

**ALASKA STATE LEGISLATURE  
HOUSE JUDICIARY STANDING COMMITTEE**

February 6, 2006

1:12 p.m.

**MEMBERS PRESENT**

Representative Lesil McGuire, Chair  
Representative Tom Anderson  
Representative John Coghill  
Representative Pete Kott  
Representative Peggy Wilson  
Representative Les Gara  
Representative Max Gruenberg

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

SENATE BILL NO. 172

"An Act relating to the presentation of initiatives and referenda on the ballot."

- MOVED HCS SB 172(JUD) OUT OF COMMITTEE

SENATE BILL NO. 132

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

- MOVED HCS SB 132(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 379

"An Act relating to controlled substances."

- MOVED CSHB 379(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 373

"An Act relating to the manufacture and transportation of alcoholic beverages; relating to forfeitures of property for violations of alcoholic beverage laws; and relating to violations of alcoholic beverage laws."

- SCHEDULED BUT NOT HEARD

HOUSE BILL NO. 295

"An Act adopting the Uniform Fraudulent Transfer Act and relating to fraudulent transfers of property."

- SCHEDULED BUT NOT HEARD

**PREVIOUS COMMITTEE ACTION**

BILL: SB 172

SHORT TITLE: INITIATIVE/REFERENDUM BALLOT SUMMARY

SPONSOR(S): SENATOR(S) THERRIAULT

04/13/05	(S)	READ THE FIRST TIME - REFERRALS
04/13/05	(S)	STA
04/19/05	(S)	STA AT 3:30 PM BELTZ 211
04/19/05	(S)	Moved SB 172 Out of Committee
04/19/05	(S)	MINUTE(STA)
04/20/05	(S)	STA RPT 4DP
04/20/05	(S)	DP: THERRIAULT, WAGONER, HUGGINS, DAVIS
04/25/05	(S)	TRANSMITTED TO (H)
04/25/05	(S)	VERSION: SB 172
04/26/05	(H)	READ THE FIRST TIME - REFERRALS
04/26/05	(H)	STA, JUD
05/05/05	(H)	STA AT 8:00 AM CAPITOL 106
05/05/05	(H)	Moved HCS SB 172(STA) Out of Committee
05/05/05	(H)	MINUTE(STA)
05/05/05	(H)	STA RPT HCS(STA) 4DP 2NR
05/05/05	(H)	DP: LYNN, GATTO, ELKINS, SEATON;
05/05/05	(H)	NR: GARDNER, GRUENBERG
05/07/05	(H)	JUD AT 3:30 PM CAPITOL 120
05/07/05	(H)	Meeting Postponed to 12 noon 5/8/05
05/08/05	(H)	JUD AT 12:00 AM CAPITOL 120
05/08/05	(H)	Meeting Postponed
05/09/05	(H)	JUD AT 0:00 AM CAPITOL 120
05/09/05	(H)	<Bill Hearing Canceled>
02/03/06	(H)	JUD AT 1:00 PM CAPITOL 120
02/03/06	(H)	Scheduled But Not Heard
02/06/06	(H)	JUD AT 1:00 PM CAPITOL 120

BILL: SB 132

SHORT TITLE: HUMAN RIGHTS COMMISSION

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

03/04/05	(S)	READ THE FIRST TIME - REFERRALS
03/04/05	(S)	STA, JUD
03/17/05	(S)	STA AT 3:30 PM BUTROVICH 205

03/17/05 (S) Heard & Held  
03/17/05 (S) MINUTE(STA)  
03/29/05 (S) STA AT 3:30 PM BELTZ 211  
03/29/05 (S) Moved SB 132 Out of Committee  
03/29/05 (S) MINUTE(STA)  
03/30/05 (S) STA RPT 3NR 1AM  
03/30/05 (S) NR: THERRIAULT, WAGONER, HUGGINS  
03/30/05 (S) AM: DAVIS  
04/07/05 (S) JUD AT 8:30 AM BUTROVICH 205  
04/07/05 (S) Scheduled But Not Heard  
04/08/05 (H) JUD AT 8:00 AM CAPITOL 120  
04/08/05 (S) Scheduled But Not Heard  
04/14/05 (S) JUD AT 8:00 AM BUTROVICH 205  
04/14/05 (S) Moved SB 132 Out of Committee  
04/14/05 (S) MINUTE(JUD)  
04/14/05 (S) JUD RPT 1DP 2NR 2AM  
04/14/05 (S) DP: SEEKINS  
04/14/05 (S) NR: THERRIAULT, HUGGINS  
04/14/05 (S) AM: FRENCH, GUESS  
04/21/05 (S) TRANSMITTED TO (H)  
04/21/05 (S) VERSION: SB 132(EFD FLD)  
04/22/05 (H) READ THE FIRST TIME - REFERRALS  
04/22/05 (H) STA, JUD  
05/03/05 (H) STA AT 8:00 AM CAPITOL 106  
05/03/05 (H) Heard & Held  
05/03/05 (H) MINUTE(STA)  
05/05/05 (H) STA AT 8:00 AM CAPITOL 106  
05/05/05 (H) Moved HCS SB 132(STA) Out of Committee  
05/05/05 (H) MINUTE(STA)  
05/05/05 (H) STA RPT HCS(STA) 4DP 1AM  
05/05/05 (H) DP: LYNN, GATTO, ELKINS, SEATON;  
05/05/05 (H) AM: GRUENBERG  
05/05/05 (H) JUD AT 1:00 PM CAPITOL 120  
05/05/05 (H) Scheduled But Not Heard  
05/06/05 (H) JUD AT 1:00 PM CAPITOL 120  
05/06/05 (H) Heard & Held  
05/06/05 (H) MINUTE(JUD)  
05/07/05 (H) RULES TO CALENDAR PENDING REPORT  
05/07/05 (H) IN JUDICIARY  
05/08/05 (H) RULES TO CALENDAR PENDING REPORT  
05/08/05 (H) IN JUDICIARY  
05/09/05 (H) JUD AT 0:00 AM CAPITOL 120  
05/09/05 (H) Heard & Held  
05/09/05 (H) MINUTE(JUD)  
01/18/06 (H) JUD AT 1:00 PM CAPITOL 120  
01/18/06 (H) Scheduled But Not Heard  
01/25/06 (H) JUD AT 1:00 PM CAPITOL 120

01/25/06	(H)	Scheduled But Not Heard
02/01/06	(H)	JUD AT 1:00 PM CAPITOL 120
02/01/06	(H)	-- Meeting Canceled --
02/03/06	(H)	JUD AT 1:00 PM CAPITOL 120
02/03/06	(H)	Scheduled But Not Heard
02/06/06	(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 379

SHORT TITLE: CONTROLLED SUBSTANCES, INCL. ANALOGS

SPONSOR(S): REPRESENTATIVE(S) MEYER

01/18/06	(H)	READ THE FIRST TIME - REFERRALS
01/18/06	(H)	JUD, FIN
01/27/06	(H)	JUD AT 1:00 PM CAPITOL 120
01/27/06	(H)	Heard & Held
01/27/06	(H)	MINUTE(JUD)
02/06/06	(H)	JUD AT 1:00 PM CAPITOL 120

**WITNESS REGISTER**

JOE BALASH, Staff  
to Senator Gene Therriault  
Alaska State Legislature  
Juneau, Alaska  
POSITION STATEMENT: Presented SB 172 on behalf of Senator  
Therriault, sponsor.

ANNETTE KREITZER, Chief of Staff  
Office of the Lieutenant Governor  
Juneau, Alaska  
POSITION STATEMENT: Presented the lieutenant governor's position  
on SB 172.

