

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

May 5, 2005

8:04 a.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 28

"An Act relating to the municipal dividend program; and providing for an effective date."

- MOVED HB 28 OUT OF COMMITTEE

SENATE BILL NO. 172

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

- MOVED HCS SB 172(STA) OUT OF COMMITTEE

HOUSE BILL NO. 176

"An Act exempting the state and its political subdivisions from daylight saving time."

- MOVED CSHB 176(STA) OUT OF COMMITTEE

HOUSE BILL NO. 273

"An Act relating to the dividends of individuals claiming allowable absences; and providing for an effective date."

- HEARD AND HELD

SENATE BILL NO. 132(efd fld)

"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; and making conforming amendments."

- MOVED HCS SB 132(STA) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HB 28

SHORT TITLE: MUNICIPAL DIVIDEND PROGRAM

SPONSOR(S): REPRESENTATIVE(S) MOSES

01/10/05	(H)	PREFILE RELEASED 12/30/04
01/10/05	(H)	READ THE FIRST TIME - REFERRALS
01/10/05	(H)	CRA, STA, FIN
03/29/05	(H)	CRA AT 8:00 AM CAPITOL 124
03/29/05	(H)	Heard & Held
03/29/05	(H)	MINUTE(CRA)
04/05/05	(H)	CRA AT 8:00 AM CAPITOL 124
04/05/05	(H)	Scheduled But Not Heard
04/07/05	(H)	CRA AT 8:00 AM CAPITOL 124
04/07/05	(H)	Moved Out of Committee
04/07/05	(H)	MINUTE(CRA)
04/08/05	(H)	CRA RPT 1DP 4NR
04/08/05	(H)	DP: CISSNA;
04/08/05	(H)	NR: KOTT, SALMON, LEDOUX, OLSON
05/03/05	(H)	STA AT 8:00 AM CAPITOL 106
05/03/05	(H)	Scheduled But Not Heard
05/05/05	(H)	STA AT 8:00 AM CAPITOL 106

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

BILL: HB 176

SHORT TITLE: ELIMINATE DAYLIGHT SAVING TIME

SPONSOR(S): REPRESENTATIVE(S) SALMON

02/25/05 (H) READ THE FIRST TIME - REFERRALS
02/25/05 (H) CRA, STA
04/07/05 (H) CRA AT 8:00 AM CAPITOL 124
04/07/05 (H) Moved Out of Committee
04/07/05 (H) MINUTE(CRA)
04/08/05 (H) CRA RPT 1DP 1DNP 3NR
04/08/05 (H) DP: SALMON;
04/08/05 (H) DNP: OLSON;
04/08/05 (H) NR: CISSNA, KOTT, LEDOUX
04/23/05 (H) STA AT 9:30 AM CAPITOL 106
04/23/05 (H) Heard & Held
04/23/05 (H) MINUTE(STA)
05/05/05 (H) STA AT 8:00 AM CAPITOL 106

BILL: HB 273

SHORT TITLE: PFD: DELAY PAYMENT FOR ALLOWABLE ABSENCES

SPONSOR(S): REPRESENTATIVE(S) WEYHRAUCH

04/18/05 (H) READ THE FIRST TIME - REFERRALS
04/18/05 (H) STA, FIN
05/05/05 (H) STA AT 8:00 AM CAPITOL 106

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 RPT 1DP 2NR 2AM

04/14/05 (S) DP: SEEKINS
 04/14/05 (S) NR: THERRIAULT, HUGGINS
 04/14/05 (S) AM: FRENCH, GUESS
 04/14/05 (S) JUD AT 8:00 AM BUTROVICH 205
 04/14/05 (S) Moved SB 132 Out of Committee
 04/14/05 (S) MINUTE(JUD)
 04/21/05 (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

WITNESS REGISTER

REPRESENTATIVE CARL MOSES

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Introduced HB 28, as sponsor.

KEVIN RITCHIE, Executive Director

Alaska Municipal League (AML)

Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 28.

ADAM BERG, Staff

to Representative Carl Moses

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Testified on behalf of Representative Moses, sponsor of HB 28.

BILL ROLFZEN, Municipal Assistance

National Forest Receipts

Fish Tax, PILT

Juneau Office

Division of Community Advocacy

Department of Commerce, Community, & Economic Development (DCCED)

Juneau, Alaska

POSITION STATEMENT: Answered questions during the hearing on HB 28.

JOE BALASH, Staff

to Senator Gene Therriault

Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented SB 172 on behalf of Senator
Therriault, sponsor.

REPRESENTATIVE WOODIE SALMON
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Testified as sponsor of HB 176.

LYNN WILLIS
Eagle River, Alaska

POSITION STATEMENT: Testified on behalf of himself during the
hearing on HB 176.

ROBERT TOBEY
Glennallen, Alaska

POSITION STATEMENT: Testified on behalf of himself during the
hearing on HB 176 in opposition to doing away with daylight
saving time.

MOIRA SMITH, Staff
to Representative Woodie Salmon
Alaska State Legislature

POSITION STATEMENT: Testified on behalf of Representative
Salmon, sponsor of HB 176.

LINDA SYLVESTER, Staff
to Representative Bruce Weyhrauch
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 273 on behalf of
Representative Weyhrauch, sponsor.

SHARON BARTON, Director
Alaska Permanent Fund Division
Department of Revenue
Juneau, Alaska

POSITION STATEMENT: Answered questions during the hearing on HB
273.

CHRISTOPHER C. POAG, Assistant Attorney General
Commercial/Fair Business Section
Civil Division - Juneau
Department of Law (DOL)
Juneau, Alaska

POSITION STATEMENT: Testified during the hearing on HB 273.

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

POSITION STATEMENT: Answered questions during the hearing on SB 132.

GRACE MERKES, Vice Chair
Alaska Human Rights Commission
(Address not provided)

POSITION STATEMENT: Testified during the hearing on SB 132.

ACTION NARRATIVE

CHAIR PAUL SEATON called the House State Affairs Standing Committee meeting to order at [8:04:41 AM](#). Representatives Gatto, Elkins, Lynn, and Seaton were present at the call to order. Representatives Ramras, Gardner, and Gruenberg arrived as the meeting was in progress.

[8:05:24 AM](#)

HB 28-MUNICIPAL DIVIDEND PROGRAM

[8:05:30 AM](#)

CHAIR SEATON announced that the first order of business was HOUSE BILL NO. 28, "An Act relating to the municipal dividend program; and providing for an effective date."

