts haven't been enforcing those fines.

CHAIR McGUIRE asked whether a Suspended Imposition Of Sentence (SIS) can include a suspension of the fines.

REPRESENTATIVE GARA noted that an SIS would only be granted for a first offense and so wouldn't be granted to a person convicted of a repeat DUI offense. He said he agrees with Representative Dahlstrom's comments, but posited that the children of a person convicted of a repeat DUI offense will only be noticing how long their parent is missing from the home while serving the mandatory minimum jail sentence.

2:39:56 PM

REPRESENTATIVE GARA reiterated his belief that there should be some sort of "out" [for those in dire financial straits who have families to support]; for example, a payment scheduled could be established.

CHAIR McGUIRE said she doesn't see that the bill specifies the terms of any possible payment agreement that could be arranged. She asked whether the judge has the discretion to set up a payment agreement so as not to cause unbearable hardship on a family.

MS. NOBREGA offered her understanding that such can be done, either through the Alaska Court System (ACS) or the DOL. With regard to the issue of SIS, she noted that there is a chart in members' packets containing information garnered from local papers about SISs granted in Juneau and Nome. Referring to one such SIS as an example, she pointed out that the person didn't have to pay a single dollar of the mandatory minimum $10,000

fine and had two years of his/her mandatory minimum sentence suspended. She relayed that almost everyone convicted of a DUI in Juneau had portions of his/her sentence suspended and most, if not all, of his/her fines suspended.

REPRESENTATIVE GARA offered his belief, however, that if the bill says that a person has to pay the fine, even if he/she is unable to do so, then the judge will have the authority to put that person in jail for the remainder of his/her suspended sentence. He opined that the committee ought to be able to achieve the goal of having as much of the money imposed for fines paid as possible while still statutorily allowing the judge to set up a payment schedule. If the ability to set up a payment schedule is already provided for in statute, he remarked, then his concern is satisfied, but if such isn't already provided for, then he would like to add such a provision to HB 136.

2:44:20 PM

CHAIR McGUIRE asked Mr. Wooliver to comment regarding Representative Gara's concern.

DOUG WOOLIVER, Administrative Attorney, Administrative Staff, Office of the Administrative Director, Alaska Court System (ACS), said that the only provisions of HB 136 he was prepared to speak on were the provisions that serve as incentives for people to participate in therapeutic court programs, which the ACS supports because it thinks they work and save both money and lives; those provisions include the one that allows for a reduction in fines [when a person successfully completes a court ordered treatment program] and the one that allows those convicted of felony DUI to participate in therapeutic court programs. He did relay, however, that payment schedules are routinely set up, but they vary between judges, and that judges also disagree amongst themselves regarding the extent to which mandatory minimum fines can be suspended.

REPRESENTATIVE GARA asked whether, if HB 136 is adopted, judges would retain the discretion to set up a payment schedule.

MR. WOOLIVER said yes.

REPRESENTATIVE GARA asked whether he should worry that probation time might be turned into jail time if a person isn't able to pay the fine on schedule.

MR. WOOLIVER said he didn't know, and suggested that others could perhaps better address that issue.

2:46:58 PM

REPRESENTATIVE GARA referred to the Alaska Court of Appeals opinion in Curtis V. State, and offered his understanding that it said a person doesn't have to pay the minimum fine. He asked whether there were any standards, such as demonstrating that one doesn't have the ability to pay the fine, that came with that opinion.

MR. WOOLIVER offered his understanding that the Curtis decision basically said that mandatory minimum jail time may not be suspended and noted that there is nothing in statute regarding a requirement to pay a mandatory minimum fine. He said he is not sure whether judges are interpreting that opinion differently or whether judges are simply disagreeing with regard to whether "it's" appropriate.

2:48:03 PM

CHAIR McGUIRE asked Mr. Wanamaker to comment on Representative Gara's concern.

JAMES N. WANAMAKER, Director, Alaska Center for Therapeutic Justice, Partners for Progress, Inc. (PFP), speaking as a former judge from Anchorage's Third Judicial District, said that the practice in Anchorage has been for the judge to set a due date by which the fine must be paid - for example, by the end of a year; then, if the fine is not paid by that due date, it becomes a civil matter that is pursued by the DOL just like any other civil judgment.

REPRESENTATIVE GARA recapped what current law allows for with regard to fines. He asked whether the court's jurisdiction on a misdemeanor case lasts for more than a year.

2:52:22 PM

MR. WANAMAKER indicated that although a judge could set up a due date that goes beyond a year, that's not been the prevailing practice.

REPRESENTATIVE GARA relayed that that offers him some comfort. He then asked whether the bill will allow judges to use a

payment plan approach, for example, paying $100 a month until the entire fine is paid.

MR. WANAMAKER offered that judges don't generally set up a specific payment plan because they have so many cases and doing so would involve too many details; typically judges just give a date by which the fine in total is due. He said he has never seen a petition to revoke probation for failure to pay a fine.

REPRESENTATIVE GARA asked for Mr. Wanamaker's thoughts regarding requiring that all mandatory minimum fines be paid.

MR. WANAMAKER characterized that as a housekeeping matter, adding that he'd always taken the view that the mandatory minimum fines were the minimum that could be imposed and that they had to be paid. He offered his belief that there are just a few judges that are suspending the fines below the statutory minimum amount.

2:55:10 PM

MR. WANAMAKER, speaking on behalf of the Alaska Center for Therapeutic Justice, offered his understanding that Sections 3 and 6 would extend the statutes regarding therapeutic courts so that they would apply to those convicted of felony DUIs. He opined that the single best way to prevent the horror caused by DUI-related accidents is to get defendants into lasting sobriety, which has been proven to happen via the therapeutic court model. He noted that therapeutic courts are cost effective, and that the National Highway Traffic Safety Administration (NHTSA) is emphasizing the funding of therapeutic courts. He said he hopes the bill will be reported from committee with "do pass" recommendations.

2:57:19 PM

CHAIR McGUIRE mentioned that she's seen a summary produced by the "Scaife Family Foundation" listing the economic benefits of drug treatment.

MR. WANAMAKER mentioned that he's seen other studies that provide similar information.

