

ALASKA STATE LEGISLATURE
SENATE STATE AFFAIRS STANDING COMMITTEE

February 22, 2005

3:47 p.m.

MEMBERS PRESENT

Senator Gene Therriault, Chair
Senator Thomas Wagoner, Vice Chair
Senator Charlie Huggins
Senator Bettye Davis
Senator Kim Elton

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 39

"An Act relating to ballot titles and propositions; and providing for an effective date."

HEARD AND HELD

SENATE BILL NO. 95

"An Act relating to the collection of, and the use of reasonable force to collect, a deoxyribonucleic acid sample from persons convicted of or adjudicated delinquent for certain crimes."

HEARD AND HELD

SENATE BILL NO. 104

"An Act relating to the crime of misrepresenting permanent fund dividend eligibility; requiring the establishment of a permanent fund dividend fraud investigation unit in the Department of Revenue; and providing for an effective date."

HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 39

SHORT TITLE: BALLOT PROPOSITIONS AND TITLES

SPONSOR(S): SENATOR(S) ELTON

01/11/05 (S) PREFILE RELEASED 1/07/05

01/11/05 (S) READ THE FIRST TIME - REFERRALS
01/11/05 (S) STA, JUD
02/22/05 (S) STA AT 3:30 PM BELTZ 211

BILL: SB 95

SHORT TITLE: COLLECTION OF DNA/USE OF FORCE
SPONSOR(s): SENATOR(s) BUNDE

02/07/05 (S) READ THE FIRST TIME - REFERRALS
02/07/05 (S) STA, JUD
02/22/05 (S) STA AT 3:30 PM BELTZ 211

BILL: SB 104

SHORT TITLE: PERMANENT FUND DIVIDEND FRAUD
SPONSOR(s): SENATOR(s) SEEKINS

02/14/05 (S) READ THE FIRST TIME - REFERRALS
02/14/05 (S) STA, JUD
02/22/05 (S) STA AT 3:30 PM BELTZ 211

WITNESS REGISTER

Jessie Kiehl
Staff to Senator Kim Elton
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Answered questions on SB 39

Jeff Feldman
No address provided
POSITION STATEMENT: Testified in support of SB 39

Joe Geldhof, Attorney
Juneau, AK 99801
POSITION STATEMENT: Testified in support of SB 39

Annette Kreitzer
Chief of Staff
Office of Lieutenant Governor Loren Leman
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Testified in opposition to SB 39

Senator Con Bunde
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: prime sponsor SB 95

Lauren Wickersham
Staff to Senator Bunde
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Answered questions on SB 95

Investigator Giffer
Alaska State Trooper,
Department of Public Safety
PO Box 111200
Juneau, AK 99811-1200

POSITION STATEMENT: Testified in support of SB 95

Dean Guaneli
Chief Assistant Attorney General
Criminal Division
Department of Law
PO Box 110300
Juneau, AK 99811-0300

POSITION STATEMENT: Testified on SB 95

PORTIA PARKER
Deputy Commissioner
Department of Corrections
431 N. Franklin, Suite 400
Juneau, AK 99801

POSITION STATEMENT: Testified in support of SB 95

SCOTT CAULDER
No address provided

POSITION STATEMENT: Expressed concerns about SB 95

BRIAN HOVE
Staff to Senator Ralph Seekins
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Introduced SB 104

SHARON BARTON, Director
Permanent Fund Dividend Division
Department of Revenue
PO Box 110400
Juneau, AK 99811-0400

POSITION STATEMENT: Answered questions on SB 104

CRIS POAG
Assistant Attorney General

Civil Division
Department of Law
PO Box 110300
Juneau, AK 99811-0300

POSITION STATEMENT: Testified on SB 104

ACTION NARRATIVE

CHAIR GENE THERRIAULT called the Senate State Affairs Standing Committee meeting to order at [3:47:44 PM](#). He announced that three bills were up for consideration and that he did not intend to take final action on any of the measures that day.

SB 39-BALLOT PROPOSITIONS AND TITLES

CHAIR THERRIAULT announced SB 39, sponsored by Senator Elton, to be the first order of business. He noted the blank committee substitute (CS) and asked the sponsor which version he would speak to.

SENATOR KIM ELTON, prime sponsor, replied he would speak to the blank CS and motioned to adopt \F version SB 39 as the working document. There being no objection, it was so ordered.

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Last year, he explained, more time was spent talking about the specific language describing a few ballot initiatives than was spent on the underlying policy. SB 39 is an effort to get beyond that and de-politicize the process through the creation of a five member advisory panel.

The lieutenant governor would appoint two proponents of the initiative or referenda and two opponents. The lieutenant governor would also appoint a fifth and neutral member from a slate that was prepared by the Chief Justice of the Supreme Court. With help from state attorneys, the committee would prepare the impartial ballot title and proposition. In addition, timelines would be established so that deadlines that are inherent in any initiative process don't become an issue

The constitution is clear that the lieutenant governor will prepare the ballot language so nothing in SB 39 forces him or her to use the language the panel develops. It does, however, provide that if different language is used he or she would

outline why the language is different in the pamphlet that is sent to all Alaska voters.

