

ALASKA STATE LEGISLATURE
HOUSE STATE AFFAIRS STANDING COMMITTEE

April 12, 2011

8:08 a.m.

MEMBERS PRESENT

Representative Bob Lynn, Chair
Representative Wes Keller, Vice Chair
Representative Paul Seaton
Representative Peggy Wilson
Representative Max Gruenberg
Representative Pete Petersen
Representative Kyle Johansen

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 93

"An Act relating to special request specialty organization registration plates; and providing for an effective date."

- MOVED HCS SB 93(STA) OUT OF COMMITTEE

HOUSE BILL NO. 216

"An Act relating to deadlines in bills directing the adoption of regulations and to the informative summary required for the proposed adoption, amendment, or repeal of a regulation."

- HEARD & HELD

HOUSE BILL NO. 182

"An Act relating to distribution of annual reports by state agencies."

- HEARD & HELD

HOUSE BILL NO. 190

"An Act relating to the allowable absence for active duty service members of the armed forces for purposes of permanent fund dividend eligibility."

- HEARD & HELD

HOUSE BILL NO. 77

"An Act establishing a top two nonpartisan blanket primary election system for elective state executive and state and national legislative offices; changing appointment procedures relating to precinct watchers and members of precinct election boards, election district absentee and questioned ballot counting boards, and the Alaska Public Offices Commission; requiring certain written notices to appear in election pamphlets and polling places; relating to declarations of candidacy and letters of intent; and amending the definition of 'political party.'"

- SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: SB 93

SHORT TITLE: SPECIALTY LICENSE PLATES

SPONSOR(S): STATE AFFAIRS

02/21/11	(S)	READ THE FIRST TIME - REFERRALS
02/21/11	(S)	STA, TRA
02/22/11	(S)	STA AT 9:00 AM BUTROVICH 205
02/22/11	(S)	Heard & Held
02/22/11	(S)	MINUTE(STA)
03/01/11	(S)	STA RPT 2DP 2NR
03/01/11	(S)	DP: WIELECHOWSKI, PASKVAN
03/01/11	(S)	NR: GIESSEL, MEYER
03/01/11	(S)	STA AT 9:00 AM BUTROVICH 205
03/01/11	(S)	Moved SB 93 Out of Committee
03/01/11	(S)	MINUTE(STA)
03/15/11	(S)	TRA AT 1:00 PM BUTROVICH 205
03/15/11	(S)	Moved SB 93 Out of Committee
03/15/11	(S)	MINUTE(TRA)
03/16/11	(S)	TRA RPT 3DP 2NR
03/16/11	(S)	DP: KOOKESH, MENARD, THOMAS
03/16/11	(S)	NR: HUGGINS, EGAN
03/21/11	(S)	TRANSMITTED TO (H)
03/21/11	(S)	VERSION: SB 93
03/23/11	(H)	READ THE FIRST TIME - REFERRALS
03/23/11	(H)	STA, FIN
04/05/11	(H)	STA AT 8:00 AM CAPITOL 106
04/05/11	(H)	Scheduled But Not Heard
04/07/11	(H)	STA AT 8:00 AM CAPITOL 106
04/07/11	(H)	Heard & Held
04/07/11	(H)	MINUTE(STA)

04/12/11 (H) STA AT 8:00 AM CAPITOL 106

BILL: HB 216

SHORT TITLE: REGULATIONS: INFORMATIVE SUMMARY/BILLS

SPONSOR(s): P.WILSON

03/30/11 (H) READ THE FIRST TIME - REFERRALS

03/30/11 (H) STA, JUD

04/12/11 (H) STA AT 8:00 AM CAPITOL 106

BILL: HB 182

SHORT TITLE: ELECTRONIC DISTRIBUTION OF AGENCY REPORTS

SPONSOR(s): JOHANSEN

03/09/11 (H) READ THE FIRST TIME - REFERRALS

03/09/11 (H) STA, FIN

03/29/11 (H) STA AT 8:00 AM CAPITOL 106

03/29/11 (H) Heard & Held

03/29/11 (H) MINUTE(STA)

04/12/11 (H) STA AT 8:00 AM CAPITOL 106

BILL: HB 190

SHORT TITLE: PFD ALLOWABLE ABSENCE: MILITARY

SPONSOR(s): FEIGE

03/11/11 (H) READ THE FIRST TIME - REFERRALS

03/11/11 (H) STA, FIN

03/31/11 (H) STA AT 8:00 AM CAPITOL 106

03/31/11 (H) Heard & Held

03/31/11 (H) MINUTE(STA)

04/12/11 (H) STA AT 8:00 AM CAPITOL 106

WITNESS REGISTER

NANCY MANLY, Staff
Representative Bob Lynn
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Explained the changes that were made in Version I of SB 93.

SENATOR BILL WIELECHOWSKI
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented SB 93 on behalf of the Senate State Affairs Committee, sponsor, on which Senator Wielechowski is chair.

KARLA HART, Staff
Senator Bill Wielechowski
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Answered questions related to SB 93 on behalf of the Senate State Affairs Standing Committee, sponsor, of which Senator Wielechowski is chair.

