

SENATE FINANCE COMMITTEE
March 17, 2014
9:04 a.m.

[9:04:53 AM](#)

CALL TO ORDER

Co-Chair Meyer called the Senate Finance Committee meeting to order at 9:04 a.m.

MEMBERS PRESENT

Senator Pete Kelly, Co-Chair
Senator Kevin Meyer, Co-Chair
Senator Anna Fairclough, Vice-Chair
Senator Click Bishop
Senator Mike Dunleavy
Senator Lyman Hoffman
Senator Donny Olson

MEMBERS ABSENT

None

ALSO PRESENT

Angela Rodell, Commissioner, Department of Revenue; Senator Fred Dyson; Chuck Kopp, Staff, Senator Fred Dyson; Nancy Meade, General Counsel, Alaska Court System; Carmen Gutierrez, Self, Juneau.

PRESENT VIA TELECONFERENCE

Dr. Norman Means, Self, Anchorage; James Mooney, Self, Anchorage; James Noble, Self, Prudhoe Bay; Donna Klecka, Self, Eagle River.

SUMMARY

CONFIRMATION: Department of Revenue, Commissioner Angela Rodell

SB 80 OUT-OF-STATE PHYSICIAN LICENSE

SB 80 was SCHEDULED but not HEARD.

SB 108 LIMIT PUBLIC ACCESS TO CRIMINAL RECORDS

SB 108 was HEARD and HELD in committee for further consideration.

SB 135 EXTEND ALASKA HEALTH CARE COMMISSION

SB 135 was REPORTED out of committee with a "do pass" recommendation and with a previously published zero fiscal note: FN1 (DHS).

SB 161 AUTOPSIES AND DEATH CERTIFICATES

CSSB 161(FIN) was REPORTED out of committee with a "do pass" recommendation and with a new zero fiscal note from the Department of Health and Social Services.

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Co-Chair Meyer related that typically in confirmation hearings, the committee allowed the designee time to explain why they wanted the job and why they were the best selection.

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^CONFIRMATION: DEPARTMENT OF REVENUE, COMMISSIONER ANGELA RODELL

ANGELA RODELL, COMMISSIONER, DEPARTMENT OF REVENUE, spoke about her background and related that a love of public service had led her to get a double major in political science and economics. She discussed her background and work history. [The information can be found in her resume which was in members' packets (copy on file).] She shared that she then received a Master's Degree in Public Administration with an emphasis in public finance. She related that through her work in financing housing, she had visited Alaska and met with the Alaska Housing Finance Corporation (AHFC); the trip had made a real impression on her at the time. She related that when she had met with AHFC in December of 1996, Alaska was in a very different place; however, it was also in a very similar place. She shared that many of issues that were being discussed this year were also under discussion 20 years prior. She related that 20 years ago, a natural gas pipeline, the depletion of

the Constitutional Budget Reserve Fund, and the decline or elimination of the Prudhoe curve were all being discussed.

Commissioner Rodell continued to address the committee and felt that she had gained a unique perspective over the last 15 years as she had been advising clients in Alaska and around the United States. She asserted that Alaska was in a great position and had hard decisions to make; she wanted to be part of that decision making process and taking the state forward. She offered that Alaska had always managed its resources well and made the hard decisions when they arose. She thought that Alaska saved money when appropriate and had likewise invested money in the state when that was appropriate. She opined that the State of Alaska had honored its contract obligations and had taken care of its people. She added that Alaska currently had a lot possibilities and that it was a very exciting time to be here; additionally, she was excited to work with the current administration. She related that although she had officially come to Alaska in 2011 as the Deputy Commissioner of Treasury for the Department of Revenue, she felt as though she had been participating in the state's finances for almost 20 years; she wanted to continue in that roll.

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Co-Chair Meyer noted that Commissioner Rodell's background was very impressive.

Co-Chair Meyer inquired what Commissioner Rodell's forecast was for improving revenue for the state and referenced concerns regarding the oil production forecasts continuing to go down, despite passing the oil tax bill the prior session. It was his impression that Commissioner Rodell tended to be conservative with the forecasts and that if they exceeded the prediction that would be great; he hoped that production forecast would at least be above the conservative number.

Co-Chair Meyer requested an explanation of how Commissioner Rodell made the production forecast, as well as how she viewed future revenue for the State of Alaska. Commissioner Rodell responded that from her standpoint, it was imperative that DOR was conservative on the production forecasts, given that it was used for all of the state's spending decisions. She stated that she would rather error

on the side of showing revenues lower than forecasted so that there were potential surpluses at the end of the year rather than significantly large deficits. She acknowledged that it was important to give the legislature comfort with the methodology that was used in the forecasts.

