

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

January 24, 2018

1:01 p.m.

MEMBERS PRESENT

Representative Matt Claman, Chair
Representative Zach Fansler, Vice Chair
Representative Jonathan Kreiss-Tomkins
Representative Gabrielle LeDoux
Representative David Eastman
Representative Chuck Kopp
Representative Lora Reinbold

MEMBERS ABSENT

Representative Charisse Millett (alternate)
Representative Louise Stutes (alternate)

COMMITTEE CALENDAR

CS FOR SENATE BILL NO. 63(FIN)

"An Act prohibiting smoking in certain places; relating to education on the smoking prohibition; and providing for an effective date."

- MOVED HCS CSSB 63(JUD) OUT OF COMMITTEE

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 216

"An Act relating to restitution; relating to the office of victims' rights; relating to transfers from the dividend fund; creating the restorative justice account; relating to appropriations from the restorative justice account for services for and payments to crime victims, operating costs of the Violent Crimes Compensation Board, operation of domestic violence and sexual assault programs, mental health services and substance abuse treatment for offenders, and incarceration costs; relating to delinquent minors; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 63

SHORT TITLE: REGULATION OF SMOKING

SPONSOR(s): SENATOR(s) MICCICHE

02/17/17 (S) READ THE FIRST TIME - REFERRALS
02/17/17 (S) HSS, FIN
03/01/17 (S) HSS AT 1:30 PM BUTROVICH 205
03/01/17 (S) Moved SB 63 Out of Committee
03/01/17 (S) MINUTE(HSS)
03/03/17 (S) HSS RPT 5DP
03/03/17 (S) DP: WILSON, BEGICH, VON IMHOF, GIESSEL,
MICCICHE
03/13/17 (S) FIN AT 9:00 AM SENATE FINANCE 532
03/13/17 (S) Heard & Held
03/13/17 (S) MINUTE(FIN)
03/20/17 (S) FIN AT 9:00 AM SENATE FINANCE 532
03/20/17 (S) Moved CSSB 63(FIN) Out of Committee
03/20/17 (S) MINUTE(FIN)
03/21/17 (S) FIN RPT CS 6DP 1NR SAME TITLE
03/21/17 (S) DP: HOFFMAN, MACKINNON, BISHOP, VON
IMHOF, OLSON, MICCICHE
03/21/17 (S) NR: DUNLEAVY
03/27/17 (S) TRANSMITTED TO (H)
03/27/17 (S) VERSION: CSSB 63(FIN)
03/29/17 (H) READ THE FIRST TIME - REFERRALS
03/29/17 (H) CRA, JUD
04/13/17 (H) CRA AT 8:00 AM BARNES 124
04/13/17 (H) Heard & Held
04/13/17 (H) MINUTE(CRA)
04/18/17 (H) CRA AT 8:00 AM BARNES 124
04/18/17 (H) Heard & Held
04/18/17 (H) MINUTE(CRA)
04/25/17 (H) CRA AT 8:00 AM BARNES 124
04/25/17 (H) Heard & Held
04/25/17 (H) MINUTE(CRA)
04/27/17 (H) CRA AT 8:00 AM BARNES 124
04/27/17 (H) Moved HCS CSSB 63(CRA) Out of Committee
04/27/17 (H) MINUTE(CRA)
04/28/17 (H) CRA RPT HCS(CRA) 3DP 3NR 1AM
04/28/17 (H) DP: TALERICO, DRUMMOND, PARISH
04/28/17 (H) NR: WESTLAKE, SADDLER, RAUSCHER
04/28/17 (H) AM: FANSLER
01/22/18 (H) JUD AT 1:00 PM GRUENBERG 120
01/22/18 (H) Heard & Held
01/22/18 (H) MINUTE(JUD)
01/24/18 (H) JUD AT 1:00 PM GRUENBERG 120

BILL: HB 216

SHORT TITLE: TRANSFERS FROM DIVIDEND FUND; CRIMES

SPONSOR(s): REPRESENTATIVE(s) KOPP

04/07/17	(H)	READ THE FIRST TIME - REFERRALS
04/07/17	(H)	JUD, FIN
01/16/18	(H)	SPONSOR SUBSTITUTE INTRODUCED
01/16/18	(H)	READ THE FIRST TIME - REFERRALS
01/16/18	(H)	JUD, FIN
01/17/18	(H)	JUD AT 1:00 PM GRUENBERG 120
01/17/18	(H)	-- MEETING CANCELED --
01/19/18	(H)	JUD AT 1:00 PM GRUENBERG 120
01/19/18	(H)	Heard & Held
01/19/18	(H)	MINUTE(JUD)
01/24/18	(H)	JUD AT 1:00 PM GRUENBERG 120

WITNESS REGISTER

SENATOR MICCICHE

Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: As prime sponsor, offered comment during the hearing on SB 63.

JOE DARNELL, Investigator IV
Tobacco Youth Education & Enforcement Program
Division of Behavioral Health (DBH)
Department of Health and Social Services (DHSS)
Anchorage, Alaska

POSITION STATEMENT: Answered questions during the hearing on HCS CSSB 63(CRA).

CHELEY GRIGSBY, Health Program Manager III
Tobacco Prevention and Control Program
Division of Public Health
Department of Health and Social Services (DHSS)
Anchorage, Alaska

POSITION STATEMENT: Responded to questions during the hearing on HCS CSSB 63(CRA).

SARA RACE, Director
Central Office
Permanent Fund Dividend Division
Department of Revenue
Juneau, Alaska

POSITION STATEMENT: Responded to questions during the hearing on HB 216.

NOAH STAR, Staff

Representative Jonathan Kreiss-Tomkins
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Spoke to Amendment 1 to SSHB 216 on behalf of Representative Kreiss-Tomkins.

ACTION NARRATIVE

[1:01:08 PM](#)

CHAIR MATT CLAMAN called the House Judiciary Standing Committee meeting to order at 1:01 p.m. Representatives Kopp, Fansler, Eastman, and Claman were present at the call to order. Representatives Kreiss-Tomkins, LeDoux, and Reinbold arrived as the meeting was in progress.

SB 63-REGULATION OF SMOKING

[1:01:42 PM](#)

CHAIR CLAMAN announced that the first order of business would be CS FOR SENATE BILL NO. 63(FIN), "An Act prohibiting smoking in certain places; relating to education on the smoking prohibition; and providing for an effective date." [Before the committee was HCS CSSB 63(CRA).]

[1:02:26 PM](#)

CHAIR CLAMAN, in response to a query from Representative Eastman, reminded the committee that public testimony on HCS CSSB 63(CRA) had been closed during the last scheduled hearing on 1/22/18.

