

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

February 25, 2020

3:02 p.m.

MEMBERS PRESENT

Representative Zack Fields, Co-Chair
Representative Jonathan Kreiss-Tomkins, Co-Chair
Representative Grier Hopkins
Representative Andi Story
Representative Steve Thompson
Representative Sarah Vance
Representative Laddie Shaw

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 239

"An Act establishing a state lottery; providing for participation in multi-state lotteries; establishing the Alaska State Lottery Board in the Department of Revenue; relating to confidentiality of information regarding lottery winners; requiring background investigations by the Department of Public Safety; and providing for an effective date."

- HEARD & HELD

HOUSE BILL NO. 190

"An Act relating to allowable absences for a permanent fund dividend; and providing for an effective date."

- HEARD & HELD

SENATE BILL NO. 80 AM

"An Act relating to proposing and enacting laws by initiative; and prohibiting the state and its agencies and corporations from spending funds to influence the outcome of certain ballot propositions and questions."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 239

SHORT TITLE: ESTABLISH STATE LOTTERY BOARD/LOTTERIES

SPONSOR(s): REPRESENTATIVE(s) THOMPSON

02/05/20 (H) READ THE FIRST TIME - REFERRALS
02/05/20 (H) STA, FIN
02/18/20 (H) STA AT 3:00 PM GRUENBERG 120
02/18/20 (H) Heard & Held
02/18/20 (H) MINUTE(STA)
02/25/20 (H) STA AT 3:00 PM GRUENBERG 120

BILL: HB 190

SHORT TITLE: PFD ALLOWABLE ABSENCES

SPONSOR(s): REPRESENTATIVE(s) TALERICO

01/21/20 (H) PREFILE RELEASED 1/10/20
01/21/20 (H) READ THE FIRST TIME - REFERRALS
01/21/20 (H) STA, FIN
02/25/20 (H) STA AT 3:00 PM GRUENBERG 120

BILL: SB 80

SHORT TITLE: INITIATIVE SEVERABILITY

SPONSOR(s): SENATOR(s) BIRCH

03/06/19 (S) READ THE FIRST TIME - REFERRALS
03/06/19 (S) STA, JUD
04/11/19 (S) STA AT 3:30 PM BUTROVICH 205
04/11/19 (S) Moved SB 80 Out of Committee
04/11/19 (S) MINUTE(STA)
04/12/19 (S) STA RPT 2DP 1DNP 2NR
04/12/19 (S) NR: SHOWER, REINBOLD
04/12/19 (S) DP: MICCICHE, COGHILL
04/12/19 (S) DNP: KAWASAKI
04/23/19 (S) JUD AT 6:00 PM BELTZ 105 (TSBldg)
04/23/19 (S) Heard & Held
04/23/19 (S) MINUTE(JUD)
04/24/19 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
04/24/19 (S) Moved SB 80 Out of Committee
04/24/19 (S) MINUTE(JUD)
04/26/19 (S) JUD RPT 3DP 1NR
04/26/19 (S) DP: HUGHES, MICCICHE, REINBOLD
04/26/19 (S) NR: KIEHL
04/30/19 (S) TABLED Y13 N6 A1
05/02/19 (S) TAKE FROM TABLE UC
05/02/19 (S) TRANSMITTED TO (H)
05/02/19 (S) VERSION: SB 80 AM
05/03/19 (H) READ THE FIRST TIME - REFERRALS

05/03/19 (H) STA, JUD
02/25/20 (H) STA AT 3:00 PM GRUENBERG 120

WITNESS REGISTER

SETH WHITTEN, Staff
Representative Steve Thompson
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Answered questions on behalf of Representative Thompson, prime sponsor of HB 239.

JONATHAN CLONTZ, Chief Executive Officer (CEO)
Wyoming Lottery Corporation
Cheyenne, Wyoming

POSITION STATEMENT: Provided information and answered questions during the hearing on HB 239.

BISHOP WOOSLEY, President
North American Association of State and Provincial Lotteries (NASPL);
Director, Arkansas Lottery
Little Rock, Arkansas

POSITION STATEMENT: Provided information and answered questions during the hearing on HB 239.

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

POSITION STATEMENT: Answered questions during the hearing on HB 239.

KEITH WHYTE, Executive Director
National Council on Problem Gambling (NCPG)
Washington, D.C.

POSITION STATEMENT: Provided information and answered questions during the hearing on HB 239.

REPRESENTATIVE DAVE TALERICO
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 190, as prime sponsor.

ANNE WESKE, Director
Permanent Fund Dividend (PFD) Division
Department of Revenue (DOR)

Juneau, Alaska

POSITION STATEMENT: Answered questions during the hearing on HB 190.

