

SENATE FINANCE COMMITTEE

April 23, 2018

1:51 p.m.

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CALL TO ORDER

Co-Chair MacKinnon called the Senate Finance Committee meeting to order at 1:51 p.m.

MEMBERS PRESENT

Senator Lyman Hoffman, Co-Chair
Senator Anna MacKinnon, Co-Chair
Senator Click Bishop, Vice-Chair
Senator Peter Micciche
Senator Donny Olson
Senator Gary Stevens

MEMBERS ABSENT

Senator Natasha von Imhof

ALSO PRESENT

Tim Clark, Staff, Representative Bryce Edgmon; Brandon S. Spanos, Deputy Director, Tax Division, Department of Revenue; Representative Matt Claman, Sponsor; Lizzie Kubitz, Staff, Representative Matt Claman; Nikole Nelson, Executive Director, Alaska Legal Services Corporation.

PRESENT VIA TELECONFERENCE

Tom Brookover, Director, Sport Fish Division, Department of Fish and Game, Anchorage; Kathryn Monfreda, Chief, Criminal Records and Identification Bureau, Division of Statewide Services, Department of Public Safety, Anchorage; Emilie Beasley, Self, Matanuska-Susitna Borough.

SUMMARY

HB 106 CIVIL LEGAL SERVICES FUND

HB 106 was HEARD and HELD in committee for further consideration.

CSHB 219(JUD)

CRIM HIST CHECK: ST EMPLOYEES/CONTRACTORS

CSHB 219(JUD) was HEARD and HELD in committee for further consideration.

CSHB 267(RES)

RELEASE HUNTING/FISHING RECORDS TO MUNI

CSHB 267(RES) was REPORTED out of committee with three "do pass" recommendations and three "no recommendation"; and with one new fiscal note from the Department of Fish and Game; one previously published zero fiscal note: FN 1(DFG); and one previously published fiscal impact note: FN2 (CED).

#hb267

CS FOR HOUSE BILL NO. 267(RES)

"An Act requiring the release of certain records relating to big game hunters, guided hunts, and guided sport fishing activities to municipalities for verification of taxes payable; and providing for an effective date."

Co-Chair MacKinnon reported that the bill was previously heard in committee on April 16, 2018 and during the morning meeting on April 23, 2018.

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Senator Micciche relayed concerns over the confidentiality of log book information. He asked for specifics regarding log book information and whether the information would remain confidential when the municipalities received the data.

TOM BROOKOVER, DIRECTOR, SPORT FISH DIVISION, DEPARTMENT OF FISH AND GAME, ANCHORAGE (via teleconference), answered that the division collected the information through a program that required sportfishing business owners and guides to register with the Department of Fish and Game (DFG) and to complete a log book. He delineated that the program included two guide books; one for salt water fishing and one for fresh water fishing. He listed the required information: The Division of Motor Vehicles (DMV)

boat registration number or the United States (US) Coast Guard number along with the locations where guide services were provided; data for the specific angler including the name or license number, the catch species, and number harvested. The sport fishing business owner was responsible for turning the log book over to the division. He furthered that the program was in place since 2005. The purpose of the program was to collect data needed for management, conservation of the resource, and regulation of the industry. He pointed out that the division conducted an Annual Statewide Harvest Survey (ASHS) from guided and unguided anglers and on-site creel surveys (or angler interviews) at specific sites on specific times in addition to the logbook program. He indicated that the creel survey and the logbooks provided detailed information versus the generalized information collected via the ASHS. The logbooks were a significant source of data due to the level of specificity provided. In some cases, it was the only information collected and the department wanted to ensure the "integrity and quality" of the data. He related that the division questioned what purpose the logbook data would serve the municipalities. The division used the data for fishery management, conservation, and guided activity regulation, which was different from the assumed purpose of verifying municipal tax reporting. He voiced the division's concern regarding the proposed use of the data and noted that the division was uncertain about the consequences of providing the information to municipalities.

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Senator Micciche ascertained that the logbook location information did not require GPS data and the location was only identified by name of the waterbody. Mr. Brookover replied in the affirmative and added that the freshwater logbook requested the name of lake, stream, or river by area, and the salt water location was identified through coded areas. The division provided a prescribed list of locations for both fresh or saltwater.