[1:02:54 PM](#)

SENATOR MICCICHE, Alaska State Legislature, as prime sponsor of SB 63, referred to information on veterans' clubs, which he had forwarded to the committee following the 1/22/18 hearing. He commented that many grew up during a time when there was secondhand smoking in the house or in a car with the windows closed. He quoted from a USA Today article, dated 3/9/14, which stated that during the Korean and Vietnam Wars, soldiers received cigarettes with their field rations, and that changed in 1986 when the Pentagon banned use of tobacco and increased the number of designated nonsmoking areas. Senator Micciche said "things have changed," and CSSB 63(FIN) "brings us into that modern age of protecting those that choose to not smoke and

protecting their rights to breathe smoke-free air." He expressed appreciation for the efforts of the committee on the proposed legislation.

[1:04:46 PM](#)

CHAIR CLAMAN said the committee would consider amendments, and he advised that Legislative Legal and Research Services would have permission to make any technical and conforming changes to any amendments adopted by the committee. He outlined a plan for the timing he would allow for addressing amendments.

[1:05:25 PM](#)

REPRESENTATIVE KOPP moved to adopt Amendment 1, labeled 30-LS0024\T.4, Martin, 1/22/18, which read as follows:

Page 4, lines 2 - 5:

Delete all material and insert:

"(e) Notwithstanding (a) and (b) of this section, smoking may be permitted in a separate enclosed smoking area located in a terminal for international passengers who are in transit in a state-owned and state-operated international airport and who are restricted by federal law from leaving the airport, if the smoking area is vented directly to an outdoor area that is not an area where smoking is prohibited under (c) of this section."

[1:05:28 PM](#)

REPRESENTATIVE FANSLER objected.

[1:05:34 PM](#)

REPRESENTATIVE KOPP drew attention to language currently proposed under SB 63, on page 4, lines 2-4, which read:

(e) Notwithstanding (a) and (b) of this section, an individual may smoke in a separate enclosed smoking area located in an airport if the smoking area is vented directly to an outdoor area that is not an area where smoking is prohibited under (c) of this section.

REPRESENTATIVE KOPP said he is not aware any state-owned or public airports that have separate enclosed smoking areas. He said [Amendment 1] would apply to the international airport

system where passengers are restricted by federal law from leaving the airport when they arrive in the international terminal. Those international terminals are set up with smoking rooms that have ventilation to the outside of the terminal, which he said he thinks is appropriate for international travelers that do not have an option to leave the airport. He said, "I have not heard from any airport operator ... that they have ... an airport that they would like to build a smoking room. That would be contrary to this amendment. I mean, I'd certainly like to hear from them if they do. I'm unaware that there's a facility in this state that would ... take issue with this." He opined that the international airport system needs Amendment 1; it would apply to both the Anchorage and Fairbanks International Airports. He said he spoke to the bill sponsor, who supports Amendment 1.

[1:07:40 PM](#)

REPRESENTATIVE LEDOUX asked whether federal law requires a designated smoking place for international passengers.

[1:08:09 PM](#)

SENATOR MICCICHE answered there is not a requirement. He said he thinks Amendment 1 is "a fairness amendment" that would offer [a place to smoke for] someone who has been on a flight for many hours and cannot leave the airport.

REPRESENTATIVE LEDOUX surmised there are probably Alaskans who work in international airports, and she asked, "Why wouldn't you be just as concerned with those residents who are working ... there than you would be about anybody else?"

SENATOR MICCICHE indicated that there are places where smoking is allowed that are not places where employees have to be to serve customers.

REPRESENTATIVE LEDOUX asked if the bill specifically states that employees cannot go out to the designated smoking areas.

SENATOR MICCICHE responded that the bill states that those employees are not required to serve those smoking areas.

[1:11:01 PM](#)

REPRESENTATIVE FANSLER offered his understanding that Amendment 1 would set a more rigid standard.

[1:12:00 PM](#)

REPRESENTATIVE KOPP confirmed the proposed amendment would create a more stringent requirement. He said it goes back to a previous version of the proposed legislation that was requested by the director of the international airport system. He reiterated that he is not aware of anyone from a municipal or state airport asking for a smoke room; however, there are two international airports that are set up with "directly ventilated rooms for international travelers."

[1:12:47 PM](#)

REPRESENTATIVE LEDOUX asked for clarification whether HCS CSSB 63(STA), without amendment, has "an airport exception."

SENATOR MICCICHE explained that a legislative staff member had suggested the bill include all airports, but feedback from the Department of Transportation & Public Facilities (DOT&PF) and municipalities showed that those airports in the state that are not international airports do not want to build ventilated smoke rooms, because there already are places at those airports for patrons to go outside to smoke. He added, "And the one case that you can't go outside is the one case where we've made an exception, and that is the international airport in Anchorage."

[1:14:07 PM](#)

CHAIR CLAMAN surmised Amendment 1 would require a municipal airport, such as the one in Bethel, Alaska, to get permission from the legislature to build a smoke room; currently municipal airports show no interest in building smoke rooms at their airport facilities. He offered his understanding that Representative Kopp was nodding in agreement.

[1:15:04 PM](#)

REPRESENTATIVE KOPP said a consistent theme of the bill is to have safe public work spaces [by requiring smokers to] smoke outdoors. He said [Amendment 1] "just continues with that theme."

[1:15:30 PM](#)

CHAIR CLAMAN asked if the objection was maintained.

REPRESENTATIVE FANSLER answered no.

CHAIR CLAMAN announced there being no further objection, Amendment 1 was adopted.

[1:15:42 PM](#)

REPRESENTATIVE KOPP moved to adopt Amendment 2, labeled 30-LS0024\T.5, Martin, 1/22/18, which read as follows:

Page 3, lines 20 - 21:

Delete all material and insert:

"(ii) is separated from the other business or building in a manner that does not allow e-cigarette vapor or aerosol to travel into the other business or building;"

REPRESENTATIVE FANSLER objected.

[1:15:53 PM](#)

REPRESENTATIVE KOPP directed attention to language on page 3, lines 20-21, which read:

(ii) has a ventilation system vented to an area where smoking is not prohibited:

REPRESENTATIVE KOPP said installing ventilation systems can be expensive. The proposed amendment recognizes that there are well-established businesses that have good relationships with their neighbors. It would replace the ventilation system language with "is separated from the other business or building in a manner that does not allow e-cigarette vapor or aerosol to travel into the other business or building". He said this is consistent with a "complaint-driven" theme. He added, "If people are fine with you there, this doesn't say that you would have to completely redo your ventilation system; it just says that ... you're not allowing the vapor or aerosol to travel into the other business or building, but without putting ... the positive requirement of also doing the ventilation system."

REPRESENTATIVE KOPP pointed to language on page 2, lines 23-25, which states that an individual would not be prohibited from smoking in "a private residence that is in a building where another residence provides paid child care or care for adults". He said he thinks [Amendment 2] would make the proposed bill

"internally consistent" while giving e-cig stores more liberty in how they are allowed to establish their businesses.

[1:18:09 PM](#)

CHAIR CLAMAN asked if the objection was maintained.

REPRESENTATIVE FANSLER answered no.