JEFFREY A. MITTMAN, Executive Director
American Civil Liberties Union of Alaska (ACLU of Alaska)
Anchorage, Alaska

POSITION STATEMENT: Discussed the constitutionality of Version I, during the hearing on SB 93.

WHITNEY BREWSTER, Director
Division of Motor Vehicles (DMV)
Department of Administration
Anchorage, Alaska

POSITION STATEMENT: Answered questions during the hearing on SB 93.

WARD HURLBURT, Director and Chief Medical Officer
Division of Public Health
Department of Health & Social Services
Anchorage, Alaska

POSITION STATEMENT: Provided comment during the hearing on HB 216.

REPRESENTATIVE ERIC FEIGE
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 190 as sponsor.

MICHAEL PASCHALL, Staff
Representative Eric Feige
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Answered questions during the hearing on HB 190, on behalf of Representative Feige, sponsor.

DAN BRANCH, Senior Assistant Attorney General
Commercial/Fair Business Section
Civil Division (Juneau)
Department of Law
Juneau, Alaska

POSITION STATEMENT: Testified during the hearing on HB 190.

ACTION NARRATIVE

[8:08:45 AM](#)

CHAIR BOB LYNN called the House State Affairs Standing Committee meeting to order at 8:08 a.m. Representatives Keller, Seaton, P. Wilson, Petersen, Gruenberg, and Lynn were present at the call to order. Representative Johansen arrived as the meeting was in progress.

SB 93-SPECIALTY LICENSE PLATES

[8:08:59 AM](#)

CHAIR LYNN announced that the first order of business was SENATE BILL NO. 93, "An Act relating to special request specialty organization registration plates; and providing for an effective date."

[8:10:12 AM](#)

REPRESENTATIVE KELLER moved to adopt the proposed House committee substitute (HCS) for SB 93, Version 27-LS0515\I, Luckhaupt, 3/30/11, as a work draft.

REPRESENTATIVE GRUENBERG objected for the purpose of discussion.

[8:10:34 AM](#)

NANCY MANLY, Staff, Representative Bob Lynn, Alaska State Legislature, explained the changes that were made in Version I of SB 93. She stated that in addition to adopting the bill sponsor's plan to give the Division of Motor Vehicles (DMV) the authority to issue specialty license plates, Version D would also create specialty license plates for the National Rifle Association, breast cancer awareness, Lao veterans, and plates depicting "In God We Trust" and "Choose Life."

[8:11:23 AM](#)

REPRESENTATIVE SEATON asked if, other than the addition of the specific specialty license plates, there would be any changes made to the original bill version.

CHAIR LYNN offered his understanding that there would be no change within the original bill language.

[8:12:18 AM](#)

SENATOR BILL WIELECHOWSKI, Alaska State Legislature, presented SB 93 on behalf of the Senate State Affairs Standing Committee, sponsor, on which Senator Wielechowski is chair. He expressed concern regarding the language in Version I proposing a specialty plate for "choose life." He explained that courts have traditionally upheld that when one viewpoint is supported, the opposing viewpoint must also be supported. He said he has been told there are some organizations that may file a law suit if there is a "choose life" license plate without there also being a specialty plate for Planned Parenthood. In regard to Representative Seaton's previous question, he said it does not look like any of the original language in the bill has been altered.

[8:14:22 AM](#)

CHAIR LYNN stated his understanding that under SB 93, any group that is not included could go to the division and request a specialty license plate of their choosing.

SENATOR WIELECHOWSKI confirmed that is correct, but said there are those who would maintain that [Version I] is unconstitutional.

[8:16:15 AM](#)

REPRESENTATIVE GRUENBERG observed that if the committee chooses to remove the language in the bill pertaining to "choose life," it would need to delete lines 7-14, on page 4, and lines 7-12, on page 2.

SENATOR WIELECHOWSKI confirmed that is correct.

[8:16:47 AM](#)

REPRESENTATIVE P. WILSON said she does not understand where the complaint could be if everyone will be allowed to have a plate of their choosing.

SENATOR WIELECHOWSKI said there have been cases around the country to this effect.

REPRESENTATIVE P. WILSON reiterated that she does not understand why a law suit would result when all along groups have had the

opportunity to request a specialty license plate through the legislature and would, under SB 93, have the opportunity to do so directly through the division.

[8:18:22 AM](#)

REPRESENTATIVE GRUENBERG said he has prepared an amendment, but has not decided yet whether to offer it.

CHAIR LYNN said he does not want this bill hearing to turn into a Planned Parenthood/right to life debate.

[8:20:13 AM](#)

KARLA HART, Staff, Representative Bill Wielechowski, Alaska State Legislature, answered questions related to SB 93 on behalf of the Senate State Affairs Standing Committee, sponsor, of which Senator Wielechowski is chair. In response to Representative Seaton, regarding the application fee that the organization would charge for the setup, she clarified that under SB 93, that cost is revenue neutral; there would be a fee set to cover those setup charges. Under the current process, she continued, the DMV absorbs the cost of the setup and development of the specialty license plates.

REPRESENTATIVE SEATON asked for confirmation that that is the only distinction.

