

**ALASKA STATE LEGISLATURE
HOUSE STATE AFFAIRS STANDING COMMITTEE**

February 28, 2017

5:38 p.m.

MEMBERS PRESENT

Representative Jonathan Kreiss-Tomkins, Chair
Representative Gabrielle LeDoux, Vice Chair
Representative Chris Tuck
Representative Adam Wool
Representative Chris Birch
Representative DeLena Johnson

MEMBERS ABSENT

Representative Gary Knopp
Representative Andy Josephson (alternate)
Representative Chuck Kopp (alternate)

COMMITTEE CALENDAR

HOUSE BILL NO. 91

"An Act relating to fees for certain persons filing disclosure statements or other reports with the Alaska Public Offices Commission; relating to a tax on legislative lobbyists; and providing for an effective date."

- MOVED CSHB 91(STA) OUT OF COMMITTEE

HOUSE BILL NO. 127

"An Act relating to a permanent fund dividend for an individual whose conviction has been vacated, reversed, or dismissed; and relating to the calculation of the value of the permanent fund dividend by including payment to individuals eligible for a permanent fund dividend because of a conviction that has been vacated, reversed, or dismissed."

- HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 91

SHORT TITLE: APOC REGISTRATION FEES; LOBBYIST TAX

SPONSOR(S): REPRESENTATIVE(S) KITO

01/30/17 (H) READ THE FIRST TIME - REFERRALS

01/30/17 (H) STA, FIN
02/09/17 (H) STA AT 3:00 PM GRUENBERG 120
02/09/17 (H) Heard & Held
02/09/17 (H) MINUTE(STA)
02/14/17 (H) STA AT 3:00 PM GRUENBERG 120
02/14/17 (H) Heard & Held
02/14/17 (H) MINUTE(STA)
02/21/17 (H) STA AT 3:00 PM GRUENBERG 120
02/21/17 (H) Heard & Held
02/21/17 (H) MINUTE(STA)
02/23/17 (H) STA AT 3:00 PM GRUENBERG 120
02/23/17 (H) Heard & Held
02/23/17 (H) MINUTE(STA)
02/28/17 (H) STA AT 3:00 PM GRUENBERG 120
02/28/17 (H) STA AT 5:30 PM GRUENBERG 120

BILL: HB 127

SHORT TITLE: CRIM. CONV. OVERTURNED: RECEIVE PAST PFD
SPONSOR(S): REPRESENTATIVE(S) KAWASAKI

02/15/17 (H) READ THE FIRST TIME - REFERRALS
02/15/17 (H) STA, FIN
02/28/17 (H) STA AT 3:00 PM GRUENBERG 120
02/28/17 (H) STA AT 5:30 PM GRUENBERG 120

WITNESS REGISTER

REPRESENTATIVE SCOTT KAWASAKI

Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 127, as prime sponsor.

WILLIAM JODWALIS, Staff
Representative Scott Kawasaki
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Provided a sectional analysis of HB 127 on behalf of Representative Kawasaki, prime sponsor.

BILL OBERLY, Executive Director
Alaska Innocence Project (AKIP)
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 127.

SARA RACE, Director
Permanent Fund Dividend Division (PFDD)
Juneau, Alaska

POSITION STATEMENT: Answered questions during the hearing on HB 127.

JERRY BURNETT, Deputy Commissioner
Department of Revenue (DOR)
Juneau, Alaska

POSITION STATEMENT: Answered questions during the hearing on HB 127.

ACTION NARRATIVE

[5:38:42 PM](#)

CHAIR JONATHAN KREISS-TOMKINS called the House State Affairs Standing Committee meeting to order at 5:38 p.m. Representatives LeDoux, Tuck, Wool, Johnson, and Kreiss-Tomkins were present at the call to order. Representative Birch arrived as the meeting was in progress.

HB 91-APOC REGISTRATION FEES; LOBBYIST TAX

[5:39:32 PM](#)

CHAIR KREISS-TOMKINS announced that the first order of business would be HOUSE BILL NO. 91, "An Act relating to fees for certain persons filing disclosure statements or other reports with the Alaska Public Offices Commission; relating to a tax on legislative lobbyists; and providing for an effective date." [Before the committee, adopted as a work draft and amended on 2/23/17, was the proposed committee substitute (CS) for HB 91, Version 30-LS0067\D, Bullard, 2/21/17.]