REPRESENTATIVE GARA asked whether passage of the bill will require judges to send someone to jail for failure to pay the mandatory minimum fine.

MR. WANAMAKER said no, adding that the judge doesn't have the authority to send someone to jail until a petition to revoke probation has been filed by the district attorney, and such isn't done, since failure to pay a fine simply becomes a civil matter.

2:59:48 PM

WENDY HAMILTON, Coordinator, Juneau Therapeutic Court, characterized all three of the aspects of HB 136 that Ms. Nobrega spoke of as housekeeping measures. She opined that extending the provision regarding therapeutic courts so that it applies to felony DUI offenders is a much needed change, noted that the Juneau Therapeutic Court will be handling both misdemeanor and felony DUI offenses, and offered her belief that felony DUI offenders are just a higher level of risk. With regard to the bill's proposal to increase the amount of a fine that may be waived if a person convicted of a DUI successfully completes court ordered treatment, she posited that this proposed change goes hand in hand with the extension of therapeutic courts to felony DUI offenders. Successfully completing court ordered treatment requires a lot of hard work, she noted, and so there should be incentives for offenders to chose that option.

MS. HAMILTON, with regard to the concern raised by Representative Gara, said that in her experience, having worked in the field of felony probation/parole for two and a half years, no one has ever been sent back to jail for failure to pay a fine; [the state] has always worked out a payment plan that an offender is amenable to, and an offender is even allowed to miss a payment or two before being called by his/her probation/parole officer. She, too, mentioned that unpaid fines are eventually turned over to the DOL for collection, even if the offender is already off probation/parole. "Fines are one of the 'bites' that you can have, jail and fines, and that's why that third piece is very much needed for the second piece to work," she concluded.

3:02:27 PM

MATT FELIX, Executive Director, Juneau Affiliate, National Council on Alcoholism and Drug Dependence, Inc. (NCADD), relayed that the NCADD does a lot of drug and alcohol treatment prevention and is the recipient of the federal money that is used to administer the Juneau Therapeutic Court in conjunction with the ACS. He, too, characterized the changes proposed by HB

136 as cleanup language that is needed, and suggested that therapeutic courts "fill in the gaps" and make the courts work better by offering "a carrot" approach in addition to the punitive approach. With regard to Representative Gara's concerns, he said that the NCADD's experience has been that a lot of an offender's fine ends up being waived if he/she successfully completes court ordered treatment, and characterized this as part of the carrot approach. Additionally, if a person successfully completes court ordered treatment, he/she will get credit for treatment fees, credit for therapy, and credit for a number of other things he/she is ordered to do, and the judge has the discretion to apply that credit to the offender's fine; therefore, a person could end up paying only one-fourth of a $10,000 fine, for example.

CHAIR McGUIRE surmised that the NCADD is seeing the [therapeutic court process] work.

MR. FELIX concurred, adding that the NHTSA is now funding therapeutic courts because they are one of the few things that do work to stop DUI fatalities. The reason why so much federal money is pouring into Alaska is because Alaska has the worst DUI rate per capita and the worst DUI fatality rate of any state; over the years, and still currently, 50 percent of Alaska's auto fatalities have been DUI related, and up to one third of those fatalities were the result of multiple DUI [situations].

CHAIR McGUIRE asked whether interlock devices are making an impact on that rate.

MR. FELIX indicated that although [the courts] are now authorized to make use of interlock devices in sentencing, they are not being used in Alaska yet, though they have been used successfully in other states as part of the sentencing structure and as part of the therapeutic court model.

3:08:11 PM

CHAIR McGUIRE, after ascertaining that no one else wished to testify, closed public testimony on HB 136.

REPRESENTATIVE DAHLSTROM moved to report HB 136 out of committee with individual recommendations and the accompanying fiscal notes.

REPRESENTATIVE GARA objected, and asked that the committee consider adopting a letter of intent so as to ensure that the

bill won't be turned into a means by which to impose the remaining part of a person's sentence because of a failure to pay the mandatory minimum fine.

CHAIR McGUIRE said she wouldn't have a problem supporting such a letter of intent but would first want to see in it writing.

3:10:06 PM

REPRESENTATIVE GARA asked that the committee delay moving the bill until later in the meeting in order to give him an opportunity to craft the letter of intent.

CHAIR McGUIRE agreed to do so.

REPRESENTATIVE ANDERSON asked that the letter of intent include language indicating that the committee recognizes that therapeutic courts, treatment programs, and interlock devices are valuable tools for rehabilitation.

REPRESENTATIVE GARA agreed to do so.

REPRESENTATIVE DAHLSTROM withdrew the motion to report HB 136 from committee.

CHAIR McGUIRE relayed that HB 136 would be set aside and heard again later in the meeting when the aforementioned letter of intent is available for members to look at.

HB 116 - MINORS ON LICENSED PREMISES

3:11:12 PM

CHAIR McGUIRE announced that the next order of business would be HOUSE BILL NO. 116, "An Act relating to the liability of certain persons for entry and remaining on licensed premises." [Before the committee was CSHB 116(STA).]

REPRESENTATIVE ANDERSON indicated that he'd like to move the bill from committee.

REPRESENTATIVE KEVIN MEYER, Alaska State Legislature, sponsor, said that HB 116 protects minors working with [law] enforcement officers doing compliance checks on liquor license holders. He referred to legislation he sponsored during the last legislative session that created a civil penalty for those that violate AS 04.16.060, and noted that the bill would clarify that those

minors helping law enforcement with compliance checks would not be held liable for violating either AS 04.16.049 or AS 04.16.060. He pointed out that currently, minor volunteers actively assisting law enforcement in compliance checks are not exempt from the liability provision of AS 04.16.065, and opined that they should be exempt. There have been instances of licensees attempting to bring suit against the minors that are assisting law enforcement with compliance checks. He mentioned that he has been "a victim" of a compliance check wherein two minors outside of a liquor store asked him to purchase alcohol for them and, fortunately, he responded correctly by refusing to do so.

