

ALASKA STATE LEGISLATURE
HOUSE STATE AFFAIRS STANDING COMMITTEE

March 20, 2007

8:11 a.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 166

"An Act relating to contributions from permanent fund dividends to community foundations, to certain educational organizations, and to certain other charitable organizations that provide a positive youth development program, workforce development, aid to the arts, or aid and services to the elderly, low-income individuals, individuals in emergency situations, disabled individuals, or individuals with mental illness; and providing for an effective date."

- HEARD AND HELD

HOUSE BILL NO. 151

"An Act requiring an indemnification and hold harmless provision in professional services contracts of state agencies, quasi-public agencies, municipalities, and political subdivisions."

- HEARD AND HELD

HOUSE BILL NO. 92

"An Act removing the victims' advocate and the staff of the office of victims' rights from the jurisdiction of the office of the ombudsman in the legislative branch."

- SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: HB 166

SHORT TITLE: CONTRIBUTIONS FROM PERM. FUND DIVIDENDS

SPONSOR(s): REPRESENTATIVE(s) THOMAS

02/28/07 (H) READ THE FIRST TIME - REFERRALS
02/28/07 (H) STA, FIN
03/20/07 (H) STA AT 8:00 AM CAPITOL 106

BILL: HB 151

SHORT TITLE: INDEMNITY CLAUSE IN PUBLIC CONTRACTS

SPONSOR(s): REPRESENTATIVE(s) JOHNSON BY REQUEST

02/22/07 (H) READ THE FIRST TIME - REFERRALS
02/22/07 (H) STA, JUD
03/20/07 (H) STA AT 8:00 AM CAPITOL 106

WITNESS REGISTER

REPRESENTATIVE BILL THOMAS, JR.

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Introduced HB 166 as prime sponsor.

KACI HOTCH, Staff

to Representative Bill Thomas, Jr.

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Answered a question on behalf of Representative Thomas, prime sponsor of HB 166.

JERRY BURNETT, Director

Administrative Services Division

Department of Revenue

Juneau, Alaska

POSITION STATEMENT: Testified during the hearing on HB 166.

MICHELE BROWN, President

United Way of Anchorage

Anchorage, Alaska

POSITION STATEMENT: Testified in support HB 166.

DIANE KAPLAN, President

Rasmuson Foundation

Anchorage, Alaska

POSITION STATEMENT: Testified on behalf of the Rasmuson Foundation during the hearing on HB 166.

THERESA BANNISTER, Attorney
Legislative Legal and Research Services
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Addressed Amendment 1 during the hearing on HB 151.

MARK O'BRIEN, Chief Contracts Officer
Contracting and Appeals
Office of the Commissioner
Department of Transportation & Public Facilities (DOT&PF)
Juneau, Alaska

POSITION STATEMENT: Answered questions during the hearing on HB 151.

BRAD THOMPSON, Director
Division of Risk Management
Department of Administration
Juneau, Alaska

POSITION STATEMENT: Answered questions during the hearing on HB 151.

ACTION NARRATIVE

CHAIR BOB LYNN called the House State Affairs Standing Committee meeting to order at [8:11:52 AM](#). Representatives Roses, Coghill, Johansen, Johnson, Gruenberg, Doll, and Lynn were present at the call to order.

HB 166-CONTRIBUTIONS FROM PERM. FUND DIVIDENDS

[8:12:26 AM](#)

CHAIR LYNN announced that the first order of business was HOUSE BILL NO. 166, "An Act relating to contributions from permanent fund dividends to community foundations, to certain educational organizations, and to certain other charitable organizations that provide a positive youth development program, workforce development, aid to the arts, or aid and services to the elderly, low-income individuals, individuals in emergency situations, disabled individuals, or individuals with mental illness; and providing for an effective date."

[8:12:36 AM](#)

REPRESENTATIVE BILL THOMAS, JR., Alaska State Legislature, introduced HB 166 as prime sponsor. He paraphrased his sponsor statement, which read as follows [original punctuation provided]:

HB 166 is an attempt to increase private philanthropy in Alaska by giving people the option of donating a portion of their Permanent Fund Dividend check to their favorite charity. Alaskans who make \$100,000 or more, rank among the lowest in the nation as far as percentage of income donated to charities.

In the hustle and bustle of life, we often forget about those organizations who rely on donations and who provide important services to our communities. HB 166 allows for a list of approved organizations to be included with a person's PFD [permanent fund dividend] application and allows them to check off which charities that they would like to donate to. 100% of their donation will go to the charity. The simplicity of being able to simply check the desired charity while applying for one's PFD will increase the rate of donation and give these charities another avenue to use in their fundraising.

HB 166 also requires that the charity meet certain criteria before it can be placed on the list with the PFD applications. Among the criteria, the charity must be a 501(c)(3) organization, be directed by a voluntary board whose members are residents of Alaska, receive \$100,000 or 5%, whichever is less, of its annual receipts in contributions, and the charity must provide a copy of an audit, for the previous fiscal year, to the Department of Revenue

The Rasmuson Foundation, a charitable foundation which makes \$25 million in grants each year to Alaska organizations, has pledged to fully fund the administrative costs of the program for the first three years of the program, creating a zero fiscal impact on the state in these crucial beginning years.

