

MINUTES
SENATE FINANCE COMMITTEE
April 25, 2001
9:11 AM

TAPES

SFC-01 # 85, Side A
SFC 01 # 85, Side B

CALL TO ORDER

Co-Chair Pete Kelly convened the meeting at approximately 9:11 AM.

PRESENT

Senator Dave Donley, Co-Chair
Senator Pete Kelly, Co-Chair
Senator Jerry Ward, Vice Chair
Senator Loren Leman
Senator Gary Wilken
Senator Alan Austerman
Senator Lyman Hoffman
Senator Donald Olson
Senator Lydia Green

Also Attending: JOHN BITNEY, Legislative Liaison, Alaska Housing Finance Corporation, Department of Revenue; PAUL ROETMAN, staff to Senator Leman; DEBBIE OSSIANDER, Legislative Chair and Member, Anchorage School Board; ALISON ELGEE, Deputy Commissioner, Department of Administration; BRUCE JOHNSON, Deputy Commissioner of Education, Department of Education and Early Development; CHRIS CHRISTENSEN, Deputy Administrative Director, Alaska Court System; ROBERT STORER, Executive Director, Alaska Permanent Fund Corporation, Department of Revenue; RON LORENSON, outside counsel for the Alaska Permanent Fund Corporation

Attending via Teleconference: From Oklahoma: MELISSA HILL, Alaska Teacher Placement Program; From Anchorage: JOHN KELSEY, former trustee, Alaska Permanent Fund Corporation

SUMMARY INFORMATION

SB 181-SMALL COMMUNITY HOUSING LOANS

The Committee heard from the Alaska Housing Finance Corporation and

a committee substitute was adopted. The bill was held in Committee.

SB 149-TEACHER INCENTIVES

The Committee heard from the sponsor, the Department of Administration, the Department of Education and Early Development and representatives from school districts. The bill moved from Committee.

SB 161-NO PAY FOR JUDGES UNTIL DECISION

The Committee heard from the sponsor and the Alaska Court System. The bill was held in Committee.

SB 92-REMOVAL OF MEMBERS OF THE PF BOARD

The Committee heard from the Alaska Permanent Fund Corporation, the Corporation's legal counsel and a former board member. The bill was held in Committee.

HB 149-PRIVATE PRISON IN KENAI

This bill was scheduled but not heard.

#SB181

SENATE BILL NO. 181

"An Act making the interest rate for the Alaska Housing Finance Corporation's small community housing mortgage loans the same as the interest rate on mortgage loans purchased under the corporation's special mortgage loan purchase program from the proceeds of the most recent applicable issue of taxable bonds before the origination or purchase of the small community housing mortgage loans."

This was the second hearing for this bill in the Senate Finance Committee.

Co-Chair Donley indicated he had a proposed committee substitute to distribute to Committee members for consideration.

AT EASE 9:10 AM / 9:17 AM

Co-Chair Donley moved for adoption of CS SB 181, 22-LS0488/S as a working draft and explained the changes. He noted the original version of the bill eliminates the one-percent subsidy within the Housing Assistance Loan Fund (HALF) program. The committee

substitute, he stated, retains this subsidy for the first \$100,000 value of a residential purchase and would limit availability to only those communities with an average cost of living equal to, or greater than, 125 percent of the statewide average.

Senator Hoffman objected and shared he had a conversation with representatives from the Alaska Housing Finance Corporation (AHFC) where he learned that limiting availability of the subsidy to any amount less than \$200,000 would jeopardize the dividend provided to the state treasury. He commented that this limitation would also "cripple the housing program in many rural areas of the state." stressed the existing allowances are necessary to ensure the continuation of the program's ability to offer lower interest rates. He requested a representative of the Corporation address the benefits of the program.

Co-Chair Kelly announced public testimony had been heard during the bill's previous hearing and was concluded.

Co-Chair Donley added that his intent is to only adopt the committee substitute at this meeting and hold the bill for future review. He invited written comments on the committee substitute.

Co-Chair Kelly asked what, if any impact the proposals in the committee substitute would have on the annual AHFC dividend to the State of Alaska.

JOHN BITNEY, Legislative Liaison, Alaska Housing Finance Corporation, Department of Revenue testified that he saw the committee substitute as "legislation that would limit use of the program."