MS. HART prefaced her answer by noting that she is not an attorney. She pointed out one distinction is that legislatively approved plates are considered a form of government speech, whereas administratively approved plates appear to be a form of private speech. She said she thinks there may be some distinction there in terms of a court case. She further noted that the courts have ruled differently in various states.

[8:22:23 AM](#)

REPRESENTATIVE GRUENBERG stated his understanding that other plate designs would mean additional costs.

MS. HART clarified that the group supplying the design would incur the cost.

[8:23:12 AM](#)

REPRESENTATIVE SEATON directed attention to language on page 3, line 10, which requires a group to "submit registration fees for at least 50 motor vehicles before specialty registration plates will be issued". He said he may offer an amendment to lower that threshold, because there may be smaller groups that desire specialty license plates.

[8:24:29 AM](#)

REPRESENTATIVE GRUENBERG directed attention to page 3, line 12, which read as follows:

(D) may not be offensive in purpose, nature, activity, or name;

REPRESENTATIVE GRUENBERG expressed concern about the meaning of offensive and whether this language may present constitutional problems.

[8:25:23 AM](#)

SENATOR WIELECHOWSKI responded that there is a well-established body of case law around the country to address this issue. In response to a follow-up question, he confirmed that this language is not unique to Alaska.

[8:26:28 AM](#)

MS. HART said Pennsylvania's model states that "the department may refuse any combination of letters and numbers for cause and shall adopt rules and regulations for the issuance of plates." She said Pennsylvania's regulation addresses the issue of offense and discriminatory content.

[8:27:11 AM](#)

REPRESENTATIVE KELLER said he would be proposing a sunset clause so that the proposed legislation could undergo a trial period.

[8:29:23 AM](#)

JEFFREY A. MITTMAN, Executive Director, American Civil Liberties Union of Alaska (ACLU of Alaska), stated that the ACLU does not take a position for or against the State of Alaska having a specialty license plate program. Furthermore, he said the ACLU does not take a position on whether or not certain individuals or organizations should be entitled to create plates. The ACLU

looks solely at constitutional issues. He cited Arizona Life Coalition Inc. v. Stanton, 515 F.3d 956, a 9th Circuit Court of Appeals case in which the court protected the rights of the "Choose Life" organization to obtain a plate under Arizona's license plate system. He said the ACLU would have similarly represented the "Choose Life" organization.

MR. MITTMAN said [Version I] discriminates both in the matter of process and content. Under Version I, if one person wanted to obtain a National Rifle Association (NRA) plate, for example, and nine individuals wanted to obtain a Brady handgun control plate, the one individual could go down to the DMV and get the NRA plate, whereas the nine individuals would not be given the opportunity to get the Brady handgun control plate. He said that is not only process discrimination, but also viewpoint discrimination.

CHAIR LYNN suggested that under the original bill, those people could go to the DMV and apply for "one of these other license plates expressing a different viewpoint."

MR. MITTMAN responded that they could apply, but "if they didn't meet the differential requirements that the process establishes they could not be successful." He explained that Version I sets out certain viewpoints to be more privileged than others, which could be viewed by the court as discrimination. First Amendment rights are so important that the courts are protective of them.

MR. MITTMAN stated that SB 93, as originally written, was "perfectly neutral"; it set up one system for the entire state. He stated, "It is our recommendation ... that ... all organizations who have had any sort of bill be approved, and that the legislature put in language that allows for approval." He noted that SB 16, which passed through the Senate, allowed for "pro-family" and "pro-choice"; therefore, it would be "part of the legislative record in revealing whether or not the legislature has been neutral in both process and concept."

[8:34:17 AM](#)

MR. MITTMAN, in response to Representative Gruenberg's concern regarding the interpretation and constitutionality of the word "offensive", said potentially that language could be an opportunity for a government agency to deny language. However, he stated, "We see this as a light yellow flag; it is something that we'd watch, but we would not anticipate that it would be a problem."

[8:35:20 AM](#)

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

REPRESENTATIVE GRUENBERG removed his objection to the motion to adopt the proposed House committee substitute (HCS) for SB 93, Version 27-LS0515\I, Luckhaupt, 3/30/11, as a work draft. There being no further objection, Version I was before the committee.

[8:35:38 AM](#)

REPRESENTATIVE SEATON moved to adopt Amendment 1, as follows:

Page 3, line 10:
Change "50" to "10".

There being no objection, Amendment 1 was adopted.

[8:36:06 AM](#)

REPRESENTATIVE KELLER moved to adopt Conceptual Amendment 2, to add a sunset clause on page 5 relating to subsection (gg) in Section 1.

REPRESENTATIVE KELLER said he is concerned about [specialty license plates being used much like] a bumper sticker. In response to a question from the chair, he explained that [subsection (gg)] is language in Version I that was also in the original bill version. He noted that the date of the sunset clause that would be added under Conceptual Amendment 2 would be June 1, 2014.

[8:38:21 AM](#)

REPRESENTATIVE SEATON objected to Conceptual Amendment 2 for the purpose of discussion. He said he does not see a problem which necessitates an audit and sunset process.

REPRESENTATIVE KELLER stated his intent is to be cautious.