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REPRESENTATIVE WOOL moved to report the proposed CS for HB 91, Version 30-LS0067\D, Bullard, 2/21/17, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 91(STA) was reported from the House State Affairs Standing Committee.

HB 127-CRIM. CONV. OVERTURNED: RECEIVE PAST PFD

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CHAIR KREISS-TOMKINS announced that the final order of business would be HOUSE BILL NO. 127, "An Act relating to a permanent

fund dividend for an individual whose conviction has been vacated, reversed, or dismissed; and relating to the calculation of the value of the permanent fund dividend by including payment to individuals eligible for a permanent fund dividend because of a conviction that has been vacated, reversed, or dismissed."

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REPRESENTATIVE SCOTT KAWASAKI, Alaska State Legislature, as prime sponsor of HB 127, paraphrased from the sponsor statement, which read as follows [original punctuation provided]:

The State of Alaska Department of Law Criminal Division's mission is to "assure safe and healthy communities by prosecuting and convicting criminal offenders throughout Alaska." Likewise, the State has a responsibility to ensure those convicted of crimes are prosecuted fairly and with due justice, and in the event of wrongful convictions, compensate those who have faced such an injustice.

Incarcerated Alaskans forgo their Permanent Fund Dividends [PFD] to the State. HB 127 seeks to pay Permanent Fund Dividends to Alaskans whose convictions were vacated, reversed or dismissed. If passed, those eligible must apply for the PFD within 120 days following the new judgment or within 120 days of the effective date of the bill. Currently, this bill would help 4 Alaskans who were victims of wrongful conviction at a total cost of \$103,450.96 in owed PFDs.

The PFD is a defining characteristic of what it means to be an Alaskan. Providing the PFD to those Alaskans who have wrongfully had their liberties taken away from them is one of the few things the State of Alaska can do to help them reestablish a normal life in providing means to find housing, food and education.

A wrongful conviction is a true tragedy. The transition back to civilian life for these individuals can be difficult due to the loss of time with loved ones, let alone the loss of income otherwise earned. I ask your support for this bill that would help victims of injustice with their transition back into society as the State looks to ensure that the criminal justice system is ever more thorough and fair.

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WILLIAM JODWALIS, Staff, Representative Scott Kawasaki, Alaska State Legislature, stated that the intent of HB 127 is to reimburse wrongfully convicted individuals with the permanent fund dividend (PFD) that they would have acquired had they not been incarcerated and to include such compensation into the calculation process of the PFD.

MR. JODWALIS relayed that currently under AS 43.23.005(d), a person cannot receive his/her PFD if during the qualifying year: the individual was sentenced because of conviction in the state of a felony; was incarcerated for all or part of the year as a class A felon; or received a misdemeanor after a prior felony conviction or two or more prior misdemeanor convictions.

MR. JODWALIS paraphrased from the sectional analysis, which read as follows [original punctuation provided]:

Section 1

(i) Establishes that individuals whose convictions have been vacated or reversed and either dismissed or retried and found not guilty are eligible to receive the permanent fund dividend for each year the individual was ineligible while incarcerated

(j) Sets the time frame for individuals being able to apply for permanent fund dividend compensation at no later than within 120 days after a dismissal or not guilty finding.

Section 2

Amends AS 43.23.025(a), which involves the calculation of the annual value for the PFD, under subsection (C) to include (i) of section 1 of this Bill, which would factor the compensation of Permanent Fund Dividends for wrongful convictions into the calculation of the annual PFD values.

Section 3

Amends uncodified law of the State of Alaska by adding a new section that states that those who are eligible

for PFD compensation as defined under section 1 of this bill, yet have had their conviction overturned before this act takes place, will have 120 days from its effective date to apply for the PFD.

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BILL OBERLY, Executive Director, Alaska Innocence Project (AKIP), stated that the purpose of HB 127 is to fill a hole in the PFD statutes by providing eligibility for PFDs to persons who were wrongfully prevented from applying for the years they were wrongfully imprisoned. Individuals who have been exonerated - those whose convictions were vacated or reversed, those for whom all charges were dismissed, or those found not guilty at retrial - should be eligible to apply for and receive each of the PFDs they were denied during their wrongful incarceration.