Co-Chair Donley clarified the \$100,000 limitation only applies to the first \$100,000 of a home loan. A loan over that amount could still be obtained, with the portion above the limit accrued at the regular interest rate, he stressed.

Senator Austerman commented that public testimony should be allowed on the changes in the committee substitute.

Mr. Bitney stated he understood the language to imply that the corporation may not use money to subsidize any amount that exceeds \$100,000. He pointed out this does not change other statutes governing the calculation procedure determining the one-percent reduction below the normal rate. Therefore, he advised, language reconciliation may be necessary to overcome the conflict.

Mr. Bitney continued, noting the committee substitute also limits

the corporation from issuing loans under this program only to those areas with a higher cost of living. This, he emphasized, changes the program itself and would probably limit the loan activity to the extent that AHFC would earn less money and subsequently the dividend would be smaller. He qualified that because the committee substitute was just released, he had been unable to research the matter fully.

Co-Chair Kelly requested an analysis from the corporation and that the witness work with Co-Chair Donley and Senator Hoffman to determine the best way to carry out the intent of the legislation without drastically reducing dividend payments.

Co-Chair Donley recalled Senator Hoffman's earlier comments that the existing interest rate subsidy program is parallel to the first time homebuyers program. Co-Chair Donley understood there is a limit to the amount that could be borrowed under the first time homebuyers program and asked if this were correct.

Mr. Bitney affirmed and stated the acquisition limit for the price of a home in Anchorage is \$179,000, and for areas outside of Anchorage the limit is \$160,000.

Co-Chair Donley asked if first time homebuyers program is available statewide.

Mr. Bitney answered it is, but pointed out that the real estate market in many areas is such that the first time homebuyers program could not be utilized because home prices are higher than the maximum allowed.

Co-Chair Donley stated that while the HALF program has no financial needs criteria, the first time homebuyer program does have limitations if the borrower has significant assets.

Mr. Bitney confirmed that as well as an acquisition limit; the first time homebuyers program is for low to moderate-income borrowers.

Co-Chair Donley asked if in light of these factors, the first time homebuyers program really is comparable to the HALF program.

Mr. Bitney responded that the comparison is shown through the historical use of the program. He informed that 85 percent of loans issued under the HALF program have been made to borrowers earning less than \$100,000 annually. He stated the average income of borrowers under the HALF program is less than that of the urban borrowers of the tax exemption program. While he admitted there are

exemptions to the norm, such as with the \$400,000 loan granted under the HALF program, he stressed that the program is used primarily by borrowers with similar incomes and for the purchase of similar homes as the borrowers under the tax exemption program.

Co-Chair Kelly again asked how the provisions in the committee substitute would impact the AHFC dividend.

Co-Chair Donley stated he wanted an analysis of the financial ramifications of the committee substitute from AHFC.

Senator Hoffman withdrew his objection and the committee substitute was ADOPTED.

Co-Chair Kelly ordered the bill HELD in Committee.

#SB 149

SPONSOR SUBSTITUTE FOR SENATE BILL NO. 149

"An Act relating to employment incentives for teachers and health care providers, to reemployment of retired teachers, to loans to and loan forgiveness for teachers and health care providers, to awards to teachers, to eligibility for major medical insurance coverage for beneficiaries of the teachers' retirement system, and to teacher certificates; and providing for an effective date."

This was the first hearing for this bill in the Senate Finance Committee.

Senator Leman presented the legislation relating to a topic discussed by the Committee about finding incentives to improve the opportunity for hiring and rehiring teachers held at an earlier meeting. He noted when he first introduced this bill it included health care providers. However, he said it was decided in the Senate Health, Education and Social Services Committee to limit the scope to teachers, as well as deleting language that produced high fiscal notes.

Senator Leman stressed the need for proactive measures required to obtain teachers.

AT EASE 9:30 AM / 9:32 AM

Senator Leman continued with his presentation noting that the bill now targets three items.

PAUL ROETMAN, staff to Senator Leman detailed the three primary

elements of the committee substitute. He listed the first as the recognition of credentials for out of state teachers, the second as an incentive for employment of retired teachers through an election option, and the third as improvement of medical coverage for current teachers.

