

ALASKA STATE LEGISLATURE
HOUSE STATE AFFAIRS STANDING COMMITTEE

January 31, 2013

8:05 a.m.

MEMBERS PRESENT

Representative Bob Lynn, Chair
Representative Wes Keller, Vice Chair
Representative Lynn Gattis
Representative Shelley Hughes
Representative Doug Isaacson
Representative Charisse Millett
Representative Jonathan Kreiss-Tomkins

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 75

"An Act repealing certain audit requirements for entities receiving contributions from permanent fund dividends; requiring each campus of the University of Alaska to apply to be included on the contribution list for contributions from permanent fund dividends; and requiring a university to pay an application fee for each campus separately listed on the contribution list for contributions from permanent fund dividends."

- MOVED HB 75 OUT OF COMMITTEE

HOUSE BILL NO. 10

"An Act authorizing state agencies to pay private legal fees and costs incurred by persons exonerated of alleged violations of the Alaska Executive Branch Ethics Act; allowing certain public officers and former public officers to accept state payments to offset private legal fees and costs related to defending against complaints under the Alaska Executive Branch Ethics Act; and creating certain exceptions to limitations under the Alaska Executive Branch Ethics Act on the use of state resources to provide or pay for transportation of spouses and children of the governor and the lieutenant governor."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 75

SHORT TITLE: CONTRIBUTION FROM PFD: AUDITS; UNIVERSITY
SPONSOR(S): REPRESENTATIVE(S) SEATON

01/18/13 (H) READ THE FIRST TIME - REFERRALS
01/18/13 (H) STA, FIN
01/31/13 (H) STA AT 8:00 AM CAPITOL 106

BILL: HB 10

SHORT TITLE: EXEC ETHICS: LEGAL FEES/FAMILY TRAVEL
SPONSOR(S): REPRESENTATIVE(S) GRUENBERG

01/16/13 (H) PREFILE RELEASED 1/7/13
01/16/13 (H) READ THE FIRST TIME - REFERRALS
01/16/13 (H) STA, JUD
01/31/13 (H) STA AT 8:00 AM CAPITOL 106

WITNESS REGISTER

REPRESENTATIVE PAUL SEATON
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 75 as sponsor.

HEATHER BEGGS, Staff
Representative Paul Seaton
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Provided information regarding HB 75 on behalf of Representative Seaton, sponsor.

MIKE WALSH, MPA, Ph.D., Vice President
Operations
Foraker Group
Fairbanks, Alaska

POSITION STATEMENT: Answered questions during the hearing on HB 75.

KATHLEEN LIGHT, Executive Director
Ketchikan Arts and Humanities Council (KAHC)

POSITION STATEMENT: Testified in support of HB 75.

ANGELA RODELL, Deputy Commissioner
Department of Revenue (DOR)
Juneau, Alaska

POSITION STATEMENT: Answered questions during the hearing on HB 75.

DANA PAPERMAN, Executive Director
Seward Senior Center
Seward, Alaska

POSITION STATEMENT: Testified in support of HB 75.

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

POSITION STATEMENT: Presented HB 10 on behalf of Representative Gruenberg, sponsor.

REPRESENTATIVE MAX GRUENBERG
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: As sponsor, responded to questions during the hearing on HB 10.

JUDY BOCKMON, Assistant Attorney General;
State Ethics Attorney
Opinions, Appeals, & Ethics Section
Civil Division (Anchorage)
Department of Law (DOL)
Anchorage, Alaska

POSITION STATEMENT: Answered questions during the hearing on HB 10.

ACTION NARRATIVE

[8:05:00 AM](#)

CHAIR BOB LYNN called the House State Affairs Standing Committee meeting to order at 8:05 a.m. Representatives Hughes, Isaacson, Keller, Gattis, Kreiss-Tomkins, and Lynn were present at the call to order. Representatives Millett arrived as the meeting was in progress.

HB 75-CONTRIBUTION FROM PFD: AUDITS; UNIVERSITY

[8:05:32 AM](#)

CHAIR LYNN announced that the first order of business was HOUSE BILL NO. 75, "An Act repealing certain audit requirements for entities receiving contributions from permanent fund dividends;

requiring each campus of the University of Alaska to apply to be included on the contribution list for contributions from permanent fund dividends; and requiring a university to pay an application fee for each campus separately listed on the contribution list for contributions from permanent fund dividends."