HB 166 gives people a simple and convenient way to donate to their favorite charities, who make a positive impact in our communities. I urge your support of this important piece of legislation.

[8:15:29 AM](#)

CHAIR LYNN asked how the applicant making the donation will be able to specify how much he/she is giving.

[8:15:51 AM](#)

KACI HOTCH, Staff to Representative Bill Thomas, Jr., Alaska State Legislature, on behalf of Representative Thomas, prime sponsor of HB 166, explained that the following amounts can be checked on the permanent fund dividend (PFD) application: \$25, \$50, \$75, or \$100, or ten percent, twenty-five percent, fifty percent, or one hundred percent of the amount of the PFD.

[8:16:19 AM](#)

REPRESENTATIVE THOMAS, in response to a question from Representative Roses regarding the cost of the bill after the first three years, said the legislation sunsets after that time and would have to be reauthorized. In response to Chair Lynn, he said anyone who decides to give to a charity through the proposed check-off method on the PFD application would have a receipt of that donation to show the Internal Revenue Service (IRS).

[8:17:20 AM](#)

REPRESENTATIVE THOMAS, in response to Representative Johnson, stated his understanding that all the eligible 501(3)(c) entities would be on a list that accompanies the PFD application; however, not all organizations will qualify. He indicated that [the analysis portion of the fiscal note] gives an explanation regarding qualification.

REPRESENTATIVE JOHNSON pointed out that the fund source is listed under the General Fund for HB 166, while it is listed under statutory program receipts for a matching Senate bill. He questioned the inconsistency.

[8:19:00 AM](#)

REPRESENTATIVE THOMAS suggested that a representative from the Department of Revenue could explain.

[8:19:10 AM](#)

REPRESENTATIVE THOMAS, in response to Chair Lynn, confirmed that a PFD applicant can designate donations for more than one charity on the same form.

[8:19:29 AM](#)

REPRESENTATIVE GRUENBERG expressed appreciation of the generosity of the Rasmuson Foundation. He asked if that foundation would mind entering into a contract with the state guaranteeing that it will pay the administrative costs. He stated support of HB 166, but said he has one concern. He directed attention to page 2, lines 20-28, which read as follows:

(c) The department may not include an educational organization on the contribution list unless the primary purpose of the organization is to provide vocational training or postsecondary education. Other than a community foundation, the department may not include a charitable organization on the contribution list for a dividend year unless the primary purpose of the organization is to provide a positive youth development program, workforce development, aid to the arts, or aid and services to the elderly, low-income individuals, individuals in emergency situations, disabled individuals, or individuals with mental illness. In addition, the educational organization, community foundation, or charitable organization

REPRESENTATIVE GRUENBERG said, for example, that that language would preclude someone from giving to a hospital, museum, library, and nonprofit k-12 schools, and he questioned whether that was the sponsor's intent. He related, "... Normally, for check-offs, as long as an organization would qualify as a 501(c)(3), that would be the donor's choice."

[8:21:26 AM](#)

REPRESENTATIVE THOMAS offered his understanding that any entity qualified as a 501(c)(3) would qualify to be on the list.

REPRESENTATIVE GRUENBERG replied that he was hoping the sponsor would say that, and he emphasized to Representative Thomas the need to scrutinize the language on page 2, lines 20-28, because it is "much narrower than any 501(c)(3)." In response to Chair Lynn, he said he think's it may be appropriate to include the

term "501(c)(3)" in the bill; however, he said he would like the sponsor to be in absolute agreement with doing so.

[8:22:11 AM](#)

REPRESENTATIVE ROSES surmised that the Rasmuson Foundation may support the limited list of 501(c)(3) entities because it is expeditious in who it contributes funds to and who it doesn't.

[8:23:40 AM](#)

JERRY BURNETT, Director, Administrative Services Division, Department of Revenue, prefaced his statements by clarifying that the use of PFDs is not the department's concern. That said, he expressed concern regarding the complexity of having a wide variety of choices related to amounts and charities. He explained, "Every time you add a choice, you add complexity in our payment system, [and] you add complexity to the application." He said people who apply for dividends want a simple application; any questions they have require them to call the department. He said that may not seem like much to anyone outside the department; however, if 10 percent of the people who apply want to access the proposed program, and 10 percent of those people have a question about it, that means 6,000 phone calls. Mr. Burnett said the department will work on those issues with the bill sponsor and with the Rasmuson Foundation if the bill moves forward, but there may be unintended consequences. He noted that the only "check-off" currently on the application is for the advanced tuition program, which is designed for applicants to put money aside to the University of Alaska. He explained that the department writes one check to the University Foundation who administers the program and applies the money from each of the people [who checked that option]. He stated, "The more we can make it resemble that, the easier it will be to administer for the department."