[8:05:33 AM](#)

REPRESENTATIVE CARL MOSES, Alaska State Legislature, introduced HB 28, as sponsor. He noted that he has sponsored the subject of the bill for many years, and each year it becomes more important for the community. He indicated that communities are closing their doors because of lack of funds, and the proposed bill would give permanent fund earnings to local governments to spend as they see fit.

[8:06:37 AM](#)

REPRESENTATIVE MOSES offered some examples of approximately how much money various communities could expect to receive: Anchorage, \$70 million; Matanuska/Susitna, \$20 million;

Fairbanks, \$20 million; and the rural area of Kenai, \$15 million. The smaller municipalities would receive a minimum of \$40,000. He stated, "It's so important I can't understand why all members aren't co-sponsors."

[8:07:53 AM](#)

CHAIR SEATON directed attention to a page [included in the committee packet, entitled, "Alaska Permanent Fund Corporation Bill Analysis - HB 28", which compares current statute versus the proposed legislation's plan to have a municipal dividend.] He observed an escalation from 2005-2015. He asked, "Is that due simply to population growth, if this is at \$250 per person, or ... am I missing something that's built in there?"

[8:08:33 AM](#)

REPRESENTATIVE MOSES answered, "Well, it will fluctuate according to the ... number of recipients in each community."

[8:08:45 AM](#)

CHAIR SEATON offered his understanding that there would be a minimum of \$40,000 per community and \$250 per person. He observed that the numbers increase from 2005 to 2015. He clarified, "But I didn't see an inflationary index rating in the bill, and I'm just wondering if I missed it or if that's all calculated on just population increase."

[8:09:15 AM](#)

REPRESENTATIVE MOSES said, "There's no inflation."

[8:09:24 AM](#)

REPRESENTATIVE GATTO asked what the justification is for having a \$40,000 minimum.

[8:09:39 AM](#)

REPRESENTATIVE MOSES responded, "It just follows the way that way we have been doing municipal help in the past. We've always had a minimum per community."

[8:09:55 AM](#)

REPRESENTATIVE GATTO pointed out that the smaller communities would receive more than \$250 per person. He asked if there is something inherent about the smallest communities that says, "The smaller you are, the more you need municipal revenue sharing."

[8:10:41 AM](#)

REPRESENTATIVE MOSES replied that there is a minimum amount necessary to justify incorporating a community, and the \$40,000 minimum would encourage communities.

[8:11:19 AM](#)

REPRESENTATIVE GATTO tried to recall when the committee had last discussed the definition of community.

[8:11:37 AM](#)

CHAIR SEATON said that was during a hearing on another bill and the definition of community given at that time was that it must include a minimum of 25.

[8:12:02 AM](#)

REPRESENTATIVE MOSES said he thinks the minimum number necessary to be counted as a community has been 25 for some years. In response to a follow-up question from Chair Seaton, he indicated that it would be acceptable to specify that number in an amendment.

[8:12:39 AM](#)

REPRESENTATIVE LYNN asked Representative Moses to confirm for the record that the bill would not affect anybody's permanent fund dividend (PFD) at all.

[8:13:30 AM](#)

REPRESENTATIVE MOSES answered that's correct.

[8:14:30 AM](#)

KEVIN RITCHIE, Executive Director, Alaska Municipal League (AML), stated that AML has, for quite awhile, supported the proposed legislation. He noted that strong communities are probably more a part of the Alaska State Constitution than any

other state's constitution. A number of small communities in rural Alaska have already been lost, while the larger communities are facing significant tax challenges and local taxpayers are being taxed too much. The proposed legislation would allow the state to pass money to communities to use as they will. He indicated that would act as tax relief and would bypass federal government. He offered further details.

[8:16:15 AM](#)

MR. RITCHIE directed attention to [a three-page, double-sided handout in the committee packet, entitled, "Revenue Sharing Fact Sheet"]. He noted that [pages 2 and 3] show a survey that was conducted by a statewide professional polling organization. He noted that three out of four people surveyed suggested that [revenue sharing] was a good thing to do for both small and large communities.

[8:17:13 AM](#)

REPRESENTATIVE LYNN referred to three of the categories of those polled, as shown in the survey: conservative, moderate, and progressive. He asked if "progressive" means liberal.

[8:17:37 AM](#)

MR. RITCHIE responded, "I suspect it was." He explained, "Those were the three choices given people that were responding to that survey, and they chose the one."

[8:17:45 AM](#)

REPRESENTATIVE GATTO asked what the communities [with the smallest populations] are likely to do with \$40,000.

[8:18:13 AM](#)

MR. RITCHIE responded that if a community is going to be viable, it needs staff, fuel, electricity, and phone service, for example. He said \$40,000 is considered a bottom line to cover those basic costs.

[8:19:15 AM](#)

REPRESENTATIVE GATTO asked if Mr. Ritchie's opinion is that the small communities would use the money for personnel, rather than to build a well or a dock, for example.

8:19:19 AM

MR. RITCHIE said he can't answer that. Notwithstanding that, he said it would be fair to say, "Whatever the people needed the most to increase their quality of life, that's probably where the money would go"

8:20:05 AM

ADAM BERG, Staff to Representative Carl Moses, Alaska State Legislature, testifying on behalf of Representative Moses, sponsor, specified that HB 28 addresses municipalities, not communities. He said there is a definition available from Department of Commerce, Community, & Economic Development (DCCED) of a municipality. Basically, a municipality has the ability to tax itself. In response to a question from Representative Gatto, he said Bill Rolfzen from DCCED could further address the issue of the makeup of a municipality.

8:21:55 AM

MR. BERG, in response to a question from Chair Seaton, referred to Section 2 of the bill, which read as follows:

***Sec.2.** AS 37.13.145 is amended by adding a new subsection to read:

(e) After the transfers under (b) and (c) of this section, on June 30 of each year, the corporation shall transfer from the earnings reserve account to the municipal dividend fund established under AS 29.60.800 the amount needed to fund municipal dividends for the next fiscal year, or the balance in the earnings reserve account, whichever is less.

MR. BERG confirmed that (b) refers to the dividend program, while (c) refers to inflation proofing.

8:22:35 AM

BILL ROLFZEN, Municipal Assistance, National Forest Receipts, Fish Tax, PILT, Juneau Office, Division of Community Advocacy, Department of Commerce, Community, & Economic Development (DCCED), reconfirmed that the bill deals with municipalities only. He said municipalities are incorporated political subdivisions of the state, defined under 29.71.800.13, which he read as follows:

A municipality means a political subdivision incorporated under laws of the state that is a home rule or general law city, a home rule or general law borough, or unified municipality.

MR. ROLFZEN said there are rigorous standards established under Title 20, Chapter 5, 29.05. For example, a first class city must have at least 400 permanent residents; a second class city must have at least 25 registered voters sign the incorporation petition.