SENATOR JOSH REVAK
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented SB 80 on behalf of Senator Birch, prime sponsor.

KIM SKIPPER, Staff
Senator Josh Revak
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Answered questions during the hearing on SB 80 on behalf of Senator Revak.

ACTION NARRATIVE

[3:02:00 PM](#)

CO-CHAIR JONATHAN KREISS-TOMKINS called the House State Affairs Standing Committee meeting to order at 3:02 p.m. Representatives Shaw, Hopkins, Thompson, Vance, Fields, and Kreiss-Tomkins were present at the call to order. Representative Story arrived as the meeting was in progress.

HB 239-ESTABLISH STATE LOTTERY BOARD/LOTTERIES

[3:02:41 PM](#)

CO-CHAIR KREISS-TOMKINS announced that the first order of business would be HOUSE BILL NO. 239, "An Act establishing a state lottery; providing for participation in multi-state lotteries; establishing the Alaska State Lottery Board in the Department of Revenue; relating to confidentiality of information regarding lottery winners; requiring background investigations by the Department of Public Safety; and providing for an effective date."

[3:03:05 PM](#)

REPRESENTATIVE THOMPSON relayed that the lottery that would be established under HB 239 would generate a much-needed source of revenue for the state. He said that he recognizes the concerns about the expansion of gambling and the effects that it would have on the lives of Alaskans. He maintained that he shares the

concerns; he has worked hard to craft legislation that considers the factors most closely associated with behavioral addiction; and the proposed legislation would prohibit the type of activity that exploits those factors. He referred to the invited testimony of several experts familiar with the lottery industry and problem gambling issues to address committee members' questions.

[3:04:20 PM](#)

SETH WHITTEN, Staff, Representative Steve Thompson, Alaska State Legislature, referred to documents in the committee packet: an email dated 2/5/20 listing lottery sales in states with populations similar to Alaska's; and a Gallup, Inc. poll report [7/22/16], entitled "About Half of Americans Play State Lotteries," which offers a demographic breakdown of the buyers of lottery tickets along with information on problem gambling.

[3:05:41 PM](#)

JONATHAN CLONTZ, Chief Executive Officer (CEO), Wyoming Lottery Corporation, relayed that Wyoming passed a law authorizing a state lottery in 2013; the lottery was launched August 2014. He stated that it was a small lottery due to Wyoming's low population - about 375,000 adult residents. He described Wyoming's lottery: one in-state game - "Cowboy Draw" - which is a cash lottery game; and multi-state games - "Powerball," "Mega Millions," and "Lucky for Life." Wyoming's lottery does not include instant-win games or video lottery terminals; it does not allow the use of debit cards or credit cards for purchases; and there is a limit on the number of tickets which can be bought at one location. As required by statute, the Wyoming Council on Problem Gambling (WCPG) was established in partnership with the Wyoming Department of Health.

MR. CLONTZ related that Wyoming borrowed money from a local bank so as not to expend state general fund resources; the loan was paid back several months early, at which time revenue began to come into the state. There is a nine-member board of directors appointed by the governor, and it operates as a quasi-governmental instrument of the state. The state is continuing to make the lottery a well-rounded full portfolio lottery.

[3:08:33 PM](#)

REPRESENTATIVE SHAW asked what Wyoming's net profit per year was for the past three years from the lottery.

MR. CLONTZ responded that last year [2019] over \$6 million was transferred to the state; about \$4 million was transferred in 2018; and about \$2.5 million was transferred in 2017. The total for the three years was about \$12.5 million.

CO-CHAIR FIELDS asked for data on the distribution of lottery users over economic demographics. He asked, "Are poor people participating at a higher rate than other groups?"

MR. CLONTZ answered that the Wyoming Lottery Corporation performs trigger studies on various issues to assess player behavior and impacts on society. He stated that staff look at the demographics of players - age and income; sometimes that information is difficult to get. The results of two trigger studies revealed that the most prominent player category was ages 45-60 and middle-income.

CO-CHAIR KREISS-TOMKINS asked for an explanation of "trigger study."

MR. CLONTZ explained that a trigger study is an internal study "triggered" by an issue that warrants study, such as researching the interest in a new game or examining problem gambling in a certain community. It is performed in-house or through contract.

[3:12:51 PM](#)

REPRESENTATIVE HOPKINS asked whether Wyoming participates in multi-state lotteries and how the revenue-sharing is handled.

MR. CLONTZ replied that Wyoming's lottery was launched with Powerball and Mega Millions; once it received permission from [the Multi-State Lottery Association (MUSL)] it began to sell Powerball and Mega Millions products. He explained that the member states pay a percentage into the jackpots according to their sales; participating in the multi-state games relieved Wyoming of the pressure of paying out a full jackpot. He relayed that Wyoming could not launch an in-state game until it had a reserve account built up to pay out full jackpots.