Senator Micciche informed the committee that the information was protected through AS 11.56.850, Official Misconduct statutes, and carried a Class A misdemeanor for violations and AS 11.56.860, relating to Misuse of Confidential Information another Class A misdemeanor. He deduced that the only reason the data would be used was to

determine the number of days of service provided to the client and if it matched the tax information.

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TIM CLARK, STAFF, REPRESENTATIVE BRYCE EDGMON, confirmed that Senator Micciche's statements were correct and indicated that the consequences for breaching confidentiality at the municipal level was "serious."

Co-Chair MacKinnon asked Mr. Brookover if the data the division would share with a municipality would contain a warning against misuse. Mr. Brookover responded that the division would supply the information in a summary format as opposed to the logbook sheets and was consistent with how DFG supplied other types of requested information. He was uncertain how or if a warning in respect to confidentiality would be addressed.

Senator Micciche understood that the information would be aggregated and include the total number of trips but not the exact locations. He asked for confirmation. Mr. Brookover answered in the affirmative. He noted that the bill used the words "may release records" and did not include details about the level of specificity. The division would initially aggregate the data, but the specificity depended on the municipalities needs and how the activities were taxed. However, the bill did not prohibit the division from responding to more specific requests, if the tax policy was detailed and taxed items like the number of anglers, specific location, or time periods. He summarized that the division would aggregate the information but provide more detailed information by request. Senator Micciche emphasized that the state "protected tax payer information in every other aspect" and warned that he would "watch" the flow of information. The legislative intent was not to provide specific information. He understood that the intent of the bill was for data that provided "an aggregated cross check" of information.

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Co-Chair MacKinnon corrected his statement and read from the bill:

The bill shall make hunting records and activity reports available to a municipality that levels a tax

on those activities if the information concerned hunts or activities occurring within the four years proceeding the date and the municipalities request the records for the purpose of verifying taxes payable and the municipality agree to maintain the confidentiality of the records.

Co-Chair MacKinnon added that the municipality would receive specific information, which was the only way a tax audit could proceed.

Mr. Clark relayed that the municipality the sponsor had been working closely with employed a simple flat tax per day on the fishing and hunting activities within its boundaries.

Vice-Chair Bishop referenced testimony that the lost revenue amounted to between \$50 thousand and \$100 thousand in the Lake and Peninsula Borough. He asked whether he was correct. Mr. Clark replied in the affirmative.

Co-Chair MacKinnon alerted that a fee would be charged to the municipality that requested the data. She asked Mr. Brookover whether the 4-year's prior information was easily accessible. Mr. Brookover replied that the data was available, but the division would need to configure the data base and develop the summary reports to enable responses to the request. He noted the fiscal note had identified the implementation costs. Co-Chair MacKinnon asked whether DFG would have to reenter the data. Mr. Brookover responded in the negative and reiterated that the summary reporting function would need to be created because a municipal boundary did not match the division's location boundaries but the data itself existed.

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Co-Chair MacKinnon cited page 1, line 10 under AS 08.54.760 (b) and noted the words, "The department shall make hunt records and activity reports available..." She turned to AS 16.05.815(a) on page 2, lines 20 and 21 and read the following, "The department and the Alaska Commercial Fisheries Entry Commission may release..." She asked about the differences between the use of "may" or "shall." Mr. Clark was uncertain. He guessed that use of the term for the provision related to sport fishing "fit most logically"

with existing statute and the hunting records provision was drafted as a new section.

Co-Chair MacKinnon observed that the provision was not exclusive to sport fishing and read the following from the bill, "... the landings of fish, shellfish, or fishery products, and annual statistical reports of fishermen, buyers, and processors..." She inquired whether the area where the fish was caught would be provided to the taxing authority. Mr. Clark responded that when the statute corresponded specifically to the logbook information, the answer was in the affirmative. The logbook information was providing the municipality confirmation that the activity took place within its jurisdiction. Co-Chair MacKinnon wondered whether that applied to commercial fishers. Mr. Clark replied that the part of the provision concerning commercial fishers was long existing and related to large regions where the commercial fishery harvest was landed versus where it was caught.

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Senator Stevens listed the three areas in the state that collected the type of tax; the Lake and Peninsula Borough, Sitka, and Yakutat. He noted that Yakutat was in his district and thought that the tax was a per day tax and the aggregate summary would be adequate. He asked whether Mr. Clark knew how Yakutat structured its tax. He voiced that Yakutat only received half of the amount of tax it was owed. Mr. Clark recalled testimony from Yakutat's manager that the tax was like a severance tax.

