

LEGAL SERVICES

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MEMORANDUM

March 21, 2015

SUBJECT: Transition to nine-member Board of Regents
(CSHB 107(); Work Order No. 29-LS0465P)

TO: Representative Lynn Gattis
Attn: Andrew Ford

FROM: Kate S. Glover *KSG*
Legislative Counsel

Enclosed is the draft committee substitute you requested reducing the number of regents on the Board of Regents for the University of Alaska to nine members. The "Transition" section of the draft takes a different approach than Mr. Ford and I discussed on the phone. Instead of allowing the governor to determine which regents to remove without cause under AS 14.40.155, the draft provides that the terms of office of all of the regents will expire in February 2016, and the governor must appoint replacements who will serve staggered terms. The draft uses this approach to provide an enforceable process for reducing the size of the board, and to minimize the extent to which the draft would encroach on the governor's, or the Board of Regents' authority.

As this office has explained in previous memos to your office, the legislature has a limited role in the appointment of members to the Board of Regents of the University of Alaska under the Constitution of the State of Alaska. Because all of the regents' terms would expire, the draft does avoid potential problems with the legislature selecting individual regents to remove from the board. It may nonetheless exceed the legislature's authority.

The extent of the governor's authority is also uncertain, however, and is a matter of some debate. An opinion from the state attorney general concludes that the governor does not have the power to remove a regent without cause.¹ In addition, AS 14.40.155 purports to limit the grounds on which the governor may suspend or remove a regent, and requires hearings prior to suspension or dismissal. The approach you requested, which would require the governor to select regents and provide for the immediate expiration of their terms, may require the governor to exceed his authority.

¹ Alaska Op. Atty Gen., File No. 663-06-0103 (Feb. 2, 2007). The attorney general's opinion cites to conflicting opinions that have been issued by this office and by the general counsel for the University.

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A third approach might be to allow the Board of Regents to select the regents whose terms will expire early. This would give the board, instead of the governor or the legislature, the discretion to choose members, and thereby avoid some of the separation of powers problem with removing regents from the board, but it would be unenforceable. If no board members volunteered to give up their terms, it would be difficult to obtain a court order requiring the board to eliminate two regents.

The approach least likely to violate separation of powers principles would be an approach similar to that reflected in the previous version of the bill (29-LS0465\N). The next two regents whose terms expire would simply not be replaced, and the governor would appoint regents who meet the residency requirements of the bill as vacancies arise. According to the website for the Board of Regents, two regents' terms will expire in 2017, and two more in 2019.

Please review the draft carefully and let me know if I can be of further assistance.

KSG:lnd
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Enclosure