

ALASKA STATE LEGISLATURE
HOUSE STATE AFFAIRS STANDING COMMITTEE

April 21, 2005

8:10 a.m.

MEMBERS PRESENT

Representative Paul Seaton, Chair
Representative Jim Elkins
Representative Bob Lynn
Representative Jay Ramras
Representative Berta Gardner
Representative Max Gruenberg

MEMBERS ABSENT

Representative Carl Gatto, Vice Chair

COMMITTEE CALENDAR

HOUSE JOINT RESOLUTION NO. 12

Proposing amendments to the Constitution of the State of Alaska relating to the repeal of the budget reserve fund.

- MOVED CSHJR 12(W&M) OUT OF COMMITTEE

HOUSE BILL NO. 86

"An Act establishing in the office of the ombudsman a state executive branch employee fraud, waste, and abuse report hotline program."

- MOVED CSHB86(STA) OUT OF COMMITTEE

HOUSE BILL NO. 34

"An Act relating to the expungement of records relating to conviction set asides granted after suspended imposition of sentence."

- HEARD AND HELD

HOUSE BILL NO. 146

"An Act relating to an extension for review and approval of revisions to the Alaska coastal management program; providing for an effective date by amending the effective date of sec. 45, ch. 24, SLA 2003; and providing for an effective date."

- BILL HEARING CANCELED

CS FOR SENATE BILL NO. 141(FIN)

"An Act relating to the teachers' and public employees' retirement systems and creating defined contribution and health reimbursement plans for members of the teachers' retirement system and the public employees' retirement system who are first hired after July 1, 2005; relating to university retirement programs; establishing the Alaska Retirement Management Board to replace the Alaska State Pension Investment Board, the Alaska Teachers' Retirement Board, and the Public Employees' Retirement Board; adding appeals of the decisions of the administrator of the teachers' and public employees' retirement systems to the jurisdiction of the office of administrative hearings; providing for nonvested members of the teachers' retirement system defined benefit plans to transfer into the teachers' retirement system defined contribution plan and for nonvested members of the public employees' retirement system defined benefit plans to transfer into the public employees' retirement system defined contribution plan; providing for political subdivisions and public organizations to request to participate in the public employees' defined contribution retirement plan; and providing for an effective date."

- BILL HEARING CANCELED

HOUSE BILL NO. 238

"An Act relating to contribution rates for employers and members in the defined benefit plans of the teachers' retirement system and the public employees' retirement system and to the ad-hoc post-retirement pension adjustment in the teachers' retirement system; requiring insurance plans provided to members of the teachers' retirement system, the judicial retirement system, the public employees' retirement system, and the former elected public officials retirement system to provide a list of preferred drugs; relating to defined contribution plans for members of the teachers' retirement system and the public employees' retirement system; and providing for an effective date."

- BILL HEARING CANCELED

PREVIOUS COMMITTEE ACTION

BILL: HJR 12

SHORT TITLE: CONST. AM: BUDGET RESERVE FUND REPEAL

SPONSOR(S): REPRESENTATIVE(S) HARRIS

02/18/05 (H) READ THE FIRST TIME - REFERRALS
 02/18/05 (H) W&M, STA, JUD, FIN
 04/01/05 (H) W&M AT 8:30 AM CAPITOL 106
 04/01/05 (H) Heard & Held
 04/01/05 (H) MINUTE(W&M)
 04/08/05 (H) W&M AT 8:30 AM CAPITOL 106
 04/08/05 (H) Heard & Held
 04/08/05 (H) MINUTE(W&M)
 04/11/05 (H) W&M AT 8:30 AM CAPITOL 106
 04/11/05 (H) Moved CSHJR 12(W&M) Out of Committee
 04/11/05 (H) MINUTE(W&M)
 04/12/05 (H) W&M RPT CS(W&M) NT 3DP 1NR
 04/12/05 (H) DP: WILSON, SEATON, WEYHRAUCH;
 04/12/05 (H) NR: SAMUELS
 04/19/05 (H) STA AT 8:00 AM CAPITOL 106
 04/19/05 (H) Scheduled But Not Heard
 04/20/05 (H) STA AT 8:00 AM CAPITOL 106
 04/20/05 (H) Scheduled But Not Heard
 04/21/05 (H) STA AT 8:00 AM CAPITOL 106

BILL: HB 86

SHORT TITLE: OMBUDSMAN HOTLINE
 SPONSOR(S): REPRESENTATIVE(S) MEYER

01/19/05 (H) READ THE FIRST TIME - REFERRALS
 01/19/05 (H) STA, JUD
 04/07/05 (H) STA AT 8:00 AM CAPITOL 106
 04/07/05 (H) Heard & Held
 04/07/05 (H) MINUTE(STA)
 04/21/05 (H) STA AT 8:00 AM CAPITOL 106

BILL: HB 34

SHORT TITLE: EXPUNGEMENT OF SET ASIDES
 SPONSOR(S): REPRESENTATIVE(S) WEYHRAUCH

01/10/05 (H) PREFILE RELEASED 12/30/04
 01/10/05 (H) READ THE FIRST TIME - REFERRALS
 01/10/05 (H) STA, JUD
 03/01/05 (H) STA AT 8:00 AM CAPITOL 106
 03/01/05 (H) Bill Postponed
 03/17/05 (H) STA AT 8:00 AM CAPITOL 106
 03/17/05 (H) Heard & Held
 03/17/05 (H) MINUTE(STA)
 04/16/05 (H) STA AT 9:30 AM CAPITOL 106
 04/16/05 (H) Heard & Held
 04/16/05 (H) MINUTE(STA)
 04/21/05 (H) STA AT 8:00 AM CAPITOL 106

WITNESS REGISTER

REPRESENTATIVE JOHN HARRIS

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Presented HJR 12 on behalf of the House Special Committee on Ways and Means, sponsor.