[8:42:04 AM](#)

WHITNEY BREWSTER, Director, Division of Motor Vehicles (DMV), Department of Administration, stated that the DMV's regulations have been helpful in determining how the division deals with

personalized license plates, and the division would use similar language of that regulation in dealing with organizations applying for a plate. She said if the proposed legislation passes, her preference would be to receive feedback from the legislature regarding the division's regulatory process. She said she understands Representative Keller's concern that the proposed legislation would give responsibility to the DMV to determine which organizations are appropriate.

MS. BREWSTER said the DMV currently has an administrative hearing process wherein someone who is denied a plate has the opportunity to request an administrative hearing. If the person does not agree with the hearing officer, he/she has the option of appealing to the Alaska Superior Court. She ventured that the process under SB 93 would be similar. She acknowledged that these considerations do not address specifically Representative Keller's concern that there might be "an Amway plate," for example; however, she said the court has consistently stated that the issue is one of free speech, and if specialty plates were made available to 501c3 organizations, then the division would have to seriously consider that issue when making a determination.

REPRESENTATIVE KELLER acknowledged that Ms. Brewster shares his concerns, and he reiterated his support for Conceptual Amendment 2.

[8:46:17 AM](#)

MS. BREWSTER, in response to Representative Petersen, related that the division uses software that will catch most of the inappropriate language submitted before a plate is issued; however, some inappropriate requests slip through that screening. She said the division denies 6-7 inappropriate license applications a week, but few of those denials result in a challenge, because the reason for the denial is obvious. She estimated that the division holds one specialty plate hearing per quarter. She incidentally reported that the DMV offers fraternal organization plates established through statute last session, but no one has applied for one to date. She noted that that legislation was the first to open the door to various entities requesting a plate not through the legislative process.

REPRESENTATIVE PETERSEN said it does not make sense that a [501c3] organization would go to the trouble to make an indecent license plate that would be turned down by the division.

MS. BREWSTER offered her understanding that Pennsylvania has thus far had one plate that was questioned as being offensive; however, she said she does not foresee this being a big issue in Alaska. She reiterated that if the organization is denied a plate, it has an avenue for appeal.

[8:50:24 AM](#)

REPRESENTATIVE KELLER, in response to Representative Gruenberg, clarified that Conceptual Amendment 2 would place a sunset to subsection (gg); it would not delete the section.

[8:51:24 AM](#)

REPRESENTATIVE JOHANSEN asked the bill sponsor what he thinks of Conceptual Amendment 2.

SENATOR WIELECHOWSKI noted the short time period between the effective date of the bill and the proposed date of the sunset.

[8:52:03 AM](#)

REPRESENTATIVE KELLER moved to amend Conceptual Amendment 2, to change 2014 to 2015. There being no objection, the amendment to Conceptual Amendment 2 was adopted.

SENATOR WIELECHOWSKI pointed out that the purpose of the bill is to end the necessity for the legislature to address license plate bills, and [Conceptual Amendment 2, as amended] will bring the issue of license plates back before the legislature.

[8:52:38 AM](#)

REPRESENTATIVE SEATON maintained his objection to Conceptual Amendment 2, as amended. He said if the legislation proves to be problematic, the legislature can always choose to bring the issue back for further discussion.

[8:53:31 AM](#)

A roll call vote was taken. Representatives Johansen, P. Wilson, Keller, and Lynn voted in favor of Conceptual Amendment 2, as amended. Representatives Seaton, Gruenberg, and Petersen voted against it. Therefore, Conceptual Amendment 2, as amended, was adopted by a vote of 4-3.

[8:54:15 AM](#)

REPRESENTATIVE GRUENBERG asked the bill sponsor what he thought - following Mr. Mittman's testimony - about removing the language in the proposed legislation referring to "Alaska Choose Life".

8:56:08 AM

SENATOR WIELECHOWSKI said he would support such an amendment, because he thinks it would resolve the constitutional issues that have been presented.

8:56:27 AM

REPRESENTATIVE GRUENBERG moved to adopt Conceptual Amendment 3, as follows:

Page 2, lines 7-12:
Delete language

Page 4, lines 7-14:
Delete language

REPRESENTATIVE JOHANSEN objected.

REPRESENTATIVE SEATON said he does not support Conceptual Amendment 3. He said specialty license plates currently are established in state law and [under SB 93] would be managed administratively, which would result in the existence of specialized plates from two systems. He stated, "I don't think looking at one particular plate overcomes two systems."

8:57:56 AM

REPRESENTATIVE JOHANSEN explained that he objects to Representative Gruenberg's singling out the "Choose Life" plate as articulating one point of view, and he said he would like to express his point of view regarding the meaning of "Choose Life".

8:58:54 AM

The committee took a brief at 8:59 a.m.

8:59:14 AM

REPRESENTATIVE JOHANSEN said he does not know what particular point of view Representative Gruenberg is referring to, because "Choose Life" could mean don't commit suicide. He indicated his objection was to the characterization of "that statement as something in particular" and the singling out of it when "there are other portions of this bill that ... could fall under this umbrella."

REPRESENTATIVE JOHANSEN maintained his objection.

[9:00:42 AM](#)

REPRESENTATIVE GRUENBERG said he thinks there is merit in some points that have been made, and he said he would like to know whether the bill sponsor maintains his support of Conceptual Amendment 3.