[8:23:55 AM](#)

REPRESENTATIVE GATTO asked if the term "population" would include every man, woman, and child, and the term "voter" only those who are voters.

[8:24:18 AM](#)

MR. ROLFZEN responded as follows:

For the purposes of an ongoing program, we look at permanent residence of the community, not necessarily voters. My illustration was just how to get to the point of being a city in the first place.

[8:24:40 AM](#)

CHAIR SEATON closed public testimony. He reviewed the previous testimony heard.

[8:25:21 AM](#)

REPRESENTATIVE GARDNER said she finds it interesting that the aforementioned survey did not include any question that relates to using permanent fund money. She said she wonders how the answers may or may not have been different had that question been included, given that 83 percent of the people voiced that they did not want the fund touched.

[8:25:56 AM](#)

REPRESENTATIVE ELKINS moved to report HB 28 out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HB 28 was reported out of the House State Affairs Standing Committee.

SB 172-INITIATIVE/REFERENDUM BALLOT SUMMARY

8:26:57 AM

CHAIR SEATON announced that the next order of business was SENATE BILL NO. 172, "An Act relating to the presentation of initiatives and referenda on the ballot."

8:26:59 AM

JOE BALASH, Staff to Senator Gene Therriault, Alaska State Legislature, on behalf of Senator Therriault, sponsor, paraphrased the sponsor statement, which read as follows:

AS 15.45.180(a) currently provides that once an initiative petition is certified as containing the number of valid signatures required for placement on the ballot, the lieutenant governor shall prepare both a ballot title and a proposition for the election ballot. The same mechanism applies at AS 15.45.410(a) for referenda. Under existing law, the ballot title must indicate the "general subject of the proposition," and may not exceed six words. The proposition must give a "true and impartial summary" of the proposed law, in not more than 100 words.

With the increasing complexity of laws being proposed by initiative, it is difficult to provide an accurate description of the contents of a proposed law in only six words. Likewise, the Legislature is currently taking on more controversial and complex legislation that some voter groups may attempt to overturn through use of the referendum.

The current word length limitations on ballot titles contributes to the likelihood that voters will not fully understand the scope and effect of initiative propositions and referenda that are placed before them. Allowing the lieutenant governor up to 25 words for the ballot title will provide the opportunity for a more accurate description of the contents of the proposed law.

8:30:25 AM

REPRESENTATIVE GATTO asked how long the lieutenant governor has to act on a ballot title and proposition that has been given to him/her.

[8:30:57 AM](#)

MR. BALASH said he doesn't know.

[8:31:08 AM](#)

CHAIR SEATON offered his understanding that there is no time frame currently, but there may be an amendment to address that issue. He asked Mr. Balash if he has seen the amendments.

[8:31:42 AM](#)

MR. BALASH said he has recently seen an amendment [later named Amendment 1], which read as follows [original punctuation provided]:

After line 8 insert a new subsection to read:

AS 15.45.180(c)

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

MR. BALASH said, "On it's face it makes sense," considering the timeframe in which the petition circulators have to get the signatures turned back in to the lieutenant governor.

[8:32:16 AM](#)

CHAIR SEATON reviewed that an initiative petition has to be filed "before," in order to give the legislature time to enact substantially similar legislation. If the legislature adopts such legislation, then the proposition doesn't go forward; if it does not, then the lieutenant governor prepares the language that will go on the ballot within a certain time frame. He indicated that [Amendment 1] would give a timeframe, without which "time can get pushed back."

[8:33:20 AM](#)

REPRESENTATIVE GARDNER asked: "If there is legislative session after the petition is filed and a substantially similar law passes, what is the timeline and who determines whether it's substantially similar?"

[8:33:41 AM](#)

CHAIR SEATON offered his understanding that that's determined by the lieutenant governor, and by the courts if there is a challenge. He noted that there have been some challenges in the past.

[8:33:50 AM](#)

REPRESENTATIVE LYNN noted that there are two potential amendments in the committee packet, and he asked for a comparison of the two.

[8:34:11 AM](#)

MR. BALASH referred to the other amendment in the committee packet [later named Amendment 2], which read as follows [original punctuation provided]:

After line 14 insert a new subsection to read:

AS 15.45.410(c)

"The lieutenant governor shall submit the ballot title and proposition to the director not later than 60 days after the date the petition is filed."

MR. BALASH explained that would be [60 days] from the date that the petition is filed with the lieutenant governor. He offered an example whereby session began on January [10], which meant that petitions had to be turned in to the lieutenant governor before the gavel fell on January 10. Sixty days after that, regardless of whether or not the lieutenant governor has actually certified that the signatures are "equal in number to that required," he/she would have to come up with the ballot title and language. He concluded, "So, in this case we would be talking about the difference between ... approximately March 10 and, hopefully, June 10."

[8:35:25 AM](#)

CHAIR SEATON clarified that the amendments would modify two different sections; therefore, they are not conflicting amendments.

[8:36:05 AM](#)

REPRESENTATIVE GATTO moved to adopt Amendment 1 [text provided previously]. There being no objection, Amendment 1 was adopted.

[8:36:57 AM](#)

REPRESENTATIVE GATTO moved to adopt Amendment 2 [text provided previously]. There being no objection, Amendment 2 was adopted.

[8:37:46 AM](#)

CHAIR SEATON, after ascertaining that there was no one to testify on SB 172, closed public testimony.

[8:37:51 AM](#)

REPRESENTATIVE RAMRAS moved to report SB 172, as amended, out of committee with individual recommendations and the accompanying fiscal note. There being no objection, HCS SB 172(STA) was reported out of the House State Affairs Standing Committee.

HB 176-ELIMINATE DAYLIGHT SAVING TIME

[8:38:50 AM](#)

CHAIR SEATON announced that the next order of business was HOUSE BILL NO. 176, "An Act exempting the state and its political subdivisions from daylight saving time."

[8:38:51 AM](#)

REPRESENTATIVE WOODIE SALMON, Alaska State Legislature, as sponsor of HB 176, said he thinks there was a good amount of discussion at the last hearing on HB 176 and the bill is in "good form."

[8:39:25 AM](#)

REPRESENTATIVE GATTO moved to adopt the committee substitute (CS), Version 24-LS0490\G, Bannister, 5/4/05, as a work draft. There being no objection, Version G was before the committee.

