

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

April 23, 2021

1:34 p.m.

MEMBERS PRESENT

Senator Roger Holland, Chair
Senator Mike Shower, Vice Chair
Senator Shelley Hughes
Senator Robert Myers
Senator Jesse Kiehl

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 82

"An Act relating to elections and election investigations."

- HEARD & HELD

SENATE JOINT RESOLUTION NO. 4

Proposing an amendment to the Constitution of the State of Alaska relating to abortion.

- MOVED SJR 4 OUT OF COMMITTEE

SENATE BILL NO. 122

"An Act relating to the definition of 'victim.'"

- BILL HEARING CANCELED

PREVIOUS COMMITTEE ACTION

BILL: SB 82

SHORT TITLE: ELECTIONS; ELECTION INVESTIGATIONS

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

02/12/21	(S)	READ THE FIRST TIME - REFERRALS
02/12/21	(S)	JUD, STA, FIN
03/01/21	(S)	JUD AT 1:30 PM BUTROVICH 205
03/01/21	(S)	Heard & Held

03/01/21 (S) MINUTE (JUD)
 04/12/21 (S) JUD AT 1:30 PM BUTROVICH 205
 04/12/21 (S) Heard & Held
 04/12/21 (S) MINUTE (JUD)
 04/21/21 (S) JUD AT 1:30 PM BUTROVICH 205
 04/21/21 (S) <Bill Hearing Canceled>
 04/23/21 (S) JUD AT 1:30 PM BUTROVICH 205

BILL: SJR 4

SHORT TITLE: CONST. AM: ABORTION/FUNDING

SPONSOR (s): SENATOR (s) HUGHES

01/22/21 (S) PREFILE RELEASED 1/8/21
 01/22/21 (S) READ THE FIRST TIME - REFERRALS
 01/22/21 (S) HSS, JUD, FIN
 03/16/21 (S) HSS AT 1:30 PM BUTROVICH 205
 03/16/21 (S) Heard & Held
 03/16/21 (S) MINUTE (HSS)
 03/23/21 (S) HSS AT 1:30 PM BUTROVICH 205
 03/23/21 (S) Moved SJR 4 Out of Committee
 03/23/21 (S) MINUTE (HSS)
 03/24/21 (S) HSS RPT 3DP 1DNP 1NR
 03/24/21 (S) DP: WILSON, COSTELLO, HUGHES
 03/24/21 (S) DNP: BEGICH
 03/24/21 (S) NR: REINBOLD
 04/16/21 (S) JUD AT 1:30 PM BUTROVICH 205
 04/16/21 (S) Heard & Held
 04/16/21 (S) MINUTE (JUD)
 04/23/21 (S) JUD AT 1:30 PM BUTROVICH 205

WITNESS REGISTER

CORI MILLS, Senior Assistant Attorney General
 Labor & State Affairs Section
 Civil Division
 Department of Law
 Juneau, Alaska

POSITION STATEMENT: Answered questions during the discussion of SB 82.

NANCY MEADE, General Counsel
 Administrative Offices
 Alaska Court System
 Anchorage, Alaska

POSITION STATEMENT: Testified and answered questions during the discussion of SB 82.

CATHY SCHLINGHYDE, Staff
Senator Jesse Kiehl
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Answered questions on behalf of Senator Kiehl during the discussion of SJR 4.

ANDREW DUNMIRE, Attorney
Legislative Legal Services
Legislative Affairs Agency
Juneau, Alaska

POSITION STATEMENT: Answered questions during the discussion of SJR 4.

ACTION NARRATIVE

[1:34:01 PM](#)

CHAIR ROGER HOLLAND called the Senate Judiciary Standing Committee meeting to order at 1:34 p.m. Present at the call to order were Senators Myers, Hughes, Shower, Kiehl, and Chair Holland.

SB 82-ELECTIONS; ELECTION INVESTIGATIONS

[1:34:42 PM](#)

CHAIR HOLLAND announced the consideration of SENATE BILL NO. 82, "An Act relating to elections and election investigations."

[This was the third hearing for SB 82. SB 82 was previously heard on 3/1/21 and 4/12/21.]

[1:34:56 PM](#)

At ease

[1:35:08 PM](#)

CHAIR HOLLAND reconvened the meeting

[1:35:28 PM](#)

CORI MILLS, Senior Assistant Attorney General, Labor & State Affairs Section, Civil Division, Department of Law, Juneau, Alaska, stated she will provide input on amendments to SB 82.

[Amendment 5 was offered prior to Amendments 1 through 4 being taken up.]

[1:36:46 PM](#)

SENATOR HUGHES made a motion to adopt Amendment 5, [work order 32-GS1615\A.10].