RANDY RUARO, Legislative Liaison  
Department of Law  
Juneau, Alaska  
POSITION STATEMENT: Presented the administration's position on  
SB 132.

MICHAEL PAWLOWSKI, Staff  
to Representative Kevin Meyer  
Alaska State Legislature  
Juneau, Alaska  
POSITION STATEMENT: Presented amendments to HB 379 on behalf of  
Representative Meyer, sponsor.

CHRIS BEHEIM, Supervisor

Scientific Crime Detection Laboratory  
Anchorage, Alaska

POSITION STATEMENT: Answered questions regarding HB 379.

#### **ACTION NARRATIVE**

**CHAIR LESIL McGUIRE** called the House Judiciary Standing Committee meeting to order at [1:12:49 PM](#). Representatives McGuire, Gruenberg, Kott, Coghill, and Wilson were present at the call to order. Representatives Gara and Anderson arrived as the meeting was in progress.

#### SB 172 - INITIATIVE/REFERENDUM BALLOT SUMMARY

[1:13:59 PM](#)

CHAIR MCGUIRE announced that the first order of business would be SENATE BILL NO. 172, "An Act relating to the presentation of initiatives and referenda on the ballot."

[1:14:09 PM](#)

JOE BALASH, Staff to Senator Gene Therriault, Alaska State Legislature, presented SB 172 on behalf of Senator Therriault, sponsor. He said the bill is simple. Current statutes provide that once an initiative petition has been certified, the lieutenant governor is required to prepare a ballot title and summary, which is the same for referenda. He stated that under existing law the ballot title must indicate the general subject of the proposition and may not exceed six words, and the summary must be impartial and not more than 100 words.

[1:15:00 PM](#)

REPRESENTATIVE KOTT moved to adopt a proposed House committee substitute (HCS) for SB 172, version 24-LS0859\P, Kurtz, 2/03/03, as a working document. There being no objection, Version P was before the committee.

MR. BALASH said SB 172 speaks to the lieutenant governor's duty of titling and summarizing voter initiatives and referenda. He stated that the current six-word limit for titles is becoming a limitation to increasingly complex initiatives and legislative laws, and he gave an example of recent legislation where the title was a page and a half long. The bill's intent is to provide an accurate description of the issues that are before the voters, he said. He noted that the original Senate version

only addressed the number of words in the title, and the current CS addresses the number of words for the summary, which is 100 words for each section. An initiative section is defined as a provision that is different in purpose or subject matter, and a referendum section will be defined by Legislative Legal and Research Services, he added.

[1:18:06 PM](#)

MR. BALASH relayed that the version of SB 172 that passed the Senate contained a change in the maximum number of words in the title from 6 to 25. The House State Affairs Standing Committee then added provisions limiting the time allowed for the lieutenant governor to prepare the title and summary, but the current lieutenant governor said he had concerns with that, so Senator Therriault agreed to drop those provisions.

REPRESENTATIVE KOTT asked for clarification on Section 3.

MR. BALASH told him he was looking at Version X.

CHAIR MCGUIRE said there was a time limitation amendment by the House State Affairs Standing Committee, and the lieutenant governor expressed that it may not be enough time to do a good job. The big change in the current version is the removal of the deadline and putting the effective date back in again, she explained.

[1:22:33 PM](#)

REPRESENTATIVE GRUENBERG relayed that he is not aware of the problems [the lieutenant governor's office] has with [the time limit provisions]. He said there was care taken to put the amendment in, and he is not inclined to take it out. He said the provision was added because sometimes people challenge the lieutenant governor's wording, "and this has caused a problem on several occasions very recently." He said that a final version [of an initiative or referendum] issued only a short time before the election doesn't allow time for a legal challenge to make certain the law is complied with. "This will make it difficult to challenge what the lieutenant governor does if we don't provide enough time to do it, and it will require the court system to hear these things on an emergency basis, and it will require, sometimes even, the printing of two sets of ballots." He said the lieutenant governor certainly should have the time to prepare initiatives in enough time to allow for people to study them. It is a reasonable request, and the policy of not

doing it encourages problematic synopses and titles, he stated. "That is a good public policy to advance, and I have no idea why they don't want to have an adequate judicial review," he said.

CHAIR MCGUIRE noted that the time limit is "really the only substantive issue that we're addressing." She said the word-limit aspects of the bill are not under debate, but there may be a desire for a discussion on the effective date.

REPRESENTATIVE GRUENBERG said he did not recall seeing an effective date in the original bill.

CHAIR MCGUIRE said it was immediate as it passed the Senate, and the House State Affairs Standing Committee removed that. She said she would like to see an immediate effective date.

1:25:35 PM

ANNETTE KREITZER, Chief of Staff, Office of the Lieutenant Governor, said Representative Gruenberg called her with a concern that 30 days may not be enough time, and she told him she would take a look at it. She said it was unfortunate that the amendment was adopted by the House State Affairs Standing Committee to "address the situation that Representative Gruenberg referenced." She said Representative Gruenberg was concerned that someone may sue over the language of an initiative. She stated that the problem with putting a 30-day deadline on the lieutenant governor doesn't solve that problem. "There are people who will sue at any time that it suits them to sue, and so telling us that we have to have our work done 30 days after the legislative session doesn't solve that problem."

MS. KREITZER said she spoke with the chair of the House State Affairs Standing Committee and "hashed through this because the committee minutes don't really get to why this amendment was adopted." She said her office does not put a time limit on the Department of Law to provide legal guidance. "We are waiting to see what the legislature does, whether they pass legislation that is similar to an initiative." She said there are several initiatives this year that the legislature may act on. She said her office keeps the Department of Law (DOL) "pretty busy," and doesn't want to keep them any busier with initiatives that may or may not go forward. "So we wait until the end of the session," she relayed.

REPRESENTATIVE GRUENBERG said he sees the problem, but perhaps it can be solved without removing all deadlines. He suggested a

deadline for filing a legal challenge. He pointed out that election challenges are limited to a very brief period, "and this is a type of an election challenge." He surmised that Ms. Kreitzer is envisioning a case in which an initiative is trumped by legislation, but he characterized this as a red herring because if a legislative bill trumps the initiative, then the whole point is moot. He then acknowledged that someone might challenge the contention that the bill is the same as the initiative. He said he is not certain how to solve the problem, "but I do think it's a bad idea not to have the process moving along and have the whole thing in a log jam at the very end--even after the election pamphlet [is] printed." He asked for a suggestion.

1:30:28 PM

MS. KREITZER said she doesn't know that there is a problem. She relayed that her office works with opponents and proponents of initiatives monthly. She said the lieutenant governor's website shows that "we could have come into this session with five initiatives having been certified by the lieutenant governor." She said as soon as an initiative is turned in, the staff is working on the language for the petition booklets, which is probably similar to the ballot language. "Although, I'll tell you there are two of them right now that were unhappy to start with." She said one is 05HUNT [An Act prohibiting the shooting of wolves and grizzly bears with the use of aircraft]. "I talked with those folks and they had a concern about the language that the Department of Law had proposed for their initiative." She said she raised the issues with DOL, and the attorney agreed with the initiative sponsors, so the lieutenant governor's office changed the language. Regarding the pesticide initiative, she said, "Their attorney disagrees with the state's attorney." Her office works with the initiative groups all along, she said.

REPRESENTATIVE GRUENBERG offered his understanding that for an initiative to be on the ballot, it has to be in by the time the legislature convenes.

MS. KREITZER said that is true if it is to go on the 2006 general election. She said there are two already on the 2006 primary, which has a different deadline.

