

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

April 12, 2007

8:05 a.m.

MEMBERS PRESENT

Representative Bob Lynn, Chair
Representative Bob Roses, Vice Chair
Representative John Coghill
Representative Kyle Johansen
Representative Craig Johnson
Representative Andrea Doll
Representative Max Gruenberg

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

CS FOR SENATE BILL NO. 59(FIN)

"An Act relating to the use of broadcasting to promote charitable raffles and lotteries and to establishing cabbage classics as a form of charitable gaming."

- MOVED HCS CSSB 59(STA) OUT OF COMMITTEE

HOUSE JOINT RESOLUTION NO. 6

Proposing amendments to the Constitution of the State of Alaska relating to the office of attorney general.

- HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 59

SHORT TITLE: GAMING: BROADCASTING/CABBAGE CLASSICS

SPONSOR(s): SENATOR(s) STEVENS

01/19/07	(S)	READ THE FIRST TIME - REFERRALS
01/19/07	(S)	L&C
02/06/07	(S)	L&C AT 1:30 PM BELTZ 211
02/06/07	(S)	Heard & Held
02/06/07	(S)	MINUTE(L&C)
02/08/07	(S)	L&C AT 1:30 PM BELTZ 211
02/08/07	(S)	Moved SB 59 Out of Committee

02/08/07 (S) MINUTE(L&C)
02/09/07 (S) L&C RPT 5DP
02/09/07 (S) DP: ELLIS, BUNDE, DAVIS, STEVENS,
HOFFMAN
03/02/07 (S) FIN REFERRAL ADDED
03/13/07 (S) FIN AT 9:00 AM SENATE FINANCE 532
03/13/07 (S) Moved CSSB 59(FIN) Out of Committee
03/13/07 (S) MINUTE(FIN)
03/14/07 (S) FIN RPT CS 4DP 3NR NEW TITLE
03/14/07 (S) DP: HOFFMAN, STEDMAN, THOMAS, HUGGINS
03/14/07 (S) NR: ELTON, DYSON, OLSON
03/21/07 (S) TRANSMITTED TO (H)
03/21/07 (S) VERSION: CSSB 59(FIN)
03/22/07 (H) READ THE FIRST TIME - REFERRALS
03/22/07 (H) STA, FIN
04/12/07 (H) STA AT 8:00 AM CAPITOL 106

BILL: HJR 6

SHORT TITLE: CONST. AM: ELECTED ATTORNEY GENERAL
SPONSOR(S): REPRESENTATIVE(S) CRAWFORD

01/25/07 (H) READ THE FIRST TIME - REFERRALS
01/25/07 (H) STA, JUD, FIN
03/15/07 (H) STA AT 8:00 AM CAPITOL 106
03/15/07 (H) Heard & Held
03/15/07 (H) MINUTE(STA)
04/12/07 (H) STA AT 8:00 AM CAPITOL 106

WITNESS REGISTER

DOUG LETCH, Staff
to Senator Gary Stevens
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented SB 59 on behalf of Senator Stevens, prime sponsor.

DENNIS EGAN, President and General Manager
Alaska-Juneau Communications, Inc. ;
Board Member and Past President
Alaska Broadcasters' Association
Juneau, Alaska

POSITION STATEMENT: Testified in support of SB 59.

GRETCHEN KLEIN
Ketchikan, Alaska

POSITION STATEMENT: Testified on behalf of herself in support of SB 59.

DENNIS BOOKEY, Manager
Morris Communications
(No address provided)

POSITION STATEMENT: Testified in support of SB 59.

DAVID LAMBERT, Past President
Alaska Dog Musers Association
Fairbanks, Alaska

POSITION STATEMENT: Expressed support of Representative Coghill's proposal addressing dog mushers' contests during the hearing on SB 59.

DARWIN PETERSON, Staff
to Senator Lyda Green
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: On behalf of Senator Green, explained the reason for specific language in SB 59.

REPRESENTATIVE HARRY CRAWFORD
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Testified as prime sponsor of HJR 6

ALEX FOOT, Intern
to Representative Harry Crawford
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Offered information on behalf of Representative Crawford, prime sponsor of HJR 6.