3:15:02 PM

DOUGLAS B. GRIFFIN, Director, Alcoholic Beverage Control Board ("ABC Board"), Department of Public Safety (DPS), opined that the sponsor has done a good job of "framing the question and the need for" HB 116, and noted that William Roche, Chief Enforcement Officer, is also available for questions. He offered that the compliance check program is a simple way of putting people on notice that they need to take greater care in making sure they don't serve alcohol to underage persons. In management parlance, he remarked, the program is not that complicated but does involve an underage person going on to a licensed premises. He added that the ABC Board is very careful to not mislead or trick anyone about the age of the person making the request; the program is not intended to be a method by which to entrap anyone.

MR. GRIFFIN said that one of the unforeseen problems encountered with the program in relation to the newly established civil penalty in AS 04.16.065, however, is that some licensees have attempted to pursue civil action against the minors assisting with the compliance checks. He noted that the compliance check program has proven to be very effective as a deterrent; when the program first started, the failure rate approached 50 percent, and after just a few years of conducting the program, and without spending a whole lot of money, the failure rate is now under 10 percent. He concluded by saying, "We do need this bill to clean up some of the potential problems that could be brought about from licensees that don't like ... the fact that we're out there trying to make sure that they're towing the line, by guarding our underage people [from] the potential of being sued."

3:18:26 PM

JESSICA PARIS, Coordinator, Youth in Action, Juneau Affiliate, National Council on Alcoholism and Drug Dependence, Inc. (NCADD), relayed that she is speaking on behalf of the teens she has worked with while participating in the compliance check program, and mentioned that she witnessed Representative Meyer making "the right choice" during the compliance check he underwent. She noted that law enforcement officers had indicated that there was a problem with recruiting and training "agents," underage persons willing to assist with the compliance program, and so that is what her current job entails. Some of the issues she faces when attempting to recruit and retain teens for compliance checks, she relayed, is that the work is sporadic, that it is preferable to have teens that are between the age 18 and 20, that the teens can't be drinking, and that it takes some courage on the part of the teens to work with law enforcement to potentially shut down a source of alcohol to their peers. So it is frustrating to then have these teens face potentially being sued for $1,000 for their work, she concluded, adding that one such teen she has worked with is facing just such a suit.

3:20:44 PM

CHAIR McGUIRE, after ascertaining that no one else wished to testify, closed public testimony on HB 116.

REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 1, to remove from page 1, lines 7 and 13, "the person" and insert ", supervises,". He offered his belief that Amendment 1 would allow for instances in which the minor is wired and is not being physically accompanied or visually observed by a law enforcement officer.

CHAIR McGUIRE, characterizing Amendment 1 as a good amendment, asked whether there were any objections to Amendment 1. There being none, Amendment 1 was adopted.

REPRESENTATIVE GRUENBERG mentioned that [in a prior committee] there had been discussion about making "this" applicable to [AS 04.16.050, AS 04.16.051, and AS 04.16.052], to add identical language to those statutes.

MICHAEL PAWLOWSKI, Staff to Representative Kevin Meyer, House Finance Committee, Alaska State Legislature, sponsor, pointed out that AS 04.16.050 pertains to possession, control, or consumption by persons under the age of 21; that AS 04.16.051

pertains to furnishing or delivery of alcoholic beverages to persons under 21; and AS 04.16.052 pertains to furnishing alcoholic beverages to persons under the age of 21 by licensees. Therefore, he opined, there are several different enforcement issues in Alaska's alcohol and beverage laws that are covered in those three statutes.

MR. PAWLOWSKI relayed that the ABC Board had indicated that it might be helpful to add the exemption from liability proposed in HB 116 in case the legislature, in the future, wanted to add a civil liability provision to one of the aforementioned sections. However, no such civil liability provisions exist in those statutes currently, and criminal liability, as provided for in Title 11, wouldn't apply because the minor would be accompanied by a peace officer. Therefore, he indicated, expanding HB 116 to include AS 04.16.050, AS 04.16.051, and AS 04.16.052 would not be necessary at this time, even though the ABC Board likes the idea of doing so.

3:25:26 PM

REPRESENTATIVE GRUENBERG said he wouldn't offer a proposed amendment to include those statutes in HB 116 if the sponsor prefers to forgo such a change.

REPRESENTATIVE MEYER said he appreciates the suggestion but doesn't see a need for changing the bill in that fashion.

3:26:49 PM

REPRESENTATIVE DAHLSTROM moved to report CSHB 116(STA), as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 116(JUD) was reported from the House Judiciary Standing Committee.

The committee took an at-ease from 3:27 p.m. to 3:28 p.m.

hb136
HB 136 - DRUNK DRIVING TREATMENT PROGRAM

3:28:24 PM

CHAIR McGUIRE announced that the committee would return to the hearing on HOUSE BILL NO. 136, "An Act restricting the authority of a court to suspend execution of a sentence or grant probation in prosecutions for driving while under the influence and

prosecutions for refusal to submit to a chemical test; and allowing a court to suspend up to 75 percent of the minimum fines required for driving while under the influence and for refusal to submit to a chemical test if the defendant successfully completes a court-ordered treatment program."

CHAIR McGUIRE indicated that a proposed letter of intent has been distributed.

REPRESENTATIVE GARA made a motion to adopt the proposed letter of intent, which, with handwritten corrections, read [original punctuation provided]:

> It is the intention of the legislature that the Court System and Department of Law continue their practice as regards collection of unpaid fines for Driving Under the Influence of Alcohol. That practice is to pursue the payment of unpaid fines through a civil action by the Department of Law, and not through revocing [sic] probation. It is also the intent of the legislature to encourage the use of fines, wellness courts, and interlocking devices where appropriate as tools for addressing these crimes, and those who commit them.

CHAIR McGUIRE suggested that the letter of intent be adopted after the bill is reported from committee.

REPRESENTATIVE DAHLSTROM moved to report HB 136 out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HB 136 was reported from the House Judiciary Standing Committee.

REPRESENTATIVE GARA again made the motion to adopt the proposed letter of intent. There being no objection, the letter of intent was adopted and forwarded with HB 136.