Commissioner Rodell shared that she did have concerns regarding Alaska's growing dependence on the oil and gas production tax as opposed to other taxes or revenue sources available within the state. She thought that 20 years ago Alaska was maybe 70 percent reliant on the oil and gas production tax, but that now Alaska was 90 percent reliant on that as a revenue source; meanwhile, the federal government was also cutting back on its spending in Alaska. She wondered how the state was going to pick up the federal portion of the revenue sharing. She opined that the state would have to continue to look for diversity in its revenue base and look at investment earnings as a source of revenue. She thought that the state needed to continue to look at ways to encourage business development within the state.

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Co-Chair Meyer offered that it was a little risky having 90 percent of your revenue coming from one source. He inquired how Commissioner Rodell saw the makeup of the state's revenue stream in 20 years and hoped that the state would have income from gas by then. Commissioner Rodell replied that gas was important component of what DOR saw 20 years in the future; however, this was still a huge influence from the energy sector overall. She hoped to see more revenue coming from business sectors within the state outside of the energy sector such as fisheries, other resource development, and mineral taxes.

Co-Chair Meyer thought that financially speaking, the state was in a good position and inquired if Alaska had the highest credit rating that was possible. Commissioner Rodell replied in the affirmative.

Co-Chair Meyer inquired what changes Commissioner Rodell anticipated or desired to make within DOR in the future. Commissioner Rodell replied that DOR was in a really good position currently and that she felt good about many of the things that it was taking on; DOR was continuing to review its regulations and was attempting to find an easier way to

comply with statute through regulations and encouraging certain business activity through those regulation changes. She reported that DOR was doing to a lot of work to develop its databases to provide good information on both the use of tax credits along with where tax revenues were coming from. She reported that DOR was trying to find cost efficiencies where it could but thought that the department was doing a much better job of serving the public; DOR was becoming a more customer-service friendly department and she wanted to continue that effort. She wanted to continue to foster working across divisions to address many of the concerns regarding confidentiality in order to provide the public with information about what the department was doing and how it was conducting the state's business.

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Senator Hoffman relayed that the Permanent Fund was \$50 billion. He inquired how Commissioner Rodell saw the fund today, as well as how she envisioned its role in the future. He thought that the Permanent Fund Earnings Reserve account had about \$5 billion and additionally inquired what role Commissioner Rodell saw it playing in the near future for the State of Alaska. Commissioner Rodell replied that the Permanent Fund was a tremendous asset to Alaska, not only in the financial support it offered to the state in terms of comfort and security, but also in the form of yearly assistance to the state's economy. She thought that the state needed to recognize what an asset the Permanent Fund could be to economic development. She clarified that she did not necessarily mean investing Permanent Fund dollars into the state or its projects, but recognizing the jobs that the fund was creating in and of itself by hiring external managers, accountants, and bankers to the extent that the DOR could encourage some of that development to come to the state. She related that recognizing that the \$50 billion Permanent Fund and its investment strategies can do certain things that it would not have had the capability to do 10 years prior.

Commissioner Rodell addressed the second part of Senator Hoffman's question and related that the state's various reserve accounts were partially responsible for the state's tremendous credit rating. She thought that Permanent Fund Earnings Reserve would be important as the state went forward with the budgets, especially if the Constitutional Budget Reserve continued to be used as forecasted. She

found it interesting that Alaska always had always management to turn reserves around either through cutting expenses or additional revenue. She thought that the Permanent Fund Earnings Reserve was more of a source of support and credit for Alaska rather than a source of spending.

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Senator Bishop inquired what the largest financial package in dollar amounts that Commissioner Rodell had put together in her 7 years with First Southwest in New York City.

Commissioner Rodell responded that it was an interesting question because there was a difference between dollar volume and complexity. She offered that some of the most complex transactions that she had worked on had been some of the smallest dollar sized transactions; they had been complex because of the number of parties, moving parts, and agreements associated with them. She opined that real-estate transactions in particular tended to be complex because of all the associated legal agreements attached to them. She thought that the largest volume sized transaction that she had worked on was \$11 billion.

Senator Bishop noted that he had been before a confirmation hearing as a commissioner designee and his questions were not "gotchya" questions; they were intended to make him feel better about the future.

Senator Bishop inquired if Commissioner Rodell felt that she had the wherewithal to see the state through the AK LNG project. Commissioner Rodell replied in the affirmative and added that she was very excited about the prospect. She thought that the AK LNG project would be one of the most interesting times and transactions that Alaskans would work on.

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Senator Olson appreciated that Commissioner Rodell was "taking the bull by the horns" and noted that the state was going through some difficult times regarding its future. He pointed out that the commissioner of DOR was handling a lot of money and recalled a prior issue where the state had lost a lot of money because of investment mistakes.