REPRESENTATIVE GRUENBERG said that was the previous year, so "in order to get on the ballot for the primary, they have to be in by the odd numbered year, so you have almost two years to deal

with that." He said the shortest [timeframe] is for the general election, which need to be in by the second Monday in January, so the staff have 151 days under this legislation to deal with the problem.

MS. KREITZER clarified that "when you turn in an initiative you have one year from the time you get your petition booklets to file with the lieutenant governor's office."

REPRESENTATIVE GRUENBERG said if the lieutenant governor's office is saying it needs enough time, the House State Affairs Standing Committee CS gives the office at least 151 days to "do this." He noted that that is reasonable because it is four and one half months from the election. "And then we give people a reasonable period of time to file their challenge, and then the court system has the time to proceed. That's all we were asking."

[1:34:04 PM](#)

CHAIR MCGUIRE noted that the chair of the House State Affairs Standing Committee visited her and "removed his desire to see this in here, along with the sponsor of the bill." She said when the committee addressed the issue before it had "this idealized look at it, but when they really sat down and looked at it with the Division of Elections in the lieutenant governor's office, it didn't seem to make sense—the problem that the amendments were addressing really wasn't fixed." She said she didn't disagree with Representative Gruenberg, but that she needed more information. She said 30 days was not enough [time], especially if it is a ballot measure that the legislature wants to trump. She stated that it is a waste of time to give an artificial deadline. The legislation would "have to be married with some kind of limitation on the plaintiff's right to then go ahead and bring the action." She said she does not know what the right amount of time would be, and she does not want to shoot in the dark at figures. Her gut feeling, she offered, is that there isn't a way to fix the complete logjam and the chaos "because zealous advocates on both sides are going to use whatever they have right up to the last minute."

REPRESENTATIVE GRUENBERG indicated that he would be amenable to giving the lieutenant governor 60 plus 30 days, and that would give the courts several months to look at the situation.

CHAIR MCGUIRE said she has not been given compelling evidence that "this is a tremendous problem." She suggested moving forward with the three other bills.

[1:37:46 PM](#)

REPRESENTATIVE COGHILL said there are start and finish deadlines, which are the general and primary elections. He added that "the legal challenge can happen anywhere in that arena, so I think that any person proactive enough to get a petition ...."

REPRESENTATIVE GRUENBERG said he is not talking about challenges to the initiative itself, only to the title and the synopsis.

REPRESENTATIVE COGHILL said, "Then you have to put it in a booklet...and that's where the rub's going to come." He noted that there is a publishing deadline, so "there is a series of deadlines already where the verbiage is going to be vetted very clearly." He added that democracy can be messy, "but everyone gets a bite at the apple."

CHAIR MCGUIRE said that her point is that in imposing a deadline for describing the ballot title, "you face the argument about substantial similarity because you may not know what it's going to be yet." The legislature adjourning doesn't mean anything, she noted, and there could be a lot of energy going forward before realizing it is not to be.

REPRESENTATIVE GRUENBERG said the bill does not deal with the [initiative].

CHAIR MCGUIRE said it deals with what is going to be on the ballot itself.

REPRESENTATIVE GRUENBERG said it is the initiative, and the initiative came in its final form no later than the first day of the session.

CHAIR MCGUIRE asked, "But will it be on or not?"

REPRESENTATIVE GRUENBERG said if it is not on, then it would be a moot point, "but they can certainly draft this anytime from the first day of the session on. And if it's pulled it's pulled."

CHAIR MCGUIRE surmised then that Representative Gruenberg's point is to spend the time drafting it no matter what.

REPRESENTATIVE GRUENBERG said yes.

MS. KREITZER said that the lieutenant governor understands that as initiatives become more complex, more words may be necessary to describe them. She said he clearly understands those limit changes, but the language adopted in the House State Affairs Standing Committee was adopted without consulting with his office. She said the office has a web site with initiatives and where they stand. It is a dynamic process, she said, and the lieutenant governor is still in litigation over the cruise ship initiative. She asked what the amendment would do for an initiative that is "still out there." She stated, "The lieutenant governor has been on the other end. Constitutional amendment; definition of marriage. He's been on the other end of telling the lieutenant governor he didn't like her language. We didn't sue," she said. She added that he felt that it was the lieutenant governor's prerogative and it was incumbent on those who supported it to go out and get support for their constitutional amendment. She added that it is a new era where people sue over initiatives, and she does not see an arbitrary deadline as solving that problem.

[1:44:25 PM](#)

WHITNEY BREWSTER, Director, Division of Elections, said the fiscal impact of increasing the wording in the ballot title is zero but there will be a fiscal impact to increasing the wording of the summary section. She gave an example of an initiative that has 16 sections, which could be summarized with 1,625 words, or 10 times the previous limits. Printing costs, which was \$300,000 for the 2004 election, could double, she noted. She added that approximately 800 words will fit on a ballot, so some initiatives would cover two ballots if the lieutenant governor decided to use the maximum number of words allowed in the bill. She said it would increase shipping, mailing, translating and envelope costs.

CHAIR MCGUIRE said the fiscal note will be forthcoming.

REPRESENTATIVE GARA asked if the increase will be \$300,000 plus the listed postal costs.

MS. BREWSTER said yes, and she hasn't factored in the cost of the initiative material that the initiative sponsors use.

1:49:12 PM

JOHN SHIVELY, Vice President, Government and Community Relations, Holland America, said he is in support of the CS. He said his company is facing a complex initiative that is nine pages long with a number of sections. He thinks voters should be educated on what they are voting on, and the "whole initiative should be on the ballot," reducing the risk of lawsuits. He said it would be unrealistic and expensive, however. He urged adoption of the CS.

REPRESENTATIVE GARA said he has major concerns about a provision the [cruise ship] industry requested be added to the bill. He said the industry wants initiatives to use up to 100 words per section. He said the longer the description, the more convoluted it can be, which may deter a voter from signing an initiative. He acknowledged that there may be complex bills requiring further explanation, but "it seems to me you can describe any bill in 100 words." He suggested allowing the lieutenant governor to attach additional material that would give the voter the option to read. Telling the lieutenant governor to give a 1,500-word description that a voter would need to read prior to signing an initiative "causes the mischief of over-information to the point that you are going to deter people from signing the initiative," he surmised.

MR. SHIVELY said he disagrees with Representative Gara and suggested that people would write less confusing initiatives if the CS were to pass. He said very few people even read an initiative. "They get a little statement from the person that has the petition book" before deciding to sign, he said, and if Representative Gara is suggesting that voters get confused with too much information, that is not "what democracy is about."

REPRESENTATIVE GARA clarified that he wanted to offer voters the information, not withhold it. It would be an optional statement that a voter could choose to read. He noted that he has understood the petitions that he has signed in the past.

MR. SHIVELY said he is not as concerned about the petition book itself as he is about the ballot; it is important to have additional explanations for people in the voting booth.

1:55:18 PM

CHAIR MCGUIRE closed public testimony, and noted that Version P was before the committee.

REPRESENTATIVE GARA moved to adopt Amendment 1, which, with handwritten corrections, read [original punctuation provided]:

p.1., line 7:  
Delete "25"  
Insert "15"

p.2., line 1:  
Delete "25"  
Insert "15"

CHAIR MCGUIRE objected for purposes of discussion.

REPRESENTATIVE GARA opined that the voters need enough information to "understand what they're voting on. You can perform mischief by letting the lieutenant governor's office add additional words in a way where they can frankly confuse things for the voters." He said that has happened in recent initiatives causing litigation. He added that he can't think of a recent initiative where the subject can't be described in 15 words. It will be followed by the 100-word statement anyway, he stated, and he gave examples. By allowing 25 words, it will "allow a lieutenant governor who's trying to tank an initiative the ability to obfuscate when they should be clarifying for voters."