[1:18:12 PM](#)

CHAIR CLAMAN asked if there was further objection to the motion to adopt Amendment 2. There being none, it was so ordered.

[1:18:36 PM](#)

REPRESENTATIVE LEDOUX requested the committee hear from a representative from the Department of Health and Social Services regarding the department's fiscal note [included in the committee packet]. She directed attention to the second line of the second paragraph of the fiscal analysis, which read as follows:

Ideally, the Division of Behavioral Health would consider this as a form of "passive enforcement" which could be performed in addition to the other duties assigned to the Tobacco Investigators.

REPRESENTATIVE LEDOUX opined the statement is not one that "bodes really well for a fiscal note." She asked if the fiscal note was based on "hopes and dreams" or, as she said she would expect, "cold, hard reality."

[1:21:00 PM](#)

The committee took an at-ease from 1:21 p.m. to 1:23 p.m. to address a technical problem.

[1:23:02 PM](#)

JOE DARNELL, Investigator IV, Tobacco Youth Education & Enforcement Program, Division of Behavioral Health (DBH), Department of Health and Social Services (DHSS), explained that the DBH is using a passive enforcement matrix that it adopted from the Municipality of Anchorage, which has had the ordinance in place since 2007. He said the division does not see [the fiscal note] as "we're hoping." He relayed that in the last 10

years the Municipality of Anchorage has written two citations relating to its smoke-free ordinance and has had only 200 complaints. He said the division considers that the fiscal note will be zero, in terms of enforcement.

1:24:20 PM

REPRESENTATIVE LEDOUX drew attention to language in the third paragraph of the fiscal note analysis, which read:

If the intent is that the type of sign provided is an electronic downloadable copy of a sample sign, the cost would be minimal regardless of the number of signs requested. However, if the intent is for more durable manufactured or printed signage, then additional resources would be needed.

REPRESENTATIVE LEDOUX asked, "Intent is created by the legislature, is it not?"

MR. DARNELL answered that's correct.

REPRESENTATIVE LEDOUX asked, "So, what does the bill require?"

MR. DARNELL answered that the bill requires that signage needs to be posted.

REPRESENTATIVE LEDOUX asked about signage that is posted outdoors.

MR. DARNELL noted that [signage] falls under the [Division] of Public Health. Notwithstanding that, he offered his understanding that there is a zero fiscal note for the state because Americans for Nonsmokers' Rights (ANR) will be donating the money to purchase those signs.

REPRESENTATIVE LEDOUX questioned whether ANR would be donating those signs for eternity.

1:26:05 PM

CHELEY GRIGSBY, Health Program Manager III, Tobacco Prevention and Control Program, Division of Public Health, Department of Health and Social Services (DHSS), responded that there is a sponsor to purchase the signs initially.

REPRESENTATIVE LEDOUX questioned how the state could come up with a zero fiscal note based on a verbal promise from someone to give a donation. She said, "I guess I kind of find this as ... maybe a way to avoid giving a bill a fiscal note."

[1:27:34 PM](#)

MS. GRIGSBY said there is no contract in place; currently there is a sponsor who would donate the signs. In response to a follow-up question, she said the program currently has signs [that could be used] by someone who wants to replace signs in the future. She added that there would be no plan to replace the signs every year.

[1:28:21 PM](#)

REPRESENTATIVE EASTMAN noted that the zero fiscal note goes to 2024, and he surmised that signs would have to be replaced before that time. He asked how much the donor has allocated for the signs and how close that matches the department's estimation of the cost of signage. He said signage will be needed anywhere smoking is prohibited, and that includes on a marine vessel. He stated, "I'm quite certain the printing of a piece of paper is not going to last very long on the outside of a boat."

MS. GRIGSBY said she would have to investigate further in order to offer a response. She then deferred to Senator Micciche.

SENATOR MICCICHE relayed that the funding would cover a one-time replacement. He explained that the money is solely for DOT&PF signage; additional signs required under CSSB 63(FIN) would be covered by a grant. He said the few [signs] that would have to be replaced would be covered "the way they're covered today and the way they've always been covered since there's been a signage requirement, and that is through the tobacco cessation program." He reiterated his points in response to a follow-up question. He added that there would be no additional burden [caused by] the proposed legislation.

REPRESENTATIVE EASTMAN asked, "If there's more signs, isn't that going to be more cost?"

SENATOR MICCICHE answered, "I imagine I could calculate an incremental difference in how that [cost would] be covered, and I would imagine that that increase probably exists."

[1:32:09 PM](#)

CHAIR CLAMAN offered an example wherein the grant pays for 100 signs to be replaced, and if a sign or two needs replacing every few years, "they'll replace it"; however, there are "a bunch of other signs" that get replaced by DOT&PF as part of its regular program.

[1:33:08 PM](#)

REPRESENTATIVE LEDOUX questioned how there could be a zero fiscal note when there will be an incremental cost.

SENATOR MICCICHE suggested people can view things in a variety of ways or look at the facts, and the fact in this instance is that there is a tobacco cessation program originally funded by a settlement with tobacco companies that is trying to help Alaskans not use tobacco. He said, "They have a portion of their funding that would help replace signs at no additional cost to the state. That's the fact. That's the reason there's not a Department of Health and Social Services fiscal note for the replacement of signs; that's the reason there's not a Department of Transportation [& Public Facilities] fiscal note for the replacement of signs. I cannot think of any other way to answer that."

REPRESENTATIVE LEDOUX maintained that money currently used for one thing then used for something else is still a cost.

[1:35:14 PM](#)

REPRESENTATIVE KOPP imparted that the Tobacco Cessation Fund is always used for the same thing - not for different things. He said he spoke to the commissioner of DOT&PF and found that because the signs for which the department actually needs to do a hard fabrication are being paid for upfront by the Tobacco Cessation Fund, and because most of the signs can be put into "all-weather devices," the cost of minimal. He said metal signs last for decades. The cost of replacing a sign now and then is "so incremental" that there is no sign replacement fund that requires the dedication of a set amount.

REPRESENTATIVE KOPP noted that it is common for municipalities to partner with industry on many types of projects to cover what a government entity would otherwise be doing, and he said those kinds of programs tend to last longer than when they are driven solely by the government.

REPRESENTATIVE LEDOUX said she agreed with the comment but wondered why there would not be a fiscal note to reflect, for example, that private industry will bear the cost. She explained that the problem is the total lack of a fiscal note.

[1:37:33 PM](#)

REPRESENTATIVE LEDOUX returned to the aforementioned fiscal note analysis, to a sentence in the third paragraph, which read as follows [original punctuation provided]:

Current grantees and contractors will refocus their efforts to the implementation related to this statewide smoking prohibition, possibly at the expense of current educational efforts.

REPRESENTATIVE LEDOUX asked what educational efforts may be affected. She further inquired whether someone from the department could state for the record that the department would not be coming back to the legislature [asking for more money] next year because there is not enough money for the educational efforts.