Senator Olson queried what Commissioners Rodell's thoughts were regarding having the Permanent Fund being managed in a more financially metropolitan centers such as New York or San Francisco instead of in state. Commissioner Rodell replied that with technology and information sharing at its current state, there was no need to manage the fund outside of the state. She added that it would not be necessary. She stated that between the state office building and the Goldbelt building, the state was managing over \$100 billion and offered that she had seen nothing in her career that would indicate that it needed to be managed anywhere but Alaska. She added that it might be helpful for DOR to have offices in anchorage.

Senator Olson related that recently, the Senators had met to look over some of the budget forecasts related to the unfunded liability. He reiterated that the commissioner of DOR was dealing with a lot of money, but that the state also had a fair amount of liability in the retirement system; he inquired how Commissioner Rodell saw this aspect playing out in the long run. He referenced long-term forecasts and inquired what Commissioner Rodell's views were regarding the unfunded liability, particularly in light of all the aging retirees. He further queried if the state could survive the issue with the unfunded liability. Commissioner Rodell responded that she thought the state could survive something like this and that it was an important piece of the governor's proposal of putting \$3 billion into the PERS and TRS Trust Fund. She reported that the state was moving some money out of reserves into the PERS and TRS and that it would allow Alaska to offset the liability to a much more manageable level in order to take on additional debt in the future. She was concerned that if the money was not transferred, the liability would just continue to grow. She thought that if Alaska wanted to move the pension liability to a more pay as you go structure, it would have to convert the asset allocation in PERS and TRS, which was currently targeted at 8 percent, to a much more conservative asset allocation that earned a lower rate so that the principle could be preserved to pay out benefits. She thought that contract obligation would be essential in moving the gasline forwards and that the state needed to be able to demonstrate that it honored its debts and contract obligations; people would be entering more than 50 contracts with the state in a partnership in the gasline.

9:28:06 AM

Commissioner Rodell continued to address Senator Olson question and related that the state needed to show that it took care of its liabilities.

Senator Olson discussed a recent 5 percent drop in oil production in one month and that there was a concern regarding the reserve accounts being exhausted in the future. He offered that bonding would be the only way the state could continue on with essential services; he saw a bleak financial future for the state. He opined that as conservative as Commissioner Rodell was, some of the revenue forecasts were fairly optimistic. He inquired how the state would keep itself out of trouble in 7 or 10 years. Commissioner Rodell responded that it would be a challenge to manage the state's spending into the future. She related that she was optimistic about the forecast and saw a lot of untapped potential in areas of exploration or in heavy and shale oil. She thought that the state had opportunities in the future to increase revenue. She spoke of the need to create a stable tax environment for any business to plan and operate through. She understood Senator Olson's comment about a bleak financial future, but she approached it from the standpoint of tremendous opportunity.

Senator Olson pointed out that the following questions had been provided by a constituent and inquired if Commissioner Rodell had ever been employed by the oil companies. Commissioner Rodell responded in the negative.

Senator Olson queried if Commissioner Rodell had a pension from an oil company. Commissioner Rodell replied in the negative.

Senator Olson inquired if Commissioner Rodell owned any oil company stock. Commissioner Rodell responded that she did not own stock directly.

Co-Chair Meyer mused that that all Alaskans owned oil stock through the Permanent Fund.

9:31:23 AM

Co-Chair Kelly inquired what Commissioner Rodell thought of the future of interest rates and the economic environment of America in general over the next 10 years. Commissioner Rodell thought that it felt like Americans had been waiting for the interest rate to go up, but that the yield curve continued to steepen; people expected that the interest rates would be higher in 10 years. She noted that interest rates were staying extremely low in the near-term. She recalled that the state had sold a one-year note for \$170 million and that the interest rate on that was 1/10 of 1 percent; that was great for borrowers, but was terrible for investors. She noted that Alaska was investing in the same market and was not really getting any investment income.

Co-Chair Kelly queried why investors even bothered to continue to invest with such a low interest rate. Commissioner Rodell replied that DOR had had that discussion internally and wondered if it would be better holding dollar bills rather than losing purchasing power through some of the investments. She stated that the interest rate was the area where the state was really getting punished. She related that the state had \$20 billion in reserves, but that it knew that future revenues might not be sufficient to operate the state; therefore, Alaska was heavily reliant on maintaining the principal in those reserves so that the money was available for essential core services. She concluded that short-term investments were not making a lot of money currently.

Co-Chair Kelly observed that he enjoyed talking to economists that could explain their thinking and that Commissioner Rodell was able to do that. He inquired what mechanisms would fall in place and how it would affect Alaska if the Chinese economy tanked. Commissioner Rodell replied that if the Chinese economy tanked, the expectation was that the demand for oil worldwide would drop; therefore prices overall would fall. There was a school of thought that Oil Producing and Exporting Countries (OPEC) and the Middle East had a certain floor that they did not want to go below and would do things and ratchet back supply in order to prop up oil prices. She offered that there would be continued volatility and other things that caused oil prices to spike. She thought that China had a big influence and would continue to, but that there were other offsetting influences in the near term.

