

ALASKA STATE LEGISLATURE
HOUSE STATE AFFAIRS STANDING COMMITTEE

February 20, 2018

3:19 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
Representative Gary Knopp

MEMBERS ABSENT

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

COMMITTEE CALENDAR

HOUSE JOINT RESOLUTION NO. 26

Proposing amendments to the Constitution of the State of Alaska relating to the membership and actions of the Redistricting Board and relating to district boundaries and the establishment of a nonpartisan statewide district map.

- HEARD & HELD

CONFIRMATION HEARING(S)

- CONFIRMATION(S) ADVANCED

PRESENTATION: INDIRECT EXPENDITURE HEARING

- HEARD

PREVIOUS COMMITTEE ACTION

BILL: HJR 26

SHORT TITLE: CONST. AM: REDISTRICTING;BOARD MEMBERSHIP

SPONSOR(S): REPRESENTATIVE(S) GARA

01/08/18	(H)	PREFILE RELEASED 1/8/18
01/16/18	(H)	READ THE FIRST TIME - REFERRALS
01/16/18	(H)	STA, JUD, FIN

01/22/18 (H) SPONSOR SUBSTITUTE INTRODUCED
01/22/18 (H) READ THE FIRST TIME - REFERRALS
01/22/18 (H) STA, JUD, FIN
02/20/18 (H) STA AT 3:15 PM GRUENBERG 120

WITNESS REGISTER

REPRESENTATIVE LES GARA
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented SSHJR 26, as prime sponsor.

JUSTIN LEVITT, Professor
Loyola Law School
Los Angeles, California

POSITION STATEMENT: Testified during the hearing on SSHJR 26.

MARGO WARING, League of Women Voters of Juneau (LWVJ)
Juneau, Alaska

POSITION STATEMENT: Testified during the hearing on SSHJR 26.

LESLIE RIDLE, Commissioner Designee
Department of Administration (DOA)
Juneau, Alaska

POSITION STATEMENT: Testified as appointed commissioner of the Department of Administration (DOA).

DAN STICKEL, Chief Economist
Tax Division
Department of Revenue (DOR)
Juneau, Alaska

POSITION STATEMENT: Co-presented an overview of DOR's Indirect Expenditure Report for fiscal years 2011-2015 (FY 11-15), with the use of a PowerPoint presentation.

KY CLARK, Economist
Tax Division
Department of Revenue (DOR)
Juneau, Alaska

POSITION STATEMENT: Co-presented an overview of DOR's Indirect Expenditure Report for fiscal years 2011-2015 (FY 11-15), with the use of a PowerPoint presentation.

ALEXEI PAINTER, Fiscal Analyst
Legislative Finance Division (LFD)
Legislative Affairs Agency (LAA) Juneau, Alaska

POSITION STATEMENT: Presented an overview of the Legislative Finance Division's indirect expenditure reports with the use of a PowerPoint presentation.

ACTION NARRATIVE

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CHAIR JONATHAN KREISS-TOMKINS called the House State Affairs Standing Committee meeting to order at 3:19 p.m. Representatives Birch, Johnson, Knopp, and Kreiss-Tomkins were present at the call to order. Representatives LeDoux, Tuck, and Wool arrived as the meeting was in progress.

HJR 26-CONST. AM: REDISTRICTING;BOARD MEMBERSHIP

[3:20:47 PM](#)

CHAIR KREISS-TOMKINS announced that the first order of business would be SPONSOR SUBSTITUTE FOR HOUSE JOINT RESOLUTION NO. 26, Proposing amendments to the Constitution of the State of Alaska relating to the membership and actions of the Redistricting Board and relating to district boundaries and the establishment of a nonpartisan statewide district map.

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REPRESENTATIVE LES GARA, Alaska State Legislature, as prime sponsor, presented SSHJR 26. He noted that a proposed committee substitute (CS) for SSHJR 26, Version 30-OS0155\N, Bullard, 1/31/18 [included in the committee packet and referred to as Version N] would attempt to eliminate politics from redistricting, which is also referred to as gerrymandering. He said that roughly ten states have adopted a non-partisan method of drawing district lines so as not to favor one party or another. He maintained that both parties have tried to take advantage of the redistricting process.

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JUSTIN LEVITT, Professor, Loyola Law School, relayed his experience in the field of redistricting and voting rights. He testified that he agrees with Representative Gara's assessment that neither party has a monopoly on abusing the redistricting process when possible. He stated that in most states, sitting legislators draw both their own district lines and where applicable, districts of members of Congress. He said that it

is often legislative leadership that wields redistricting power, not the "rank and file" legislators. He reported that in many states, leadership is at least tempted to use redistricting power as a cudgel against both members of the opposing party and occasionally against members of their own party.

MR. LEVITT continued by saying that the process is rarely transparent; because redistricting can be very personal when it is pursued as an exercise in raw partisan power, it often appears to be overflowing with ill will, creating significant conflict among legislators that carries over into the legislative sessions. He maintained that when this happens, it creates substantial cynicism among the public, even if the process did not actually put personal and partisan interests ahead of the public interest. He said that in his experience and in the experience of many other redistricting commentators, it often appears to the public eye that the system is rigged, that is, members exercising the power granted to the state to act on behalf of all its constituents but exercising that power to benefit just a few.