REPRESENTATIVE COGHILL noted that the bills in his packet all have more than 15 words in the headings.

[1:57:55 PM](#)

MR. BALASH noted that what is missing from the committee packets is a comparison of past initiatives with prepared summaries. He said he has two initiatives, both with 29 words as written by the initiative sponsors. He said 25 words are too many in many instances and perhaps too few for others, so rather than err on the side of restrictions, Senator Therriault decided to err on the side of caution by giving the lieutenant governor flexibility.

CHAIR MCGUIRE reminded the committee that the lieutenant governor could be with the opposite political party in the future.

REPRESENTATIVE GARA said initiative sponsors were never asked to limit themselves to 15 words, which could have easily been done for the aforementioned initiatives.

[2:00:13 PM](#)

A roll call vote was taken. Representative Gara voted in favor of Amendment 1. Representatives McGuire, Coghill, Wilson, Kott, Anderson and Gruenberg voted against it. Therefore, Amendment 1 failed by a vote of 1-6.

[2:00:41 PM](#)

REPRESENTATIVE GARA moved to adopt Amendment 2, labeled 24-LS0859\X.2, Kurtz, 2/3/06, which was edited with handwritten notes to read as follows:

Page 1, line 8:

Delete "for each section"

Page 1, lines 9 - 11:

Delete "In this subsection, "section" means a provision of the proposed law that is distinct from other provisions in purpose or subject matter."

Page 1, following line 10:

Insert a new bill section to read:

"\* **Sec. 2.** AS 15.45.180 is amended by adding a new subsection to read:

(c) If the lieutenant governor believes it is necessary for a better understanding by the public of a bill that is the subject of an initiative, the lieutenant governor may prepare an additional analysis that clearly and concisely states the purposes of the proposed initiative. The analysis may not exceed 100 words a section. If, under this subsection, an additional analysis of a bill is prepared, a person circulating the initiative petition for that bill shall advise, both in writing and orally, each voter from whom the person seeks a signature that the additional analysis is available for review by the voter. A circulator shall have the additional analysis available for immediate inspection by the voter when circulating a petition. In this subsection, "section" means a provision of the proposed initiative that is distinct from other provisions in purpose or subject matter."

Renumber the following bill sections accordingly.

Page 1, line 15, through page 2, line 1:

Delete "for each section"

Page 2, lines 1 - 4:

Delete "In this subsection, "section" means each section of the Alaska statutes created, amended, or repealed in the Act, and each section of the Act that does not create or amend codified law."

Page 2, line 5:

Delete "a new subsection"

Insert "new subsections"

Page 2, following line 7:

Insert a new subsection to read:

"(d) If the lieutenant governor believes it is necessary for a better understanding by the public of an Act that is the subject of a referendum, the lieutenant governor may prepare an additional analysis that clearly and concisely states the purposes of the Act. The analysis may not exceed 100 words a section. If an additional analysis of an Act has been prepared, a person circulating the referendum petition for that Act shall advise, both in writing and orally, each voter from whom the person seeks a signature that the additional analysis is available for review by the voter. A circulator shall have the additional analysis available for immediate inspection by the voter when circulating a petition. In this subsection, "section" means each section of the Alaska statutes created, amended, or repealed in the Act, and each section of the Act that does not create or amend codified law."

REPRESENTATIVE ANDERSON objected.

REPRESENTATIVE GARA explained that Amendment 2 addresses the cruise ship industry proposed provision. He said the logical order of discussing a bill is not necessarily the same order as the sections of the bill. The provision will lead to a disjointed description of a bill, he noted. "First you're going to discuss, in a hundred words, a very discrete part of the bill in Section 1, and then a very discrete part of the bill in Section 2," and so on. He said the bill is probably better

described as a whole, instead of little pieces of disjointed descriptions on a section-by-section basis, which will be confusing. He further stated that 100 words per section in a 15-section bill is a 1500-word description, and "that's mind-boggling." He said if the lieutenant governor doesn't like an initiative and wants to defeat it, the initiative will be buried in excess words designed to confuse people. He said Amendment 2 states that if there needs to be more than 100 words the circulator shall carry around a sectional attachment.

CHAIR MCGUIRE asked if Amendment 2 "removes it from the ballot itself and puts it into the petition that is circulated."

REPRESENTATIVE GARA noted that the amendment addresses the petition, and he will do a conceptual amendment to deal with the ballot if Amendment 2 passes. He said the ballot should have a comprehensive 100-word description with a more detailed description that followed. He said the ballot shouldn't be written so that the bill title is followed directly by a disjointed sectional analysis.

[2:04:25 PM](#)

REPRESENTATIVE COGHILL said he is somewhat sympathetic, and he has never been a big fan of having to read a ballot for a half hour before voting; however, the nature of petitions is becoming more complex. He said he felt that voters did not understand a past billboard vote because of the limited wording. He added "if we're going to allow people to have that access to direct democracy, it has to be with some deliberation, and that means you have to have the information in front of them." He said that was what campaigns were for. He said campaigns give people an idea of what is going to be on the ballot. He noted that "brand new verbiage before you get to the ballot--you will feel that you have been had by your government." He said he would be nervous about not having a summary of a section. "If we're going to go to the people and say you want to change a whole title of your law, then they better get a good shot at it." He concluded that 100 words might represent the changing of 1,000 words in law.

REPRESENTATIVE GARA said he doesn't disagree with those points, but a 100-word description of the bill should come first. If the lieutenant governor decides the issue is complex, then a section by section explanation can follow, he said, "but you've got to make it readable, and the sectional without a sponsor statement, like we do in our bills ... is not readable."

REPRESENTATIVE COGHILL agreed but pointed out that there are no sponsor statements on ballots. The description should be read by voters in the election booklet, he said.

CHAIR MCGUIRE said, "You hope people do it, but ...".

REPRESENTATIVE COGHILL said every registered voter gets a pamphlet.

[2:08:24 PM](#)

REPRESENTATIVE GARA withdrew Amendment 2.

REPRESENTATIVE GARA moved Conceptual Amendment 3, hoping to meld his concerns with Representative Coghill's concerns.

REPRESENTATIVE ANDERSON objected for discussion.

REPRESENTATIVE GARA said Conceptual Amendment 3 will be:

For both the circulating petition that people read when they're signing the initiative and for the ballot, there shall be a statement of the bill that is up to 100 words, which is just like the current law right now. Following the statement of the bill, if the lieutenant governor determines that the 100 words wasn't enough, there shall be a sectional of up to 100 words per section.

REPRESENTATIVE GARA explained that, "this way you have in laymen's terms 100 words that describe the bill to people, and then the analysis that goes section by section. If you don't have the laymen's description first, it's going to be very confusing for people in the ballot box and when they're signing."

REPRESENTATIVE COGHILL noted that the title has been expanded to 25 words, which nearly constitutes a summary. "I'm happy that 25 words can get that done," he added. He said he is concerned that a policy statement and then the specifics could weary the voter.

CHAIR MCGUIRE remarked that the nice thing about the bill is that it currently says "in not more than 100 words." She said it doesn't have to be 100 words and that goes to the spirit of [conceptual amendment 3]. She stated that it is absolutely

critical that people understand what they are voting on, and when she reads a bill she tries to skip the sponsor statement and read what a bill really does because it is easy to gloss over details in the statement. She added that she is comfortable with the proposed change, but she doesn't know how it will play out in reality. She thinks it will be more informative to describe the sections, but she does not have a "burning opposition" to the amendment.