8:39:44 AM

CHAIR SEATON explained that Version G "changes the bill from us adopting and implementing something that will affect everybody's individual lives every day to [an] advisory vote for the people at the next regular election"

8:40:25 AM

LYNN WILLIS, Eagle River, testified on behalf of himself in support of the "repeal of daylight saving time by direct legislative action or by vote of the people of Alaska." He addressed one argument against repeal, which is the idea that there is a clear and present need for daylight saving time to keep Alaska businesses from operating at a disadvantage. Mr. Willis countered that technology has overcome any need for the state to mandate the use of daylight saving time to support business. He explained, "Use of the Internet and advances in communication technology allow many, if not most, business transactions, to be initiated, conducted, and/or completed at any time of the day on any day of the week. If Alaska suspends the use of daylight saving time, while the Lower 48 continues to use it, any business in Alaska operating between the core hours of 9:00 a.m. and 5:00 p.m., Alaska standard time will have a minimum of three to six business hours that overlap with these same core hours in any time zone in the Lower 48."

MR. WILLIS opined that the use of daylight saving time does not automatically benefit any businesses that routinely interface with the Lower 48 states. He offered a hypothetical example. He asked the committee to remember: "Since 1983 - when all of Alaska, west of the Yukon Territory, except the far Aleutians, advanced its clocks permanently - most of Alaska has been on permanent daylight saving time. From April to October, most of Alaska is on double daylight saving time." Mr. Willis said he has to commute and work under artificial lighting longer because of daylight saving time. He noted, "If we were to permanently stay on double daylight saving time, as [has] been suggested, sunrise on December 21, 2005, will be at 11:14 [a.m.] in Anchorage."

8:44:43 AM

CHAIR SEATON interjected to tell Mr. Willis that the question before the committee is whether to put a ballot proposition forward for an advisory vote of the citizenry to eliminate daylight saving time to be on Alaska standard time. He

explained that the committee needs to move on with its busy calendar. He said, "I just want to make sure that I understand you correctly that you support going to an advisory vote to eliminate daylight saving time."

[8:45:48 AM](#)

MR. WILLIS responded, "If that's my only alternative, yes I do."

[8:45:59 AM](#)

REPRESENTATIVE GARDNER asked Mr. Willis how he would feel if Alaska were to move from Alaska time to Pacific time, and at the same time eliminate participation in daylight saving time. She said that would be one way to reduce the discrepancy between Alaska's time and other time zones in the country.

[8:46:22 AM](#)

MR. WILLIS said he would oppose that. He explained:

The reason we have time zones is so that we can have some synchronization between the position of the sun and the time of the day. We've already skewed that two hours. If we advanced another time zone, to the Pacific time zone, it would be even worse. It's a fact that we're not geographically located with the rest of the United States; we are in another time zone. And I think by doing that you're just making the situation worse.

[8:47:00 AM](#)

REPRESENTATIVE GRUENBERG mentioned an energy bill that the U.S. Congress is considering, which would have the country on daylight saving time eight months of the year. He observed, "So, if we go backwards, we'll not be just one hour behind Pacific time but we'll be two hours, and we'll be five hours behind New York." He surmised that that may all right for those who have sophisticated use of the Internet, but he asked how it would affect the thousands of Alaskans who don't.

[8:48:09 AM](#)

MR. WILLIS said he thinks most of the thousands of Alaskans don't have "any communication that's necessary with the Lower 48." He said only so much can be done to get along with the

Lower 48, and he reminded the committee of Alaska's economy with the Far East. He said, "We have to respect our position relative to them."

[8:48:27 AM](#)

ROBERT TOBEY testified on behalf of himself in opposition to doing away with daylight saving time. He said he is one of the thousands of Alaskans who would experience some problems if there was a five-hour time gap between Alaska and the East Coast. He said, "It will cause me far more inconvenience and sleep loss than pushing my clock ahead one hour once a year." Mr. Tobey revealed that he has a small business that frequently requires him to deal with suppliers on the East Coast and in other portions of the Lower 48. He stated, "It's difficult enough to get service for my clients as it is. Often orders have to be in early in the morning, Eastern Time to get timely delivery in Alaska. Adding another hour means every time I have to deal with the Outside companies, I would need to add an extra hour that I have to be at the office or ... get up ... earlier." Mr. Tobey said he is certain there are many other Alaskans who would be inconvenienced as much or more than he would be.

MR. TOBEY stated that he would wholeheartedly support staying on daylight saving time, thus being only three hours behind the East Coast and the same as the West Coast for a good part of the year. He said that would be a longer period if the U.S. Congress passes the previously mentioned energy bill. He said, "This action would meet the need of business travelers and those not wanting to lose an hour of sleep once every spring."

[8:50:06 AM](#)

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

[8:50:27 AM](#)

REPRESENTATIVE ELKINS moved to report CSHB 176, Version 24-LS0490\G, Bannister, 5/4/05 out of committee with individual recommendations and the accompanying fiscal notes.

REPRESENTATIVE ELKINS, in response to Representative Gruenberg's saying he would like more committee discussion, removed his motion.

[8:51:16 AM](#)

REPRESENTATIVE GRUENBERG stated his concern that the bill only gives the voters one choice, which would be to eliminate daylight saving time. He said he would like to know how the sponsor would feel about giving voters other choices: To keep daylight saving time all year round, or to put the state on various time zones.

REPRESENTATIVE GRUENBERG suggested another page could be created in "the official election pamphlet" so that "the people could check this off and really take a little more time to study the issue and then just simply mail that in."

[8:52:59 AM](#)

REPRESENTATIVE SALMON said he doesn't want to complicate the issue by giving too many choices.

[8:54:05 AM](#)

REPRESENTATIVE GRUENBERG said Alaska is unusual because the state is so far north. He said he doesn't know how people would feel about wanting to be closer to the rest of the U.S., "time wise."

[8:55:43 AM](#)

REPRESENTATIVE ELKINS moved to report CSHB 176, Version 24-LS0490\G, Bannister, 5/4/05 out of committee with individual recommendations and the accompanying fiscal notes.

[8:56:09 AM](#)

MOIRA SMITH, Staff to Representative Woodie Salmon, Alaska State Legislature, on behalf of Representative Salmon, sponsor, said there was a zero fiscal for the original bill, but no fiscal note was created for Version G.

[8:56:27 AM](#)

CHAIR SEATON said the committee would request that a fiscal note be drawn up for Version G. He asked if there was any objection to the motion. There being none, CSHB 176(STA) was reported out of the House State Affairs Standing Committee.

HB 273-PFD: DELAY PAYMENT FOR ALLOWABLE ABSENCES

8:57:01 AM

CHAIR SEATON announced that the next order of business was HOUSE BILL NO. 273, "An Act relating to the dividends of individuals claiming allowable absences; and providing for an effective date."

