

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

March 18, 2013

1:04 p.m.

MEMBERS PRESENT

Representative Wes Keller, Chair
Representative Bob Lynn, Vice Chair
Representative Neal Foster
Representative Gabrielle LeDoux
Representative Charisse Millett
Representative Lance Pruitt
Representative Max Gruenberg

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

CONFIRMATION HEARING(S):

Commission on Judicial Conduct

James Christopher Brown - Anchorage

- CONFIRMATION(S) ADVANCED

Select Committee on Legislative Ethics

Gary J. Turner - Soldotna

- CONFIRMATION(S) ADVANCED

HOUSE BILL NO. 104

"An Act relating to election practices and procedures; relating to the election of an advisory school board in a regional educational attendance area; and providing for an effective date."

- MOVED CSHB 104(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 140

"An Act relating to the information that must be included with certain notices provided for the proposed adoption, amendment, or repeal of a regulation."

- HEARD & HELD

HOUSE BILL NO. 57

"An Act adopting the Alaska Entity Transactions Act; relating to changing the form of entities, including corporations, partnerships, limited liability companies, business trusts, and other organizations; amending Rule 79, Alaska Rules of Civil Procedure, and Rules 602(b)(2), 602(c), and 605.5, Alaska Rules of Appellate Procedure; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: HB 104

SHORT TITLE: ELECTION PROCEDURES; REAA ADVISORY BOARDS

SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

02/06/13	(H)	READ THE FIRST TIME - REFERRALS
02/06/13	(H)	STA, JUD
02/19/13	(H)	STA AT 8:00 AM CAPITOL 106
02/19/13	(H)	Moved CSHB 104(STA) Out of Committee
02/19/13	(H)	MINUTE(STA)
02/20/13	(H)	STA RPT CS(STA) NT 5DP 2NR
02/20/13	(H)	DP: HUGHES, ISAACSON, GATTIS, KREISS-TOMKINS, LYNN
02/20/13	(H)	NR: MILLETT, KELLER
02/27/13	(H)	JUD AT 1:00 PM CAPITOL 120
02/27/13	(H)	Heard & Held
02/27/13	(H)	MINUTE(JUD)
03/04/13	(H)	JUD AT 1:00 PM CAPITOL 120
03/04/13	(H)	Scheduled But Not Heard
03/11/13	(H)	JUD AT 1:00 PM CAPITOL 120
03/11/13	(H)	Heard & Held
03/11/13	(H)	MINUTE(JUD)
03/15/13	(H)	JUD AT 1:00 PM CAPITOL 120
03/15/13	(H)	Moved CSHB 104(JUD) Out of Committee
03/15/13	(H)	MINUTE(JUD)
03/18/13	(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 140

SHORT TITLE: NOTICE FOR REGULATION ADOPTION

SPONSOR(s): REINBOLD

02/22/13	(H)	READ THE FIRST TIME - REFERRALS
02/22/13	(H)	JUD

03/18/13

(H)

JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

JAMES CHRISTOPHER BROWN, Appointee
Commission on Judicial Conduct
Anchorage, Alaska

POSITION STATEMENT: Testified as an appointee to the Commission on Judicial Conduct.

GARY J. TURNER, Appointee
Select Committee on Legislative Ethics
Soldotna, Alaska

POSITION STATEMENT: Testified as an appointee to the Select Committee on Legislative Ethics.

GAIL FENUMIAI, Director
Division of Elections
Office of the Lieutenant Governor
Juneau, Alaska

POSITION STATEMENT: During hearing of HB 104, answered questions.

MARGERET PATON WALSH, Assistant Attorney General
Labor and State Affairs Section
Civil Division (Anchorage)
Department of Law
Anchorage, Alaska

POSITION STATEMENT: During hearing of HB 104, answered questions.

TED MADSEN, Staff
Representative Gruenberg
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: During hearing of HB 104, explained Amendment 5.

REPRESENTATIVE LORA REINBOLD
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Spoke as the sponsor of HB 140.

ROBERT PEARSON, Staff
Representative Lora Reinbold
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 140 on behalf of the sponsor, Representative Reinbold.

CATHY P. FOERSTER, Chair
Alaska Oil & Gas Conservation Commission (AOGCC)
Department of Administration
Anchorage, Alaska

POSITION STATEMENT: Expressed concern with HB 140.

ACTION NARRATIVE

[1:04:43 PM](#)

CHAIR WES KELLER called the House Judiciary Standing Committee meeting to order at 1:04 p.m. Representatives Keller, Gruenberg, Foster, LeDoux, Lynn, and Pruitt were present at the call to order. Representative Millett arrived as the meeting was in progress.

Confirmation Hearing(s):
Commission on Judicial Conduct

[1:05:08 PM](#)

CHAIR KELLER announced that the first order of business would be consideration of the appointment of James Christopher Brown to the Commission on Judicial Conduct.

[1:05:34 PM](#)

JAMES CHRISTOPHER BROWN, Appointee, Commission on Judicial Conduct, related his appreciation for the opportunity to serve a second term on the Commission on Judicial Conduct as he was originally appointed in 2009. He related that he has enjoyed his education as to how the Alaska court system works and benefited from his interaction with the attorneys and judges. Furthermore, he opined that he's been able to make a significant and worthwhile contribution to the analysis and review of cases. Mr. Brown further opined that the commission does an excellent job of representing and protecting both the rights of the state's citizens as well as the rights and obligations of the officers of the court. Therefore, Mr. Brown said he looked forward to continuing to serve on the Commission on Judicial Conduct.

[1:06:59 PM](#)

REPRESENTATIVE GRUENBERG inquired as to how many cases annually the commission finds probable cause with which to proceed.

MR. BROWN estimated that it's a couple to a few cases each year as the overwhelming preponderance of the complaints address legal issues rather than judicial ethics. In further response to Representative Gruenberg, Mr. Brown said he didn't find any cases that appear fabricated or vexatious and vindictive against judges who render adverse.