Mr. Roetman addressed incentives for out of state teachers as shown in Sections 1 and 2 of the committee substitute. He stated this streamlines the process by offering an Alaskan preliminary teaching certificate to an applicant with a valid teaching credential from any state, as well as clearance through a criminal background check. He noted that the preliminary teaching certificate holder would have to pass the existing competency exam within one year and complete Alaska studies within three years of receiving the certificate. He said these preliminary certificates could be issued for special education and other specialties as well. He remarked this procedure would make it easier for teachers to move to Alaska and quickly gain employment. He informed that a teacher, while employed under the preliminary teaching certificate, does not qualify for tenure.

Mr. Roetman next spoke to the impact of the legislation on reemployment of retired teachers as described in Sections 3, 4 and 6. He explained the stipulations under which a school could declare a teacher shortage and subsequently hire a retired employee covered by the Teachers Retirement System (TRS). He detailed that a retired TRS employee could elect to continuation of retirement benefits upon re-employment as a teacher. He noted additional retirement benefits would not accrue and that the employee would receive only a salary. He qualified this re-employment option is not available for teachers, administrators or principals who retired under the Retired Incentive Plan (RIP) early retirement program. He also pointed out tenure could not be accrued by participants.

Mr. Roetman stated that an annual report to the legislature is required under this legislation to allow monitoring of the impact of the re-employment of retired teachers on the retirement program itself. In addition, he noted, the retirement portion of the legislation has a three-year sunset clause in the event the teacher shortage situation changes.

Mr. Roetman listed the third element of the legislation, which increases medical benefits to 100 percent coverage for a teacher who worked 25 years rather than 20 years. He stated current law provides for medical benefits on an age-determined basis only; a TRS member must be 65 years of age or older to begin receiving coverage. He commented the intent of this portion of the legislation is to increase retention of teachers by providing

additional medical benefits available at an earlier age.

Senator Hoffman asked if there are incentives for part-time teachers to help cover the teacher shortages.

Mr. Roetman replied the incentives are for full time employment only.

Senator Green asked the same question and Mr. Roetman affirmed his answer.

AT EASE 9:37 AM / 9:39 AM

Mr. Roetman corrected his earlier testimony and stated the retirement re-employment incentive extends to retirees who accept part time teaching employment as well as full time employment.

MELISSA HILL, Alaska Teacher Placement Program, testified via teleconference from Oklahoma, that the Program is "on the front lines of recruiting". She told how the Program works with the 53 school districts in the state as well as teachers seeking information regarding employment in Alaska. Therefore, she surmised, the Program has a unique perspective on the teacher shortage both instate and nationally.

Ms. Hill listed several facts as follows.

Over the previous five years, there has been a decline nationally of students pursuing careers in education.

Many states, upon realizing this, began proactive approaches and raised teacher salaries.

Those states that did not take these measures and are now in a reactive phase, have adopted measures that include, but are not limited to, hiring incentives - some as high as \$10,000, housing allowances, loan forgiveness programs and alternative certification procedures.

Ms. Hill encouraged the Committee to consider all three components of this legislation, asserting they are only a small effort compared to other states' activities.

Ms. Hill remarked the preliminary certification of out of state teachers is the program's highest priority, and would assist in the certification process for both school districts and educators.

Ms. Hill expressed that the employment of retired teachers "brings

experience and mentors into the classroom."

Ms. Hill stated the increase in medical benefits is "just a small component" compared to the efforts of other states. She stressed that any incentives would be helpful.

Ms. Hill told the Committee she was attending a job fair in Oklahoma with representatives from 11 Alaska School Districts. She said that the districts in urban areas, such as Anchorage and the Kenai Peninsula are conducting some interviews. However, she said the rural school districts were having a difficult time recruiting for the up to 30 vacant positions in their districts. She warned that the teacher shortage would get worse before it improves and stressed the need to certify and hire qualified teachers in Alaska. To not do so, she cautioned, would not give "justice to Alaskan children."

DEBBIE OSSIANDER, Legislative Chair and Member, Anchorage School Board testified in Juneau in support of the legislation. She spoke of "acute shortage areas" within the Anchorage School District (ASD) that extended beyond teachers to special education and related services, librarians, foreign language teacher experts, math and science teachers and music specialists. She stated that the district has had to contract with private firms, at a higher cost, to provide some special education services.

Ms. Ossiander told of requests to the Department of Education and Early Development for flexibility in accepting out of state teaching certificates for provisional certification in Alaska.

Ms. Ossiander stated the problems associated with the current process of issuing the waivers for special education teachers.