ACTION NARRATIVE

CHAIR BOB LYNN called the House State Affairs Standing Committee meeting to order at [8:05:44 AM](#). Representatives Roses, Coghill, Johansen, Doll, and Lynn were present at the call to order. Representatives Johnson and Gruenberg arrived as the meeting was in progress.

SB 59-GAMING: BROADCASTING/CABBAGE CLASSICS

[8:06:37 AM](#)

CHAIR LYNN announced that the first order of business was CS FOR SENATE BILL NO. 59(FIN), "An Act relating to the use of broadcasting to promote charitable raffles and lotteries and to establishing cabbage classics as a form of charitable gaming."

8:07:03 AM

REPRESENTATIVE JOHNSON declared a conflict of interest. He explained that his wife works for a television station in Anchorage and sits on the board of directors of the Alaska Broadcast Association, the entity that is bringing the bill forward. He asked that he be excused from discussion and voting on SB 59.

REPRESENTATIVE COGHILL objected, and said he thinks Representative Johnson should participate.

CHAIR LYNN requested that Representative Johnson participate in the committee process, including voting.

8:07:41 AM

DOUG LETCH, Staff to Senator Gary Stevens, Alaska State Legislature, presented SB 59 on behalf of Senator Stevens, prime sponsor. He said the bill relates to the use of broadcast media to promote raffles and lotteries. One section of the bill, he noted, addresses the Palmer Cabbage Classic. He stated the sponsor's intent is to level the playing field for Alaska's broadcasters, while helping out local charities around the state by allowing the charities to advertise raffles and lotteries on the radio. Currently, charities are allowed to put out such advertisements only by newspaper and other print media. He noted that federal law allows states to set their own regulations regarding this issue.

8:09:18 AM

MR. LETCH revealed that he is a former broadcaster. He relayed that he worked at the public radio station in McGrath, in 1992, and this issue was prominent then, because there was no newspaper that served the McGrath area. He spoke of his involvement with various charities in Kodiak, and said the ability to use radio would help in that community's fundraising efforts, as well.

8:10:32 AM

MR. LETCH, in response to Chair Lynn, emphasized that the proposed legislation "is not in any way, shape, or form an expansion of gambling in the state of Alaska." He said there is a zero fiscal note. In response to a follow-up question, he suggested that Mr. Egan could better answer questions related to the amount broadcasting companies would charge. Notwithstanding that, he shared his knowledge that nonprofit organizations are given a special advertising rate.

8:11:46 AM

MR. LETCH, in response to Representative Roses, offered his understanding that radio stations cannot even mention that a nonprofit entity is holding a raffle, without getting in trouble. In response to a follow-up question, he offered his understanding that if the bill were to pass, the broadcasters would have the flexibility to decide whether to charge a nonprofit group or offer air time for advertising a raffle, for example, as a community service announcement.

8:13:20 AM

DENNIS EGAN, President and General Manager, Alaska Juneau Communications; Board Member and Past President of the Alaska Broadcasters' Association, testified in support of SB 59. He said the bill would afford a solution to the disparate treatment currently being imposed on Alaska's broadcasters by current Alaska statute. He continued:

Alaska statute bans - but only by way of radio and television [{"TV"}] - the advertising of lawful, charitable gaming or conduct. Newspapers and related media are free to advertise the very same activity and conduct that radio and TV stations may not advertise.

Recognizing the unfair burden placed upon broadcasters, [U.S.] Congress passed the charity games advertising clarification Act of 1988. It's been in effect since 1990. Congress opened the door for broadcasters to advertise for a charity, not to conduct charitable gaming. The new federal law left it up to the individual states to ratify the federal law, and to this date, nearly every state has allowed broadcasters in their respective states to become fully consistent with federal law.

Under the Charity Games Advertising Act, signed into law by President [Ronald] Reagan in 1988, federal law prohibits the acceptance of any advertising from a business whose primary purpose is the conducting of a gaming activity, charitable or otherwise. We feel that being allowed to announce that the local volunteer fire department is having a raffle to raise funds for CPR equipment or the senior center is selling tickets on an afghan to raise funds for the senior citizen Care-a-van or that the high school sports teams are selling tickets for a raffle to raise funds for travel is not detrimental to anyone.