[8:05:50 AM](#)

REPRESENTATIVE PAUL SEATON, Alaska State Legislature, presented HB 75 as sponsor. He reviewed that the "Pick.Click.Give" program was established by the [25th Alaska State] Legislature as a simple way for Alaskans to designate a portion of their permanent fund dividend (PFD) as a donation to charities. Currently, he stated, nonprofit organizations with a total budget of less than \$250,000 are exempt from the financial audit required of nonprofit organizations with a total budget of \$250,000 or greater wishing to participate in Pick.Click.Give. He clarified that the audit is a financial one done by a certified public accountant (CPA); it is not an Internal Revenue Service (IRS) audit. He reviewed that the IRS 990 form, [included in the committee packet], is 12 pages in length, was revised in 2008, and not only ensures nonprofit organizations' income and expense numbers match, but also considers conflicts of interest and governance.

[8:07:55 AM](#)

REPRESENTATIVE SEATON explained that the current audit requirement is problematic for a nonprofit organization that, for example, makes \$260,000 a year, because the cost of the audit is \$7,000-\$12,000. He opined that the purpose of a nonprofit organization is to accomplish its mission, not to employ CPAs. Representative Seaton said there is no question that CPA audits are best practices; however, he said the question is whether the state should require a CPA audit from a small entity simply to allow people to donate money to that entity. He questioned why it is necessary to disadvantage a smaller nonprofit organization with an onerous requirement that is not required of larger nonprofit organizations until they reach \$500,000 in federal funds.

REPRESENTATIVE SEATON relayed that many people who did not see their charity on the Pick.Click.Give list mistakenly interpreted that to mean that the charity had lost its nonprofit status, which he said is "another reason to get rid of this." He said The Rasmuson Foundation and other entities are trying to make it

very easy for people to donate to the organizations they support and are happy to have more nonprofit organizations participate in the Pick.Click.Give program.

8:11:20 AM

REPRESENTATIVE SEATON said the proposed legislation would also correct an oversight in the original legislation. He explained that all the nonprofits pay a \$250 administrative fee, but the University of Alaska campuses were left out of that requirement. He offered his understanding that the University of Alaska does not mind being asked to pay that fee.

8:12:21 AM

REPRESENTATIVE SEATON, in response to the chair, relayed that the CPA audit looks at finances and account balancing, not whether the expense should have been made. He said the idea for the bill came from a complaint from the Seward Senior Center in Seward, Alaska, which was generating \$3,000-\$4,000 in donations, while facing an audit that was going to cost \$12,000. He remarked that the CPA audit is not even reviewed. In response to a follow-up question, he clarified that a CPA audit would not determine the legitimacy of a nonprofit organization; that is something the IRS would do.

8:15:26 AM

REPRESENTATIVE GATTIS said she understands best practices, but questioned what the other purpose of the [CPA] audit could be. She asked if the audit is open to the public.

8:16:23 AM

HEATHER BEGGS, Staff, Representative Paul Seaton, Alaska State Legislature, on behalf of Representative Seaton, sponsor of HB 75, stated, "Both the 990 and CPA audits do report some program activities of nonprofits." She said the IRS 990 form is more detailed. She said both documents are open to the public; although the 990 form is more accessible. She relayed that with the revisions made in 2008, "nonprofits are penalized \$20 a day every day after five days that they would refuse giving a 990 to a donor." The CPA audit is an internally managed file that should be given but is not required to be given [to the public], she said.

REPRESENTATIVE GATTIS asked Ms. Beggs to confirm that [the CPA] audit will not necessarily clarify for donors how their money is spent.

MS. BEGGS answered that is correct.

[8:17:47 AM](#)

REPRESENTATIVE KELLER asked if any nonprofit 501(c)(3) willing to fill out the 990 form is eligible to be listed in the Pick.Click.Give program.

[8:18:23 AM](#)

MS. BEGGS answered that there are other requirements, upon which she suggested the Foraker Group could expound, but said every organization must be a 501(c)(3), which is why the bill sponsor feels the 990 form is the best accountability (indisc. - overlapping voices). In response to follow-up questions, she indicated that the status of the University of Alaska is specified in statute, and she offered her understanding that the university is "the only other exception," but again deferred to the Foraker Group for further details.

REPRESENTATIVE KELLER stated support of the sponsor's "getting this through."