32-GS1645\A.10
Klein
4/22/21

AMENDMENT 5

OFFERED IN THE SENATE
TO: SB 82

BY SENATOR HUGHES

Page 1, line 7:
Delete "30"
Insert "60"

Page 1, line 8, following "after":
Insert "certification of"

Page 1, line 9:
Delete "30"
Insert "60"

Page 2, lines 3 - 22:

Delete all material and insert:

"(c) In conducting an investigation under this section, if the attorney general has reason to believe that a person has information relevant to the investigation, the attorney general may

(1) issue a subpoena requiring the person to provide testimony and answer questions under oath, subject to penalty of perjury,

(A) in person, virtually, or by telephone, at the discretion of the attorney general;

(B) at the location and date and time stated in the subpoena;

(C) not less than seven days after service of the subpoena, unless a court order allows for expedited testimony;

(2) issue a subpoena duces tecum requiring the person to produce for inspection, copying, and testing any books, records, documents, or electronically stored information within 30 days, unless the court orders an expedited response; electronically stored information shall be translated, if necessary, into a reasonably useable form;

(3) issue interrogatories to the person, which shall be signed under oath, subject to penalty of perjury, and provided to the attorney general within 30 days unless a court orders an expedited response;

(4) obtain relevant records and information from a state agency upon written request to the agency head; if the records or information requested by the attorney general are required by law to remain confidential, the state agency shall provide the records or information and designate them as confidential; the attorney general shall keep confidential any records or information designated as confidential, except when disclosure is necessary to file an action under this section or to comply with state or federal law or a court order.

(d) The attorney general shall serve a subpoena, subpoena duces tecum, or interrogatory issued under (c) of this section in the manner prescribed by AS 44.62.430. The attorney general may initiate contempt proceedings in the manner prescribed by AS 44.62.590 against a person who fails in whole or in part to respond to a subpoena, subpoena duces tecum, or interrogatory issued under (c) of this section.

(e) Before serving a subpoena, subpoena duces tecum, or interrogatories, the attorney general may file an ex parte petition in superior court seeking an order requiring the person to respond to the subpoena, subpoena duces tecum, or interrogatory sooner than permitted under (c) of this section. The order shall be issued by a judge upon a showing of probable cause that a violation of this chapter, excluding AS 15.13, has been committed, is being committed, or is about to be committed and that there is reason to believe an expedited response may be necessary under the circumstances. The order may also designate a deadline by which the recipient of a subpoena, subpoena duces tecum, or interrogatory must file an action in superior court to quash the subpoena.

(f) A person who is served with a subpoena, subpoena duces tecum, or interrogatory under (c) of this section may file an action in superior court to quash the subpoena, subpoena duces tecum, or interrogatory not later than 10 days after being served, unless an earlier time is designated by the court under (e) of this section. An action brought under this subsection shall be considered on an

expedited basis. The court may hear evidence and argument from the attorney general in an ex parte setting. The court may quash a subpoena, subpoena duces tecum, or interrogatory only after finding the subpoena, subpoena duces tecum, or interrogatory is not reasonably calculated to aid in a good faith investigation of an alleged violation of this chapter."

Reletter the following subsections accordingly.

Page 2, line 23:

Delete "(f)"

Insert "(h)"

Page 3, line 3:

Delete "remain confidential under (e)"

Insert "is not a public record under (g)"

Page 3, line 4:

Delete "(g)"

Insert "(i)"

Page 3, line 10:

Delete "(g)"

Insert "(i)"

Page 3, line 14:

Delete "civil penalty"

Insert "fine"

CHAIR HOLLAND objected for discussion purposes.

[1:36:58 PM](#)

SENATOR HUGHES explained the intent of Amendment 5. On page 1, line 7, the language would change from "30 days from the date of an election" to "60 days from the certification of an election" to give individuals additional time to file complaints with the Division of Elections. Secondly, it would require information sharing between the agency and the attorney general's office. On page 2, lines [3-22], the language would allow the attorney general to obtain relevant records from a state agency in order to expedite an investigation. Third, it would clarify terms, as suggested by the Alaska Court System administrator by changing the language "civil penalty" to "fine" on page 3, line 14, which will more accurately describe a penalty imposed by the court. Typically, a fine is considered a sum of money imposed by the

court whereas a penalty may not involve a court's proceeding. Fourth, the amendment explains exactly how the attorney general would have the ability to investigate and provide a robust and timely process to ensure compliance by giving the Division of Elections and the Attorney General the tools to identify and prevent violations of election law before those violations could affect the outcome of an election. The proposed language provides more detail on how the attorney general's office would investigate and ensure compliance with an investigation. It would provide more balance by giving the attorney general the right to subpoena and it would give the recipient the right to challenge.

SENATOR HUGHES stated that she worked with the Department of Law on this amendment.

[1:39:17 PM](#)

At ease

[1:39:36 PM](#)

CHAIR HOLLAND reconvened the meeting.

[1:39:50 PM](#)

MS. MILLS said the Department of Law supports Amendment 5. It will provide some clarity by adding language that complaints can be made within 60 days from the certification of an election. It would provide a more robust subpoena process, which can be done on an expedited basis in cases that the department believes it is necessary to do so. She said she received comments from the Alaska Court System to help ensure that the language will fit with how the court actually imposes fines.