REPRESENTATIVE HOPKINS asked whether the multi-state lottery tickets bring in as much revenue per ticket as the in-state lottery tickets, considering they are taxed the same.

MR. CLONTZ responded that there are set pay-out percentages - about 50 percent for the multi-state games as determined by MUSL; Wyoming makes 21-22 percent from those games. For Wyoming's in-state game, the pay-out percentage is set at 68 percent. The game is "branded" to suit the state; therefore, the state wants people to win that game more; it wants to encourage player loyalty to the brand. Wyoming does not make as much in profit - 13 percent - compared with the multi-state games; however, the volume of play is consistently higher.

[3:16:39 PM](#)

REPRESENTATIVE HOPKINS asked for the cost of administrative overhead for the state lottery and hired staff.

MR. CLONTZ answered that the nine-member board borrowed \$3 million for start-up; it hired staff; it contracted for marketing, legal counsel, and information technology (IT); and it paid for background investigations for retailers. He explained that most of the services for the Wyoming lottery had to be outsourced.

REPRESENTATIVE THOMPSON asked how long it took to pay back \$3 million.

MR. CLONTZ said that the board estimated it would take 24 months, but it only took 16 months. The board made the decision to pay off the debt before transferring revenue to the state.

[3:20:09 PM](#)

CO-CHAIR KREISS-TOMKINS asked what the projections are for net revenue to Wyoming from the lottery, and whether revenue is expected to plateau.

MR. CLONTZ answered that Wyoming is already seeing a leveling off. There is always a spike in sales when jackpots are very high; however, since the billion-dollar jackpots [came into being], it takes a much higher jackpot to generate the same level of excitement. He said that when jackpots are low, sales are low; the Wyoming Lottery Corporation utilizes promotions to stimulate sales and interest. He expressed that the lottery needs another game in its portfolio that is a non-jackpot reliant game. He reiterated that instant games are prohibited; and too many draw games "start to cannibalize each other." He maintained that the corporation must strike a careful balance. He estimated that revenue will most likely level off to \$4-5

million per year; adding another game may increase the revenue \$1.5-3 million.

[3:24:02 PM](#)

REPRESENTATIVE STORY asked whether scratch games are not allowed because of charitable gaming in Wyoming.

MR. CLONTZ answered no, that is not the primary reason. He explained that Wyoming is a conservative state; passing legislation for a lottery was difficult; there were promises made to not allow instant games because of a great concern for problem gambling among residents. He said that he has not seen evidence that the traditional draw games lead to gambling problems; it occurs in connection with video lottery, casino table games, and instant-win games. He offered that it is likely that the prohibition may be removed in the future.

REPRESENTATIVE STORY asked about the WCPG and the issues it addresses.

MR. CLONTZ reiterated that state statute required the council to be established in partnership with the Department of Health. The council found that Wyoming had many addiction treatment specialists, but none specifically trained in problem gambling. In the statute there is a requirement that up to \$200,000 per year be considered by the board of directors to be placed into the problem gambling fund; the funds come from expired unclaimed tickets. Money is set aside every year to be used in association with problem gambling. The Department of Health addiction treatment specialists identified gambling addiction treatment training and sent staff to be trained. The corporation contracted with a research company to study the issue of problem gambling in Wyoming. The findings revealed that it was not a significant issue, and in areas where there were problem gambling issues, they were secondary and tertiary to other addictions. The Wyoming Lottery Corporation established a problem gambling hotline; the hotline received six calls and four were due to the callers not being able to read the print on their tickets. The council meets regularly, conducts governance work, and attends conferences, but generally there is not much for them to do. He stated that the corporation has restricted the number of tickets a person can buy in one transaction to 125, as a deterrent [to excessive gambling]; and it does not allow the use of debit and credit cards. The corporation partnered with the Department of Family Services to integrate with its child support registry so that

lottery winners owing back child support could be identified and the money transferred to that agency.

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REPRESENTATIVE STORY mentioned that she would like to see a copy of any council reports to the Department of Health.

MR. CLONTZ agreed to provide them.

3:32:18 PM

BISHOP WOOSLEY, President, North American Association of State and Provincial Lotteries (NASPL) and Director, Arkansas Lottery, summarized his experience with the Arkansas Lottery and his position on NASPL. He said that NASPL is an active organization representing 53 lotteries across North America; its function is to disseminate information benefitting the state and provincial lottery organizations through education and communication. When appropriate, NASPL advocates for positions of the association in matters of general policy on lotteries.

REPRESENTATIVE THOMPSON asked for a description of the Arkansas Lottery and whether it has draw tickets only or expanded gaming.

