

**ALASKA STATE LEGISLATURE
HOUSE LABOR AND COMMERCE STANDING COMMITTEE**

March 18, 2019

3:16 p.m.

MEMBERS PRESENT

Representative Adam Wool, Co-Chair
Representative Gabrielle LeDoux, Co-Chair
Representative Zack Fields
Representative Sara Hannan
Representative Louise Stutes
Representative Dave Talerico

MEMBERS ABSENT

Representative Josh Revak

COMMITTEE CALENDAR

CONFIRMATION HEARING(S) :

Real Estate Commission

Michael Tavoliero - Anchorage

- CONFIRMATION(S) ADVANCED

HOUSE BILL NO. 48

"An Act removing from the exempt service of the state persons who are employed in a professional capacity to make a temporary or special inquiry, study, or examination as authorized by the governor and including those persons in the partially exempt service of the state."

- HEARD & HELD

HOUSE BILL NO. 44

"An Act relating to fees for using an automated teller machine; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 48

SHORT TITLE: TEMP STATE EMPLOYEES IN PART EXEMPT SVCE

SPONSOR (s) : REPRESENTATIVE (s) WILSON

02/20/19 (H) READ THE FIRST TIME - REFERRALS
02/20/19 (H) L&C, FIN
03/18/19 (H) L&C AT 3:15 PM BARNES 124

BILL: HB 44

SHORT TITLE: AUTOMATED TELLER MACHINES: FEES

SPONSOR (s) : REPRESENTATIVE (s) ORTIZ

02/20/19 (H) READ THE FIRST TIME - REFERRALS
02/20/19 (H) L&C
03/18/19 (H) L&C AT 3:15 PM BARNES 124

WITNESS REGISTER

MICHAEL TAVOLIERO, Appointee
Real Estate Commission
Anchorage, Alaska

POSITION STATEMENT: Testified as appointee to the Real Estate Commission.

REPRESENTATIVE TAMMIE WILSON
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: As prime sponsor, presented HB 48.

REMOND HENDERSON, Staff
Representative Tammie Wilson
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Answered questions during the hearing on HB 48, on behalf of Representative Wilson, prime sponsor.

REPRESENTATIVE DAN ORTIZ
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: As prime sponsor, presented HB 44.

CAROLINE HAMP, Staff
Representative Dan Ortiz
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Answered questions during the hearing on HB 44, on behalf of Representative Ortiz, prime sponsor.

BRUCE RENARD, Executive Director

National ATM Council, Inc. (NAC)
Jacksonville, Florida

POSITION STATEMENT: Testified and answered questions during the hearing on HB 44.

PAUL THOMAS, Owner
Alaska Cache Liquor
Juneau, Alaska

POSITION STATEMENT: Testified during the hearing on HB 44.

SARAH OATES, President/CEO
Alaska Cabaret, Hotel, Restaurant and Retailers Association
(CHARR)

Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 44.

ACTION NARRATIVE

[3:16:02 PM](#)

CO-CHAIR GABRIELLE LEDOUX called the House Labor and Commerce Standing Committee meeting to order at 3:16 p.m. Representatives Talerico, Fields, Stutes, Hannan, LeDoux, and Wool were present at the call to order.

CONFIRMATION HEARING(S): Real Estate Commission

[3:17:10 PM](#)

CO-CHAIR LEDOUX announced that the first order of business would be the confirmation hearing on the Real Estate Commission.

[3:17:46 PM](#)

MICHAEL TAVOLIERO, Appointee, Real Estate Commission, stated that he has been a real estate licensee since 2008. He pointed out that the real estate industry accounts for a large portion of the state's economy. The real estate industry is not just about selling property and making money, he said, "there is a much deeper emotional and pragmatic aspect to our industry. It is about bringing people together and giving them the tools to address the social and economic issues in their life." He opined that buying a house is more than just a property investment, "it is really about home ownership, family, future, and happiness. It is about continuing to improve the quality of life in Alaska with the expansion of a professional real estate community." He related that he has worked in both commercial

and residential and done large and small investments, further noting that the real estate industry creates thousands of jobs and is a vital part of community development and growth in Alaska. He suggested that "accomplishing these goals requires strong partnerships between the state legislature, local government, and the real estate industry." He concluded by stating that efforts made by the Real Estate Commission to develop professional standards are "proudly substantial", adding that "professional investigations and remedies which are meaningful and fair to the public must be foremost in the commission's mindset."

REPRESENTATIVE FIELDS, referencing an email Mr. Tavoliero sent to the legislature that featured a Facebook post by Carol Carmen, asked if he was communicating in his role as a gubernatorial appointee to the Real Estate Commission when he wrote, "Yes, totally agree. But the legislature, especially the house majority and senate leadership, are deaf to this opinion. Therein lies the frailty of opaque state government in the dark wet recesses of a cave called Juneau."