[1:41:06 PM](#)

NANCY MEADE, General Counsel, Administrative Offices, Alaska Court System, Anchorage, Alaska, via Teams, stated that Amendment 5 is acceptable policy for the legislature, she said. However, it would require out several unusual procedures. She referred to subsection (e) on page 2, lines 24 to 28, related to the Department of Law's investigatory power and their issuance of subpoenas or interrogatories. The language on line 22 would authorize the attorney general to file an ex parte petition to have the court require a shorter timeframe for the respondent to provide a response. The judge would need to find probable cause that a violation of the election fraud provision has been committed or is being committed. She characterized it as similar to a civil search warrant. Judges do this with respect to crimes, to determine if there is probable cause that something

untoward has happened. Since this is a civil and not a criminal matter, it provides for an unusual procedure. However, she said she believes that the court is equipped to comply.

MS. MEADE referred to subsection (f), which also provides a process different from the usual one the court system uses. When the respondent receives a subpoena from the Department of Law related to an election investigation, the person can start an action in superior court to have that subpoena quashed. She characterized this as quite unusual. The court system would need to develop forms or procedures to allow a civil action that begins an action to quash a subpoena. Subpoenas and interrogatories in every other instance in the law are issued during an ongoing action, so a civil case already exists.

MS. MEADE referred to page 3, lines 3 and 4, which states, "An action brought under this subsection shall be considered on an expedited basis." She remarked that this is a very unusual requirement. Usually, a person would file a petition along with a motion to have it considered on an expedited basis. It is not common to place this language in statute since the court would need to drop everything to comply. However, if the legislature adopts this as policy, the court system would do so.

[1:44:53 PM](#)

MS. MEADE referred to page 3, line 5, which allows the court to hear evidence and arguments from the attorney general in an ex parte setting, which means the other party in an action is not present and cannot provide any evidence. She explained that ex parte proceedings are disfavored in the law because they do not provide due process. However, if the legislature adds subpoena actions for consideration in an ex parte setting, the court can and will abide.

[1:46:24 PM](#)

SENATOR HUGHES asked the Department of Law to respond. She pointed out that Amendment 5 relates to an investigative process that is authorized to gather evidence but it does not pertain to a hearing where decisions will be made.

[1:47:32 PM](#)

MS. MILLS agreed that the Department of Law would seek ways to gather evidence to substantiate a complaint that has alleged violation that has occurred. She understood the court system's points, that this is something the court system rarely sees. However, the election context has strict deadlines that the Division of Elections must meet so the department would need to

move quickly. She was unsure whether the expedited procedures would be needed each time but it would provide an important option to assure that the investigation moves forward. She referred to the ex parte settings on lines 4 to 5, which states that the court may hear evidence. The department is not requiring evidence be heard or to receive arguments but would like to leave that option open since it would be in the midst of an investigation. There may be evidence to support the department pursuing a subpoena or to gather more information but it should not be public at that point. The department would not want the subject of the complaint or even a third party to be aware of the complaint. First, the department does not want to tarnish the reputation of someone prior to completing its investigation nor does it wish to hinder an investigation. There may be circumstances in which an ex parte hearing is held to consider background information. If members have specific questions on the process someone from the Consumer Protection Section can respond, she said.

[1:50:01 PM](#)

SENATOR KIEHL expressed interest in the ex parte language in SB 82. He stated that he supports most of the language in Amendment 5. He explained that the emphasis on permissive language, such that it is possible for a judge to agree to hear evidence and arguments in ex parte settings gives him a modicum of comfort.

[1:50:34 PM](#)

CHAIR SENATOR HOLLAND removed his objection.

[1:51:31 PM](#)

At ease

[1:52:10 PM](#)

CHAIR HOLLAND reconvened the meeting. There being no further objection, Amendment 5 was adopted.

[1:52:25 PM](#)

SENATOR KIEHL made a motion to adopt Amendment 1, [work order 32-GS1645\A.1].

32-GS1645\A.1
Klein
4/15/21

AMENDMENT 1

OFFERED IN THE SENATE

BY SENATOR KIEHL

TO: SB 82

Page 1, line 5:

Delete "division"

Insert "attorney general"

Page 1, line 11, through page 2, line 8:

Delete all material and insert:

"(b) If a complaint alleges a violation of AS 15.13 or a regulation adopted under AS 15.13, the attorney general shall refer the complaint to the Alaska Public Offices Commission. If the complaint is incomplete, the attorney general finds the complaint frivolous, or the allegations in the complaint, if true, do not constitute a violation, the attorney general may request additional information or dismiss the complaint.

(c) Excluding an alleged violation of a provision of AS 15.13 or a regulation adopted under AS 15.13, the attorney general may investigate an alleged violation of a provision of this title

(1) included in a complaint;

(2) identified by the director; or

(3) identified by the attorney general."

Page 3, line 18:

Delete "director"

Insert "attorney general"

Page 3, line 20:

Delete all material.

Reletter the following subsections accordingly.

CHAIR HOLLAND objected for discussion purposes.

[1:52:36 PM](#)

SENATOR KIEHL explained that Amendment 1 would direct any complaints to the attorney general's office instead of the Division of Elections. He offered his view that complaints would primarily relate to legal issues so it makes sense for investigations to begin at the Department of Law. This could also avoid the potential appearance of impropriety since some of the complaints will be filed against the Division of Election's staff. Thus, it seems a little odd to have the division decide if the complaint warrants an investigation. He suggested that

the complaint is dismissed, it is best done by the Department of Law.