[8:19:43 AM](#)

REPRESENTATIVE KELLER stated his belief that the audit became an eligibility requirement because the bar was so high. He said he thinks it is great to take that bar away, as long as everybody gets "a fair shake," and he questioned whether "we" are prepared to make sure everyone can apply on equal terms. He mentioned public schools. He said he was thinking about religious nonprofit organizations and "how that eligibility is required." He indicated that the IRS has made changes related to 501(c)(3) organizations, but stated that "they weren't that difficult."

[8:20:51 AM](#)

REPRESENTATIVE SEATON said the general purpose of [the Pick.Click.Give program] is to enable people to give donations with ease. He said generally people give money to organizations they know. He stated that really small organizations are already exempt; [the proposed] legislation is designed for those organizations with budgets over \$250,000.

[8:23:22 AM](#)

REPRESENTATIVE KELLER said he understands the purpose of the proposed legislation, but clarified that he wants to know if [the division] is prepared for the increased number of nonprofit organizations that might participate in Pick.Click.Give if HB 75 passes. Further, he expressed concern that there would be an equal basis of qualification for all charities.

REPRESENTATIVE SEATON responded that HB 75 would get rid of inequality. Regarding the concern about being prepared for the change, he noted that representatives from the Rasmuson Foundation and the division were available to testify. He related that "they" have not expressed concern about the additional work that may result from allowing more nonprofit organizations into the Pick.Click.Give program.

[8:26:29 AM](#)

MS. BEGGS, in response to Representative Isaacson, stated that the 990 forms were all changed in 2008 and are "tiered" to accommodate organizations with smaller budgets, but still include "all the same accountable categories."

REPRESENTATIVE ISAACSON asked if the intent of HB 75 is to allow nonprofit organizations to use whichever form they file to the IRS as the form they submit to the Pick.Click.Give program.

REPRESENTATIVE SEATON answered that is correct.

[8:28:46 AM](#)

REPRESENTATIVE HUGHES noted that the 990 form lists the purpose of the nonprofit organization. She further noted that 990 forms can be accessed easily on line. She offered her understanding that [Alaska] has one of the highest nonprofit organizations to population ratios, which she said could mean a long list burdening the division; however, she recollected hearing about a requirement wherein "they have to receive a certain amount of their revenue income via donations" - an amount that she said seemed high, such as \$100,000 - and she suggested that that detail could limit the rise in program participants.

[8:30:26 AM](#)

MS. BEGGS suggested that Representative Hughes might be referring to the "one-third public support test," which is part of the 990 form requirement for nonprofit organizations, but not part of the Pick.Click.Give application.

[8:30:50 AM](#)

REPRESENTATIVE KREISS-TOMKINS pointed to a research brief from Legislative Legal and Research Services, dated 1/24/13, in which it is noted that Diane Kaplan, president of the Rasmuson Foundation, testified in 2007 that there were budget and staffing requirements related to qualifications of a nonprofit organization to take part in the Pick.Click.Give program. He asked for details regarding those requirements.

[8:31:22 AM](#)

MS. BEGGS deferred to other testifiers to answer further questions.

[8:32:02 AM](#)

MIKE WALSH, MPA, Ph.D., Vice President, Operations, Foraker Group, in response to the chair, explained that the Foraker Group is a 501(c)(3) nonprofit management core organization whose job is to strengthen nonprofit organizations through education, training, organizational development, and shared financial human services. In response to [Representative Hughes'] previous mention of a \$100,000 price point, confirmed that that pertains to a requirement of the Pick.Click.Give program wherein an organization must receive 5 percent or at least \$100,000 of its revenue from donated sources. In response to Representative Isaacson, he clarified, "... whichever is the lower."

[8:34:38 AM](#)

DR. WALSH, in response to a question from Representative Keller, stated that there is little administrative burden anticipated as a result of HB 75, because the process for taking in applications is on line and simple.

[8:36:19 AM](#)

KATHLEEN LIGHT, Executive Director, Ketchikan Arts and Humanities Council (KAHC), testified in support of HB 75. She stated that KAHC cannot participate in the Pick.Click.Give

program because it is too great a financial burden to do so. She said the program is an extraordinary means to increase funding for many nonprofit organizations, as well as a philanthropic opportunity for Alaskan citizens, and participation in the program gives a "stamp of approval" to an organization; however, ironically the program disenfranchises those organizations that cannot participate because of its cost. Ms. Light said KAHC receives numerous calls from people asking why the council is not in the Pick.Click.Give program, and has discovered later that those people are not donating money to the council, because they have already given through the Pick.Click.Give program. Under HB 75, she said, KAHC would be financially able to participate in the Pick.Click.Give program.