Co-Chair Kelly inquired if the state invested much in gold and wondered if it should. Commissioner Rodell responded that she would have to go back and look to see specifically where the state had gold. She stated that Alaska periodically looked at the direct buying of gold, but thought that most of the investments in gold were found in the permanent funds rather than the state funds. She concluded that she would have to return with an answer.

Co-Chair Kelly noted that a lot of economies had invested in gold and thought that Alaska was one of the few that could play in that market. He didn't know that it was a good idea, but was curious. Commissioner Rodell related that DOR did look for investments that were counter-cyclical in order offset potential losses and that it did look for opportunities to invest in other markets or commodities in order to minimize the volatility.

[FRA1]

Vice-Chair Fairclough requested the commissioner to discuss her management style and how she worked with others. She noted that government typically was operated in silos, but that mega projects required collaboration. She inquired how Commissioner Rodell would relate peer to peer at the commissioner level and how she would work with her own team to encourage them to perform their best. Commissioner Rodell replied that she would describe her management style as open, transparent, and team oriented. She shared that she did not have a hierarchal style that was top down, but was more about looking across DOR and assessing where there was real talent for specific projects. She related that in the case of moving the gasline forward, she thought that people from the Treasury Division would be important because of their perspective as an investors. She thought that it would also be important to bring in the Tax Division so that the state could understand the implications from that standpoint. She added that having all of that under the department would be helpful in evaluating the terms of contracts going forward.

Commissioner Rodell continued to address Vice-Chair Fairclough's questions and related that it was also important that she worked in the same collaborative manner with the other commissioners and expounded that she could see a role in the gasline for almost every commissioner that she worked with; the Department of Public Safety, the Department of Transportation and Public Facilities, the Department of Labor and Workforce Development, the

Department of Commerce, Community and Economic Development, the Department of Labor and Workforce Development, the Department of Natural Resources, and the Department of Administration would all have to be involved. She offered that her experience with cabinet so far was that it was a very collegial group that reached out routinely to discuss various issues.

Vice-Chair Fairclough shared a "glowing" report from a DOR employee. The employee had indicated that DOR had an open door policy and that they could come into Commissioner Rodell's office and offer suggestions or supply information that might be useful.

Vice-Chair Fairclough noted that Commissioner Rodell had briefly discussed how the unfunded pension liability could affect the state's credit rating; she inquired if anything else could jeopardize the state's top credit rating. Commissioner Rodell responded that it was important to note that the rating analysts were more focused on the near term, even though the rating might be on a long-term 20 or 30 year piece of debt; however, they were really focused on the actions being taken now and over the next 5 years. She reported that rating analysts would look at how the state continued to meet its near-term obligations and what Alaska was doing to take care of the state. She thought that the important take away was that Alaska did a good job of taking care of people first in thin times and had invested when it was easier to do a capital budget. She expounded that Alaska had a record of doing what it said it was going to do as opposed to running gimmicks that she could point to in the Lower-48; she believed that it was a cultural thing in Alaska that she did not see in other parts of the country.

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Vice-Chair Fairclough inquired how the market would view "kicking a can down the road" and wondered how simply making the prescribed payments under the current funding mechanism would be viewed. She thought that the state was required to contribute \$600 million and wondered what would happen if the market looked at a 5-year plan and saw that the payment was escalated to over a \$1 billion. Commissioner Rodell responded Alaska had historically funded its ark and that as long as the Alaska kept making the annual payment, it would be acceptable. Credit would be

given for continuing to make the annual payment; however, the question was what would happen if the payment got to be a greater percentage of the operating budget and the state zeroed or backed away from it. She related that rating analysts were concerned about the size of the unfunded liability, but that making a payment versus not making one was of greater concern.

Vice-Chair Fairclough inquired if Commissioner Rodell could discuss ethics and how it applied to her position, as well as how she held to that standard so that the legislature would have confidence in the information that she was providing. Commissioner Rodell responded that you could not do her job without public trust and the trust of the legislature. She stated that if there was anything that might give a constituent pause that she might not be acting in the best interest of the state, such as contracting through with various vendors, she would take steps to remove herself, so that there was no appearance of conflict and that those procurements were kept above board. She shared that the test for her was if it would raise flags or give her a bad feeling if she was on the outside looking in; if it did, it was important to take steps to avoid even the appearance of a conflict.