MR. LEVITT offered his belief that the U.S. is the only industrialized western democracy that allows those with the greatest potential for conflict of interest to draw their own electoral district lines. He said that many countries have observed the U.S. practice and determined that they can find a better way.

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MR. LEVITT relayed that a few states, including Alaska, have taken a different approach to drawing state legislative districts. Connecticut and Maine allow the legislature to draw redistricting lines that have supermajority requirements, which can increase the likelihood of a more bipartisan outcome. He reported that seven states - Arkansas, Colorado, Hawaii, Missouri, New Jersey, Ohio, and Pennsylvania - have established commissions to draw redistricting lines but allow elected officials to serve on those commissions. In most instances these bodies are also structured in a manner designed to be bipartisan; therefore, they differ from the legislature. In two other states - Iowa and New York - there are advisory bodies with substantial independence from the legislature, but theoretically they are subject to legislative override. He said that New York's system is new for the year 2020, so it remains to be seen how it will work. Iowa's experience in the last four decades shows that its independent body substantially drives the

process and has never been overridden by the legislature, even though the legislature has that authority.

MR. LEVITT referred to several other states - Arizona, California, Idaho, Montana, Washington, and as of 1998, Alaska - that have asked commissions with substantial amounts of independence from the legislature to draw legislative lines. These states are often considered leaders of establishing redistricting processes in that the processes correspond more to public interest than to partisan or private interests. Members of the commissions in all these states must not be current sitting state legislators or other specified public officials; the list varies from state to state. He said that members of the commissions of these states are precluded from running for office in the districts for which they have drawn lines, at least for a few years. In the states with independent commissions, all but one are designed so that the membership of the commission is balanced in a bipartisan fashion. He offered that California, in addition, provides specific membership on the commission for those who are affiliated with neither major party.

MR. LEVITT relayed that the one state that does not, at present, have a directly and intentionally bipartisan structure is Alaska. States have created a diverse array of options to perform legislative and congressional redistricting; even within the rough categories described, there is substantial variance in how each structure is designed and substantial variance in how each works in practice. He added that some of the systems work quite well; some work fairly well; and some work fairly poorly. Each likely could be improved - sometimes incrementally and sometimes exponentially.

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MR. LEVITT maintained that he firmly believes that there is no single correct "cookie cutter" answer for every state; there is no "magic bullet" that can or should be uniformly implemented everywhere and in the same way, without concern for demography, history, or political context. He expressed that Iowa's system works well for Iowa but would not work well for California. California's system works well for California but is unnecessary for Idaho. Idaho's system works well for Idaho but isn't likely to work well in New York. He asserted that each system, even when it functions well for its own state, can likely be improved.

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MR. LEVITT related that the present system in Alaska has many elements to commend it, but it, too, can be improved. He opined that the process was improved in 1998, when control passed from the governor alone to the current reapportionment board. He expressed his belief that Version N of SSHJR 26 would make even greater advancements to the process. At present, Alaska has some safeguards for the public. Those who draw the lines may not be public employees or officials at the time they are appointed or throughout the tenure of their appointments. There are provisions for geographic diversity; there must be a member from each judicial district on the board. There was substantial transparency in the manner that redistricting was conducted in the 2000 and 2010 redistricting cycles.

MR. LEVITT said that in theory, appointment to the reapportionment board is to be made without regard to partisan political affiliation; the members of the board are not supposed to be partisan. He pointed out that currently, four out of five members of the reapportionment board are themselves appointed by officials elected to political positions; it is often the case that the officials of one political party will do most of the appointing. He explained that when elected officials with partisan allegiance make the appointments, even while the text precludes appointment regarding partisan affiliation, the public may be misled into perceiving that the board itself has a partisan slant.

MR. LEVITT stated that Version N would continue Alaska's hardy tradition of a redistricting body distinct from the legislature and continue the tradition of precluding current public employees and officials. In addition, it would add a welcome measure of incremental independence by precluding former political party operatives and former elected officials from serving on the board. He maintained that Version N would prevent someone from retiring from a legislative office and serving on the board the next day. It would also add a measure of partisan balance to the reapportionment body itself with two members from each of the major parties and several members from neither. He opined that this would more closely approximate the structure of independent commissions in other states, such as Arizona, Idaho, Montana, and Washington; he noted the political and partisan diversity of this group of states. He opined it would strengthen the measures of incremental independence and incremental balance; it would strengthen the Alaskans' faith in the redistricting process.

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MR. LEVITT relayed that Version N also would strengthen the redistricting process's focus on criteria that benefit Alaskans - retaining the state's very strong protections for communities of interest - and thus, legislators would really know who they are representing, and that would be felt and perceived by the public. The criteria would still be embodied in the requirement that districts contain relatively integrated socioeconomic areas but would add specific language that would preclude drawing a map to unduly favor a party or candidate. He maintained that aspect being important both for the substance of the map and the public perception of it. He said that the Alaska Supreme Court has emphatically enforced the redistricting provision of state law and that he expects it would enforce the provision of Version N, if it became law, which should give Alaska citizens incremental confidence that the process is defined for them.