MR. OBERLY attested that when an individual is exonerated and released from prison in Alaska, he/she gets no monetary assistance and does not receive the services that a guilty person receives upon release. He said that Alaska has no compensation law at this time for wrongful convictions, and he added that 32 states and the District of Columbia all have such legislation. In 2012, 60 percent of compensation received by such individuals was through statute, 30 percent through lawsuit, and 10 percent through special legislation. He said that with the passage of compensation bills by additional states, now 81% of compensation is by statute, which makes lawsuits less likely.

MR. OBERLY maintained that the proposed legislation would not provide compensation by statute but would address funds directly taken from individuals because of their wrongful convictions. He stated that HB 127 applies to the "Fairbanks Four" - four [wrongly convicted] individuals who were exonerated in December of 2015. They were released with nothing - no job experience and no education beyond high school. He cited that Marvin Roberts, who was valedictorian of his high school class and in 1997 had a promising future, is now delivering pizzas. He asserted that for these four individuals, the benefit of getting their PFDs would be immediate and substantial. He stated that the [PFD] money was wrongfully taken from these individuals as was 18 years of their lives, and HB 127 would help to correct this injustice and prevent future PFD denials.

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REPRESENTATIVE BIRCH asked if there were any conditions, provisions, or signed agreements upon release of the Fairbanks Four precluding litigation or civil recourse.

MR. OBERLY responded that through a signed agreement with the State of Alaska, the four men agreed not to file suit with the state for compensation. He emphasized that the agreement only prohibited them from filing suit, not from receiving compensation by some other means. He opined that the agreement does not affect HB 127.

REPRESENTATIVE BIRCH suggested that while not a lawsuit, HB 127 would constitute an active engagement in pursuing financial remedy. He expressed interest in receiving a copy of the agreement.

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REPRESENTATIVE TUCK said he is surprised that Alaska does not already have legislation that reverses the harm of withholding PFDs in the case of wrongful convictions. He mentioned that it is money that should never have been taken, and without HB 127, Alaska is imposing more unnecessary harm on innocent people. He maintained that this compensation is separate from any judicial action. He expressed his support for Section 3 of HB 127, which allows other victims of wrongful convictions to be able to apply for their PFDs.

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REPRESENTATIVE JOHNSON asked if there are people other than the Fairbanks Four who would be affected [by the proposed legislation].

REPRESENTATIVE KAWASAKI answered that HB 127 has received a great deal of attention specifically due to the Fairbanks Four but that the proposed legislation would benefit everyone who has been incarcerated wrongly. He pointed out that due to DNA evidence, 2016 has had the largest number of exonerations in the history of United States, and 20 of the exonerated people were on death row. He mentioned that despite the best efforts of the justice system, errors are made, and HB 127 would help to restore faith in that system.

REPRESENTATIVE JOHNSON asked for the number of people who would be affected beside the four men mentioned.

REPRESENTATIVE KAWASAKI responded that information is readily available on some individuals, but for those who have not been prosecuted, the data is more difficult to obtain. He said that HB 127 would set up a process whereby a person who was wrongly convicted - his/her case was vacated, dismissed, or reversed in court - could apply for the PFDs within 120 days, and a determination would be made regarding qualification.

REPRESENTATIVE JOHNSON referred to the zero-fiscal note and expressed a desire to get a sense of the amount of money that might be involved. She stated that the amount that would be owed to the Fairbanks Four is \$103,450.96. She asked what the process was to identify other recipients and what the fiscal note would be.

REPRESENTATIVE KAWASAKI answered that the Department of Revenue (DOR) sets aside a fund titled, "Reserve for Prior Year Dividend Liabilities," which is used to pay dividends to Alaskans who through some extenuating circumstances were not able to file timely. He said that fund is available for any compensation potential that exists. Currently the fund is at \$233,000, and it varies from year to year.

REPRESENTATIVE JOHNSON stated that she is concerned about the lack of information on the fiscal liability of HB 127.