[8:27:21 AM](#)

REPRESENTATIVE ROSES said having taught math for over 20 years, he knows that many people don't know percentages. He said it may be possible that an applicant checks off "50," thinking that it means \$50, when it really signifies 50 percent. Furthermore, he pointed out that at the time of the application, a person doesn't know what the sum of the PFD will be; therefore, he/she has no way of knowing how much money 50 percent will be. He said he supports the idea behind the bill, but he said he would like to see better clarity regarding the numbers.

[8:29:03 AM](#)

MR. BURNETT told Representative Roses that that is exactly the point he was trying to make. Regarding the comments Representative Johnson made related to the fiscal note, he said [HB 166] has a provision that would prohibit the department "from spending any permanent fund dividend money on it." He said in the Senate bill, that provision was added "after our fiscal note was done." He continued:

It's not clear to me whether or not this would be statutory designated program receipts or general fund program receipts. If, in fact, the bill requires a contract with the Rasmuson Foundation for them to pay, it'll probably be ... statutory designated program receipts, and that's a change that we're quite willing to work on in [the House] Finance Committee and make sure that it's budgeted correctly.

[8:30:05 AM](#)

REPRESENTATIVE GRUENBERG asked, "If the Rasmuson Foundation and the sponsor are willing to have a clause in the bill that has a condition precedent for a contract, would the department be willing to help draft that contract?"

MR. BURNETT answered in the affirmative.

[8:30:41 AM](#)

REPRESENTATIVE DOLL asked how many additional employees would need to be hired by the department in order to operate the proposed plan.

MR. BURNETT replied that the biggest challenge the department would face would be in rewriting the computer program to ensure that both the online application process and the payment system work properly. He said approximately 75 percent of PFD applicants apply online. He said the department's fiscal note provides several hundred thousand dollars to accomplish that. He stated that although the department anticipates hiring only one additional employee, the program will have "some effects spread throughout the division." He said any time changes are made to a program that affects every person in the state, both the department and legislators can expect to receive an

increased number of phone calls, whether or not the change works well or poorly.

[8:32:26 AM](#)

MR. BURNETT, in response to a question from Representative Roses, said court-ordered garnishments from a PFD would take priority over donations. In response to a question from Representative Gruenberg, he said voluntary assignments, under which donations and the voluntary advanced tuition fall, will always come after garnishments; therefore, there is no need to make that specification in the language of the bill.

[8:34:12 AM](#)

MICHELE BROWN, President, United Way of Anchorage, testified in support HB 166. She said the bill is both good social policy and an excellent way of promoting sustainability for the invaluable services of nonprofit entities. She said Alaskans have a great tradition of neighborliness, but that has not yet translated into cash-based philanthropy. She stated, "Despite what many Alaskans want to believe, government can't do everything, and much of what has been done regarding quality of life comes from the work of nonprofit organizations and their volunteers." Ms. Brown relayed that the United Way of Anchorage is a network of organizations that cares for children and seniors, connects people with healthcare services and information, provides workforce development, and ensures that people are housed and fit so that they can get educated and hold jobs. She relayed that that which affects individuals has significant financial and social impact on the community, as well. She said the proposed legislation would provide an easy way for people to invest in quality of life for others. Ms. Brown said the United Way of Anchorage stands ready to help implement this legislation. She revealed that the organization has a long history of managing donor-designated fundraising and currently manages five public sector campaigns on behalf of governmental entities, which she said are similar to how HB 166 is set up. She said the United Way of Anchorage could be "up and running with the state to implement this as directed very quickly" and efficiently.

[8:37:07 AM](#)

CHAIR LYNN expressed appreciation for the work of the United Way.

[8:37:13 AM](#)

REPRESENTATIVE GRUENBERG asked how much United Way's management would cost the program.

MS. BROWN said United Way would be working with the Foraker Group at a cost estimated at under \$100,000. In response to a follow-up question from Representative Gruenberg, she confirmed that that money would come from the Rasmuson Foundation during the three years before which the bill would sunset.

[8:37:45 AM](#)

REPRESENTATIVE GRUENBERG referred back to page 2, lines 20-28, [text provided previously], and asked if there are any organizations under the umbrella of the United Way of Anchorage that would not qualify.

MS. BROWN answered no.

[8:38:06 AM](#)

DIANE KAPLAN, President, Rasmuson Foundation, said the foundation is pleased to work with the State of Alaska. She said the idea came about a couple years ago. She said the United Way of Anchorage does a wonderful job in facilitating contributions; however, it only reaches a few communities in Alaska. Because of success of other campaigns, she said, the Rasmuson Foundation thinks [the check-off system on the PFD application] would be "a terrific way of advancing interest around promoting philanthropy in our state." She echoed Ms. Brown's comment that Alaska has a long history of its people being generous in their volunteer efforts. The proposed legislation will provide a way to help organizations that the public has come to depend upon deliver critical services around that state. Ms. Kaplan explained that the dollars given by individuals are the most precious, because they can be used for unrestricted needs, whereas many grants are specified for specific use. She said the Rasmuson Foundation board has made funds available for the first 3 years. The State of Alaska will write a single check from the donated monies and the United Way will distribute those funds.