MR. LEVITT stated that he has focused his testimony on fair process, not results, which he said is appropriate. Alaskans are diverse with various protected racial and ethnic communities and many citizens who prefer one of the major political parties. He offered that there is a fierce independent streak among Alaskans; some citizens prefer neither major party. Districts that are drawn through a fair process will inevitably in any given cycle or election end up creating some natural advantages for certain candidates; it is impossible to remove all political results from the redistricting process. However, he opined that a fair process - one designed to be independent of the candidate running in the districts drawn and one with natural balance - will give Alaskans increased confidence that the electoral contests, whatever their outcomes, have not been unfairly tilted. He expressed his belief that Version N brings Alaska's process closer to that ideal and moving in an incrementally positive direction.

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REPRESENTATIVE LEDOUX moved to adopt the proposed CS for SSHJR 26, Version 30-LS0155\N, Bullard, 1/31/18, as the working document. There being no objection, Version N was before the committee.

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REPRESENTATIVE GARA relayed that there are six changes in Version N. He referred to Section 1 of Version N, on page 1, lines 8-10, which read, "The map may not be drawn to unduly favor a political party, and a district may not be drawn to unduly favor a political party or candidate." He mentioned that the language was recommended by Mr. Levitt and was used in Hawaii's statutes.

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REPRESENTATIVE LEDOUX asked for the difference between "favoring a political party" and "unduly favoring a political party."

REPRESENTATIVE GARA responded that could be amended; the intent is to not favor a political party [through redistricting]. He stated that there are districts that favor the Democratic Party, the Republican Party, the Green Party, or the Alaska Independence Party (AIP); by virtue of the way even a non-partisan redistricting map is drawn, not every district will be fifty-fifty. He offered that technically a district may favor a [political] party, but the intent of the proposed legislation is to avoid unfairly favoring a party; the map should be written such that it does not unduly, unwarrantedly favor a party.

REPRESENTATIVE LEDOUX asked if the language might be interpreted as the map may not be drawn with the intention of favoring one party or another.

REPRESENTATIVE GARA answered, "Yes, the whole map." He added that the statewide map is intended to be nonpartisan, with the recognition that one district or another may favor one party or another.

REPRESENTATIVE LEDOUX restated Representative Gara's answer by saying, "It may end up that way, but that shouldn't be the intention of how you draw the whole map or even the district map."

REPRESENTATIVE GARA replied, "That's true."

REPRESENTATIVE GARA referred to Section 2, on page 2, lines 4-18, and relayed that the number of members on the redistricting board has changed over the years; under Version N, it would consist of seven members - two from the party with the most votes in the prior election, two from the party with the second most votes, and because most voters in Alaska are independent,

three members who are independent. The first four political party members would choose the three independent members.

REPRESENTATIVE GARA referred to Section 4, on page 3, lines 6-7, and relayed that there had been language banning political contributions by those appointed to the board; Mr. Levitt explained that might be unconstitutional; therefore, it was removed. He added that with the four party members choosing the three independent members, the political leanings of the three would become evident.

REPRESENTATIVE GARA referred to Section 4, page 3, lines 9-11, which states that the four party members would appoint the three independent nonpartisan members.

REPRESENTATIVE GARA referred to Section 4, page 3, lines 13-21, and explained that if the four party members can't agree on the three independent members by a certain deadline, the Alaska Supreme Court would appoint the three independent members.

REPRESENTATIVE GARA relayed that Section 6, on page 4, lines 1-3, contains conforming language.

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REPRESENTATIVE TUCK asked if "independent" refers to a member of the Alaska Independence Party or to someone who is [registered] undeclared nonpartisan.

REPRESENTATIVE GARA explained that the three members who are not members of the two major parties are non-party affiliated.

REPRESENTATIVE LEDOUX referred to Section 4 (d), on page 3, lines 6-8, and asked whether a person appointed to the redistricting board is required to have never been elected to office. She asked whether someone elected 20 years ago would not be allowed to serve on the board currently.

REPRESENTATIVE GARA responded that Version N would allow local officials to be appointed, since in Alaska they are often nonpartisan. He relayed that state and federal elected officials are usually affiliated with one party or another. He said he is open to an amendment but feels that these officials should not be on the redistricting board.

REPRESENTATIVE LEDOUX expressed that she understands that reasoning for the nonpartisan members, but not for the [four] partisan members, because they are supposed to be partisan.

REPRESENTATIVE GARA stated that he is amenable to a committee change on that provision. In either case, the result would be two members from each party and three independent members, who will be the "power brokers" on the board.

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REPRESENTATIVE TUCK referred to page 2, lines 16-18, which read, "three members who are not registered as affiliated with a political party and who have not been registered as affiliated with a political party within the preceding ten years". He expressed his understanding that it does not preclude someone who only has been a registered voter for five years.

REPRESENTATIVE GARA replied that there is a requirement that the member would have to have voted in the last few general elections. He agreed that someone who has been in Alaska for six years, if he/she has been independent for the entire six years, would qualify for appointment to the board.

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REPRESENTATIVE LEDOUX referred to Section 2, on page 2, lines 5-6, which read, "members, all of whom shall be residents of the State and registered voters who have voted in each of the previous four state general and primary elections". She offered the scenario of a person selected for the board in 2017, who would have had to have voted in the general and primary elections in 2016 and 2014. She suggested that some of the most partisan people are the ones who vote in primaries; she asked, "If you're actually trying to eliminate partisanship ... why would you make voting in a primary mandatory?"