MR. WOOSLEY answered that the Arkansas Lottery launched in September 2009; it began with instant ticket games - which constitute 80 percent of sales; it then added draw games - 20 percent of sales - which included Powerball, Mega Millions, two daily draw games, the regional game, Lucky for Life, and an in-state lotto game called the "Natural State Jackpot." He clarified for Representative Story that instant tickets constituted 80 percent of sales and draw games 20 percent.

REPRESENTATIVE HOPKINS asked whether the other states in the association support their nonprofits through charitable gaming.

MR. WOOSLEY answered that it varies from state to state; it depends on the geographic location and the needs of the state. The Arkansas Lottery supports scholarships for higher education; other states support state general revenue, veterans, highways, or a variety of charitable causes. He said that the newer lotteries focus more on education.

REPRESENTATIVE HOPKINS stated that in Alaska, scratch tickets are held by a permit holder; the permit holder can give a certain percentage of the revenue from the scratch tickets to

the charitable and nonprofit sector. He asked whether Mr. Woosley was familiar with any other states having a similar arrangement for draw tickets.

MR. WOOSLEY answered negatively.

[3:37:50 PM](#)

MR. WHITTEN referred to an article on the Alaska Charitable Gaming Alliance (ACGA) website, not included in the committee packet, entitled "Governor Dunleavy's Senate Bill 188 expands multiple levels of gambling," which read in part:

Rep. Steven Thompson, (R-Fairbanks), also has newly proposed gaming legislation in the form House Bill 239, that would establish a lottery under a State Lottery Board. In Thompson's case, there is neither significant and costly new government infrastructure, nor an alarming expansion of gaming. The best part of his effort has been he included the Alaska Charitable Gaming Alliance. Rep. Thompson communicated his interest in meeting with our president, Sandy Powers, to seek counsel on how his proposed legislation would affect charitable gaming. He has been transparent and thoughtful.

REPRESENTATIVE STORY asked whether Arkansas has a problem gaming council or similar organization overseeing issues related to lotteries.

MR. WOOSLEY answered, not specifically. He maintained that when the Arkansas Lottery was started, it was required to submit \$200,000 per year toward problem gambling; after six years, the Arkansas legislature eliminated that requirement. Arkansas now commits to supporting a problem gambling helpline and receives National Council on Problem Gambling (NCPG) certification through NASPL for all games. He added that the legislature has its own separate committee overseeing the Arkansas Lottery.

REPRESENTATIVE STORY asked Mr. Woosley to provide any information he has about the [problem gambling] issues and supports in place in Arkansas.

CO-CHAIR FIELDS asked for the annual cost of administering charitable gaming in Alaska.

[3:41:04 PM](#)

DAN STICKEL, Chief Economist, Tax Division, Department of Revenue (DOR), responded that he will provide that information to the committee.

MR. WHITTEN stated that in fiscal year 2018 (FY18) the gross sales for charitable gaming were \$375 million; of that amount, \$35 million went to nonprofit organizations and \$55 million to administration. He offered to verify those numbers for the committee.

[3:42:53 PM](#)

KEITH WHYTE, Executive Director, National Council on Problem Gambling (NCPG), relayed that NCPG was founded in 1972 and is the national advocate for programs and services to assist problem gamblers and their families. He stated that NCPG is neutral on legalized gambling. He mentioned NCPG's membership: gaming corporations and agencies, regulators, tribal governments, healthcare, banks and other financial institutions, and individuals - many of whom are in recovery from gambling problems.

MR. WHYTE continued by saying that NCPG provides services to help problem gamblers and their families: a national helpline number; training and education of counselors; and a variety of education, prevention, and treatment programs. He mentioned that NCPG works with the lottery, casino, and charitable industries to develop programs and policies helping them to minimize harm.

MR. WHYTE maintained that he has 25 years of experience in the gambling industry, both as executive director of NCPG and the director of research for the American Gaming Association.

CO-CHAIR FIELDS asked whether the gaming industry funds NCPG.

MR. WHYTE answered, partly. He said that since it is a membership organization, it is funded from dues. He added that half of its revenues come from membership dues - the majority of which are from gambling entities such as state lotteries, casinos, and tribal governments. The other half is from its annual conference, sales of education materials, and a few grants. He maintained that there is no federal funding for problem gambling programs. He reiterated that NCPG is neutral on legalized gambling, does not accept restrictions on funds it receives, and is very open and transparent in working with the

industry. Through membership, gambling entities make a just contribution to helping mitigate the social costs that they help generate.

REPRESENTATIVE THOMPSON mentioned his understanding that problem gamblers are enticed to gamble more when there are instant winners through scratch-off or video games, compared with once-a-week draw games. He asked if that understanding was correct.