SENATOR HUGHES expressed concern about the potential volume of complaints. She suggested that it might affect the fiscal note. She further suggested that having a complaint initially filed with the Division of Elections might result in the complainant acquiring information that could immediately resolve the matter. For example, division staff can clarify requirements that may satisfy the complainant that election laws are being followed. Currently, SB 82 does not allow a complainant an opportunity to file a complaint directly with the attorney general.

SENATOR KIEHL offered his view that the volume of complaints would not change between the Division of Elections and the Department of Law. He asked the Department of Law to comment.

[1:55:15 PM](#)

MS. MILLS responded that she understands that the volume of complaints would be the same in number. However, the Division of Elections currently receives a steady flow of complaints whereas the Department of Law would need to absorb that activity plus respond to any additional complaints filed with the attorney general. She envisioned that the division would filter complaints and the department would only receive complaints that require investigations. She said she did not think the department has too strong of a position on this but it would need to consider the fiscal impact.

[1:56:46 PM](#)

SENATOR MYERS said Amendment 1 raises an issue of expertise. The Department of Law requested two new positions to handle some of the responsibilities under the bill. He recalled prior discussions on specialized election law and procedures. He related his own experience with the Division of Elections during a recount. He offered his view that the vast majority of questions can be answered by the division so maintaining that the division conduct of the initial screening makes sense.

SENATOR HUGHES asked the chair to table Amendment 1 to allow the attorney general's office to further consider the fiscal impact.

SENATOR SHOWER said he would like more input. He agreed that Amendment 1 should be tabled.

[2:00:32 PM](#)

SENATOR KIEHL suggested the committee roll the amendment to the bottom and take it up at a subsequent meeting. He said he did not think parties could appeal decisions that were made by the Division of Elections to the Department of Law. If a complainant is unhappy with a decision, the person could resolve the matter in court, he said.

SENATOR HUGHES related her understanding that if the complainant is unhappy with the outcome made by the Division of Elections, the person could file a complaint with the attorney general.

[2:01:28 PM](#)

MS. MILLS responded that the department envisioned that someone could petition the attorney general if the Division of Elections dismissed a complaint and the party disagreed. Currently, she did not think it would be necessary to do so since the division and the Department of Law work closely on these matters but under a new administration, that relationship might change. The attorney general is not barred from investigating a complaint even though the division dismisses it, she said.

[2:02:33 PM](#)

SENATOR KIEHL withdrew Amendment 1.

[2:02:48 PM](#)

SENATOR KIEHL made a motion to adopt Amendment 2, [work order 32-GS1615\A.7].

32-GS1645\A.7
Klein
4/19/21

AMENDMENT 2

OFFERED IN THE SENATE

BY SENATOR KIEHL

TO: SB 82

Page 2, following line 22:

Insert a new subsection to read:

"(e) The attorney general may not continue an investigation of an alleged violation of a provision of this title for longer than one year after the complaint is filed unless the attorney general requests and receives approval from the superior court. The superior court may approve a request under this subsection if the attorney general establishes a reasonable probability that the person being investigated has violated a provision of this title."

Reletter the following subsections accordingly.

Page 2, line 23:
Delete "(f)"
Insert "(g)"

Page 3, line 3:
Delete "(e)"
Insert "(f)"

Page 3, line 4:
Delete "(g)"
Insert "(h)"

Page 3, line 10:
Delete "(g)"
Insert "(h)"

Page 4, following line 10:
Insert a new bill section to read:
 "*** Sec. 2.** AS 22.10.020 is amended by adding a new subsection to read:
 (j) The superior court may review and approve requests to extend an investigation under AS 15.56.140(e)."

CHAIR HOLLAND objected for discussion purposes.

2:03:00 PM

SENATOR KIEHL explained that Amendment 2 relates to the length of time to process complaints. The Division of Elections discussed this when it presented the bill and the committee subsequently expressed concern about how long some cases might linger. For example, during elections campaigners might use a complaint made against a candidate as another means to discredit the candidate. Amendment 2 states that if the attorney general wanted to continue an investigation beyond the calendar year, the attorney general could seek permission in superior court. Amendment 2 will prevent situations from occurring, where an investigation becomes an attack ad in the next cycle. A campaign might use the ongoing complaint to state a candidate has been under investigation for two years as an attempt to malign the candidate. He characterized it as a check similar to the one in Amendment 5 which addressed subpoenas.

SENATOR HUGHES said she understands the concern that candidates might use this as a tool; it could happen. She expressed concern that it raises a separation of powers issue, such that the superior court could direct the attorney general to halt a case. She offered her belief that the statute of limitations on cases was typically in the 5 to 6 year range. Amendment 2 would significantly tighten up that language. She said she could not recall any other area of law that limits that timeframe. She offered her view that the types of issues that other candidates raise is typically related to financial matters and the Alaska Public Offices Commission (APOC) would have jurisdiction over those complaints. Other complaints are related to residency, such as whether a candidate actually lives in the district, which by law must be resolved within 30 days. Thus, this narrows the realm of issues left. She pointed out that sometimes multiple complaints that are similar in nature are filed at different times by parties. This means the statute of limitation dates would also need to be staggered.