MS. LIGHT relayed that KAHC was established in 1953, has been a nonprofit organization since 1970, and has a budget of approximately \$320,000. She said the council receives grants from the City of Ketchikan, the Ketchikan Borough, the State of Alaska, the Alaska State Council on the Arts, the National Endowment for the Arts, Westaff (ph), the Rasmuson Foundation, and the Murdock Trust. She said it is not unusual for nonprofit organizations in Alaska to receive grants from so many different sources, all of which require the 990 form, which is "sufficient for them in reviewing our finances and our standing as a good nonprofit."

[8:39:46 AM](#)

ANGELA RODELL, Deputy Commissioner, Department of Revenue (DOR), said she was present to answer questions on behalf of the Permanent Fund Division. In response to a question from Representative Keller, she stated that HB 75 would not place additional burden on the Permanent Fund Division, and said the department is comfortable with the affect the proposed legislation may have. In response to a follow-up question, she said the \$250 application fee would sufficiently cover the division's cost in running the Pick.Click.Give program. In response to the chair, she confirmed that the fiscal note is zero because there would be no additional cost to the division as a result of HB 75.

[8:41:28 AM](#)

DANA PAPERMAN, Executive Director, Seward Senior Center, testified in support of HB 75. She related that the Seward Senior Center has served seniors and social services for 35 years. She thanked the bill sponsor for bringing forth the

legislation under House Bill 302 in 2012 and again as HB 75 this year. She said the Seward Senior Center became a Pick.Click.Give recipient in the first year of the program, and it received \$50 from those known personally to the center. Ms. Paperman indicated that she worked in partnership with the Seward Community Foundation, which helps finance direct marketing in the community, to increase local awareness of the Pick.Click.Give program and the recipients in Seward who benefit from it, and in the second year of the Pick.Click.Give program the Seward Senior Center received \$1,100, again coming from friends of the center. However, she stated that in 2011, the center's budget climbed above the \$250,000 mark that requires the audit, which is a financial burden on the Seward Senior Center. She said the Pick.Click.Give program created a valuable avenue for the center to increase its unrestricted funds without creating a burden on the center's funds or operating staff. She encouraged the committee to support HB 75 and to help Alaska's nonprofit organizations.

[8:43:23 AM](#)

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

[8:43:33 AM](#)

REPRESENTATIVE KELLER said he thinks HB 75 is a good bill, and he expressed his hope that the testimony that had been heard would be helpful in continued process of hearing the bill.

[8:43:54 AM](#)

REPRESENTATIVE GATTIS commented that the proposed legislation would provide generous Alaskans the opportunity to give where they choose, and she said she cannot find a problem with [the proposed legislation].

[8:44:15 AM](#)

REPRESENTATIVE GATTIS moved to report HB 75 out of committee [with individual recommendations] and the accompanying zero fiscal notes. There being no objection, HB 75 was reported out of the House State Affairs Standing Committee.

[8:45:47 AM](#)

The committee took an at-ease from 8:46 a.m. to 8:47 a.m.

HB 10-EXEC ETHICS: LEGAL FEES/FAMILY TRAVEL

8:47:46 AM

CHAIR LYNN announced that the final order of business was HOUSE BILL NO. 10, "An Act authorizing state agencies to pay private legal fees and costs incurred by persons exonerated of alleged violations of the Alaska Executive Branch Ethics Act; allowing certain public officers and former public officers to accept state payments to offset private legal fees and costs related to defending against complaints under the Alaska Executive Branch Ethics Act; and creating certain exceptions to limitations under the Alaska Executive Branch Ethics Act on the use of state resources to provide or pay for transportation of spouses and children of the governor and the lieutenant governor."