He stressed that the genesis of the bill goes back beyond the previous election to when he was the chief policy advisor to former Lieutenant Governor Terry Miller more than two decades ago.

I can tell you that the most difficult issues that were dealt with in that lieutenant governor's office - and I suspect in each of the subsequent lieutenant governor's office - is how you do the ballot language because the automatic assumption of voters is that if the ballot language is coming from an elected official who is elected on a partisan basis - automatically people have filters that go up. Especially the people who may be behind the initiatives - and it is very difficult to get beyond this. This is a way, I think, that helps lieutenant governors because it can de-politicize that ballot language issue.

CHAIR THERRIAULT noted that the court likes to maintain a bright line so he was curious whether any discussion had taken place regarding the court participating in what could be the swing vote on language it might ultimately pass judgment on.

SENATOR ELTON replied he hadn't had any direct contact, but the model is used in other instances such as the Legislative Ethics Committee. Certainly the court wouldn't want to select a proponent or an opponent, but he thought the court would want to avoid "any suggestion of bias that would kick the work on drafting ballot language into their system."

CHAIR THERRIAULT referenced the Legislative Ethics Committee and said the court has made it clear that it wouldn't act as a super parliamentarian and interject itself into the operation of a separate branch of government. A better example, he suggested, would be re-districting. Those plans always end up in the court system, he said.

SENATOR ELTON replied it's a close and interesting question and he thought the court would see it as a balance. If suggesting a slate of potential advisory panel candidates reduces the possibility of the court ending up with the ballot language issue in their laps, the court would probably view that effort as a savings of time and litigation costs.

He said he wanted to correct a part of the sponsor statement related to cost of printing last year. Media reports indicated the cost of ballot printing was about \$300,000, but the costs were actually in the neighborhood of \$240,000 to \$245,000.

SENATOR THOMAS WAGONER said he understood the intent, but it comes down to the fact that the lieutenant governor could ignore statute and proceed with his or her own language anyway.

SENATOR ELTON agreed the constitution, which grants final authority to the lieutenant governor, trumps statute. However, SB 39 sets up a process to create ballot language and in the future he suspects lieutenant governors will be thankful that the process is not seen through a partisan filter. There's a strong possibility that the lieutenant governor will trump the language developed by the advisory panel at some point in the future, but that probably won't happen often.

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SENATOR CHARLIE HUGGINS asked if it means a separate committee for each initiative.

SENATOR ELTON replied there would be potential for multiple committees.

SENATOR HUGGINS suggested this could be an administrative nightmare and that he's sure that Lieutenant Governor Leman learned a great deal during this last election cycle. Sometimes corrective action is more evil than what transpired, he said, and any time the court becomes involved it opens Pandora's box.

SENATOR ELTON said his brief response is that there is certainly an associated learning curve and most elected officials learn from experience. More than likely the present Lieutenant Governor Leman is more sensitive to the issues than he may have been two years ago, but future lieutenant governors will also be faced with a learning curve.

"The worst thing that could possibly happen is for arguments about ballot language to get into the judicial system. That, I think, is a bigger problem than having a judicial officer appoint one of five people to try and prevent that." It shouldn't be viewed as constraining the behavior of the lieutenant governor because the constitution doesn't allow that, but this approach to ballot language can constrain the behavior of initiative sponsors. It would make it more difficult for

initiative sponsors to go to court and argue about ballot language that was approved by a non-partisan and balanced committee.

SENATOR HUGGINS commented he isn't warm to the idea of committees looking after the lieutenant governor.

CHAIR THERRIault read page 2, lines 5,6, and 7 and said it means the lieutenant governor may choose to make adjustments that are allowed by the statute. It doesn't mean that he or she may ignore the statute. He noted the language appears on that page as part of AS 15.45.180 then at the top of page 3 as part of AS 15.45.410 and on the bottom of page 3 as part of AS 15.50.010. He questioned why the language is repeated in statute three times.

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SENATOR ELTON replied he believes it was an effort to make the different components of the election statutes reflect the same notion. He asked his staff to confirm that.

JESSE KIEHL, staff to Senator Elton, elaborated explaining the first reference amends the initiative laws, the second the referendum laws and the third reference amends the laws on constitutional amendments.

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CHAIR THERRIault asked whether he had anything else to add.

MR. KIEHL replied Senator Elton addressed all the primary points but a point to emphasize further is clear and early deadlines for work done on ballot titles and propositions. "While the bill is intended to reduce the likelihood of lawsuits, certainly if something should ... go to court, there is adequate time for the courts to address the question."

CHAIR THERRIault asked about the suggested date changes.

SENATOR ELTON said he would ask Mr. Keihl to explain that and members could reference the document on deadlines found in the packets.