REPRESENTATIVE GARA responded that he welcomes an amendment eliminating "primary elections." He reiterated that since the two Democrats and two Republicans would appoint three independent members who will outnumber them, the independents will be the power brokers, and making that change should not affect the outcome of creating a nonpartisan redistricting board.

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MARGO WARING, League of Women Voters of Juneau (LWVJ), testified that the League of Women Voters (LWV) has long been concerned with reapportionment and redistricting in the U.S. She mentioned that she has belonged to the national LWV Redistricting Task Force (RTF) for the three years it has been in existence. She relayed that RTF has studied the structure of redistricting boards in every state and the improvements that states have made in their processes. The RTF developed a position on redistricting, which is now held by LWV. She expressed that she supports Representative Gara's efforts to devise a fair way to redistrict Alaska and asked for House support.

MS. WARING said that Alaska's redistricting process has always been contentious. She relayed the following history: The Alaska State Constitution originally made redistricting a function of the governor; the [Alaska] constitutional convention, reacting to the problems other states had with conducting reapportionment in a timely and fair manner, selected the governor model. In 1964, the U.S. Supreme Court affirmed the rule of one person one vote. The redistricting maps of 1970, 1980, and 1990 were found by the Alaska Supreme Court to be unconstitutional. In 1998, the legislature initiated, and the public narrowly supported the creation of Alaska's current five-member redistricting board, in which two members are appointed by the governor, one by the Speaker of the House, one by the President of the Senate, and one by the chief justice - all "without regard to political affiliation." She offered that these words imply that the board would be nonpartisan; however, in practice, nonpartisanship was not achieved. The maps of 2000 and 2010 were challenged in court, and portions were found to be unconstitutional. The criteria cited in the Alaska Constitution are that districts be nearly equal in population and that one senate district encompass two house districts. The districts are to be compact and contiguous; they should be integrated socioeconomically as much as possible; and attention should be paid to local government boundaries and geographic features as much as possible.

MS. WARING opined that the theme of this history is that Alaskans, aware of the possibilities of partisanship and gerrymandering and desirous of a nonpartisan apportionment of districts, have, since statehood, favored approaches that are fair; they support the one person one vote rule; and they do not allow legislators to pick their own voters. She maintained that Alaska has yet to achieve this goal. She expressed her belief that Representative Gara's effort to achieve this goal is to be

commended. Representative Gara has studied a variety of approaches and selected one that can work for Alaska, one that provides the kind of fair redistricting process consistent with the concept of one person one vote, and one in which voters select legislators rather than legislators select voters.

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CHAIR KREISS-TOMKINS announced that SSHJR 26 would be held over.

CONFIRMATION HEARING(S):
Commissioner, Department of Administration

[3:54:32 PM](#)

CHAIR KREISS-TOMKINS announced that the next order of business would be a hearing for the consideration of the confirmation of the appointment of Leslie Ridle as commissioner of the Department of Administration.

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LESLIE RIDLE, Commissioner Designee, Department of Administration (DOA), directed the committee's attention to her resume, included in the committee packet, and relayed that she grew up in Douglas, moved to Anchorage in eighth grade and attended high school there, and went to college at Oregon State University on a student loan from the State of Alaska. She mentioned that at that time, Alaska forgave 50 percent of student loans for students who returned to the state.

COMMISSIONER RIDLE relayed that she taught seventh grade for one year and eighth grade for six years at Gruening Middle School; she taught English and Social Studies. She stated that she moved to Juneau in her late twenties, because she wanted to see "government in action"; she worked for the legislature and loved it. She added that she has been involved with the government and the legislature for 27 years. She related that she worked for the House for a couple years, the Senate for a couple years, for Governor Knowles for eight years, for Mark Begich as Mayor of Anchorage and as U.S. Senator for some years, and for Governor Bill Walker. She pointed out that she has worked in various levels of government and two branches of government, and she expressed that has given her a broad spectrum that has served her well in her current position.

COMMISSIONER RIDLE mentioned that she worked under [former] commissioner of DOA, Sheldon Fisher and learned a great deal from him. She stated that her goal is to move the projects forward that she and Mr. Fisher started. She relayed those initiatives as follows: consolidating information technology (IT); creating a streamline system for state offices through shared services; negotiating fair contracts for employees; reducing and streamlining the procurement process and tracking procurement through the state accounting system, Integrated Resource Information System (IRIS); space consolidation; expanding customer service in divisions such as the Division of Motor Vehicles (DMV) and the Division of Retirement and Benefits (DRB); saving money on healthcare for both state retirees and active plan employees; and examining the possibility of a Health Care Authority (HCA). She offered that in the next few years, she expects these large projects to be "solid." She added that along with these large initiatives are the everyday little initiatives.

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CHAIR KREISS-TOMKINS thanked Commissioner Ridle for her service to Alaska in her various positions.

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REPRESENTATIVE LEDOUX moved to forward the name of Leslie Ridle to the joint session of the House and Senate for confirmation. There being no objection, the confirmation of Leslie Ridle was advanced from the House State Affairs Standing Committee.