Ms. Ossiander expressed the high priority the ASD Board has placed on establishing a system to re-employ retired TRS teachers. She informed of the high standards required to obtain an Alaska teaching certificate and because of this, the length of time involved in meeting the requirements.

Ms. Ossiander said the increased medical benefits opportunity would provide an incentive the ASD could offer retired teachers to return to work.

Co-Chair Kelly asked Ms. Ossiander's professional credentials.

Ms. Ossiander replied she is a certified respiratory therapist who has become "a quasi education specialist" over her ten-year involvement with the school board.

Co-Chair Kelly referenced SB 86, regarding alternative certification and recalled previous Committee discussions about the fear that communities would opt for retired teachers over alternative certification of professionals in other fields entering teaching with a preliminary teachers certificate.

Co-Chair Kelly gave Senator Leman as an example of a Stanford University educated engineer, with 14 years experience in the legislature "explaining things to people" and who is willing to teach. Co-Chair Kelly wanted to know if a recently educated certified teacher would get preference.

Ms. Ossiander expressed she supported SB 86, giving an example of foreign language immersion programs and the opportunity to have certificated teachers fluent in such languages. She requested school districts be given flexibility to obtain and certify available specialists. She predicted the districts would find highly qualified professionals in their field to offer higher-level education of math, music and other subjects.

Co-Chair Kelly appreciated Ms. Ossiander was not a professional educator, citing the need for community member involvement. He commented that retired teachers were easy to rehire but that school districts should also think about hiring professionals with expertise in their field. He stated that SB 86 is an attempt to "think outside of the box" and SB 149 offers a "more utilitarian answer to a pressing problem" that still allows for alternative solutions to the teacher shortage.

Ms. Ossiander qualified she is not directly involved in individual hiring decisions, but said she would convey to the other board members the importance of having a teacher in the classroom who is "extremely capable and qualified in the subject that they're teaching."

Senator Hoffman assessed this legislation as helpful in solving a short-term problem. However, he cited lowered attendance at teacher job fairs since 1997 and asked the witness for suggestions in addressing the long-term problem.

Ms. Ossiander replied, "I think that there is no one simple answer," as evident by the different legislation pertaining to the issue. She expressed she is encouraged by the increased per pupil allocation in the foundation funding formula as it would allow the district to hire and maintain qualified teachers.

AT EASE 9:54 AM / 9:59 AM

Senator Green recalled concerns about the rehire of a state employee, including a legislator, and the possible complications associated with participation in another retirement package.

ALISON ELGEE, Deputy Commissioner, Department of Administration explained that currently a retired Public Employees Retirement System (PERS) member who takes a job as a teacher, or a retired TRS member who takes a job in a PERS position, would not have to suspend receipt of retirement benefits since that employee is entering different retirement plan. However she noted the certification requirements necessary to obtain a teaching position.

Ms. Elgee suggested if the intent is to allow a retired PERS member to become a teacher, clarification language should be inserted in the legislation to stipulate whether that employee, with a preliminary certification, is to be covered by TRS or continue to be eligible to receive PERS retirement payments. She noted that a public employee must be covered under a benefit plan and recommended PERS as a default in these instances.

Co-Chair Kelly asked if at the point the teacher becomes fully certified, the employee is then covered under TRS.

Ms. Elgee affirmed TRS is the appropriate system for a teacher who has fulfilled all requirements for becoming fully certified.

Senator Green shared a conversation she overheard about the desire to hire retired PERS members as teachers at the University of Alaska. She asked what system the university participates in.

Ms. Elgee listed classified staff as PERS members and certified staff as TRS members. She noted there is also an optional retirement plan available to teachers.

Co-Chair Kelly understood the Department of Education and Early Development might have contradictory information on the subject.

BRUCE JOHNSON, Deputy Commissioner of Education, Department of Education and Early Development stated a determination made during the creation of SB 36, from the Twentieth Alaska State Legislature, specified that a "subject matter specialist" would have a teacher certificate. He cited language from that legislation, "A person employed as a subject matter expert teacher ... is considered a certificate employee" for purposes of TRS.

Senator Green assured she was not attempting to "muddy the waters" on either SB 86 or SB 149, but pointed out this was a problem

presented and that the manner of transferring from PERS to TRS, for both school districts and the university, should be clarified. She assumed there were provisions allowing a retired PERS or TRS member to instruct at the University of Alaska on a part time basis.