8:57:06 AM

LINDA SYLVESTER, Staff to Representative Bruce Weyhrauch, Alaska State Legislature, presented HB 273 on behalf of Representative Weyhrauch, sponsor. Ms. Sylvester said the Alaska permanent fund dividend (PFD) was initiated to provide Alaskans with a share of the state's resource wealth, primarily derived from oil. She explained that, through statute, some exemptions were allowed which made it possible for some Alaskans living out of the state to still receive a PFD. She said all that is necessary for individuals to do to receive approval for an allowable absence is to make a simple statement that they intend to return to the state. She said it is an honor system, and asked, "But does the system really work?"

MS. SYLVESTER said the Permanent Fund Division recently issued an estimate that the average rate of return of individuals out of state on allowable absences was 30 percent. The division estimated that over a nine-year period, the sum of the dividends paid to those absent more than 180 days who never returned to the state was \$86.1 million.

MS. SYLVESTER noted that HB 273 has a "requirement for return." Knowing that a sizeable nest egg has accrued in their absence, both college students and military personnel may be encouraged to return to Alaska, which could increase the amount of money spent in the state.

MS. SYLVESTER noted that a potential constitutional problem was raised by the Office of the Attorney General: If the Permanent Fund Division determines that an individual living out of state is eligible [to receive a PFD], that person may be considered by the courts to have a property interest in the dividend. She said the solution to that was to amend the eligibility statutes to make a person out of state on an allowable absence to be "conditionally eligible." The condition for eligibility would be completed once that person returned to Alaska, she explained. However, if an individual out of state on an allowable absence were to die, their estate would be paid.

[9:01:46 AM](#)

MS. SYLVESTER acknowledged that Chair Seaton had introduced the idea for this bill last year. She indicated that one aspect of his bill that was "picture perfect" was that it didn't assume that people were committing fraud or misleading the Permanent Fund Division by stating that they will return to the state, it just asked them "to complete that thought and come back to the state in order for them to collect their share of Alaska's resources."

[9:02:35 AM](#)

REPRESENTATIVE GATTO moved to adopt the committee substitute (CS) for HB 273, Version 24-LS0871\G, Cook, 5/3/05, as a work draft. There being no objection, Version G was before the committee.

[9:03:47 AM](#)

REPRESENTATIVE LYNN said if a military person stationed in Alaska is serving in Iraq, for example, odds are that his/her spouse and children are in Alaska and the need for the money from the PFD is imminent because bills need to be paid. He asked Ms. Sylvester to address that concern of his.

[9:04:36 AM](#)

MS. SYLVESTER said prior to 1982, Alaskan's did not receive a PFD. The dividend, she added, is not a guaranteed entitlement to the citizens of Alaska. She indicated that it will be a hardship for those living out of state [to have to wait for their PFD payments]. She reminded the committee that those who collect a PFD but don't return to the state are a detriment to other Alaskans who continue to live in the state.

[9:05:38 AM](#)

CHAIR SEATON asked if it is known how many military personnel's spouses and children leave the state to accompany them while they are away on an allowable absence versus how many remain in the state.

[9:06:29 AM](#)

MS. SYLVESTER deferred comment to a representative of the Permanent Fund Dividend Division. Notwithstanding that, she said, "16 percent actually do return to the State of Alaska."

[9:07:00 AM](#)

REPRESENTATIVE LYNN said he understands that the PFD is not an entitlement; nonetheless, people do depend on it. He stated that many people in the military service receive such a low salary that their spouses must stay in Alaska and work. He restated his concern for the issue.

[9:07:54 AM](#)

MS. SYLVESTER responded that this issue is a policy call. She added, "The permanent fund dividend, as I understand it, is not intended to support the United States Military; it's intended to return a portion of the resource wealth of Alaska to Alaskans."

[9:08:28 AM](#)

REPRESENTATIVE LYNN stated, "I realize that [the] PFD is not meant to support the military, but it's the job of the military to support us."

[9:08:53 AM](#)

SHARON BARTON, Director, Alaska Permanent Fund Division, Department of Revenue, regarding Chair Seaton's previously stated question, said data shows that 17 out of 72 active military personnel [left Alaska] leaving no dependents behind.

[9:10:17 AM](#)

CHAIR SEATON observed, "The sample that you have is not talking about people deployed into hot zones, or anything else. This is all active duty military that have rotated through Alaska - they and their dependents. Is that correct?"

[9:10:33 AM](#)

MS. BARTON answered in the affirmative.

[9:10:40 AM](#)

CHAIR SEATON said the committee had previously heard some information showing that the PFDs that students on financial

aide receive is considered income and is subtracted from that financial aide. He asked Ms. Barton if she has any information regarding that.

MS. BARTON answered she does not.

CHAIR SEATON indicated that students on financial aide would have a nest egg waiting for them when they came back to Alaska.

[9:11:48 AM](#)

REPRESENTATIVE GARDNER pointed out that that would only apply to those students with financial aid; those without it would rely on getting that money to support them.

[9:12:18 AM](#)

MS. BARTON said, as she interprets the bill, a person who was absent, for example, any time during 2004, would have their 2005 dividend held until the he/she had been in Alaska without an allowable absence for an entire qualifying year.

[9:13:19 AM](#)

CHAIR SEATON clarified that a person can be absent for 180 days in a year and still qualify as a physical resident of Alaska. He said, "So, ... basically you have to be in the state for 185 days within the calendar year."

[9:13:35 AM](#)

MS. BARTON confirmed that's correct.

[9:13:41 AM](#)

REPRESENTATIVE GATTO proffered that an Alaskan student who leaves the state to go to school for four to six years, coming home only during vacations, would have to return to the state and stay for 185 days before receiving his/her held-back dividends.

[9:14:05 AM](#)

MS. BARTON answered that's correct.

[9:14:11 AM](#)

CHAIR SEATON said people complain about "brain drain" - when the best and brightest in the state stay out of the state because there is no real incentive for them to come back. He said the impetus of the bill is to get them to come back. He said the situation is the same in regard to the military.

[9:15:27 AM](#)

MS. BARTON, in response to a question from Representative Gardner, explained that those [who are away on allowable absences] are not the same as someone who has severed residency and is returning. They simply need to return and be in the state for the time required.

[9:16:02 AM](#)

REPRESENTATIVE LYNN asked if a person could come back to Alaska, pick up his/her five to six PFDs, for example, and turn around and leave the state again.

[9:16:31 AM](#)

CHAIR SEATON said that person could, but only after he/she spends 185 days back in Alaska. He said a person comes back for that period of time most likely will get a job and form relationships, and is therefore likely to stay in the state. In response to a Representative Lynn, he said there is nothing in the bill that says once a person comes back and reestablishes residency "we nail your foot to the floor and you can never leave again."