MR. KIEHL explained the original version of the bill created deadlines that counted backward 70 and 80 days from Election Day to give the Division of Elections time to print ballots even if

there were a court challenge. During review they found that existing statute for constitutional amendments says that within 30 days after a legislative session in which a constitutional amendment is proposed ends, or 30 days after a constitutional convention in which an amendment is proposed ends, the lieutenant governor must prepare the title. The CS says, "30 days after the legislature last had a crack at it, the committee must meet and do its work and the lieutenant governor approve."

The timeframe for referenda is shorter so the timeline for the ballot title must be shortened to get everything to the Division of Elections in time to print the ballot. That limit is not later than 21 days after the date the petition is filed. Instead of the 10-day timeframe the lieutenant governor is given to make any necessary changes for initiatives and constitutional amendments, the lieutenant governor is given 5 days for referenda. The reasoning is that when referenda can be voted on in the same year that the signature is filed, the timeframe is tight.

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CHAIR THERRIault noted a number of people wanted to testify.

SENATOR ELTON mentioned the two zero fiscal notes.

CHAIR THERRIault acknowledged the fiscal notes and called on Mr. Feldman from an off net site.

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JEFF FELDMAN advised he was part of the recent litigation involving the ballot language and when he first heard of SB 39 he wasn't sure whether it was a good fix to the problem. Ultimately he came to view the measure as non-partisan legislation.

He made the point that this is a recurring issue in the state and that a number of lieutenant governors have been defendants in lawsuits brought because of action they may have taken. Certainly, Lieutenant Governor Leman's situation last year was not unique and most lieutenant governors have had to struggle with this issue.

He suggested two issues were worth consideration. First, the present system is expensive and isn't limited to reprinting costs. Litigation expenses are likely to be in the high six

figures. The second point is that the current system makes everyone associated with the process look bad.

Referencing the comment made about not wanting a committee to make decisions about ballot language, he said that is the current system. The lieutenant governor doesn't appoint the committee; "ultimately five people wearing black robes got to decide what the language had to be."

Although committees don't move as fast as the individual, they do move more efficiently and less expensively than the process used last year, he asserted. This process would also give any lieutenant governor help and guidance and make it more likely that language that is settled upon would be impartial, accurate, and the product of both sides of an issue. Currently, once the lieutenant governor decides on the language, proponents of the initiative have no opportunity for review ahead of time and no opportunity to communicate with the lieutenant governor as to whether they like or don't like it. This suggested fix is worth serious consideration, he concluded.

SENATOR WAGONER noted that legislation passed last year relating to the initiative process should slow the number of initiatives going to ballot, but he didn't think this measure would keep the initiative process out of the court system. "When you've got two sides arguing the issue, I think you're going to end in court 90 percent of the time anyway," he remarked.

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CHAIR THERRIault asked Joe Geldhof to come forward.

JOE GELDHOF, Juneau attorney, said he was testifying on behalf of himself and that he does have some initiative experience. He urged members to develop a CS because there are some meaningful points that would be useful to the lieutenant governor in the initiative process.

He found Lieutenant Governor Leman's office to be completely professional when he dealt with it on the cruise ship initiative. Nonetheless, providing both proponents and opponents an opportunity to preview the language to be selected, as proposed in SB 39, could give the lieutenant governor the ability to receive feedback quickly and to gain a feel for how the language might be received. Otherwise you end up with language that comes through the lieutenant governor's office, but frequently from the attorney general's office and "It's

often cobbled together in a hasty fashion without full regard to what's really going on."

Finally, he urged members to consider a CS that has a short review process so an opponent and a proponent vet the lieutenant governor and the attorney general summary before the booklets are printed and released to the public. That might avoid the temptation to litigate after the booklets are collected and provide opportunity for a better end product.

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SENATOR HUGGINS asserted that unfortunately, "ballot initiatives all too often are hyperizing and polarizing by their very nature."

MR. GELDHOF replied he really isn't a fan of the initiative process and he views initiatives as the result of legislative gridlock.

SENATOR HUGGINS suggested this could result in greater protraction.

MR. GELDHOF replied it could happen that way but, "give the lieutenant governor at least a limited chance to have a little input from the people out there hammering on it.... give the lieutenant governor a shot of what's right and wrong with the language."

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CHAIR THERRIAULT agreed that in the past people have gotten thousands of signatures on language to laws that were structurally flawed. Sometimes the petitioners knew it was flawed and suggested they would fix it after the fact. He said it seems as though the argument is centered more on the language that describes the law than the language that is proposed for the statute books. When you look at the proposed summary statement that isn't the law itself, he said.

MR. GELDHOF agreed then said that the public really has an amazing capacity to know what's going on. The Legislature has an obligation to make it as clear as possible and then let the public do what they're going to do. "Let people like Mr. Feldman come up with a better work product."

CHAIR THERRIAULT said he was thinking about the property tax issue from three or four years ago. The proposed law was flawed and didn't work. You could argue about the summary statement on the booklet and you could argue about the summary on the ballots, but the process doesn't provide for a check on the proposed law itself to make sure it works.

