

**ALASKA STATE LEGISLATURE  
HOUSE JUDICIARY STANDING COMMITTEE**

April 9, 2011  
12:37 p.m.

**MEMBERS PRESENT**

Representative Carl Gatto, Chair  
Representative Steve Thompson, Vice Chair  
Representative Wes Keller  
Representative Bob Lynn  
Representative Lance Pruitt  
Representative Max Gruenberg  
Representative Lindsey Holmes  
Representative Mike Chenault (alternate)

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

HOUSE JOINT RESOLUTION NO. 4  
Proposing amendments to the Constitution of the State of Alaska  
creating a transportation infrastructure fund.

- MOVED CSHJR 4(TRA) OUT OF COMMITTEE

HOUSE BILL NO. 215  
"An Act relating to the judicial review of a right-of-way lease  
or the development or construction of an oil or gas pipeline on  
state land."

- MOVED CSHB 215(JUD) OUT OF COMMITTEE

COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 31(JUD)  
"An Act relating to the counting of write-in votes."

- MOVED HCS CSSB 31(STA) OUT OF COMMITTEE

**PREVIOUS COMMITTEE ACTION**

BILL: HJR 4  
SHORT TITLE: CONST. AM: TRANSPORTATION FUND  
SPONSOR(S): REPRESENTATIVE(S) P.WILSON, THOMPSON

01/18/11           (H)           PREFILE RELEASED 1/7/11

01/18/11 (H) READ THE FIRST TIME - REFERRALS  
 01/18/11 (H) TRA, JUD, FIN  
 02/15/11 (H) TRA AT 1:00 PM CAPITOL 17  
 02/15/11 (H) Heard & Held  
 02/15/11 (H) MINUTE(TRA)  
 02/17/11 (H) TRA AT 1:00 PM CAPITOL 17  
 02/17/11 (H) Heard & Held  
 02/17/11 (H) MINUTE(TRA)  
 02/24/11 (H) TRA AT 1:00 PM CAPITOL 17  
 02/24/11 (H) <Bill Hearing Canceled>  
 03/08/11 (H) TRA AT 1:00 PM CAPITOL 17  
 03/08/11 (H) Moved CSHJR 4(TRA) Out of Committee  
 03/08/11 (H) MINUTE(TRA)  
 03/09/11 (H) TRA RPT CS(TRA) 6DP 1NR  
 03/09/11 (H) DP: JOHNSON, FEIGE, PRUITT, MUNOZ,  
 PETERSEN, P.WILSON  
 03/09/11 (H) NR: GRUENBERG  
 03/25/11 (H) JUD AT 1:00 PM CAPITOL 120  
 03/25/11 (H) Heard & Held  
 03/25/11 (H) MINUTE(JUD)  
 04/08/11 (H) JUD AT 1:00 PM CAPITOL 120  
 04/08/11 (H) -- Rescheduled to 4/9/11 @ 12:30 pm --  
 04/09/11 (H) JUD AT 12:30 AM CAPITOL 120

BILL: HB 215

SHORT TITLE: JUDICIAL REVIEW OF PIPELINE PROJECT/ROW  
 SPONSOR(S): REPRESENTATIVE(S) CHENAULT

03/29/11 (H) READ THE FIRST TIME - REFERRALS  
 03/29/11 (H) JUD  
 04/06/11 (H) JUD AT 1:00 PM CAPITOL 120  
 04/06/11 (H) Heard & Held  
 04/06/11 (H) MINUTE(JUD)  
 04/08/11 (H) JUD AT 1:00 PM CAPITOL 120  
 04/08/11 (H) -- Rescheduled to 4/9/11 @ 12:30 pm --  
 04/09/11 (H) JUD AT 12:30 AM CAPITOL 120

BILL: SB 31

SHORT TITLE: COUNTING OF WRITE-IN VOTES  
 SPONSOR(S): SENATOR(S) THOMAS, FRENCH, MENARD, WIELECHOWSKI

01/19/11 (S) PREFILE RELEASED 1/7/11  
 01/19/11 (S) READ THE FIRST TIME - REFERRALS  
 01/19/11 (S) STA, JUD  
 01/25/11 (S) STA AT 9:00 AM BUTROVICH 205  
 01/25/11 (S) Heard & Held  
 01/25/11 (S) MINUTE(STA)