[1:08:34 PM](#)

REPRESENTATIVE LEDOUX inquired as to the percentage of cases, from those in which probable cause was found to proceed, were found to have engaged in inappropriate conduct.

MR. BROWN, noting that he doesn't have the statistics before him, relayed that the commission finding probable cause doesn't always result in what he considered extreme or very serious consequences, although any informal reprimand or consideration would be considered as such. Mr. Brown estimated that clearly more than half of those cases in which the commission finds probable cause and wishes to further consider result in some sort of action, whether it be formal or informal action.

[1:09:45 PM](#)

CHAIR KELLER reminded members that [signing the reports regarding appointments to boards and commissions in no way reflects individual members' approval or disapproval of the appointees] and that the nominations are merely forwarded to the full legislature for confirmation or rejection.

Select Committee on Legislative Ethics

[1:10:18 PM](#)

CHAIR KELLER announced that the next order of business would be consideration of the appointment of Gary Turner to the Select Committee on Legislative Ethics.

[1:10:25 PM](#)

GARY J. TURNER, Appointee, Select Committee on Legislative Ethics, began by informing the committee that he has spent seven years on the Select Committee on Legislative Ethics and if

confirmed this would be his third term. He noted that two years ago he served as the chair of the Select Committee on Legislative Ethics and is presently the vice chair. He related that he enjoys working with the committee, which he characterized as a group of dedicated people and executive director, Joyce Anderson. The Selection Committee on Legislative Ethics, he opined, provides very good guidance to legislators and staff. The Select Committee on Legislative Ethics is doing a good job, he stated, particularly when one considers how difficult it can be to decipher statute. Mr. Turner mentioned that after seven years on the committee he has learned there are many shades of grey. In closing, Mr. Turner said he looked forward to continuing to serve on the Select Committee on Legislative Ethics.

[1:12:08 PM](#)

REPRESENTATIVE LYNN inquired as what Mr. Turner taught at the Air Force Academy.

MR. TURNER answered that he taught literature and English composition.

[1:12:27 PM](#)

REPRESENTATIVE GRUENBERG asked whether Mr. Turner found many cases brought forth maliciously or without any basis in fact.

MR. TURNER replied no, recalling that there may have been a couple such cases four to five years ago when the executive branch was undergoing scrutiny that resulted in a number of ethics complaints.

[1:13:42 PM](#)

REPRESENTATIVE MILLETT noted that she sits on the Select Committee on Legislative Ethics with Mr. Turner, whom she said does a great job and is professional and efficient. She opined that it's nice to have a member from outside the legislative environment.

[1:14:17 PM](#)

CHAIR KELLER reminded members that [signing the reports regarding appointments to boards and commissions in no way reflects individual members' approval or disapproval of the

appointees] and that the nominations are merely forwarded to the full legislature for confirmation or rejection.

[1:14:39 PM](#)

REPRESENTATIVE LYNN made a motion to forward the names of James Christopher Brown for the Commission on Judicial Conduct and the name of Gary J. Turner for the Select Committee on Legislative Ethics. There being no objection, the names were forwarded.

HB 104-ELECTION PROCEDURES; REAA ADVISORY BOARDS

[1:15:04 PM](#)

CHAIR KELLER announced that the next order of business would be HOUSE BILL NO. 104, "An Act relating to election practices and procedures; relating to the election of an advisory school board in a regional educational attendance area; and providing for an effective date." [Before the committee was CSHB 104, Version 28-GH1983\P, Bullard, 3/12/13, as amended, that was reported from committee on 3/15/13.]

[1:15:31 PM](#)

REPRESENTATIVE LYNN moved that the committee rescind its previous action in moving CSHB 104, Version 28-GH1983\P, Bullard, 3/12/13, as amended, from committee on 3/15/13.

[1:15:53 PM](#)

REPRESENTATIVE GRUENBERG objected for discussion purposes.

CHAIR KELLER explained that that the committee [in reporting Version P, as amended, from committee] took action on [Section 9] of the legislation, which has huge policy ramifications. He opined that [the changes to Section 9] were not sufficiently discussed or debated. Furthermore, he related his understanding that [Section 9] is unnecessary as it's a clarification of the current process due to federal law. Currently, an application is made available for absentee ballots for those Alaskans who are in the military or overseas as a special accommodation so that they can apply electronically. The aforementioned is based on what the federal law requires. Chair Keller expressed the need to delete Section 9 of Version P in its entirety as it's unnecessary.

CHAIR KELLER disclosed that during the last election his staff regularly acquired from the Division of Elections the list of those individuals who had applied electronically for an absentee ballot. The goal was to isolate any new applicants so that campaign materials could be sent to the new applicants. The aforementioned technique, one that a number of candidates may use, requires some sophistication in terms of using the database. He opined that [Section 9] introduces a campaign strategy into HB 104, which was not intended. If [Section 9] is left in HB 104 without amendment, he suggested that it would provide an advantage to incumbents who would know to watch for applied absentee ballots the entire year whereas someone entering the election process later may not have the personnel or sophistication to [track/target new applicants]. Therefore, Chair Keller related his preference to delete [Section 9].

[1:19:24 PM](#)

REPRESENTATIVE GRUENBERG related that although he will oppose the motion to delete [Section 9], as a matter of courtesy he withdrew his objection to the motion to rescind the committee's action in reporting CSHB 104, Version P, as amended, from committee on 3/15/13.

There being no further objection, CSHB 104, Version P, as amended on 3/15/13, was before the committee.

[1:19:57 PM](#)

REPRESENTATIVE LYNN made a motion to adopt Conceptual Amendment 1, which would delete Section 9 in its entirety from Version P [as amended on 3/15/13].

REPRESENTATIVE GRUENBERG objected and inquired as to the Division of Elections' position.