MR. WHYTE answered yes. He said that in general, the structural characteristics of each form of gambling has a complex relationship with gambling addiction; frequency is one of those characteristics and is associated with increased development of gambling problems. He offered additional structural characteristics - speed of play and size of jackpot. He stated that the construct is multi-dimensional.

REPRESENTATIVE STORY asked for more information on the social costs of gambling.

MR. WHYTE replied that it is inevitable that some people who gamble will develop problems. The costs of gambling problems are not just borne by individuals, but by their families, their communities, businesses, and ultimately the taxpayers. Based on national data, it is estimated that the number of people with gambling problems in Alaska is about 12,000. A very conservative social cost estimate would assign \$1,700 per severe problem gambler per year for a total of about \$20 million in social costs. Social costs are primarily in criminal justice and healthcare: about 70 percent of people with severe gambling problems commit white collar crimes to finance their gambling; people with gambling problems are more likely to visit emergency departments, have poor physical and mental health, and have other consequences of addiction. People who have one addiction are more likely to have another. He stated that most private insurers do not routinely reimburse for a diagnosis of problem gambling; most social costs fall directly to the state. He emphasized that every dollar spent on prevention and treatment saves two or more dollars in social costs. He mentioned that to date, the citizens of Alaska are not funding any problem gambling programs.

[3:50:54 PM](#)

REPRESENTATIVE STORY asked for examples of NCPG working with the gambling industry to minimize harm.

MR. WHYTE answered that staff developed a responsible gambling verification program for the lottery industry, which includes employee training, retailer training, advertising, and funds for problem gambling. He stated that the program consists of policies and procedures that will attempt to minimize the risk of addiction for lottery products that are being sold. He maintained that NCPG can never eliminate gambling addiction but can attempt to mitigate and treat it. He said that both Wyoming and Arkansas faced tremendous challenges, which Alaska would face as well: no funds were spent on problem gambling prior to the onset of a lottery and no problem gambling services were available; this exacerbates social costs. He mentioned written testimony, not included in the committee packet, that outlines the lowest possible standards for Alaska to address the social costs as it establishes its lottery. He stressed that research demonstrates that the expansion of gambling increases both participation and gambling problems. He maintained that putting countermeasures in place - responsible gambling programs - and integrating them into Alaska's behavioral health services is the only ethical and economical way to approach this public health issue.

MR. WHITTEN offered that he would submit Mr. Whyte's written testimony to the committee.

[HB 239 was held over.]

HB 190-PFD ALLOWABLE ABSENCES

[3:54:57 PM](#)

CO-CHAIR KREISS-TOMKINS announced that the next order of business would be HOUSE BILL NO. 190, "An Act relating to allowable absences for a permanent fund dividend; and providing for an effective date."

[3:55:20 PM](#)

REPRESENTATIVE DAVE TALERICO, Alaska State Legislature, presented HB 190, as prime sponsor, by paraphrasing from the sponsor statement, which read:

HB 190: Provides for an exemption for an absence of or beyond 180 days for an otherwise eligible resident.

The main provision of HB 190 ensures that an otherwise eligible resident can be absent when they are

providing continuous medical treatment or providing care for a family member as described in sections (5) and (6) of AS 43.23.008.

HB 190 puts into statute this additional protection, which is not currently addressed by the statutes or policy.

REPRESENTATIVE TALERICO explained that statute already provides an exemption for the medical leave described; the proposed legislation clarifies that when circumstances cause the accumulative time of an absence to exceed 180 days, the person would be still eligible for a permanent fund dividend (PFD). He offered that the number of people affected by this provision would be low.

[3:59:20 PM](#)

REPRESENTATIVE THOMPSON asked for confirmation that a person who is out of state for an extended period for medical treatment does not lose his/her eligibility for a PFD.

REPRESENTATIVE TALERICO answered yes, if the person has a referral.

REPRESENTATIVE THOMPSON asked for clarification that the proposed legislation would ensure that a caregiver accompanying the person receiving medical treatment would also be eligible for a PFD and is currently denied.

REPRESENTATIVE TALERICO answered that the caregiver is not necessarily denied. The situation that HB 190 would address is when a person, who has been out of state for an extended period, suddenly finds himself/herself in the position of needing to provide the care and consequently goes well beyond the accumulative period allowed - 180 days.

CO-CHAIR KREISS-TOMKINS restated the answer: AS 43.23.008(a) - the statute covering allowable absences - currently provides an exemption for someone who is sick out of state or someone who is providing care for someone who is sick. The proposed legislation would allow for "stacking of exemptions"; the time spent out of state caring for someone who is sick would not be counted in the 180 days allowed.