Presentation: Indirect Expenditure Hearing

[4:01:45 PM](#)

CHAIR KREISS-TOMKINS announced that the final order of business would be a presentation on the Department of Revenue (DOR) Indirect Expenditure Report, presented by Dan Stickel and Ky Clark in DOR and Alexei Painter in the Legislative Finance Division (LFD).

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The committee took an at-ease from 4:02 p.m. to 4:03 p.m.

[4:03:02 PM](#)

DAN STICKEL, Chief Economist, Tax Division, Department of Revenue (DOR), explained that the presentation would give a high-level overview of what an indirect expenditure is and review the report that DOR publishes to inform the committee.

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CHAIR KREISS-TOMKINS expressed his hope that the presentation would inspire the committee to explore ways of creating greater efficiencies and reducing indirect expenditures through statutory change.

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KY CLARK, Economist, Tax Division, Department of Revenue (DOR), began the PowerPoint presentation, entitled "Overview of DOR's *Indirect Expenditure Report, Preliminary Report for FY 2011-FY 2015*," included in the committee packet. He referred to slide 4, entitled "Indirect Expenditure Report Overview," and stated that the legislation authorizing the report was signed on July 7, 2014. He relayed that AS 43.05.095 requires DOR to submit a report to the Legislature biennially on July 1 detailing the indirect expenditures of all agencies in the State. It also requires the Legislative Finance Division (LFD) to provide a report to the legislature on the indirect expenditures of certain agencies. The first Indirect Expenditure Report was released July 8, 2014, a day after the legislation was signed; the second report was released July 1, 2016; and the third will be released July 1, 2018.

MR. CLARK referred to slide 5, entitled "Indirect Expenditure Defined," and relayed that an indirect expenditure is any foregone revenue by the state designed to encourage an activity to benefit the public in the form of a credit, exemption, deduction, deferral, discount, exclusion, or other differential allowance. He gave an example of each as follows: An example of a tax credit is Alaska's oil and gas tax credit. An example of an exemption is DOA's motor vehicle and license fees being waived for disabled persons. An example of a discount is the 50 percent discount on annual food safety and sanitation permits offered by the Department of Environment Conservation (DEC) to non-profit organizations. An example of a deduction that doesn't include costs incurred in the ordinary course of business is the mining license tax percentage depletion deduction, which is allowed by DOR for certain types of mining. An example of a differential allowance is the Pioneer Home Payment Assistance Program offered by the Department of Health

and Social Services (DHSS), which allows a resident to live in an Alaska Pioneer Home even if not able to pay the monthly rate.

4:09:10 PM

MR. CLARK referred to slide 6, entitled "DOR Indirect Expenditure Report." He relayed that the most recent indirect expenditure report was released July 1, 2016, and details 231 indirect expenditures across 11 departments and agencies - 78 of which are administered by DOR. The report was a cooperative effort by all departments and agencies involved; DOR followed the process established for the 2014 report but with an improved presentation, an expanded introduction, enhanced methodologies, and other refinements.

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MR. CLARK referred to slide 8, entitled "Methodology- Internally," to delve into the actual methodology of the report. He relayed that staff surveyed all Tax Division workgroups and all divisions within DOR to ensure a complete list of all indirect expenditures in the department. Staff queried the tax database to generate information and develop the reports. He mentioned one improvement to the methodology - the development of a consistent definition for "fiscal year (FY)" - as taxes come in according to different time schedules. He maintained that "nailing down" a FY definition was important for comparing indirect expenditures and determining the revenue impact for any given FY. He referred to slide 9, entitled "Methodology- Internally," to explain the definition used for FY: the FY includes any tax returns received during the FY and covering a period that began in the FY. For FY 2015, the beginning dates of the returns are July 2014 through June 2015. Because some returns are not received until a year or a year and a half later, they were available at the time of publication of the report.

MR. CLARK referred to slide 10, entitled "Methodology- Externally," and relayed that DOR met with other departments and agencies and sent out a survey for them to report their indirect expenditures. Each agency examined their operations to identify indirect expenditures, and a few of the departments identified provisions that did not actually meet the definition of an indirect expenditure. He turned to slide 11, entitled "Methodology- Externally cont.," to point out examples of provisions not meeting the definition: the Alaska Housing Finance Corporation (AHFC) identified a potential indirect

expenditure - reduced loan rates; however, because setting the rates was part of AHFC normal operations and not required by statute, AHFC is permitted, by statute, to set the rates.

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REPRESENTATIVE TUCK offered a situation in which a rate is set and then discounted by an agency for a certain class of people. He asked whether that would qualify as an indirect expenditure.

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MR. STICKEL responded that according to the statutory definition, the differential must be set in statute. An agency with a fee setting authority may be able to provide a reduction to a fee or rate, but it would not qualify as an indirect expenditure for the report.

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MR. CLARK continued his review of the examples of provisions not meeting the indirect expenditure definition as described on slide 11. The Department of Commerce, Community & Economic Development (DCCE) has licensing fees set by statute to cover program costs; reduced licensing fees for residents versus non-residents was determined not to be foregone revenue, because the fee differential does not affect total revenue. The University of Alaska (UA) awards tuition waivers to UA employees and their dependents; however, because the waivers are included in the employee benefit package, they are not considered foregone revenues. He relayed another example related to UA - non-resident versus resident tuition - and explained that UA does not discount the resident tuition rate, rather the out-of-state student is paying a non-resident surcharge; therefore, it does not constitute foregone revenue.