Alaska's broadcasters are not trying to suggest to you what activities should be permissible in the state. What we are asking is that all media, including print, electronic, direct mail have the same ground rules when it comes to promotion.

MR. EGAN remarked that the passage of the Act in 1988 was a long time ago. He continued:

As a federal licensee, broadcasters are one of the most highly regulated industries in the United States, and we urge you to provide equity and give your favorable consideration to ... SB 59.

8:16:06 AM

REPRESENTATIVE COGHILL said he knows this issue has been brought to the legislature before, and he asked what the prior barriers to its acceptance have been.

MR. EGAN confirmed that there have been attempts to get a form of this legislation passed since 1991. He said timing was a significant issue, and he noted that there were gaming issues at that time, including pull tabs. Multiple amendments confused the issue, Mr. Egan said, and the attempted legislation "lost track of exactly what broadcasters were trying to do." He specified that he has no objections to the amendments slated for proposal to amend SB 59.

REPRESENTATIVE COGHILL mentioned pull tabs, card gaming, and casino gaming, and suggested that "this just kind of got caught up in the dust storm that those issues create." He said he thinks SB 59 is an important bill that he would like to see "get through" this year.

MR. EGAN reiterated that the bill has nothing to do with gaming; where gaming is prohibited, it would remain so.

[8:18:42 AM](#)

MR. EGAN, in response to Chair Lynn, confirmed that the vast majority of radio stations have nonprofit rates. He said, "If they don't purchase advertising anywhere, in any competing media, we give it to them. I mean, we're there trying to help the community, and we're more than happy to ... extend our facilities for them to promote their raffles or whatever they're doing." In response to a follow-up question, he confirmed that the aforementioned nonprofit rates are lower than the rates for commercial and political advertising.

[8:19:51 AM](#)

REPRESENTATIVE COGHILL noted that the word lottery is in the title of the bill, and the definition of it is broad, which concerns him. He said the definition is found in [AS 05.15.690, paragraph (40)], which read as follows:

(40) "raffle and lottery" means the selling of rights to participate and the awarding of prizes in a game of chance conducted by the drawing for prizes by lot;

REPRESENTATIVE COGHILL said the bill deals primarily with charitable (lotteries); however, he warned, "There's going to come a day when we're going to have to hold the defense up for another type of lottery." In response to Chair Lynn, he said he would be offering an amendment for a title change, which would require "a title resolution on the [House] floor."

[8:22:58 AM](#)

GRETCHEN KLEIN testified on behalf of herself in support of SB 59. She listed all the nonprofit organizations with which she has been active. She said nonprofit organizations will always struggle to diversify their funding and are dependent on federal and state funding to exist. Raffles, she noted, can fund up to 20 percent of nonprofit programming or events. She confirmed that nonprofit organizations do receive better rates for advertising. She said the programs of nonprofit organizations improve the quality of life for communities. She indicated that being able to advertise on the radio would not do anyone harm,

and nonprofit organizations sometimes just want to get on the radio and talk about their programs. She indicated that these organizations want to abide by the law, thus, adopting SB 59 would help them get their message out on the air legally.

8:26:16 AM

MS. KLEIN, in response to a request from Representative Johansen, recollected that there had been an incident last summer during a swim event to benefit diabetes. The nonprofit organization involved had paid to have "a live remote" follow the swimmers. She indicated that the related raffle was accidentally mentioned on the radio. Another radio station reported this to the state's regulating board, and the radio station in question was investigated. She said potentially there could have been a fine of \$100,000, even though the event itself only made \$12,000. She said she wrote letters to explain that the incident was a mistake.

8:29:35 AM

DENNIS BOOKEY, Manager, Morris Communications, testified in support of SB 59. He said he is also a partner in the commercial stations in Kodiak, as well as being the Past President of the Alaska Broadcasters Association - as Mr. Egan is. He concurred that this is an issue of creating an equal playing field. He said radio stations will regularly air nonprofit events at no charge during leftover time slots. Furthermore, he said it has been the policy of every broadcast company he has ever worked for that it will match the order of a nonprofit organization. In other words, the station will charge the regular rate and then duplicate the order at no charge, which basically means that organization is paying about half price.