01/27/11 (S) STA AT 9:00 AM BUTROVICH 205  
 01/27/11 (S) Moved CSSB 31(STA) Out of Committee  
 01/27/11 (S) MINUTE(STA)  
 01/28/11 (S) STA RPT CS 5DP NEW TITLE  
 01/28/11 (S) DP: WIELECHOWSKI, KOOKESH, PASKVAN,  
 MEYER, GIESSEL  
 01/31/11 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)  
 01/31/11 (S) Heard & Held  
 01/31/11 (S) MINUTE(JUD)  
 02/02/11 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)  
 02/02/11 (S) Moved CSSB 31(JUD) Out of Committee  
 02/02/11 (S) MINUTE(JUD)  
 02/04/11 (S) JUD RPT CS 4DP SAME TITLE  
 02/04/11 (S) DP: FRENCH, WIELECHOWSKI, PASKVAN,  
 MCGUIRE  
 02/14/11 (S) TRANSMITTED TO (H)  
 02/14/11 (S) VERSION: CSSB 31(JUD)  
 02/16/11 (H) READ THE FIRST TIME - REFERRALS  
 02/16/11 (H) STA, JUD  
 04/05/11 (H) STA AT 8:00 AM CAPITOL 106  
 04/05/11 (H) Scheduled But Not Heard  
 04/06/11 (H) JUD AT 1:00 PM CAPITOL 120  
 04/06/11 (H) <Bill Hearing Rescheduled to 4/8/11>  
 04/07/11 (H) STA AT 8:00 AM CAPITOL 106  
 04/07/11 (H) Moved HCS CSSB 31(STA) Out of Committee  
 04/07/11 (H) MINUTE(STA)  
 04/08/11 (H) STA RPT HCS(STA) 3DP 2AM  
 04/08/11 (H) DP: SEATON, PETERSEN, GRUENBERG  
 04/08/11 (H) AM: P.WILSON, KELLER  
 04/08/11 (H) JUD AT 1:00 PM CAPITOL 120  
 04/08/11 (H) -- Rescheduled to 4/9/11 @ 12:30 pm --  
 04/09/11 (H) JUD AT 12:30 AM CAPITOL 120

**WITNESS REGISTER**

REPRESENTATIVE PEGGY WILSON  
 Alaska State Legislature  
 Juneau, Alaska

**POSITION STATEMENT:** As a joint prime sponsor, presented HJR 4.

BECKY ROONEY, Staff  
 Representative Peggy Wilson  
 Alaska State Legislature  
 Juneau, Alaska

**POSITION STATEMENT:** Assisted with the presentation of HJR 4 on behalf of one of its joint prime sponsors, Representative P. Wilson.

TOM WRIGHT, Staff  
House Majority Office  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** During discussion of HB 215, provided comments and responded to a question on behalf of the sponsor, Representative Mike Chenault, Speaker, House of Representatives.

RUTH HAMILTON HEESE, Senior Assistant Attorney General  
Environmental Section  
Civil Division (Juneau)  
Department of Law (DOL)  
Juneau, Alaska

**POSITION STATEMENT:** Provided comments and responded to a question during discussion of HB 215.

JOHN HUTCHINS, Assistant Attorney General  
Oil, Gas & Mining Section  
Civil Division (Juneau)  
Department of Law (DOL)  
Juneau, Alaska

**POSITION STATEMENT:** Provided comments and responded to questions during discussion of HB 215.

MERRICK PEIRCE, Chief Financial Officer (CFO);  
Member  
Board of Directors  
Alaska Gasline Port Authority (AGPA)  
Fairbanks, Alaska

**POSITION STATEMENT:** During discussion of HB 215, provided comments and responded to questions.

SENATOR JOE THOMAS  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** As a joint prime sponsor, presented SB 31.

GRIER HOPKINS, Staff  
Senator Joe Thomas  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Assisted with the presentation of SB 31 on behalf of one of its joint prime sponsors, Senator Thomas.