MR. GELDHOFF replied initiatives are just the direct enactment of legislation so the same standards should be used that you as the presiding officer of a committee would consider.

CHAIR THERRIAULT said they don't always get it right as a committee, but they have the committee process, Department of Law attorneys, legislative attorneys, Majority members, and Minority members. Each provides a set of eyes coming from a different perspective and looking for mistakes. By contrast what is approved for initiatives has frequently been reviewed from just one perspective and the summary may not be accurate.

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SENATOR ELTON said perhaps the committee should consider a CS to include the summary language for petitions. With regard to the property tax initiative, he said it wasn't an issue of what was said on the summary or what would have appeared on the ballot, but it could have become an issue because there was a structural flaw to the law they were proposing. A committee could have addressed the issue by saying, "This doesn't do what it says it does."

CHAIR THERRIAULT asked Annette Kreitzer to come forward.

ANNITTE KREITZER, chief of staff for Lieutenant Governor Loren Leman, said she would speak in generalities since she hadn't seen the sponsor statement or the proposed CS.

She said she distributed pages from Lieutenant Governor Leman's web site titled "Understanding Initiatives" because it includes timelines of action on initiatives. Furthermore:

Lieutenant Governor Leman believes the initiative process is an important part of Alaska's political system. It allows Alaskans direct access to writing and approving certain laws without going through the legislative process.

SB 39 isn't necessary. Any lieutenant governor walks a fine line between proponents of an initiative and the opponents. As far as my experience goes, we've received comments on both sides of almost every initiative. The lieutenant governor takes input from many including the Department of Law. We don't operate in a vacuum.

Under SB 39, the lieutenant governor still can change the committee's recommendation and I'm sure, as others have said before me, that that's in the bill because to do otherwise would likely render the bill unconstitutional.

MS. KREITZER took issue with Mr. Feldman's statement that opponents and proponents do not have an opportunity to comment. The initiative he was referencing came at the same time that legislation was being passed so Lieutenant Governor Leman was very involved. When he was asked about that legislation he said it was substantially similar to the proposed initiative. Three days prior to printing the special advance ballots the court ruled that the initiative would have to go on the ballot.

In terms of timing she made the point that if you're vulnerable to a lawsuit at any point you wouldn't be able to meet the timelines set forth in the bill. "The bias is in the eye of the beholder. Proponents don't think we're doing enough to advance their initiative and opponents don't think we're doing enough to outline perceived flaws in an initiative."

Current law allows judicial review and judicial review would also be available under SB 39. The proposed five-member committee wouldn't have fewer biases than an elected lieutenant governor and an appointed attorney general, she concluded.

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CHAIR THERRIAULT referenced the fiscal notes and asked Senator Elton who would pay the committee expenses as far as travel and per diem.

SENATOR ELTON replied he anticipates some travel costs because it's likely that the committee would have to meet face-to-face at least initially. He suggested that little investment up front would save a lot of money later on.

CHAIR THERRIAULT noted the fiscal notes from the Division of Elections and the Department of Law and asked if he envisions that the expenses would be covered from the lieutenant governor's budget.

SENATOR ELTON replied it could happen that way. During an election cycle a lot of the lieutenant governor's staff time is used on issues such as ballot language, temporary hiring, and voter pamphlet contracting. He anticipates that it would be part of the biannual cycle for budgeting for elections.

CHAIR THERRIAULT questioned whether they would have to plan for additional costs.

SENATOR ELTON replied expenses would probably be slightly higher. Expenses would depend on the number of initiatives and perhaps the volatility of some of the initiatives. In conclusion he emphasized that it will be easy to identify costs to accomplish SB 39 but impossible to identify the accrued savings.

There was no further testimony or questions.

CHAIR THERRIAULT announced he would hold SB 39 in committee.

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SB 95-COLLECTION OF DNA/USE OF FORCE

SENATOR GENE THERRIAULT announced SB 95 to be up for consideration. He asked Senator Bunde to introduce the bill.

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SENATOR CON BUNDE, prime sponsor, explained that he had the bill drafted as a result of a conversation with the commissioner of the Department of Public Safety. He learned that people who are required to submit to DNA testing may refuse to cooperate and the authorities may not force compliance. Convicted people often have quite a resume of another crimes, he said, so matching DNA can help solve other unsolved crimes. It's logical, he said, that the state should be able to use reasonable force to collect a DNA sample if the convicted individual decides not to cooperate. The procedure isn't invasive it's simply using a cotton swab on the cheek.

SB 95 is an attempt to clear the backlog of unsolved crimes and perhaps discourage some people from committing additional crimes.

CHAIR THERRIAULT asked Senator Bunde to discuss some of the backup material provided in the packets.

SENATOR BUNDE referenced the letter from the Anchorage Police Department supporting SB 95 then said the other material is general background and information on the effectiveness of using DNA.

CHAIR THERRIAULT remarked the language "forced collection" sounds harsher than a cotton swab on the cheek. He asked which other states have implemented DNA collection laws.