HB 94 - ELECTIONS

3:29:35 PM

CHAIR McGUIRE announced that the final order of business would be HOUSE BILL NO. 94, "An Act relating to qualifications of voters, requirements and procedures regarding independent candidates for President and Vice-President of the United States, voter registration and voter registration records, voter registration through a power of attorney, voter registration

using scanned documents, voter residence, precinct boundary and polling place designation and modification, recognized political parties, voters unaffiliated with a political party, early voting, absentee voting, application for absentee ballots through a power of attorney, or by scanned documents, ballot design, ballot counting, voting by mail, voting machines, vote tally systems, initiative, referendum, recall, and definitions in the Alaska Election Code; relating to incorporation elections; and providing for an effective date." [Before the committee was CSHB 94(STA).]

LAURA A. GLAISER, Director, Central Office, Division of Elections, Office of the Lieutenant Governor, characterized HB 94 as an omnibus "repair election" bill, and noted that it had initially been introduced during the 23rd legislature as House Bill 523. She explained that the housekeeping measures that HB 94 provides involve changing the phrase "work sites" to "construction sites"; providing that the presumptive evidence of a voter's address is his/her record, not the voter card; defining "nonpartisan" and "undeclared" voters in statute; protecting voter information of domestic violence victims in accord with confidentiality laws improved last year; defining the process for independent candidates for president and vice president; ensuring consistency in the definition of "overseas voters"; clarifying the age requirements for serving once elected; clearly setting out recognized political party status in the qualification standards for parties; changing Title 29 so as to clearly define a qualified voter as one who's registered to vote within the proposed borough or municipality at least 30 days prior to an election; defining "reregistration"; and repealing duplicative language regarding regional supervisor offices as absentee voting stations.

MS. GLAISER said that some key points that came up this year include allowing a voter, through a power of attorney, to authorize another to register to vote or make changes to the voter's registration, or fill out an application for a by-mail absentee ballot; the latter were requested a lot this last election season by family members of those serving overseas. She mentioned that in the House State Affairs Standing Committee, Representative Gruenberg helped with the drafting of that provision. Additionally, the witnessing requirements for absentee ballot requests by-mail or electronic transmission were reduced from two witnesses to one witness and that witness no longer has to be a U.S. citizen. Scanning would now be another means by which to transmit voter registration or by-mail

absentee ballot requests to the division; the division currently accepts these forms in person, by mail, or by fax.

MS. GLAISER mentioned that the division had been told that the phrase "electronic transmission" was not clear enough to allow someone to scan his/her electronic voter registration application and attach it as an e-mail; the need for clarification on this issue prompted some of the changes offered via HB 94. The bill also requires the division to implement ballot rotation for the names of candidates running for governor, lieutenant governor, United States senator, United States representative, and state senator on ballots printed for each House district. Placement of names for state House candidates will appear in random order as determined by the director, and this is not a change from current practice. She mentioned that instituting a ballot rotation for state House seats would increase the fiscal note and the burden on the division. In response to a question, she acknowledged that there are studies which indicate that having one's name first on the ballot increases one's chances of winning, as well as studies which indicate that the chances are not increased.

REPRESENTATIVE GRUENBERG mentioned that Joseph Sonneman researched that issue and took a case to the supreme court. He mentioned a chart that illustrates what ballot rotation would look like, and concurred that having a rotating ballot for state House seats would increase the fiscal note.

MS. GLAISER mentioned that for a state Senate seat, if there are more than two candidates, one of them will never be first on the ballot.

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MS. GLAISER indicated that the bill will increase ballot security by precluding ballots from being mailed to a voter whose address has already been identified as "undeliverable." Also, election boards will be required to report the number of ballots that are destroyed - this is intended to increase accountability - and the bill adds standards for voting machines and vote tally systems. She noted that a great deal of the bill addresses petitions, referendums, and recalls, with the intent of making the process of petitioning one's government more user friendly and more consistent.

MS. GLAISER relayed that the bill also requires printed names and dates of birth as identifiers for petition signers, and this

should help the division more readily qualify a voter's signature. In order to comply with the U.S. Supreme Court decision in Buckley v. American Constitutional Law Foundation, the bill proposes the following qualifications for a petition circulator: he/she must be 18 years of age or older, and must be both a U.S. citizen and an Alaskan resident.

MS. GLAISER mentioned that language that was the basis for the division requiring accountability reports from petition sponsors has been removed; the Hinterberger v. State of Alaska decision determined that that requirement placed an undue burden on petition carriers. The bill also removes language requiring the circulator's name to be prominently displayed on the petition, though that requirement has not been enforced since the Buckley decision came out, and removes language [requiring] an additional 100 signatures when filing a recall petition.

3:38:18 PM

REPRESENTATIVE DAHLSTROM thanked the division for its work, and commented on the current system's integrity. With regard to now only needing one witness on an absentee ballot request by-mail or electronic transmission, she mentioned that this change disturbs her.

MS. GLAISER said this change disturbs her as well, particularly since the bill's original requirement that that witness be a U.S. citizen was removed in the House State Affairs Standing Committee. However, 39 states currently do not require a witness to be a U.S. citizen because it is believed that such a requirement creates a higher bar to voting. Furthermore, the division can't verify that a witness is a U.S. citizen, though the witness does sign an oath.

3:41:03 PM

REPRESENTATIVE GARA mentioned that Section 19 causes him concern because it says the division can use any machine that's been approved by the Federal Election Commission, and he wants to ensure that this does not mean a machine that doesn't use a paper ballot.

MS. GLAISER said that would not be the case, and noted that in the House State Affairs Standing Committee, Representative Gruenberg added language to Section 19 that referenced the statute which stipulates that a voting machine must use a paper ballot.

MS. GLAISER, in response to a question, relayed that the language change from two witnesses to one witness - who no longer has to be a U.S. citizen - is located on page 11, lines 1 and 25-26, and pertains to both electronic and by-mail absentee ballots.

REPRESENTATIVE GRUENBERG referred to testimony heard in the House State Affairs Standing Committee regarding the potential difficulty, while traveling abroad, of finding a U.S. citizen to act as a witness; the feeling in the House State Affairs Standing Committee was that it would not be necessary for a witness to be a U.S. citizen. In response to a question, he noted that 39 states don't have a witness requirement, and said he would be willing to offer an amendment to that effect if absentee voters are required to swear under penalty of perjury that they are who they say they are.