MIKE PAWLOWSKI, Staff

to Representative Kevin Meyer

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Reviewed the changes made to HB 86 in Version Y on behalf of Representative Meyer, sponsor

LINDA LORD-JENKINS, Ombudsman

Anchorage Office

Office of the Ombudsman

Anchorage, Alaska

POSITION STATEMENT: Answered questions during the hearing on HB 86.

LINDA SYLVESTER, Staff

to Representative Bruce Weyhrauch

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Reviewed the changes to HB 34 shown in Version I on behalf of Representative Weyhrauch, sponsor.

DOUG WOOLIVER, Administrative Attorney

Administrative Staff

Office of the Administrative Director

Alaska Court System

Anchorage, Alaska

POSITION STATEMENT: Answered questions during the hearing on HB 34.

ACTION NARRATIVE

CHAIR PAUL SEATON called the House State Affairs Standing Committee meeting to order at [8:10:16 AM](#). Representatives Lynn, Ramras, Gardner, and Seaton were present at the call to order. Representatives Elkins and Gruenberg arrived as the meeting was in progress.

HJR 12-CONST. AM: BUDGET RESERVE FUND REPEAL

8:10:37 AM

CHAIR SEATON announced that the first order of business was HOUSE JOINT RESOLUTION NO. 12, Proposing amendments to the Constitution of the State of Alaska relating to the repeal of the budget reserve fund. [Before the committee was CSHJR 12(W&M).]

8:10:50 AM

REPRESENTATIVE JOHN HARRIS, Alaska State Legislature, presented HJR 12 on behalf of the House Special Committee on Ways and Means, sponsor. Before beginning his testimony, Representative Harris offered his condolences to Chair Seaton who recently lost his mother.

REPRESENTATIVE HARRIS stated that the proposed resolution would amend the Alaska State Constitution in regard to the constitutional budget reserve (CBR). He said the CBR has two provisions: a three-quarter vote to access the CBR; and the sweep provision, which sweeps funds that are eligible into the CBR, unless there is a provision in the budget that reverses those sweeps. He added that the reverse sweep motion [requires] a three-quarter vote.

8:12:12 AM

REPRESENTATIVE HARRIS said his vision, and that of others, is to remove the CBR from the constitution and put it into another constitutionally protected fund, but one that is a capital generation fund. The earnings of that fund would be used for capital construction and maintenance repair of state facilities throughout Alaska. Representative Harris said some people say that would take away the minority's leverage in the three-quarter vote; however, he stated that it would actually give the minority more leverage, ultimately. He explained, "The reason I say that is: it also takes away the pot of money that the legislature has ... used over the years to balance the budget" He indicated that taking away the CBR would allow the state to have a fiscal plan to operate on like other states do. He said other states have to balance their budgets, and they seldom have to dip into reserve funds. He offered examples.

8:13:38 AM

REPRESENTATIVE HARRIS said Alaska has so many unfunded capital and deferred maintenance needs throughout the state, including airports, schools, and roads, and the state needs to consistently put money into the upgrades of those facilities. He noted that the resolution would create a [percent of market value (POMV)] to automatically give inflation proofing of the fund. He added, "If you believe that interest rates will be higher than 5 percent - determine that 5 percent will be the amount." He said HJR 12 would require the state to "develop revenue, long-range," rather than dipping into the CBR whenever the state doesn't have the will to tax its people or use the earnings of the permanent fund.

[8:15:48 AM](#)

REPRESENTATIVE HARRIS said concern has been expressed regarding cash flow problems and whether the state can balance its budget or bring money forward. He said rather than have another mechanism set up, there currently exists in state statute a statutory budget reserve. The proposed resolution would take \$600 million from the CBR, which could be used by the state government to "borrow from and return back." He said he would like to see bigger fences put around the money so that it's more difficult for the legislature to get at it, because his intention is that the money would be an interest-bearing, cash availability fund for the administration to use.

[8:18:26 AM](#)

REPRESENTATIVE GARDNER said she is thrilled to see this as a possible first step towards a fiscal plan for the state, which is long overdue. She asked Representative Harris if the CBR is currently invested in such a way that the state is earning about 4 percent interest.

[8:18:57 AM](#)

REPRESENTATIVE HARRIS said he doesn't know the exact numbers. He added, "It's invested more for liquidity than ... the permanent fund is, for instance, because ... it's a cash flow issue and you need the cash available."

[8:19:09 AM](#)

REPRESENTATIVE GARDNER remarked, "So, right off the top, this plan, in changing the structure, would potentially generate a

higher interest rate than we're getting now, so if we just want to talk about cold cash that's in the state, we'd be ahead."

REPRESENTATIVE HARRIS answered that's correct.

[8:19:24 AM](#)

CHAIR SEATON stated his presumption that the \$600 million, which would be the cash flow account, would have to be a liquid investment.

[8:19:54 AM](#)

REPRESENTATIVE ELKINS concurred with Representative Gardner that HJR 12 is "headed in the right direction," and he stated his support for the resolution.