SENATOR HUGHES suggested the importance of having a clear statement to indicate that the attorney general will expedite complaints on candidates and elected officials. This would provide a solution such that complaints would not bump up against the next election. This would require the Department of Law (DOL) to prioritize these cases.

[2:07:37 PM](#)

SENATOR SHOWER suggested that the language would not guarantee that the attorney general will expedite cases since it is subjective and would likely depend on the specific attorney general. He asked if Amendment 2 could be amended to require that the attorney general must prioritize cases, including some means to measure it.

SENATOR HUGHES suggested language to require that the attorney general expedite complaints pertaining to candidates and elected officials in order to complete the investigation prior to the next election.

[2:09:29 PM](#)

SENATOR KIEHL recalled previous discussions with the Department of Law, the department indicated that some legitimate cases may last several years. He argued against placing hard deadlines in the bill that could harm investigations. He offered his view that that a relatively low threshold of reasonable probability exists. He suggested if members are concerned that one year is not enough time, it could be increased to 16 months.

[2:11:00 PM](#)

MS. MILLS responded that DOL has looked at the issue. She agreed with Senator Hughes that candidate qualifications currently impose a 30-day time limit for determinations to be made by the division. She said Amendment 2 would apply to complaints not related to campaign finance, candidate qualifications, or some other violations not directly related to election law. She expressed concern that going to court could alert people that an investigation was underway. As previously discussed, related to subpoena power, DOL wants to use the ex parte process to present information to the judge without hindering the investigation. She said Amendment 2 seeks accountability from DOL during the midst of an investigation, which is difficult. She suggested that it might be best to identify and narrow the concerns to the circumstances that raise concern. She said DOL would likely support the provision to prioritize complaints but she was unsure of how to accomplish the notification and accountability requirements without hindering the investigations.

[2:13:47 PM](#)

SENATOR SHOWER requested DOL develop the language to prioritize complaints and develop accountability requirements.

[2:15:02 PM](#)

SENATOR MYERS offered his view that the concern on the separation of powers issue in Amendment 2 is with the superior court's oversight. He asked whether any other body could provide the oversight.

[2:15:42 PM](#)

SENATOR KIEHL said he appreciated the question on separation of powers. He agreed that the checks and balance are important. He suggested that the Office of Administrative Hearings (OAH) is a quasi-independent body in the executive branch that could handle these matters.

[2:16:42 PM](#)

MS. MEADE replied that she shares some of the same concerns. She said Amendment 2 would put the court in the position of supervising an activity that is wholly within the executive branch. She said she was not aware of any other area of law where a superior court judge would make a ruling to tell the executive branch how to proceed with their investigative work. She suggested that it might be possible to find a work around.

CHAIR HOLLAND asked for clarification on the request for DOL.

[2:18:11 PM](#)

SENATOR SHOWER restated his request. He asked DOL to provide language to bridge the gap between providing the safety valve that Senator Kiehl suggests but to set the bar to achieve it without causing any concerns.

[2:18:53 PM](#)

MS. MILLS responded that she would discuss this further with her team to develop workable language. She suggested that keeping the process within the executive branch and providing a confidential process were positive directions.

CHAIR HOLLAND related his understanding on the separation of powers issue. He asked whether an alternate body could be used rather than involving the superior court.

[2:20:26 PM](#)

SENATOR MYERS asked if the Office of Administrative Hearings (OAH) could provide oversight due to the separation of powers issue rather than superior court.

MS. MILLS agreed that one approach could be to use OAH. She stated that one issue is how to handle multiple complaints and overlapping investigations.

[2:22:26 PM](#)

SENATOR KIEHL related that Amendment 2 does not try to address every scenario, but there should be enough specificity to mean something. He stated that DOL would have the discretion to consolidate complaints but also initiate its own complaints.

[2:23:26 PM](#)

SENATOR KIEHL said he appreciated the discussion and DOL's willingness to work on language. He offered his willingness to withdraw Amendment 2 and take it up on another occasion.

CHAIR HOLLAND withdrew his objection.

SENATOR KIEHL withdrew Amendment 2.

[2:24:22 PM](#)

SENATOR KIEHL made a motion to adopt Amendment 3, [work order 32-GS1615\A.4].

32-GS1645\A.4
Klein
4/15/21

AMENDMENT 3

OFFERED IN THE SENATE
TO: SB 82

BY SENATOR KIEHL

Page 2, line 29:
Delete "may"
Insert "shall"

CHAIR HOLLAND objected for discussion purposes.

[2:24:32 PM](#)

SENATOR KIEHL explained that Amendment 3 would change the language "may" to "shall" for the attorney general to notify the Division of Elections when a case is completed. He emphasized the importance for an individual to know when a case is completed and the person is cleared of any wrongdoing. When an investigation leads to criminal charges or changes in the laws or regulations, that information is known. However, when the department investigates a complaint and finds no evidence of any wrongdoing, DOL must let the division know so the parties know the outcome.