REPRESENTATIVE COGHILL asked whether a witness would be more liable than the absentee voter.

REPRESENTATIVE GRUENBERG said no.

3:46:31 PM

REPRESENTATIVE GRUENBERG offered his recollection that one is already under penalty of perjury to identify one's self correctly for the purpose of voting.

CHAIR McGUIRE asked what the form says "on the witnessing part."

MS. GLAISER said it's important to know that seeking a witness is a person's last recourse; she indicated that the form that's returned to the Division of Elections says:

> By law your ballot cannot be counted unless you include your signature, have it witnessed and provide an identifier. I declare that I am a citizen of the United States and that I have been a resident of Alaska for at least 30 days. I have not requested a ballot from any other state and am not voting in any other manner in this election. If I had this certification attested by witnesses other than an authorized official, it was because no official empowered to administer an oath was reasonably available. I certify that the foregoing is true and accurate.

REPRESENTATIVE GRUENBERG noted that Section 14, proposed 15.20.066(b)(2), already requires that an absentee ballot returned by electronic transmission must be accompanied by a statement executed under oath as to the voter's identity. Section 16, on the other hand, pertains to returning an absentee ballot by mail and doesn't require a person to state under oath that he/she is who he/she is claiming to be. He opined that there should be such a requirement when one returns an absentee ballot by mail, particularly since that requirement exists if one returns an absentee ballot via fax.

MS. GLAISER noted that the bill doesn't include the entire statute, and indicated that she would be looking at the full statute to find out whether elsewhere it makes such a requirement for those sending in their absentee ballots by mail.

CHAIR McGUIRE asked whether the Division of Elections has ever had occasion to contact the witnesses because of suspected voter fraud.

3:49:57 PM

MS. GLAISER relayed that she has been asked to contact a witness when, for example, the witness's signature was the voter' signature, or when the witness had a different name but the signature was the same as the voter's. She said that the Division of Elections has an attorney general's opinion that says that division personnel are not signature experts, but when it's flagrant, they can "make that call." She noted that if it's a close election or if there is a concern or if there are questions about how the absentee review boards are functioning, then the issue of witness verification is pursued further. She acknowledged that the Division of Elections doesn't know whether every single witness is whom he/she says.

CHAIR McGUIRE said she agrees with Representative Gruenberg's comments regarding "an oath requirement." She added, however, that she would be reluctant to "remove the witnessing part of it"; rather, perhaps they should add a requirement that witnesses take an oath under penalty of perjury when they witness absentee ballots. In other words, if an absentee ballot is not signed by a notary, there ought to be a mechanism by which to ensure that the absentee ballot is being witnessed correctly. She surmised that if one knows that he/she will have to ask someone else to falsify information about one's identity, it might serve as a deterrent.

MS. GLAISER said that the "first bar" is the highest, that of having to fill out an absentee ballot in the presence of a notary public, commissioned officer of the armed forces including the National Guard, district judge or magistrate, United States postal official, registration official, or other person qualified to administer oaths. She opined that this should be the first test, although the division doesn't scrutinize the fact that a person had two witnesses sign the form even though he/she had easy access to a notary public. Alaska is recognized as doing the most to make sure a ballot is counted, and the division does not judge a person with regard to whether he/she met the highest bar or took the easier route.

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REPRESENTATIVE GRUENBERG referred to page 11 and noted that the statute doesn't require that "it" be under oath even in front of a notary, whereas the form does. He opined that if an oath is required, then the oath should be required regardless of whether "it's" in front of the notary; "then what they would do, would be ... [to] have you say, here, up at the top, 'signed under penalty of perjury.'"

REPRESENTATIVE GRUENBERG made a motion to adopt Conceptual Amendment 1, to alter AS 15.20.081 "to require that here, just like with fax, that it be signed under penalty of perjury or under oath."

CHAIR McGUIRE, noting that [CSHB 94(STA)] is before the committee, asked whether there were any objections to Conceptual Amendment 1. There being none, Conceptual Amendment 1 was adopted.

REPRESENTATIVE GRUENBERG, in response to a question, said he would feel much better if [a witness were required to sign] under oath.

CHAIR McGUIRE noted how easy it is to obtain false identification, and said she wants to give recourse to the division in cases of voter fraud, which some states have terrible problems with.

3:58:12 PM

REPRESENTATIVE COGHILL pointed out that when he goes into vote people [working] under oath check his ID; he characterized this

as a high bar that provides Alaska with a very clean voting system. Where that system starts to get messy, he opined, is [in regard to absentee voters] and suggested that the individual's signature under oath is the last place to go [to ensure the system's integrity]. He said he doesn't consider the requirement for an absentee voter to have someone honestly witness his/her signature as being too much of a burden. Noting that proposed AS 15.20.081(d) first says that an absentee voter should fill out his/her ballot in front of a notary public, the goal being to identify who a voter is, he offered his belief that there is still a need for that level of serious scrutiny; therefore, he is not willing to remove the witness requirements just yet.

MS. GLAISER noted that the division is going out to bid on a new voter registration system, which would allow the division to scan a voter's signature and thus provide the "absentee board" with the ability to compare signatures.

4:02:22 PM

CHAIR McGUIRE asked what the current rule is regarding absentee voting.

MS. GLAISER relayed that other states require an absentee voter to swear that he/she will either be traveling or is incapable of voting in the regular manner. So although absentee voting is not supposed to be a person's first choice, the division doesn't question a person with regard to why he/she is choosing to vote absentee.

REPRESENTATIVE GARA noted that the bill contains substantive provisions regarding the initiative process.

CHAIR McGUIRE mentioned that the bill would be held over.