[9:18:44 AM](#)

REPRESENTATIVE GRUENBERG directed attention to [subsection (c)] of Version G, on page 4, lines 10-14, which read as follows:

(c) If an individual who is conditionally eligible for a dividend that has not become payable under (a) of this section dies before conditional eligibility for the dividend is terminated under (b) of this section, the department shall pay the dividend to a personal representative of the estate or to a successor claiming personal property under AS 13.16.680.

REPRESENTATIVE GRUENBERG noted that AS 13.16.680 read:

Sec. 13.16.680. Collection of personal property by affidavit.

(a) Thirty days after the death of a decedent, any person indebted to the decedent or having possession of tangible personal property or an instrument evidencing a debt, obligation, stock, or chose in action belonging to the decedent shall make payment of the indebtedness or deliver the tangible personal property or an instrument evidencing a debt, obligation, stock, or chose in action to a person claiming to be the successor of the decedent upon being presented an affidavit made by or on behalf of the successor stating that

(1) the value of the entire estate, wherever located, less liens and encumbrances, does not exceed \$15,000;

(2) 30 days have elapsed since the death of the decedent;

(3) no application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction; and

(4) the claiming successor is entitled to payment or delivery of the property.

(b) A transfer agent of any security shall change the registered ownership on the books of a corporation from the decedent to the successor or successors upon the presentation of an affidavit as provided in (a) of this section.

REPRESENTATIVE GRUENBERG, regarding the amount of \$15,000 shown in statute, said that that could easily be the total of 15-years' worth of PFDs. He said, "You could simply file an affidavit from somebody who hasn't been here for 14 years, say this guy was going to come back, and get fourteen grand and go back to Indiana. And there's no way anybody could refute your statement of the decedent's intent."

[9:21:02 AM](#)

REPRESENTATIVE GRUENBERG moved to adopt Amendment 1, to eliminate: "or to a successor claiming personal property under AS 13.16.680." He said this issue has come up during another bill. He said he doesn't want this to become a big deal again.

[9:21:41 AM](#)

CHAIR SEATON objected to Amendment 1. He explained that someone coming to claim a deceased person's money does not certify that the deceased person intended to return. That certification was already made when the deceased person was living and first filed out the application for an allowable absence.

[9:22:07 AM](#)

REPRESENTATIVE GRUENBERG said under the proposed legislation, not only would a person have to certify his/her intent, but he/she also would have to "come back here and actually be here." He said, "They may have had that intent in the past, but under this bill, they won't have completed step two of the process, which is the whole purpose of this bill" He said he hopes that Chair Seaton would reconsider his objection.

[9:23:27 AM](#)

CHAIR SEATON stated for the record that, beginning in 2008, the limit for allowable absences will be 10 years.

[9:23:47 AM](#)

REPRESENTATIVE GATTO pointed out that the deceased would have filed up to ten consecutive times before dying and, thus, the estate would be entitled to the money.

[9:24:30 AM](#)

REPRESENTATIVE GRUENBERG mentioned a recent movie in which an evil person's goal in life was to collect for an estate.

[9:25:15 AM](#)

CHAIR SEATON said, "This doesn't limit the estate, this eliminates a third party from coming in, and I remove my objection I'm glad you caught this; ... there's never been an intention to have a creditor, or some third party come in and claim personal property for somebody."

[9:25:50 AM](#)

CHAIR SEATON asked if there was any further objection to Amendment 1. No objection was stated and Amendment 1 was adopted.

[9:28:08 AM](#)

CHAIR SEATON closed public testimony.

9:28:28 AM

REPRESENTATIVE GARDNER moved to adopt Conceptual Amendment 2, which she explained would have to be conceptual because it was not drafted to fit the lines of Version G. Conceptual Amendment 2 read as follows:

Page 1, line 6, following "dividends":

Insert "and except as provided in (d) of this section"

Page 2, following line 5:

Insert a new subsection to read:

"(d) The dividend for a current year and for the three years immediately following the current year shall be paid to an individual each year under AS 43.23.055(2) if

(1) without claiming an allowable absence under AS 43.23.008(a)(1) - (8) or (10) - (13), the individual was eligible for a dividend for the year immediately preceding the qualifying year for the current year;

(2) the individual was absent from the state during the qualifying year for the current year as allowed in AS 43.23.008(a)(1) - (8) or (10) - (13); and

(3) the individual is otherwise eligible for the dividend."

REPRESENTATIVE GARDNER described [Conceptual Amendment 2] as a "compromise position." She said she considers her children, who are studying Outside, to be Alaska residents. She said she would like those people studying or serving in the military Outside to get a PFD, but for a limited time period. She said she figures the longer they are out of the state, the less likely they are to come back, and she noted that four years is the standard length of a college career. She stated, "So, even though this disturbs the purity of the original bill, I think it meets the needs of a lot of people who are gone temporarily and have every intention of returning.

9:30:17 AM

CHAIR SEATON objected to [Conceptual Amendment 2].

[9:30:26 AM](#)

REPRESENTATIVE GRUENBERG said there are some problems with the bill that Conceptual Amendment 2 attempts to address. He said it seems the concern is about people coming back to the state. He said, "The longer you're away, the more there is a legal presumption that you do not intend to return. And at some point, that presumption could ripen into a conclusive presumption, giving rise to a claim by the state for reimbursement for any dividends paid after you left." He offered further details.

[9:32:53 AM](#)

REPRESENTATIVE GARDNER said she thinks if there was a 4-year limitation, the cost of actually filing a lawsuit and collecting would not be warranted. She added, "I think the state would just sort of write that off if somebody collects for four years and doesn't come back."

[9:33:14 AM](#)

REPRESENTATIVE GRUENBERG said that may be right. Conversely, he said he knows of attorneys who take "collection cases for the state on contingency."

[9:33:32 AM](#)

CHAIR SEATON said the problem with [Conceptual Amendment 2] is it doesn't give incentive for four-year college students to return to Alaska. He said the entire purpose of bill is to stay away from the idea that "we have fraud." The bill, he clarified, has to do with residents of Alaska getting a share of the state's resources for "being an Alaska resident in Alaska." The allowable absences are made for "hardship" and "for determinations that we think are in the best interest of the people of Alaska." He offered further details.