[1:21:44 PM](#)

GAIL FENUMIAI, Director, Division of Elections, Office of the Lieutenant Governor, explained that the division's intent with Section 9 was to harmonize with federal law, Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), which allows military and overseas voters to apply anytime during the calendar year to receive their ballot electronically whereas state law and regulation only allow non UOCAVA to apply within the 15-day window prior to an election. The division thought it would be a good idea for state law to match federal law.

However, it was not in the state code for the previous election cycles and the division will continue to perform its business as it has in the past.

CHAIR KELLER commented that the matter [addressed in Section 9], due to the huge policy ramifications, could be addressed in another bill. He then related his understanding that the state is complying with federal law under the state's existing law.

MS. FENUMIAI confirmed that to be the case.

[1:23:15 PM](#)

REPRESENTATIVE GRUENBERG asked whether the division was operating without state statutory authority when the language on page 4, lines 20-25, wasn't included.

MS. FENUMIAI pointed out that as currently written AS 15.20.066 specifies that the division can write regulations to address the use of electronic ballots. The statute further specifies that the division should consider the timelines and comply with the same time period that is allowed for absentee in-person voting, which is 15 days prior to the election. The aforementioned has been the state's interpretation of how to handle applications for receipt of ballots electronically. The Military and Overseas Voters Empowerment Act (MOVE Act) states that military uniformed citizens are allowed to apply for receipt of an electronic ballot anytime during the calendar year, which was not included in state law. Therefore, the state followed the federal law [to be in compliance with the MOVE Act]. For non-UOCAVA voters the state law was followed.

[1:24:48 PM](#)

REPRESENTATIVE GRUENBERG again asked whether the division has been operating without state statutory authority. He then asked whether the federal government giving [military citizens living overseas] the right to vote automatically empowers the Division of Elections to give those voters additional time or is legislation such as HB 104 necessary to ensure that the division isn't violating state law.

MS. FENUMIAI specified that the division's interpretation, in consultation with the Department of Law (DOL), is that the division doesn't need it to be in state law. She likened it to the 45-day ballot mailing for UOCAVA voters, which isn't in state law but is in federal law and the state is complying with

that federal law. Although HB 104 [as currently written, Version P as amended on 3/15/13] would insert [the 45-day ballot mailing for UOCAVA voters] in state statute so that it's clear that it must be done, it doesn't have to be included in state code because it's in federal law.

REPRESENTATIVE GRUENBERG stated that it's a core legal question as to whether there is solid authority that gives the division the legal right to do what it's doing without this language [proposed in Version P].

CHAIR KELLER disagreed, and echoed Ms. Fenumiai's understanding that it's not necessary to include it in state law.

[1:27:13 PM](#)

REPRESENTATIVE LEDOUX related her understanding that the division is [allowing uniformed services voters and overseas voters to apply to vote an absentee ballot electronically at any time during a calendar year] pursuant to federal law. She questioned whether that [federal law would only apply] to federal elections or whether it would apply to purely state elections.

MS. FENUMIAI informed the committee that in Alaska any election that involves a race for federal office includes every primary and general election.

REPRESENTATIVE GRUENBERG expressed the need to have testimony from DOL as there is a difference between saying a federal requirement for voting in state elections versus federal elections. He offered his understanding that the language "in federal elections" only refers to those elections for federal office.

[1:28:54 PM](#)

REPRESENTATIVE LEDOUX surmised that Ms. Fenumiai has answered that question because each year there is a race for Congress and thus on the [state] ballot there is a federal question.

REPRESENTATIVE GRUENBERG offered his understanding that usually federal laws only apply to election to federal office, but asked if that's the case.

MS. FENUMIAI clarified, "It's for an election in which there's a race for a federal office. The federal law covers federal

offices in an election. And in the State of Alaska, the primary and general election always have a federal office on the ballot. The U.S. Congressional race is always on the primary and general election ballot."

REPRESENTATIVE GRUENBERG asked whether Ms. Fenumiai has an authority for that interpretation that she can provide.

MS. FENUMIAI replied no, but noted that an attorney is being contacted for assistance.

[1:30:16 PM](#)

MS. FENUMIAI explained that the state has been complying with the federal MOVE Act, although those statutes haven't been in the state's code. The state will continue to comply with the MOVE Act even if those statutes aren't placed in state code because the division is held accountable for following federal law. In response to a question, Ms. Fenumiai clarified that the MOVE Act is an amendment to UOCAVA. After confirming that the division is following [the MOVE Act] without specific state statutory authority, Ms. Fenumiai said there is codification in state law to clarify that ballots for military and overseas uniformed citizens are mailed 45 days prior to the election.

[1:32:19 PM](#)

REPRESENTATIVE PRUITT asked whether [the MOVE Act] is different than the Voting Rights Act.

MS. FENUMIAI replied no. She explained that federal assistance voting folks encouraged the division to insert the 45-day ballot mailing into state law. However, she confirmed that the Voting Rights Act provisions aren't in state law because they are in federal law.

The committee took an at-ease from 1:33 p.m. to 1:50 p.m.

[1:50:26 PM](#)

MARGERET PATON WALSH, Assistant Attorney General, Labor and State Affairs Section, Civil Division (Anchorage), Department of Law, related her understanding that the bill provides for the same deadline, a 15-day deadline for an absentee ballot, unless the individual is a uniformed services voter or overseas voter who have a year. She related her further understanding that

[Version P, as amended] would extend the deadline of a year to everyone.

CHAIR KELLER clarified that the committee is contemplating removing Section 9 from [Version P, as amended]. He offered his understanding that the question is whether or not it's necessary for state law to authorize actions, given that the state is already following the federal law.