LAUREN WICKERSHAM, staff to Senator Bunde, said she didn't know which states use reasonable force to collect DNA but the database technology is new and growing quickly.

CHAIR THERRIAULT said his staff found that the State of Washington uses similar legislation and he was curious whether the sponsor worked with the drafters to develop model legislation.

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SENATOR BUNDE emphasized this is a relatively new concern and some in law enforcement were surprised that a convicted individual could refuse to cooperate. The crime lab and the Department of Public Safety did provide input, he said.

CHAIR THERRIAULT asked whether this would apply only to people who were incarcerated and not be retroactive.

SENATOR BUNDE replied he didn't intend it to be retroactive.

MS. WICKERSHAM added the bill doesn't address whom; it addresses how to collect for those who refuse.

SENATOR CHARLIE HUGGINS suggested the sponsor narrow the scope of who may collect a DNA sample.

SENATOR BUNDE replied the bill was purposefully drafted to cast a broad net.

SENATOR KIN ELTON questioned whether the state might incur liability or obligation once they have collected the DNA sample. Once the DNA is collected does it go into a databank that is secure and inviolate, he asked.

SENATOR BUNDE replied his understanding is that DNA is only collected for identification purposes and testing for extensive genetic markers wouldn't occur. He assured members the information is kept secure.

SENATOR ELTON asked what happens to samples collected from juvenile offenders.

SENATOR BUNDE replied his staff confirmed that privacy would be maintained.

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SENATOR ELTON said he assumed that most felonies were prosecuted by the state and he wondered which municipalities prosecute felonies.

SENATOR BUNDE replied none come to mind, but it is in keeping with the casts a wide net theory.

CHAIR THERRIAULT asked Mr. Giffer to give his testimony.

MR. GIFFER, Alaska State Trooper investigator, spoke via teleconference to say that this bill would be important in working old cases. Taking a swab is very non-intrusive and no one should get hurt in the process.

CHAIR THERRIAULT asked Dean Guaneli to give testimony.

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DEAN GUANELI, chief assistant attorney general, Department of Law, expressed support for the bill for the reasons stated by Senator Bunde and Investigator Gifford. DNA testing has proven to be most effective in solving crimes, convicting the guilty, and clearing the innocent. SB 95 makes it clear that samples may be collected from municipal offenders who are convicted of assault. The clarification is good because research shows that collecting DNA samples from misdemeanor offenders solves a number of serious offenses.

He emphasized that collecting DNA samples by means of swabbing the inside of the cheek isn't an intrusive procedure and that whether force is used or not is entirely within the person's control. Most people choose to cooperate, but some people who are under state supervision elect to buck the system at every opportunity. He suggested that most of those who refuse to cooperate would change their mind if they were informed that the law authorizes force.

Technology is advancing quickly and smaller samples are needed to conduct DNA testing. In fact, the oil in a fingerprint is getting to be enough to run a DNA test, he said. However, because prisoner litigation is and will continue to be an issue, he suggested that an appropriate immunity clause against prisoner lawsuits is needed.

SENATOR KIM ELTON said he assumes that municipalities often prosecute misdemeanor assault crimes.

MR. GUANELI said that is correct.

SENATOR ELTON asked where the cutoff point might occur and questioned whether a DNA sample might be collected if neighbors got into a scuffle.

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MR. GUANELI replied current law requires DNA samples to be collected from anyone convicted of a crime against a person. Misdemeanor assault typically occurs in domestic situations, but it could happen in the situation posited and that would be a crime against a person.

SENATOR ELTON asked for confirmation that the intent is not to go to lower level crimes.

MR. GUANELI said that is not the intent; the intent is for more inclusion. Under current law misdemeanor assaults prosecuted by a municipality aren't covered so one of the things SB 95 does is include those and make the system totally comprehensive.

CHAIR THERRIault summarized that the expansion is the same type of crime prosecuted by another jurisdiction.

MR. GUANELI agreed.

CHAIR THERRIAULT asked what happens to DNA data that is collected from minors once they become adults.

MR. GUANELI replied juvenile fingerprint information is retained in juvenile justice systems and he thought DNA identification was retained as well. They are simply identification tools; the DNA markers checked in an identification system are referred to as "junk DNA" in the scientific community and provide no useful information other than identification. Many parts of the DNA system disclose nothing other than identity and that's what's saved and analyzed, he said.

SENATOR ELTON made the point that there's nothing in law that precludes the state from analyzing the DNA for markers that would relate to medical or other genetic conditions.

MR. GUANELI replied misuse of DNA information became a crime under previous legislation, but he'd have to review the statutes to determine whether the state is authorized to run tests for information other than identification.

CHAIR THERRIAULT asked whether it was Senator Olson's bill that touched on penalties for improper use and/or distribution of DNA information.

SENATOR ELTON recalled insurance companies and other interests were at issue.

SENATOR BUNDE pointed out that SB 95 doesn't expand the tests for DNA it simply addresses collection.