[4:01:58 PM](#)

REPRESENTATIVE VANCE referred to page 3, lines 9-10, of HB 190, which read "... the spouse, minor dependent, or disabled dependent of the eligible resident..." and asked about an only adult child who leaves the state to care for parents, and the absence results in an extended period. She questioned whether the sponsor considered other categories of caregivers.

REPRESENTATIVE TALERICO answered that it is his hope that HB 190 would cover the situation she presented.

REPRESENTATIVE HOPKINS asked what changes would be needed for the dividend application under HB 190.

REPRESENTATIVE TALERICO offered that the PFD Division [Department of Revenue (DOR)] would need to answer that question.

REPRESENTATIVE STORY asked whether the proposed legislation states "designated caregiver" for the extended absence exemption.

REPRESENTATIVE TALERICO replied no. He acknowledged that it is the responsibility of the legislature, not the PFD Division, to ensure clarity in statute.

[4:06:40 PM](#)

ANNE WESKE, Director, Permanent Fund Dividend (PFD) Division, Department of Revenue (DOR), in response to the question from Representative Hopkins, stated that the PFD application form would not change under HB 190; the only change would be in processing the application; and there would be no extra cost for processing applications in this manner.

REPRESENTATIVE HOPKINS asked whether the application would have additional checkboxes or whether the applicant would need to appeal a denial.

MS. WESKE responded that because the change under the proposed legislation would apply to such a small population, the division would resolve the issue at the eligibility level. She maintained that currently people explain the reason for an absence on the application; therefore, personnel know the reason for the absence already; it would just be a matter of them following the new statute.

REPRESENTATIVE HOPKINS asked whether the applicant would need to know that this exemption was available.

MS. WESKE replied that the division already accounts for a medical absence as being allowable; the other absence would be considered vacation, which the applicant is already indicating on the current application. She said currently staff see a combination of "other" [which includes business or vacation] and "health." She stated that if the "other vacation" exceeds 45 days, the applicant is denied status. Under HB 190, the application would look the same, but staff would be able to consider the applicant for a PFD if the absence is between 45 and 180 days.

[4:09:30 PM](#)

CO-CHAIR FIELDS referred to the Paul Hall [Center for Maritime Training and Education] apprenticeship program and the recent denials by the state for PFDs for participants in the program who have long received PFDs. He asked that the PFD Division give his office guidance on providing appropriate clarifying language to ensure that the program participants would no longer experience discrimination. He offered that the state enacted regulations in 2014 that conflicted with statute and should be repealed. He mentioned proposing an amendment to HB 190 to ensure that the state does not discriminate against industry-funded programs.

MS. WESKE responded that the division has provided wording to the Department of Law (DOL) to remedy that issue. She maintained that there was no regulation change in 2014; she was provided a list of names [of participants of the program] and none had ever applied for a PFD in the history of the program. She maintained that she is researching the situation. She offered to provide guidance to Representative Fields as requested.

[4:11:41 PM](#)

REPRESENTATIVE VANCE asked for an approximate number of applications that the proposed legislation would address.

MS. WESKE estimated about 100.

REPRESENTATIVE VANCE asked whether clarifying language on "designated caregiver" would be helpful to the division.

MS. WESKE answered that the division would probably need guidance from DOL on the specification of the role of the individual.

CO-CHAIR KREISS-TOMKINS referred to the allowable absence under AS 43.23.008(a)(17), which read in part:

(17) for any reason consistent with the individual's intent to remain a state resident, provided the absence or cumulative absences do not exceed

(A) 180 days in addition to any absence or cumulative absences claimed under (3) of this subsection if the individual is not claiming an absence under (1), (2), or (4) - (16) of this subsection;

CO-CHAIR KREISS-TOMKINS asked for an approximate number of Alaskans who qualify under subparagraph (A) or the net outlay of PFDs to individuals qualifying under this exemption.

MS. WESKE restated the question: How many individuals were absent from Alaska between 90 and 180 days for an "other" reason; that is, they did not qualify for any of the allowable absences [listed under AS 43.23.008(a)(1)-(16)]?

CO-CHAIR KREISS-TOMKINS clarified by saying that for someone on vacation for 89 days and in Alaska every other day of the year, the application is handled under the normal approval process.

MS. WESKE agreed.

CO-CHAIR KREISS-TOMKINS asked for the approval process when someone is on vacation from 91-179 days and in Alaska every other day of the year.

MS. WESKE replied that the PFD Division would request flight records from the applicant and check for any indicators of residency ties in the area visited. The Legislature has determined - by statute - that any length of time above 90 days is worth further scrutiny.

CO-CHAIR KREISS-TOMKINS asked for confirmation of his understanding that under this "other" category, someone could be gone from Alaska for 179 days and continue to receive a PFD if the checks don't identify any indicators of residency in another state.