[2:25:52 PM](#)

MS. MILLS responded that the reason the language reads "may" was because DOL had concern it might be burdensome. She suggested that if a report could consist of a sentence that states that no evidence was found or the complaint was not substantiated, that would not be too burdensome. However, if the language requires DOL to prepare a lengthy report, it would be burdensome.

[2:26:43 PM](#)

SENATOR MYERS asked if the language read "shall" but added the caveat "unless the complaint has been deemed to be frivolous" would be acceptable.

MS. MILLS offered her belief that frivolous complaints would be dismissed by the division.

SENATOR HUGHES said she preferred a written record. She asked whether the language requiring a report could be clarified to make it clear that a lengthy report is not required. She suggested that perhaps the report could be limited to the conclusion DOL reached but to retain that the department must provide a written document.

SENATOR SHOWER offered his view that DOL could implement the report requirement by deciding which information to include in their report. He asked whether DOL would have the latitude to do so.

MS. MILLS answered that she generally agreed with the comments. However, it is amazing what people will sue over. She expressed concern that if the department provided a one page report, an argument could be made that it was not a report.

SENATOR SHOWER remarked that most people want the simple outcome. If the department got sued, it could write a lengthier report.

CHAIR HOLLAND commented that if someone wants a lawsuit, the person will likely sue anyway.

[2:30:40 PM](#)

SENATOR HUGHES asked if the criteria should be in statute albeit something simple. She asked if DOL could develop language.

MS. MILLS answered that report infers something bigger. She suggested changing the language "report" to "notice" so if any details are needed, they would be included. When DOL files court actions, the backup would be public. If the goal is to inform people there is an end, notice would infer something short.

[2:32:39 PM](#)

At ease

[2:33:29 PM](#)

CHAIR HOLLAND reconvened the meeting.

SENATOR HUGHES asked if the sponsor would be willing to consider using the language "shall" but to replace "report" with "notice of findings." She suggested a conceptual amendment to Amendment 3 could be adopted or Amendment 3 could be withdrawn.

[2:34:00 PM](#)

SENATOR KIEHL said the department could specify the report or notice of finding since SB 82 is the administration's bill. He said Amendment 3 would merely require the department to indicate when an investigation is completed.

[2:34:33 PM](#)

SENATOR HUGHES expressed concern that if Amendment 3 passes without the clarifying language, it would require the department to write a report, which could be burdensome. She said she would like a written report. However, it is possible that the department may receive a substantial number of complaints and she does not want to burden the department with the necessity of writing lengthy reports.

[2:35:13 PM](#)

SENATOR KIEHL offered a willingness to define report or replace report with some other language.

SENATOR HUGHES moved to adopt Conceptual Amendment 1 to Amendment 3, on page 2, line 30 to delete "report of the investigation" and insert "notice of findings."

CHAIR HOLLAND objected for discussion purposes.

CHAIR HOLLAND withdrew his objection.

[2:36:34 PM](#)

SENATOR HUGHES stated the language would then read:

(f) At the conclusion of an investigation under this section, the attorney general shall inform the division of the result of the investigation and may submit to the division a notice of finding of the investigation.

There being no further objection, Conceptual Amendment 1 to Amendment 3 was adopted.

CHAIR HOLLAND noted Amendment 3, as amended, was before the committee.

CHAIR HOLLAND removed his objection.

There being no further objection, Amendment 3, as amended, was adopted.

[2:37:37 PM](#)

At ease

[2:37:44 PM](#)

CHAIR HOLLAND reconvened the meeting.

[2:38:09 PM](#)

SENATOR KIEHL made a motion to adopt Conceptual Amendment 4, [amended work order 32-GS1645\A.9, Version A.9]. He explained Amendment 4 is a conceptual amendment because he made a handwritten change to the Legislative Legal Services amendment by deleting "(d) of" on line 6 to Version A.9 as shown:

CONCEPTUAL AMENDMENT 4

[DELETED TEXT BRACKETED]

OFFERED IN THE SENATE
TO: SB 82

BY SENATOR KIEHL

Page 2, line 23, through page 3, line 5:

Delete all material and insert:

"(e) When the attorney general submits a report of an investigation to the division, a record of the investigation and the report are public records subject to the disclosure requirements and exemptions under AS 40.25.100 - 40.25.295. Intelligence information of the attorney general obtained under [(d) OF] this section is not a public record and is not subject to disclosure under AS 40.25.100 - 40.25.295.

(f) At the conclusion of an investigation under this section, the attorney general shall inform the division of the result of the investigation and shall submit to the division a report of the investigation. If the attorney general's investigation determines that a complaint against a state agency or state employee is meritorious, the division shall make a reasonable effort to work with the agency or employee to take corrective action."

CHAIR HOLLAND objected for discussion purposes.