MS. GRIGSBY responded that the Tobacco Prevention and Control Program currently has a network of community grantees that provide education statewide; therefore, "we wouldn't need any additional resources for that."

[1:39:01 PM](#)

REPRESENTATIVE LEDOUX asked, "Then why does the fiscal note say that the implementation may come, possibly, at the expense of current educational efforts?"

MS. GRIGSBY answered, "We're already doing the education, so there would be no need to do additional or take from ... those resources; they would continue doing what they are doing."

REPRESENTATIVE LEDOUX asked for the reason behind the sentence she had just quoted in the fiscal analysis.

MS. GRIGSBY stated, "So, they would be refocusing their message, when they're doing education, to address the passing of this smoke-free workplace bill."

CHAIR CLAMAN proffered that in other words Ms. Grigsby was saying that "they're going to be focusing on this message instead of the message they're currently focusing on."

MS. GRIGSBY answered that is correct.

[1:40:34 PM](#)

REPRESENTATIVE LEDOUX said she is still waiting for someone to tell her no one would "come back with a supplemental" to pay for "the message that's now being redirected."

CHAIR CLAMAN remarked that it does not appear anyone is prepared to answer that question.

[1:40:54 PM](#)

REPRESENTATIVE REINBOLD proffered that DHSS has a \$3.2 billion budget and a \$92 million supplemental [budget]; therefore, she said she does not think this issue is even on the department's radar, because the amount is too miniscule. She relayed that she used to place signs along trails and bear corridors, and DOT&PF would give her their old signs. She indicated that dealing with signage is already part of the infrastructure. She added that perhaps the effects of the signage will be a decrease in smoking, which, in turn, will result in a huge cost-savings to the state.

[1:42:10 PM](#)

REPRESENTATIVE EASTMAN indicated that DOT&PF has been candid in regard to signs being a potential distraction and being expensive to replace, and he said he would like to know if DOT&PF would be "involved in this process" and what that involvement might be.

CHAIR CLAMAN noted there was no one present from DOT&PF to answer that question.

[1:44:46 PM](#)

REPRESENTATIVE EASTMAN indicated he had learned during another committee's bill hearing process that money designated to the [smoking cessation] effort could not be cut, because it is important to get smoking cessation materials to the public. He expressed concern as to where the money will come from in the future. He added, "I also wanted to ask if the department has

considered that given that their intention with this program is to reduce smoking, ... that reduction in smoking is also going to reduce the amount of funds available for each of these efforts, education-wise and signage-wise and so-forth, and has that been factored into ... this zero fiscal note?"

MR. GRIGSBY answered that the grant-related message is directed to statewide smoke-free law rather than community-level efforts, and the signs would be absorbed by already existing funds. She said the department is prepared to adjust the program should funds be reduced in the future. In response to a follow-up question, she said there are no plans to ask the legislature for additional funds to replace the signs.

[1:46:58 PM](#)

REPRESENTATIVE LEDOUX asked about enforcement, for example, if a complaint is filed.

[1:47:58 PM](#)

MR. DARNELL answered that for rural Alaska, following a complaint the state would send a letter to the violator; if another complaint was submitted, a letter with stronger wording would be sent; after a third or fourth complaint, a trooper or Village Public Safety Officer (VPSO) would check the situation out as part of normal duties. In response to a follow-up question, he said he could not answer whether a village could go a year without someone stopping by to check on a situation, but he does know that troopers do their best in protecting citizens and the VPSO programs.

REPRESENTATIVE LEDOUX observed that no one is able to specify how much this will cost, and she stated that it is almost impossible to have regulation or law that costs nothing. She suggested it would be more appropriate to have an indeterminate fiscal note.

[1:51:16 PM](#)

REPRESENTATIVE LEDOUX moved that the House Judiciary Standing Committee add an indeterminate fiscal note.

REPRESENTATIVE FANSLER objected.

[1:51:28 PM](#)

REPRESENTATIVE REINBOLD reiterated that the result of reducing smoking could be that the state saves money; therefore, she said she does not think it is fair for the legislature to tell the department to create an indeterminate fiscal note when there could be a credit.

[1:52:01 PM](#)

REPRESENTATIVE LEDOUX responded that the reason for an indeterminate fiscal note is when there is an uncertainty as to [the fiscal outcome of legislation].

REPRESENTATIVE EASTMAN offered his understanding that "the department is all but saying that it really should be an indeterminant fiscal note," and he indicated he thinks the committee would err in not requesting one.

[1:52:54 PM](#)

The committee took an at-ease from 1:52 p.m. to 1:53 p.m.

[1:53:32 PM](#)

CHAIR CLAMAN said there is a motion before the committee to request an indeterminant fiscal note.

REPRESENTATIVE FANSLER maintained his objection to the motion.

[1:54:13 PM](#)

REPRESENTATIVE LEDOUX restated her concern about the uncertainty of the cost that could be incurred under CSSB 63(FIN). She said there has been pressure to push the proposed legislation through, and it is easier to do that with a zero fiscal note. She said she has never seen a fiscal note that "talks about ideals and intent."

[1:55:32 PM](#)

REPRESENTATIVE FANSLER said that while he sees Representative LeDoux's point, he thinks the House Judiciary Standing Committee should put its faith in the departments and leave the questioning of fiscal notes to the House Finance Committee. He concluded that he does not see anything that would preclude him from trusting in the vetting done by the departments that resulted in the fiscal notes before the committee.

[1:56:35 PM](#)

REPRESENTATIVE EASTMAN said it is the job of the legislature, as a separate branch of government, to question what the other branch of government puts forward.

[1:57:39 PM](#)

REPRESENTATIVE KOPP said he thinks the answer was clearly stated that [since] the Municipality of Anchorage "rolled out this legislation in 2004," covering half the population of Alaska, there have been three violations, which he said does not impose an administrative burden.

[1:58:17 PM](#)

REPRESENTATIVE KREISS-TOMKINS stated opposition to the motion, although he said he is sympathetic to notion that "fiscal notes can be massaged one direction or the other to ... arrest or accelerate passage of certain pieces of legislation." He said he thinks there are reasonable arguments that the committee should not be "meddling with this fiscal note," and he said he would like to keep the executive branch "honest and on its toes going forward."

[1:59:17 PM](#)

REPRESENTATIVE LEDOUX countered that she thinks it is the job of the legislature to question fiscal notes. She said the committee does not know whether the proposed legislation will cost the state money or save the state money, and she reiterated that is the reason for requesting an indeterminate fiscal note. She opined that it is offensive that there is not an indeterminate fiscal note in this case that is so clearly indeterminate.

[2:00:16 PM](#)

A roll call vote was taken. Representatives LeDoux and Eastman voted in favor of attaching an indeterminate fiscal note to HCS CSSB 63(CRA), [as amended]. Representatives Kreiss-Tomkins, Fansler, Reinbold, Kopp, and Claman voted against it. Therefore, the motion failed by a vote of 2-5.