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REPRESENTATIVE TUCK referred to the example of the DCCED licensing fees being reduced for residents and stated that he did not understand why the fees would be exempt from the indirect expenditure report, since they are set in statute. He asked for an explanation why the DCCED reduced fees are not considered lost revenue.

MR. CLARK answered that the fees do not meet the definition of indirect expenditure, because the DCCED program is completely

funded by the fees collected; therefore, they are not foregone revenue.

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REPRESENTATIVE LEDOUX maintained that the DCCED example appears to be foregone revenue and perhaps the statutory definition of foregone revenue should be changed.

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MR. STICKEL explained that DCCED licensing fees are set in such a manner that they provide all the revenue needed to administer the program; therefore, the total revenue, which includes lower fees from residents and higher fees from non-residents, covers the total cost of program.

REPRESENTATIVE LEDOUX asserted that if higher fees were collected from residents, the revenue would exceed the cost of the program thereby decreasing the unrestricted general revenue (UGF) needed to fund the department. She said, "To me it's still foregone revenue."

MR. STICKEL replied that DOR recognizes a deficiency in the statutory definition and, therefore, is bringing these examples of exceptions to the legislature to reconsider. Based on DOR's interpretation of indirect expenditures, the DCCED fees cited are not included.

CHAIR KREISS-TOMKINS expressed his understanding that with the DCCED example, covering the cost of the program is the only concern; nonetheless, it is "flagged" for committee consideration.

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REPRESENTATIVE TUCK asked how DMV is different from the DCCED example; it charges fees to pay for its operations but does not collect additional revenue.

MR. STICKEL replied that he is not prepared to speak to the DMV indirect expenditure but will follow up.

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REPRESENTATIVE KNOPP offered that the difference is that the DCCED licensing fees are set in statute to raise funds to manage

a program; with DMV, there are set fees but not a statutory requirement to cover only the cost of administering the DMV [programs].

MR. STICKEL responded that Representative Knopp's explanation sounds plausible and will provide that information. He added that the goal of the presentation is to provide a high-level overview.

[4:21:44 PM](#)

MR. CLARK moved on to slide 12, entitled "Reported Information," to review the data points requested from each department for the report. They are as follows: the name of the indirect expenditure; a brief description; the statutory authority; the repeal date, if applicable; the intent of the legislature in enacting the statute authorizing the indirect expenditure; the public purpose that is served by the indirect expenditure; the estimated revenue impact of the indirect expenditure for the previous five fiscal years excluding the fiscal year immediately preceding the publication of the report; the estimated cost to administer the indirect expenditure, if applicable; and the number of beneficiaries who benefit from the indirect expenditure. He added that along with this required information, DOR asks the type of indirect expenditure, as listed in AS 43.05.095(d) and shown on slide 5, as well as the year the indirect expenditure began or was enacted.

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MR. CLARK referred to slide 13, entitled "Overview of DOR's *Indirect Expenditure Report*," and described the contents of the report. The introduction includes the purpose of the report, what is included in the report, and an explanation of the limitations of the report's methodology. The indirect expenditures are organized by department alphabetically, by division alphabetically, and grouped by program name for each division, if applicable. For example, the Tax Division consists of various program groups such as corporate income tax, fisheries taxes, and mining taxes.

MR. CLARK referred to slide 14, entitled "Future Plans." He stated that DOR has and will continue to solicit suggestions for improvements from the Office of Management and Budget (OMB) and LFD, which will be incorporated into the July 1, 2018, report. He stated that DOR works with agencies to obtain missing data - data that is unavailable or difficult to locate.

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MR. STICKEL referred to slide 16, entitled "Recommendations/Considerations," and relayed that DOR was asked by the legislative finance committees to recommend areas of indirect expenditures that the legislature could examine in more detail. Slide 16 lists five areas that DOR identified for the committees to consider.

MR. STICKEL turned to slide 17, entitled "House Bill 155 from 2015-2016," to describe the first area for consideration. He relayed that House Bill 155, introduced during the Twenty-Ninth Alaska State Legislature (2015-2016), would have repealed four specific indirect expenditures: tobacco products tax; cigarette tax; motor fuel tax, and large passenger vessel gambling tax deduction. He stated that HB 96, introduced during the current legislative session [the Thirtieth Alaska State Legislature (2017-2018)] is like House Bill 155 but does not include the motor fuel tax repeal.

MR. STICKEL continued with slide 18, entitled "Largest Indirect Expenditures," and offered that if the state wants to save money, it should look at the list of the largest indirect expenditures. This list includes oil and gas tax credits, which the legislature has changed significantly since FY 16, the Mining License Tax depletion deduction, and Sport Fishing, Hunting and Trapping senior discount, among others.

MR. STICKEL referred to slide 19, entitled "Recommendations from Legislative Finance," which lists indirect expenditures that LFD recommends be terminated, reconsidered, or reviewed by the legislature.

MR. STICKEL moved on to slide 20, entitled "Fee Setting Authority," to explain that the legislature has granted fee setting authority to several agencies. Examples of agencies with fee setting authority are as follows: the Alaska Marine Highway System (AMHS) fee setting authority within the Department of Transportation & Public Facilities (DOT&PF); tuition setting authority within UA; and the rate setting authority within the Alaska Housing Finance Corporation (AHFC). He said that the indirect expenditure report does not include the foregone revenue related to discounts offered by the agencies with fee setting authority.