[2:38:35 PM](#)

SENATOR KIEHL explained that once DOL submits the report to the Division of Elections, Conceptual Amendment 4 would make the records of the investigation public and the usual Public Records Act rules would apply. He assured members that personal information, such as phone numbers, Social Security number and intelligence information is protected. The handwritten change in Conceptual Amendment 4 makes certain that intelligence information will not be released. The baseline information in a concluded investigation becomes public, he said. He offered his

view that it is in the public interest to do so. He clarified that the Alaska State Troopers or other law enforcement agencies will always keep confidential any information related TO an investigation.

[2:40:19 PM](#)

SENATOR HUGHES referred to line 3 and suggested a friendly Conceptual Amendment 1 to Conceptual Amendment 4 to remove the language, "report of an investigation" and insert, "notice of the findings". She explained that a previous Conceptual Amendment 1 to Amendment 3 changed "report of the investigation" to "notice of findings." This language would be consistent with that change.

[2:41:02 PM](#)

CHAIR HOLLAND suggested adding "or notice of finding" following the language "report of an investigation" to cover either case.

[2:41:13 PM](#)

SENATOR HUGHES directed attention to line 3 of Conceptual Amendment 4 to the specific language.

SENATOR KIEHL, after clarifying the statutory cite in Conceptual Amendment 4, agreed it was needed.

[2:41:39 PM](#)

SENATOR HUGHES moved to adopt Conceptual Amendment 1 to Conceptual Amendment 4 on line 3 to remove the language, "report of an investigation" and insert, "notice of the findings".

SENATOR KIEHL clarified that the word "report" appears in three places in Conceptual Amendment 4. He suggested "notice of the findings" replace "report" in all three places.

SENATOR HUGHES revised Conceptual Amendment 1 to Conceptual Amendment 4 to replace "report of the investigation" with "notice of the findings" in all occurrences.

[2:42:24 PM](#)

SENATOR SHOWER asked the record to reflect that Legislative Legal Services can make technical and conforming changes.

[2:42:35 PM](#)

CHAIR HOLLAND agreed.

CHAIR HOLLAND objected for discussion purposes. There being no discussion, he removed his objection.

There being no further objection, Conceptual Amendment 1 to Conceptual Amendment 4 was adopted.

CHAIR HOLLAND indicated Conceptual Amendment 4, as amended, was before the committee.

[2:43:12 PM](#)

SENATOR HUGHES suggested a friendly amendment, to flip subsections (e) and (f). She explained that first, it is necessary to have the information submitted to the Division of Elections, then the records would become available to the public. It will not change what happens but the suggestion is an organizational change.

SENATOR KIEHL said he did not have any objection.

[2:44:29 PM](#)

SENATOR HUGHES moved to adopt Conceptual Amendment 2 to Conceptual Amendment 4, to reverse subsections (e) and (f).

There being no objection, Conceptual Amendment 2 to Conceptual Amendment 4 was adopted.

CHAIR HOLLAND stated that Conceptual Amendment 4, as amended, was before the committee.

[2:45:02 PM](#)

SENATOR MYERS suggested that some of the changes being made by previously adopted amendments and conceptual amendments to SB 82 would be deleted by Conceptual Amendment 4. He wanted to understand the overall effect of the amendments.

CHAIR HOLLAND agreed that Senator Myers had a fair concern.

[2:46:06 PM](#)

SENATOR KIEHL said he was not concerned that Conceptual Amendment 4 will "undo" the changes. He noted that Amendment 4 is conceptual so Legislative Legal Services can make conforming changes to the bill.

SENATOR HUGHES referred to page 3, line 2 of SB 82. She related her understanding.

[2:47:37 PM](#)

SENATOR KIEHL deferred to staff.

[2:47:56 PM](#)

CATHY SCHLINGHYDE, Staff, Senator Jesse Kiehl, Alaska State Legislature, Juneau, Alaska, on behalf of the sponsor, answered yes, Conceptual Amendment 4 will delete the language about the records being confidential and instead that they are subject to the usual rules of the Public Records Act. She offered her view that Conceptual Amendment 1 erased the contradiction with the work done in Amendment 3 so they should work in concert with each other.

[2:48:31 PM](#)

CHAIR HOLLAND withdrew his objection.

[2:48:41 PM](#)

SENATOR MYERS asked if the Department of Law could comment on Conceptual Amendment 4, as amended.

[2:49:00 PM](#)

MS. MILLS stated that she now understands Conceptual Amendment 4. She clarified that DOL has historically considered intelligence information in consumer protection matters as the information that is gathered in the course of an investigation. The record of the investigation is a fairly narrow category. Under the Consumer Protection Act, which is where this language was derived, intelligence information and the record of investigation are confidential and not subject to the Public Records Act. She advised the committee that the record of the investigation is very narrow as compared to the intelligence information, which is anything collected that may end up leading to a violation or any matters referred to law enforcement.

[2:50:34 PM](#)

SENATOR HUGHES referred to page 3, line 2. She asked if removing the rest of the information in that paragraph was fine because that information is already confidential and a public records request would not include any of it.

MS. MILLS stated her preference to treat it like consumer protection information and not make the distinction between intelligence information and the record of investigation. All of it is protected, she said. The way she reads Conceptual Amendment 4 is that there would be two buckets. The record of the investigation would be treated under the normal Public Records Act process. DOL would conduct a review, determine what was privileged and what was not, and what fell under the various exceptions. The intelligence information, which is information gathered during the investigation, including working with law

enforcement, would not be subject to the Public Records Act. DOL would not conduct the same review for those documents.