MS. PATON WALSH explained that the federal law provides for different deadlines and rules for uniformed voters overseas and the state must comply with those regardless of state law. She characterized it as a straight-forward supremacy issue, and therefore the state doesn't have any freedom to do anything differently than what federal law requires. She offered her understanding that the changes were simply to clarify for voters what is happening because it creates confusion when state law provides for something different, but that's not actually how it works. Therefore, it's an attempt to harmonize the state law so that it says what will actually happen because that's what will happen under federal law. Ms. Paton Walsh opined, therefore, that the change doesn't have to be made, but it's helpful for statutes to specify what's really going to happen.

[1:53:46 PM](#)

REPRESENTATIVE GRUENBERG asked whether the federal law applies to all races on a ballot that contain races for federal office.

MS. PATON WALSH, noting that the difficulty is the single ballot, offered her belief that one could make the argument that the state doesn't have to comply with federal law for elections that are entirely state elections. However, she cautioned that the reality is that the division doesn't hold many if any elections in which there isn't a federal race on the ballot. An administrative nightmare is created by imposing different rules on different races in an election that takes place on the same day. She questioned why that would occur, even if technically it's an entirely local/state election in which the federal rules might not apply.

[1:55:30 PM](#)

REPRESENTATIVE GRUENBERG asked whether, as a matter of law, the federal law would apply to state races.

MS. PATON WALSH answered that she didn't know for sure, but offered her sense that those federal laws apply to federal elections not state elections. However, she maintained that federal law might apply.

REPRESENTATIVE GRUENBERG expressed the need to be sure that no argument/legal question can be made to void an election.

MS. PATON WALSH said she was not sure of the hypothetical situation in which an election could be held invalid as a result of the presence or absence of this language [in Section 9]. The reason to include [Section 9], she opined, is that all of the state's elections effectively involve some kind of federal office and there is no desire to run two separate election tracks. Furthermore, all of the elections will provide absentee-ballot opportunities as required by federal law, which provides more time to apply than Alaska state law. Since the state is going to comply with the federal law, it would be easier and less confusing for voters to have the state law specify what the Division of Elections is actually doing.

[1:58:48 PM](#)

CHAIR KELLER surmised that Representative Gruenberg would maintain his objection [to the adoption of Conceptual Amendment 1, which would delete Section 9 from Version P, as amended on 3/15/13].

[1:59:27 PM](#)

A roll call vote was taken. Representatives Pruitt, Foster, LeDoux, Lynn, and Keller voted in favor of the adoption of Conceptual Amendment 1. Representative Gruenberg voted against it. Therefore, Conceptual Amendment 1 was adopted by a vote of 5-1.

[2:00:12 PM](#)

REPRESENTATIVE GRUENBERG made a motion to adopt Conceptual Amendment 2, which would insert the language [of Section 9] as it appears on page 4 of Version P prior to the adoption of Amendment 3 on 3/15/13.

REPRESENTATIVE LYNN objected.

CHAIR KELLER stated that he would be voting against Conceptual Amendment 2 as it's unnecessary.

[2:01:27 PM](#)

REPRESENTATIVE GRUENBERG pointed out that what are being addressed are the rights of service men and women and people living overseas to vote. The aforementioned is sufficiently important that the language should be inserted into the legislation, particularly as there is no harm/risk in doing so. Without the language, there is the risk of a problem. He questioned why one would invite a problem when there is no reason to do so to do anything that might jeopardize their vote.

REPRESENTATIVE PRUITT, returning to the discussion on the Voting Rights Act, opined that there are voting related items not in statute that the state has to uphold. Therefore, he characterized [Conceptual Amendment 2] as unnecessary and related that he would be opposing Conceptual.

REPRESENTATIVE LYNN emphasized his belief that no member of the committee wants to jeopardize the voting rights of the U.S. military located anywhere in the world.

[2:03:09 PM](#)

A roll call vote was taken. Representative Gruenberg voted in favor of Conceptual Amendment 2. Representatives Pruitt, Foster, LeDoux, Lynn, and Keller voted against it. Therefore, Conceptual Amendment 2 failed to be adopted by a vote of 1-5.

[2:03:38 PM](#)

REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 3, labeled 28-GH1983\P.3, Bullard, 3/14/13, which read:

Page 5, following line 17:

Insert a new bill section to read:

"* **Sec. 12.** AS 15.20.081(i) is repealed and reenacted to read:

(i) An absentee ballot application submitted by a qualified voter or on behalf of a qualified voter is valid through the two general elections following the date the application is submitted. If a voter casts an absentee ballot in accordance with (d) - (f) of this section, the voter's absentee ballot application remains valid through the two general elections following the election in which the ballot was cast. However, nothing in this subsection requires the

director or an election supervisor to send an absentee ballot to a voter after the director or election supervisor has received actual notice that mail sent to the permanent mailing address of the voter, or a different address provided by the voter, is undeliverable to the voter at that address."

Renumber the following bill sections accordingly.

Page 13, line 21:

Delete ", 15.20.081(i),"

REPRESENTATIVE PRUITT objected. He recalled testimony last week "that the Division of Elections has found in many cases when we've done two out that we're getting a lot of returns coming back on that second one." He then opined that it's best to have voters apply for an absentee ballot for each election for which they wish to obtain an absentee ballot.

The committee took a brief at-ease.

[2:05:39 PM](#)

CHAIR KELLER ruled Amendment 3 out of order because it's part of another bill, HB 12, currently in the House State Affairs Standing Committee.

REPRESENTATIVE GRUENBERG appealed the ruling of the chair and explained if the ruling of the chair prevails, [Amendment 3] won't be debated on its merit.

CHAIR KELLER reiterated that Amendment 3 is out of order.

REPRESENTATIVE LYNN invited Representative Gruenberg to provide testimony on HB 12 when and if the House State Affairs Standing Committee takes it up.

REPRESENTATIVE GRUENBERG withdrew his challenge of the ruling of the chair and expressed the hope that HB 12 is scheduled for a hearing in the House State Affairs Standing Committee.