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Co-Chair Kelly inquired what would happen if the state paid off the unfunded liability completely with a \$12 billion payment and there was a crash in the stock market the next day. He inquired what would happen to the money. Commissioner Rodell replied that there would be significant losses and the creation of a new liability. Co-Chair Kelly noted that in that case, there would be a new liability and the money would be lost. He wanted DOR to look at a strategy of the value of concrete and steel versus dollars in bank accounts. He was not a proponent of willy-nilly spending with capital money in districts to get people reelected; however, the state had some huge projects coming up and it needed to look after the next generation. He hoped that DOR would not be so conservative and balance the needs of the next generation. He was unsure what would happen to many rural areas of the state if the state's reserves became depleted because it overreacted to the unfunded liability and at the same time, it failed to provide energy infrastructure. He noted that it would be people in the cold and not simply theoretical graphs that

were being discussed. He did not think that this discussion took place often enough regarding the unfunded liability. He offered that a piece of steel and concrete that produced gas that could be sold or a pipeline that could be laid to mines would produce for the state regardless of the interest rates and other market factors. He asserted that as the Commissioner of the Department of Revenue, Ms. Rodell's job had to go beyond the graphs.

Co-Chair Kelly MOVED to ADVANCE the name of Angela Rodell for the appointment of Commissioner of the Department of Revenue. The name will be forwarded to the full membership of the legislature in joint session for consideration and a final vote. There being NO OBJECTION, it was so ordered.

The name of Angela Rodell was ADVANED for the appointment of Commissioner of the Department of Revenue. The name was forwarded to the full membership of the legislature in joint session for consideration and a final vote.

Co-Chair Meyer read from Uniform Rule 46:

Signing the reports regarding appointments to boards and commissions in no way reflects individual member's approval or disapproval of the appointees and that that nominations were merely forwarded to the full legislature for confirmation or rejection.

[9:51:57 AM](#)

AT EASE

[9:53:20 AM](#)

RECONVENED

#sb161

SENATE BILL NO. 161

"An Act relating to duties and procedures of the state medical examiner and the Department of Health and Social Services; and relating to death certificates."

[9:53:46 AM](#)

Co-Chair Meyer noted that SB 161 had a companion bill in the house.

Senator Olson noted that during the last hearing on SB 161, there had been a question on one of the fiscal notes, which had been a zero note. He confirmed that the note was in fact a zero note.

Co-Chair Kelly MOVED to REPORT CSSB 161(FIN) out of committee with individual recommendations and the accompanying fiscal note. There being NO OBJECTION, it was so ordered.

CSSB 161(FIN) was REPORTED out of committee with a "do pass" recommendation and with a new zero fiscal note from the Department of Health and Social Services.

Vice-Chair Fairclough requested a brief AT EASE.

[9:55:35 AM](#)

AT EASE

[9:55:53 AM](#)

RECONVENED

#sb135

SENATE BILL NO. 135

"An Act extending the termination date of the Alaska Health Care Commission; and providing for an effective date."

[9:55:53 AM](#)

Co-Chair Meyer noted that the only prior concern was the bill's cost. The committee had been unable to reduce the cost of the legislation, but had added a 3-year sunset date.

Senator Olson related that the Alaska Health Commissioner was originally put in place by Governor Palin and had been into statute. The commission had been looking at healthcare issues, particularly with costs in the state of Alaska. He asserted that Kris Kurtis, who was the auditor, had indicated that the Alaska Healthcare Commission was indeed serving the public's interest, which was why there recommendation to go to a 3-year sunset.

Co-Chair Meyer recalled that his concern was that there were two staff people dedicated to board with a cost of

\$500,000; however, a lot of it was federal matching money, which made it difficult to reduce the bill's cost.

Co-Chair Kelly MOVED to REPORT SB 135 out of committee with individual recommendations and the accompanying fiscal note. There being NO OBJECTION, it was so ordered.

SB 135 was REPORTED out of committee with a "do pass" recommendation and with a previously published zero fiscal note: FN1 (DHS).

9:58:03 AM

AT EASE

10:00:39 AM

RECONVENED

#sb108

SENATE BILL NO. 108

"An Act relating to the confidentiality of certain records of criminal cases; and providing for an effective date."

10:01:00 AM

SENATOR FRED DYSON, SPONSOR, addressed the legislation. He believed many members had handled Second Amendment issues well and that First Amendment issues would be addressed on a more frequent basis. The bill pertained to the Fourth Amendment's right to privacy. His concern had come out of the task force currently working on barriers to reentry from the criminal justice system. He discussed that the State of Alaska had a public website called CourtView that listed criminal records. He stated that unfortunately, the website also carried arrest records. The bill would strengthen the privacy and liberty interests of persons when charges were dismissed or acquitted by removing records from CourtView after 120 days. The information would remain available to police, the Department of Corrections, judges, and prosecutors. He stated that many employers, landlords, and other frequently looked at CourtView to determine whether a person had a record; a person's name on the website hindered that person from competing for jobs and other. He referred to a case in Anchorage from the prior year as an example of an innocent

person with their name posted on CourtView. He relayed that the record on CourtView was indefinite.