CHAIR LYNN expressed appreciation of the Rasmuson Foundation.

[8:42:04 AM](#)

REPRESENTATIVE ROSES asked if the Rasmuson Foundation would remain interested in sponsoring the administrative costs if the list were opened up to all 501(c)(3) entities.

[8:42:34 AM](#)

MS. KAPLAN responded that there are approximately 6,000 501(c)(3) entities in Alaska and if there were 6,000 choices on the PFD application, the program wouldn't be very effective for any of them. She stated, "So, we were looking for a way both to make this program rational, in terms of providing real support for core service providers, but also making sure that the organizations that are listed have credibility with the public." She said to qualify, the nonprofit organization must: file an annual tax return with the IRS; have an audit; already be engaged in individual fundraising; have a certain budget and staffing; and have been tax exempt for a period of time [and] have a voluntary board of directors who are residents here in the state.

MS. KAPLAN stated that the Rasmuson Foundation funds in every area of life, so its interest in limitation revolves more around organizations that can demonstrate a certain level of professionalism so the public can have confidence in the program.

[8:45:30 AM](#)

REPRESENTATIVE DOLL said she used to work for United Way, and she said she knows that many groups would not be on the list. She stated concerned that that may be problematic.

MS. KAPLAN said the Rasmuson Foundation is "pretty confident that every organization that can meet the basic criteria is going to get a fair shake at being included."

[8:47:45 AM](#)

REPRESENTATIVE GRUENBERG asked Ms. Kaplan if United Way deals with [organizations] involved with that listed on page 2, line 22: vocational training or postsecondary education.

MS. KAPLAN answered that United Way would simply be the contractor that would ensure that the organizations that receive designations from members of the Alaska public would receive those dollars; United Way would be providing the technical services. She emphasized that there would be no requirement

that an organization be affiliated with United Way to be part of the program. In addition to redistributing funds received from the state, United Way would issue a receipt to donors, showing that they made a charitable [donation].

REPRESENTATIVE GRUENBERG asked what kind of controls there would be regarding which entities would qualify as "vocational training or post secondary education".

[8:51:00 AM](#)

MS. KAPLAN answered that an entity receiving the funds would have to be a 501(c)(3), nonprofit corporation; a for-profit company, regardless of whether it has provided educational or any other services, could not be a recipient of these dollars. The reason, she explained, is that the public would expect to get a tax deduction for making the donation, and those [for-profit] entities are not tax exempt. Furthermore, she related that individuals could not be recipients of the donations, for the same reason.

[8:51:59 AM](#)

REPRESENTATIVE GRUENBERG asked if the Rasmuson Foundation would be willing to enter into a contract with the state, which would make the foundation responsible for paying the administrative costs.

MS. KAPLAN answered, "Absolutely, we would."

[8:53:05 AM](#)

REPRESENTATIVE ROSES pointed out the terms "vocational training" on page 2, line 22 and "workforce development" on line 25 of the same page. He asked Ms. Kaplan if she envisions any of the apprenticeship programs under the umbrellas of various labor union would qualify "under this definition."

MS. KAPLAN replied:

I'm not specifically familiar with how those are set up in terms of their tax status, but I know for example Alaska Work Partnership, which is the provider of those services for many of those labor unions, is definitely an eligible entity, in terms of our funding, and I know that they are a 501(c)(3). So, I think there's usually a nonprofit provider involved,

but in terms of the specifics of the question you just asked, I hesitate to answer, because I'm not that specifically familiar with their governing structure.

8:54:26 AM

REPRESENTATIVE COGHILL thanked Ms. Kaplan for her work and that of the Rasmuson Foundation. He directed attention to page 3, [line 15-16], which state that ["the educational organization, community foundation, or charitable organization"]:

(7) must receive at least \$100,000 or five percent of its total annual receipts, whichever is less, from contributions;

REPRESENTATIVE COGHILL asked Ms. Kaplan if that is intended to be individual or private contributions.

MS. KAPLAN answered:

That would be from any source of contributed income. And the rationale behind that is there are some organizations that are 100 percent funded, let's say by Medicaid or Medicare - they're not really involved in raising funds from the public - and those would be organizations that probably (indisc.) type of legislation. So, we're looking at organizations that are in the practice of receiving and requesting donations from the public. That was the intent.

MS. KAPLAN, in response to a question from Representative Coghill, explained that 501(c)(4) organizations are involved in lobbying activities and individuals cannot make tax deductible donations to them. A 501(c)(6) organization, she said, such as a chamber of commerce or rotary club, usually serves its members, and the purpose of that organization is to benefit a specific group of people, rather than the public at large. She said [501(c)(6)] organizations often have sister organizations that are 501(c)(3), through which they raise tax-deductible funds.