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CHAIR KREISS-TOMKINS suggested the possibility of the legislature changing the statutes so that the DCCED licensing fees would cover the cost of DCCED administration costs rather than only the cost of administering the licensing program.

MR. STICKEL replied that it is possible. He maintained that informing the legislature about the areas for which it has granted agencies fee setting authority is a useful place to start.

REPRESENTATIVE TUCK suggested that DMV fees are set in statute and not through fee setting authority.

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REPRESENTATIVE BIRCH asked whether DOR has any recommendations based on the information compiled in the report.

MR. STICKEL answered that slides 16-20 gives ideas for different areas that could be examined, and his recommendation is for legislators to look at them.

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ALEXEI PAINTER, Fiscal Analyst, Legislative Finance Division (LFD), in response to the question about DMV fees, said that those fees are not set based on the costs of the programs; therefore, an increase in the fees could be used to replace UGF. On the other hand, if a statutory exemption for fees for a board was eliminated, it would merely "shift two pays" but not bring in more revenue to the state, unless the statute was changed. He maintained that the exemption is not an indirect expenditure, because of the way the statute is written; however, if the statute were written to include any discount resulting in reduced payments by an individual or business, then it would be an indirect expenditure in the report.

MR. PAINTER referred to the PowerPoint presentation, entitled "Overview of Legislative Finance Division Indirect Expenditure Reports," included in the committee packet, and relayed that the LFD report is a follow up to the DOR report. He turned to slide 2, entitled "LFD Indirect Expenditure Reports," and relayed that DOR prepares a report every two years that covers all state agencies with indirect expenditures; LFD makes recommendations to the legislature based on the data in the DOR report but focuses on certain agencies; and the LFD report is released at

the beginning of the legislative session - six months after the DOR report. He explained that some of the agencies examined in 2015, were not "revisited"; therefore, the most recent data examined was FY 13 - now five-year-old data. Most of the related recommendations may be a useful starting point, but not particularly valid. He mentioned that there are several references to the corporate income tax rate, and that has changed; therefore, the impact of the recommendations may be different now than at the time of the report.

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MR. PAINTER referred to slide 3, entitled "Agencies in 2015 Report," and relayed that in 2015, the agencies covered were DCCED, Alaska Department of Fish & Game (ADF&G), DHSS, Department of Labor & Workforce Development (DLWD), and DOR. He moved on to slide 4, entitled "Summary of 2015 Recommendations," to point out the LFD recommendations as follows: terminate 17 provisions, which would result in a total known revenue impact of \$5 million - for 3 provisions, the impact was unknown at the time; modify or review 59 provisions; continue 37 provisions; and for 25 provisions, LFD could not make recommendations due to the provision recently having been instituted, the statute recently having been changed, or insufficient information. He mentioned that the subsequent DOR report, released in 2016, provided more information on the revenue impacts of those provisions.

MR. PAINTER referred to slide 5, entitled "2015 Report Key Points," to report that one of the 17 provisions recommended for termination was repealed under House Bill 247 [during the Twenty-Ninth Alaska State Legislature (2015-2016)].

CHAIR KREISS-TOMKINS asked for examples of the other 16 provisions that LFD recommended for termination and that come under the jurisdiction of the House State Affairs Standing Committee.

MR. PAINTER responded that many of the provisions are related to the corporate income tax; the main corporate income tax structure has not been updated since the '70s. He offered that some of the assumptions at that time do not align with modern tax law, and some provisions reference sections of the federal tax law that no longer exist. He gave an example: When Alaska created the corporate income tax provision, there was a differential in the federal tax code between the capital gains tax and regular income. For uniformity, Alaska applied those

percentages to its own corporate income tax and taxed capital gains at a lower rate based on the percentages used by the federal government. The federal government no longer engages in that practice; therefore, Alaska is left with differentials based on the 1970s federal tax code. He opined that these differentials should be revisited by the legislature.

MR. PAINTER mentioned that another provision recommended for termination involved the commercial fisheries entry commission, but he expressed that he was not familiar with the details. He stated that the House Finance Subcommittee for DOR reviewed the recommendations in 2017 line by line and recommended modification, repeal, or further review of 17 of the provisions within DOR; these are not the same 17 that were recommended by LFD for termination, although there is overlap between the two groups.

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MR. PAINTER referred to slide 6, entitled "Agencies in 2017 Report," and relayed that in 2017, LFD's report covered more agencies but fewer indirect expenditures, because the clear majority of them are within DOR. The agencies covered in the 2017 report were as follows: DOA; the Department of Education and Early Development (DEED), including the Alaska Student Loan Corporation (ASLC) and the Alaska Commission on Postsecondary Education (ACPE); DEC; the Department of Natural Resources (DNR); the Department of Transportation & Public Facilities (DOT&PF); and the Alaska Court System (ACS) ("Judiciary"). It also reviewed the Education Tax Credit due to its sunset at the end of 2018. He added that since the legislature had just modified the Education Tax Credit the year before, there was no data yet for the modified credit to be analyzed for the 2015 report; therefore, that analysis was completed for the 2017 report and recommendations offered for modification of the statute.