MR. TAVOLIERO, in response to Representative Fields, asked how that would impact his ability to serve on the Real Estate Commission.

REPRESENTATIVE FIELDS questioned whether Mr. Tavoliero wrote that comment as a representative of the governor or if it was a personal opinion.

MR. TAVOLIERO acknowledged that it was a "private" opinion.

REPRESENTATIVE FIELDS asked for Mr. Tavoliero to elaborate on the meaning of "the frailty of opaque state government in the dark wet recesses of a cave called Juneau."

MR. TAVOLIERO opined that the government should be more transparent, adding "that's why you and I serve the way we do."

REPRESENTATIVE FIELDS, referencing Senator Kiehl's reply to Mr. Tavoliero's aforementioned email, in which Kiehl wrote "decisions are made by representatives and senators who Alaskans elect and send to the state capitol." Representative Fields inquired as to the meaning of Mr. Tavoliero's response, which read, "LOL says the hound as he runs with the fox."

MR. TAVOLIERO replied "we've got to cover both sides of the coin. We've got to serve the state."

REPRESENTATIVE FIELDS repeated his question, asking for the meaning of the phrase "LOL says the hound as he runs with the fox."

MR. TAVOLIERO said it is an old Sam Ervin comment that was used during President Nixon's investigation.

REPRESENTATIVE FIELDS asked Mr. Tavoliero to whom he was comparing Senator Kiehl.

MR. TAVOLIERO asserted that it was a comment not a comparison.

REPRESENTATIVE FIELDS said he was not familiar with that reference, but it sounded like a metaphor. He maintained that he was just trying to figure out the meaning of Mr. Tavoliero's comment.

MR. TAVOLIERO stated that his job was to promote public interest and that's all he was doing.

REPRESENTATIVE FIELDS reread the phrase in question and suggested that Mr. Tavoliero was comparing Senator Kiehl to a hound. He asked if this was true or if Mr. Tavoliero was trying to say something else.

MR. TAVOLIERO replied that it was just a comment on the need for transparency.

REPRESENTATIVE FIELDS questioned how "says the hound as he runs with the fox" signifies transparency. He asked Mr. Tavoliero to explain the meaning behind that phrase.

MR. TAVOLIERO maintained that the meaning was about "the big picture" and the government needing to be more transparent, adding that he was "at a loss" and unsure as to what Representative Fields was asking him.

[3:25:04 PM](#)

CO-CHAIR LEDOUX acknowledged that Mr. Tavoliero said the phrase was an old Sam Ervin statement. The problem, she said, was that nobody knew what it meant. She asked him, once again, to explain the meaning behind "LOL says the hound as he runs with the fox."

MR. TAVOLIERO reiterated that he was alluding to the need for more transparency, noting "it's about the entire process that we serve for our state."

REPRESENTATIVE FIELDS concluded that the meaning was incoherent. He asked Mr. Tavoliero to explain the connection to Richard Nixon and Sam Ervin in greater detail.

MR. TAVOLIERO purported that Sam Ervin was the prosecutor for Watergate, adding that one of the difficulties he was faced with was "the opaqueness" of the federal government. After all, Mr. Tavoliero opined, there were many things done wrong. He asked Representative Fields if he agreed.

REPRESENTATIVE FIELDS reread Mr. Tavoliero's original statement, "therein lies the frailty of opaque state government in the dark wet recesses of a cave called Juneau" and questioned whether he was suggesting that state government is comparable to the level of criminality that existed in Washington DC under the Nixon administration.

MR. TAVOLIERO restated that the suggestion was for more transparency.

REPRESENTATIVE FIELDS noted that he was not enlightened as to what "says the hound as he runs with the fox" means.

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REPRESENTATIVE HANNAN pointed out that Mr. Tavoliero's "very abbreviated" resume showed that he had been a real estate agent since 2008. She asked him if he was working as a full-time realtor during that 10-year period.

MR. TAVOLIERO answered yes.

REPRESENTATIVE HANNAN sought clarification as to what Mr. Tavoliero did for work during the 30 years between being a paralegal and becoming a realtor.

MR. TAVOLIERO replied that he had been a small business owner.

REPRESENTATIVE HANNAN asked Mr. Tavoliero to elaborate on the kinds of businesses that he had owned.

MR. TAVOLIERO explained that he operated a transmission repair shop for 15 years, as well as other "odd jobs" during that time.

REPRESENTATIVE HANNAN, referencing Mr. Tavoliero's 10 years of experience, asked what his vision and goals would be as a member of the Real Estate Commission. She inquired as to how he would bring more transparency to state government.