8:32:04 AM

DAVID LAMBERT, Past President, Alaska Dog Mushers Association, told the committee that he has been "very involved in gaming over the years." He stated, "I'm strongly in support of Representative Coghill's proposal addressing dog mushers' contests." He said those contests are gaming events. He stated, "Currently it is illegal ... to promote the Iditarod, Yukon Quest, or any of those on radio and television. Several years ago we tried to correct this through regulations, but it's in state statute; it clearly identifies dog mushing contests." He posited that it is time to make a change and allow those

events to be broadcast legally. He commented that lotteries are no different than raffles.

[8:33:41 AM](#)

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

[8:34:07 AM](#)

REPRESENTATIVE COGHILL moved to adopt Amendment 1, labeled 25-LS0410\E.2, Luckhaupt, 3/31/07, which read as follows:

Page 1, line 1, following "**promote**":
Insert "**dog mushers' contests and**"

Page 2, line 20, following "derby":
Insert "**, a dog mushers' contest,**"

REPRESENTATIVE COGHILL spoke to Amendment 1. He stated that he thinks dog mushers' contests fit "well within the range of what we're trying to do here."

CHAIR LYNN announced that there being no objection, Amendment 1 was adopted.

[8:35:48 AM](#)

REPRESENTATIVE GRUENBERG directed attention to the sectional analysis prepared by Gerald P. Luckhaupt, Legislative Legal and Research Services [included in the committee packet], in which Mr. Luckhaupt recommends, through footnotes, that the occurrence of the term, "a cabbage classic", be changed to "cabbage classics".

[8:36:12 AM](#)

REPRESENTATIVE GRUENBERG moved to adopt Amendment 2, as follows:

On page 1, line 10:

Delete "**a cabbage classic**"
Insert "cabbage classics"

On page 2, line 4:

Delete "**a cabbage classic**"

Insert "cabbage classics"

On page 2, line 10:

Delete "a cabbage classic"

Insert "cabbage classics"

[8:37:49 AM](#)

REPRESENTATIVE GRUENBERG, in response to a question from Representative Coghill, said it would not be necessary to pluralize the language in the definition section of the bill.

[8:38:04 AM](#)

REPRESENTATIVE ROSES directed attention to page 2, lines 30-31, which addresses a "Giant Cabbage Weigh-Off at the Alaska State Fair in Palmer operated and administered by the Palmer Rotary Club." He asked why - if the idea is to use the plural, "cabbage classics" - the bill language would single out one particular event and sponsor. He said he supports the concept, but is concerned that if in the future the sponsorship changed hands, then the event would no longer be legal.

[8:39:36 AM](#)

REPRESENTATIVE GRUENBERG responded that he had been concerned that Section 5 of the bill would violate Article 2, Section 19, which read [original punctuation provided]:

SECTION 19. Local or Special Acts. The legislature shall pass no local or special act if a general act can be made applicable. Whether a general act can be made applicable shall be subject to judicial determination. Local acts necessitating appropriations by a political subdivision may not become effective unless approved by a majority of the qualified voters voting thereon in the subdivision affected.

REPRESENTATIVE GRUENBERG related that Mr. Luckhaupt told him it has been the legislature's policy, in dealing with issues related to "these kinds of specific gambling arrangements," to make the language specific so that the legislature "reviews each one separately and does not just give wholesale approval, but very narrowly goes forward in this area." He noted that there is precedent for listing events in plural form. For example, there is a specific Deep Freeze Classic in Delta Junction and a

Canned Salmon Classic in Petersburg, yet the bill lists "deep freeze classics, canned salmon classics". He concluded by stating, "I wanted to put it on the record that we had, as a committee, looked into this, and we believe that this advances a very specific beneficial policy purpose, and we do not believe that this is unconstitutional."

MR. LETCH, in response to a question from Representative Gruenberg, told him that he thinks he is "on track" with this language. He deferred further comment to Senator Lyda Green's staff.