GAIL FENUMIAI, Director  
Central Office

Division of Elections  
Office of the Lieutenant Governor  
Juneau, Alaska

**POSITION STATEMENT:** During discussion of SB 31, provided comments and responded to questions.

**ACTION NARRATIVE**

[12:37:07 PM](#)

**CHAIR CARL GATTO** called the House Judiciary Standing Committee meeting to order at 12:37 p.m. Representatives Gatto, Holmes, Lynn, Keller, Pruitt, Thompson, and Chenault (alternate) were present at the call to order. Representative Gruenberg arrived as the meeting was in progress.

**HJR 4 - CONST. AM: TRANSPORTATION FUND**

[Contains brief mention of HB 30 and HB 31, which address the funding and other necessary statutory changes related to HJR 4's proposed transportation infrastructure fund.]

[12:37:38 PM](#)

CHAIR GATTO announced that the first order of business would be HOUSE JOINT RESOLUTION NO. 4, Proposing amendments to the Constitution of the State of Alaska creating a transportation infrastructure fund. [Before the committee was CSHJR 4(TRA).]

[12:38:25 PM](#)

REPRESENTATIVE PEGGY WILSON, Alaska State Legislature, as one of the joint prime sponsors, explained that [if passed by the legislature,] HJR 4 would place before the voters a proposed amendment to the Alaska State Constitution establishing a dedicated fund - in the form of a transportation infrastructure fund - that would be used to fund Alaska's transportation projects. There are three pieces of legislation that together would enable the establishment of the proposed transportation infrastructure fund: HJR 4 would place the proposed change to the Alaska State Constitution before the voters, HB 31 would provide for the appropriation of an initial \$1 billion to the fund, and HB 30 would provide the other necessary statutory changes. The proposed constitutional amendment is broad enough, she posited, to provide some flexibility for future legislatures but concise enough to ensure that the proposed transportation infrastructure fund would not be depleted and could instead

provide transportation funding far into the future. In response to questions, she relayed that if passed by the legislature, HJR 4's proposed constitutional amendment would go before the voters at the 2012 general election; that the Department of Transportation & Public Facilities (DOT&PF) is responsible for Alaska's roads, airports, harbors, and the Alaska Marine Highway System (AMHS), but not Alaska's railroads; and that under a change made by the prior committee, the proposed transportation infrastructure fund would no longer include [revenues from airport leases].

[12:42:40 PM](#)

BECKY ROONEY, Staff, Representative Peggy Wilson, Alaska State Legislature, on behalf of Representative P. Wilson, one of HJR 4's joint prime sponsors, added that this change was made due to a federal requirement that such lease revenues be returned to the airports from which they were collected. In response to other questions, she said that revenues from the state's studded-tire tax would be included in the proposed transportation infrastructure fund, as would revenues from the state's identification (ID) card fees; and that under the proposed constitutional amendment, the legislature, in any given year, could appropriate up to 50 percent of the proposed transportation infrastructure fund's yearly revenue.

REPRESENTATIVE P. WILSON indicated that the remaining 50 percent would remain in the proposed transportation infrastructure fund in order to inflation-proof it and help it grow. In response to another question, she relayed that in order to provide the legislature with additional flexibility, the proposed constitutional amendment was drafted such that the legislature could also appropriate up to 6 percent of the proposed transportation infrastructure fund's market value averaged over the previous five fiscal years. The legislature would not be required to appropriate the maximum percentages provided for via HJR 4's proposed constitutional amendment, however, and depending on the status of Alaska's economy in a particular year, it could be wiser not to.

REPRESENTATIVE P. WILSON, in response to questions, indicated that [outlining the specific revenue sources in both statute and the Alaska State Constitution] would protect the proposed transportation infrastructure fund while also providing the legislature with flexibility, and that HB 30 would provide the necessary statutory changes, including outlining what the

appropriated funds could be used for and specifying the percentages of the revenues that could be used for those things.

MS. ROONEY, in response to a further question, explained that the ballot measure would [in part] consist of the language in Section 2's proposed Section 18 of Article IX of the Alaska State Constitution. She added that language [on page 2, lines 2-3 - specifically that which says, "and from other transportation-related fees and funds designated by the legislature" - would allow for the possible future appropriation] of revenue streams that don't yet exist.