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CHAIR THERRIAULT read the following from the State of Idaho and asked whether Alaska has a similar requirement.

When the state accepts an offender from another state under any interstate compact, or any other reciprocal agreement with any county, state or federal agency, or any other provision of law whether or not the offender is confined or released the acceptance is conditional on the offender providing a DNA sample and thumbprint impression if the offender was convicted of an offense that would qualify as a crime described in Section 19.

MR. GUANELI explained that registered sex offenders are required to give a DNA sample whether they're convicted in Alaska or

elsewhere, but non sex offenders who come in under the interstate process aren't required to do so. There are two ways to address that, he said. Although he'd have to check with the interstate supervision process, his first suggestion is for the Department of Corrections to adopt an administrative policy stating they won't accept a prisoner under interstate supervision without taking a DNA sample. Another way to address the issue would be to enact a statute to require collection. The latter would require drafting changes, but it is a possibility.

CHAIR THERRIAULT asked Portia Parker to come forward.

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PORTIA PARKER, deputy commissioner, Department of Corrections, thanked Senator Bunde for introducing the legislation and expressed departmental support for the bill. Generally corrections officials don't have difficulty collecting DNA samples from offenders, but just knowing that reasonable force could be used would be very helpful. The Department of Corrections also supports the bill as a way to close other cases using DNA. This is a real need for law enforcement and for victims and for public safety, she said.

The collection process and the policies and procedures the Department of Corrections and the Department of Public Safety established cooperatively when DNA samples were first collected is working fairly well, she reported, but "this would be a definite to the department in fulfilling that statutory obligation."

CHAIR THERRIAULT asked her to address the interstate compact issue.

MS. PARKER said she hadn't contacted the compact administrator, but she thought the department would support that if it didn't interfere with the interstate compact rules with other states. "Although if other states are requiring that of offenders going into their state, we probably won't have a problem requiring that." It certainly wouldn't be a problem if the requirement were in statute, she said

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CHAIR THERRIAULT questioned why the state would swap prisoners and asked her to elaborate on what actually happens under the compact.

MS. PARKER explained that this involves a probationer or parolee in another state who wants to move to Alaska and typically it's an Alaskan who wants to return home. Likewise, Alaska has offenders from outside the state who want to return home once they are out of prison and on probation or parole. A mechanism is established whereby every state participating in the compact must abide by compact rules. Although there are exceptions, "They pretty much have to take ours who want to go there and we have to take theirs who want to come here so there is that movement." Generally it's a good process, she said, because they're going where they have family support, or a job, or a school opportunity.

CHAIR THERRIAULT asked Senator Bunde whether he would object to including language to make it clear that if a convicted offender were to come to Alaska from another jurisdiction, they would have to abide by the same rules as people convicted in Alaska.

SENATOR BUNDE said he wouldn't object; it seems logical.

SENATOR THOMAS WAGONER questioned how many people move in and out of the state under the compact.

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MS. PARKER replied she could get the information, but last year roughly the same number left the state under the compact as returned home.

SENATOR WAGONER asked if his assumption is correct that the receiving parole officer is responsible for oversight.

MS. PARKER replied that's the case since the compact adopted new rules in August 2004. Probation or parole violations here are subject to Alaska conditions and consequences. The same applies to offenders sent out of state; they must comply with the conditions in the jurisdiction in which they reside.

CHAIR THERRIAULT referenced page 1, lines 6 and 7 and questioned whether we currently collect blood samples or just rely on the oral swab.

MS.PARKER replied the oral swab is used.

CHAIR THERRIAULT referenced the suggested language "may use reasonable force to collect" and questioned whether it should be

expanded to say, "use such means as are reasonably necessary to collect".

MS. PARKER responded the department had no opinion on that.

SCOTT CAULDER testified via teleconference and expressed concern with the applicability of the bill because it appears to address an overly broad range of things. Another issue is that although the bill targets notorious criminals, anybody else might be eligible. He questioned what might be considered reasonable when "reasonable force" may be used. This would be particularly important when you're talking about juveniles, he said.

What this boils down to is "The individual has the choice, but their choice is no choice and this is our way to get those people who are bucking the system." He asked the committee to consider whether that foundation is a good reason for a law even though it might be a good tool in the toolbox.

5:20:30 PM

CHAIR THERRIault asked Mr. Guaneli what standard the court would allow in determining what is reasonable and if unreasonable force were used, whether the sample would be invalid.

MR. GUANELI said his view is that if unreasonable force were used both the state and the officer would be subject to liability, but the sample wouldn't be jeopardized. In terms of what is reasonable, it's the same as with any negligence action. The standard would be what a reasonable officer would do under the circumstances and an expert would validate the action if litigation were involved. "It's difficult to envision all the circumstances that would face an officer who is dealing with a recalcitrant inmate so the word reasonable was chosen. The whole concept of reasonableness is reflected throughout the Alaska statutes - throughout our constitution."