[2:07:47 PM](#)

REPRESENTATIVE GRUENBERG then asked Chair Keller to reconsider his ruling and allow Amendment 3 to be divided such that the portion not in HB 12 can be considered.

CHAIR KELLER said he wouldn't allow Amendment 3 to be divided, but suggested that a new amendment could be offered if Representative Gruenberg so desired.

2:09:02 PM

REPRESENTATIVE GRUENBERG made a motion to adopt Conceptual Amendment 4, as follows:

Page 13, line 21:

Delete ", 15.20.081(i),"

REPRESENTATIVE GRUENBERG informed the committee that AS 15.20.081(i) read as follows:

(i) An absentee ballot application submitted by an absent uniformed services voter or by an absent overseas voter qualifying under AS 15.05.011 is valid through the next two regularly scheduled general elections for federal office after the date the application is submitted. In this subsection, "absent uniformed services voter" has the meaning given in 42 U.S.C. 1973ff-6.

REPRESENTATIVE GRUENBERG pointed out that Conceptual Amendment 4 would leave existing language in statute, which he opined is important to ensure that military and overseas voters can apply for absentee ballot applications through the next two regularly scheduled general elections for federal office. He offered his understanding from Ms. Fenumiai that the reason those [statute] aren't in the federal law is because it was viewed as too administratively difficult to apply. However, Representative Gruenberg opined that the small amount of additional administrative work is well worth providing [uniformed military and overseas voters] the right to vote.

The committee took an at-ease from 2:11 p.m. to 2:17 p.m.

2:17:13 PM

CHAIR KELLER objected to Conceptual Amendment 4 recalling that the Division of Elections had testified that [AS 15.20.081(i)] isn't necessary.

REPRESENTATIVE PRUITT offered his recollection that the division had testified at the [3/15/13] hearing regarding the difficulty of following [uniformed military and overseas voters] over the

course of two general elections as they're a transient population. He highlighted that the federal government has already eliminated this provision.

[2:18:38 PM](#)

MS. FENUMIAI explained that the division is proposing this repeal of AS 15.20.081(i) because the federal government originally included this provision in the MOVE Act, but repealed it after finding that military populations are very transient and the address provided in the first year may not be a valid address two years later. She recalled having over 900 ballots to UOCAVA voters returned as undeliverable with no forwarding address following the primary. During the 2012 elections, of the over 2,600 voters over 1,600 qualified to have their application good for two general elections either not return their ballot or it was returned as undeliverable. In response to a question, Ms. Fenumiai estimated that of the little over 2,600 voters who qualified for the extended absentee ballot application, about 1,000 ballots were returned to and counted by the division because about 1,600 were returned as undeliverable or were not returned at all. Following the primary, over 900 ballots were returned as undeliverable. She highlighted that the division does make an attempt to contact these [uniformed military and overseas] voters at the beginning of the year in an attempt to confirm/update the mailing address. Because the law exists the division must continue to send these voters [for whom the inquiry was returned as undeliverable or wasn't returned at all] a ballot.

[2:21:05 PM](#)

REPRESENTATIVE GRUENBERG recalled that per Ms. Fenumiai's request the following language in Conceptual Amendment 4 was included:

However, nothing in this subsection requires the director or an election supervisor to send an absentee ballot to a voter after the director or election supervisor has received actual notice that mail sent to the permanent mailing address of the voter, or a different address provided by the voter, is undeliverable to the voter at that address.

REPRESENTATIVE GRUENBERG asked whether simply adding to [AS 15.20.081(i)] the abovementioned language in Conceptual Amendment 4 would satisfy her objection and ease the

administrative burden on the division and not disenfranchise 1,000 voters.

MS. FENUMIAI opined that no voter would ever be disenfranchised because every voter has the opportunity to apply [for an absentee ballot] at the beginning of every calendar year for all elections in a calendar year. Furthermore, it's a minor conflict of state and federal law as the federal government repealed the provision and the federal voting assistance program, the sole responsibility of which is to protect the rights of military and overseas voters, encouraged the repeal of the MOVE Act.

[2:23:12 PM](#)

CHAIR KELLER maintained his objection.

A roll call vote was taken. Representative Gruenberg voted in favor of Conceptual Amendment 4. Representatives Lynn, Millett, Pruitt, Foster, LeDoux, and Keller voted against it. Therefore, Conceptual Amendment 4 failed to be adopted by a vote of 1-6.

[2:23:39 PM](#)

CHAIR KELLER informed the committee that the amendment in committee member's packets labeled 28-GH1983\P.2, Bullard, 3/14/13, is in essence HB 11, which is in the possession of the House State Affairs Standing Committee.

[2:23:56 PM](#)

REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 5, labeled 28-GH1983\P.6, Bullard, 3/14/13, which read:

Page 1, line 1, following "**procedures;**":
Insert "**relating to voter registration;**"

Page 2, following line 3:
Insert new bill sections to read:
"*** Sec. 3.** AS 15.07.050(a) is amended to read:
(a) Registration may be made
(1) in person before a registration official or through a voter registration agency;
(2) by another individual on behalf of the voter if the voter has executed a written general power of attorney or a written special power of

attorney authorizing that other individual to register the voter;

(3) by mail; [OR]

(4) online; or

(5) by facsimile transmission, scanning, or other [ANOTHER] method of electronic transmission that the director approves.

* **Sec. 4.** AS 15.07.055(e) is amended to read:

(e) The director shall enter into an agreement with the Department of Administration and the Department of Revenue to match identifying information provided by a voter who initially registers by mail, online, or by facsimile or other electronic transmission approved by the director under AS 15.07.050 with existing identification records

(1) maintained by the administrative component of the Department of Administration that administers motor vehicle and driver's license laws and by the administrative component of the Department of Revenue that administers the permanent fund dividend laws; and

(2) bearing the same identifying number, name, and date of birth provided on the registration.