CHAIR GATTO, after ascertaining that no one else wished to testify, closed public testimony on HJR 4.

[12:50:51 PM](#)

REPRESENTATIVE THOMPSON moved to report CSHJR 4(TRA) out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHJR 4(TRA) was reported from the House Judiciary Standing Committee.

The committee took an at-ease from 12:51 p.m. to 12:54 p.m.

**HB 215 - JUDICIAL REVIEW OF PIPELINE PROJECT/ROW**

[12:54:18 PM](#)

CHAIR GATTO announced that the next order of business would be HOUSE BILL NO. 215, "An Act relating to the judicial review of a right-of-way lease or the development or construction of an oil or gas pipeline on state land." [Before the committee was the proposed committee substitute (CS) for HB 215, Version 27-LS0741\I, Bullock, 4/5/11, which had been adopted as the working document on 4/6/11.]

[12:55:50 PM](#)

REPRESENTATIVE HOLMES made a motion to adopt Amendment 1, labeled 27-LS0741\I.1, Bullock, 4/7/11, which read:

Page 6, line 19:  
Delete "**(b)**"  
Insert "**(c)**"

Page 6, line 20:  
Delete all material and insert:

"\* **Sec. 6.** AS 38.35.200 is amended by adding a new subsection to read:"

Page 6, line 21:  
Delete "(b)"  
Insert "(c)"

REPRESENTATIVE PRUITT objected for the purpose of discussion.

[12:56:20 PM](#)

TOM WRIGHT, Staff, House Majority Office, Alaska State Legislature, on behalf of the sponsor, Representative Mike Chenault, Speaker, House of Representatives, indicating that there had been discussions with the Department of Law (DOL) on this issue, explained that Amendment 1 would provide for the retention of existing AS 38.35.200(b), which currently allows for a judicial review [based on the grounds that there was a failure to follow the procedures set out in AS 38.35, or on the grounds that there has been an abuse of discretion such that it constitutes a denial of due process]. Under Amendment 1, instead of repealing and reenacting AS 38.35.200(b), Version I's Section 6 would simply add a new subsection (c) to AS 38.35.200. Currently, existing subsection (b) pertains to all pipelines, whereas what would become new subsection (c) under Amendment 1 would pertain only to natural gas pipelines.

REPRESENTATIVE PRUITT removed his objection.

CHAIR GATTO, after ascertaining that there were no further objections, announced that Amendment 1 was adopted.

CHAIR GATTO relayed that the proposed amendment in members' packets labeled 27-LS0741\I.2, Bullock, 4/7/11, would not be offered; that proposed amendment read:

Page 1, line 2:  
Delete "**and**"

Page 1, line 4, following "**corridor**":  
Insert "**; and providing for an effective date**"

Page 7, following line 10:  
Insert a new bill section to read:  
"**\* Sec. 8.** This Act takes effect immediately under AS 01.10.070(c)."

12:59:03 PM

REPRESENTATIVE HOLMES made a motion to adopt Amendment 2, labeled 27-LS0741\I.3, Bullock, 4/8/11, which read:

Page 6, line 21, following "law":

Insert "and except for an action described in (c) of this section"

Page 7, following line 5:

Insert a new bill section to read:

"\* **Sec. 7.** AS 38.35.200 is amended by adding a new subsection to read:

(c) An appeal of a permitting decision by the Department of Environmental Conservation under AS 46.03 or AS 46.14 that is made under authority delegated to the Department of Environmental Conservation by the United States Environmental Protection Agency is not

(1) subject to the limitation in (a)(2) of this section;

(2) included in the actions described in (b) of this section."

Renumber the following bill section accordingly.

REPRESENTATIVE PRUITT objected for the purpose of discussion.

MR. WRIGHT - indicating that the language of Amendment 2 was suggested by the Department of Environmental Conservation (DEC), and characterizing Amendment 2 as necessary - explained that all legislation that could affect the state's primacy over its air or water quality must be submitted to and reviewed by the federal Environmental Protection Agency (EPA), which then determines whether the legislation would violate federal regulation and whether the state's primacy should therefore be revoked. Adoption of Amendment 2 would ensure that the state's primacy over its own air and water quality won't become an issue under HB 215, thereby precluding the need for the EPA to become involved. In terms of pipeline right-of-ways, he relayed, the water-quality issues that need to be addressed are primarily those pertaining to storm/water runoff and water discharge, and [the sponsor] would prefer for the state to deal with the DEC on these issues rather than with the EPA.