MR. TAVOLIERO stated that he would promote a stronger level of professionalism in the real estate industry, while at the same time supporting and bringing in new licensees. He explained that last year there were licensees lost due to lack of renewal and he would like to encourage more people to join the industry. He related that the single most important part of the Real Estate Commission is protecting the public and serving as a "consumer protection group," adding that he took that very seriously.

REPRESENTATIVE HANNAN asked Mr. Tavoliero if, during his ten years as a real estate agent in Alaska, he had been involved with the Realtors Political Action Committee (RPAC) or served on their board in any capacity.

MR. TAVOLIERO replied that had worked with their board and their "political process," further noting that he paid his dues every year.

REPRESENTATIVE HANNAN sought clarification as to whether Mr. Tavoliero had ever served on RPAC's board or political action committee, or if he had just been buying and selling real estate and paying dues to their organization.

MR. TAVOLIERO explained that he had served on their political policy board as well as their ethics board, but never on RPAC's actual board itself.

[3:31:15 PM](#)

CO-CHAIR WOOL asked Mr. Tavoliero to explain the makeup of the board.

MR. TAVOLIERO sought clarification as to whether Representative Wool was referring to the "Anchorage real estate board."

CO-CHAIR WOOL remarked that he was referring to the state board that Mr. Tavoliero claimed to have worked with on various subcommittees.

MR. TAVOLIERO explained that there are several boards through the National Association of Realtors (NAR) that are established in Alaska. He stated that the only one he had ever worked with on a peripheral level was the Anchorage real estate board.

CO-CHAIR WOOL asked if Mr. Tavoliero was familiar with the Alaska board of realtors.

MR. TAVOLIERO maintained that he was not familiar with the board of realtors.

CO-CHAIR WOOL inquired as to what part of the state Mr. Tavoliero worked in.

MR. TAVOLIERO replied that he worked in Southcentral Alaska; Anchorage, Eagle River, Chugiak, and the valley. He added that he had worked in Fairbanks as well. He disclosed that he owns property in North Pole, Alaska and was developing homes in that area.

[3:33:40 PM](#)

REPRESENTATIVE STUTES asked Mr. Tavoliero what board he was currently being appointed to.

MR. TAVOLIERO answered, "the Alaska Real Estate Commission."

REPRESENTATIVE STUTES, in response to Mr. Tavoliero, asked if that was a statement or a question.

MR. TAVOLIERO reiterated that his appointment was to the Alaska Real Estate Commission.

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CO-CHAIR LEDOUX inquired as to what the Alaska Real Estate Commission does.

MR. TAVOLIERO opined that it protects the public through regulation for consumer protection and enhances and develops the profession itself. He added that testing, fees, and all the general provisions for licensing are done through the commission as well.

CO-CHAIR LEDOUX, referencing Mr. Tavoliero's resume, asked for the names of the businesses he owned or people he worked for in

the 30-year gap between attending San Francisco State University and becoming a real estate agent.

MR. TAVOLIERO replied that he owned the AAMCO Transmission franchise in Anchorage for several years.

CO-CHAIR LEDOUX asked Mr. Tavoliero to clarify the dates that he owned the franchise.

MR. TAVOLIERO stated that it was in the 1980s, after which he worked transmission repair.

CO-CHAIR LEDOUX questioned whether Mr. Tavoliero owned the businesses himself.

MR. TAVOLIERO answered yes.

CO-CHAIR LEDOUX asked Mr. Tavoliero for the names of his transmission businesses.

MR. TAVOLIERO relayed that he owned A Accurate Transmission.

CO-CHAIR LEDOUX inquired as to how long he owned that business.

MR. TAVOLIERO replied that he owned it until 2005 or 2006, after which he went on disability and then became a real estate agent in 2008.

CO-CHAIR LEDOUX asked Mr. Tavoliero if he had ever declared bankruptcy on any of his businesses.

MR. TAVOLIERO answered no and asked how that would affect his ability to serve on the Real Estate Commission.

CO-CHAIR LEDOUX reminded Mr. Tavoliero that she was the one asking questions. She asked him again if he had ever declared bankruptcy.

MR. TAVOLIERO stated that he had not.

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CO-CHAIR WOOL asserted that the conversation started out about transparency and the lack thereof, however, every time Mr. Tavoliero was asked a question the committee members had to "pull teeth" to get basic information. He pointed out that Mr.

Tavoliero's resume was scant and that his responses were lacking.

REPRESENTATIVE HANNAN addressed Mr. Tavoliero's property development, asking him if he owned or was partnering with the contracting business that was developing the homes. She also inquired as to the name of the contracting business.