Ms. Elgee affirmed a public employee could work in a separate field, as long as the new position is eligible to participate in a retirement system different than the one the employee retired from.

Senator Hoffman asked if the employee would have to "start all over" to become vested in the new retirement program.

Ms. Elgee answered that is correct and noted the vesting requirement for TRS is eight years.

Mr. Johnson testified the "department has been excited about the concepts" presented, and judges SB 149 to be good legislation that would provide "additional tools" to ensure the most qualified individuals are employed as teachers in Alaska. He reaffirmed the situation is acute, that job fairs are attracting fewer applicants and that Alaskans could be recruited as teachers.

Mr. Johnson added the department's support for the acceptance of teacher certificates from other states for preliminary certification. He expressed, "That makes good sense and eliminates tremendous barriers that we've had up to this point in time."

Mr. Johnson noted the Alaska State Board of Education had recently adopted preliminary certification regulations similar to the intent of the bill.

Senator Green asked if an employee retired under PERS, who becomes a teacher, could elect to not participate in TERS. She predicted this could save the school districts money.

Ms. Elgee responded that currently a full time employee does not have the election to not participate in the applicable retirement system. She noted that the re-hire provisions in the bill for retired TRS members do give the option to not participate, but that retired PERS members would be required to participate in the TRS program.

Co-Chair Kelly pointed out that by requiring these teachers to participate, they are actually contributing to the retirement fund. He stated this is a long-term advantage of the fund.

Senator Lemman offered a motion to move SS SB 149 from Committee with accompanying Department of Education and Early Development

zero fiscal note and fiscal note from the Department of Administration for \$50,000.

SFC 01 # 85, Side B 10:13 AM

There was no objection and the bill MOVED from Committee.

#SB161

CS FOR SENATE BILL NO. 161(JUD)

"An Act relating to the withholding of salary of justices, judges, and magistrates; relating to prompt decisions by justices, judges, and magistrates; and relating to judicial retention elections for judicial officers; and providing for an effective date."

This was the first hearing for this bill in the Senate Finance Committee.

Co-Chair Donley testified this bill amends the current timeframe guidelines governing when the judicial branch must issue decisions in court cases. He detailed statute in place since statehood that requires judges and justices to produce a proposed decision within six months of the last argument on a case. He noted that there is no time requirement for rendering a final decision and as a result, several cases have been pending for over two years and one case for over three years.

Co-Chair Donley asserted, "justice delayed is justice denied" and that two years is too long for Alaskans to wait for a decision from the Supreme Court.

Co-Chair Donley explained this legislation would add another "six-month tier" to the existing system to hold multi-judge courts accountable for issuing "reasonable decisions within a reasonable amount of time." He noted an additional two months would be allowed in times when a justice vacates the panel and a new justice is appointed. He stated citizens could therefore expect a decision within one year, or 14 months if there was a change in panel membership, after the completion of all arguments and pleadings in a case. He surmised this is more than an adequate amount of time.

Co-Chair Donley shared that the position of the judiciary branch is that the existing law is unconstitutional. The reason, he said, is because it is improper for the legislature to set such deadlines.

However, he stressed this law was established at statehood and has been followed since that time, which sets a precedence.

Co-Chair Donley also noted Section 1 of the legislation adds to the existing law that provides the content of the Official Election Pamphlet (OEP). He shared that the current procedure designates a page in the OEP detailing various information about each judge up for retention confirmation. He stated this legislation requires the voter's guide to also include information as to whether or not a judge has complied with the timeframe requirements as specified in this legislation.

Co-Chair Donley explained the process of having a judge complete a salary warrant each pay period indicating whether the judge is in compliance with that law. He stated that if the judge is not in compliance, the salary is withheld. He noted there are currently some judges that are not getting paid under the existing statute. He surmised the public should have knowledge of this when deciding whether to retain a judge.

Senator Olson pointed out it actually takes longer than six months to appoint and confirm a new judge. Therefore he surmised the additional two months for multi-paneled courts would be inadequate. He asked how the deadline would be justified when there is an even number of Supreme Court justices seated.