8:48:08 AM

TED MADSEN, Staff, Representative Max Gruenberg, Alaska State Legislature, presented HB 10 on behalf of Representative Gruenberg, sponsor. He said HB 10 would set into statute "much of the substance of some attorney general regulations regarding the [Alaska] Executive Branch Ethics Act that were promulgated ... back in December of 2009." He explained that Representative Gruenberg disagreed with the procedures within two regulations. The first issue had to do with 9AAC 52.045, which addresses transportation expenses of family members of the governor and lieutenant governor. Mr. Madsen explained that currently minor children are the only ones whose travel costs can be reimbursed, but the sponsor thinks it is appropriate to include any child of the governor or lieutenant governor who is dependent upon the care of his/her parents because of, for example, a physical, mental, or developmental disability - even if the child is over the age of 19.

CHAIR LYNN said theoretically that could include a child of the governor or lieutenant governor who is 35 years of age.

MR. MADSEN answered that is correct.

8:50:51 AM

REPRESENTATIVE KELLER asked if current regulation prohibits coverage of travel costs for "a minor child who is dependent and becomes an adult."

MR. MADSEN cited 9 AAC 52.045 (d)(2), which defines family member as "a spouse or minor child of the governor or lieutenant governor".

CHAIR LYNN offered his understanding that HB 10 would increase coverage from a minor child to a mentally or physically disabled adult child of the governor or lieutenant governor.

MR. MADSEN confirmed that is correct.

REPRESENTATIVE KELLER ventured that just because it is not covered under regulation does not mean coverage of the travel cost of a dependent adult child of the governor or lieutenant governor would be prohibited. He described a scenario in which a former governor of the state becomes dependent on his children for care, and under HB 10 "a senior citizen would still not qualify." He questioned how big the value of HB 10 would be.

[8:53:02 AM](#)

MR. MADSEN relayed that the sponsor believes it would be unfair to unnecessarily keep the governor's or lieutenant governor's family from [traveling together] when there is a child in the family who is dependent upon his/her mother or father for care. He directed attention to the stipulations related to travel cost reimbursement in Section 3, page 3, lines 19-31. For example, [as shown on lines 28-29] he stated that the event must be "a family-oriented or youth-oriented event at which the person's attendance is particularly appropriate".

CHAIR LYNN suggested one example might be participation in the Special Olympics.

MR. MADSEN concurred.

REPRESENTATIVE KELLER said he realizes that. He stated his belief that because there is no prohibition, the executive branch could pay for travel as it sees fit; therefore, he questioned the necessity of the proposed legislation.

[8:55:46 AM](#)

REPRESENTATIVE MAX GRUENBERG, Alaska State Legislature, as sponsor of HB 10, told Representative Keller that he is correct that currently there is nothing that prevents the executive branch from "doing what they're doing." However, he said he thinks it is better policy to give the oversight to the

legislature, which appropriates the money and is a different branch of government.

[8:57:22 AM](#)

REPRESENTATIVE KELLER opined that the spirit of the current regulation is meant to be "a little general."

[8:57:47 AM](#)

REPRESENTATIVE GRUENBERG clarified his intent was to follow the same parameters as the regulation. He reiterated that the question is: Who decides? He said he thinks it is appropriate for the executive branch not to make policy regarding its own travel arrangements.

[8:58:34 AM](#)

REPRESENTATIVE GATTIS stated that if she was the governor, she would want to know what the rules are before making travel arrangements. She said she thinks she can see both sides, but wants to know if currently there are rules to guide a governor who may want to travel with a child.

REPRESENTATIVE GRUENBERG clarified that there are rules in regulation currently; the only difference is that under HB 10, adult disabled children would be included.

[9:00:15 AM](#)

REPRESENTATIVE ISAACSON posited that HB 10 would help to rectify an issue that needs to be clarified. He said it is not good policy for the executive branch to ignore the legislature's statutory authority. He said he likes what the proposed legislation would do to clarify this issue, especially in terms of when a child's care is customary and needed, so that the child is not split apart from the family when the family is trying to follow the letter of the law.

[9:02:16 AM](#)

REPRESENTATIVE KELLER clarified that he never meant to suggest that statute could be ignored by the executive branch. He stated, "The line between what's statute and what's law is a difficult one and a subjective one to draw." He said the question is how far [the legislature] can go in specifying policy in statute.

CHAIR LYNN pointed out that the question is not regarding whom the governor can bring along when traveling, but who pays for those people.