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Vice-Chair Bishop MOVED to REPORT CSHB 267(RES) out of committee with individual recommendations and accompanying fiscal notes. There being NO OBJECTION, it was so ordered.

CSHB 267(RES) was REPORTED out of committee with three "do pass" recommendations and three "no recommendation"; and with one new fiscal note from the Department of Fish and Game; one previously published zero fiscal note: FN 1(DFG); and one previously published fiscal impact note: FN2 (CED).

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AT EASE

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#hb219

CS FOR HOUSE BILL NO. 219 (JUD)

"An Act relating to background investigation requirements for state employees whose job duties require access to certain federal tax information; relating to current or prospective contractors with the state with access to certain federal tax information; establishing state personnel procedures required for employee access to certain federal tax information; and providing for an effective date."

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BRANDON S. SPANOS, DEPUTY DIRECTOR, TAX DIVISION, DEPARTMENT OF REVENUE, presented the bill. He explained that HB 219 authorized agencies to mandate national criminal history record checks that included fingerprinting, for state employees and contractors accessing certain federal tax information. The Internal Revenue Service's (IRS) "Publication 1075" (published by the Department of the Treasury, Internal Revenue Service and updated September 30, 2016) specified the requirements that state and local agencies must follow to obtain certain federal tax information directly from the IRS. The IRS enacted the measures to safeguard the information. He related that the bill applied primarily to three departments: The Department of Revenue, Child Support Services Division and the Tax Division; the Department of Labor and Workforce Development (DLWD), and the Department of Health and Social Services (DHSS). He reiterated that the 2016 update for Publication 1075 required the criminal history record checks that included fingerprinting. The state implemented the background checks but needed further authority to require fingerprinting. He summarized that essentially, the bill authorized the fingerprinting requirement. The fingerprints were submitted to the Department of Public Safety (DPS) who sent them to the Federal Bureau of Investigation (FBI) for the national criminal history check.

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Mr. Spanos discussed the Sectional Analysis (copy on file):

Section 1

Amends AS 12.62.400 by adding a new subsection.

This will require an agency to submit the fingerprints of current or prospective employees or contractors whose job duties require access to federal tax information (defined in AS 39.55.015(e)(3) and 36.30.960(d)(3)) to the Department of Public Safety for submission to the Federal Bureau of Investigation to obtain a criminal history record. Defines "agency", "employee" and "contractor".

Section 2

Amends AS 36.30 by adding a new section.

This section establishes state personnel procedures for obtaining and submitting fingerprints for current or prospective contractors if a contract with the state requires access to federal tax information. Defines "agency", "contractor" and "federal tax information".

Section 3

Amends AS 39 by adding a new chapter.

This new chapter addresses state personnel procedures related to federal tax information.

Adds AS 39.55.010

This section explains the purpose of the chapter-- to establish procedures to safeguard federal tax information which will apply to a current or prospective state employee whose job duties require access to federal tax information.

Adds AS 39.55.015

This section requires current and prospective state employees whose job duties require access to federal tax information to provide information to an agency for a state and national criminal history record check. Defines "agency", "employee", "federal tax information", "return", and "return information".

Section 4

Provides the effective date of July 1, 2018.

Senator Stevens asked what areas of the state the employees that required fingerprinting were located. Mr. Spanos only knew the location of the DOR employees that were primarily located in Anchorage and Juneau. He offered that an

employee could go to any law enforcement agency for fingerprinting.

Co-Chair MacKinnon asked whether the Office of Children's Services was affected by the bill. Mr. Spanos did not know the answer.

Vice-Chair Bishop wondered what the procedure was for sending fingerprints to the FBI.

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KATHRYN MONFREDA, CHIEF, CRIMINAL RECORDS AND IDENTIFICATION BUREAU, DIVISION OF STATEWIDE SERVICES, DEPARTMENT OF PUBLIC SAFETY, ANCHORAGE (via teleconference), explained that fingerprints for employment or licensing purposes were received as a "rolled" set of fingerprints on a "hard card format." The department digitized the fingerprints and compared them in the state's system that was a consortium of 8 states systems in one shared database. Subsequently, they were sent electronically to the FBI for the background check. The FBI destroyed the fingerprints after the background check was completed.