MR. PAINTER moved on to slide 7, entitled "Summary of 2017 Recommendations," and relayed that LFD offered the following recommendations: the termination of 2 provisions that had no known revenue impact; the modification or review of 13 provisions; and the continuation of 56 provisions. There was no recommendation for 6 provisions. He explained that the large number of provisions recommended for continuance was because of the agencies reviewed and the types of provisions.

MR. PAINTER referred to slide 8, entitled "2017 Report Key Points," to point out that for some provisions, revenue generation is not the goal of the fee. He said that the most prominent example of that is someone getting a ticket from ACS, and often the ticket is waived upon correction of the offense. It will show up as an indirect expenditure because it constitutes foregone state revenue. He maintained that the goal of the ticket is for the action to be corrected; it is foregone revenue, however, fulfills the purpose. For example, the point of fining someone for a broken tail light is not to generate revenue but to have the tail light fixed.

MR. PAINTER mentioned that there are other provisions for which their authorities set the fee structure. The Alaska Marine Highway System (AMHS) reported all the fee variants for the report, but the legislature delegated the authority to set the fee structure to AMHS; therefore, the legislature does not have that authority unless the statute is changed. He added that departments may provide information on fee variants that technically do not qualify as indirect expenditures; however, they are not forced to do so.

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REPRESENTATIVE LEDOUX asked for clarification on the comment that departments do not have to provide data.

MR. PAINTER responded that statute requires the departments to submit data to DOR, but there is no punishment for not doing so. He gave the example of UA tuition discounts: these discounts may be on the border of qualifying, but DOR has no authority over UA and cannot require it to do something against its will.

REPRESENTATIVE LEDOUX pointed out that in statute the legislature said "shall." She asked for a list of departments and agencies that have interpreted that to mean "we can if we want to and we can't if we don't want to."

MR. PAINTER answered that no agencies with identified indirect expenditures have declined to participate; no agencies are out of compliance. If there were such agencies, LFD would highlight it in its report. He added that UA has a valid reason for not participating.

REPRESENTATIVE LEDOUX posed the question: If DOR asks for the data, the statute says "shall," and the agency has not provided the data, "why aren't they out of compliance?"

MR. PAINTER replied that UA maintained that it does not meet the statutory requirement, therefore, did not provide the data. He stated that UA is correct in its assessment.

REPRESENTATIVE LEDOUX asked, "Isn't that a little bit like telling the IRS [Internal Revenue Service] when they want to audit you that you don't have to provide the data because you're not out of compliance with the tax laws?"

MR. PAINTER explained that the difference is that the agencies determine what is an indirect expenditure and what is not. If the agencies determine that they do not have indirect expenditures under the statute, then that is the binding interpretation. He added that if the legislature desires UA to participate, then it should change the statute to address UA matters. He expressed his belief that the sponsor [of House Bill 306] did intend agencies such as UA to participate; however, the statute was not written in such a way to accomplish that.

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MR. PAINTER continued with slide 8 by saying that the House [Finance] Subcommittees for DEC and DNR reviewed the indirect expenditures of the two departments as recommended by LFD. The subcommittees determined that some of the provisions were appropriate; for example, the collection of one of the DEC fees would cost more money than would be generated by the fee; therefore, retaining the fee exemptions made sense.

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REPRESENTATIVE LEDOUX asked for confirmation that within DEC and DNR, the cost of eliminating an exemption would be greater than leaving it in place.

MR. PAINTER replied that his example refers to the DEC fee exemptions for inspections of facilities; there are 125 such facilities in Alaska; and there is a reasonable fee that can be charged for such inspections. The cost of the fee study, which requires regulation changes, makes the effort economically unfeasible. The determination of the subcommittee was that the group paying the fees would be too small to make going through the process worthwhile.

REPRESENTATIVE LEDOUX suggested that for one year, it may not be worthwhile, but after ten years, could generate much more in revenue.

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REPRESENTATIVE JOHNSON mentioned proposed legislation [HB 322] changing DEC spill penalties for residents that are not businesses and asked whether it would be considered an indirect expenditure if the proposed legislation passed.

MR. PAINTER expressed his belief that the proposed legislation is currently being held in the House Resources Standing Committee and added that he has not reviewed the bill. He said that his understanding is that the waived fees for spills below a certain volume would fall into the category of indirect expenditure.

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MR. PAINTER moved on to slide 9, entitled "2019 Report," to relay that according to statute, LFD has no agencies to review for the next report. Statute provided for agencies to be reviewed in the first two years; in the third year LFD was to review all the remaining agencies; however, there are no agencies remaining. He stated that instead of a blank report, LFD will submit a report that reviews the two tax credits scheduled to sunset - the Community Development Quota (CDQ) tax credit and the Salmon and Herring Product Development tax credit.

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REPRESENTATIVE TUCK asked Mr. Painter what the fiscal note was for House Bill 306.

MR. PAINTER responded that he did not know the exact amount; he offered his belief that it was the equivalent of three DOR positions; the supplemental budget reduced the number of positions to one. He added that LFD was given a small amount for contractual services with which he was hired.

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ADJOURNMENT

There being no further business before the committee, the House State Affairs Standing Committee meeting was adjourned at 4:52 p.m.