CHAIR GATTO indicated support for Amendment 2.

1:02:00 PM

REPRESENTATIVE CHENAULT, speaking as the sponsor of HB 215, relayed that he reluctantly supports Amendment 2.

MR. WRIGHT suggested that the drafter be instructed to conform the language of Amendment 2 with the changes effected by the adoption of Amendment 1.

CHAIR GATTO and REPRESENTATIVE HOLMES acknowledged that point.

MR. WRIGHT, in response to comments and questions regarding Version I's Section 5 - which is proposing to amend AS 38.35.200(a) - explained that the language stipulating that an objection to a right-of-way lease must be raised within the later of either 60 days after the effective date of the bill, or 60 days after the publication of notice under AS 38.35.070, was included in order to address the fact that the Alaska Gasline Development Corporation (AGDC) has already applied for a pipeline right-of-way under [the existing statute], and the sponsor wanted to ensure that parties weren't precluded from raising an objection under the proposed judicial-review provisions just because the period for raising an objection under the existing provisions had lapsed. This language would provide such parties with the ability to raise an objection anytime during the 60 days after the effective date of the bill.

REPRESENTATIVE PRUITT removed his objection to the motion to adopt Amendment 2.

CHAIR GATTO, after ascertaining that there were no further objections, announced that Amendment 2 was adopted.

1:12:06 PM

RUTH HAMILTON HEESE, Senior Assistant Attorney General, Environmental Section, Civil Division (Juneau), Department of Law (DOL), indicating that she was representing the DEC, relayed that Amendment 2 addresses her client's concern regarding state primacy.

1:12:42 PM

JOHN HUTCHINS, Assistant Attorney General, Oil, Gas & Mining Section, Civil Division (Juneau), Department of Law (DOL), indicating that he was representing the Department of Natural Resources' office of State Pipeline Coordinator, relayed that

his client is generally supportive of HB 215. In response to questions, he confirmed that [with the adoption of Amendment 1, existing AS 38.35.200(b)] would remain unchanged, and what has become proposed AS 38.35.200(c) would pertain to intrastate natural gas pipelines - but not just to their right-of-ways - with the Alaska Superior Court having exclusive jurisdiction - but none to issue an injunction before the issuance of a final judgment. He offered his understanding that AS 38.35 sets out the criteria for what could constitute an intrastate pipeline, and that [the bill] would apply in situations involving a right-of-way lease granted under AS 38.35. In response to further questions, he surmised that if the Alaska Superior Court ultimately determines that the state official responsible for a particular permitting decision was incorrect, then an injunction would be needed to "unwind" whatever had been done since that permitting decision was made.

MS. HAMILTON HEESE concurred.

REPRESENTATIVE HOLMES noted that AS 38.35.020 says in part:

(a) Rights-of-way on state land including rights-of-way over, under, along, across, or upon the right-of-way of a public road or highway or the right-of-way of a railroad or other public utility, or across, upon, over, or under a river or other body of water or land belonging to or administered by the state ....

MR. HUTCHINS, in response to questions, offered his belief that proposed AS 38.35.200(c) wouldn't constitute a violation of the separation of powers doctrine, and wouldn't amend a court rule. He acknowledged, however, that he still has some uncertainty regarding the latter point. In response to comments, he explained that a court has equitable powers to unwind actions that have been taken, so although the court can't issue an injunction to restrain something that has already been done, it can craft satisfactory relief.

REPRESENTATIVE GRUENBERG pointed out, though, that if an objection were to be raised in order to protect a stream, for example, and the case goes on for a while, by the time the court is finally allowed under the bill to issue an injunction, it could be too late to protect that stream because the damage would have already been done.

MR. HUTCHINS surmised that if the legislature wants to ensure that the court does have the ability to issue an injunction in

situations where there is the possibility of irreparable harm occurring, the [proposed] statute would need to be changed.