[8:20:07 AM](#)

REPRESENTATIVE HARRIS admitted that the proposed resolution is not without controversy, and he reiterated that his intent is not to penalize the minority. He added that he has been working with Representative Croft on this issue. He stated that if the public votes for this resolution, it would put the state in the position of having to begin adopting a long-range fiscal plan to support its services. He said it will be an uphill battle to get this issue to the ballot. He talked about other controversial proposals, such as the use of the permanent fund. Representative Harris mentioned the price of oil per barrel and the need to consider that a lower price per barrel would diminish Alaska's CBR in a matter of years. He said the budget will only continue to increase. He said, "We're dependent on one source of revenue, and if that ... volume of revenue does not continue to increase, we're putting ourselves in a bad situation." He emphasized the importance of addressing the issue now.

[8:23:44 AM](#)

CHAIR SEATON stated his support of HJR 12. He asked Representative Harris to explain to the committee how the statutory budget reserve fund is used.

[8:24:08 AM](#)

REPRESENTATIVE HARRIS offered his understanding that although it's an act, there is nothing currently in it at present.

[8:24:51 AM](#)

CHAIR SEATON said he would like that information.

[8:26:05 AM](#)

CHAIR SEATON, after ascertaining that there was no one else to testify, closed public testimony.

The committee took an at-ease from [8:26:27 AM](#) to [8:32:34 AM](#).

[8:32:55 AM](#)

REPRESENTATIVE GARDNER moved to report CSHJR 12(W&M) out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHJR 12(W&M) was reported out of the House State Affairs Standing Committee.

The committee took an at-ease from [8:33:53 AM](#) to [8:52:42 AM](#).

HB 86-OMBUDSMAN HOTLINE

CHAIR SEATON announced that the next order of business was HOUSE BILL NO. 86, "An Act establishing in the office of the ombudsman a state executive branch employee fraud, waste, and abuse report hotline program."

[8:53:00 AM](#)

REPRESENTATIVE GARDNER moved to adopt the committee substitute (CS) for HB 86, Version 24-LS0237\Y, Craver, 4/20/05. There being no objection, Version Y was before the committee.

[8:53:28 AM](#)

MIKE PAWLOWSKI, Staff to Representative Kevin Meyer, Alaska State Legislature, on behalf of Representative Meyer, sponsor, reviewed the changes made to HB 86 in Version Y. He said those changes were in response to discussions with the Office of the Ombudsman.

MR. PAWLOWSKI noted that the first change shows in Section 2, on page 2, lines [9-11]. The language has been "softened to a degree" to allow the ombudsman to attempt to identify the person calling the hotline, while protecting the anonymity "of the agency employee reporting to the hotline." The ombudsman, he

said, felt strongly that "there needed to be at least some leeway to get back to the person." In the same section, on page 2, lines 12-15, new language was added, which read as follows:

(d) The ombudsman shall report to the Legislative Budget and Audit Committee every six months regarding the number of calls, and the types of fraud, waste, and abuse reported through the hotline program. The ombudsman may not verify the reports or investigate the information reported.

[8:55:52 AM](#)

REPRESENTATIVE ELKINS asked, "At that time did they make recommendations on their findings ...?"

[8:56:04 AM](#)

MR. PAWLOWSKI answered, "At this point, the discussion that we've had is that they do not make recommendations on their [findings]." He directed attention to page 1, lines 5-6, which give the ombudsman the leeway to adopt, by regulation, procedures for receiving and processing. That gives the Office of the Ombudsman the ability to decide how to process a frivolous complaint or "something that is obviously not worthwhile to investigate."

[8:57:02 AM](#)

REPRESENTATIVE GRUENBERG asked what the reason is to require the extra step of the report.

[8:57:43 AM](#)

MR. PAWLOWSKI replied, "We view it as a very valuable tool for the legislature to know what the allegations that are made through this employee hotline are." In response to a follow-up question from Representative Gruenberg, Mr. Pawlowski indicated that the sponsor is open to suggestions as to how often the report should be required.

REPRESENTATIVE GRUENBERG stated his concern that people would be spending their limited staff time doing the reports "rather than doing the cases."

MR. PAWLOWSKI stated his belief that the fiscal note shows that a person would be added to "handle the hotline and handle this

burden." In response to a suggestion to do the reports annually, he said, "I think we'd be very amenable to that."

[8:58:32 AM](#)

MR. PAWLOWSKI directed attention to the third change to the bill: the new language of Section 3, on page 3, lines 1-5, which read as follows:

***Sec.3.** AS 39.25 is amended by adding a new section to read:

Sec. 39.25.920. Department of administration to inform employees of hotline. The commissioner of administration shall inform executive branch employees of the public employee fraud, waste, and abuse hotline program established under AS 24.55.222.

[8:58:59 AM](#)

REPRESENTATIVE GRUENBERG asked for the reason for using "executive branch", and he suggested using "public employees" instead.

[8:59:41 AM](#)

MR. PAWLOWSKI said, "I believe that's a very good catch." He moved on to the fourth change, which he said is simply one of omission. He said:

Before we set up an investigatory feature to the hotline, where the ombudsman's office goes and investigates these instances of fraud, waste, and abuse, we'd like to see whether the program is received or not. And so, what we've done is we've removed the investigation portion. The reason behind that being ... that there still is the ability to investigate through [the Legislative Budget and Audit Committee's (BUD's)] ability to direct an audit if fraud, waste, or abuse is glaring enough that ... the committee can decide to pursue that. At the same time, without having the knowledge that this hotline will be effective or used, we believe it's premature to start off establishing an entire investigatory branch.