MR. TAVOLIERO replied that he was pursuing that project with his wife for retirement purposes. He explained that they found a contractor in the Fairbanks area and have built one home. He added that he hoped to build two or three more.

REPRESENTATIVE HANNAN asked if his use of a real estate license was important in that transaction, whether it was in the rental process or the search for a contractor.

MR. TAVOLIERO stated that he does get a commission as a result of the completed project but that he's not involved in the rental process. He noted that he and his wife contracted with a property manager.

REPRESENTATIVE HANNAN inquired as to Mr. Tavoliero's opinion on the statewide residential building code proposals that have come up in pieces of legislation over the past few years.

MR. TAVOLIERO said that he was unsure because he relied on contractors for that.

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CO-CHAIR LEDOUX remarked that she was astounded by Mr. Tavoliero's last answer, adding that it seemed to be something that real estate agents might know about. She pointed out that, as an associate broker, Mr. Tavoliero must work under someone. She asked him who that was.

MR. TAVOLIERO reported that he worked for Core Real Estate Group, LLC.

CO-CHAIR LEDOUX asked where it's headquartered out of and who the principal broker is.

MR. TAVOLIERO stated that Core Real Estate Group, LLC is in Eagle River, Alaska and the brokers are Derek Hert and Anneliese Cooper.

CO-CHAIR LEDOUX asked Mr. Tavoliero how long he had worked there.

MR. TAVOLIERO explained that he helped start the business and has worked there for three years.

CO-CHAIR LEDOUX sought clarification as to who Mr. Tavoliero worked for prior to working for Core Real Estate Group, LLC.

MR. TAVOLIERO revealed that he previously worked for EXIT Realty and then a company called Signature. He added that both were located in Eagle River, Alaska; however, he was unsure of their current status.

[3:42:41 PM](#)

REPRESENTATIVE FIELDS addressed Mr. Tavoliero's Twitter account, referencing a (tweet) by Paul Joseph Watson that he had retweeted on June 4, 2017, which read, "Theresa May says Terror ideology is 'a perversion of Islam.' She obviously hasn't read the Q'uran." He asked if, in retweeting that, Mr. Tavoliero was trying to say that terrorist ideology is part of Islamic teachings.

MR. TAVOLIERO alleged that he did not remember tweeting that.

REPRESENTATIVE FIELDS referenced another retweet from Mr. Tavoliero's account, which read, "Make no mistake, these medieval butchers won't stop. Islam is not compatible with Western Civilization." He further noted two more tweets from Mr. Tavoliero's account on May 27, 2017, which read, "You can't be polite or tolerable of those who blindly and deftly want to kill you. Our only option is to destroy them" followed by "People of Mindanao support President Duterte's efforts to kill all the terrorists!" Representative Fields pointed out that Rodrigo Duterte has been widely criticized for murdering civilians in his country. He asked Mr. Tavoliero if he believed that Islam is a threat to Western civilization and, to quote Mr. Tavoliero's tweet, "our only option is to destroy them."

MR. TAVOLIERO maintained that he did not remember the Twitter comments and sought clarification as to the question he was being asked.

REPRESENTATIVE FIELDS re-summarized Mr. Tavoliero's tweets and questioned whether Mr. Tavoliero believed that violence against

Muslims is acceptable, as some of his tweets suggest that Islam is a threat to western civilization.

MR. TAVOLIERO answered, "no it's not."

REPRESENTATIVE FIELDS asked Mr. Tavoliero why he would write those things.

MR. TAVOLIERO alleged that he had a "Filipino virtual assistant" setup his account who he believed to be responsible for the tweets in question, adding that he did not remember them.

REPRESENTATIVE FIELDS sought to clarify Mr. Tavoliero's last statement, asking if he had a social media manager that wrote things for him.

MR. TAVOLIERO restated that he had a "Filipino virtual assistant" who helped set up a website and social media accounts.

REPRESENTATIVE FIELDS asked who that individual was.

MR. TAVOLIERO maintained that the virtual assistant only worked for him for a short period of time and that he could not remember their name.

REPRESENTATIVE FIELDS asked if that person wrote tweets on Mr. Tavoliero's behalf.

MR. TAVOLIERO answered, "not to my knowledge."

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CO-CHAIR LEDOUX pointed out the inconsistency between Mr. Tavoliero's statements, in which he blamed his virtual assistant for tweeting things he didn't agree with on his behalf, and then said he didn't know anything about that. She added that it was confusing.

MR. TAVOLIERO agreed that it was confusing because he did not remember the tweets.

[3:48:00 PM](#)

REPRESENTATIVE FIELDS, in closing, remarked that the tweets in question seemed to come from the same Michael Tavoliero with whom they were speaking to, adding that they are public record.