REPRESENTATIVE GARA said that a sponsor statement in a bill could present a one-sided argument, but the law on initiatives and referenda is that it must be objective. The 100-word statement has to be objective. The sponsor of the bill doesn't think the 25-word title is enough, he argued. A lieutenant governor who is trying to play games is going to use 100 words for every section, and that is why a one-time concise statement is necessary, he stated.

[2:14:13 PM](#)

A roll call vote was taken. Representative Gara and Gruenberg voted in favor of Conceptual Amendment 3. Representatives McGuire, Coghill, Wilson, Kott and Anderson voted against it. Therefore, Conceptual Amendment 3 failed by a vote of 2-5.

[2:14:40 PM](#)

REPRESENTATIVE GRUENBERG moved to adopt Amendment 4.

REPRESENTATIVE COGHILL objected.

REPRESENTATIVE GRUENBERG relayed that Amendment 4 goes back to the House State Affairs Standing Committee CS with the addition of a requirement that any suit challenging the wording of the ballot title or proposition must be filed within 30 days of being submitted to the director. He said it gives the administration 120 days to prepare the title and the summary. He noted that it is certainly adequate, and it gives another 30 days for a total of 151 days. He said that the people challenging will only have 30 days to file a suit, and it will allow the process to proceed in an orderly fashion without the expense of printing two sets of ballots. He then surmised that he may have caused an inadvertent problem regarding the date the election pamphlet needs to be in.

MS. KREITZER recollected that it is July 1 or August 1.

REPRESENTATIVE GRUENBERG said he thought it was July 1, which might make his deadlines too long.

MS. KREITZER said that is not the only problem with the deadlines. She said there is another deadline for absentee ballots, but she would be willing to work with him to solve the problem.

REPRESENTATIVE GRUENBERG withdrew Amendment 4.

REPRESENTATIVE GARA moved to adopt Conceptual Amendment 5, labeled 24-LS0859\X.1, Kurtz, 2/3/06, as follows [original punctuation provided]:

Page 1, line 4, following "governor":

Insert "shall appoint a ballot proposition committee to prepare"

Page 1, line 5:

Delete "shall prepare"

Insert "[SHALL PREPARE]"

Page 1, following line 10:

Insert a new bill section to read:

"\* **Sec. 2.** AS 15.45.180 is amended by adding new subsections to read:

(c) The lieutenant governor shall appoint five individuals to the ballot proposition committee, including

(1) two proponents of the initiative, at least one of whom must be a member of the initiative committee;

(2) two opponents of the initiative; and

(3) one individual from a list of three submitted by the chief justice of the Alaska Supreme Court.

(d) The committee shall submit the ballot title and proposition to the lieutenant governor not later than 30 days after the date of the adjournment of the first regular legislative session convened after the petition is filed.

(e) The lieutenant governor shall review the ballot title and proposition prepared under (a) of this section and make any changes necessary to make the proposition true and impartial. Not later than 10 days after receiving the ballot title and proposition from the committee, the lieutenant governor shall

complete the review and provide the ballot title and proposition to the director. If the lieutenant governor makes any changes to the ballot title or proposition prepared under (a) of this section, the lieutenant governor shall also provide the director with a written explanation of those changes."

Renumber the following bill sections accordingly.

Page 1, lines 12 - 14:

Delete "The lieutenant governor, with the assistance of the attorney general, shall prepare a ballot title and proposition upon determining that the petition is properly filed"

Insert "**If the petition is properly filed, the lieutenant governor shall appoint a ballot proposition committee to prepare, with the assistance of the attorney general, a ballot title and proposition** [THE LIEUTENANT GOVERNOR, WITH THE ASSISTANCE OF THE ATTORNEY GENERAL, SHALL PREPARE A BALLOT TITLE AND PROPOSITION UPON DETERMINING THAT THE PETITION IS PROPERLY FILED]"

Page 2, lines 5 - 7:

Delete all material and insert:

"\* **Sec. 4.** AS 15.45.410 is amended by adding new subsections to read:

(c) The lieutenant governor shall appoint five individuals to the ballot proposition committee, including

(1) two proponents of the referendum, at least one of whom must be a member of the referendum committee;

(2) two opponents of the referendum; and

(3) one individual from a list of three submitted by the chief justice of the Alaska Supreme Court.

(d) The committee shall submit the ballot title and proposition to the lieutenant governor not later than 55 days after the date the petition is filed.

(e) The lieutenant governor shall review the ballot title and proposition prepared under (a) of this section and make any changes necessary to make the proposition true and impartial. Not later than five days after receiving the ballot title and proposition from the committee, the lieutenant governor shall complete the review and provide the

ballot title and proposition to the director. If the lieutenant governor makes any changes to the ballot title or proposition prepared under (a) of this section, the lieutenant governor shall also provide the director with a written explanation of those changes."

REPRESENTATIVE GARA said the original concept was proposed by Senator Elton's office. The amendment addresses times when the lieutenant governor is hostile to a petition, and to prevent a lieutenant governor from confusing voters it requires a committee to draft the language. The committee will consist of two members who support the initiative and two who oppose it and one member appointed by the court, he explained. He said it will hopefully lead to a more objective summary, especially since the legislation before the committee will lead to more mischief by the lieutenant governor's office. The summary will then be reviewed by the lieutenant governor, he said.

REPRESENTATIVE WILSON said she doesn't think the amendment will do anything because the individuals will be appointed by the lieutenant governor.

REPRESENTATIVE GARA said the lieutenant governor would be limited in those four appointments, and the court would appoint the fifth person.

CHAIR MCGUIRE remarked that the amendment is interesting but it is almost a completely new bill, and she will oppose it because she has not had time to speak with the bill's sponsor.

[2:21:48 PM](#)

A roll call vote was taken. Representative Gara and Gruenberg voted in favor of Conceptual Amendment 5. Representatives McGuire, Coghill, Wilson, Kott and Anderson voted against it. Therefore, Conceptual Amendment 5 failed by a vote of 2-5.

[2:22:59 PM](#)

REPRESENTATIVE ANDERSON moved to report the proposed House committee substitute (HCS) for SB 172, version 24-LS0859\p, Kurtz, 2/03/03, out of committee with individual recommendations and the accompanying fiscal notes. Hearing no objections, HCS SB 172(JUD) was reported out of the House Judiciary Standing Committee.

MR. BALASH announced that the fiscal note would be forthcoming.

SB 132 - HUMAN RIGHTS COMMISSION

2:23:44 PM

CHAIR MCGUIRE announced that the next order of business would be SENATE BILL NO. 132, "An Act relating to complaints filed with, investigations, hearings, and orders of, and the interest rate on awards of the State Commission for Human Rights; making conforming amendments; and providing for an effective date."

2:24:28 PM

RANDY RUARO, Legislative Liaison, Department of Law, suggested that the committee deal with a pending amendment offered by Representative Gara.

REPRESENTATIVE GARA said he will not offer Amendment 5.

The committee took an at-ease from 2:26 p.m. to 2:29 p.m.

2:29:36 PM

REPRESENTATIVE GARA moved Amendment 6, labeled 24-GS1110\G.1, Kane, 1/18/06, as follows [original punctuation provided]:

Page 1, line 2:

Delete "**and**"

Insert "**providing for attorney fees and costs in cases involving human rights violations;**"

Page 1, line 3, following "**amendments**":

Insert "**; and amending Rule 82, Alaska Rules of Civil Procedure**"

Page 6, following line 15:

Insert a new bill section to read:

"\* **Sec. 11.** AS 18.80 is amended by adding a new section to article 2 to read:

**Sec. 18.80.147. Attorney fees and costs.** (a) In an action brought by a person under AS 22.10.020(i), a prevailing plaintiff shall be awarded costs as provided by court rule and full reasonable attorney fees at the prevailing reasonable rate.