[2:01:13 PM](#)

REPRESENTATIVE EASTMAN said he has learned that all is not well when the truth is not black and white and cannot stand on its own. He said HCS CSSB 63(CRA), [as amended], includes good intentions, which he supports, but it is also, in part, less than candid. He said not only is the fiscal note process being massaged, but "volunteer" is being used to mean "employee" and "employer" is being used to mean someone who accepts a volunteer's help. He gave an example of an elderly person who has a business, smokes, has no employees, but has a relative come help him lift boxes every so often. Representative Eastman said HCS CSSB 63(CRA), [as amended], maintains that that relative helping out the elderly business owner is an employee; therefore, signs must be put up and the elderly gentleman must not smoke in his establishment "even though he's at no risk of doing anything harmful to anyone other than himself through his choice of smoking." He said if the legislature cannot account for such a scenario, then it has not done its due diligence and is putting forward good intentions rather than good legislation.

[2:04:30 PM](#)

REPRESENTATIVE REINBOLD said her take on the proposed legislation is that it has to do with secondhand smoke, which means that somebody else is present when a person is smoking. She said HCS CSSB 63(CRA), [as amended], does not infringe upon a person's right to smoke; it simply outlines where it is okay to smoke. She said it would apply to places of employment, not to people's homes. She said many people have had to deal with secondhand smoke. She said she would support moving HCS CSSB 63(CRA), [as amended], out of committee.

[2:05:25 PM](#)

REPRESENTATIVE KOPP concurred with Representative Reinbold. He said it amazes him how seriously deaths by alcohol and plane crashes are viewed when so many more people die from tobacco use. He said he thinks HCS CSSB 63(CRA) [as amended] has "a light footprint considering the enormous public health and Medicaid cost that we pay." Smoke inhalation is one of the number one drivers of Medicaid costs. He said there are many examples where regulations have been put in place to protect the public, including the seat belt requirement and driving under the influence (DUI) fines. He reiterated that he thinks HCS CSSB 63(CRA), [as amended], does not go too far.

[2:06:48 PM](#)

REPRESENTATIVE LEDOUX opined that to pretend that a bill can be enforced and mean anything without any costs is to live in make-believe land.

[2:07:19 PM](#)

REPRESENTATIVE FANSLER stated support of HCS CSSB 63(CRA) [as amended] as a good and important step toward ensuring public health, and he said he hopes an effect will be to drive down healthcare costs to the state.

[2:08:34 PM](#)

REPRESENTATIVE FANSLER moved to report HCS CSSB 63(CRA), as amended, out of committee with individual recommendations and the accompanying fiscal notes.

REPRESENTATIVE EASTMAN objected.

[2:08:55 PM](#)

A roll call vote was taken. Representatives Kopp, Kreiss-Tomkins, Fansler, Reinbold, and Claman voted in favor of reporting HCS CSSB 63(CRA), as amended, out of committee with individual recommendations and the accompanying fiscal notes. Representatives LeDoux and Eastman voted against it. Therefore, HCS CSSB 63(JUD) was reported out of the House Judiciary Standing Committee by a vote of 5-2.

[2:09:29 PM](#)

The committee took an at-ease from 2:09 p.m. to 2:18 p.m.

[2:18:14 PM](#)

HB 216-TRANSFERS FROM DIVIDEND FUND; CRIMES

CHAIR CLAMAN announced that the final order of business would be SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 216, "An Act relating to restitution; relating to the office of victims' rights; relating to transfers from the dividend fund; creating the restorative justice account; relating to appropriations from the restorative justice account for services for and payments to crime victims, operating costs of the Violent Crimes Compensation Board, operation of domestic violence and sexual assault programs, mental health services and substance abuse treatment for offenders, and incarceration costs; relating to delinquent minors; and providing for an effective date."

CHAIR CLAMAN noted that two additional fiscal notes were added to the committee packet that day.

2:19:29 PM

REPRESENTATIVE EASTMAN directed attention to a letter in the committee packet, dated 12/18/17, from Sara Race, Director of the Permanent Fund Dividend Division of the Department of Revenue, to Pat Pitney, Director of the Office of Management and Budget. He said the letter spells out what amount of money would become part of the fund proposed under HB 216. He indicated he would like clarification regarding the calculations in the letter.

2:20:12 PM

SARA RACE, Director, Central Office, Permanent Fund Dividend Division, Department of Revenue (DOR), recommended Representative Eastman look at a calculation breakdown in the committee packet [titled "FY 19 PFD Fund Appropriation Calculation for Departments of Corrections and Public Safety"]. She said the division bases the amount available for calculation on the dividend available two years ago. She said [4,588] individuals [from the Department of Corrections (DOC) and 665 from the Department of Public Safety (DPS)] who applied for a dividend in 2017 were later identified as [incarcerated] felons or misdemeanants or [sentenced felons]. She related that the division can determine eligibility on those cases as it would for any other application it receives and identify how many would otherwise have been eligible [had they not been denied as a felon or misdemeanant]. That calculation results in a percentage shown on the breakdown. She pointed out a couple minor adjustments that are made to result in [an estimated number of otherwise eligible applicants], and that number is multiplied by the dividend amount to come up with the [total appropriation].

REPRESENTATIVE EASTMAN pointed out the amount of [11,429, under the category of estimated number of otherwise eligible applicants], and he asked how the division accounts for individuals whose PFD is already "going toward some kind of restitution."

MS. RACE answered that when the division is determining eligibility a garnishment has not yet been applied. Those who filed could have had garnishments attached to their

applications, but they would have been denied because they were a felon or misdemeanor.

REPRESENTATIVE EASTMAN asked Ms. Race if she has any idea how many of the [11,429] might fall into the category of those whose PFDs are "already not going to them" but instead are being directed toward restitution for crimes victims, child support, for example.

MS. RACE answered that the division would not have the number of individuals that fall into that category "for the entire population"; however, the division would have "a pretty good idea of how many that would be of the 4,500 individuals that did apply for a dividend." The division could look at those applications to determine whether there were "garnishments that would have otherwise been applied if they had been paid and not denied." In response to a follow-up question, she said she does not have that number available right now.

[2:23:58 PM](#)

REPRESENTATIVE REINBOLD asked for confirmation that the state is "taking permanent fund dividends from ineligible people that normally would not, because of a conviction, ... be allowed to receive the dividend."

MS. RACE confirmed that is correct.

REPRESENTATIVE REINBOLD said basically the state is taking that money and redistributing it, and in [2017] 94 percent "went to the offender[s] themselves to pay for their healthcare in the last year according to the last testimony or helping pay, I think it was 6 percent, to restitution." She inquired whether, if the state did not do that, the money from ineligible people would go back into the corpus or earnings reserve or be distributed among other Alaskans.