[9:00:45 AM](#)

REPRESENTATIVE GRUENBERG stated, "This is an issue that ... will come up in the bill also, dealing with the Human Rights Commission." He said, "I appreciate what you're doing here - good change."

[9:01:38 AM](#)

REPRESENTATIVE GARDNER noted that the purpose of the bill is to "establish procedures for receiving and processing", including, on page 1, line 7, "conducting investigations". She said she is confused between that and the language on page 2, beginning on line 14, which read: "The ombudsman may not verify the reports or investigate the information reported." She asked for clarification.

[9:02:02 AM](#)

MR. PAWLOWSKI explained, "The new addition of the hotline is a distinction between the ombudsman's existing language [in statute]. He reiterated that the reason for the new language on page 2, beginning on line 14, is "to see if it works before we build up the investigatory part." He concluded, "So, we're clarifying that they can receive and process, but we do not want you to investigate here."

[9:02:42 AM](#)

REPRESENTATIVE GRUENBERG said he liked the elimination of the investigation section, because it eliminated the micro management of the agency. He added, "But I think they should be able to investigate; I just don't want it set out how they have to do it." He said he would like to eliminate the aforementioned sentence on page 2, beginning on line 14. He said, "The agency can certainly do it if it wants to, but that's up to the agency."

[9:03:34 AM](#)

REPRESENTATIVE LYNN concurred. He said he doesn't think it's necessary to "complicate the lives of people trying to do a good job."

[9:04:10 AM](#)

CHAIR SEATON, after ascertaining that there was not one else to testify, closed public testimony.

[9:04:45 AM](#)

REPRESENTATIVE GRUENBERG moved Amendment 1, as follows:

Page 2, lines [14-15]:

Delete "The ombudsman may not verify the reports or investigate the information reported."

[9:05:35 AM](#)

MR. PAWLOWSKI, in response to a question from Chair Seaton, said Amendment 1 would be acceptable to the sponsor.

[9:05:44 AM](#)

CHAIR SEATON indicated that he doesn't think the intent of the language was to be restrictive, but that could be the result. He asked if there was any objection to Amendment 1. There being none, Amendment 1 was adopted.

[9:06:19 AM](#)

REPRESENTATIVE GRUENBERG moved Conceptual Amendment 2, as follows:

Page 3, line 3:

Delete "executive branch"

Insert "public"

[9:07:17 AM](#)

MR. PAWLOWSKI suggested the language be made to conform to the other language in the bill.

[9:07:51 AM](#)

CHAIR SEATON stated his preference to have a conceptual amendment in order to show "the full intent of what we're doing."

[9:08:09 AM](#)

MR. PAWLOWSKI said that's fine.

[9:08:14 AM](#)

CHAIR SEATON reiterated [Conceptual] Amendment 2.

[9:09:00 AM](#)

CHAIR SEATON asked if there was any objection to [Conceptual] Amendment 2. They're being none, [Conceptual] Amendment 2 was adopted.

[9:09:16 AM](#)

REPRESENTATIVE GRUENBERG moved Amendment 3, as follows:

Page 2, line 13:
Delete "every six months"
Insert "annually"

[9:10:44 AM](#)

REPRESENTATIVE GARDNER objected for discussion purposes.

[9:10:52 AM](#)

REPRESENTATIVE ELKINS said he thinks the whole bill was strengthened when the committee [adopted Amendment 1]. He said he likes the "every six months", because "the more often they report, the hotter the trail is."

[9:11:11 AM](#)

REPRESENTATIVE GRUENBERG withdrew Amendment 3.

[9:11:43 AM](#)

CHAIR SEATON noted that the six-month report is going to the Legislative Budget and Audit Committee (BUD), not to the legislature. The former meets more regularly throughout the year than does the latter.

[9:12:21 AM](#)

CHAIR SEATON reopened public testimony. [Ombudsman Linda Lord-Jenkins was asked some questions to ascertain whether she had Version Y before her, but her testimony begins later in these minutes.]

[9:14:24 AM](#)

REPRESENTATIVE LYNN, regarding the reports that will be sent to BUD, stated his assumption that the reports would be made available to anyone in the legislature who would like to review them.

[9:14:44 AM](#)

REPRESENTATIVE GRUENBERG said he doesn't know whether BUD would consider those reports confidential and, if so, whether language should be added to allow access to members of the legislature.

[9:15:03 AM](#)

REPRESENTATIVE LYNN clarified that he is not talking about "the particulars of each complaint," but rather "the numbers of this, the numbers of that, in broad categories."

[9:15:17 AM](#)

CHAIR SEATON told Representative Lynn that the details are held confidential by the ombudsman and the report would detail the number of calls and types of fraud waste and abuse that have been reported.

[9:16:21 AM](#)

MR. PAWLOWSKI, in response to a question from Chair Seaton, stated his understanding that it would be the prerogative of the chair of BUD [whether or not to make the reports available to the legislature]. He emphasized that it is not the intent of the sponsor that the records be kept confidential, primarily because the information could be helpful to legislators working through "the typical budget process that we do work through every year."

[9:17:00 AM](#)

CHAIR SEATON asked if [BUD] typically reports back to the legislature at the beginning of a new legislature regarding "the activity they've taken in our behalf in the interim."