REPRESENTATIVE COGHILL noted that Ms. Kaplan's work with the Foraker Group has been a huge benefit to Alaska. He remarked that the criteria set up in order for organizations to be on the list would put some organizations on a "preferred giving list." He asked if Ms. Kaplan anticipates public tension over that issue.

MS. KAPLAN responded:

We're really looking [at] this as a rising tide and all ships benefiting down the road, because our hope is to really do a very extensive public campaign about individual giving. Some people will choose to give through their permanent fund, and I think other people will choose to give in another manner. If people have their awareness raised about individual giving, if their particular group or choice is not on this list, they still have every right to take \$25 or \$100 from their permanent fund [dividend] and give it to that organization - they just might not be doing it through the check-off. ... Our hope is just to raise the awareness around charitable giving for individuals in general, and we see the permanent fund dividend as just one of many tools to do that.

MS. KAPLAN, in response to Chair Lynn, agreed that the check-off list would give an advantage to those on it. However, she said it is estimated that 600 organizations will make it onto that list, and any organization that wishes to qualify need only follow the standard, best practices, governance criteria for nonprofit organizations. She admitted that the list may not be perfect; however, she said she thinks it is the best list that a group of experienced nonprofit executives and donors from around the state could produce.

[9:00:59 AM](#)

MS. KAPLAN, in response to a question from Representative Doll, directed attention to page 1, line 25, and noted that the term, "youth development program" is a broad description for organizations which serve children.

[9:01:20 AM](#)

REPRESENTATIVE GRUENBERG said the language on page 3, lines 2-3 is the only place in the bill that sets a date for determination on any of the criterion. He suggested that there be language in the bill that would require the organization to notify "the manager" if it no longer meets any of the nine criterion.

MS. KAPLAN responded that she thinks the Rasmuson Foundation would not have any objection to adding such language.

[9:02:30 AM](#)

MS. KAPLAN, in response to a request from Representative Gruenberg, said she would ask Ms. Brown to make the list of organizations available to the committee.

[9:03:11 AM](#)

REPRESENTATIVE ROSES said although the list would be helpful, he does not want the bill held up while waiting for it.

MS. KAPLAN concurred with Representative Roses' desire to see the bill move on to the next committee. She said if the bill is held up for another year that would result in a big loss of income for nonprofit organizations.

[9:03:46 AM](#)

CHAIR LYNN closed public testimony.

[9:04:17 AM](#)

REPRESENTATIVE COGHILL said he appreciates Representative Gruenberg's previous recommendation to amend the bill "to somehow protect the nine criteria." However, he said although he likes "the idea," he is not in favor of the bill. He warned that once check-offs are added on the PFD application, which has already happened, then "it's just another, 'Me, too.'" He emphasized how appreciative he is of the Rasmuson Foundation's offer and its desire to see an increase in charitable giving in Alaska; however, he said he is just not certain that this is the best way to do it. He explained that he is not sure he wants the state to manage such a program, because once it starts accepting that responsibility, then there will be other "steps of responsibility that we'll pick up for people."

[9:07:13 AM](#)

REPRESENTATIVE ROSES said he does not disagree with Representative Coghill's comments. However, he noted that the House Health, Education and Social Services Standing Committee subcommittee recently closed out its budget, and some decisions were made to cut out some organizations from the budget because they could have other means by which to raise funds. He said HB 166 would provide one of those means.

[9:08:52 AM](#)

REPRESENTATIVE GRUENBERG expressed concern that the unintended net result of the bill would be to "let the state off the hook." He explained:

If charity "A" got money from a private source, then the state would "defund" it. And so, the charity would retain no more money than it's getting now, and the beneficiary of this would be the State of Alaska. And there's no protection in the bill for that. I would like to see the charities benefit, not the State of Alaska.

CHAIR LYNN remarked that it is okay to benefit the state. He said it is not state's job to fund every 501(3)(c) in Alaska.

REPRESENTATIVE GRUENBERG responded that a citizen opting to give money to a charity through the proposed check-off method on the PFD has the right to know if that money "may simply go to reduce the money the state gives the charity." He stated that he thinks most Alaskans would not carry the reasoning as far as Representative Roses' example; they would think their money is actually going to benefit the designated charities.

CHAIR LYNN pondered whether those 501(c)(3) entities not on the list would be hurt.

REPRESENTATIVE GRUENBERG stated that he also shares that concern.

[9:12:18 AM](#)

REPRESENTATIVE ROSES stated:

If I led you to believe through my comments that ... we're looking for ... a way to supplant some of the funds that the state is providing, that isn't what I intended to say. The point I was trying to make is: When we were looking ... at the Health & Social Services budget, ... we were looking for \$38 million-worth of cuts. The areas that we were most cognizant of not trying to apply cuts were ones that had matching dollars, because when you cut one dollar there, you're actually cutting two. So, those areas that are able to have the matching grants ... fared the best in the budget

REPRESENTATIVE ROSES explained that his prior comments pertained to concern over where the contributions from the private sector come from and how the dollars can be better leveraged to accomplish objectives. He stated:

We're going to have to start cutting regardless of where the money comes from or who gets it, if the oil revenues continue to decline, which we know they're going to. ... All I'm saying is that the charitable contributions are going to be much more important in the future than they are now, because there [are] going to be less state dollars

REPRESENTATIVE ROSES said although he shares Representative Coghill's concerns regarding the dangers of opening a door and then not knowing where it all ends, he will support HB 166.