MS. RACE answered as follows:

The calculation is part of statute now, and the amount available that is calculated through this process is available for appropriation. So, past that point I really can't speak to how it is broken into the 94 percent that you speak to that's going to Department of Corrections.

MS. RACE indicated that if statute changed regarding individuals that fall into this category, then the money would go back into the dividend fund and then become available for the calculation process for individuals that are receiving a dividend.

[2:26:16 PM](#)

REPRESENTATIVE KOPP asked whether DOC is an eligible recipient of the fund.

MS. RACE answered, "They are one of the individuals that are listed in the priority order available for appropriation."

REPRESENTATIVE KOPP clarified there are five or six eligible recipients and, as Representative Reinbold pointed out, one recipient is "pretty much consuming all the fund." He said it is the criminal fund, and he said he thinks the question is whether that money, if not going to an inmate fund, would "rotate back out of the criminal fund" or "stay in the criminal fund itself."

MS. RACE replied that the money available to the criminal fund is appropriated directly from the dividend fund. She offered her understand that if no part of this was listed in statute, then that money would be available to pay dividends.

REPRESENTATIVE KOPP summarized that "these eligible recipients" are paid out of the criminal fund through a formula that the Office of Management and Budget applies.

MS. RACE answered as follows:

The money that we calculate here is what we refer to OMB through the [memorandum], and from that point forward, if it wasn't appropriated, ... I'm not sure I could answer that question.

REPRESENTATIVE KOPP referred to the 1980 law that established the crime victim compensation fund, and indicated that under SSHB 216, the amount of the dividends that would otherwise have been paid to those who are not eligible because of their criminal convictions would be appropriated annually from the dividend fund to the crime victim compensation fund. He referred to [Representative Reinbold's] question as to whether those dividends would go somewhere else if not to the fund, and he said he is not aware that that has ever happened but would like to know if it has.

MS. RACE responded that she is not aware that [that has ever happened].

REPRESENTATIVE KOPP concluded, "So, it's available to go to eligible recipients as far as you know rather than being re-appropriated for other purposes."

MS. RACE answered that's correct.

[2:29:34 PM](#)

REPRESENTATIVE EASTMAN commented that he would like to know how many of 4,500 incarcerated persons "already ... did not have access to the PFD because it had already been taken by the courts to ... go to someone who deserved it more." He said he suspects a number of Alaskans deserve to see those funds, and he is hesitant to "maintain the system" wherein "the state takes those funds."

[2:30:40 PM](#)

REPRESENTATIVE KOPP emphasized that when a felon or repeat misdemeanor is ineligible to receive a dividend "that money is not going to anything else but victim compensation." He continued as follows:

So, they would have an excellent argument to go right to [the Office of Victims' Rights] (OVR), who is going to be taking care of restitutions, the crime victim compensation fund, or eligible nonprofit organizations that provide grants for crime victims and show them their order. And this bill prioritizes victims first out of this fund, which right now they're victims last. So, if we're truly concerned about victims, you're right, there may be a small percentage of people who were on a payment plan - that dividend is not lost, it is going directly to victim restoration, but it's not like it's going to ... something else.

REPRESENTATIVE KOPP clarified that SSHB 216 would bring a significantly greater quantity of resource to restoring survivors of crime than anything under current law.

[2:31:56 PM](#)

CHAIR CLAMAN said the decision made several years ago to put dividend money for which people are not eligible into a fund is not a decision up for discussion. The focus today is how to prioritize the money that has been set aside.

CHAIR CLAMAN said he would entertain amendments to SSHB 216, and he noted that Legislative Legal and Research Services has permission to make any technical and conforming changes to the bill based on any amendments adopted.

[2:33:37 PM](#)

REPRESENTATIVE KREISS-TOMKINS moved to adopt Amendment 1, to SSHB 216, labeled 30-LS0572\T.1, Martin, 1/18/18, which read as follows:

Page 6, lines 8 - 11:

Delete all material and insert:

"(3) nonprofit organizations to provide grants for services for crime victims and domestic violence and sexual assault programs;

(4) nonprofit organizations to provide grants for mental health services and substance abuse treatment for offenders; and"

REPRESENTATIVE FANSLER objected.

REPRESENTATIVE KREISS-TOMKINS deferred to his staff to speak to Amendment 1.

[2:33:58 PM](#)

NOAH STAR, Staff, Representative Jonathan Kreiss-Tomkins, Alaska State Legislature, spoke to Amendment 1 to SSHB 216 on behalf of Representative Kreiss-Tomkins. He explained the proposed amendment would switch the order of the third and fourth priorities listed under SSHB 216 such that "crime victims and domestic violence and sexual assault programs" would be listed before "mental health services and substance abuse treatment for offenders".

[2:34:52 PM](#)

REPRESENTATIVE REINBOLD emphasized her support for Amendment 1.

[2:35:42 PM](#)

REPRESENTATIVE FANSLER asked the bill sponsor why the two organizations were listed the way they are listed in SSHB 216.

[2:35:57 PM](#)

REPRESENTATIVE KOPP answered that both recipients are important. He stated support for Amendment 1.

[2:36:13 PM](#)

REPRESENTATIVE FANSLER removed his objection to the motion to adopt Amendment 1. There being no further objection, Amendment 1 was adopted.

[2:36:39 PM](#)

REPRESENTATIVE REINBOLD moved to adopt Amendment 2, to SSHB 216, labeled 30-LS0572\T.2, Martin, 1/22/18, which read as follows:

Page 1, line 6, following "**costs;**":

Insert "**relating to contributions from dividends;**"

Page 8, following line 5:

Insert new bill sections to read:

"* **Sec. 8.** AS 43.23.062(a) is amended to read:

(a) Notwithstanding AS 43.23.069, the Department of Revenue shall prepare the electronic Alaska permanent fund dividend application to allow an applicant who files electronically to direct that money be subtracted from the dividend payment and contributed to **the crime victim compensation fund (AS 18.67.162)**, the peace officer and firefighter survivors' fund, or [TO] one or more of the educational organizations, community foundations, or charitable organizations that appear on the contribution list contained in the application. A contribution to **the crime victim compensation fund,** the peace officer and firefighter survivors' fund or to an organization may be \$25, \$50, \$75, \$100, or more, in increments of \$50, up to the total amount of the permanent fund dividend that the applicant is entitled to receive. If the total amount of contributions elected by an applicant exceeds the amount of the permanent fund dividend that the applicant is entitled to receive, contributions shall be deducted from the dividend in the order of priority

elected by the applicant on the application until the entire amount of the dividend that the applicant is entitled to receive is allocated for contribution. The electronic dividend application form must include notice that seven percent of the money contributed will be used for administrative costs incurred in implementing this section, and money from the dividend fund will not be used for that purpose.