[9:35:51 AM](#)

REPRESENTATIVE GARDNER concurred with everything that Chair Seaton said. She said:

It's a pure program. It's simple, it's clean, and that's great. As a private citizen I'd love to see it passed. As a legislator, I represent a lot of people

who are concerned about their families: they're concerned about people who are out of state taking care of elderly relatives; they're concerned about their college kids; they're concerned about their sons and daughters serving outside of the state. And I think what my amendment does is make the bill palatable to people who would otherwise adamantly oppose it. And I see it as a compromise and a middle ground that will work for more people, even though - yes - it detracts from the purity of the original concept.

[9:36:36 AM](#)

REPRESENTATIVE LYNN, regarding [Chair Seaton's argument], said, "It reminds me of a saying I've seen in one of the places in Anchorage that says something like, 'Cheat the other fellow and pass the savings on to the state.'"

[9:36:59 AM](#)

CHAIR SEATON pointed out that any money that is not going out [to someone not living in the state] would go back into "everybody's personal dividend pool." He explained, "None of that money comes back until people disqualify themselves." He offered his understanding that there are currently 13 allowable absences. He said, "The question is: 'Do we want to have all of these people come back to Alaska and establish their residency before they get the dividend?'"

[9:38:49 AM](#)

REPRESENTATIVE GARDNER [moved to adopt] an amendment to [Conceptual] Amendment 2, to delete "the three years" and insert "one year" in the new subsection (d).

REPRESENTATIVE GARDNER said that would give the college students a reason to come back and a little bit of a nest egg. She offered her understanding that those stationed in Iraq are not there longer than two years, "and so we're not interrupting the needs of their families during that time."

REPRESENTATIVE GATTO expressed concerns about fraud. He said he likes Representative Gardner's amendment [to Conceptual Amendment 2].

[9:41:41 AM](#)

REPRESENTATIVE GARDNER, regarding someone who goes out of state on an allowable absence to care for an elderly ill relative, said, "After two years you figure the relative has moved on or recovered"

[9:41:55 AM](#)

MS. SYLVESTER reiterated that there is a problem with the system as it stands currently. She said the concept of "requiring a return" is not new; years ago Alaska offered a forgiveness clause to students, but required students who left the state for school to return for a period of time. She said this is akin to saying, "I know what your mouth is saying, but want to see what your feet are doing." She emphasized, "It's a huge, huge issue."

[9:44:01 AM](#)

REPRESENTATIVE GARDNER called a question.

CHAIR SEATON, in response to a request for clarification from Representative Gruenberg, reviewed the amendment to Conceptual Amendment 2.

CHAIR SEATON asked if there was any objection to the amendment to Conceptual Amendment 2. There being none, it was so ordered.

CHAIR SEATON restated his objection to [Conceptual Amendment 2, as amended].

A roll call vote was taken. Representatives Gardner, Gruenberg, Gatto, and Lynn voted in favor of Conceptual Amendment 2, as amended. Representative Seaton voted against it. Therefore, Conceptual Amendment 2, as amended, passed by a vote of 4-1.

[9:45:52 AM](#)

REPRESENTATIVE LYNN moved Conceptual Amendment 3, which read as follows [original punctuation provided]:

The provisions of this statute do not apply to any military service member who is assigned to duty in a location where combat pay is authorized, or to any military service member whose military dependents remain in Alaska while the service member serves

outside Alaska, or to any military service member who is receiving care in a military hospital.

9:46:36 AM

MS. SYLVESTER said the department of law should be consulted regarding any change to the bill that would single out any particular party.

9:46:50 AM

CHRISTOPHER C. POAG, Assistant Attorney General, Commercial/Fair Business Section, Civil Division - Juneau, Department of Law (DOL), stated he has a concern about creating a series of exceptions to exceptions. He said the supreme court has routinely allowed the State of Alaska to treat residency for purposes of the PFD differently than for normal state resident purposes. The supreme court has also said that the purpose of the PFD program is to encourage people to maintain their Alaska residency and "reduce turnover." Allowable absences have been made "because we decided that those categories of persons are likely to return to Alaska and remain indefinitely. He stated that if exceptions are made, they have to be based on "the purpose." He said the purpose of the exception that is being proposed in Amendment 3 is that "those categories of persons are more likely to return and should be accepted and treated differently than the other categories that we're making come back to receive their PFD." He continued:

We should not hang our hat on their need for the PFD, because the supreme court has not spoken to need, as far as eligibility. The supreme court has spoken to the purpose being to maintain Alaska residency and reduce turnover. So, if there are statistics or evidence that shows the category ... [Representative Lynn is] referring to has more ... likelihood of returning to Alaska because of their circumstances or because of the situation, it would probably survive the scrutiny.

9:49:05 AM

CHAIR SEATON, in response to Representative Gruenberg, asked him to hold his questions. He then asked Representative Lynn to withdraw his amendment so the committee could hear the next bill, with the understanding that Representative Lynn could move to adopt Amendment 3 again when the committee next hears HB 273.

[9:49:28 AM](#)

REPRESENTATIVE LYNN withdrew his motion to adopt Conceptual Amendment 3.

CHAIR SEATON announced that HB 273 was heard and held.

[9:49:54 AM](#)

SB 132-HUMAN RIGHTS COMMISSION

[9:50:00 AM](#)

CHAIR SEATON announced that the last order of business was SENATE BILL NO. 132(efd fld), "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; and making conforming amendments."

[9:50:02 AM](#)

SCOTT J. NORDSTRAND, Deputy Attorney General, Civil Division, Office of the Attorney General, Department of Law (DOL), referred to a prior hearing on SB 132 and stated:

The last change that was made here to ... existing law was to provide clarification as to the remedies available to those folks that bring complaints to the Human Rights Commission. ... You may recall ... last year there was some concern that we had removed the term "any appropriate relief" from the bill and then specified certain remedies. There was some concern by the commission and others that that limited the kinds of remedies they could ... make and that ultimately there might be some kind of remedy we hadn't anticipated and put in the bill.

What we did was we put "any appropriate relief" back in, and then we listed things. ... We tried to be as comprehensive as possible about the kinds of remedies that courts had allowed, so that folks who come and look at the law can actually have an idea of the kinds of things that they could seek - reinstatements, seniority, back pay, front pay with limits, ... [for example] - because a lot of these folks don't have a

lawyer representing them, and this would be helpful to them.

MR. NORDSTRAND offered to answer questions from the committee.

[9:51:38 AM](#)

REPRESENTATIVE GARDNER stated it seems the bill is really attempting to address the fact that the agency doesn't have adequate funding to really do what it is mandated to do in terms of human rights investigations. She stated her concern that this gives the executive director a lot of power once decisions are made and "everything really kind of funnels right there."