* **Sec. 5.** AS 15.07.060(e) is amended to read:

(e) For an applicant requesting initial registration by mail, online, or by facsimile or other electronic transmission approved by the director under AS 15.07.050, the director shall verify the information provided in compliance with (a)(2) and (3) of this section through state agency records described in AS 15.07.055(e). If the applicant cannot comply with the requirement of (a)(2) of this section because the applicant has not been issued any of the listed numbers, the applicant may instead submit a copy of one of the following forms of identification: a driver's license, state identification card, current and valid photo identification, birth certificate, passport, or hunting or fishing license.

* **Sec. 6.** AS 15.07.070(b) is amended to read:

(b) To register by mail or by facsimile, scanning, or other electronic transmission approved by the director under AS 15.07.050, the director, the area election supervisor, or a voter registration agency shall furnish, at no cost to the voter, forms prepared by the director on which the registration information required under AS 15.07.060 shall be inserted by the voter, by a person on behalf of the

voter if that person is designated to act on behalf of the voter in a power of attorney, or by a person on behalf of the voter if the voter is physically incapacitated. For registration online under AS 15.07.050(a)(4), the director shall provide an electronic version of the forms on the Internet website of the division. The director may require proof of identification of the applicant as required by regulations adopted by the director under AS 44.62 (Administrative Procedure Act). Upon receipt and approval of the completed registration forms, the director or the election supervisor shall forward to the voter an acknowledgment, and the voter's name shall immediately be placed on the master register. If the registration is denied, the voter shall immediately be informed in writing that registration was denied and the reason for denial. When identifying information has been provided by the voter as required by this chapter, the election supervisor shall forward to the voter a registration card.

* **Sec. 7.** AS 15.07.070(c) is amended to read:

(c) The names of persons submitting completed registration forms by mail that are postmarked at least 30 days before the next election, or submitting completed registration forms online or by facsimile or other electronic transmission approved by the director under AS 15.07.050 that are received at least 30 days before the next election, shall be placed on the official registration list for that election. If a registration form received by mail less than 30 days before an election does not have a legible and dated postmark, the name of the person submitting the form shall be placed on the official registration list for that election if the form was signed and dated by the person at least 30 days before the election and if the form is received by the director or election supervisor at least 25 days before the election. The name of a person submitting a completed registration form by mail, online, or by facsimile or other electronic transmission that does not meet the applicable requirements of this subsection may not be placed on the official registration list for that election but shall be placed on the master register after that election.

* **Sec. 8.** AS 15.07.070(f) is amended to read:

(f) Incomplete or inaccurate registration forms may not be accepted. A person who submitted an

incomplete or inaccurate registration form may register by reexecuting and resubmitting a registration form in person, by mail, online, or by facsimile or other electronic transmission approved by the director under AS 15.07.050. The requirements of (c) or (d) of this section apply to a registration form resubmitted under this subsection."

Renumber the following bill sections accordingly.

Page 4, following line 5:

Insert a new bill section to read:

"* **Sec. 14.** AS 15.15.225(b) is amended to read:

(b) An election official may waive the identification requirement if the election official knows the identity of the voter. The identification requirement may not be waived for voters who are first-time voters who initially registered by mail, online, or by facsimile or other electronic transmission approved by the director under AS 15.07.050, and did not provide identification as required in AS 15.07.060."

Renumber the following bill sections accordingly.

Page 5, following line 17:

Insert a new bill section to read:

"* **Sec. 19.** AS 15.20.081(f) is amended to read:

(f) The director shall require a voter casting an absentee ballot by mail to provide proof of identification or other information to aid in the establishment of the voter's identity as prescribed by regulations adopted under AS 44.62 (Administrative Procedure Act). If the voter is a first-time voter who initially registered by mail, online, or by facsimile or other electronic transmission approved by the director under AS 15.07.050 and has not met the identification requirements set out in AS 15.07.060, the voter must provide one of the following forms of proof of identification:

(1) a copy of a driver's license, state identification card, current and valid photo identification, birth certificate, passport, or hunting or fishing license; or

(2) a copy of a current utility bill, bank statement, paycheck, government check, or other government document; an item provided under this

paragraph must show the name and current address of the voter."

Renumber the following bill sections accordingly.

Page 5, following line 29:

Insert a new bill section to read:

"* **Sec. 21.** AS 15.20.203(b) is amended to read:

(b) An absentee ballot may not be counted if

(1) the voter has failed to properly execute the certificate;

(2) an official or the witnesses authorized by law to attest the voter's certificate fail to execute the certificate, except that an absentee ballot cast in person and accepted by an absentee voting official or election supervisor may be counted despite failure of the absentee voting official or election supervisor to properly sign and date the voter's certificate as attesting official as required under AS 15.20.061(c);

(3) the ballot is not attested on or before the date of the election;

(4) the ballot, if postmarked, is not postmarked on or before the date of the election;

(5) after the day of election, the ballot was delivered by a means other than mail; or

(6) the voter voted

(A) in person and is a

(i) first-time voter who initially registered by mail, online, or by facsimile or other electronic transmission approved by the director under AS 15.07.050, has not provided the identification required by AS 15.15.225(a), was not eligible for waiver of the identification requirement under AS 15.15.225(b), and has not provided the identifiers required in AS 15.07.060(a)(2) and (3) that can be verified through state agency records described in AS 15.07.055(e); or

(ii) voter other than one described in (i) of this subparagraph, did not provide identification described in AS 15.15.225(a), was not personally known by the election official, and has not provided the identifiers required in AS 15.07.060(a)(2) and (3); or

(B) by mail, online, or electronic transmission, is a first-time voter who initially registered by mail or by facsimile or other electronic transmission approved by the director under

AS 15.07.050 to vote, has not met the identification requirements set out in AS 15.07.060, and does not submit with the ballot a copy of a

(i) driver's license, state identification card, current and valid photo identification, birth certificate, passport, or hunting or fishing license; or

(ii) current utility bill, bank statement, paycheck, government check, or other government document; an item described in this sub-subparagraph must show the name and current address of the voter."