(b) Unless the action is found to be frivolous, in an action brought by a person under

AS 22.10.020(i), a prevailing defendant shall be awarded attorney fees and costs as provided by court rule. If the action is found to be frivolous, the attorney fees to be awarded to the defendant shall be full reasonable attorney fees at the prevailing reasonable rate.

(c) In this section, "frivolous" means

(1) not reasonably based on evidence or on existing law or a reasonable extension, modification, or reversal of existing law; or

(2) brought to harass the defendant or to cause unnecessary delay or needless expense."

Renumber the following bill sections accordingly.

Page 7, following line 3:

Insert a new bill section to read:

"\* **Sec. 15.** The uncodified law of the State of Alaska is amended by adding a new section to read:

INDIRECT COURT RULE AMENDMENT. The provisions of sec. 11 of this Act have the effect of changing Rule 82, Alaska Rules of Civil Procedure, by requiring the award of full reasonable attorney fees in certain cases."

Renumber the following bill sections accordingly.

Page 7, line 7:

Delete "secs. 1 - 13"

Insert "secs. 1 - 14"

REPRESENTATIVE COGHILL objected.

REPRESENTATIVE GARA explained that the Human Rights Commission (HRC) is short-staff, which causes statute of limitations problems. He said the HRC cuts off claims earlier and represents fewer people. He noted that the mission of the HRC is to help people obtain justice if they were a victim of discrimination, "and so the whole idea that we should solve a problem by saying, OK, here's an easier way for you to represent fewer people, doesn't really go to the mission of the HCR." Amendment 6 adds language used in a number of other areas of the law, including consumer protection and landlord/tenant statutes, he said. He explained that if an individual prevails on a valid claim, that person will be entitled to compensation for attorney fees and costs. Currently, victims have difficulty getting an attorney for small cases, he stated.

REPRESENTATIVE GARA told the committee that there is a concept in the law called "privatizing the attorney general" that allows a person to get a private attorney and get compensated for attorney fees if he or she prevails. He said it will save the state money, and it finds a remedy for true victims of discrimination. If a case is frivolous, the individual will have to pay for the defendant's costs, he said, creating a disincentive for people to sue with marginal claims. It protects people who are truly victims of discrimination, recognizes that the HRC is short-staffed and protects people against frivolous claims, he concluded.

[2:34:32 PM](#)

REPRESENTATIVE GRUENBERG discussed the need for a two-thirds majority to change procedural rules and whether or not this amendment actually does that. He said he always thought Rule 82, Alaska Rules of Civil Procedure, was an interpretive rule and not a procedural rule, and thus the legislature would only need a majority to adopt this change.

REPRESENTATIVE GARA said that the legislative legal staff put the requirement of a court rule change in the amendment as a note of caution.

REPRESENTATIVE GRUENBERG asked if an attorney for the plaintiff would get a contingency fee based on the contingent fee or the Rule 82 fee.

REPRESENTATIVE GARA offered his understanding that it is what the court determines is reasonable.

REPRESENTATIVE GRUENBERG said that normally these cases are taken on a contingent fee from a plaintiff, and a prevailing reasonable rate indicates an hourly rate.

REPRESENTATIVE GARA concurred.

CHAIR MCGUIRE asked if the language is identical to the language in consumer protection laws.

REPRESENTATIVE GARA said he has a cover letter from the Division of Legal and Research Services saying the language was taken directly from the Unfair Trade Practices Act provisions for attorney fees.

2:38:38 PM

REPRESENTATIVE COGHILL asked if "frivolous" has the same meaning in the amendment as in the Unfair Trade Practices Act.

REPRESENTATIVE GARA said, "Yes, it would be a claim filed with no good faith basis in factor law."

REPRESENTATIVE COGHILL said his concern is that there would be "differing bars" in human rights issues as opposed to labor practices. He added, "I'm just concerned that in human rights, frivolous might have two problems. One is the chilling effect of having a bar that might be higher—I don't know. The other one is that in court, how you would have a subjective case appear under the fair labor standards. So I'm just nervous; I just don't know. And, are we importing a standard that actually applies in the situation that we're trying to apply it?"

CHAIR MCGUIRE noted that Rule 11, Federal Rules of Civil Procedures, says that there must be a good faith basis for presenting a case. She said there is already a frivolity element that must be factored in. She added that this is just extending it out, and it is not a new concept. In giving the opportunity to recover reasonable attorney fees, Representative Gara wants to make it clear that that shouldn't be an incentive for people to get counsel. She offered an example wherein someone files a false claim against someone and is simply abusing the system.

REPRESENTATIVE COGHILL said labor practice issues are more easily provable because there will be employment and pay records, whereas in human rights, frivolity could be harder to prove.

REPRESENTATIVE GARA noted that it really doesn't matter what area of law, frivolous means there were no true facts to support a claim.

REPRESENTATIVE COGHILL noted that the bill has timelines and rules for complaining, and now "you get down to my word against your word in these particular cases."

REPRESENTATIVE GRUENBERG said there is also Rule 95, Alaska Rules of Civil Procedure, and federal Rule 11 allows sanctions if an attorney signs something that is frivolous. He added that Alaska has gotten a bit away from that because Rule 95 was

adopted, which says an attorney can be fined up to \$50,000 for filing a frivolous lawsuit.

[2:45:18 PM](#)

MR. RUARO said there were four reasons to oppose Amendment 6. He said the language doesn't fit the title. The second reason is because Superior Court Judge Collins said the legislature is restricted on enacting attorney fee rules by statute, he stated.

REPRESENTATIVE GRUENBERG interjected to say, "I think she said that we didn't do it by a two-thirds vote and have it comply with the rule, but this would cure that problem."

MR. RUARO said the other point is he doesn't know that there has been a showing that current Rule 82 fees haven't been adequate in these cases. "I don't know that there is a need for it."

REPRESENTATIVE COGHILL asked then why have a Human Rights Commission. "Is it a safety valve or a whole new avenue?" he queried. He said he is not sure if that is what the committee is going to do. He said, "Certainly, I'm not one that thinks that if you're going to have a system of appeal based on your human rights that you wouldn't want to bar a way to go to court. But it seems to me that we've designed a way to go through the Human Rights Commission. So now, if we start another avenue, I'm not too sure that that's the right policy call." He said maybe it is worthwhile to have a recourse for an individual who gets a wrong decision from the HRC. "If they refuse to make a decision, I guess then the question would be what is the recourse to an individual, because I think that's the intention of the amendment," he said.

CHAIR MCGUIRE noted that the first approach was to give an individual a year to bring a case. But the HRC repeatedly said there are some legitimate cases that will be "cut off" because the budget isn't enough to support the committee's language that gives an individual a year to file. She said this [amendment] may not be the preferred route but there are human rights violations occurring and the state does not want to make it a priority by committing to it in the budget beyond 180 days. She said the first question to ask is if committee members want to commit to supporting plaintiffs beyond the 180-day limit, and if not, members ought to vote against the amendment and vote to rescind the [provision] that increases the time period to 365 days. She said if members believe in making that time extension, there are only a couple of avenues to solve it. One

is to keep it there and provide adequate funding and the second is to do something akin to Amendment 6. She agreed that it is a policy shift, but the same thing is done for consumer protection, for example.

REPRESENTATIVE GARA noted that the language is a way to expand access to justice without spending state money. The only other alternative, he stated, was to tell the governor to put more money into the HRC. The governor has decided not to do that. He said people will have the option of going to the HRC or to court. [Those options] are not changing, he said, but an individual will be able to go to court "more feasibly."