[2:52:16 PM](#)

SENATOR HUGHES referred to page 3, line 2. She asked if starting with the word "intelligence" and replacing the remaining language would accomplish her goal.

MS. MILLS said the department would prefer Senator Kiehl's Conceptual Amendment 4 because it better identifies it as not being a public record. That makes it easier for DOL rather than saying it is not confidential because it raises questions. She stated that DOL considered stating it is not subject to the Public Records Act. She said that this language makes it really clear what lines are being drawn. She maintained that the language in Conceptual Amendment 4 was more appropriate.

[2:53:29 PM](#)

There being no further objection, Conceptual Amendment 4, as amended, was adopted.

[SB 82 was held in committee.]

SJR 4-CONST. AM: ABORTION/FUNDING

[2:53:56 PM](#)

CHAIR HOLLAND reconvened the meeting and announced the consideration of SENATE JOINT RESOLUTION NO. 4, Proposing an amendment to the Constitution of the State of Alaska relating to abortion.

[This was the second hearing on SJR 4. Public testimony was opened and closed on 4/16/21.]

[2:54:15 PM](#)

SENATOR HUGHES stated that SJR 4 uses the language "may". She related her understanding that the Manual of Legislative Drafting states when using the negative, such as stating that the person cannot do something, the language "may not" is used rather than the language "shall not". In this case, the language "may not" is the same as "cannot." However, some other states have used the language "shall" including Louisiana, but Alabama uses "may not." Tennessee uses the language, "Nothing in this constitution secures or protects She asked the record to reflect that "may not" is the same as "cannot." She asked Mr. Dunmire to address the issue.

[2:56:20 PM](#)

ANDREW DUNMIRE, Attorney, Legislative Legal Services, Legislative Affairs Agency, Juneau, Alaska, referred to page 65 of the Manual of Legislative Drafting, which instructs using "shall" to impose a duty upon someone. It further instructs using "may not" to impose a prohibition upon someone. The Alaska Constitution is not as consistent as bills currently being drafted. For example, Art. 1, Sec. 20 reads, "No member of the armed forces shall in time of peace be quartered in any house ..." More recent provisions do conform to the current drafting style. For example, Art. 1, Sec. 25 reads, "To be valid or recognized in this State, a marriage may exist only between one man and one woman." The current style is to use "may not" to express a prohibition whereas to use "shall" to instruct someone or an agency has a duty to perform an act.

[2:57:42 PM](#)

SENATOR HUGHES said she wanted the record to be clear that the meaning of the language "may not" is the same as "cannot" and it does not provide for any other interpretation.

[2:58:32 PM](#)

At ease

[2:58:54 PM](#)

SENATOR HOLLAND reconvened the meeting.

[2:59:04 PM](#)

SENATOR SHOWER moved to report SJR 4, work order 32-LS0246\A from committee with individual recommendations and attached fiscal note(s).

[2:59:15 PM](#)

SENATOR KIEHL objected. He said his objection goes directly to the heart of the proposed constitutional amendment to remove some of Alaskan women's rights. In fact, he could not think of any situation in which he could support placing such restrictions in the Alaska Constitution. The committee has debated and discussed SJR 4 and it has heard presentations from those who have tried to frame this as asserting the legislature's right to lawmaking. However, the simple fact is that the courts have exercised their duties and obligations under the Alaska Constitution. The Alaska Supreme Court has prevented the legislature from violating these constitutional rights by overturning restrictions on abortion that the legislature tried to enact. He stated that the Alaska Constitution provides women the right to decide when or whether

to become a parent. This applies to all women, whether they are young or poor. Women have the right to privacy under the Alaska Constitution, which is more explicit about these rights than the US Constitution. The courts have found that the government may not violate women's rights to privacy. The Alaska Constitution also grants women equality. The only way that the government can come between a woman and her doctor and her religious leader, if she has one, and her decision when or whether to become a parent is to remove some of her rights. Ultimately, that is the effect of SJR 4, he said.

[3:01:37 PM](#)

SENATOR HUGHES reminded members that little baby girls who will become future women have rights while in utero. She said the baby is not a growth or a tumor but is an actual baby. Although SJR 4 does not set any policy, it will help the state move forward to determine the policies. She offered her belief that taking the life of a baby via abortion is murder because it is taking the life of another human. She offered her view that it is time for Alaskans to establish policy that reflects the values of Alaskans.

SENATOR KIEHL maintained his objection.

[3:02:53 PM](#)

A roll call vote was taken. Senators Shower, Hughes, Myers, and Holland voted in favor of reporting SJR 4 from committee and Senator Kiehl voted against it. Therefore, the CSSJR 4(JUD) was reported from the Senate Judiciary Standing Committee by a vote of 4:1.

[3:03:37 PM](#)

There being no further business to come before the committee, Chair Holland adjourned the Senate Judiciary Standing Committee meeting at 3:03 p.m.