* **Sec. 9.** AS 43.23.062(b) is amended to read:

(b) The department shall list each educational organization, community foundation, or charitable organization eligible under (c) and (d) of this section, each university campus that applies under (l) of this section, the crime victim compensation fund, and the peace officer and firefighter survivors' fund on the contribution list. The department shall maintain an electronic database for the contribution list that is accessible to the public and that permits searches by organization or fund name, geographic location, and type. The department shall provide a statement of the contributions made by an individual that is suitable for federal income tax purposes to each individual who elects to contribute under (a) of this section.

* **Sec. 10.** AS 43.23.062(m) is amended to read:

(m) In addition to the application fee in (f) of this section, the department shall withhold a coordination fee from each organization, foundation, or university campus that receives contributions under this section in the immediately preceding dividend year. The coordination fee for an organization, foundation, or university campus that receives contributions under this section shall be seven percent of the amount of contributions reported by the department under (j) of this section for the organization, foundation, or university campus for the immediately preceding dividend year. The coordination fee shall be separately accounted for under AS 37.05.142 and shall be accounted for separately from the application fee collected under (f) of this section. The annual estimated balance in the account maintained under AS 37.05.142 for coordination fees collected under this subsection may be appropriated for costs of administering this section. The department may not withhold a coordination fee for contributions to the crime victim compensation fund or the peace officer and firefighter survivors' fund."

Renumber the following bill sections accordingly.

REPRESENTATIVE FANSLER objected.

[2:36:44 PM](#)

REPRESENTATIVE REINBOLD prefaced her explanation of Amendment 2 by relating that a lot of people are not giving as much [in donations] as they used to give. She said the proposed amendment would allow eligible recipients of the PFD the option of donating their PFD monies to the crime victim compensation fund through an existing method called ["Click, Pick, Give"].

REPRESENTATIVE KOPP stated his support of Amendment 2. He added, "The Restorative Justice Account, which holds the appropriation, it's ... number one priority is the crime victim compensation fund, which Representative Reinbold has identified; so, this would just move it into the top priority voluntarily by people on the ... Pick, Click, and Give-type of thing, I guess."

[2:38:07 PM](#)

REPRESENTATIVE FANSLER said he likes Amendment 2 but wonders if the Permanent Fund Dividend Division may be concerned that adding too many recipient choices on Pick, Click, Give may "dampen the giving spirit."

[2:38:43 PM](#)

MS. RACE responded that the division has not done specific studies on the issue, but she offered her understanding that the Alaska Community Foundation, which houses the Pick, Click, Give program, would have data. She said there are search tools available to help individuals narrow the search for charitable organizations on Pick, Click, Give.

[2:39:23 PM](#)

CHAIR CLAMAN asked for confirmation that there are service charges associated with the Pick, Click, Give program such that 100 percent of a donation does not go to the donor's choice(s).

MS. RACE confirmed that 7 percent of a donation is collected in administrative fees to cover the running of the program.

CHAIR CLAMAN asked if the same 7 percent would be taken out if someone chose the crime victim compensation fund under Pick, Click, Give, even though it is a state funded program rather than a nonprofit organization.

MS. RACE answered that the peace officer and fire fighter survivors' fund is excluded from the 7 percent administrative fee and so, too, would be the crime victim compensation fund.

[2:40:40 PM](#)

REPRESENTATIVE EASTMAN offered his understanding that one of the reasons for the administrative cost is that there is a verification process involved. He echoed Ms. Race's comment that the crime victim compensation fund would be exempt.

[2:41:33 PM](#)

REPRESENTATIVE FANSLER removed his objection to the motion to adopt Amendment 2. There being no further objection, Amendment 2 was adopted.

[2:41:48 PM](#)

REPRESENTATIVE KOPP moved to adopt Amendment 3, to SSHB 216, labeled 30-LS0572\T.5, Martin, 1/22/18, which read as follows:

Page 2, line 23, following "Law":

Insert "If the Department of Law receives a response to the notice before the 90-day period, the Department of Law may begin collection on the restitution."

Page 9, line 9, following "Law":

Insert "If the Department of Law receives a response to the notice before the 90-day period, the Department of Law may begin collection on the restitution."

REPRESENTATIVE FANSLER objected.

[2:41:52 PM](#)

REPRESENTATIVE KOPP spoke to Amendment 3. He said it would clarify that once the Department of Law receives notice from the crime victim, the department may immediately begin "aggressively

providing assistance." The clarification would, under Amendment 3, be applied to two sections of SSHB 216.

[2:42:32 PM](#)

REPRESENTATIVE FANSLER asked if "this" would hamper a person, who at first decided not to ask for restitution but later decides he/she wants restitution.

REPRESENTATIVE KOPP answered:

Once an order is given, the Department of Law gives notice to the eligible recipient that they have 90 days to elect to collect the restitution without the assistance of the Department of Law.

REPRESENTATIVE KOPP directed attention to language on page 2, line 23, of SSHB 216, which read:

A recipient may inform the Department of Law at a later time of the recipient's election to collect the restitution without the assistance of the Department of Law

REPRESENTATIVE KOPP said there is no time [constraint] on that provision, so a person could decide a year later he/she does not want help. He said he does not know if Representative Fansler's question was in terms of a year later someone deciding he/she does want help. He said he thinks it makes sense in the law to have some time limitation.

CHAIR CLAMAN directed attention to the answer to the issue, which is in Section 3, on page 2, lines 26-29, which read as follows:

A recipient who has elected under this section to collect restitution without the assistance of the Department of Law may not later request the services of that department to collect the restitution.

[2:44:18 PM](#)

REPRESENTATIVE KOPP pointed out that that is current law.

REPRESENTATIVE FANSLER indicated that is the answer he was seeking.

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REPRESENTATIVE EASTMAN said he thinks everyone is assuming that the proposed phrase "receives a response to the notice" - as read in Amendment 3 - means a person wants to "move forward on this." He questioned whether the committee should specify what type of response.

REPRESENTATIVE KOPP said the context of the sentence in its entirety - "If the Department of Law receives a response to the notice before the 90-day period, the Department of Law may begin collection on the restitution" - is obvious, because the department would not begin collection on the restitution if the person had said he/she did not want it.

REPRESENTATIVE EASTMAN asked if there is any intent for a minimum waiting period.

REPRESENTATIVE KOPP answered that the key word in the sentence is "before", which allows the process to start immediately - as soon as the department is notified.

[2:46:20 PM](#)

REPRESENTATIVE FANSLER withdrew his objection to Amendment 3. There being no further objection, Amendment 3 was adopted.

[2:46:33 PM](#)

REPRESENTATIVE KOPP moved to adopt Amendment 4, to SSHB 216, labeled 30-LS0572\T.6, Martin, 1/22/18, which read as follows:

Page 3, lines 7 - 9:

Delete all material and insert:

"(b) The office of victims' rights shall make restitution payments to eligible victims in the following priority order:"

REPRESENTATIVE FANSLER objected.

[2:46:39 PM](#)

REPRESENTATIVE KOPP noted that language on page 3, lines 7-8, of SSHB 216, read: "If an order of restitution provides for payment to more than one crime victim". Representative Kopp said that sounds like a restitution order for multiple people.