[2:51:11 PM](#)

REPRESENTATIVE GRUENBERG said Mr. Ruaro raised two issues that the committee has not discussed, including the title, which can be solved with a concurrent resolution. With regard to the difficulty in getting counsel, he suggested that Representative Gara speak to that since he has practiced in that area. He noted that he had an equal-pay case and the only reason the case could be carried through was because the standard was full attorney fees on an hourly basis. "So it is very important that we do this," he opined. He spoke to Representative Coghill's question of why have a HCR if Amendment 6 passes. He said the HCR has the authority not to take any case, just like any prosecutor, he said, and that [decision] is non-reviewable.

MR. RUARO said Representatives Gruenberg and Gara are speaking from the position of being solo practitioners, and he said he once was an associate in a [law] firm and was a fixed cost to that firm. He said there are firms that will not be burdened with an associate taking on a case. He also opined that employment discrimination is an area with a lot of confusion; it is often a he-said-she-said situation. The HCR dismisses about 65 percent of its cases because there is no substantial evidence of discrimination. He said if the amendment is adopted, then "everyone of those employers who was found not to have done anything wrong, basically, would be subject to a demand letter that says, 'you need to pay now or you're going to be subject to full attorney's fees later.'" It ratchets up the leverage for a settlement, so a lot of employers who did nothing wrong will get one of those letters, he warned. He said Rule 82 provides sufficient recovery for fees currently.

[2:55:34 PM](#)

REPRESENTATIVE ANDERSON surmised then, that two-thirds of the time there is no merit, but [employers] will get a threatening letter saying they will pay attorney fees and costs. He said he has been in the opposite case in defending the employer.

MR. RUARO concurred.

CHAIR MCGUIRE asked if the amendment fails, will Mr. Ruaro still push his position of withdrawal of Amendment 3.

MR. RUARO explained that he has worked with Representative Anderson on a replacement to Amendment 3, which would take out any reference to a statute of limitations as a set period of time and leave it at the discretion of the HRC as it is now. Since the statute is a function of policy and available resources, it would be best for the HRC to continue to control it. He said the HRC has done it that way for quite a few years.

CHAIR MCGUIRE said that really means that you would go back to 180 days.

MR. RUARO concurred, but the HRC could review it.

The committee took an at-ease from 2:57 p.m. to 2:58 p.m.

[2:57:57 PM](#)

REPRESENTATIVE GARA remarked that Mr. Ruaro shouldn't have spoken about Representative Gara's law practice. He said he doesn't understand Mr. Ruaro's comment about working for large firms. The reason people can't get representation in employment cases is that Rule 82 says that attorneys get only 20 percent of their fees and costs when they win their case, he noted. A person with a small case won't get paid representation, and that is the whole point of the Consumer Protection Act and labor laws and of this amendment, he stated. "If you have a good case we want you to be able to get your recovery of your attorney's fees so that you can say to an attorney from the outset, 'Look, I don't have a very big case, but if we win you'll get compensated.'"

REPRESENTATIVE ANDERSON said Representative Gara does not have statistics to show that people not going to attorneys for such cases.

REPRESENTATIVE GARA said that the committee is spending too much time talking about the subject, but he had "a lot of people come

to the law firm...with employment cases." He said damages in employment cases tend to be very low.

[3:00:56 PM](#)

A roll call vote was taken. Representative Gara, Gruenberg, Kott and McGuire voted in favor of Amendment 6. Representatives Coghill, Wilson and Anderson voted against it. Therefore, Amendment 6 carried by a vote of 4-3.

REPRESENTATIVE ANDERSON moved to offer Amendment 7 as follows [original punctuation provided]:

Page 2, line 3:  
Delete "new subsections"  
Insert "a new subsection"

Page 2, lines 7-9:  
Delete all material.

REPRESENTATIVE GRUENBERG objected.

REPRESENTATIVE ANDERSON explained that Amendment 7 provides a deletion on page 2 "so there is not plural of reference to subsections for lines 4 through 6, related and attached to the meat of the amendment, which is deleting lines 7 through 9 on page 2, which states that a complaint can be filed not later than 180 days. And what that means is that we're taking out a reference in the bill setting a statute of limitations to file a charge through the commission. And it would revert back to what the current regulations state. And my opinion, and the Department of Law's opinion, was that the statute that we have here is really a function of policy and it's better to leave it to the regulations to interpret how many days you have to grieve or to make a complaint. And that that will be evolving and will change relative to the commission and regulatory oversight. And it shouldn't be indelible in statute." He questioned the effects of the last amendment and if Amendment 7 is still necessary.

MR. RUARO suggested that Amendment 7 is still necessary.

[3:03:29 PM](#)

CHAIR MCGUIRE relayed that she supports either concept, and that human rights are very important. She added that she is sympathetic to testimony from the department and the HRC that

there aren't enough resources "and there needs to be a reduction in time from what this committee decided, then I am supportive of Representative Gara's policy of allowing some of the folks in the private sector to have an incentive to pick up the work that needs to be done to ensure that we have a good basis of human rights in this state." When people are "sexually discriminated against" or discriminated against based on their gender or skin color, it is sensitive and the tendency, especially for women, is to put it aside and try to work through the issues and put on a brave face, she said. A complaint filed after 180 days does not negate its reality, she added. "It may be that that person tries to work it out, and within a year they realize they can't," she stated. She said her instinct is that "the minute that this committee...adjourns, ...you guys are going to come up with an action plan for how to withdraw the substantive policy of Representative Gara's amendment. And so that when this bill appears on the floor, it's going to not only have that provision out, but it's going to have a reversal of the days, which is unacceptable to me."

MR. RUARO noted that with regard to the statute of limitations, he said that one would still have the Equal Employment Opportunity Commission (EEOC) available with a 300-day limit. He said he found out that the two-year statute of limitations for the court system provides access to Rule 100, Alaska Rules of Civil Procedure, which says that a party can ask for mediation and arbitration. He said he thinks there are a lot of different avenues.

[3:07:20 PM](#)

CHAIR MCGUIRE asked what the basis is for filing a Rule 100 claim.

MR. RUARO explained that "basically the party has to desire to have mediation or arbitration occur. I haven't seen a court deny a motion yet. I filed several of them in private practice; they were never denied."

CHAIR MCGUIRE said she is not that compelled by the EEOC because she doesn't support making a policy stating that human rights are a federal issue, and the state doesn't need to worry about them. She said she is willing to explore Rule 100.

[3:08:14 PM](#)

REPRESENTATIVE GRUENBERG said he is not aware of anywhere else in the law where the legislative authority is delegated on a statute of limitations, which is traditionally statutory, to an executive agency. He surmised that that is an unconstitutional delegation of authority.

MR. RUARO said he doesn't have a case, but he thinks it has been that way for over 10 years.

REPRESENTATIVE GRUENBERG said that would have some weight, but not a lot if it has never been challenged. He is concerned about going on record delegating to the agency. With respect to Rule 100, it is a general mediation, so "why have a human rights commission if you're going to turn these cases all over to general arbitration or mediation?" He said he doesn't know that there's any authority under this to order arbitration without stipulation of the parties. Mediation is nonbinding, he pointed out.

REPRESENTATIVE GARA remarked that Mr. Ruaro's reference to Rule 100 bolsters the case for [Amendment 6]. He said a person cannot get mediation unless there is a lawsuit, and that person will not be able to find an attorney to file a lawsuit without the amendment.

MR. RUARO disagreed that there is an inability to find attorneys for such cases. He said small cases provide some of the best returns in dollars per hours, based on his own experience.