[9:03:57 AM](#)

MR. MADSEN, in response to comments made by Representative Hughes and the sponsor, offered clarification by citing the language in AAC 52.045(c), which read as follows:

(c) For purposes of AS 39.52.120(a) and (b)(3), the use or authorization of use of state money or other state resources for transportation of a family member that does not benefit the state is presumed insignificant if the governor or lieutenant governor pays the state the cost of the family member's transportation. Except for transportation by state aircraft for partisan political purposes under AS 39.52.120(f), the agency that authorized or paid for the travel shall determine the cost of the transportation based on either

- (1) the actual fare paid; or
- (2) the fare for equivalent commercial transportation, if the travel was by state aircraft, vessel, or vehicle.

[9:07:35 AM](#)

JUDY BOCKMON, Assistant Attorney General; State Ethics Attorney, Opinions, Appeals, & Ethics Section, Civil Division (Anchorage), Department of Law (DOL), in response to Representative Keller, offered a brief overview of the code of conduct set up through the Alaska Executive Branch Ethics Act. She said regulations have been adopted over time to provide additional parameters with respect to certain portions of the statute. In response to the chair, she said the Alaska Executive Branch Ethics Act applies primarily to someone in the executive branch of government while he/she is actively in service

[9:10:59 AM](#)

CHAIR LYNN directed attention to the following language in the bill title, on line 3: **"allowing certain public officers and former public officers"**.

MS. BOCKMON responded that both the regulations and the proposed legislation recognize the possibility that a former state officer could be the subject of an ethics complaint for conduct while in office, and the attorneys' fee provision covers that individual. She said the regulation and the proposed statute do not cover a former employee's violation of one of those provisions that apply after he/she leaves state service.

[9:12:09 AM](#)

REPRESENTATIVE GRUENBERG directed attention to language in Section 5, on page 5, lines 5-9, which read:

***Sec. 5.** The uncodified law of the State of Alaska is amended by adding a new section to read:
APPLICABILITY. AS 39.52.470, enacted by sec.4 of this Act, applies only to complaints under AS 39.521.310 - 39.52.390 that are initiated or filed on or after the effective date of this Act.

REPRESENTATIVE GRUENBERG stated, "That's talking about the attorneys' fees. The transportation would apply to applications that are made after the effective date; there's no retroactivity clause."

[9:12:53 AM](#)

REPRESENTATIVE KELLER offered his understanding that HB 10 is looking at policy decisions regarding regulation that is already in place. He suggested that the committee needs to hear the rest of the presentation.

[9:13:45 AM](#)

REPRESENTATIVE GRUENBERG clarified that the first part of the proposed legislation would adopt the regulations in statute, "except for the developmentally disabled kid." He offered his understanding that Representative Millett would be offering an amendment. He said she has sponsored legislation, which he has cosponsored, in support of the developmentally disabled community, and he indicated a change in phrase is needed from "mental disability" to "intellectual" or "developmental disability".

[9:15:07 AM](#)

REPRESENTATIVE ISAACSON moved to adopt Amendment 1, labeled 28-LS0040\A.2, Wayne, 1/30/13, which read as follows:

Page 3, line 12:

Delete "or mental"

Insert ", intellectual, or developmental"

There being no objection, Amendment 1 was adopted.

[9:15:47 AM](#)

REPRESENTATIVE GRUENBERG directed attention to Section 4 of HB 10, on page 4, line 7, through page 5, line 4, which addresses the ability for any person in the executive branch who is exonerated to recoup his/her cost in attorneys' fees in defending against an ethics complaint. He stated that under current regulation, the person can apply and receive payments before they are exonerated; under HB 10, the person would have to wait until he/she is exonerated. He said that is the normal practice in the state. He opined that if money is awarded in advance, the person may not prevail, and then he/she has to be chased down to get the money back, which is "unseemly" and "a waste of time."

[9:18:51 AM](#)

REPRESENTATIVE KELLER asked at what point a person could begin to accumulate a legal debt because of a complaint.

[9:19:39 AM](#)

MS. BOCKMON answered that when a complaint is first received, the department does a preliminary review and analysis to determine whether it states appropriate Ethics Act claims and warrants investigation. If the department decides to formally accept the complaint, then statute requires that the subject of the complaint is notified, and the investigation would proceed. She said most investigations are resolved at some level of the investigatory phase; however, statute provides for more formal accusation that might lead to a hearing. She shared that her experience has shown that most subjects do not immediately hire an attorney when they are served with a complaint, unless the circumstances are serious. She said, "If it got to the public accusation phase without otherwise resolving, I would expect most folks would hire an attorney - but maybe not."