REPRESENTATIVE GRUENBERG said he is concerned about how long it could be before the court would have jurisdiction under the bill to address such harm via an injunction.

MR. HUTCHINS mentioned that the court could issue a final judgment, and thus also an injunction, in the initial case, before any appeal. In response to a question, he indicated that that's his interpretation of the proposed language in Section 6 that reads, "except in conjunction with a final judgment on a claim filed under this subsection, the superior court may not grant injunctive relief". In response to another question, he offered his belief that there aren't any constitutional problems with that provision, but agreed to research the issue further.

REPRESENTATIVE KELLER suggested that the bill be moved from committee and any problems with it be dealt with when it's heard on the House floor.

REPRESENTATIVE GRUENBERG relayed that he didn't want to delay the bill, but is troubled by its proposal to limit the court's ability to grant injunctive relief.

[1:35:01 PM](#)

MERRICK PEIRCE, Chief Financial Officer (CFO); Member, Board of Directors, Alaska Gasline Port Authority (AGPA), indicating that his organization is proposing an intrastate natural gas pipeline project, expressed concern that along with other pieces of legislation, HB 215 appears to be intended to foster a competing intrastate natural gas pipeline project - one, he opined, that wouldn't be in the best interest of Alaska - and relayed that he is therefore skeptical of any effort to limit judicial review for such a project. He also offered his understanding of what that competing intrastate natural gas pipeline project would and would not entail compared to the one his organization is proposing, and advice regarding what a successful project should entail. In conclusion, he indicated a preference that the bill not be moved from committee.

REPRESENTATIVE PRUITT offered his belief that with regard to intrastate natural gas pipelines, it would be in the best interest of Alaska for its options to be left open.

CHAIR GATTO characterized HB 215 as being part of the solution for Alaska's future.

REPRESENTATIVE THOMPSON, pointing out that the bill isn't stipulating that a particular route be used, opined that HB 215 would benefit any and all pipelines.

CHAIR GATTO, after ascertaining that no one else wished to testify, closed public testimony on HB 215.

REPRESENTATIVE GRUENBERG said that he supports the bill strongly but just wants to be sure that it is doesn't violate the constitution, and relayed that he would therefore continue working with the sponsor and the DOL to address his concerns.

[1:46:46 PM](#)

REPRESENTATIVE THOMPSON moved to report the proposed CS for HB 215, Version 27-LS0741\I, Bullock, 4/5/11, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 215(JUD) was reported from the House Judiciary Standing Committee.

The committee took an at-ease from 1:47 p.m. to 1:49 p.m.

#### **SB 31 - COUNTING OF WRITE-IN VOTES**

[1:49:33 PM](#)

CHAIR GATTO announced that the final order of business would be CS FOR SENATE BILL NO. 31(JUD), "An Act relating to the counting of write-in votes." [Before the committee was HCS CSSB 31(STA).]

[1:49:58 PM](#)

SENATOR JOE THOMAS, Alaska State Legislature, as one of the joint prime sponsors, explained that SB 31 would clarify Alaska's statutes by utilizing language recommended by the Alaska Supreme Court in its recent Miller v. Treadwell decision; this language has been "reinforced" by the Alaska Superior Court and the U.S. District Court, and in the 2010 General Election Review conducted by the Office of the Lieutenant Governor. He offered his understanding that the bill's proposed language comes from the federal Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), and that it specifies that the director of the Division of Elections shall use a determination of a voter's

intent as the guiding principle when counting and judging a write-in ballot and its validity. Senate Bill 31 incorporates into statute the concept of favoring voter intent, which Alaska's courts have done consistently for over 50 years. The goal of clarifying Alaska's statutes on this issue is twofold: one, to ensure that in future elections, as many Alaskans as possible are enfranchised; and two, to strengthen the perception of Alaska's democratic process. Achieving this goal, and using inclusive rather than exclusive statutory language, will protect the fundamental democratic rights of all voting Alaskans regardless of their backgrounds, abilities, or skills.

[1:51:45 PM](#)

SENATOR THOMAS indicated that in Miller, the court focused on the language of existing AS 15.15.360(a)(11), which says:

(11) A vote for a write-in candidate, other than a write-in vote for governor and lieutenant governor, shall be counted if the oval is filled in for that candidate and if the name, as it appears on the write-in declaration of candidacy, of the candidate or the last name of the candidate is written in the space provided.