SENATOR ELTON pointed out that inserting the language "in this state" in two places is a limiting element and that language seems to apply to felonies under AS 11 or AS 28.35. Then the language, "or a law or an ordinance" is used. Because the word "or" is used, he wondered whether "in this state" applies to the state statutes but not to an ordinance or law elsewhere.

MR. GUANELI said the qualifier "in this state" would mean Alaska, Alaska statutes, or Alaska municipal statutes. If there were going to be a provision that talks about interstate

probation supervision, you'd have to add a number 6 to the classes of people from whom samples would be taken, he said. The bill was drafted that way so it would include municipal offences. Standard language used throughout the statutes is "a law or ordinance with elements similar to a crime". That raises the question of whether people coming to Alaska who have already served their time would have to submit a sample. Using the language, "in this state" would exclude those people from the reach of this statute, he said.

SENATOR ELTON asked if his reading is that using "or" doesn't interrupt the predicate "in this state".

MR. GUANELI said it doesn't interrupt.

CHAIR THERRIAULT announced they would work with the sponsor and look at the interstate compact issue before hearing the bill again.

[5:25:32 PM](#)

SENATOR BUNDE summarized that people who are investigated for minor crimes frequently have a substantial criminal record so he would argue for including the broader definition of crimes against people and that collecting a DNA sample is the 21st century fingerprint.

SB 95 was held in committee.

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SB 104-PERMANENT FUND DIVIDEND FRAUD

CHAIR GENE THERRIAULT announced SB 104 to be up for consideration and asked Mr. Hove to come forward.

[5:27:03 PM](#)

BRIAN HOVE, staff to Senator Ralph Seekins, paraphrased the sponsor statement.

SB 104 seeks to strengthen the Department of Revenue's ability to investigate fraud associated with making a false application for a permanent fund dividend. Furthermore, submission of a fraudulent permanent fund dividend application would become a class C felony.

In 2004 the Department of Revenue (DOR) examined over 1,600 fraud tips and audited over 1,700 permanent fund dividend (PFD) applications suspected of being fraudulent. This resulted in \$1.4 million in denied or assessed dividends (1,500 + applications). Furthermore, there were three federal indictments and one conviction for crimes involving PFD fraud.

The most common PFD fraud offense involves persons who forge the signature of another on the application (or related documents) with the intent of receiving a dividend to which they are not entitled. It's important to note that the bill is not intended to capture, for example, cases where husbands or wives sign for each other. However, the provisions of this legislation would apply in cases where the individual is attempting to steal from another person or from the state.

Current law (AS 11.46.510) describes three separate degrees of forgery - the two most serious offenses are punishable as class B and C felonies, but are limited to cases involving various types of financial instruments such as currency, securities, deeds of trust, etc.

Forgery in the third degree covers instances where a person intentionally makes a false statement on a written instrument (such as a PFD application). However, this offense is punishable as a class A misdemeanor only. The DOR proposal to elevate PFD fraud from a simple misdemeanor to a class C felony is expected to provide a more effective deterrent for this type of theft.

Furthermore, SB 104 aids in identifying and curing instances of permanent fund dividend fraud by codifying in statute a fraud investigation unit within the Department of Revenue. This unit will assist the Department of Law in detecting and investigating instances of PFD fraud.

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CHAIR THERRIAULT referenced the language on page 1, line 7 that says, "circumstances not proscribed under AS 11.56.225" and

noted that it's the new section proposed in Section 2. He then asked whether his interpretation was correct that Section 1 exempts misrepresenting the permanent fund eligibility, but it's put back in through a new section of statute written to deal with it specifically.

MR. HOVE suggested Sharon Barton answer the question.

[5:30:26 PM](#)

CHAIR THERRIAULT read language on page 2, lines 6 through 8 and noted that it points back to Section 1. He asked for an explanation because it seems circular.

SHARON BARTON, director, Permanent Fund Dividend Division, said the explanation should come from the legislative drafter. In reading it she came to the same conclusion decided it was written that way to make it clear that violations pertaining to PFDs would be dealt with under AS 11.56.225 and others would be dealt with under AS 11.56.210.

CHAIR THERRIAULT asked if that includes all other falsification.

MS. BARTON said un-sworn falsification.

CHAIR THERRIAULT asked if this is specific and separate for PFDs.

MS. BARTONS said that's correct.

CHAIR THERRIAULT said he didn't understand why language on page 2, line 7 refers back to AS 11.56.210 so his staff would consult the drafters before final action was taken.

MS. BARTON referenced language on page 2 and remarked it could be stated more elegantly by simply saying, "violates AS 11.56.210 and the statement is in an application for a permanent fund dividend".

CHAIR THERRIAULT suggested the drafters might not have wanted to repeat the factors that go into a AS 11.56.210 violation so they refer to the criteria, but say that prosecution would be under a new section of law.

MS. BARTON said she also thought that was the intent.

MR. HOVE said they wanted to introduce the bill that day then return with a committee substitute (CS) at a subsequent hearing.