[9:17:30 AM](#)

REPRESENTATIVE ELKINS said he doesn't think so.

REPRESENTATIVE GRUENBERG said no.

[9:17:35 AM](#)

REPRESENTATIVE LYNN suggested language to allow the legislature to request the reports.

[9:18:03 AM](#)

CHAIR SEATON stated that he thinks the entire function of [BUD] is to serve in the legislature's stead, and he thinks all the records of that committee are available to the legislature.

[9:18:31 AM](#)

REPRESENTATIVE ELKINS said he thinks "any one of us" could request the blanket report from the ombudsman, because it's probably a public document.

[9:18:54 AM](#)

CHAIR SEATON directed attention to page 2, [subsection (d), as amended], which read: "The ombudsman shall report to the Legislative Budget and Audit Committee every six months regarding the number of calls, and the types of fraud, waste, and abuse reported through the hotline program." He asked the state ombudsman if that would be a document available to the public.

[9:19:17 AM](#)

LINDA LORD-JENKINS, Ombudsman, Office of the Ombudsman - Anchorage, responded, "It could be a report depending on how we redact specific information from it."

[9:19:33 AM](#)

CHAIR SEATON indicated that, as the bill reads, there should not be any information in the report that would need redacting, because the legislature would not be asking for anything that would be confidential or would identify [any person contacting the hotline].

[9:19:55 AM](#)

MS. JENKINS, in response to a question from Chair Seaton, confirmed that she would make the report available even if she had to make some redactions.

[9:20:57 AM](#)

REPRESENTATIVE GRUENBERG noted that the bill would be heard next in the House Judiciary Standing Committee. He asked that Ms. Lord-Jenkins and Mr. Pawlowski work with John McKay, the attorney for the Anchorage Daily News, to "determine the answer to that question and, if necessary, come up with some language." He committed to offer that [language] in the House Judiciary Standing Committee if it is a reasonable solution.

REPRESENTATIVE LYNN said that would satisfy him.

REPRESENTATIVE GARDNER suggested that the report be routinely sent by e-mail to all sitting legislators.

[9:21:34 AM](#)

REPRESENTATIVE ELKINS said [the report] is a public document, but he sees negative pitfalls in "making this too big of a public field." He said the press can take something minor and blow it out of proportion, so he advised against making a big deal that it is public.

[9:22:34 AM](#)

REPRESENTATIVE GRUENBERG said - Representative Gardner's consideration aside - he wants to ensure that there is an answer to the question regarding public document law.

[9:23:16 AM](#)

MR. PAWLOWSKI said he agrees with Representative Gruenberg that it isn't explicit in law, and he said it would concern the sponsor if members of [the legislature] didn't have access to the reports.

[9:24:14 AM](#)

REPRESENTATIVE GRUENBERG explained that Representative Gardner's suggestion would send the reports directly to the legislators, not the entire public.

[9:24:33 AM](#)

REPRESENTATIVE ELKINS said he understands that, but quipped, "And we all know without a shadow of a doubt that our e-mails are very safe and very sacred."

[9:24:48 AM](#)

CHAIR SEATON said getting reports from numerous agencies is a standard requirement. He said the only reason he thinks the report would be going to [BUD] instead of to the legislature is if "we're going to be getting reports on an interim basis that the legislature wouldn't be able to receive."

[9:25:42 AM](#)

REPRESENTATIVE GRUENBERG suggested [to Representative Gardner that she could offer an amendment to] change the words "Legislative Budget and Audit Committee" on page 2, lines 12-13, to "Legislature".

[9:26:10 AM](#)

REPRESENTATIVE GARDNER said, "It seems to me that if the report formally goes to the Legislative Budget and Audit Committee they have a duty to review it." She said she just wants to be able to see the reports.

[9:26:33 AM](#)

REPRESENTATIVE GRUENBERG indicated that the language just states that the report is sent to [BUD]; it doesn't mean that anybody will look at it. He said if Representative Gardner wants the report to be available to the legislature, he would support an amendment to that intent.

[9:27:03 AM](#)

REPRESENTATIVE GARDNER moved to adopt Amendment 4, as follows:

Page 2, lines 12-13:
Delete "Legislative Budget and Audit Committee"
Insert "legislature"

REPRESENTATIVE GARDNER said, "I just think we need to know if there's thousands of these or a couple dozen."

[9:27:48 AM](#)

REPRESENTATIVE ELKINS objected to Amendment 4. He said he thinks if [BUD] is doing its job, it would be certain to let the legislature know if it sees any danger signs, for example.

[9:28:18 AM](#)

CHAIR SEATON asked Representative Gardner if she still wants the report to be sent every six months, or if she would like to change it to annually.

[9:28:45 AM](#)

REPRESENTATIVE GARDNER said it is fine to leave the language at "every six months" [on page 2, line 13].

[9:28:54 AM](#)

CHAIR SEATON restated Amendment 4.

[9:29:25 AM](#)

REPRESENTATIVE GARDNER added, "I envisioned something in the nature simply of an e-mail, with maybe an attached synopsis list."

[9:29:33 AM](#)

CHAIR SEATON asked if Representative Gardner wanted to change Amendment 4 to read "shall report electronically to the legislature".

[9:29:49 AM](#)

REPRESENTATIVE GARDNER said it doesn't matter.