10:04:25 AM

CHUCK KOPP, STAFF, SENATOR FRED DYSON, stated that section 1 of the bill addressed the practicality of going back without incurring a large fiscal note. The sponsor's office had developed the legislative intent language in conjunction with the Alaska Court System that aimed to address people who were currently struggling under the weight of an acquitted or dismissed charge on CourtView. He read from the sectional analysis (copy on file):

Section 1

Provides legislative intent directing the Court, to the extent practicable, to treat as confidential records of criminal cases disposed of before the effective date of the Act by acquittal of all charges, dismissal of all charges, or acquittal of some charges and dismissal of remaining charges, to the same extent that records are held confidential by this bill, under AS 22.35.030.

Section 2

Amends AS 22.35 by adding a new section, AS 22.35.030. Records concerning criminal cases resulting in acquittal or dismissal confidential.

This section establishes that a court record of a criminal case is confidential if 120 days have elapsed from the date of acquittal or dismissal and (1) the person was acquitted of all charges filed in the case; (2) all charges against the person have been dismissed by the prosecuting authority; or (3) the person was acquitted of some of the charges in the case, and the remaining charges were dismissed.

Provide exceptions for access to information made confidential for state agency employees responsible for health, safety, welfare, or placement of a child, a person with a physical or intellectual disability, or a person with a mental illness; employees that protect other vulnerable citizens, and state criminal justice information network users. The Department of

Health and Social Services will adopt regulations to administer these exceptions.

Section 3

Establishes the Applicability of the Act to criminal charges concluded on or after the effective date of the Act by dismissal or by acquittal of the defendant.

Section 4

Establishes the effective date of the Act as October 1, 2014.

Mr. Kopp elaborated that that the original bill had read that a court record of a criminal case would be confidential if 90 days had elapsed from the date of acquittal or dismissal; the provision had been updated in Section 2 to 120 days per a request from the Department of Law due to a 120 evidentiary rule.

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Mr. Kopp directed committee attention to the zero fiscal notes from the Department of Administration, which included the Office of Public Advocacy and the Public Defender's Office, and one from the Department of Law. He stated that the courts could address the process by which records were held confidential under court rule. He noted that there were letters of support in member files as well as one letter of opposition from the Office of Victim's Rights.

NANCY MEADE, GENERAL COUNSEL, ALASKA COURT SYSTEM, testified that the Alaska Court System (ACS) was neutral on the bill. She shared that she had worked with the bill sponsor to ensure that the legislation could be implemented with the least amount of expense and technological problems. She said that ACS could make cases confidential; this would be a unique category of cases, as all other cases that were confidential were so from the beginning of the case. She relayed that when the legislature made a certain case type confidential the case was not posted on Court View or released in hard copy. The cases were kept in courthouses in a fluorescent envelope and were viewed by no one, with the exception of: the parties in the case, the attorneys in the case, court staff for case processing purposes, and the judge. She explained that the legislation

would make cases confidential after they had previously been public. Provided that every charge in the case was dismissed or acquitted the case would be removed from CourtView at no fiscal impact to the state. She spoke to the retroactivity provision in the bill. She stated that ACS had transferred all of its case management to the CourtView system over the past decade and different courts had different dates on which they were put on CourtView. She said that as long as courts were on CourtView certain case types could be removed. She warned that removing case files prior to the conversion date could prove logistically problematic. The retroactivity intent language in the bill would alleviate the fiscal and logistical problem of retrieving cases from storage and categorizing them differently. She reiterated that ACS could implement all of the changes proposed in the legislation without a fiscal impact except for the exceptions that were created for certain state agencies. She stated that in order for certain people in specific state agencies to gain access to cases that had been removed from CourtView a special portal would need to be created. The portal would need to work with the ACS vendor and would have an initial fee of \$22,000, a yearly maintenance fee of \$3000, and a security fee of \$500.

10:14:20 AM

DR. NORMAN MEANS, SELF, ANCHORAGE (via teleconference), spoke in support of SB 108. He relayed a story concerning his daughter's arrest for driving under the influence (DUI). He stated his daughter was driving with friends when the fuel pump in the vehicle went out. The vehicle stalled in the middle of the road and an Anchorage police officer responded. He said that after the officer pushed the van to the side of the road while his daughter steered, he issued a traffic stop. He explained that his daughter provided all of the required documents, which were in order. He testified that the officer then began demanding his daughter's personal phone number, which she refused to provide. He stated that his daughter asserted her constitutional right to remain silent, requested an attorney, and refused to consent to any searches. He furthered that at that point the officer placed her under arrest for DUI; she was transported to the Anchorage jail. He read from the arresting officer's report: "She does not appear to be under the effects of any drugs, legal or illegal."