[3:12:22 PM](#)

REPRESENTATIVE GARA asked if those were human rights cases.

MR. RUARO said no.

REPRESENTATIVE GARA contended that human rights cases are very different.

[3:12:48 PM](#)

A roll call vote was taken. Representative Anderson voted in favor of Amendment 7. Representatives McGuire, Coghill, Wilson, Kott, Gara and Gruenberg voted against it. Therefore, Amendment 7 failed by a vote of 1-6.

[3:13:29 PM](#)

REPRESENTATIVE GRUENBERG moved to report HCS SB 132(STA), as amended, out of committee with individual recommendations and the accompanying fiscal notes.

The committee took an at-ease from 3:14 p.m. to 3:14 p.m.

CHAIR MCGUIRE, after determining that there were no objections, announced HCS SB 132(JUD) was reported from the House Judiciary Standing Committee.

REPRESENTATIVE GRUENBERG moved that the committee introduce a concurrent resolution approving a title change to reflect the amendments. Hearing no objections, it was so ordered.

REPRESENTATIVE GRUENBERG moved to waive the referral of the concurrent resolution to the House Judiciary Standing Committee, "so it can go directly to the floor with the bill."

REPRESENTATIVE COGHILL said he thinks it would be referred to the next committee of referral.

REPRESENTATIVE GRUENBERG said okay.

REPRESENTATIVE ANDERSON noted that if the bill changes, then the House Concurrent Resolution will be meaningless.

[HCS SB 132(JUD) was reported from committee.]

HB 379 - CONTROLLED SUBSTANCES, INCL. ANALOGS

[3:15:32 PM](#)

CHAIR MCGUIRE announced that the final order of business would be HOUSE BILL NO. 379, "An Act relating to controlled substances." She noted that the committee was still on Version G, and that she had amendments that she agreed to offer on behalf of the sponsor.

MICHAEL PAWLOWSKI, staff to Representative Kevin Meyer, sponsor of HB 379, relayed that, according to the chemists at the [Alaska's Scientific Crime Detection Laboratory], there are legitimate industrial uses for the analogues to Gamma Hydroxy Butyrate (GHB). Thus, Amendment 1 seeks to protect those limited uses. Amendment 1, labeled 24-LS1396\G.1, Luckhaupt, 2/6/06, reads as follows [original punctuation provided]:

Page 1, lines 13-14:

Delete all material and insert:

- "(2) when intended or used for human consumption:  
(A) gamma butyrolactone(GBL);  
(B) 1,4 butanediol(BD);  
(C) gamma hydroxyvalerate(GHV);  
(D) gamma-valerolactone 4-pentanolide(GVL)."

MR. PAWLOWSKI said Amendment 1 adds GHV and GVL to the bill, which are federally recognized analogs to GHB that the [United States] Drug Enforcement Agency has identified. It is in conjunction with Amendment 2, he added.

[3:17:31 PM](#)

CHRIS BEHEIM, Supervisor, Scientific Crime Detection Laboratory, Anchorage, said he agrees that GHV and GVL are listed as analogs, and there are legitimate uses for the 1,4 butanediol and GBL as solvents, but he can't say that they are used in Alaska for any purpose. They are used for the manufacture of plastics and certain fibers, he said, but it makes sense to have them controlled for illicit uses.

[3:18:12 PM](#)

CHAIR MCGUIRE moved to adopt Amendment 1. Hearing no objections, Amendment 1 was adopted.

CHAIR MCGUIRE moved to adopt Amendment 2 as follows [original punctuation provided]:

Page 1, line 15, through page 2, line 23:  
Delete all material.

Renumber the following bill section accordingly.

MR. PAWLOWSKI said Section 2 of the bill was broad and over reaching--regulating "chemicals that we didn't want to touch."

Hearing no objections, Amendment 2 was adopted.

REPRESENTATIVE GARA said he wants to make sure that the legislation only outlines substances that are being used in the "date rape" drug and nothing beyond that. He said that on page 1, line 6, it says "any of these materials...or which contain any of its salts or isomers." He asked if subsets of these chemicals are made illegal by the legislation and if there are legitimate uses for them.

MR. BEHEIM noted that there are legitimate uses for GHB, including a prescription drug that is categorized as schedule III federally; however, the GHB that is most encountered would be in the illicit form. He said the GHB comes in different forms: an acid or a salt of an acid.

REPRESENTATIVE GARA asked if the bill should be more detailed to protect legal uses.

MR. BEHEIM said that in the federal schedule, GHB is in both schedule I--which has no legitimate use--and in schedule III. He said if it is abused, the schedule III substance becomes a schedule I substance.

[3:21:16 PM](#)

MR. PAWLOWSKI relayed that salts or isomers are standard descriptions, and making a salt is something that he is vague about. He said with the language of "when intended or used for human consumption," he believes that the bill is "getting away from legitimate uses." He added, "As to the medical side of it, I'm honestly not sure, but I thought that was exempted under Controlled Substances Act because of the way you get into the violation in the first place."

MR. BEHEIM gave an example with regard to salts. He said cocaine is encountered in two forms, one as the hydrochloride salt and the other is as the base, which is crack cocaine. Many drugs come in many forms, he added, and there are also different isomers.

REPRESENTATIVE GARA said he just wants to make sure that substances with legitimate uses are not being made illegal under this legislation. He noted that Mr. Beheim said there was a prescription form of GHB.

MR. BEHEIM pointed out that GHB is the "same, exact chemical" in a prescription form, which is a sodium salt, but when there is a legitimate prescription it is a federal schedule III substance. He said the same chemical in the same form can be illicitly abused, so both forms are controlled but they are in different schedules.

MR. PAWLOWSKI noted that oxycodone is covered as a schedule I, but somehow the legitimate use is protected. "This would put GHB in the same schedule," he said.

3:24:27 PM

REPRESENTATIVE GARA pondered whether there is a need to add language that says "except for that form of GHB that is permitted by prescription use."

CHAIR MCGUIRE said she does not know how that is handled, because there are things in the schedule where there is no evidence "that prosecutors are out there running rampant prosecuting people for these legitimate uses."

REPRESENTATIVE GRUENBERG posited that adding something to schedule I A allows it to be prescribed.

REPRESENTATIVE COGHILL suggested doing research on that point.

CHAIR MCGUIRE expressed that the bill will go to the House Finance Committee, and she said it is likely not the sponsor's intent to criminalize uses of reasonable substances. She added that she is comfortable passing the bill out with the assurance from Mr. Pawlowski that he will send the committee a memo about how legitimate uses are protected.

3:27:03 PM

MR. PAWLOWSKI agreed to do so.

REPRESENTATIVE GRUENBERG moved Conceptual Amendment 3 in order to narrow the title as tightly as possible because he does not want to see a marijuana bill coming back in disguise.

MR. PAWLOWSKI suggested a title that says, "including GHB and its federally recognized analogs."

REPRESENTATIVE GRUENBERG asked who the drafter is.

MR. PAWLOWSKI said Jerry Luckhaupt.

REPRESENTATIVE GRUENBERG requested a final version of the bill in the aforementioned memo to the committee from the sponsor.

3:28:38 PM

CHAIR MCGUIRE, after determining that there were no objections, announced that Conceptual Amendment 3 was adopted.

REPRESENTATIVE WILSON moved to report HB 379, as amended, out of committee with individual recommendations and the accompanying fiscal notes.

CHAIR MCGUIRE said the fiscal note is pending.

CHAIR MCGUIRE, after determining that there were no objections, announced that CSHB 379(JUD) was reported out of the House Judiciary Standing Committee.

**ADJOURNMENT**

[3:29:04 PM](#)

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:29 p.m.