[9:29:55 AM](#)

MR. PAWLOWSKI recommended the requirement to send the report to the legislature be additional language, rather than replacement language. He explained that given the Legislative Budget and Audit Committee's specific purview and jurisdiction over the "legislative audit division," the reports could have very significant meaning for that committee.

REPRESENTATIVE GARDNER withdrew Amendment 4.

[9:31:32 AM](#)

REPRESENTATIVE GARDNER moved [Conceptual] Amendment 5, as follows:

Page 2, line 13:

After "every six months"

Insert ", and to the legislature annually,"

REPRESENTATIVE ELKINS objected to [Conceptual] Amendment 5. He said he thinks the committee made some good amendments to the bill already and now is starting to "gum it up."

[9:32:42 AM](#)

A roll call vote was taken. Representatives Gardner, Gruenberg, Lynn, and Seaton voted in favor of Conceptual Amendment 5. Representative Elkins voted against it. Therefore, Conceptual Amendment 5 passed by a vote of 4-1.

[9:34:38 AM](#)

REPRESENTATIVE GARDNER moved to report CSHB 86, Version 24-LS0237\Y, Craver, 4/20/05, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 86(STA) was reported out of the House State Affairs Standing Committee.

HB 34-EXPUNGEMENT OF SET ASIDES

[9:35:47 AM](#)

CHAIR SEATON announced that the last order of business was HOUSE BILL NO. 34, "An Act relating to the expungement of records relating to conviction set asides granted after suspended imposition of sentence."

[9:36:03 AM](#)

REPRESENTATIVE GRUENBERG moved to adopt the committee substitute (CS) for HB 34, Version 24-LS0240\I, Luckhaupt, 4/18/05, as a work draft. There being no objection, Version I was before the committee.

[9:36:25 AM](#)

LINDA SYLVESTER, Staff to Representative Bruce Weyhrauch, Alaska State Legislature, on behalf of Representative Weyhrauch, sponsor, reviewed the changes to the bill shown in Version I.

[9:38:27 AM](#)

MS. SYLVESTER explained that one change is the court would not automatically be issuing expungements; a person would petition for one and judges would follow concrete guidelines.

[9:39:38 AM](#)

CHAIR SEATON moved Amendment 1 to Version I, which read as follows [original punctuation provided]:

Page 1, Line 7, Following, "expungement."

DELETE: "The court may issue the order if the person has proven by a preponderance of the evidence that the person is not likely to reoffend."

INSERT: "No sooner than one year following the date of the set aside of the suspended imposition of sentence, and if the person has not been charged with a crime, the court may issue the order of expungement."

MS. SYLVESTER reviewed Amendment 1.

[9:41:19 AM](#)

REPRESENTATIVE LYNN objected to Amendment 1. He stated that he has a philosophical problem with any amendment that would increase the already broad language of the bill.

[9:41:57 AM](#)

REPRESENTATIVE ELKINS told Representative Lynn that he will support [Amendment 1] for one reason: He indicated that people [with old criminal records - for example a charge of driving under the influence (DUI) they may have received a few decades in the past] are being pulled off state ferries and tug boats, [by the Canadian government while in Canadian waters] and being flown home, leaving the ferries and tugs without sufficient crew. He said, "It takes about a year to get through the Canadian government to get it cleaned up," and [Amendment 1] would eliminate that [problem].

[9:42:59 AM](#)

REPRESENTATIVE GARDNER reminded her fellow committee members that the crimes being considered are not violent crimes, but rather minor offenses, and there would be reason to believe that the person is not likely to reoffend.

[9:43:18 AM](#)

CHAIR SEATON added, "It's only those crimes ... [that] went to court and [for which] there was a suspended imposition of sentence"

[9:44:25 AM](#)

REPRESENTATIVE LYNN removed his objection and said he probably would not object to any further amendments in order to speed the committee process; however, he may object to the bill.

[9:45:31 AM](#)

CHAIR SEATON asked if there was any further objection to Amendment 1. There being none, Amendment 1 was adopted.

[9:45:58 AM](#)

DOUG WOOLIVER, Administrative Attorney, Administrative Staff, Office of the Administrative Director, Alaska Court System, stated that he has worked extensively with the sponsor's staff to create a variety of options that are procedurally consistent with what the court can and cannot do. He said the change [manifested through Amendment 1] was recommended by at least a couple judges who were uncomfortable with the language "unlikely to reoffend in the future".

[9:47:42 AM](#)

REPRESENTATIVE GRUENBERG, regarding the adopted Amendment 1, said he wants it to be clear that the language "no sooner than one year" will allow a judge in an individual case to say, "I won't consider an expungement order sooner than two years from the date of the imposition of sentence"

[9:48:22 AM](#)

MR. WOOLIVER responded that that's how he read that language.

[9:48:31 AM](#)

CHAIR SEATON asked if "no sooner than" means that folks who had a suspended imposition sentence in the past could come to the court to ask for an expungement of their set aside.

[9:48:54 AM](#)

MR. WOOLIVER responded, "As I read the current language, it's not limited to people who recently received a set aside."

[9:49:35 AM](#)

CHAIR SEATON [moved] Amendment 2, which read as follows [original punctuation provided]:

Page 2, Line 10,
DELETE: "arrest, adjudication"

Page 1, Line 14,
DELETE: "arrest, adjudication"

[9:50:17 AM](#)

MS. SYLVESTER said, "The intention is not to do a surgical strike of every record of the court process."