Renumber the following bill sections accordingly.

Page 6, following line 18:

Insert a new bill section to read:

"* **Sec. 24.** AS 15.20.207(b) is amended to read:

(b) A questioned ballot may not be counted if the voter

(1) has failed to properly execute the certificate;

(2) is a first-time voter who initially registered by mail, online, or by facsimile or other electronic transmission approved by the director under AS 15.07.050, has not provided the identification required by AS 15.15.225(a), was not eligible for waiver of the identification requirement under AS 15.15.225(b), and has not provided the identifiers required in AS 15.07.060(a)(2) and (3) that can be verified through state agency records described in AS 15.07.055(e); or

(3) is a voter other than one described in (2) of this subsection, did not provide identification described in AS 15.15.225(a), was not personally known by the election official, and has not provided the identifiers required in AS 15.07.060(a)(2) and (3)."

Renumber the following bill sections accordingly.

CHAIR KELLER objected.

[2:24:46 PM](#)

TED MADSEN, Staff, Representative Gruenberg, Alaska State Legislature, explained that Amendment 5 would allow Alaskan citizens to register to vote online and would amend a number of provisions in Title 15. According to the National Conference of

State Legislatures (NCSL), 15 states have already adopted online voter registration and another 14 have similar legislation pending. He noted that Arizona was the first state to adopt online voter registration in 2002, and it has resulted in a cost savings according to a Pew Center on the States study. The study, which focused on Arizona and Washington, found paper voter registration cost \$.83 [per ballot] to process whereas online voter registration cost \$.03 [per ballot]. Mr. Madsen highlighted that online voter registration is a bipartisan/nonpartisan cost savings measure that also speeds the process by which citizens are allowed to register to vote.

[2:26:53 PM](#)

REPRESENTATIVE MILLETT inquired as to the cost of implementing the program as outlined in Amendment 5 and inquired as to whether there is a fiscal note.

MR. MADSEN responded that he doesn't have a fiscal note for the amendment.

[2:27:22 PM](#)

REPRESENTATIVE PRUITT characterized the proposal in Amendment 5 as a huge policy change, which he would oppose due to the security aspect of it. There is a lot of potential for fraud via the online voting system. He informed the committee that the National Institute of Standards and Technology has advised voting against online voting. He announced that he will be voting against Amendment 5.

CHAIR KELLER expressed disfavor with Amendment 5, which is lengthy and extensively changes the title to include registration and procedures that aren't included in the current bill put forth by the Division of Elections. He then requested that Representative Gruenberg withdraw Amendment 5 and introduce the concepts it embodies in another bill instead.

[2:29:42 PM](#)

REPRESENTATIVE GRUENBERG announced that he will not withdraw Amendment 5.

[2:31:02 PM](#)

REPRESENTATIVE GRUENBERG inquired as to the cost of the proposal embodied in Amendment 5.

MS. FENUMIAI said she didn't have an estimate of the cost at this time. In further response to Representative Gruenberg, Ms. Fenumiai said that she did not know of any true voter fraud issues.

[2:31:42 PM](#)

REPRESENTATIVE PRUITT opined that the initial registration is a bit different than voter fraud.

[2:32:08 PM](#)

REPRESENTATIVE MILLETT offered that although she is in favor of electronic voting and the state should move toward that, this bill isn't the appropriate vehicle. Furthermore, it's a larger issue than the House Judiciary Standing Committee can discuss. She then encouraged the amendment sponsor to introduce a bill about Internet voting.

[2:32:45 PM](#)

REPRESENTATIVE FOSTER agreed with Representative Millett's comments and expressed the desire to have the confidence that the concerns by Representative Pruitt are addressed, perhaps in a pilot program and a separate bill.

[2:33:40 PM](#)

REPRESENTATIVE GRUENBERG withdrew Amendment 5.

[2:34:41 PM](#)

REPRESENTATIVE LYNN moved to report CSHB 104, Version 28-GH1983\P, Bullard, 3/12/13, as amended [on 3/15/13 and today], out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, [new] CSHB 104(JUD) was reported from the House Judiciary Standing Committee.

HB 140-NOTICE FOR REGULATION ADOPTION

[2:35:14 PM](#)

CHAIR KELLER announced that the final order of business would be HOUSE BILL NO. 140, "An Act relating to the information that

must be included with certain notices provided for the proposed adoption, amendment, or repeal of a regulation."

[2:35:32 PM](#)

REPRESENTATIVE LORA REINBOLD, Alaska State Legislature, explained that HB 140 is intended to address what many consider to be too many regulations. The purpose of HB 140 is to make the government and the regulators aware of the impacts of the regulations. She opined that government agencies and regulators need to work collaboratively with businesses and communities and be reminded that they work for the people. Representative Reinbold then paraphrased from the written sponsor statement, which read:

Under current law, state agencies that propose changes to the Alaska Administrative Code, our state regulations, are required to disclose certain information about the regulation, including the reason for the proposed action, costs of implementation of the regulation to the adopting agency and the origin of the proposed regulation.

To provide better information about regulations that may significantly affect private individuals and businesses, other state agencies and local governments, House Bill 140 requires that regulation notices include information about estimated costs beyond those to the agency. In view of the increasing reach of the Washington D.C. into Alaska's affairs, the bill also requires that when the federal government is the reason for the regulation, the exact federal law, executive order or decision be identified in order for Alaskans to better understand government actions that affect their businesses and lives.

Open government is a great American and Alaskan tradition. I respectfully request your support for House Bill 140.