SENATOR THOMAS, mentioning that the challenge which was raised pertained to whether that language meant that the name of a write-in candidate must be written exactly as it appears on the candidate's declaration of candidacy, pointed out that the only declaration of candidacy he has ever seen has been his own. [To address what the court considered to be an ambiguity in statute with regard to minor misspellings of write-in candidates' names, and] in keeping with the court's determination in Miller, [the bill - via Section 1's proposed new AS 15.15.360(d)(5) - stipulates that in counting votes for a write-in candidate, if the intention of the voter can be ascertained, the director of the Division of Elections shall disregard any abbreviation, misspelling, or other minor variation in the form of the name of a candidate]. He offered his understanding that it is the intent of the Division of Elections to also address [the purported ambiguity] by providing [to voters] a list of the names of write-in candidates; this, he ventured, would substantially reduce the number of potential misspellings to begin with, though it won't eliminate them altogether.

SENATOR THOMAS, in conclusion, posited that although [the bill] won't prevent future legal challenges regarding write-in

candidates from being raised, it does clarify the law and constitutes a move forward in the direction the courts have been taking for over the last 50 years.

REPRESENTATIVE LYNN asked whether just providing the name of a write-in candidate but not also filling in the oval on the ballot would be sufficient to determine voter intent.

SENATOR THOMAS indicated that the Division of Elections could better address that question.

[1:55:41 PM](#)

GRIER HOPKINS, Staff, Senator Joe Thomas, Alaska State Legislature, on behalf of Senator Thomas, one of SB 31's joint prime sponsors, explained that Section 1 - which would add a new subsection (d)(1)-(5) to AS 15.15.360 - addresses the counting of write-in votes and [subsequent] determinations by the division director regarding voter intent. Specifically, proposed new subsection (d)'s paragraphs (1)-(4) contain [along with some clarifying editorial changes] the provisions of existing AS 15.15.360(a)(9)-(12), which address write-in candidates/votes and which would be repealed via SB 31's Section 3, thereby leaving the remaining provisions of AS 15.15.360(a) - those being paragraphs (1)-(8) - to address the marking/counting of standard ballots. Section 2 of SB 31 provides for a proposed new AS 15.15.365, which would statutorily address the issue of counting write-in votes in a general election; the language in proposed AS 15.15.365(a)-(e) mirrors the regulatory language in 6 AAC 25.085.

MR. HOPKINS explained that Section 2's proposed AS 15.15.365(a) addresses the trigger for counting write-in ballots, adding his understanding that the Division of Elections doesn't count write-in ballots unless there is a legitimate [likelihood] that those ballots could change the outcome of the election. [Under both existing and proposed AS 15.15.360,] the oval must be filled in [as specified in AS 15.15.360(a)(1) regardless of whether a person is voting for a write-in candidate or a candidate whose name is already on the ballot; this is] because it's the filled in oval which registers with the voting machine as a cast vote. He then offered his understanding that under proposed AS 15.15.365(a)(1)-(2), in order for any write-in votes to be counted, there must be more total votes cast for all write-in candidates than for any other candidate, or the difference between the total write-in votes cast and the number of votes cast for the leading candidate must be less than

.5 percent. He mentioned that the remainder of Section 2, proposed AS 15.15.365(b)-(e), addresses the time and place for counting write-in ballots.

REPRESENTATIVE GRUENBERG [although HCS CSSB 31(STA) was already properly before the committee] moved to adopt HCS CSSB 31(STA) as the working document.

REPRESENTATIVE HOLMES objected for the purpose of discussion. [Although the objection was never removed, the committee treated HCS CSSB 31(STA) as having been adopted as the working document.]