[9:50:46 AM](#)

CHAIR SEATON noted that the language to be deleted on line 10 actually read, "**arrested**" and "**adjudged**", which is different than how the sponsor's amendment read.

REPRESENTATIVE GRUENBERG said the first part of Amendment 2 should delete: "**previously arrested, been adjudged,**" so that the sentence reads: "**Upon entry of such an order, the applicant shall be deemed not to have been convicted, or received a suspended imposition of sentence, or a set aside.**"

CHAIR SEATON asked Mr. Wooliver to comment.

[9:52:55 AM](#)

MR. WOOLIVER said it's not hard to seal or make confidential a court file; however, "names do show up in countless other places that are ... all but impossible to go back and remove." He said all court proceedings are recorded on a CD ROM. There is an arraignment list for the day which is not searchable by name,

but is searchable by date; so, if a person is arraigned, his/her name will show up. He explained, "It's very difficult, bordering on impossible, to go back later and then try to delete any reference to you for your arraignment, for your bail hearing, for your change of plea hearing. You'll just be one name amongst hundreds on a CD. That's the type of thing we can't make confidential."

[9:53:41 AM](#)

CHAIR SEATON said he thinks the part of the language the committee is addressing immediately is regarding whether the applicant shall be deemed as not convicted, not regarding record deletion.

MR. WOOLIVER responded, "They're related, though."

CHAIR SEATON said what he wants to know is if Mr. Wooliver recommends that the language read "previously convicted" or "has not been convicted".

MR. WOOLIVER replied that he does not have a position on that.

[9:54:22 AM](#)

CHAIR SEATON announced that Amendment 2 would be conceptual and now read as follows:

Page 1, Line 10

Delete: "previously arrested, been adjudged,"

CHAIR SEATON, in response to a comment from Representative Gruenberg, said, "I don't see any objection other than this to adopting the amendment." He announced that [Conceptual] Amendment 2 was adopted.

[9:55:40 AM](#)

CHAIR SEATON moved Amendment 3 [previously part of the original Amendment 2 from the sponsor], which now read as follows:

Page 1, Line 14

Delete: "arrest, adjudication"

[9:57:14 AM](#)

MR. WOOLIVER remarked that his previous comments were more applicable to [what was the second part of Amendment 2 and is now Amendment 3]. He continued:

This deals with the types of records the court can either seal or make confidential. As I explained earlier, there are just some records that, by the nature of the way they are gathered, can't be made confidential or sealed, and others that are relatively simple. The record of the conviction or files on those types of things we can easily make confidential. Every other reference to the names and records relating to arrest and arraignment and bail review are things that are not the types of things you search anyway on the Internet or any other place, but as a practical matter they're all but impossible to delete.

MR. WOOLIVER, in response to a question from Chair Seaton, said the aforementioned is true at least for the court system. He said he knows the Department of Public Safety has "other issues."

[9:57:49 AM](#)

CHAIR SEATON asked if there was any objection to Amendment 3.

[9:58:24 AM](#)

REPRESENTATIVE GRUENBERG objected to Amendment 3 for discussion purposes. He said he would like to know if Joanna Stewart from the Department of Public Safety would like to comment on Amendment 3 [but it was ascertained that she did not].

[9:59:35 AM](#)

REPRESENTATIVE GRUENBERG [withdrew his objection to Amendment 3].

[9:59:47 AM](#)

CHAIR SEATON announced that, there being no further objection, Amendment 3 was adopted.

[10:00:00 AM](#)

REPRESENTATIVE GRUENBERG asked if the court system would have had any problem with the language "previously arrested, been

adjudged," if the committee had not deleted it in Conceptual Amendment 2.

[10:01:01 AM](#)

MR. WOOLIVER responded, "Actually, that section doesn't really apply to us, it's just a policy call that you'll make as to what you will allow this person to report to the world."

[10:01:19 AM](#)

REPRESENTATIVE GRUENBERG moved to reconsider the committee's action on Amendment 2.

[10:01:29 AM](#)

MR. WOOLIVER interjected, "Just reading this again ..., I may have misspoken. There may be other reasons - other aspects about whether someone has been previously arrested in other contexts - that I'm not thinking of right now. So, I'm not sure what the impact of ... changing that amendment would be, frankly."

[10:01:51 AM](#)

REPRESENTATIVE GRUENBERG concluded that he would not make a motion. [His motion to reconsider the committee's adoption of Amendment 2 was treated as withdrawn.]

[10:02:11 AM](#)

CHAIR SEATON told Representative Gruenberg he thinks it's important to be specific when allowing people to be deemed as not having been arrested; it should pertain to an individual crime, not be blanketed for all crimes.

[10:02:28 AM](#)

REPRESENTATIVE GRUENBERG said he thinks that's an excellent point. He suggested there should be language in the bill to reflect that concern.

[10:03:02 AM](#)

REPRESENTATIVE GRUENBERG moved Conceptual Amendment 4, as follows:

Page 1, line 11:
Between "set aside" and "._"
Insert "for that crime"

CHAIR SEATON asked if there was any objection to Conceptual Amendment 4. There being none, Conceptual Amendment 4 was adopted. He explained that since the amendment is conceptual, it "could be conformed throughout, if there's another place."