REPRESENTATIVE REINBOLD then highlighted the letters of support from the Council of Alaska Producers and the National Federation of Independent Business/Alaska in members' packets and stated that there are more letters of support to come.

[2:40:45 PM](#)

ROBERT PEARSON, Staff, Representative Lora Reinbold, Alaska State Legislature, paraphrased from the following sectional analysis, which read:

Sec. 1 Short title: "Regulation Impact Transparency Act." House Bill 140 will require additional information in state agency notices of proposed regulations, specifically to increase transparency of the proposal's fiscal impacts, including to the private sector.

Sec. 2 Under current Alaska Statutes 44.62.190(d) the agency is required to provide a "reason for the proposed action." If the reason given is "federal," HB 140 will require identification of the federal action that is the reason for the proposed regulation. It also adds a requirement to estimate compliance costs to private persons (including private businesses), other state agencies and municipalities.

Sec. 3 Applicability: applies to regulations proposals noticed on or after the effective date of this act.

MR. PEARSON then directed attention to the document entitled "What does HB 140 do?" and noted that it's a notice of proposed regulations. Page 2 of this document is what's known as additional regulations notice information under AS 44.62.190(d), which is the only part of the law that will be changed by HB 140. As specified on page 2, Section 2(1) will require the state agency supply a reference/citation of the federal law or other action that could include anything from an executive order to the combined federal register. The only other change HB 140 would make is to insert Section 2(3)(A),(B), and (C), which would require the estimated costs to private individuals, other state agencies, and municipalities will be included in the regulation notice.

[2:44:06 PM](#)

MR. PEARSON pointed out that the fiscal note for HB 140 is indeterminate and highlighted the fiscal note analysis language that says, "... more detail is needed as to whether the estimate required is a general estimate of impacts for a group or set of municipalities or for each individual municipality, etc." He offered his belief that the language in HB 140 is clear when it refers to an estimate of annual costs. He acknowledged, however, that it isn't a number encompassing every person in the state who may be impacted by the regulations but rather is simply an estimate of costs to the impacted entities. The

agencies should be able to make an estimate based on their knowledge of the regulations and community to which the regulations apply.

[2:45:57 PM](#)

CHAIR KELLER expressed favor with HB 140.

[2:46:22 PM](#)

REPRESENTATIVE MILLETT said she likes the concept of HB 140. She then asked who would be responsible for making the estimates of annual costs. If the Office of Management & Budget is responsible for making the estimates, she surmised that the workload would increase significantly or an economist would have to be added to each department.

MR. PEARSON answered that the sponsor doesn't anticipate major personnel requirements for this change. He noted that the regulations notice always has a signature at the bottom of a regulations specialist, assistant to the commissioner who, in effect, is the one who signs the estimate. However, in each department that promulgates regulations, there are those who have expertise in the area being regulated. The regulation specialist would ask for the necessary information to provide the estimate and put it in the notice. The thought is that the departments know the regulated community and who they're regulating and should know to some degree when they propose a regulation whether it will cost the public or other state agencies and include that information.

REPRESENTATIVE LEDOUX expressed interest in hearing whether departmental commissioners would anticipate an increase in staff.

MR. PEARSON deferred to others who may be better able to address that question.

[2:49:25 PM](#)

REPRESENTATIVE REINBOLD relayed that she is willing to work with DOL to develop language that would make this legislation possible. She then emphasized the need for the state to identify from where the regulations are coming and do long-term thinking. She mentioned that as chair of the Administrative Regulation Review Committee she plans to hold hearings on this issue, and thus there should be more information forthcoming.

CHAIR KELLER expressed interest in hearing from the Alaska Municipal League (AML), particularly since the legislature does impose mandates that cost [municipalities] money.

[2:50:51 PM](#)

REPRESENTATIVE LEDOUX inquired which department promulgates the most regulations.

MR. PEARSON answered that the Department of Commerce, Community & Economic Development (DCCED), with its licensing and professional boards, is the largest promulgator of regulations.

REPRESENTATIVE LEDOUX suggested that the commissioner of DCCED be invited to speak at the next hearing on HB 140.

[2:51:53 PM](#)

CATHY P. FOERSTER, Chair, Alaska Oil & Gas Conservation Commission (AOGCC), Department of Administration, provided the following testimony:

From the perspective of the AOGCC HB 140 is problematic in its current wording. The commission does not wish to be in the position of conceding that federal law or a federal court decision does or even could require us to promulgate regulations. And I think that statement speaks for itself, it sets a state's rights precedent that is counter to where we [AOGCC] sit; we make regulations based on what's best for the citizens of Alaska, based on what we do here in Alaska.

MS. FOERSTER then expressed AOGCC's concern that it doesn't have the time, resources, or expertise to make a determination as to the economic impact on all the listed entities. The AOGCC, she highlighted, has a process in place such that during the promulgation of regulations ample public notice of the proposed regulations, additions, or changes is included. Furthermore, hearings on those changes are noticed and written comments before or during the hearing are welcome as is testimony at the hearing itself. She noted that generally lots of comments, including the parties' estimates of the economic impact of any regulation changes are received. The process, she opined, works really well, even though the AOGCC doesn't have financial experts. From conversations with DOL, Ms. Foerster related her

understanding that with a bit of collaborative "tweeking" AOGCC's concerns with HB 140 can be addressed. Ms. Foerster clarified that she isn't stating opposition to HB 140 but rather believes it should receive the thought and attention necessary to ensure that it says what is desired.

[2:55:01 PM](#)

CHAIR KELLER announced that HB 140 would be set aside.

REPRESENTATIVE REINBOLD related her expectation for push back from the government as it's not accustomed to "looking down the road." Therefore, Representative Reinbold said she is willing to work with the departments in hopes that they are willing to partner with industry in order to move the state forward toward the goal of a long-term sustainable future for the state.

[2:56:13 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:56 p.m.