Dr. Means related that his daughter passed a Breathalyzer Test and was released on her own recognizance; however, the arrest record currently remains on Court View. He expressed frustration that the vehicle had been impounded when it was registered under his name, and not to his daughter. He said that he had had no fewer than 5 separate departments of municipal government find fault with all, or part, of the arresting officer's actions. He shared that he filed a complaint with the Chief of Police, and after an investigation, Internal Affairs responded in a written letter to him alerting him that his complaints concerning the vehicle impoundment had been sustained. He felt that his daughter's experience was an example of the difficulties a person faced when attempting to get an arrest record sealed based on the improper actions of one police officer.

Mr. Means lamented that despite the overwhelmingly controvertible evidence that his daughter had done nothing wrong the municipal attorney at the time had written that:

While the officer might not have had probable cause to arrest her for DUI, he had probable cause to arrest her for some crime.

Mr. Means wondered what that crime would have been. He opined that all that his daughter had wanted was to have her record sealed, even offering to waive her right to pursue any litigation. As a result his daughter had been forced to file litigation in an effort to clear her name. He shared that his daughter would be testifying before the legislature at a later date on SB 180. He remarked that the system in the state made it impossible to get a record expunged or sealed. He worried that his daughter's record could limit her options for graduate school or future employment.

[10:21:27 AM](#)

JAMES MOONEY, SELF, ANCHORAGE (via teleconference), testified in strong support of SB 108. He stated that in 2009 he had been falsely accused of sexual assaulting his fiancé. He said that the relationship had lasted for 6 years, but began to deteriorate after differences of opinion arose concerning child custody. He was arrested for sexual assault, fought the charge in court, and was

acquitted on all charges. His accuser and his daughter moved out of state several weeks after making the accusations, as a result he had not seen his daughter in 4 years. He believed that the accusations were premeditated because his accuser had knowledge of the legal system. He reiterated that he had been acquitted on all charges. He shared that he had lost his job and had been out of work for months and was living off savings. He opined that employment opportunities were cut short once employers ran a background check. He felt that he was suffering repercussions as though he had been convicted and sent to prison.

[10:25:40 AM](#)

JAMES NOBLE, SELF, PRUDHOE BAY (via teleconference), testified in support of SB 108. He relayed a story concerning two charges filed against him and the repercussions he experienced following a dismissal ruling from a judge on both cases. He stated that after researching cases similar to his he had determined that the common thread was revengeful actions from a significant other who was abusing the court system. He explained that he had been in a romantic relationship from 2003 to 2007. He said that his partner terminated the romantic relationship in 2006, but a platonic relationship remained. He relayed that he ended the friendship when the person began dating a new person. He stated that he received a domestic violence protective order from the court on September 17, 2007 and hired an attorney who represented him throughout court proceedings. During the course of the defense for the domestic violence order, the attorney discovered a stalking charge, filed by his ex on September 11, 2007 and had been dismissed by the court on September 12, 2007. He argued that he had never been notified of, or given any details concerning, the stalking charge. He opined that the stalking charge could be seen on CourtView, regardless of the fact that the charges had been dismissed. He said that he appeared before the court on October 4, 2007 to contest the domestic violence charge which was dismissed due to insufficient evidence.

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Mr. Noble feared that the information on CourtView could hinder him when seeking future employment. He added that

the social stigma could limit his ability to form new relationships.

10:31:10 AM

DONNA KLECKA, SELF, EAGLE RIVER (via teleconference), spoke in favor of the SB 108. She testified that she was self-employed which made word-of-mouth important to her professional reputation. She state that she had gone through a divorce in 1999. During the proceedings her ex-husband attempted to use domestic violence charges as leverage for child custody. She spoke of another incidence where a woman, whom she believed to be mentally unstable, had made multiple charges against her of trespassing, theft and stalking. Due to the charges, she was arrested and held for 24 hours. She related that the arresting officer had lost her job for the episode because she had not had an arrest warrant. She said that she had received accusatory notes from neighbors. She added that she had been charged with assault and battery at one point as well. She opined that her children were harassed at school. She relayed that approximately a year and a half ago she had consumed alcohol and was pulled over for speeding in Seward. She asserted that the Alaska State Trooper had profiled her by pulling up her record before pulling her over. She shared that she had been nervous while taking the field sobriety test, which was videotaped. She stated that in the process of her arrest her arm was broken by the police. She said that the arresting officers had written in their report that she has not had alcohol on her breath; she also submitted to a blood test, which turned up negative. She said that all of the charges against her were dismissed. She shared that during discovery the arresting officer stated that he had been aggressive with her as a result of having reviewed her record.

10:38:55 AM

CARMEN GUTIERREZ, SELF, JUNEAU, spoke in support of SB 108. She read from a prepared document (copy on file):

Thank you for the opportunity to comment on SB 108. As a former attorney for 25 years followed by the privilege of serving the state as Deputy Commissioner for the Department of Corrections, I have observed first-hand the need for the criminal justice reforms for which this Committee has so tirelessly worked to

advance. I thank this Committee for its courageousness in promoting needed revisions aimed at reducing recidivism. Every former offender who is able to successfully return to his or her community means one less victim, one less crime, and one less costly prosecution.