[10:03:49 AM](#)

CHAIR SEATON directed attention to the sponsor's Amendment 3, which he said would now be named Amendment 5. He moved Amendment 5, which read as follows [original punctuation provided]:

Page 2, Line 5,
INSERT: APPLICABILITY: The amendment to AS 12.55.085(e) made by sec. 1 of this Act allowing the sealing of certain records only applies when a conviction, suspension of imposition of sentence, and the set aside under AS 12.55.085 have all occurred after the effective date of this ACT.

[10:04:55 AM](#)

REPRESENTATIVE GRUENBERG objected. He explained as follows:

It was at my request that that second section was eliminated from the original bill. And the reason it's been (indisc.). This deals with the cost involved. And the thing is that agencies are concerned that if we make it retroactive, it's going to be very expensive. We don't, at this point, know what the additional expense is going to be, and we don't know ... where the cutoff date should be and how this should work. And it may vary by agency.

REPRESENTATIVE GRUENBERG stated his preference that "the reach of this bill should be dealt with in [the House Finance Committee] after the agencies have worked up their fiscal notes, and that the House State Affairs Standing Committee should ask the House Finance Committee to address [Amendment 5]."

[10:06:33 AM](#)

CHAIR SEATON proffered that the committee's intent is not to ask the court system or the Department of Public Safety to dig through records of previous acts that were set aside, but to allow the person who had the set aside to consider that [conviction] expunged and be able to honestly answer that they were not convicted [on a job application, for example].

[10:08:05 AM](#)

MR. WOOLIVER stated that without the amendment, anyone who has had a set aside "now more than a year in the past" can come petition the court to have his/her record expunged. With the amendment, only those who have been convicted since the effective date would have that option available to them. Retroactivity would be a public policy call for the legislature to make, while for the court system and others in criminal justice agencies, it would be an issue of how difficult it would be to go back and expunge records from the past.

[10:09:36 AM](#)

CHAIR SEATON indicated that he read [Amendment 5] differently. He stated, "It doesn't say that expungement won't be there, it means that you won't have to go back and change the record." He suggested that the bill possibly needs to be in two sections. The first would read: "Upon entry of such an order the applicant shall be deemed not to have been previously convicted or received a suspended imposition of sentence, or a set aside for that crime." The second would have to do with allowing the sealing of record. He added, "Or ... maybe we should be requiring the sealing of record." He offered further details.

[10:11:23 AM](#)

MR. WOOLIVER responded that if that's the goal, he's not sure [Amendment 5] accomplishes it.

[10:11:37 AM](#)

CHAIR SEATON reiterated that two issues are currently combined in one paragraph in Section 1. He said he would like to hold the bill and get a committee substitute drawn up with two sections.

[10:12:44 AM](#)

REPRESENTATIVE GRUENBERG observed that the only committee that would really take the time with HB 34 is the House State Affairs Standing Committee. He offered to be on a subcommittee to deal with the issue.

CHAIR SEATON said he would serve on the subcommittee with Representative Gruenberg.

10:13:19 AM

CHAIR SEATON stated his understanding for the record that Amendment 5 was withdrawn.

10:13:51 AM

REPRESENTATIVE GRUENBERG [moved] Amendment 6 [originally the sponsor's Amendment 4], which read as follows [original punctuation provided]:

Page 1, Line 13, following "cost of"
DELETE: "sealing the records"
INSERT: "making the records confidential"

Page 2, Line 2, following "electronic records are"
DELETE: "sealed"
INSERT: "confidential. Nothing in this section affects or prevents the use of an offenders [sic] prior conviction, including an expunged conviction, in a later criminal prosecution."

REPRESENTATIVE GRUENBERG stated that there's a great difference in the court system between making a record confidential and sealing the record. In the former, the record is stamped "confidential"; in the latter, the record is place in an envelope under seal and can only be opened if a judge issues an order. If a person reoffends, he said, the question is whether the district attorney can look at the record, for example, when it would be helpful to use the fact of the prior conviction. He offered further details. Under [Version I], the record would be sealed. Amendment 6 would allow the confidential record to be used in a subsequent criminal prosecution.

REPRESENTATIVE GRUENBERG noted that there was a typographical error: The word "offenders" should read "offender's".

10:17:04 AM

REPRESENTATIVE LYNN said he would support Amendment 6.

[10:17:13 AM](#)

MR. WOOLIVER confirmed that Representative Gruenberg's explanation was accurate. In response to a question from Chair Seaton, he said deciding whether or not to adopt Amendment 6 would be a policy call for the committee to make. He recapped Representative Gruenberg's explanation of sealed versus confidential.

[10:18:09 AM](#)

CHAIR SEATON said he wants to ensure that the court system would have access for future court action, but "really no one else does."

[10:18:42 AM](#)

MR. WOOLIVER confirmed that's correct.

[10:19:02 AM](#)

CHAIR SEATON offered his recollection that he had objected to Amendment 6 and he removed his objection.

[10:19:29 AM](#)

REPRESENTATIVE GRUENBERG moved an amendment to Amendment 6 to change "offenders" to "offender's".

CHAIR SEATON asked if there was any objection to the amendment to Amendment 6. None was stated and the amendment to Amendment 6 was treated as adopted.

[10:19:43 AM](#)

CHAIR SEATON asked if there was any objection to Amendment 6, as amended. There being none, Amendment 6, as amended, was adopted.

CHAIR SEATON announced that HB 34 was heard and held.

[10:20:50 AM](#)

ADJOURNMENT

There being no further business before the committee, the House State Affairs Standing Committee meeting was adjourned at [10:20:58 AM](#).