[8:42:22 AM](#)

DARWIN PETERSON, Staff to Senator Lyda Green, Alaska State Legislature, on behalf of Senator Green, explained that the reason for the specific language previously highlighted by Representative Roses, in Section 5 of the bill, was to specify that "this is the only place that we intend for this charitable event to occur." Regarding plural versus singular, he explained that Senator Kim Elton had offered an amendment that changed the events from a plural listing to a singular one, because that is how they were listed under "the definition." However, Mr. Peterson said he thinks Representative Gruenberg is correct.

[8:44:51 AM](#)

REPRESENTATIVE GRUENBERG said he can understand what [Sen. Elton] was thinking, but legally, Mr. Luckhaupt is correct.

[8:45:21 AM](#)

REPRESENTATIVE COGHILL indicated that he does not see the necessity of pluralizing the classics listed in the bill until "we get to that policy call."

[8:46:03 AM](#)

REPRESENTATIVE ROSES questioned restricting the cabbage classic to the Alaska State Fair, when the title uses the term "cabbage classics". He stated his preference would be to read: "the cabbage weigh-off at the Alaska State Fair."

[8:47:23 AM](#)

REPRESENTATIVE COGHILL said he would remove his objection [expressed through discussion, but not as an outright objection].

[8:48:44 AM](#)

CHAIR LYNN announced that with no further objection, Amendment 2 was adopted.

[8:49:05 AM](#)

REPRESENTATIVE COGHILL moved to report CSSB 59(FIN), as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HCS CSSB 59(STA) was reported out of the House State Affairs Standing Committee.

REPRESENTATIVE COGHILL reminded Chair Lynn that no action would need to be taken regarding the aforementioned resolution, but it would need to go to the House floor with the bill.

HJR 6-CONST. AM: ELECTED ATTORNEY GENERAL

[8:50:16 AM](#)

CHAIR LYNN announced that the last order of business was HOUSE JOINT RESOLUTION NO. 6, Proposing amendments to the Constitution of the State of Alaska relating to the office of attorney general.

The committee took an at-ease from 8:50:28 AM to [8:52:43 AM](#).

[8:53:01 AM](#)

REPRESENTATIVE HARRY CRAWFORD, Alaska State Legislature, as prime sponsor of HJR 6, offered his understanding that there are 45 states that don't have appointed attorney generals. He stated his belief that when Alaska first became a state, it thought it would be continually battling the federal government, which is why the state chose in its constitution to have an appointed attorney general. He said Alaska has grown up since then and it is time to correct what he said he believes was a flaw in the original constitution. He said he has a problem with the words in the constitution that say the attorney general "shall serve at the pleasure of the governor." He stated his belief that the AG should be able to ferret out wrongdoing wherever he/she sees it, without the threat of being fired. He

recognized the AG as the top lawyer for the people of Alaska, but said currently the AG is serving as the top lawyer for the governor.

[8:55:46 AM](#)

CHAIR LYNN pointed out that the governor has the power not only to fire the AG, but also to keep him/her.

REPRESENTATIVE CRAWFORD agreed, but reiterated that he believes that is wrong to have the AG serving completely at the pleasure of the governor.

CHAIR LYNN noted that not only is a governor elected, but an entire administration; typically that entire administration is of the same or nearly the same political party as the governor. He questioned whether or not the AG should belong to the same party as the governor.

[8:57:28 AM](#)

REPRESENTATIVE CRAWFORD recalled that during one of the first interviews of the current AG, he was asked whether he served the governor or the people, and the AG had a difficult time answering the question.

CHAIR LYNN suggested that there may not be a good answer.

REPRESENTATIVE CRAWFORD emphasized that although the AG can be a legal advisor for both the governor and the public, it is a mistake to say that he/she works for the governor and not the people. In response to Chair Lynn's comment about political affiliation, he credited Representative Johnson with having suggested there be an open primary for AGs, followed by an election for the AG, the same way as the public elects the lieutenant governor - as "part of a slate." Representative Crawford said he likes that idea; it would mean the top three offices would be elected as a group. He said this would mean that although the AG may be allied with the governor, he/she would not walk in to work one day and be fired by the governor.