MS. WESKE answered, that's correct.

CO-CHAIR KREISS-TOMKINS asked to be provided with the number of Alaskans who qualify for the exemption [under AS 43.23.008(a)(17)(A)] and the total amount dispersed through those PFDs.

[4:16:44 PM](#)

CO-CHAIR KREISS-TOMKINS also asked for the number of individuals who would qualify for the exemption under HB 190.

MS. WESKE offered to provide that information.

REPRESENTATIVE STORY asked for the number of denials in the last few years due to caregivers being out of state to care for significant others.

CO-CHAIR KREISS-TOMKINS stated that he has heard that a U.S. Coast Guard (USCG) member and his/her family, who live in Alaska and collect PFDs, could continue to collect PFDs for the duration of the service member's tenure in the USCG even after they have left the state. He asked whether that was true or urban legend.

MS. WESKE answered that it is urban legend. The family would still need to show ties to Alaska; they could have no residency ties to any other area; and they must return to Alaska within five years for 30 consecutive days and return to the state every other year for 72 hours.

CO-CHAIR FIELDS asked for any indicators of residency ties besides buying a house, having a homestead exemption, and voting.

MS. WESKE added enrollment of children in school, securing a lease, employment, and obtaining a driver's license or identification.

MS. WESKE clarified that the items she listed are how a person in Alaska could establish a tie; a job in another state does not always indicate a residency tie.

REPRESENTATIVE STORY asked for the reference for the requirements of "72 hours" and "30 days" and asked why 72 hours was chosen.

MS. WESKE agreed to provide that information.

[HB 190 was held over.]

SB 80-INITIATIVE SEVERABILITY

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CO-CHAIR KREISS-TOMKINS announced that the final order of business would be SENATE BILL NO. 80 am, "An Act relating to proposing and enacting laws by initiative; and prohibiting the state and its agencies and corporations from spending funds to influence the outcome of certain ballot propositions and questions."

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SENATOR JOSH REVAK, Alaska State Legislature, presented SB 80 by paraphrasing from his written statement, which read:

- Good Afternoon, Mr. Chair and members of the House State Affairs Committee, thank you for hearing SB 80. For the record, Sen. Josh Revak, District M in South Anchorage.
- SB 80 seeks to protect the integrity of the ballot initiative process by ensuring ballot initiative language that appears before voters at the ballot box is the same as the language circulated during the signature-gathering phase and to restore the legislature's important role in the initiative process.
- Alaska's constitution details a very important right of our residents - the right to enact legislation through the voter initiative process. The legislature also has the right to enact legislation substantially the same as the proposed initiative thus removing it from the ballot.
- Per our constitution, some issues are off-limits for ballot initiatives and initiatives can only cover one subject. But while a cursory legal review of language occurs before the Lieutenant Governor's certification, it has sometimes been the case that further review finds constitutional concerns with proposed language. In those cases, a party can file a lawsuit to force

the issue through the court system. This can happen simultaneous to the circulation of signature booklets.

- Under current law, if a court determines that language in a proposed initiative is unconstitutional and/or severed, an amended version of the language can appear before voters. This results in voters seeing a different initiative than the one they supported with their signature. Furthermore, if the courts revise/sever the language after the legislative review process, they deny the legislature its right to review the initiative as revised. The net effect of a court's severance is that an initiative can move forward to the voters that is substantially different than the initial version reviewed by the legislature.
- SB 80 restores a "check" in the checks and balances the constitutional framers envisioned for the initiative process. Voters should be assured that language on the ballot has not changed from the language in the petition booklets supported with voter signatures and further, it restores the legislature's right to review and enact substantially similar legislation to stop an initiative from moving forward.
- SB 80, amended on the Senate floor, affirms that a state entity may not be used to influence an election concerning an initiative, referendum, constitutional amendment, constitutional convention, or recall, unless the money was specifically appropriated for that purpose. However, exceptions apply to usual and customary legislative activity.
- Mr. Chair, again thank you for the opportunity to present SB 80 and I would appreciate the committees support.

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CO-CHAIR FIELDS asked for the number of initiatives in the state's history that have been severed versus the number that have not.

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KIM SKIPPER, Staff, Senator Josh Revak, Alaska State Legislature, indicated that there have been two initiatives severed.

CO-CHAIR FIELDS asked Ms. Skipper to identify the two initiatives and describe the differences in language.

MS. SKIPPER stated that the most recent initiative was Ballot Measure 1 [the Salmon Habitat Protections and Permits Initiative, 2018]. She offered to provide the committee with information on any other severed initiatives.