Co-Chair MacKinnon OPENED public testimony.

Co-Chair MacKinnon CLOSED public testimony.

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Vice-Chair Bishop addressed the fiscal notes. He noted the four zero fiscal notes accompanying the bill. The first was for DOC, allocated to Administrative Services, FN6 (COR), the second was for DHSS, allocated to Administrative Support Services, FN7 (DHS), and the third was for DPS, allocated to Criminal Justice Information Systems Program, FN9 (DPS). Lastly, he pointed to the DLWD zero fiscal note, FN6 (LWF) allocated to Unemployment Insurance and relayed that the anticipated cost would be covered within the current budget through federal funds. He continued with the fiscal impact note for DOR, FN10 (REV), allocated to the Tax Division in the amount of \$4.8 thousand for FY 19 and \$500 in the outyears. He read from the analysis on the page 2 of the fiscal note:

This bill authorizes state agencies that receive Federal Tax Information (FTI) to undergo federal background checks as now required in IRS Publication 1075. Background checks would be conducted on all current and new employees at a cost of \$47 for each completed investigation.

The Tax Division estimates that 102 employees will be fingerprinted in the first year, and approximately 10 employees in subsequent years.

Co-Chair MacKinnon asked whether DOR had to adopt new regulations with passage of the legislation. Mr. Spanos answered in the negative. Co-Chair MacKinnon asked why the department did not calculate the cost of fingerprints as revenue on the fiscal note. Mr. Spanos replied that the cost of fingerprinting did not change the department's revenue. He added that losing the ability to receive the federal information would negatively impact the department. Co-Chair MacKinnon inquired whether DOR was charging anyone to perform fingerprinting. Mr. Spanos responded that DOR planned to pay for the fingerprinting and not charge the employees.

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Vice-Chair Bishop pointed to the following from the fiscal note, "An updated background check will also be required every ten years." He assumed that did include fingerprinting. Mr. Spanos replied in the affirmative. Vice-Chair Bishop asked what changed on fingerprints after 10 years. Mr. Spanos responded that he thought the same thing and considered maintaining a record of the fingerprints for resubmission if possible. However, the background checks were required every 10 years.

Co-Chair MacKinnon noted that some of the fiscal notes reported that fingerprinting cost \$47 per set, and the Legislative Finance Division (LFD) believed that a small amount of revenue would be generated from fingerprinting. However, she understood that Mr. Spanos stated DOR would not charge employees for fingerprinting. She wanted to discuss the issue of storing someone's personal information

and any liability issue that might result for the state as a result. She requested further review of the DPS fiscal note.

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Vice-Chair Bishop pointed to one last DOR fiscal impact note allocated to the Child Support Services Division in the amount of \$10 thousand for FY 19 and \$1.5 thousand in the outyears. He mentioned that \$6.6 thousand was in Federal Receipts and the remaining \$3.4 thousand in Undesignated General Funds (UGF). He read from page 2 of the analysis:

The Child Support Services Division has 196 employees who will be fingerprinted in the first year, and approximately 32 employees each subsequent year. Every 10 years, background checks must be renewed. Background checks would be conducted on all current and new employees at a cost of \$47 for each completed investigation.

Vice-Chair Bishop relayed that he had concerns regarding what happened to the background check information after ten years.

Co-Chair MacKinnon questioned whether regulations were necessary for the Division of Child Support Services with passage of the bill. She purported that the fiscal note did not speak to the question.

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Co-Chair MacKinnon returned to the DPS fiscal note and asked Ms. Monfreda to comment regarding storage of employee's background information for ten years and the FBI destruction of fingerprints. She referred to an earlier version of the DPS fiscal note that reported revenue from the collection of fingerprints. Ms. Monfreda reiterated that the department's fiscal note was zero because the fee collected for processing the fingerprints was equal to the cost charged by the FBI, which billed DPS monthly. She continued that the reason for the 10 year renewal was that fingerprints changed through the aging process or were worn down. She reiterated that the FBI destroyed the fingerprints and DPS stored the fingerprints. Fingerprints over one-year old were unacceptable to the FBI. Co-Chair

MacKinnon confirmed that DPS was storing the fingerprints. Ms. Monfreda replied in the affirmative.