SENATOR WIELECHOWSKI responded that he finds it ironic that he introduced the original version of SB 93 as a means to end all the time spent by the legislature in considering individual specialized license plates and Version I introduces several individual plates for the legislature to consider. He said as an attorney, one of the first rules is to protect the client from being sued, and there has been testimony that leaving "Choose Life" in Version I would lead to a law suit against the state; therefore, he said he would like "Choose Life" taken out of the bill.

[9:01:59 AM](#)

REPRESENTATIVE GRUENBERG stated that he would maintain his motion to adopt Conceptual Amendment 3 out of respect for the bill sponsor.

[9:02:13 AM](#)

A roll call vote was taken. Representatives Petersen and Gruenberg voted in favor of Conceptual Amendment 3. Representatives Johansen, P. Wilson, Seaton, Keller, and Lynn voted against it. Therefore, Conceptual Amendment 3 failed by a vote of 2-5.

[9:03:09 AM](#)

REPRESENTATIVE KELLER moved to report the House committee substitute (HCS) for SB 93, Version 27-LS0515\I, Luckhaupt, 3/30/11, as amended, out of committee with individual

recommendations and the accompanying fiscal notes. There being no objection, HCS SB 93(STA) was reported out of the House State Affairs Standing Committee.

HB 216-REGULATIONS: INFORMATIVE SUMMARY/BILLS

[9:03:57 AM](#)

CHAIR LYNN announced that the next order of business was HOUSE BILL NO. 216, "An Act relating to deadlines in bills directing the adoption of regulations and to the informative summary required for the proposed adoption, amendment, or repeal of a regulation."

[9:04:36 AM](#)

The committee took a one-minute at-ease.

[9:05:36 AM](#)

REPRESENTATIVE P. WILSON presented HB 216 as sponsor. She said the bill would address two problems related to changes in state regulations: the slow manner in which regulations are sometimes implemented and the confusing language of regulations.

[9:07:26 AM](#)

REPRESENTATIVE P. WILSON said Section 1 of the proposed legislation would require that the legislature set up a time to have regulations completed and ready to implement. She said this information is important to legislators when deciding when to set the effective date of proposed legislation. Section 2, she noted, would require agencies to provide descriptive summaries of proposed changes to regulations. She said this will help legislators to better understand the proposed changes, as well as aid in the public's understanding of those changes, thereby increasing the public's participation in government process. She said the descriptions need not be lengthy and would not be legally binding.

REPRESENTATIVE P. WILSON pointed to a note [included in the committee packet] from Theresa Bannister of Legislative Legal and Research Services. Representative P. Wilson said that based on Ms. Bannister's comments, she realizes that the courts are unlikely to void a bill for violating the requirements under HB 216, and amendments may be necessary to make the proposed legislation more viable. However, she expressed her belief that

there is a great need for improvement in the legislative process, which is the intent of HB 216. She said she open to suggestions from the committee.

[9:10:05 AM](#)

REPRESENTATIVE JOHANSEN expressed appreciation to Representative P. Wilson for bringing the proposed legislation forward, but said he thinks a lot of discussion would be required to address issues including the timeline of public process, the complexities of implementing statute, and the difficulty departments have in implementing initiatives.

[9:11:41 AM](#)

REPRESENTATIVE KELLER thanked Representative P. Wilson for sponsoring HB 216, concurred with Representative Johansen that the bill needs further consideration, and offered to help the sponsor with the legislation over the interim.

[9:12:30 AM](#)

REPRESENTATIVE GRUENBERG mentioned a proposed bill heard a few weeks ago regarding the waiver of attorney client privilege, and said there had been discussion about how rule making under the Administrative Procedure Act (APA) is working. He said he thinks "that would be a ... good project for this committee in the interim." He asked Representative P. Wilson if she would allow HB 216 to be used as a vehicle in considering any necessary changes to the rule-making process.

REPRESENTATIVE P. WILSON answered yes.

[9:13:57 AM](#)

REPRESENTATIVE PETERSEN said he likes the concept of HB 216, but expressed concern about the subjective nature of [**"easily readable language that a person without a legal background is able to understand"** - page 2, lines 6-7].

[9:14:24 AM](#)

REPRESENTATIVE P. WILSON noted that the sponsor statement singles out the Department of Health & Social Services in the example given of the length of time taken to adopt a regulation. She emphasized that her intent had not been to insult that entity, and said she would revise the sponsor statement.

[9:15:54 AM](#)

WARD HURLBURT, Director and Chief Medical Officer, Division of Public Health, Department of Health & Social Services, in response to the bill sponsor, related that the department had failed to expeditiously publish regulations following the passage of House Bill 277. He assured the committee that the department takes its responsibilities seriously, and he said he would help to ensure such a lapse does not recur. He added that the department has no official position regarding HB 216.

[9:17:57 AM](#)

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

[9:18:18 AM](#)

REPRESENTATIVE SEATON said this is an important issue, and he expressed his appreciation that the committee is addressing it.

[HB 216 was held over.]

HB 182-ELECTRONIC DISTRIBUTION OF AGENCY REPORTS

[9:18:47 AM](#)

CHAIR LYNN announced that the next order of business was HOUSE BILL NO. 182, "An Act relating to distribution of annual reports by state agencies."