CO-CHAIR FIELDS asked for the substantive difference regarding Ballot Measure 1.

MS. SKIPPER offered to provide that information.

CO-CHAIR KREISS-TOMKINS asked Ms. Skipper to identify the second initiative that was severed.

MS. SKIPPER agreed to provide that information.

CO-CHAIR FIELDS asked, "Was the main policy debate ... around this issue - of whether we can have non-severability of initiatives - with severability of legislative bills, and whether that's a constitutional problem?"

MS. SKIPPER answered that there are issues surrounding the potential unconstitutionality of SB 80; however, the proposed legislation also addresses that the constitution provides the legislature the right to review [the initiative] and provides the public the right to sign a petition based on ballot language - not of a concept but of an actual bill. She maintained that when a court severs that initiative, the public is faced with something different than what they signed. She said that there is a pending advisory opinion on the constitutionality of [SB 80] based on elimination of the severability clause but added that there is a vetting process in the legislature that does not occur with the public.

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CO-CHAIR KREISS-TOMKINS asked for the chronology of events surrounding Ballot Measure 1 and stated his understanding that it consisted of: the initiative qualifying for the ballot; litigation; the Alaska Supreme Court ruling that some provisions of the initiative were unconstitutional; and the court amending

the substance of the initiative. He stated that if a component of a bill is found unconstitutional, it is severed and eliminated as opposed to changed. He asked for comment on that distinction, on the court's role, and what severability means in the context of initiatives.

SENATOR REVAK mentioned that a legal opinion may be warranted; however, supporters of the bill believe that what happened with the initiative for Ballot Measure 1 "opened the door for a bait-and-switch" type of policy surrounding initiatives. He offered that putting enticing language in a ballot initiative - maybe even unconstitutional language - to get the public to sign it, knowing that it would be struck down [by the court] simultaneously while the legislature is reviewing it, would a) take away from the legislature's ability to review the final language on a ballot initiative, and b) result in substantially different language [than signed on to in the initiative process]. He maintained that the concern is that people will use [the initiative process] as a tool against the legislature and the voters, and the proposed legislation attempts to address that concern.

CO-CHAIR KREISS-TOMKINS asked for more information on the distinction between severing or eliminating a provision of an initiative versus modifying through the court review process.

REPRESENTATIVE HOPKINS referred to page 2, line 5, of SB 80, which read, "An initiative petition may not contain a severability clause." He asked whether currently a ballot initiative has a severability clause and how the clause reads.

MS. SKIPPER responded that the severability clause tries to mimic what the legislature allows in its [bill-making] process; if a bill passes and the court deems part of the bill unconstitutional, then the court can strip that part of the bill and leave the remainder of the bill to become law. She said that the ballot initiative process allows for that same process. The concern is that when the court severs [an initiative] so that it changes dramatically from what the public saw at the onset of the petition process, the change is on the ballot and the legislature cannot rereview the initiative, because the legislature's review process is over and the court has made the change prior to the election cycle.

CO-CHAIR KREISS-TOMKINS commented that from his experience with legislative review of initiatives, the substantial similarity

between legislation passed by the legislature that might preempt a ballot initiative is extremely liberally construed.

REPRESENTATIVE VANCE asked for the number of states that allow for a citizens' initiative like Alaska's.

SENATOR REVAK offered to provide that information to the committee.

REPRESENTATIVE STORY acknowledged that the citizens' initiative is important to Alaskans. She expressed her belief that citizens are adequately informed of changes to the initiatives. She asked whether the thinking behind the proposed legislation is that the ballot measure would be so different from what is on the petition that citizens would not be informed about the changes.

SENATOR REVAK answered yes. He maintained that in recent history, the ballot measure was substantially different. He stated that there are several issues involved - legislative review and a bait-and-switch policy in which the public does not know the substantial change in the initiative. He offered his hope that through SB 80, people who draft ballot initiatives would be more vigilant regarding the initiative language; it's good for the public, for the legislature, and for the civic process.

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CO-CHAIR KREISS-TOMKINS asked for information on which of the states allowing a constitutional ballot initiative process prohibit severability clauses versus allow them.

CO-CHAIR FIELDS asked whether any of the states among those identified have analogous language saying that every initiative appearing on the ballot that is altered by the court must be substantially like what voters originally signed. He asked whether in the Senate there was discussion about "severability" versus "substantially similar."

MS. SKIPPER replied that issue did not come up in the Senate. The discussions in the Senate revolved around the legislative review process, restoring the rights of the legislature, bringing integrity back to the process, and making sure the public sees the ballot initiative as originally intended.

[SB 80 was held over.]

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ADJOURNMENT

There being no further business before the committee, the House State Affairs Standing Committee meeting was adjourned at 4:38 p.m.