9:15:10 AM

REPRESENTATIVE JOHNSON stated that he does not think there is anything that can be done to HB 166 to protect charities that would not financially encumber future legislatures.

9:16:00 AM

REPRESENTATIVE GRUENBERG said Representative Johnson is correct. He said he had merely been talking about intent. To Representative Roses, he said he has never sat on the House Health, Education and Social Services Standing Committee finance subcommittee, but he just did not want HB 166 to be used as an excuse to cut the charity.

9:16:28 AM

REPRESENTATIVE DOLL said she will support HB 166, which she described as a vehicle for a kind of voluntary tax and a means to help those in need.

9:17:01 AM

REPRESENTATIVE COGHILL reiterated his concern that those on the list will be the "preferred group," and that that will create tension.

9:19:08 AM

REPRESENTATIVE GRUENBERG said he shares some of Representative Coghill's concerns. He asked if there are any recognized charitable organizations or groups that do not meet the criterion on page 2, lines [20-29], because he said he does not want to eliminate them.

CHAIR LYNN added that there are many organizations that are part of the United Way that are not on the list.

[9:20:25 AM](#)

MS. BROWN said United Way's role will be simply as a "pass-through contractor." She stated, "Administering this will be more like when we administer the Share Campaign or the Combined Federal Campaign, where the governmental entities determine who's eligible and we then simply do the administrative work. So, it really doesn't tie, in any way, shape, or form with the United Way private campaign." She offered further details.

MS. BROWN, in response to a question from Chair Lynn, said the United Way, the Rasmuson Foundation, and the Foraker Group have set up a process by which organizations apply to be on the list, and there will be an initial review, a supervisory review, and - any time there is a decision that an organization is not eligible - a review by a broad, statewide panel. She stated:

In this process, we had determined it would be a very liberal interpretation of the language criteria that Representative Gruenberg was citing on page 2 ... [subsection (c)]. Where we expect most of the limitations - where people will not qualify - will be in the other issues. For instance ... they will not have a voluntary board, or they won't have a board that resides in state, or they will have been too new to have been providing services for two years, or some other factor like that.

CHAIR LYNN asked if a charity's social views would have anything to do with its qualification.

MS. BROWN answered no.

[9:23:32 AM](#)

MS. BROWN, in response to questions from Representative Johnson, said the United Way would most likely be on the list, but only after submitting an application and qualifying. She said the

United Way has 49 service partners. She relayed that the United Way of Anchorage always has entities trying to "join into our umbrella." She said, "Our funding goes to our services partners, but as we work on particular issues, it can also go broader than that. She related that when someone "designates to a particular organization," the United Way charges 8 percent for administrative fees. She added, "On the public campaigns, however, those run more at 2 ... or 3 percent."

MS. KAPLAN added, "However, on the permanent fund[dividend] program, as proposed, 100 percent of the donation will go directly to the designated charity, because the Rasmuson Foundation would be covering those costs."

[9:25:25 AM](#)

REPRESENTATIVE GRUENBERG said he will support the bill with the following two changes: The addition of language that requires a contract between the state and the Rasmuson Foundation, and a provision that the charity must notify the organization managing the program if it is no longer eligible. He said it sounds like the criteria set up are strict and structured.

[9:27:06 AM](#)

CHAIR LYNN suggested the committee hold the bill to get those amendments drafted.

CHAIR LYNN announced that HB 166 was heard and held.

REPRESENTATIVE ROSES said he would not be present at the next committee meeting and wants the other committee members to know that he supports moving HB 166 out of committee.

REPRESENTATIVE GRUENBERG offered to speak Representative Roses' views for the record should he be absent.

HB 151-INDEMNITY CLAUSE IN PUBLIC CONTRACTS

[9:28:49 AM](#)

CHAIR LYNN announced that the final order of business was HOUSE BILL NO. 151, "An Act requiring an indemnification and hold harmless provision in professional services contracts of state agencies, quasi-public agencies, municipalities, and political subdivisions."

The committee took an at-ease from [9:28:59 AM](#) to [9:34:10 AM](#).

[9:34:21 AM](#)

REPRESENTATIVE JOHNSON, Alaska State Legislature, introduced HB 151 as sponsor by request. He said a constituent called attention to the necessity for the bill. The constituent illustrated the problem by saying that if someone were to slip on the ice in front of a state building, and someone else were to remark that the ice wouldn't have fallen on the sidewalk if the building had been designed correctly, the necessity to defend the state would go all the way to the engineer that designed the building, irrespective of whether or not someone did not scrape the ice or the contractor may or may have made a mistake. Representative Johnson relayed that the designer and the engineer, according to some contracts with the State of Alaska, are responsible for defending the state in all the legal costs involved. The bill, he said, would level the playing field for all contracts with the state, as well as ensure accountability; for example, the person who did not scrape the ice would be responsible and "it wouldn't go all the way back to the designer."