4:05:31 PM

JOSEPH A. SONNEMAN, Ph.D., relayed that he'd earned his Ph.D. in government, that he is the former chair of Alaskans for Fair Elections - which asked for the recent recount regarding the U.S. Senate seat - and that he would be speaking about two sections of HB 94, Sections 10 and 19, and about two proposed amendments. With regard to Section 10, which pertains to ballot rotation, he offered his understanding that statisticians have determined that if there is a long list of candidates, people at

the top of the list seem to do approximately 5 to 7 percent better with regard to garnering votes. He went on to say:

> Woodrow Wilson, the only political scientist to become president, even wrote an article about that about 1910 or so. And then, of course, when candidates learned this, some candidates actually began changing their names because candidates were listed alphabetically in those days. So to prevent the gaming of the system, ... a number of states and territories ... began rotating the name of candidates on separate ballots, so you would have as many ... versions of the ballot as there were candidates [and the different ballots would be distributed to voters as they came in to vote]. ...
>
> Alaska was one of those places that had adopted full ballot rotation, and we had that in place for about 70 years ... until about [1997 or 1996] ... [when] the task force for the lieutenant governor recommended that ballot rotation be done away with as a cost-saving measure. And ..., unfortunately, that was adopted. So I filed suit and it went up to the supreme court, which decided three to two that the legislature was entitled to pick a fair method [but] did not have to pick the fairest method.
>
> And there is no question that the method that is used today is a fair method, and the method that is used today is that [the] Division of Elections picks the letters of the alphabet - each letter is picked separately ... for each House district. ... My point, though, is that even though that's a fair method, it's a method in which if there is any positional bias, one person, whoever is picked, gets the benefit of all that positional bias for that House district. And so, to me, even though that's a fair method, it's a drawing; it's not an election, because somebody could ... easily be the winner because of the result of the drawing rather than as a result of the voting.
>
> Nevertheless, that's what we've had for about eight years. ... And, as Representative Gruenberg said, [last year the House State Affairs Standing Committee] went in favor of full ballot rotation. ... Of course, with full ballot rotation, there's a substantial cost, a cost that Alaska was able to afford for 70 years

> when we did not have oil money, and it's curious to me that now we say [we] can't afford it. But [setting] that to one side, I think the method that is before you in Section 10 of this bill [is] a very creative way to improve on the present system without incurring the costs of full ballot rotation. Obviously it's not quite as good as full ballot rotation, but the cost is much, much less. ... So I would say that I favor Section 10.

DR. SONNEMAN noted that section 10 rotates by House district rather than by ballot; this means that House district candidates don't rotate, but there are up to 40 rotations available for statewide offices.

CHAIR McGUIRE asked what prompted voters to pick candidates listed at the top of a ballot.

4:11:06 PM

DR. SONNEMAN offered his understanding that that practice was more prevalent in places such as the state of New York, which used to elect its judges, and so, from a list of 200 names, people would just pick those who were at the top; he mentioned that to a lesser degree some people would pick those who were at the bottom of the list. A counter argument is that positional bias doesn't matter as much when either there are very few candidates or when there is a lot of advertising or when there is strong party identification. The early studies were based on long lists of candidates, and positional bias was found to exist in those situations. He reiterated his support of Section 10 as something that can win approval in "this budget conscious age."

DR. SONNEMAN referred to Section 19, which pertains to the standards for voting machines and vote tally systems, and said that having a paper trail is an issue of concern to Alaskans for Fair Elections, and so the group is very glad of the inclusion of the aforementioned amendment regarding the statutory reference to the stipulation that a voting machine must use a paper ballot. That is the current law, and Alaskans for Fair Elections is hoping it remains in place.

DR. SONNEMAN turned attention to a proposed amendment by Representative Gara, which read [original punctuation provided]:

> Page 10, following line 14
> Insert new bill sections to read:

"***Sec. 13.** AS 15.15.420 is amended to read:

Sec. 15.15.420. Duty to review the ballot counting. The director shall review the counting of the ballots with the assistance of and in the presence of the **state ballot counting review board** [APPOINTED REPRESENTATIVES FROM THE POLITICAL PARTIES].

***Sec. 14.** AS 15.15.430 is amended to read:

Sec. 15.15.430. Scope of the review of ballot counting. (a) The review 10 of ballot counting by the director shall include only [A REVIEW OF]

(1) **a review of** the precinct registers, tallies, and ballots case; [AND]

(2) **a review of** absentee and questioned ballots as prescribed by law**; and**

(3) a hand count of ballots from one or more randomly selected precincts in each election district that accounts for at least five percent of the ballots cast in that district.

(b) If, following the ballot review set out in (a) of this section, the director 18 finds an unexplained discrepancy in the ballot count in any precinct, the director may count the ballots from that precinct. **If there is a discrepancy of more than one percent between the results of the hand count under (a)(3) of this section and the count certified by the election board, the director shall conduct a hand count of the ballots from that district.** The director shall certify in writing to the state ballot counting review board **and publish on the division's Internet website** any changes resulting from **a** [THE] count **performed under this subsection**."

Instructions to Legislative Legal:
Make corresponding amendments and renumber accordingly.

DR. SONNEMAN referred specifically to the language in the proposed amendment that says, "**(3) a hand count of ballots from one or more randomly selected precincts in each election district that accounts for at least five percent of the ballots cast in that district.**", offered his understanding that this language was offered as an amendment in the House State Affairs Standing Committee, and relayed that a lot of members of Alaskans for Fair Elections are supportive of this language. Alaska now has all of its elections "programmed" by only one person, and some form of oversight would be desirable, he indicated, and used the analogy of wanting an audit performed on

a bank that has only one cashier. A hand count is essentially like an audit, he explained, ensuring that "nobody has made an offer you can't refuse to the one programmer, or that somebody [hasn't] ... somehow gotten remote access to any of the machines and changed the programming."

DR. SONNEMAN relayed that the feeling in the House State Affairs Standing Committee was, why fix a problem that doesn't yet exist. He offered an example of a road not needing a stop sign at one of it's corners in the days of horse drawn carriages, and then, with the passage of time and the advent of motor vehicles, that road becomes a much more dangerous road to cross and does need a stop sign, but the prevailing thought is, "Well, nobody's been killed there yet." He characterized the situation involving elections as even worse than the situation in his example, because if an election is somehow stolen through mis-programming, "we non-programmers" won't know that the election has been wrongly decided because there won't be anyone auditing the state's only programmer.

CHAIR McGUIRE asked why that language failed to be adopted in the House State Affairs Standing Committee.