He said he was left confused about whether Mr. Tavoliero thought exterminating mass numbers of people from a particular religion was appropriate, which is "disturbing."

MR. TAVOLIERO declared, "how dare you say that," adding that Representative Fields comment wasn't appropriate.

REPRESENTATIVE FIELDS read "You can't be polite or tolerable of those who blindly and deftly want to kill you. Our only option is to destroy them" and pointed out that now Mr. Tavoliero was trying to say he did not agree with that statement, which came from his Twitter account. He remarked that this was a more reasonable position than "supporting wholesale murder."

[3:49:15 PM](#)

CO-CHAIR LEDOUX opened public testimony. After ascertaining that no one wished to testify, she closed public testimony.

CO-CHAIR WOOL reiterated that the conversation started out about transparency, however, more they spoke with Mr. Tavoliero the less transparent he was. He related that they had to "drill deep" to get basic resume information and found a lot of work experience that was not on Mr. Tavoliero's resume.

REPRESENTATIVE FIELDS read the following from Mr. Tavoliero's resume, "I bring business experience to the table. My skills in negotiations, management, relationship-building, and community outreach will benefit all" and reminded members that Mr. Tavoliero was comparing the legislature, in particular Senator Kiehl, to a criminal investigation in Washington DC. He expressed concern that Mr. Tavoliero emailed "flippant" remarks to all state elected officials and displayed a record of espousing violent ideology which, he opined, is not appropriate for someone in a public position. He concluded by echoing Representative Wool's comments regarding Mr. Tavoliero's lack of concern, knowledge, and experience that would seem appropriate for this position.

CO-CHAIR WOOL made a motion to advance the confirmation of Michael Tavoliero, appointee to the Alaska Real Estate Commission, to the joint session for consideration. He reminded members that signing the reports regarding appointments to boards and commissions in no way reflects individual members' approval or disapproval of the appointees, and that the nominations are merely forwarded to the full legislature for confirmation or rejection.

CO-CHAIR LEDOUX reminded listeners that the committee has no choice other than to recommend appointees be forwarded to the joint session for consideration; therefore, Mr. Tavoliero's name was forwarded.

HB 48- TEMP STATE EMPLOYEES IN PART EXEMPT SVCE

[3:52:25 PM](#)

CO-CHAIR LEDOUX announced that the next order of business would be HOUSE BILL NO. 48, "An Act removing from the exempt service of the state persons who are employed in a professional capacity to make a temporary or special inquiry, study, or examination as authorized by the governor and including those persons in the partially exempt service of the state."

[3:52:51 PM](#)

REPRESENTATIVE TAMMIE WILSON, Alaska State Legislature, as prime sponsor of HB 48, introduced the bill and read the following sponsor statement [original punctuation provided]:

AS 39.25.110(9) was supposed to allow the governor to appoint someone for some "temporary and special inquiry". Because they are temporary, exempts do not get PERS or regular State leave, health insurance or other State benefits. However, the statute has not been used in that manner. It has instead been used to establish positions without the intent of the positions being temporary, which would then entitle employees to PERS and all other benefits.

The purpose of HB 48 is to discontinue the historical practice by the Executive Branch of using AS 39.25.110(9) to unilaterally establish highly paid executive level temporary exempt positions that have no salary limits. There are positions established many years ago using this statute that still exist today. Some are unbudgeted and do not appear in agency position counts. Several attempts have been made to obtain a complete list of these positions and current salary levels, but these attempts have been unsuccessful.

HB 48 is intended to eliminate the establishment of "temporary exempt" positions and instead place these

positions in the partially exempt service. Persons may be "appointed" to partially exempt positions, however, they will be subject to salary limits like all other state employees. HB 48 will force the administration to be more transparent and allow all employees to be treated fairly.

REPRESENTATIVE WILSON addressed the 0-dollar fiscal note, which she said could be interpreted as the administration either attempting to withhold their exempt positions or expressing indifference because it doesn't impact them.

[3:54:51 PM](#)

REPRESENTATIVE HANNAN expressed concern that the words "exempt" and "temporary exempt" were being used interchangeably. After looking at the statute, she said, it appeared that the current bill speaks to those under AS 39.25.110(09) [Exempt Service; persons employed in a professional capacity to make a temporary or special inquiry, study or examination as authorized by the governor], which are temporary; however, they were being referred to as exempt. She continued by saying that referencing those positions as exempt is precarious because exempt positions are a much broader category. Alaska's deputy attorney general, for example, is an exempt position and isn't temporary in nature. She asked if the term or phrasing for that subcategory should be "temporaries."