[9:52:46 AM](#)

MR. NORDSTRAND said it is a question of prosecutorial discretion. He mentioned the [Department of Fish & Game v. Meyer] case, which resulted in the supreme court's taking away the prosecutorial discretion of the commission. He read a response of the court as follows:

We are sympathetic to the commission's claim of lack of resources We recognize that it might be highly desirable for the commission staff to have the power to administratively dismiss cases which have individual merit but no widespread impact.

MR. NORDSTRAND added, "But they found that the law didn't allow that." He continued:

And what we're saying is: "There is a solid public policy in support of giving the commission that kind of resource." The commission, in that case, basically argued that they had become ... "a complaint-taking agency"; that they didn't have the power to say what was a good complaint, what was a bad complaint, what's worth the time and resources of the state to pursue and what isn't. And in the face of a system that allows the individual to take cases - whatever the merit - to court on their own, it was decided that no matter how many resources you give to this agency, there's going to be a case that's just silly to go forward with. But there's that nub of a fact that would compel under the current law that it go forward. And so, this is a balance. It's no different than, for example, the attorney general's power to decide

which crimes are prosecuted in this state. Same idea. ... Not all circumstances that might be prosecuted as crimes are, for various reasons. ... Plea bargains are a function of resource issues, to some degree. And so, this is recognizing that fact.

And it's also consistent with, for example, what the [U.S. Equal Employment Opportunity Commission (EEOC)] does. They don't have to take every case. In fact, they take a small number of the cases that are brought to them. So, ... it will allow the commission to spend the time actually actively routing out discrimination, as opposed to becoming, as they argued in the Meyer case, a complaint-taking agency.

[9:55:07 AM](#)

REPRESENTATIVE GATTO observed that without some sort of limitation, [the commission] would have to accept all complaints.

[9:55:43 AM](#)

MR. NORDSTRAND said the law does require "some measure of evidence." He added, "But remember the standard is it has to be completely lacking in merit."

[9:55:49 AM](#)

CHAIR SEATON clarified that Mr. Nordstrand is talking about the current law, "and this would change that so there would be some..."

[9:57:21 AM](#)

GRACE MERKES, Vice Chair, Alaska Human Rights Commission, said the commission supports [SB 132]. She added that the commission has some concern about Section 4, regarding the review process, but is willing to work with the committee. In response to Representative Gruenberg, she explained that the commission's main concern is [there is no firm guideline as to] "when, or why, or how come we have to review cases."

[9:59:38 AM](#)

MR. NORDSTRAND, in response to Chair Seaton and Representative Gruenberg, noted that the discretionary language in Section 4 [begins on line 27] and read:

The commission, in its discretion, may review the executive director's order of dismissal and may affirm the order, remand the complaint for further investigation, or refer the complaint for conference, conciliation, and persuasion as provided in AS 18.80.110 if it concludes that substantial evidence supports the complaint of an unlawful discriminatory practice.

[10:01:39 AM](#)

REPRESENTATIVE GRUENBERG suggested the language could read, "may come up with but is not required to". He asked if that would increase Ms. Merkes' comfort level.

[10:02:01 AM](#)

MS. MERKES said she thinks that would mean the same thing; however, she remarked that it might help the public [perception].

[10:02:06 AM](#)

MR. NORDSTRAND proffered that "may" means exactly what Representative Gruenberg has suggested.

[10:02:30 AM](#)

REPRESENTATIVE GRUENBERG said he is certain that Legislative Legal and Research Services would not have a problem with that language being added and he wants "people to feel comfortable with that."

[10:02:58 AM](#)

MR. NORDSTRAND, in response to a question from Chair Seaton, said he has no objection to [Representative Gruenberg's] concept.

[10:03:05 AM](#)

REPRESENTATIVE GRUENBERG moved to adopt Conceptual Amendment 1, as follows:

Page 2, line 28:
Between "may review" and "the executive director's"
Insert ", but is not required to,"

10:03:34 AM

REPRESENTATIVE GATTO objected to Conceptual Amendment 1. He said he thinks the language is "fairly conclusive the way it is."

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

10:05:07 AM

REPRESENTATIVE GRUENBERG moved Amendment 2, as follows:

Page 2, line 26:
Delete "shall"
Insert "may"

REPRESENTATIVE GRUENBERG explained that he wants to give the executive director discretion.

10:07:26 AM

MR. NORDSTRAND said the department would oppose [Amendment 2]. He explained, "Essentially this is the gate keeping function of the act." He said all that is necessary to pursue a case through to hearing is to have a finding of substantial evidence by the executive director. He continued:

So, what this would permit is: the executive director found there was not substantial evidence of discrimination, but nonetheless said, "Let's go forward anyway." That would seem to be a difficult policy to (indisc. - overlapping voices).

10:08:00 AM

CHAIR SEATON objected to Amendment 2.

10:08:18 AM

REPRESENTATIVE GRUENBERG responded, "That's not what the language says." He clarified that the language is "fails to discover", and he explained that "discover" is a term of art. He said, "This is before the discovery stage has begun."

[10:08:37 AM](#)

MR. NORDSTRAND said the investigation process is a thorough one in which the executive director's agent interviews the complaining party and the lawyer, and receives evidence from the employer and any other party involved. He said, "In fact, there is a delivery of evidence, though it's not tested under oath, and it's not done in deposition."

[10:09:21 AM](#)

REPRESENTATIVE GRUENBERG, in response to a remark by Chair Seaton, directed attention to page 3, line 31, which he said gives the complainant the right to appear, "with or without counsel". He revealed that he has sat as a hearing examiner before the Human Rights Commission. He said in many cases the agency staff may not have the resources to do the investigation, but the complainant is allowed to participate with or without counsel and can conduct independent discovery, "and this would prevent them from doing that."

[10:10:01 AM](#)

REPRESENTATIVE ELKINS suggested that the committee hold the bill so Representative Gruenberg can meet with Legislative Legal and Research Services.

[10:10:33 AM](#)

CHAIR SEATON asked Representative Gruenberg if any of the issues he is raising are substantive House State Affairs Standing Committee issues that couldn't be addressed by the House Judiciary Standing Committee.

REPRESENTATIVE GRUENBERG answered no.

REPRESENTATIVE LYNN moved to report SB 132, [as amended], out of committee with individual recommendations and the accompanying fiscal notes.

[In response to the committee secretary, Chair Seaton clarified that the pending Amendment 2 was now withdrawn].

10:11:38 AM

CHAIR SEATON asked if there was any objection to the motion to move SB 132, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being none, HCS SB 132(STA) was reported out of the House State Affairs Standing Committee.

10:12:02 AM

ADJOURNMENT

There being no further business before the committee, the House State Affairs Standing Committee meeting was adjourned at 10:12:23 AM.