REPRESENTATIVE JOHNSON said some contractors are discouraged from bidding, because it is very difficult to get insurance, and they know that they may have to defend themselves in some future litigation. He said only about 5 percent of the contracts with the state put this type of responsibility on the [design consulting companies], but those that do are costing extra money, time, and effort due to litigation. He said one unintended consequence of HB 151 is that it "may bring in some financial consultants for the permanent fund dividend group and the [Alaska Retirement Management (ARM)] Board." He stated that that is not the intention of the proposed legislation, and he expressed willingness to clean up the language to avoid such a consequence.

[9:38:55 AM](#)

CHAIR LYNN moved to adopt Amendment 1, labeled 25-LS0479\C.1, Bannister, 3/16/07, which read as follows:

Page 1, line 1, following "**indemnification**":
Insert "**, defense,**"

Page 1, line 7, following "**Indemnification**":
Insert "**, defense,**"

Page 1, lines 9 - 10:

Delete "that indemnifies the public agency and holds the public agency harmless"

Insert "under which the consultant agrees to indemnify, defend, and hold harmless the public agency from claims or liability"

Page 1, lines 10 - 11:

Delete "who contracts with the public agency to provide the professional services"

Page 1, line 12:

Delete "joint liability on a comparative fault basis"

Insert "the indemnification, defense, and hold harmless obligation on a comparative fault basis where there is joint liability"

Page 2, line 1, following "indemnify":

Insert ", defend,"

Page 2, line 4, following "indemnify":

Insert ", defend, or hold harmless"

Page 2, line 8, following "indemnification":

Insert ", defense,"

Page 2, line 12:

Delete "provision"

Insert "subsection"

Page 2, following line 16:

Insert a new paragraph to read:

"(1) "consultant" means a person who contracts with a public agency to provide professional services;"

Renumber the following paragraphs accordingly.

[9:38:58 AM](#)

REPRESENTATIVE COGHILL objected.

[9:39:08 AM](#)

THERESA BANNISTER, Attorney, Legislative Legal and Research Services, Alaska State Legislature, said Amendment 1 would add an obligation of dissent to the language of the bill.

[9:39:51 AM](#)

REPRESENTATIVE COGHILL removed his objection.

[9:40:02 AM](#)

REPRESENTATIVE GRUENBERG said he would like the terms "indemnification," "defense," and "hold harmless" to be defined for the record.

[9:40:26 AM](#)

MS. BANNISTER said she would have to look up the terms indemnify and hold harmless to describe the difference between them; however, she said all three terms have always been associated together.

REPRESENTATIVE GRUENBERG said defense is the obligation to defend against the [court].

CHAIR LYNN proffered that indemnify means to "bring back to the original position."

REPRESENTATIVE GRUENBERG said he does not know the difference between indemnification and hold harmless.

[9:41:04 AM](#)

REPRESENTATIVE JOHNSON said Brad Thomas from Risk Management suggested Amendment 1, and he is currently present.

CHAIR LYNN reminded the committee that the objection to Amendment 1 had been removed.

REPRESENTATIVE COGHILL suggested that the House Judiciary Standing Committee review the definitions when it hears the bill next.

REPRESENTATIVE LYNN announced that Amendment 1 was adopted.

[9:42:10 AM](#)

REPRESENTATIVE JOHNSON said the bill would provide a policy of fairness and address the cost to state and the difficulty of individuals to contract with the state. He suggested the committee focus on the bigger policy decision.

REPRESENTATIVE COGHILL asked if there have been court tests related to the aforementioned terms.

REPRESENTATIVE JOHNSON deferred to Mark O'Brien.

[9:43:57 AM](#)

MARK O'BRIEN, Chief Contracts Officer, Contracting and Appeals, Office of the Commissioner, Department of Transportation & Public Facilities (DOT&PF), regarding the terms indemnification, defense, and hold harmless, said the department has found this language to be adequate in protecting its concerns and has not had any specific claims or difficulties that required amendment to that language.

[9:44:47 AM](#)

REPRESENTATIVE ROSES asked Mr. O'Brien if there have been any instances where contractors have not bid because of the barriers referenced by the sponsor.

MR. O'BRIEN explained that the existing language that the department uses is the model toward which the proposed bill intends to move other entities; therefore, the department has not experienced such a barrier.

MR. O'BRIEN, in response to a question from Representative Coghill, stated that before the bill was introduced, he was asked to look at it. At that time, he said, he contacted both the Risk Management Section and attorneys who work with DOT&PF, and "they were not aware of any problems that they had in the recent past involving our current provision."

[9:46:15 AM](#)

MR. O'BRIEN, in response to a comment from Representative Coghill, confirmed that DOT&PF is responsible for numerous buildings, facilities, highways, and airports throughout the state, so "it's fair to characterize a fairly significant investment in those facilities."