REPRESENTATIVE WILSON acknowledged that it was one specific area of statute that would be eliminated and deferred to her staff, Remond Henderson.

[3:56:30 PM](#)

REMOND HENDERSON, Staff, Representative Tammie Wilson, Alaska State Legislature, on behalf of Representative Wilson, prime sponsor of HB 48, stated that the current bill was specifically designed to address only those temporary exempt positions established by AS 39.25.110(09).

REPRESENTATIVE HANNAN surmised that the current bill was intended for political appointees that were hired for a specific purpose. She suggested including a timeframe that would dictate the length of their temporary employment. She asked if Representative Wilson had considered that.

REPRESENTATIVE WILSON replied that she was unsure because the administration was not responsive. She reflected on a phone call from an anonymous caller who informed her of a position in Anchorage that was being paid an "exorbitant" amount and had no Position Control Number (PCN), adding that this particular position was not political. She explained that if the governor's office had extra money and wanted to hire someone as a temporary employee there would be no way to find that position. Alternatively, they could be put into a PCN and, unlike others who wouldn't go through this process, designated to the correct job classification with a corresponding salary and benefits. However, under AS 39.25.110(09) someone could be making twice as much as another individual with the same job title, solely because they were hired by the governor under that specific part of the statute. She opined that this should not be happening, and it was time for it to end.

REPRESENTATIVE HANNAN related that she shared Representative Wilson's concern. She restated her suggestion of putting a one or two-year timeframe on temporary exempt positions. She pointed out that the process to make a position exempt exists under that same statute, which involves going through the personnel board, classification, and a public notice period. It still allows an individual to be appointed, she noted, and avoid the probationary period that one would encounter with a classified job. She questioned whether defining how long 'temporary' was would mitigate those temporary hires that end up working for 10-years off the books with no PCN.

REPRESENTATIVE WILSON emphasized that she was more concerned with the hidden employee names and funds than the temporary aspect. She offered her belief that, originally, the statute was for projects that required hiring someone for a short amount of time who would be paid more for their "specialized knowledge;" however, the way it's been used over time has strayed from that initial intent. She opined that as long as this particular part of the statute exists it will continue to be abused. She further noted that adding a timeframe of 3 or 6 months would not help designate a specific salary to these positions, like most jobs have. She pointed out that this would not take away the [governor's] ability to write a specific contract for someone.

[4:00:56 PM](#)

REPRESENTATIVE STUTES asked for an example of the type of job being discussed.

MR. HENDERSON described a unit within the Department of Corrections (DOC) called an "investigative unit" under which they established temporary exempt positions titled "Professional Conduct Investigator" using the aforementioned statute. He stated that the position received 173,000 dollars in salary and benefits and further noted that it was created in FY 17 and existed until the current commissioner cut it from the FY 20 budget.

REPRESENTATIVE STUTES posited that temporary exempt positions do not receive benefits.

[4:02:30 PM](#)

REPRESENTATIVE WILSON acknowledged that they are not supposed to receive benefits under the statute's original intent; however, it's not being utilized accordingly.

REPRESENTATIVE STUTES surmised that there are some employees who receive a salary and benefits but are off the books and have no PCN. She asked if this was correct.

REPRESENTATIVE WILSON replied that some positions do have a PCN while others do not. She explained that if the governor's office had money left in their budget, they could hire someone underneath AS 39.25.110(09) and not give them a PCN. She noted that positions like that, which you can't find in the budget books, are what makes things difficult.

[4:03:33 PM](#)

MR. HENDERSON added that some [positions] are identified, for example, by a letter "T" in front of the last 3 letters of the PCN. He stated that the only way to truly figure out how many of those positions exist is to contact each department and ask them to provide that information. He explained that the current bill moves one particular part of the statute AS 39.25.110(09) [persons employed in a professional capacity to make a temporary or special inquiry, study or examination as authorized by the governor] from Exempt Service [AS 39.25.110] to Partially Exempt Service [AS 39.25.120], which subjects the appointment to a pay plan that is established under statute. He further noted that the governor can still appoint someone up to a step F, unless there are extenuating circumstances that can justify the need for a higher paying position. The difference, he said, is that

someone would no longer be able to be placed in a high paying position without a rationale.

[4:05:31 PM](#)

CO-CHAIR LEDOUX asked who would approve the hire if the administration wanted to employ someone beyond a step F.

MR. HENDERSON offered his belief that it was reviewed by the personnel board. Nonetheless, he said he would follow up with clarification from the Department of Administration, Division of Personnel and Labor Relations.