[9:21:40 AM](#)

MS. BOCKMON, in response to a question from Representative Hughes regarding possible costs to the state, explained that the fiscal note is zero, because under [HB 10], neither the transportation costs nor the attorneys' fees would impact the Department of Law. She said the Office of the Governor has an administrative account that is addressed in the budget and appropriations process every year, and the transportation costs are covered within that funding. She offered her understanding that the attorneys' fees are covered through the Division of Risk Management, in the Department of Administration (DOA), and the DOA provides the fee payments through interagency assessment; therefore, if there was a particular person subject to an ethics complaint who chose to avail him/herself of the attorneys' fees benefit, that would be addressed through the Division of Risk Management and that particular person's agency.

MS. BOCKMON, in response to a request from Representative Hughes regarding historical information, said there are instances where state employees are the subject of various complaints - not just ethics complaints. She said she is not fully educated on all the parameters in which a defense might be provide in whatever the law suit is. In addition to Ethics Act proceedings, she said, there are also other proceedings, which can make a conflict challenge or bring a complaint under the hearing officers' procedures, for example. The regulations for the Ethics Act have been in place only since December 2010. She offered her understanding that to date there has been no one seeking reimbursement of attorneys' fees costs. She recollected two significant matters involving attorneys, and in both instances the individual was not exonerated. She said there may have been one smaller complaint that was dismissed where an attorney was involved; however, she said she is not aware that there have been any requests for reimbursement of attorneys' fees since the regulation went in to effect.

[9:26:02 AM](#)

REPRESENTATIVE HUGHES asked if there is any statutory limit in what would be paid to attorneys' fees.

MS. BOCKMON replied that in August 2009, the Division of Risk Management set a cap of \$25,000 per proceeding, regardless of the number of claims made. She offered her understanding that the division set that as policy, and said, "I don't see a citation to ... another authority."

9:27:39 AM

REPRESENTATIVE KREISS-TOMKINS offered his understanding that HB 10 would change when attorneys' fees are paid out, not how; a person would be paid back his/her attorneys' fee costs only after being exonerated.

9:28:14 AM

CHAIR LYNN offered his understanding that under HB 10, the person who had been exonerated or the Division of Risk Management would be reimbursed.

9:28:34 AM

REPRESENTATIVE GRUENBERG answered that is correct. In response to Representative Hughes' previous questions, he said the general rule for fiscal notes is that they are viewed only in terms of the effect of the bill. The only effect of HB 10, he said, is "an unknown amount, which will ... potentially save the state money," because it will protect against a circumstance where a person is reimbursed for the attorneys' fees and subsequently is not exonerated. He opined that a zero fiscal note is very appropriate, because under HB 10, nothing would be changed but to ensure that a person is not paid erroneously.

REPRESENTATIVE GRUENBERG directed attention to language beginning on page 4, line 31, to page 5, line 4, which he said does not set an amount for attorney's fees, but outlines that those fees must be reasonable, related to the cost of legal representation, and necessarily incurred.

CHAIR LYNN said "reasonable" is in the eyes of the judge.

REPRESENTATIVE GRUENBERG said that is correct. He said this pertains to regulation 9 AAC 52.040(d)(2), which read:

(2) expenses are reasonable if, based on an evaluation of the complexity of the alleged claim, the attorney's fee or hourly rate, the hours expended, the relationship between the amount of work performed and the significance of the alleged claim, and other relevant factors, the expenses were necessarily incurred to defend against an allegation in a complaint brought under AS 39.52.310 - 39.52.390; those expenses may

(A) include attorney's fees, fees incurred for professional legal services customarily performed by an attorney but delegated to and performed by an investigator, paralegal, or law clerk, and related costs; and

(B) be apportioned by alleged violation if a complaint alleges more than one violation, but only if the public officer provides clear documentation that the expenses paid were limited to the alleged violation for which the public officer is exonerated; and

REPRESENTATIVE GRUENBERG stated, "We didn't go into that detail in statute, because that's covered in the [regulations]."