Amendment 4 would highlight the priority order, which reflects current practice.

REPRESENTATIVE EASTMAN asked how OVR would be instructed to deal with instances where there is more than one crime victim if that language is changed under Amendment 4.

REPRESENTATIVE KOPP answered that under the current system, once a case is adjudicated and it is time to issue a restitution order, the court would notify OVR of the restitution orders, which would enable the office to connect with the victims to offer assistance in getting victims' orders paid and work with the Permanent Fund Dividend Division. He added, "This actually empowers OVR in a way they have not been empowered before to represent victims in getting them restitution."

REPRESENTATIVE KOPP said if Representative Eastman's question pertains to multiple victims on a single incident, then those individuals are distinct victims and would receive distinct restitution orders. The priority [as shown on page 3, lines 10-12, of SSHB 216], would remain as follows:

- (1) a natural person;
- (2) private businesses;
- (3) state and local governments.

REPRESENTATIVE EASTMAN offered a situation in which there are two crimes and a victim from each one, and he asked if the Office of Victims' Rights would prioritize the first natural person and get PFD funds to him/her but not be able to get funds to the other person whose chronological order is second.

REPRESENTATIVE KOPP replied that Representative Eastman's question is answered on [page 3], lines 13-15, which read:

(c) The office of victims' rights shall adopt regulations under AS 44.62 (Administrative Procedure Act) to establish a process for payments of restitution balances from the restorative justice account established in AS 43.23.048.

REPRESENTATIVE KOPP stated, "It's very difficult in statute to get down into the weeds of what needs to happen on the regulation level." Regulation cannot violate statute and carries out the will of statutes, he said. He concluded, "We are putting into the law the vehicle from which regulation is enabled, which will answer those thornier questions, and

certainly there is public comment periods and things like that for us to comment on."

2:50:47 PM

REPRESENTATIVE FANSLER removed his objection to the motion to adopt Amendment 4. There being no further objection, Amendment 4 was adopted.

2:50:59 PM

REPRESENTATIVE EASTMAN moved to adopt Amendment 5, to SSHB 216, labeled 30-LS0572\T.3, Martin, 1/23/18, which read as follows:

Page 4, line 31:

Delete "if they had been eligible"

Insert "[IF THEY HAD BEEN ELIGIBLE]"

Page 5, line 7:

Delete "if they had been eligible"

Insert "[IF THEY HAD BEEN ELIGIBLE]"

Page 5, lines 30 - 31:

Delete "if they had been eligible"

REPRESENTATIVE FANSLER objected.

2:51:03 PM

REPRESENTATIVE EASTMAN spoke to Amendment 5. He explained that by removing the words "if they had been eligible", the assumption would be that those individuals would have been eligible, which is the process he said the department uses currently wherein if someone is incarcerated and convicted, then the assumption is that he/she would have been eligible but because of the conviction/incarceration he/she is not. He said that is what triggers the money to restorative justice account.

REPRESENTATIVE KOPP responded that Representative Eastman had identified a legislative drafting style. He suggested reading the first part of [paragraph (6)], on page 4, line 29, and adjoining it with the final words on line 31, such that it read: "the total amount that would have been paid" "if they had been eligible". He said this language has been in statute for 30 years and has worked for the Department of Revenue. Representative Kopp again suggested compacting the words in [subsection (b)], on page 5, lines 4 and 7, to read: "total

amount that would have been paid" "if they had been eligible". He said deleting "if they had been eligible" just changes drafting style; it's a different way of saying the same thing. He indicated that adopting Amendment 5 could complicate things, because the committee would be "messaging with a section of law that's worked well for a long time."

[2:53:49 PM](#)

REPRESENTATIVE REINBOLD indicated that she would have supported the proposed amendment "if we weren't collecting from anybody ineligible." However, she opined that deleting "if they had been eligible" is undermining, because "who are we to stop ... if they'd never been eligible in the first place?" She said she would oppose Amendment 5.

[2:54:26 PM](#)

REPRESENTATIVE FANSLER said he gathers that Amendment 5 is just wordsmithing. He asked if it was Representative Eastman's thought to delete the words as a way of making the language more concise.

REPRESENTATIVE EASTMAN indicated that Amendment 5 is directed to someone who is not privy to the way the language has been interpreted by the department. He said the assumption is that "we're only dealing with individuals who are eligible and then, because of their conviction or incarceration, they are rendered ineligible." He said there are many requirements to be eligible; one of them is that a person must apply. He continued:

But that's not the way that ... the department has interpreted it. They have interpreted it as though those words were not, in fact, there. They've interpreted it as though if you are incarcerated or if you have received a conviction, ... you're still in Alaska, you've ... accomplished your eligibility and so forth, and so we'll just ... presume that eligibility. And so, ... what I've suggested through this amendment is that instead of obliging the department to sort of make that interpretive decision, make it more clear in the language that we are not, in fact, requiring anyone to apply, so that then they can be found ineligible by virtue of their conviction or incarceration.

[2:56:10 PM](#)

REPRESENTATIVE KOPP suggested there may be some confusion in the matter. He offered clarification as follows:

You are presumed in the law to not be eligible, period, even if you have applied. ... It doesn't matter; ... that is now an ineligible dividend, and it goes into this crime [victim] compensation fund.

[2:56:44 PM](#)

REPRESENTATIVE LEDOUX offered a scenario in which someone comes to Alaska, commits a crime on day one in the state, and ends up in jail. She said the person would not only be ineligible for a PFD because of being incarcerated, but he/she would also be ineligible [for not having met the minimum residency requirement]. She asked if that person's money would go into [the crime victim compensation fund].

REPRESENTATIVE KOPP said the answer is no because the person was already not eligible [before he/she committed the crime]. He said [SSHB 216] addresses AS 43.23.005(d), which pertains to the criminal aspects regarding disqualification. He said there are other [subsections], including one that addresses a residency requirement. The proposed legislation focuses on a person who is otherwise eligible but for subsection (d) of the statute.

[2:59:33 PM](#)

REPRESENTATIVE EASTMAN questioned how a person who is not eligible [for a PFD] would "impact this situation."

MS. RACE pointed back to the aforementioned calculation page and continued as follows:

Because we do have 4,500 individuals that do apply for the dividend, we are able to walk through the standard eligibility process, which would then speak to any other eligibility requirements that those individuals did not meet, which is why a percentage is applied to the total number of individuals that are reported from DPS and Public Safety rather than 100 percent.

[3:00:40 PM](#)

CHAIR CLAMAN announced that Amendment 5 would be left pending. He noted that Representative Eastman had supplied a memorandum addressing the issue, and he said he would distribute it to the committee in future. He noted the last paragraph of the memorandum written by Hillary Martin advises caution in amending a statute that has existed for years and has been interpreted one way.

[SSHB 216 was held over.]

[3:02:06 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:02 p.m.