REPRESENTATIVE JOHANSEN, as sponsor, reported that he is working on a committee substitute and is responding to feedback regarding the need for clarification. He said he plans to work on the bill during the interim and hopes it will be heard again at the start of session in January 2012.

REPRESENTATIVE KELLER opined that [HB 182] is a good bill.

[HB 182 was held over.]

HB 190-PFD ALLOWABLE ABSENCE: MILITARY

[9:19:39 AM](#)

CHAIR LYNN announced that the last order of business was HOUSE BILL NO. 190, "An Act relating to the allowable absence for active duty service members of the armed forces for purposes of permanent fund dividend eligibility."

[9:20:11 AM](#)

The committee took an at-ease from 9:20 a.m. to 9:22 a.m.

[9:23:24 AM](#)

REPRESENTATIVE ERIC FEIGE, Alaska State Legislature, presented HB 190 as sponsor.

[9:23:46 AM](#)

The committee took a brief at-ease.

[9:24:29 AM](#)

REPRESENTATIVE GRUENBERG removed his objection, which was left pending on 3/3/11, to the motion to adopt the proposed committee substitute (CS) for HB 190, Version 27-LS0564\D, Kirsch, 3/28/11, as a work draft. There being no further objection, Version D before the committee.

[9:25:03 AM](#)

REPRESENTATIVE FEIGE said the main change incorporated into Version D is in language on page 2, lines 1-5. He said that language accounts for individuals who began receiving the permanent fund dividend (PFD) as dependents, left the state as dependents of active duty military members, and later joined the military. In the original bill version, the people in that category would have been eligible for the PFD, even though they had not really satisfied the intent of the bill, which is to cover those who are Alaska residents when inducted into the military.

[9:26:54 AM](#)

REPRESENTATIVE GRUENBERG moved to adopt Amendment 1, labeled 27-LS0564\D.1, Kirsch, 4/4/11, which read as follows [original punctuation provided]:

Page 2, following line 5:
Insert a new bill section to read:

"* **Sec. 2.** The uncodified law of the State of Alaska is amended by adding a new section to read:

PERMANENT FUND DIVIDEND APPLICATIONS. Notwithstanding permanent fund dividend application procedures or deadlines, an individual who qualifies for a dividend for 2009, 2010, or 2011 because of the amendment to AS 43.23.008(c) made in sec. 1 of this Act, may apply for the dividend by January 1, 2015. The Department of Revenue shall prepare a form for applications under this section."

Renumber the following bill section accordingly.

Page 2, following line 11:

Insert a new bill section to read:

"* **Sec. 4.** The uncodified law of the State of Alaska is amended by adding a new section to read:

RETROACTIVITY. Section 1 of this Act is retroactive to January 1, 2009."

REPRESENTATIVE JOHANSEN objected.

REPRESENTATIVE GRUENBERG spoke to Amendment 1. He offered his understanding that during the last hearing on HB 190, the committee heard two members of the military testify that they had not been able to obtain dividends for 2009 and 2010 because they were "caught in this gap." He asked how many people would be covered by Amendment 1.

[9:28:13 AM](#)

MICHAEL PASCHALL, Staff, Representative Eric Feige, Alaska State Legislature, on behalf of Representative Feige, estimated that less than 100 people would be affected by Amendment 1.

REPRESENTATIVE GRUENBERG asked the bill sponsor if [Amendment 1] would adequately address the issue.

REPRESENTATIVE FEIGE answered yes.

[9:29:13 AM](#)

REPRESENTATIVE JOHANSEN removed his objection. There being no further objection, Amendment 1 was adopted.

[9:29:25 AM](#)

REPRESENTATIVE KELLER moved to adopt Amendment 2, labeled 27-LS0564\D.2, Kirsch, 4/11/11, which read as follows [original punctuation provided]:

Page 2, following line 5:

Insert a new bill section to read:

"* **Sec. 2.** AS 43.23.008 is amended by adding a new subsection to read:

"(e) If insufficient documentation is available to establish the nature of an absence, as required under (c)(1) and (2) of this section, the department may waive the requirement of those paragraphs."

Renumber the following bill section accordingly.

REPRESENTATIVE JOHANSEN objected for the purpose of discussion.

[9:29:43 AM](#)

REPRESENTATIVE FEIGE said the language gives flexibility to the division to waive the requirements proving eligibility in the three years prior to induction into military service, in situations where information now required was not at one time collected by the division.

[9:31:12 AM](#)

REPRESENTATIVE P. WILSON asked if, under Amendment 1, the division would have to pay dividends retroactively to someone who had collected a dividend for three years, 20 years ago, then went into the service and "is still there."

REPRESENTATIVE FEIGE answered no.

REPRESENTATIVE P. WILSON questioned when the PFD program began.

REPRESENTATIVE FEIGE answered [1982].

REPRESENTATIVE GRUENBERG pointed to the adopted Amendment 1, which shows that there would be limited retroactivity to January 1, 2009.

REPRESENTATIVE KELLER asked if the bill sponsor intends to allow the division to waive the requirements without proof that the criteria of Section 1(c)(1) and (2) are met.