REPRESENTATIVE JOHNSON, in response to Representative Coghill, offered his understanding that DOT&PF oversees construction of approximately 90 percent of the state's facilities.

REPRESENTATIVE COGHILL asked, "Can you tell me why this has not been previously a part of contracting?"

REPRESENTATIVE JOHNSON said he can't answer regarding the past; however, he surmised the reason this issue has not been brought to light is due to the fact that "they weren't able to sit down with someone and ... draw the picture and explain ... the inequities that existed [within] some of the contracting to a legislator that would ... introduce the legislation"

REPRESENTATIVE COGHILL asked Mr. O'Brien, "Has there been discussion on this very issue, looking for legal help from other agencies?"

MR. O'BRIEN answered no. He explained:

Each owner sets up their own contractual requirements for how they're going to impose the indemnity and hold harmless provisions on the contractors that work for them. And so, they would do that in-house with advice of their own council and have not come to [DOT&PF] and asked us that particular question that I'm aware of.

REPRESENTATIVE JOHNSON noted that Brad Thompson is the director of Risk Management, and he might provide feedback to Representative Coghill's questions.

[9:49:46 AM](#)

MR. O'BRIEN, in response to a question from Representative Roses, said the University of Alaska has its own contracting arm.

REPRESENTATIVE ROSES explained that he wanted to note for the record that the bill would provide the same security to the university that it provides to DOT&PF.

[9:51:09 AM](#)

REPRESENTATIVE GRUENBERG, in response to Representative Doll, explained that HB 151 has no written effective date, thus, if passed, it would automatically become effective 90 days after being signed by the governor.

REPRESENTATIVE GRUENBERG directed attention to the language of AS 45.45.900, which read as follows:

Sec. 45.45.900. Indemnification agreements against public policy.

A provision, clause, covenant, or agreement contained in, collateral to, or affecting a construction contract that purports to indemnify the promisee against liability for damages for (1) death or bodily injury to persons, (2) injury to property, (3) design defects, or (4) other loss, damage or expense arising under (1), (2), or (3) of this section from the sole negligence or wilful misconduct of the promisee or the promisee's agents, servants, or independent contractors who are directly responsible to the promisee, is against public policy and is void and unenforceable; however, this provision does not affect the validity of an insurance contract workers' compensation, or agreement issued by an insurer subject to the provisions of AS 21, or a provision, clause, covenant, or agreement of indemnification respecting the handling, containment, or cleanup of oil or hazardous substances as defined in AS 46.

REPRESENTATIVE GRUENBERG asked if that provision applies to the state.

MR. O'BRIEN responded that that is not in his area of expertise.

[9:53:49 AM](#)

BRAD THOMPSON, Director, Division of Risk Management, Department of Administration, said the division administers the self-insurance program for state agencies only - not the University of Alaska, the Alaska Railroad, the Alaska Housing Finance Corporation, or other school districts and local municipalities. He explained that HB 151 defines "public agencies" to encompass all of those other parties to follow the form that the state has already been using. He said the division advises and gives guidance to DOT&PF and other state departments within its self-insured program and uses "various forms of boiler plate conditions" for indemnity in contracts for professional services. He said that is a normal business practice. The proposed legislation, he said, would apply the state's present business practice to all other public agencies as defined. He

said he provided a fiscal note that shows that the bill, as amended, uses the language from the DOT&PF model.

MR. THOMPSON, in response to Representative Gruenberg's citation of AS 45.45.900, said:

That certainly would apply to the state, but the nuance there is that it limits the ability to contract out your sole negligence. You cannot contract away, in a construction contract, your own sole negligence. The state does not do so in its construction contracts; and it does not do so in the appendix D, which is our professional form for design engineers.

[9:55:44 AM](#)

MR. THOMPSON, in response to Representative Roses, clarified:

In our contracts, we stipulate that the independent professional is responsible for their own deeds or misdeeds. And [there are] different words for it, but that's really what we're asking them: to hold us and protect us from things that are their legal responsibility, and to defend us in the cases where it is arising from their legal...

What we at the same time say, within that same clause: if there's comparative fault - if we and they are responsible for whatever occurred - we would apportion that based on comparative fault, which is prevailing law. Now, there are ... stronger stipulations of indemnity that would obligate the independent professional to also protect for the comparative allocation of the principle - the owner of the project. We don't do so.

[9:57:08 AM](#)

REPRESENTATIVE ROSES asked if HB 151 would "provide that same level of coverage" to which Mr. Thompson referred.

MR. THOMPSON responded, "I don't administer the risk management guidance to those agencies, so I don't know the particulars, but I'm understanding that they have different terms."

REPRESENTATIVE JOHNSON confirmed, "That is the intent."

9:57:54 AM

CHAIR LYNN announced that HB 151 was heard and held.

9:58:13 AM

CHAIR LYNN discussed the committee's upcoming calendar.

ADJOURNMENT

There being no further business before the committee, the House State Affairs Standing Committee meeting was adjourned at 9:59:41 AM.