REPRESENTATIVE GRUENBERG said that the vote went along party lines, and that the feeling was that adopting such language might have a fiscal impact.

MS. GLAISER mentioned that the amendment would have engendered an additional fiscal note of $25,000.

REPRESENTATIVE GRUENBERG characterized that amount as "not much" and the failure to pass the amendment as unfortunate.

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DR. SONNEMAN said that he and a number of members of Alaskans for Fair Elections support Representative Gara's aforementioned amendment. He then referred to the amendment labeled 24-GH1048\G.12, Kurtz, 2/11/05, which read:

> Page 8, following line 12:
> Insert a new bill section to read:
> "*** Sec. 15.** AS 15.20.450 is amended to read:
> **Sec. 15.20.450. Requirements of deposit and recount cost.** The application must include a deposit in cash, by certified check, or by bond with a surety approved by the director. The amount of the deposit

is **$2,500** [$300] for each precinct, **$10,000** [$750] for each house district, and **$50,000** [$10,000] for the entire state. If the recount includes an office for which candidates received a tie vote, or the difference between the number of votes cast was 20 or less or was less than .5 percent of the total number of votes cast for the two candidates for the contested office, or a question or proposition for which there was a tie vote on the issue, or the difference between the number of votes cast in favor of or opposed to the issue was 20 or less or was less than .5 percent of the total votes cast in favor of or opposed to the issue, the application need not include a deposit, and the state shall bear the cost of the recount. If, on the recount, a candidate other than the candidate who received the original election certificate is declared elected, or if the vote on recount is determined to be four percent or more in excess of the vote reported by the state review for the candidate applying for the recount or in favor of or opposed to the question or proposition as stated in the application, the entire deposit shall be refunded. If the entire deposit is not refunded, the director shall refund any money remaining after the cost of the recount has been paid from the deposit. **If the cost of the recount exceeds the amount of the deposit, the recount applicant shall pay the remainder upon notification by the state of the amount due.**"

Renumber the following bill sections accordingly.

Page 21, line 4:
Delete "secs. 20 - 43"
Insert "secs. 21 - 44"

DR. SONNEMAN offered his understanding that the amendment labeled G.12 would substantially raise the amount of the deposit required of those requesting a recount. Under current law, a recount request regarding a statewide seat must be accompanied by a deposit of $10,000, and if the cost of the recount is less than that amount, the director of the Division of Elections refunds the remainder of the deposit to those that requested the recount. Current law is silent, however, with regard to what happens if the cost of the recount exceeds the deposit amount. He elaborated:

It's been reported in the newspapers and I think prior testimony, that even though our group came up with the $10,000, ... the cost of the recount was more on the order of [$30,000 or $40,000]. And so this amendment, I think, is trying to say that it's something like a user fee and the folks who request a recount should pay the costs of what they get; that they get the recount and, therefore, they should pay for it. And on the surface that sounds pretty good, but we'd like to explain why it isn't. First, as I said earlier, a recount ... provides an audit function ..., and so, just as audits are [a part of the] cost of doing business, we think recounts are a cost of doing government. ... The potential of a recount keeps elections honest. ...

And here ... these are not minor increases; this would go from $750, for a House district recount, ... to $10,000 - approximately twelve times as much - and [a] statewide [seat recount] would go to $50,000 - five times as much. ... If you let the world know, through law, that recounts are going to be much, much more expensive - and the last sentence of the amendment says, ... if the cost of the recount exceeds the deposit, the applicant must pay the remainder - ... that's equivalent to letting the world know that election audits are going to occur much more rarely. And so those people who are, unfortunately, inclined to try [to] sway elections in improper ways are going to say, "Alaska is a target, and we will be able to do whatever we can do in Alaska and the odds of somebody coming up with $50,000 for a statewide recount are that much less than [at] $10,000."

CHAIR McGUIRE asked whether the deposit for a recount can be paid out of campaign funds.

REPRESENTATIVE GRUENBERG offered his belief that one could do so.

DR. SONNEMAN pointed out that the other aspect of recounts to consider is that a group must raise the deposit within five days including weekends, and explained that Alaskans for Fair Elections succeeded in raising $9,600 within that five-day period and the balance was paid for by one of the members. For that group to have been able to raise $50,000 in that amount of

time would have been impossible, he remarked, and characterized the proposed change as a severe burden.

4:22:22 PM

DR. SONNEMAN also pointed out, with regard to the argument that recount deposit fees should be user fees, that the accurate counting of an election benefits all of society, and therefore Alaskans for Fair Elections thinks that it is inappropriate to single out the requesting group to pay the whole cost, and that a recount deposit should not be considered a penalty. Noting, for example, that in cases of pollution, international environmental law contains the principle of "polluter pays," he relayed that Alaskans for Fair Elections doesn't believe that a recount request is like pollution; rather, everybody benefits from a recount.

DR. SONNEMAN offered his understanding that current law says that the state will pay for a recount if there is a difference of less than .5 percent, but the requester is required to pay if the difference exceeds .5 percent; therefore, should the amendment labeled G.12 be adopted, if the difference is .49, then the state pays, and if the difference .51 percent, the requestor will be required to deposit $50,000. This seems an extreme difference for such a narrow margin, he remarked, and noted that Maine has a graduated approach to this issue, though the House State Affairs Standing Committee deemed it too complex for Alaska for the time being. He opined that the appropriate course of action for the House Judiciary Standing Committee would be to follow suit with the House State Affairs Standing Committee and defeat the amendment labeled G.12.

REPRESENTATIVE GRUENBERG confirmed that he and Representative Seaton had looked at the Maine model and both had agreed that it wouldn't suit a "little state like Alaska."

DR. SONNEMAN relayed that several members of Alaskans for Fair Elections have said that the main concept of the proposed amendment labeled G.12 again raises the concern addressed via Representative Gara's aforementioned proposed amendment in that one could defeat even a graduated system if one had access to the computer programs of the voting machines. It is therefore doubly important to have control of the [.5] percent threshold, he opined, and mentioned that he and Alaskans for Fair Elections agree with the written testimony offered by Don Anderson in support of Representative Gara's aforementioned proposed amendment.