REPRESENTATIVE KAWASAKI responded that his staff could try to obtain some preliminary estimates.

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REPRESENTATIVE LEDOUX asked if everyone who has been convicted of a felony is denied receiving PFDs only while incarcerated.

REPRESENTATIVE KAWASAKI answered that under AS 43.23.005(d), a person would be ineligible to receive his/her PFD for the qualifying year if he/she: had been sentenced because of a conviction of a felony; was incarcerated for all or part of the year as a class A felon; or had received a misdemeanor after having already been convicted of a felony or after having received two prior misdemeanors.

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SARA RACE, Director, Permanent Fund Dividend Division (PFDD), stated that if some individual falls into one of the categories

specified in AS 43.23.005(d), he/she is ineligible to receive a PFD. She added that these individuals are not prevented from applying for a PFD for the qualifying year, and if they do apply, the statute assists PFDD in making a determination of eligibility.

REPRESENTATIVE LEDOUX asked whether a person convicted of a felony or other crime must be incarcerated to be denied a PFD.

MS. RACE answered that if a person is convicted, there may be a period during which he/she is not incarcerated. In that case the person would be deemed ineligible for a PFD for that period.

REPRESENTATIVE LEDOUX asked if a person who is convicted and appeals the conviction is ineligible [to receive the PFD] for the time spent appealing the conviction, even if not incarcerated.

MS. RACE responded, "That is correct." She explained further that for a person whose conviction has been overturned, the regulations allow 60 days to appeal PFDD's denial of the PFD. If the denial is appealed, PFDD then contacts the Department of Corrections (DOC) to determine if the individual falls into one of the categories stated in AS 43.23.005(d). If so, the denial would be upheld.

REPRESENTATIVE LEDOUX relayed the scenario of a person who applied for the PFD while in jail, the PFD was denied, but the conviction was vacated upon appeal. She asked if, under HB 127, that person would receive the PFD at the time the conviction was vacated.

MS. RACE answered that in that scenario, the individual would most likely contact PFDD to activate the PFD appeal process at the time the conviction was overturned.

REPRESENTATIVE LEDOUX commented that the person would have had to apply previously for the PFD and it is unlikely that he/she would have known to do that.

REPRESENTATIVE LEDOUX opined that the proposed legislation is entirely different from civil litigation. She stated that the Fairbanks Four agreed not to engage in civil litigation against the state for wrongful imprisonment, but HB 127 represents a political process. She expressed her dismay by how the Department of Law (DOL) handled the case. She opined that if someone is innocent, he/she should be released from prison

without being asked to sign an agreement giving up his/her rights not to sue for wrongful conviction to be released from prison without the state contesting it. She added that without litigation, any wrongdoing in the wrongful conviction is not exposed.

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REPRESENTATIVE WOOL agreed with Representative LeDoux. He mentioned that when the topic of PFD reimbursement came up regarding the Fairbanks Four, he heard that their PFD money was used to pay for their incarceration. He asked if, in fact, PFD money for incarcerated Alaskans is transferred to DOC for prisoner "room and board."

REPRESENTATIVE KAWASAKI replied that under current law, there is a crime victim compensation fund into which the PFDs of incarcerated Alaskans are paid. The fund is administered by the Violent Crimes Compensation Board and is used for victims of violent crimes. He added that funds also go to the Alaska Council of Domestic Violence and Sexual Assault (CDVSA), DOC, probation programs, the Office of Victims' Rights (OVR), and non-profit victims' rights organizations by way of designated grants. He stated there are other statutes that specifically outline the ways PFDs are garnished for unpaid child support and unpaid University of Alaska tuition.

REPRESENTATIVE WOOL asked if the PFD money is reallocated for those who are incarcerated without them applying for it.

MS. RACE responded that PFDD uses a calculated formula based on information from DOC regarding the number of people incarcerated for felonies and misdemeanors.

REPRESENTATIVE WOOL asked for confirmation that the state automatically applies for those people who are incarcerated and ineligible to receive a PFD.

MS. RACE confirmed that the money is appropriated to DOC.