REPRESENTATIVE FEIGE responded that the intent is not to leave it wide open, but rather to give reasonable discretion to the division. In response to Representative Keller, he said he would have no objection to an amendment specifying that a waiver would be allowed if the division first determines that the requirements of Section 1(c)(1) and (2) had been met.

[9:35:22 AM](#)

REPRESENTATIVE GRUENBERG said he thinks Representative Keller is right not to want to allow the division to offer waivers [without guidelines]. He suggested that if there is insufficient documentation to establish the nature of absence under c(1) and (2) of this section, then the Department of Revenue may want to adopt regulations allowing alternative proof. He said he would like time to draft the wording of an amendment to Amendment 2.

[9:36:35 AM](#)

REPRESENTATIVE P. WILSON said one possible scenario is that a person may throw away documentation, thinking that he/she does not qualify, but the division feels that the person's absence was because of service in the military and waives the requirements of c(1) and (2).

[9:37:11 AM](#)

REPRESENTATIVE JOHANSEN asked the bill sponsor if he is confident that the regulatory agency will create the appropriate regulations.

REPRESENTATIVE FEIGE responded that he thinks it would be clearer if it was set out in statute. He said the requirements of (c)(1) and (2) do not address whether a person has received a PFD check. He suggested one way to determine a person's eligibility is whether or not that person received a PFD.

[9:39:16 AM](#)

REPRESENTATIVE SEATON asked for clarification as to who would qualify under this waiver.

REPRESENTATIVE FEIGE answered that it would apply to someone who is an Alaska resident at the time of induction into the military and serves in the military as a career. Regarding (c)(1) and (2), he reiterated, "Being able to prove where you were 20 years

ago can be somewhat problematic, and the division does not have that information because it was not required on permanent fund applications at that time."

REPRESENTATIVE SEATON expressed concern that there may be a loophole in which someone may be able to reestablish his/her residency without coming back to the state and remaining for a year when he/she had at some point in that process officially changed his/her residence.

[9:42:36 AM](#)

MR. PASCHALL directed attention to language on page 1, lines 5-8, which read as follows:

(c) An otherwise eligible individual who has been eligible for the immediately preceding 10 dividends despite being absent from the state for more than 180 days in each of the related 10 qualifying years is only eligible for the current year dividend if the individual was absent 180 days or less during the qualifying year.

MR. PASCHALL indicated that the intent of the bill is to address only those individuals who had "limited out on the 10 years."

[9:43:35 AM](#)

REPRESENTATIVE KELLER moved to adopt Conceptual Amendment 1 to Amendment 2, as follows:

On line 5 of Amendment 2:
Delete "waive the"
Insert "adopt regulations to establish methods of alternative compliance"

REPRESENTATIVE KELLER said he thinks Conceptual Amendment 1 to Amendment 2 would tighten the language of Amendment 2 and put the public process "out on the table."

REPRESENTATIVE KELLER, in response to the committee aide, restated Conceptual Amendment 1 to Amendment 2, as follows:

On line 5 of Amendment 2:
Delete "waive the"
Insert "adopt regulations to establish alternative compliance determination"

REPRESENTATIVE KELLER reiterated that this is a conceptual amendment.

REPRESENTATIVE GRUENBERG asked Representative Keller to repeat the part of the proposed language of Conceptual Amendment 1 to Amendment 2, following "adopt regulations to establish".

REPRESENTATIVE KELLER filled in: ..."alternative methods of determination".

REPRESENTATIVE GRUENBERG asked, ..."alternative methods of"...?

REPRESENTATIVE KELLER replied, ..."compliance". He explained that that means compliance with the requirements in (c)(1) and (2).

[9:45:28 AM](#)

REPRESENTATIVE GRUENBERG suggested an alternative fix that would read: "adopt regulations to establish the requirement of those paragraphs."

REPRESENTATIVE KELLER moved to amend Conceptual Amendment 1 to Amendment 2, so that Amendment 2, as amended, would read as follows:

Page 2, following line 5:

Insert a new bill section to read:

"* Sec. 2. AS 43.23.008 is amended by adding a new subsection to read:

"(e) If insufficient documentation is available to establish the nature of an absence, as required under (c)(1) and (2) of this section, the department may adopt regulations to establish the requirement of those paragraphs."

Renumber the following bill section accordingly.

[The motion to amend Conceptual Amendment 1 to Conceptual Amendment 2 was treated as adopted.]

CHAIR LYNN asked if there was any objection to [Conceptual Amendment 1, as amended, to Conceptual Amendment 2]. There being none, it was so ordered.

REPRESENTATIVE JOHANSEN removed his objection to the motion to adopt Amendment 2, [as amended]. There being no further objection, Amendment 2, as amended, was adopted.

[9:46:36 AM](#)

REPRESENTATIVE SEATON noted that at the last bill hearing he had requested an opinion from Legislative Legal and Research Services regarding "the discrimination between ... a three-year residency requirement versus a one-year residency requirement." He explained that this relates to a case that determined it is illegal to discriminate based on longevity of residency.

[9:47:21 AM](#)

MR. PASCHALL responded, "Their synopsis of that is ... [that] it could be [a legal problem]; ... there's no definitive answer."