[9:00:13 AM](#)

CHAIR LYNN asked how there would be any certainty that an elected AG would not be giving answers to advance his/her political future.

REPRESENTATIVE CRAWFORD said he believes that he should be able to go to the attorney general and ask for advice, no matter what the AG's political affiliation is.

CHAIR LYNN asked Representative Crawford what he would do if he was governor and his AG wanted to legalize casino gambling in the state.

REPRESENTATIVE CRAWFORD said he would try to work the issue out one way or the other. He stated his belief in direct democracy and trusting the judgment of the people; therefore, if he were governor and the public elected an AG who ran on a pro-gambling platform, he would have to live with that. In response to a question from Chair Lynn, he concurred that Alaska has a representative form of democracy, but he stated his belief in the direct election of state officials.

9:04:00 AM

REPRESENTATIVE ROSES offered his understanding that the AG takes an oath of office to uphold the Constitution of the State of Alaska and protect the rights of the citizens of the state; he/she doesn't take an oath to protect the rights of the governor. He said he knows there can be conflict, but he does not see any difference "in terms of the appointment." He directed attention to the sponsor statement, and read: "Serving at the pleasure of the governor exposes the attorney general to a conflict between his or her loyalty to the head of the executive branch and his or her duty to represent and protect the people of Alaska." The sponsor statement goes on to say that that is an ethical dilemma. Representative Roses noted that he was appointed by a former governor to sit on the Alaska Retirement Management (ARM) Board, and he said his responsibility on that board was to do that which would benefit the ARM Board, not that which would benefit the governor. He questioned how far Representative Crawford's idea would go. For example, would every board member and every person who serves as commissioner be elected by the people? He stated, "At some point in time we must believe in the integrity of the individuals that are serving and the oath of office that they take." He said getting elected does not make a person more or less ethical.

9:07:02 AM

REPRESENTATIVE CRAWFORD noted that out of the scenario that Representative Roses described, the only person who has the

ability to investigate or charge the governor with a crime is the attorney general, and he/she can be fired by the person being investigated.

REPRESENTATIVE ROSES asked if the legislature has the authority to hire its own prosecutor in the event that it determines there has been wrong-doing on behalf of the governor and no proper investigation by the attorney general is being conducted.

REPRESENTATIVE CRAWFORD said during the last administration, the AG resigned "under pressure"; however, he offered his understanding that the legislature did not have the ability to hire a special prosecutor.

REPRESENTATIVE ROSES concluded that the legislature currently has the ability to be the checks and balances system.

REPRESENTATIVE CRAWFORD said private citizens have the ability to file charges. He added, "We didn't do that as a legislature or as a legislator."

REPRESENTATIVE ROSES said, "If we didn't have a [checks and balances] system in place, and it was totally up to that individual and that was the only person that had the ability to do it, I would be with you 100 percent." He said he does not take changes to the constitution lightly and he is reluctant to agree to changing it without thinking that there were no other options.

[9:10:27 AM](#)

REPRESENTATIVE DOLL said she gets nervous with the idea of the public electing the attorney general. Although it would mean a vote of the majority, she said oftentimes the majority moves like a wave in the ocean. She emphasized her reliance on the law of the constitution. She said she would like to see [an attorney general] who is appointed by the supreme court, so that he/she is beholden to neither the governor nor the public.

[9:11:25 AM](#)

REPRESENTATIVE GRUENBERG said attorneys in Alaska, including the attorney general, are subject to the code of professional responsibility which comprises several rules of professional conduct. Representative Gruenberg cited AS 44.23.010, which read:

Sec. 44.23.010. Attorney general.

The principal executive officer of the Department of Law is the attorney general.

REPRESENTATIVE GRUENBERG next cited 44.23.020(a), which read as follows:

(a) The attorney general is the legal advisor of the governor and other state officers.

REPRESENTATIVE GRUENBERG noted that AS 44.23.020(b) lists the functions of the attorney general. He continued:

But there are cases that say that the powers and duties of the attorney general are those described at common law, which means that the AG is the chief legal officer for the state as an organization. So, really, at the common law and in this state, the client of the AG and all of the members of the Department of Law is the state.