[4:07:04 PM](#)

REPRESENTATIVE FIELDS revealed that he had asked Legislative Finance and the administration to account for the personnel cost of political appointees in the executive branch and never received a response. He acknowledged that he had been a political appointee himself and understands that they are an important part of the democratic process; however, everyone has a right to understand how the executive branch is organized. He expressed his appreciation for the current bill in the interest of transparency.

CO-CHAIR LEDOUX acknowledged that knowing the personnel cost of political appointees in the executive branch would be helpful information to have. She suggested that Representative Wilson follow up on that request.

[4:07:51 PM](#)

REPRESENTATIVE WILSON asserted that she had already requested that information multiple times, which is why she had looked forward to seeing the fiscal note from the Department of Administration to see if they would list any of the appointed positions. She concluded that the governor would be okay with the current bill's proposed changes due to the lack of response.

CO-CHAIR LEDOUX stated that she was having a difficult time comprehending why there is a 0-dollar fiscal note, adding that it should probably be a negative fiscal note. She said she was hopeful that by the bill's next hearing the administration would provide an explanation.

REPRESENTATIVE WILSON noted that the bill was going to the House Finance Committee next where they would probably ask the same question.

[4:08:54 PM](#)

CO-CHAIR WOOL inquired as to Alaska's statutory definition of "exempt" and "partially exempt." He noted the importance of accounting for employee positions and salaries in the budget, adding that it should be "a basic condition of transparency."

REPRESENTATIVE WILSON agreed to follow up on the definitions. She mentioned that the last time she went through the budget she found two people with the same PCN number, which she thought to be strange.

[4:10:12 PM](#)

The committee took a brief at-ease at 4:10 p.m.

[4:11:11 PM](#)

CO-CHAIR LEDOUX announced that HB 48 was held over.

HB 44-AUTOMATED TELLER MACHINES: FEES

[4:11:39 PM](#)

CO-CHAIR LEDOUX announced that the final order of business would be HOUSE BILL NO. 44, "An Act relating to fees for using an automated teller machine; and providing for an effective date."

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REPRESENTATIVE DAN ORTIZ, Alaska State Legislature, as prime sponsor, presented HB 44. He paraphrased parts of the sponsor statement [included in the committee packet], which read in its entirety as follows [original punctuation provided]:

The intent of this bill is to allow retail automatic teller machines (ATMs) to charge a withdraw fee on transactions made by international bank card holders.

Currently, independently owned ATMs are not able to charge a fee on transactions made by international card holders. Our current law only pertains to ATMs owned by state-sponsored banks or credit unions, and

does not include retail and individually owned ATMs. Because of this gap, retail ATMs cannot charge a withdraw fee on transactions from bank cards outside of the United States.

Alaska welcomes millions of visitors each year, with a large percentage of those visitors from out of the country. In the summer of 2016 alone, nearly 300,000 international visitors came to Alaska. Retail ATM owners cannot charge fees on these tourists' transactions.

Multiple other state's have already passed laws to close this gap and allow retail ATM owners to charge a transaction fee to international card holders.

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CO-CHAIR LEDOUX asked if domestic card holders can be charged a withdraw fee.

REPRESENTATIVE ORTIZ answered yes. He explained that the current bill would "close the gap" and allow privately owned ATMs to charge international users [a withdraw fee], adding that, currently, retail ATM owners charge domestic card holders more to make up for the rates they don't receive from international users. He stated that the current bill would allow private owners to set a fee for withdraws made by international card users, which would increase their revenue from international tourists. He further noted that HB 44 has received support from Alaskan ATM owners; the Alaska Cabaret, Hotel, Restaurant and Retailers Association (CHARR) and the National ATM Council, Inc. (NAC).

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REPRESENTATIVE STUTES inquired as to the difference between an international user and a "regular" user.

REPRESENTATIVE ORTIZ explained that an international user was "anyone from a foreign country other than the United States."

REPRESENTATIVE STUTES surmised that an international user would be recognized by his or her bank being located outside of the United States. She asked if this was correct.

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CAROLINE HAMP, Staff, Representative Dan Ortiz, Alaska State Legislature, on behalf of Representative Ortiz, prime sponsor of HB 44, acknowledged that it was the card holders' bank, not their nationality, that was significant.

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REPRESENTATIVE HANNAN said she had made the presumption that if an ATM couldn't charge a fee then the bank card wouldn't work, when, in reality, an international card holder can use the ATM, but no fee is recovered.

REPRESENTATIVE ORTIZ said that was correct.

REPRESENTATIVE HANNAN asked if ATM owners were allowed to block users if they couldn't charge them a fee.

REPRESENTATIVE ORTIZ replied that he did not know the answer to that question.