MS. BARTON pointed to Section 2, paragraph (3), and said line 10 would read more clearly if it said, "a public employee with the intent to mislead that public employee about a person's eligibility" but it wouldn't change the intent of the statement.

MR. HOVE restated his desire to return with a CS or several amendments.

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SENATOR ELTON commented if this bill passes and PFD fraud is moved into AS 11, and SB 95 passes as well, people convicted of PFD fraud would be required to submit to a DNA swab. He wasn't commenting on whether that would be bad, but that's what would happen.

CHAIR THERRIAULT replied "You had the limiting crimes against the person in [SB 95]."

SENATOR ELTON read, "any crime covered in AS 11 or against a person or a felony under AS 11" so this would be a felony under AS 11.

CHAIR THERRIAULT said he would look into that.

[5:35:35 PM](#)

CHAIR THERRIAULT asked Mr. Poag whether the committee had discussed anything that he might want to clarify.

[5:35:51 PM](#)

CRIS POAG, civil division Department of Law, said although he isn't in the criminal division he helped Director Barton draft similar legislation. Definitely, he said, paragraph (2) could be cleared up using the language Director Barton suggested and he agreed with her recommendation for changing the language in paragraph (3) as well.

He suggested they consult Mr. Guaneli as to whether the bill would trigger a requirement for DNA testing. He didn't know what triggers the testing requirement, but if the trigger were a felony conviction then this bill would trigger that requirement. Furthermore, "If felonies are the trigger, the behavior that is

exhibited in these types of offenses is very consistent with other felony level behavior." Misrepresenting permanent fund eligibility is very similar to other felony offenses such as forgery, perjury, and theft in the second degree. Therefore, you don't have to be concerned that this is treated as a felony and that a DNA sample would be required.

PFD fraud doesn't need to be treated as a felony, it could be treated as a misdemeanor, but the Department of Revenue (DOR) is very vulnerable to permanent fund fraud because this crime isn't reported. It's left entirely to the DOR to determine who is fraudulently applying for and obtaining PFDs, which makes them a bit more vulnerable than the typical victim.

The Department of Revenue isn't the true victim in these cases, he stressed, it's all Alaskans; every PFD is reduced by the number of fraudulent applications that are accepted each year. It's expensive and time consuming for the permanent fund fraud unit to ferret out these types of events, investigate them and pursue a prosecution. That's why we think it's appropriate, but not necessary to raise this to a felony level crime, he concluded.

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CHAIR THERRIAULT remarked he didn't necessarily agree that nobody reports PFD crimes because 1,600 fraud tips were reported through the fraud tip line.

MR. POAG agreed the fraud tip line has proven to be very effective and the tips have generally been accurate. However, absent motive or incentive finding fraud is a difficult task when 635,000 applications come in every year. Raising public awareness and pursuing the crime as a felony may have a strong deterrent effect, he suggested.

CHAIR THERRIAULT asked whether most of the people using the fraud line were acting as good Samaritans or were most on a vendetta against their neighbor.

MR. POAG said it's his understanding the axe to grind component is often the catalyst but there are good Samaritans as well.

SENATOR BETTYE DAVIS asked whether the fraud unit has access to federal records.

MR. POAG replied they don't and he assumed she was referring to the National Crime Information Center (NCIC). That, he said, is one of the collateral consequences and reasons for this legislation.

[5:41:04 PM](#)

SENATOR DAVIS asked where that is referenced in the bill.

MR. POAG acknowledged there is no reference. The Permanent Fund Division would have to make an application to the Department of Public Safety and the application would be forwarded to the NCIC for review to determine whether criminal justice agency work was being conducted for criminal purposes. It's a federal decision rather than a state decision, he said.

CHAIR THERRIault commented he remembers overhearing someone announce that "My husband and I are waiting for our dividends and then we're out of here [for good]." Wasn't that person committing fraud, he asked.

MR. POAG said it depends on whether they qualify for an allowable absence, but it sounds as though they didn't intend to return and if that had been reported, someone would have followed up on the tip.

SENATOR ELTON said he would like to receive follow up information to show a correlation because he has always assumed that a person who is disingenuous on a FPD application isn't the type to commit a violent crime where DNA evidence might be left.

MR. POAG said he would find out what triggers a DNA test requirement.

SENATOR ELTON said what he's really interested in is finding out whether there is a correlation between this kind of felony and felonies that are crimes against a person where law enforcement may collect DNA evidence.

MR. POAG clarified he was referring to the distinction between crimes against persons and crimes against property.

SENATOR ELTON repeated he was interested in the data.

CHAIR THERRIault asked Mr. Poag to provide the information to the committee and announced he would hold SB 104 in committee.

5:43:29 PM

CHAIR THERRIAULT referenced EO 104 and announced he would introduce legislation under the Senate State Affairs Committee to deal with the separation of the Legislature from the Administration as it relates to the TIC.

There being no further business to come before the committee, Chair Therriault adjourned the meeting at 5:43:54 PM.