... They talk in terms of this particular rule as individual people in state government are not his clients or her clients, but they are constituents of the client, which is the state as a whole.

REPRESENTATIVE GRUENBERG referred back to the rules of professional conduct, specifically Rule 1.13 - "Organization as Client." He read "(a)" as follows:

Except as herein after provided, a lawyer employed or retained by an organization ... represents the organization acting through its duly authorized constituents.

REPRESENTATIVE GRUENBERG next read from the commentary portion of the rule, which read as follows:

Clarifying the Lawyer's Role

There are times when the organization's interest may be or become adverse to those of one or more of its constituents. In such circumstances the lawyer should advise any constituent, whose interest the lawyer finds adverse to that of the organization of the conflict or potential conflict of interest, that the lawyer cannot represent such constituent, and that such person may wish to obtain independent

representation. Care must be taken to assure that the individual understands that, when there is such adversity of interest, the lawyer for the organization cannot provide legal representation for that constituent individual, and that discussions between the lawyer for the organization and the individual may not be privileged based on the facts of the case.

[9:15:43 AM](#)

REPRESENTATIVE GRUENBERG said the federal government has created "the Office of the White House Council." He recommended that the legislature look at AS 44.23 and consider establishing, through statute, some type of governor's council that could be employed in the event of a conflict of interest. He emphasized the importance of having such a council.

CHAIR LYNN said there is a problem that needs to be addressed, but said the debate is whether or not electing an AG would solve the problem.

[9:17:23 AM](#)

REPRESENTATIVE CRAWFORD said he understands everything Representative Gruenberg just said about who the client is, and it may address the issue of conflict of interest; however, he said that "still doesn't remove the problem in that the governor can walk in and fire the attorney general for whatever ... [reason]." He said that is problematic.

[9:18:44 AM](#)

REPRESENTATIVE JOHNSON said he hates to develop policies based on situations. He said a situation comes to mind where the AG had an opportunity to advance a law suit, thought the state had a good chance of winning, was told by "his boss" that the lawsuit would not be advanced, and went on record to say [the lawsuit] was removed for political reasons. He surmised that if there had been an elected AG in office at that time, the issue would have been addressed. He said it was an issue that still exists and that the state will be facing for a long time to come. He said he has no interest in setting up an adversarial situation; however, he wonders how many instances there have been when the AG has said, "We can win this," and the governor has said no.

[9:21:44 AM](#)

REPRESENTATIVE CRAWFORD said it was obvious that the AG was following orders, and that is something that has happened over the years. He clarified that he does not want to cast dispersions upon all attorneys general. He restated that he does not think the attorney general should have to be "part of the team," because he's "different from other department heads." He reiterated that the AG is a law enforcement officer; the top lawyer for the people of Alaska. He said both the United States Constitution and the Constitution of the State of Alaska have been amended and will be again. He said it is difficult to amend the constitution; it takes a two-thirds vote of both bodies, plus a vote of the people.

[9:24:33 AM](#)

REPRESENTATIVE ROSES said the focus thus far has been on what happens when the AG disagrees with the governor, with the assumption that the AG was right, the governor was wrong, and there was no recourse. He asked what happens in a situation when the governor is right or where there has been a misuse of office, and the AG was elected. The only recourse at that point, he surmised, would be to recall the elected AG, which he said concerns him. He posited that one advantage of having an appointed AG is that the governor can dismiss him/her for misconduct in one day instead of - in the case of an elected AG - having to wait until the next election. He suggested that to address any concerns that an AG could be dismissed unjustly, the legislature has the power to put some checks and balances in place - for example, to have an appeal or review process.

[9:26:14 AM](#)

REPRESENTATIVE CRAWFORD suggested impeachment as another option. He indicated that he is open to other suggestions for making the AG independent of the governor. He expressed appreciation for Representative Johnson's idea to elect attorneys general "as a slate."

REPRESENTATIVE ROSES said he thinks electing attorneys general as a slate would give the impression that "they're part of the same group and that they're going to support each other." He said that would not necessarily prevent conflict or the perception of "serving at the pleasure of [the governor]." He said he is not in favor of the election process.