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CO-CHAIR WOOL, as an ATM owner himself, disclosed a conflict of interest. In response to Representative Hannan, he explained that he bought his [ATM] machine from a private company who processes the transactions and compensates him monthly. He said he was unsure as to whether that company can block transactions from specific banks, adding that foreign card holders most likely use the machine without being charged the withdraw fee. Nonetheless, he revealed that even if they had to pay the withdraw fee and he was making money off every transaction, he still wouldn't be inclined to lower the fee. He concluded by expressing his support for the current bill.

REPRESENTATIVE STUTES sought clarification on the withdraw fee and whether it concerned the exchange rate or if it was simply the extra fee a card holder is charged when they use an ATM machine that does not belong to their bank.

REPRESENTATIVE ORTIZ confirmed that it was the extra fee.

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CO-CHAIR LEDOUX recognized Bruce Renard and asked him if private ATM machine owners can block foreign transactions.

BRUCE RENARD, Executive Director, National ATM Council, Inc. (NAC), pointed out that it's a misnomer to refer to an ATM as "private" because each one has a sponsoring bank. He explained that 60 percent of ATMs in the United States are owned by entrepreneurs and business owners and referred to as "independent ATMs," despite being operated pursuant to their sponsoring bank.

CO-CHAIR LEDOUX interjected, asking Mr. Renard if he could answer her previously stated question and save the rest for public testimony.

MR. RENARD consented and offered his belief that, technically, blocking [foreign transactions] could be done, but it would be in violation of the network rules. He explained that all ATMs are subject to compliance with the rules of the global finance network, who wouldn't approve of blocking. He further described the situation [in Alaska] as "a catch-22" because ATMs must allow these international transactions that, theoretically, could be blocked. He noted that Alaska is the last state with this glitch.

CO-CHAIR LEDOUX inquired as to why her Wells Fargo bank card only works in certain ATM machines when she travels internationally.

MR. RENARD stated that different countries have different protocols, however, Visa and Mastercard cards should work everywhere, which is why they are so dominant. He remarked that, in general, ATMs should accept US cards abroad, and if they don't it's unique to that country.

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REPRESENTATIVE HANNAN stated that she intended to support this piece of legislation because Alaska receives so many international visitors. She asked if a statute had been passed to allow ATMs to charge fees on domestic card holders' transactions. She sought clarification as to why, in an industry that is highly regulated by the federal government, Alaska was the last state with this glitch concerning transaction fees. She asked if international fees were excluded from federal banking law.

REPRESENTATIVE ORTIZ offered his understanding that when regulations around ATM use were established, they left independently owned machines out of the equation. He explained

that, currently, institutions like Wells Fargo can charge a fee, but for some reason, Alaska remains the one place where individually owned ATMs cannot charge international users. He added that passing the current bill would put Alaska on par with the other 49 states.

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CO-CHAIR LEDOUX opened public testimony.

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MR. RENARD addressed the intent of the current bill, which is to solve the glitch that is specific to Alaska and its interaction with the global network rules. That interaction has resulted in the inability of Alaska's independently owned ATMs to charge a reasonable fee on transactions made by international bank card holders. He pointed out that federal law placed a fee disclosure requirement and the ability to opt out on any surcharge established by ATM owners. This has resulted in independently owned ATM surcharges remaining low, generally within two to three dollars, whereas surcharges from Bank ATMs (other than one's own) may be twice as high. He reiterated that HB 44 would fix the glitch that is currently in Alaska law by allowing ATMs to charge the same fees to international card holders as they do domestic card holders. By doing so, he said, it would create a level playing field between bank owned ATMs and independently owned ATMs.

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PAUL THOMAS, Owner, Alaska Cache Liquor Inc, noted that he owned the ATM located inside his business as well as 14 other ATMs in Juneau. He stated that the current bill would put independently owned ATMs on par with all the other ATMs. He pointed out the impact that being located close to international traveler departure points has on ATM operators. The docks, being a prominent departure point for international cruise ship passengers, means independent ATMS in that area will see a considerable amount of "no charge" fees, which could prompt owners to raise the surcharge. He urged members to even "the playing field."

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SARAH OATES, President/CEO, Alaska Cabaret, Hotel, Restaurant and Retailers Association (CHARR), noted that she was

representing many business owners from across the state, many of whom have independent ATMs in their establishments. She expressed their support for the current bill, as it would allow for independent ATM owners to collect the same fee as large financial institutions. She stated that current law puts small business owners at a disadvantage by forcing them to "eat the cost" of international fees rather than passing them on to consumers. She concluded by reiterating that Alaska CHARR fully supports "this very fair piece of legislation that would help small Alaskan businesses."

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CO-CHAIR LEDOUX closed public testimony and announced that HB 44 was held over.

[4:35:47 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at [4:35] p.m.