REPRESENTATIVE WOOL commented that a person in prison does not have to apply for the PFD for it to be redistributed on his/her behalf, but if the person's conviction is determined to have been wrongful, then he/she must apply within a certain timeframe.

CHAIR KREISS-TOMKINS asked for clarification that for people who are in jail and not getting PFDs because of the crime they committed, the PFDD is giving the PFD money to DOC as an interagency cash transfer.

MS. RACE agreed with that assessment. She offered that the money is a calculated appropriation to DOC and is not a "one-for-one."

CHAIR KREISS-TOMKINS asked for an explanation of "calculated" as opposed to "one-for-one."

MS. RACE responded that DOC provides PFDD with a complex spreadsheet along with a list of individuals incarcerated or convicted of a felony or misdemeanor. She said that PFDD uses the same standard calculation to determine the percentage to be appropriated to DOC that is used to calculate the amount of the PFD. This calculation represents the reasonable expectation of the percentage of people who will be eligible for the PFD upon application.

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REPRESENTATIVE WOOL asked how child support is paid from the PFD of an incarcerated person owing child support. He enquired if a garnishment on file with the Alaska Child Support Services Division (CSSD) would result in continued deductions from the PFD of that person after imprisonment.

MS. RACE explained that the garnishment process requires a PFD application to be filed by an eligible applicant. In the scenario Representative Wool mentioned, the convicted person would have been deemed ineligible; therefore, the PFD could not be garnished.

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JERRY BURNETT, Deputy Commissioner, Department of Revenue (DOR), confirmed that the amount of PFD funds appropriated to DOC each year is a calculated amount based on the number of people incarcerated. He reiterated that regarding child support garnishment and student loan garnishment, the incarcerated person is not eligible for a PFD; therefore, there is nothing to garnish.

REPRESENTATIVE WOOL asked for confirmation that the incarcerated person's PFD money is allocated to DOC even though the person is ineligible for the PFD.

MR. BURNETT confirmed that assessment. He stated that this appropriation is included among the statutorily allowable appropriations by the legislature.

REPRESENTATIVE WOOL asked, "If that same number of people that are in prison - let's say 5,000 ... - if that 5,000 people in the population just didn't apply one year, then that would benefit the rest of the people. Their checks would go up by a little bit ... because there would be less people to disperse it to. But in this case, it's automatically taken out."

MR. BURNETT answered yes.

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REPRESENTATIVE JOHNSON commented that the intent [of HB 127] is not to retrieve the money from DOC. She asked for confirmation that there is a fund for "under-claimed or unclaimed" PFDs.

REPRESENTATIVE KAWASAKI stated that there is such a fund - the Reserve for Prior Year Dividend Liabilities - and it currently contains about \$233,000.

REPRESENTATIVE JOHNSON asked if this is the fund from which the PFD money would be paid under HB 127.

REPRESENTATIVE KAWASAKI responded yes.

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REPRESENTATIVE LEDOUX asked how money gets into the Reserve for Prior Year Dividend Liabilities.

MR. BURNETT responded that each year when the PFD is calculated, funds are reserved, because the exact numbers of recipients and successful appeals are unknown. The reserve funds pay for prior year appeals and for 18-year-olds whose parents have not previously applied for them. Reserving this fund reduces the PFD check by a few cents, and the fund carries forward in future years. If it is not used, it increases the dividend for the next year; if it is used, it decreases the dividend for the next year. He added that under the proposed legislation, PFDs for the wrongfully convicted would be awarded for each of the years

that they were eligible, if they were an Alaska resident and applied timely.

REPRESENTATIVE LEDOUX asked whether someone sent to a prison outside of the state would be considered an Alaska resident.

MR. BURNETT responded that he believed they would because they would have been in the custody of the State of Alaska during the period of incarceration.

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REPRESENTATIVE WOOL asked why and how a prisoner, who was ineligible for a PFD, would have applied every year.

MR. BURNETT answered that it is highly unlikely that people would apply from prison believing they would be ineligible, even if they were able to file an application.

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CHAIR KREISS-TOMKINS announced that HB 127 was held over.

[6:30:32 PM](#)

ADJOURNMENT

There being no further business before the committee, the House State Affairs Standing Committee meeting was adjourned at 6:31 p.m.