[9:28:14 AM](#)

REPRESENTATIVE GRUENBERG directed attention to an article from Alaska Scrapbook, [included in the committee packet]. He said the framers of the Constitution of the State of Alaska deliberately decided to change from the territory's practice of electing an AG to having one appointed by the governor. He offered an historical example of another branch of government attempting to control the attorney general, and he relayed that the Alaska Supreme Court says that is not allowable. He explained that the decision whether to prosecute or not to prosecute is an executive decision, and it is a violation of the constitutional separation of powers for a different branch to make that decision. He said he does not think there would be anything wrong with the idea of the legislature passing a law requiring the executive branch to pursue an appeal. He said the decision to appeal or not to appeal is an "internal question."

[9:32:32 AM](#)

REPRESENTATIVE GRUENBERG said the opposite situation can occur just as easily. He explained that an attorney general who was elected may do something for political purposes that does not serve the best interest of the state. He commented on the number of elected officials that would be serving if the AG was also elected.

[9:34:01 AM](#)

REPRESENTATIVE COGHILL stated that the main purpose for the decision during the Constitutional Convention to have an appointed attorney general was to have a strong executive branch, and one reason for that is so that Alaska could "stand strong as a small state in a large country." He emphasized the importance of reading that part of the floor debate from the Constitutional Convention related to the attorney general as a reminder of what the members of that convention argued about. He said there were other arguments, such as whether [attorneys general] should be approved by the legislative council, brought up by the judicial council, or appointed by the [Alaska] Supreme Court. He offered further details.

[9:40:04 AM](#)

CHAIR LYNN said this is a significant issue and he wants to "put a lot of sunlight" on it. He said he thinks a good case can be made for both arguments.

9:40:47 AM

REPRESENTATIVE JOHNSON suggested he could moved to adopt a conceptual amendment which could then be put into particular wording by Legislative Legal and Research Services.

REPRESENTATIVE COGHILL stated that he strongly objects to making conceptual amendments to the constitution. He said he is "somewhat sympathetic to electing the attorney general."

9:41:42 AM

REPRESENTATIVE JOHANSEN expressed his desire that the committee wait to offer any amendments until further reviewing the history aforementioned by Representative Coghill.

9:42:02 AM

ALEX FOOT, Intern to Representative Harry Crawford, Alaska State Legislature, on behalf of Representative Crawford, prime sponsor of HJR 6, offered his understanding that approximately one-third of the delegates to the Alaska Constitutional Convention voted in favor of electing the attorney general.

REPRESENTATIVE CRAWFORD stated his belief that Representative Coghill had hit upon the crux of the argument: the Constitutional Convention delegates put the power in the hands of the governor. He said Alaska has, arguably, the most powerful governor of all 50 states, and he believes that was a mistake. He stated his belief that the state does not need an imperial governorship; conversely, it needs checks on its administration. He reiterated that he likes the idea of a slate election, and he recalled that Representative Doll had requested that there be term limits, which is an idea he said "would be in order, as well."

9:44:29 AM

MR. FOOT announced, "Twenty-one states currently employ straight-ticket voting."

9:44:45 AM

CHAIR LYNN closed public testimony.

9:44:54 AM

REPRESENTATIVE JOHNSON said he wants the opportunity to run his amendment by Legislative Legal and Research Services before presenting it.

[9:45:36 AM](#)

CHAIR LYNN asked Representative Doll to do the same with her amendment. He said the committee would hold the resolution and bring it back "fairly rapidly." He stated his intent to move the bill in an expedient manner.

[9:46:49 AM](#)

REPRESENTATIVE GRUENBERG, "in light of the two [potential] amendments," noted that in recent past, there was an attorney general who was appointed by former Governor Walter J. Hickel, continued to serve under former Governor Tony Knowles, and served longer than eight years.

[HJR 6 was heard and held.]

[9:47:28 AM](#)

ADJOURNMENT

There being no further business before the committee, the House State Affairs Standing Committee meeting was adjourned at [9:47:37 AM](#).