[9:33:00 AM](#)

REPRESENTATIVE KELLER asked if it is the norm in other states to have no money paid until after exoneration from an ethics complaint. He posed the possibility that ethics complaints can be used as a tool in the toolbox of various organizations. He continued as follows:

For example, a political organization puts out the word and says, "Okay, we've got to have lots of complaints filed." That may or may not have an effect on the AG, but we know that the ... media is involved at a different level than what it normally is in the courts, and this becomes a matter of public opinion, you know, then that ... can affect the results of what happens with the ... next ethics complaint.

REPRESENTATIVE KELLER expressed his concern that HB 10 can be used as a political tool. Further, he questioned whether it is appropriate to remove the option that the executive branch would have of protecting an employee that may have become a political target. He offered his understanding that the passage of HB 10 would "prevent that kind of coverage." He asked if the executive branch would have the option of "putting the money out there ... to help protect its employees" if the proposed legislation does not pass.

[9:36:12 AM](#)

REPRESENTATIVE GRUENBERG responded that the practice before any litigation came about was like that in criminal law where there was no reimbursement for anything, but worse because there is no

public attorney appointed to represent the defendant in an ethics case. He said neither the public defender nor the Office of Public Advocacy have any statutory provision that allows them to represent "these folks." He opined that when former Governor Palin was hit with litigation, that brought people's attention to "the fact that there should be some method of dealing with this." He said the AG decided not to provide a public attorney for the defendant, but to provide a method of reimbursing a private attorney for the reasonable amount of the fee. Even under the Alaska Legislative Branch Ethics Act, there would be no one to defend legislators, he said, but "fortunately that hasn't happened."

REPRESENTATIVE GRUENBERG, regarding the question about fairness, said it is possible that the person upon whom the ethics complaint was filed could incur considerable expense; however, he said he thinks the chance of not being exonerated is much greater. He echoed Ms. Bockmon's statement that most of the cases are handled in house and do not require the attorneys' fees. He said he thinks the issue of vexatious litigation goes beyond the scope of HB 10.

[9:42:45 AM](#)

REPRESENTATIVE KELLER asked the bill sponsor if he thinks HB 10 would "expand the potency potential of vexatious complaint."

REPRESENTATIVE GRUENBERG responded that he does not think the proposed legislation would have any effect on vexatious litigation.

[9:43:55 AM](#)

CHAIR LYNN said it seems that there are two separate bills in HB 10. He reviewed that the first part of the proposed legislation deals with the governor or lieutenant governor being able to do what should be done for a disabled child of any age. He questioned whether the two parts of the bill belong together.

[9:44:29 AM](#)

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

[9:44:48 AM](#)

CHAIR LYNN stated his support for the first part of HB 10, and said the second part raises a lot of questions that merit more discussion.

[9:45:24 AM](#)

REPRESENTATIVE GATTIS offered her understanding that testimony has shown that frivolous ethics complaints are exposed, which she said addresses her concern that a person would not have to shell out the money to cover attorneys' fees for a frivolous complaint and get reimbursed later. Regarding a nonfrivolous ethics complaint, wherein the person has to hire his/her own attorney, she stated, "Our constituents have to do the same thing, and I think they're looking at us to have the same rules."

[9:46:43 AM](#)

REPRESENTATIVE ISAACSON said the bill sponsor has pointed out that the intent of HB 10 is not to address the issue of vexatious litigation; however, he estimated that the bill would notify the plaintiff that if he/she makes it through the executive branch ethics process, he/she will not bleed the governor's funds, because if the governor prevails, then the governor will be reimbursed. He suggested perhaps the situation with former Governor Palin was that people tried to "bleed her dry." He stated, "That is not what we want our executives to have to endure." He concurred with the chair that HB 10 may be two bills in one, but stated his support of both aspects of the proposed legislation, because it would provide "clear instructions to all involved."

[9:48:41 AM](#)

REPRESENTATIVE KREISS-TOMKINS offered his understanding that with vexatious complaints; it is the complainant that will "pay through the nose" when his/her complaint is found to be meritless. He added, "It's just a question of when." He opined that the second part of HB 10 is logical and merely aligns "when that money is paid out for executive branch people with members of the general public."

[9:49:40 AM](#)

CHAIR LYNN reiterated his previous remarks about the complexity of the second part of the proposed legislation.

CHAIR LYNN announced that HB 10 [as amended] was held over.

[9:50:59 AM](#)

ADJOURNMENT

There being no further business before the committee, the House State Affairs Standing Committee meeting was adjourned at 9:51 a.m.