CSHB 219(JUD) was HEARD and HELD in committee for further consideration.

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AT EASE

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RECONVENED

#hb106

HOUSE BILL NO. 106

"An Act allowing appropriations to the civil legal services fund from court filing fees."

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REPRESENTATIVE MATT CLAMAN, SPONSOR, thanked the committee for hearing the bill. He explained the legislation. He communicated that the bill would safeguard Alaskans' access to the civil justice system by creating a stable and sustainable mechanism for funding the Alaska Legal Services Corporation (ALSC), protecting those who cannot afford to hire an attorney of their own. The ALSC provided help to seniors, veterans, disabled Alaskans, children, low income workers, consumers, and domestic violence victims. The Senate Judiciary Committee Substitute [SCS HB 106(JUD)] allowed the legislature to appropriate 5 percent of the filing fees paid to the Alaska Court System during the previous fiscal year into the already existing Civil Legal Services Fund. He furthered that the fund was created in 2007 with bipartisan support to help ensure that civil legal aid was available to Alaska's disadvantaged population. He elaborated that deposits to the fund were generated from 15 percent of civil punitive damage awards at the discretion of the legislature. The legislature was authorized to distribute the funds to organizations that provided civil legal services to low income Alaskans. In 2011, ALSC received its only appropriation from the fund in the amount of \$110 thousand. The amount was insufficient to address the critical unmet need for civil legal assistance. He noted that in 2017 the attorney general reported that in the last four years the state only collected \$15 thousand in punitive damages. He furthered that the Alaska Legal

Services Corporation was established in 1967 and was a nonprofit charitable 501(c)(3), whose funding comes from a variety of state, federal, and private sources.

Representative Claman continued that the Alaska Legal Services Corporation endeavored to serve a growing number of eligible applicants. Since 1984, the number of Alaskans who qualified for legal services had more than doubled, from 41,000 to over 100,000. Currently, the state's contribution to ALSC was only a fraction of what it was 30 years ago. The state appropriated \$1.2 million in 1984 with the appropriation declining to \$450 thousand in 2016. The corporation had to turn away hundreds of families each year. The legislation attempted to bridge the civil justice gap by stabilizing ALSC funding and providing civil legal aid to all Alaskans, not just the few who can afford it.

Representative Claman relayed from personal experience that his former law practice had volunteered for many years, working with the ALSC performing intake interviews with clients and received a Bar Association award for its work. He personally observed that ALSC's demand for services was much higher than they could provide and underscored the importance of the bill.

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LIZZIE KUBITZ, STAFF, REPRESENTATIVE MATT CLAMAN, explained the Sectional Analysis (copy on file):

Section 1

Amends AS 37.05.590 relating to the Civil Legal Services Fund by inserting language that authorizes the legislature to appropriate up to 25 percent of the filing fees received by the Alaska Court System during the previous fiscal year into the already created Civil Legal Services Fund.

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Co-Chair MacKinnon OPENED public testimony.

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NIKOLE NELSON, EXECUTIVE DIRECTOR, ALASKA LEGAL SERVICES CORPORATION, shared that the ALSC was a non-profit law firm dedicated to ensuring access to justice for all Alaskans in

the civil legal system. The corporation strove to bridge Alaska's civil justice gap for 50 years. She explained why it was vital to support civil legal aid. She conveyed that both the state and federal constitutions guaranteed due process and equal protection under the law. However, civil legal aid was significantly lacking and created an "enormous justice gap" between individuals who needed civil legal aid and those that could attain it. She voiced that the mission of ALSC was to ensure fairness for all in the civil justice system. She delineated that the corporation provided legal help in protecting individuals' livelihood, health, safety, and families. The corporation offered direct advice and representation as well as self-help information for the public. The corporation maintained a hotline for advice and provided community education and clinics. The corporation had 11 regional offices and 6 medical legal partnerships that enabled it to expand its reach statewide. The offices were located in Anchorage, Juneau, Fairbanks, Kotzebue, Ketchikan, Nome, Bethel, Dillingham, Kenai, Palmer, Utqiagvik, Sitka, and Kodiak. Each office was staffed locally and relied on a vast network of pro bono volunteers due to limited resources. She described the type of clients the ALSC served. She elucidated that women who suffered spousal abuse often in front of their children, or a grandfather who supported his grandchildren and was afraid of losing his home due to a predatory lender, or a commercial fisher who spent her all money on boat repair and the boat subsequently caught on fire, or a disabled veteran denied federal Veteran's Affairs benefits were all examples of individuals that asked ALSC for help on a daily basis. She emphasized that a civil legal solution existed for all the problems she described and the constitutional right for a criminal court appointed attorney was not extended to civil cases.