I believe that SB 108 is another step in that direction. As it stands today, every person who is arrested for a criminal offense has a permanent public record of that arrest. In felony cases, a detailed statement of alleged factual detail accompanies the fact of arrest and charge.

The name of the person arrested and then convicted always remains available to the public through the period of prosecution and after conviction. That is fair.

What is not fair and not in keeping without system of criminal justice is that under current law a person's name and fact of charge remains available to the public even when the prosecutor dismisses the charge, the charge is dismissed by the court or after a jury acquits the person. Despite dismissal of or acquittal on the charge, the fact of arrest and the accompanying documentation forever remains available for public examination.

The reality is that when the fact of arrest after dismissal continues to be made available for public inspection either by an in-person visit to the courthouse or by review on CourtView, the arrest often becomes synonymous with conviction in the mind of those doing the inspecting. This greatly impedes a person's ability to find employment, rent an apartment and to live a life free of stigmatization for a crime for which the person was never convicted.

Numerous individuals - both men and women - in Alaska are arrested for the crime of Assault in the Fourth Degree. A person may be charged with this offense if a police officer concluded there is probable cause to believe that a person by "words or other conduct recklessly places another person in fear of imminent physical injury."

AS 18.65.530 appropriately provides that in a domestic relations context, when a person reports to the police that she/he was placed in fear of imminent physical injury, the police must arrest the alleged offender for Domestic Violence Assault when the officer decides there is probable cause to believe that assault took place.

Needless to say, police officers taxed with a tremendous amount of work have to make snap decisions when deciding if there is probable cause to believe an assault occurred. The soundness of the police officer's decision often depends on the experience of the officer and the officer's perceived need to diffuse a situation.

After the person is arrested and charges, a prosecutor later has more time to review the merits of the case. In some cases, upon more careful review and with the benefit of additional facts, the prosecutor determines the charge doesn't merit prosecution and dismisses it. The individual arrested, however, is forever stigmatized by his arrest. It will forever be a part of the Alaska Court System records available for public inspection.

A good number of cases filed in Alaska are ultimately dismissed. For example, in FY13, the state filed 6,675 felony cases. Of those, the state dismissed 1,289 cases. Of the 29,562 misdemeanor cases filed, the state dismissed 9,508.

Our constitutional right to due process of law is intended to protect citizens from being treated as convicted persons without first being afforded certain procedural safeguards. That is the way it should be and it is our responsibility to uphold our system of criminal justice, the shining example and envy of other countries.

There are those who would have you believe that their individual judgment is more knowing than the collective wisdom of a jury; that a person's record should forever be stigmatized by an arrest and charge even though the prosecutor dismissed the charge or a jury of his peers acquitted him of the charge. These same individuals would have you believe that an arrest

should be equated to conviction of a crime. Alaska citizens, judges, prosecutors, and defense attorneys will always have different opinions regarding the facts of a case. That is why our system requires due process under the law before someone is convicted of a crime and shoulders the burdens associated with criminal conviction.

For these reasons, the fact of an arrest and charge without conviction should not forever tarnish the reputation of an Alaskan citizen. SB 108 is intended to rectify these unintended and harmful consequences that in many cases impact a person's ability to successfully live and work in our communities.

[10:45:10 AM](#)

Ms. Gutierrez asserted that for every individual that could come forward to say that having access to CourtView made a meaningful difference in a decision being made, there were many more cases of individuals who have had their ability to live successfully in their community compromised.

Senator Hoffman inquired if Ms. Gutierrez would support the legislation for an individual that had been acquitted due to a hung jury.

Ms. Gutierrez replied that when an individual was found not guilty by virtue of a hung jury the prosecutor had the ability to evaluate the evidence in the and decide whether the case merited a new trial. She understood that if the prosecutor decided that the evidence supported the charge it was the prosecutor's burden to take the case back to a jury. She asserted that, in the spirit of due process and constitutional procedure, in a hung jury case the record would be deemed confidential.

Co-Chair Meyer CLOSED public testimony.

[10:48:12 AM](#)

Vice-Chair Fairclough queried whether the opposition letter from the Office of Victim's Rights had been submitted before or after changes to the legislation had been made in the Senate Judiciary Committee.

Mr. Kopp replied that the letter had arrived before the bill was amended in Senate Judiciary. He added that the sponsor had not received any additional communications from the Office of Victim's Rights.

Vice-Chair Fairclough understood that an old court record could be damaging to people well after the fact. She expressed concern as to how the legislation would affect the rights of victims, specifically for victims of domestic violence and rape; however, she recognized that instances of false accusation did occur.

SB 108 was HEARD and HELD in committee for further consideration.

ADJOURNMENT

[10:50:57 AM](#)

The meeting was adjourned at 10:51 a.m.