DR. SONNEMAN said that Alaskans for Fair Elections appreciated the division's efforts during the recent recount, such as agreeing to hand count 10 percent of the precincts and to take that 10 percent only from precincts that had been machine-counted on election night. Alaskans for Fair Elections also had an opportunity to learn about election procedures during the recent recount. For example, because there is no federal centralized database, when people vote absentee from another state, there is no way to ensure that those people are not also voting in that other state. Also, if a person votes in advance, unless the list of registered voters is updated - and currently such is not being done rapidly enough - then he/she can theoretically also go into his/her precinct on election day and vote again. The voter history file would eventually catch the fact that a person voted twice, but not for six months; in the meantime, however, both votes would be counted. He concluded by saying that he is in favor of Sections 10 and 19 and Representative Gara's aforementioned proposed amendment, and indicating that he not in favor of the amendment labeled G.12.

4:28:25 PM

CHAIR McGUIRE asked whether other states currently have a method by which to ensure that absentee voters are voting only in one state.

DR. SONNEMAN said he did not know.

CHAIR McGUIRE mentioned that Ms. Glaiser was "nodding, 'No.'"

4:28:54 PM

MYRL THOMPSON relayed that he is the past chair of the group that worked to recall Senator Ogan, and that he's been an independent candidate for the Alaska State Legislature. He concurred with Dr. Sonneman's comments, and characterized the aforementioned proposed amendment by Representative Gara as pertinent and as something that can only improve both the system and people's perception of it. Referring to the proposed amendment labeled G.12, he, too, noted that the amount of deposit required for the recount of a House district race jumps from $750 to $10,000, and characterized this as a huge jump.

MR. THOMPSON remarked that as an independent House seat candidate, if he were to "fail the automatic count" by a few votes, it would be literally impossible to for him to gather

$10,000 in the short amount of time allotted. He noted that his major in college was political science, and relayed that a study from the '80s showed that being first on the ballot did not make a big difference for candidates with a party affiliation but did make a 3-5 percent difference for those without a party affiliation. He relayed that he is also wholeheartedly against any proposed amendment that would remove the payment of $1 per signature for recalls, initiatives, and referendums.

REPRESENTATIVE GRUENBERG thanked Mr. Thompson for his work on the issues raised by HB 94.

4:33:05 PM

KEN JACOBUS said he had four points to discuss:

> [The] first point is independent presidential candidates. It's good that you put this provision in the bill, it should stay there, [and] it should have been in there a long time ago. It's required by the U.S. Constitution, we're the 50th state to adopt such a provision, [and] you avoided litigation by doing that. ... The second point is on positional bias. I think that there definitely is positional bias, and what has been proposed ... doesn't solve the problem entirely because it doesn't solve positional bias with respect to all the elections, but it does the best job of solving positional bias without additional cost, and I support that wholeheartedly. Basically what you get is a ... fairer election without spending additional dollars on it; so that's a real good idea.
>
> [The] third point: for signing referendum petitions and initiative petitions, you require printing the voter's name, date of birth, [and] address. And the date of birth [is what] you are identifying as [an] additional identifier. ... Section 30 is an example, [and] that again appears [in] ... several places ... [such as] Section 26. Basically the point I'm making is that the date of birth is only one additional identifier that you can use. Historically, on petitions, we've used date of birth, we've used voter registration number, [and] we've used social security number. Sometimes it's difficult to get the date of birth from people, so if you want an additional identifier, I would suggest that you change the [words] "date of birth" to "an additional identifier"

and let the people who circulate the petitions determine what that additional identifier will be, depending upon what the signer is willing to give.

CHAIR McGUIRE asked Mr. Jacobus for examples of identifiers that he's seen used.

MR. JACOBUS said social security numbers and voter registration numbers. He suggested that using the date of birth without the year would work as an additional identifier while also having the benefit of not requiring people to admit how old they are.

4:35:48 PM

MS. GLAISER, in response to a question, said that if someone is just allowed to pick his/her own identifier, the division would not be able to qualify such persons if that chosen identifier is not in the division's database system, and noted that the goal of the division is to increase ways of qualifying voter signatures.

MR. JACOBUS said he agrees, and offered that being allowed to use either a voter registration number, a social security number, or a date of birth would be satisfactory.

CHAIR McGUIRE asked whether an Alaska driver's license number would work as well.

MS. GLAISER indicated that perhaps that option could work as well, but would do more research on the issue.

MR. JACOBUS mentioned that his concern is that the language currently specifies that only the date of birth may be used.

REPRESENTATIVE GRUENBERG relayed that he would be offering amendment that would allow for the use of any one of the four identifiers just mentioned.

MS. GLAISER reiterated that the division is trying to expand the ways in which to qualify signatures.

MR. JACOBUS referred to the definition of a political party, and suggested that in the interest of certainty, the legislature should pick the number of voters needed to establish a new political party - for example, 4,000 or 5,000 or 2,500 registered voters - and then that number would never change

regardless of how many people voted. He mentioned that Louisiana does something similar.

REPRESENTATIVE GRUENBERG suggested that the number ought to change as the population in the state grows, though given the controversy surrounding the issue of political parties, he wouldn't want to have to be the one to bring it up every few years.

MR. JACOBUS countered, however, that if the state simply chose a number, then as the state population grows, it will become easier for a political party to qualify.

REPRESENTATIVE GRUENBERG predicted that for just that reason there would be efforts made to increase the number.

MR. JACOBUS opined that the ability for third parties to get on the ballot, particularly if they are formed through a substantial number of registered voters, should be made easier.

REPRESENTATIVE GRUENBERG characterized that as one of the policy issues the legislature must consider.

CHAIR McGUIRE concurred.

MR. JACOBUS reiterated his suggestion that the legislature should set a threshold using an exact number though not too low a number.

VANESSA TONDINI, Staff to Representative Lesil McGuire, House Judiciary Standing Committee, Alaska State Legislature, in response to a question, noted that current law uses a 3 percent threshold for a U.S. Senate seat vacancy.

4:42:15 PM

CHAIR McGUIRE relayed that public testimony would remain open and that [CSHB 94(STA), as amended,] would be held over.

ADJOURNMENT

4:43:26 PM

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 4:43 p.m.