REPRESENTATIVE SEATON expressed concern that by including discriminating between one-year and three-year residencies, the proposed legislation would be trying to overturn a [1982] U.S. Supreme Court decision from Zobel v. Williams. He stated:

With the data that we have that shows that residents that are gone for a long period of time - 10 years - return in very low numbers, that an extended duration does not give us a[n] adequate proxy for physical residency; it puts the permanent fund [corporation] itself at risk of being declared taxable by the [Internal Revenue Service] (IRS). And so, I think we are on very shaky ground as far as the risks that we are willing to take to say that people can take their career and 20 years out of the state and still receive their permanent fund dividend. That extension could be extremely costly to all the citizens of the state.

[9:50:06 AM](#)

MR. PASCHALL noted that there was an attorney present to address Representative Seaton's concern. He indicated that Representative Seaton had asked for some statistics, which he related as follows:

The number ... for 2-5 years of absence is 19; for 6-10 is 15; for 11-19 is 30; and for 20-plus years is 16; and those were members in the armed forces that had a 10-year absence.

MR. PASCHALL, in response to questions from Representative Johansen, confirmed that the legal opinion was received from Legislative Legal and Research Services in March [2011], and he apologized that the committee was not in possession of a copy. In response to a follow-up question, he said the next committee of referral is the House Finance Committee.

[9:51:17 AM](#)

REPRESENTATIVE JOHANSEN said he would like to help out the people in the military, but not at the expense of challenging an Alaska Supreme Court case decision and putting the Permanent Fund Division at risk.

[9:52:12 AM](#)

DAN BRANCH, Senior Assistant Attorney General, Commercial/Fair Business Section, Civil Division (Juneau), Department of Law, said he thinks the committee already grasps that a classification is made in order to create an exception to a rule for a particular group of people. The government that does this creates a question regarding whether constitutional rights will be violated. He said one question related to this issue is whether the rights of people who won't benefit from this proposed Section would be violated. He mentioned the constitutional rights of people to travel and the privileges and immunities clause.

MR. BRANCH said all those rights were discussed by the U.S. Supreme Court during the Zobel v. Williams case, which struck down the first bill related to the PFD. That bill, he said, awarded length of residency by increasing the amount of a dividend by the number of years a person was a resident prior to application. He said the situation at hand is similar to the issue in the Zobel v. Williams case, in that the proposed legislation would essentially award some people who have left the state for their prior residency in the state, which he said raises "a really big red flag."

MR. BRANCH said the Department of Law does not like to give cause for anyone to challenge statute, because it has to then defend it; however, he said the proposed legislation does raise concern as to "whether this can withstand constitutionality." He said one way to consider the constitutionality of proposed legislation is to think about how hard it would be to defend; the proposed legislation would be very difficult to defend

"because of the - Zobel connection." He said he has not seen the analysis by Legislative Legal and Research Services, but said Legislative Legal and Research Services is careful in terms of pronouncing legislation constitutional or unconstitutional.

[9:56:11 AM](#)

REPRESENTATIVE JOHANSEN urged Mr. Branch to look at the legal opinion of Legislative Legal and Research Services and give feedback on it.

[9:56:52 AM](#)

CHAIR LYNN remarked that significant issues had been raised, and spoke of returning to the issue in January 2012.

[9:57:40 AM](#)

MR. BRANCH, in response to a request, stated, "There is a provision in the bill - Section 2 - that would ... allow the court to sever any [provision] in the bill that would be found unconstitutional and save what the balance of it would be." In response to Chair Lynn, he confirmed that a person from the department who is knowledgeable on this subject would be available to come before the committee in January.

[9:58:31 AM](#)

REPRESENTATIVE GRUENBERG said the three-year/three dividend plan is an attempt to solve the dilemma of proving that a person in the military who has been absent from the state for a long time is indeed a resident of Alaska. The bill attempts to solve this issue by making the determination based on the length of residency before the military person left the state. He asked if that would more likely survive constitutional challenge if there were legislative finding addressing this unusual problem and solution. He then asked whether there would be any other constitutionally permissible way to establish bona fide residency. He surmised that it is not so much the three dividends that are of concern, but rather the establishing of ties to the state.

REPRESENTATIVE FEIGE confirmed that is correct.

[10:00:30 AM](#)

MR. BRANCH responded that although findings are always helpful, the court always looks at the language itself to determine whether there is a constitutional problem. He offered his understanding that the bill sponsor is trying to come up with a way to allow certain people to continue to receive a permanent fund on the understanding that they are continuing to be and wish to be considered residents of Alaska.

REPRESENTATIVE GRUENBERG suggested there could be some way to have these people swear, under penalty of perjury, that they would come back to Alaska.

MR. BRANCH said that already may be a part of the application process, but said he thinks some objective standards would be helpful.

[HB 190 was held over.]

[10:02:27 AM](#)

CHAIR LYNN announced that this was likely the last House State Affairs Standing Committee meeting of the session, and he thanked the committee, staff, Legislative Information Office technician and committee secretary for their work.

[10:02:44 AM](#)

ADJOURNMENT

There being no further business before the committee, the House State Affairs Standing Committee meeting was adjourned at 10:03 a.m.