[2:01:16 PM](#)

MR. HOPKINS, in response to a question, indicated that due to a change made in the bill's prior committee of referral, proposed AS 15.15.365(c) and (e) together now stipulate, respectively, that if the requirements of subsection (a) have been met, the director of the Division of Elections shall establish the date for counting the write-in votes, and the director - or his/her designee - shall count all write-in ballots [under the rules outlined in proposed AS 15.15.360(d)]; and that those write-in ballots shall be counted - by the director or his/her designee - in a public place at the location where write-in ballots are sent to be counted after an election. This change is intended to provide for a more secure ballot-transfer process; proposed AS 15.15.365(e) would eliminate the need for those ballots to be transferred again, thereby mitigating the risk of damage, loss, or tampering. Currently, after all the voting precincts across the state tally their results, all of the ballots are sealed and shipped to the director's office in Juneau.

REPRESENTATIVE GRUENBERG offered his understanding that Section 2's proposed AS 15.15.365 could apply to any "write-in election."

MR. HOPKINS concurred.

REPRESENTATIVE GRUENBERG questioned whether, in situations involving a local election, the language of proposed AS 15.15.365(e) would provide the division with the flexibility to ship the write-in ballots back to that local precinct for counting.

MR. HOPKINS indicated that such could occur after the timeframe currently provided for absentee ballots to arrive at the

director's office in Juneau. In response to a question, he offered his understanding that ballots arriving after the deadline are only counted if a recount is authorized. In response to further questions and comments, he concurred that [under both existing and proposed AS 15.15.360,] writing in the name of a candidate whose name is already printed on the ballot would not invalidate that write-in vote unless it is determined that the ballot was so marked for the purpose of identifying it later on; and reiterated that [under both existing and proposed AS 15.15.360,] the oval must be filled in as specified in AS 15.15.360(a)(1) [regardless of whether a person is voting for a write-in candidate or a candidate whose name is already on the ballot, because it's the filled in oval which registers with the voting machine as a cast vote,] and that before any write-in votes are counted, the criteria outlined in proposed AS 15.15.365(a)(1)-(2) must be met. He added that in Miller, the court upheld the statute requiring the oval to be filled in.

[2:14:36 PM](#)

MR. HOPKINS mentioned that page 21 of the aforementioned 2010 General Election Review contains a specific reference to SB 31, and that when crafting the latest version of the bill, Senator Thomas worked closely with the Division of Elections. In response to a question, he concurred that SB 31 would codify the court's ruling in Miller regarding voter intent; relayed that all the courts which got involved in that case are urging that the existing statutes pertaining to write-in votes be clarified; and mentioned that members' packets include a handout containing quotes from those various courts. In response to a question regarding how voter intent would be ascertained by the director under proposed AS 15.15.360(d)(5), he offered his understanding of the process used by the Division of Elections when the write-in votes for Alaska's 2010 U.S. Senate race were counted, and indicated that ultimately, if a race's write-in ballot results are challenged, it would be the court that would determine the correctness of the director's decisions regarding voter intent.

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GAIL FENUMIAI, Director, Central Office, Division of Elections, Office of the Lieutenant Governor, in response to further questions, provided more details regarding the process used by the division when it counted the write-in ballots for Alaska's 2010 U.S. Senate race.

MR. HOPKINS reiterated that in Miller, the challenge raised was whether the language of [existing AS 15.15.360(a)(11)] means that the name of a write-in candidate has to be written exactly as it appears on the candidate's declaration of candidacy; the court ruled that it did not, surmising that if the legislature had intended differently, it would not have used the word, "appears" in [existing paragraph (11)]. Senate Bill 31 is intended to rectify this purported ambiguity in existing statute, but won't preclude someone from challenging the results of a write-in election. He mentioned that no state requires the exact spelling of a write-in candidate's name, and ventured that to do so, even in part, would raise a number of implementation issues.

MS. FENUMIAI, in response to comments and questions, said that the law is very clear that the oval must be filled in, and that the court has agreed with the division's interpretation of that law.

MR. HOPKINS mentioned that AS 15.15.360(a)(1) says:

(1) A voter may mark a ballot only by filling in, making "X" marks, diagonal, horizontal, or vertical marks, solid marks, stars, circles, asterisks, checks, or plus signs that are clearly spaced in the oval opposite the name of the candidate, proposition, or question that the voter desires to designate.

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REPRESENTATIVE THOMPSON moved to report HCS CSSB 31(STA) out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HCS CSSB 31(STA) was reported from the House Judiciary Standing Committee.

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#### **ADJOURNMENT**

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:35 p.m.