Ms. Nelson continued that the ALSC was at the "forefront of fighting the epidemic of domestic violence that plagued the state, serving over 500 victims per year." In addition, the corporation protected over 1000 seniors and their caregivers and assisted with wills, probates, and power of attorney. The corporation helped over 500 hundred veterans and 300 disabled individuals gain access to healthcare and benefits and 350 families fend off foreclosure and illegal evictions. The ALSC made civil legal services a "reality" for rural Alaskans, which represented over 40 percent of its clients in 182 different communities. The corporation assisted over 3000 families and 7000 individuals with more

than 43 thousand visits to its website and 2000 individuals attended its clinics and self-help workshops. She noted a 2012 study by the Alaska Mental Health Trust Authority (AMHTA), which found that for every dollar invested in ALSC it returned \$5 to the state. She relayed that ALSC saved the state \$600 thousand in avoided emergency shelter costs, \$2.6 million for domestic violence victims' medical care and counseling costs and helped disperse federal funds into the economy by assisting those that earned federal benefits receive them.

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Ms. Nelson furthered her testimony. She relayed that ALSC turned away hundreds of families last year with compelling needs at the rate of one for every one family served. She emphasized that the rejected cases had merit and civil recourse was available but ALSC lacked the staff and resources to assist those in need. She stressed that funding had not kept pace with the growing need. The corporation was "incredibly cost efficient" and 80 percent of cases were resolved out of court with the average case costing \$600. She reported that the starting salary for an Anchorage attorney was \$44 thousand per year. The corporation leveraged the resources of donated office space and over \$500 thousand in volunteer services. She emphasized that HB 106 would help bridge the justice gap and ensure that the principle of "justice for all" remained a priority.

Senator Olson was impressed by ALSC and the pro bono services it received. He asked how many law offices provided pro bono services in the state. Ms. Nelson replied that the corporation had a pool of approximately 850 active pro bono attorneys each year. Senator Olson inquired about the number of attorneys ALSC had on staff. Ms. Nelson responded that ALSC had 35 attorneys.

Senator Micciche voiced that sometimes the state was sued by ALSC on behalf of clients. He asked how often the corporation sued the state and to discuss under what circumstances ALSC was prohibited from practicing. Ms. Nelson answered that "on occasion" the ALSC took cases where the state was the opposing party. She reported that the number of affirmative lawsuits against the state was less than 10 out of the 3.3 thousand cases each year. Most often the corporation was helping individuals in the

"defensive position." She added that the corporation was prohibited via federal regulation from providing services for controversial matters like abortion related services or gerrymandering cases etc. In addition, the ALSC was prohibited from competing with the private bar and did not take on fee generating services such as personal injury cases. She offered to provide a complete list of restrictions.

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Vice-Chair Bishop appreciated Ms. Nelson's testimony and was supportive of the service the ALSC provided.

Senator Micciche noted that the list of restrictions was included in the member's bill packets [titled " Alaska Legal Services Corporation Restrictions on Cases] (copy on file).

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Co-Chair MacKinnon OPENED public testimony.

EMILIE BEASLEY, SELF, MATSU (via teleconference), spoke in support of the bill. She reported that she was 73 years of age, lived in the state since 1977, and served in the Marine Corps. She explained that ALSC helped her remain safe in her home from a family member who threatened her life. She appreciated the respectful attitude of ALSC staff and the representation in court. She urged support of the bill to help protect senior citizens.

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Vice-Chair Bishop thanked Ms. Beasley for her service to the country.

Co-Chair MacKinnon CLOSED public testimony.

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Co-Chair MacKinnon indicated that a new fiscal note was requested from the Office of Management and Budget (OMB).

She announced that amendments were due the following day by 5pm and that amendments for HB 219 were due the following day by noon.

HB 106 was HEARD and HELD in committee for further consideration.

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ADJOURNMENT

2:57:59 PM

The meeting was adjourned at 2:57 p.m.