Co-Chair Donley responded it would be an issue only if there were a significant period of time a seat was vacant. He stated new justices are appointed "fairly promptly". Regardless of this, he pointed out, the court can issue decisions with only four members seated. He continued that in this instance, there would only be a problem if the court deadlocked in a 2-2 vote. He posed a scenario of a court that took the entire six months allowed to issue a preliminary ruling and after six more months passed a member left the bench without a final ruling issued and the remaining four justices were tied in their opinion. He surmised the statistical probability of this worst possible scenario was small. He stated if this were a concern, he would support adding another month on the extension, giving the court a possible nine months in which to render a decision if one member left the bench during consideration.

Co-Chair Kelly noted that current law already applies to these situations.

Co-Chair Kelly asked the length of time it could take for a court to render a final decision if there were a vacancy during the consideration.

Co-Chair Donley replied the governor could appoint a new justice within a month, leaving one month for the new court to make a decision.

Senator Ward noted that candidates for public office are given an opportunity in the voter's pamphlet to explain, "something we've done or not done". He asked if judges up for retention have the same option and could therefore explain why their salary was withheld.

Co-Chair Kelly replied that the judges do make statements printed in the voter's guide.

Co-Chair Kelly referred to Co-Chair Donley's statement that the courts consider the existing law unconstitutional and asked for an elaboration.

Co-Chair Donley explained that the administrator of the court system, not speaking for the Supreme Court, has taken the position that the existing law is a violation of the separation of powers. He noted that neither the Supreme Court nor the Attorney General have issued opinions on the matter.

Co-Chair Kelly asked how many other states have similar laws.

Co-Chair Donley was unsure, but stated that at least two courts in jurisdictions outside Alaska found similar laws to be infringements of the separation of powers. He stated other courts have upheld statutes withholding legislators' salaries in the case of a failure to produce a budget within a specified time period. He noted the inconsistencies between a court ruling in favor of withholding legislators' salaries, but ruling as unconstitutional, the withholding of judges' salaries.

Co-Chair Kelly commented in defense of Alaska's court system, informing there is no choice as to which cases are accepted. He stated that the caseload is therefore higher in Alaska than in other states.

Co-Chair Donley responded this is one of the arguments raised by the court administrator.

CHRIS CHRISTENSEN, Deputy Administrative Director, Alaska Court System, testified the purpose of this legislation is to encourage timeliness and eliminate unnecessary delays in decision-making and minimize delays. He assured that the Chief Justice and other members of the Supreme Court share this concern and have been

taking "major steps" in the last few years to address timeliness issues.

Mr. Christensen detailed that in the previous year, the Supreme Court adopted very detailed time standards for trial courts. He defined a time standard as a quantifiable goal for the delivery of court services and noted that different time standards are adopted for different types of cases. He pointed out the Alaska Court System computer system is antiquated, but the intent is to start issuing quarterly reports to the legislature later in the year on the achievement of these time standards.

Mr. Christensen also noted that the previous October federal funds were used to train all judges on case management techniques. In addition, he said, the judicial branch established a mentoring program so the judges who are particularly efficient in managing their caseloads could advise those who are not and those who are new to the bench.

Mr. Christensen reminded the Committee the Chief Justice announced during her State of the Judiciary speech, that the Supreme Court is also committed to shortening times for appellate cases. He shared that approximately two weeks before this bill was introduced, the Supreme Court did adopt time standards for appellate court cases and new procedures for flagging and monitoring cases that are being delayed so that individual cases don't languish.

Mr. Christensen emphasized this is very unusual and that while it was common in other states for the Supreme Court to adopt time standards for the trial courts, it is "almost unheard of" for the Supreme Court to adopt time standards for its own operations.

Mr. Christensen summarized that timeliness is an issue requiring attention and that the Alaska Court System has been actively taking steps to address it. He expressed, "We're optimistic that we'll see continued improvements. That being said, the court system does strongly oppose SB 161."

Mr. Christensen stated that because the Supreme Court and the Court of Appeals are actually committees, the six-month rule operates differently for them. He explained how a judge or justice seated on one of these courts is assigned to the task of authoring the majority decision and has six months to do so. However, he stressed, the opinion itself is subject to negotiation and revision by the other majority members and is subject to having a dissent written, all of which may take additional time.

Mr. Christensen told how this law dates to 1959, and that every two

weeks since statehood, every judicial officer in the state, from the Supreme Court down to the magistrates, has to sign an affidavit before they get a paycheck. He pointed out there are over 20,000 state employees that all have jobs to do and that this is the only group of state employees who have paychecks withheld if they could not certify they are not behind on their work.

Mr. Christensen affirmed that as Senator Donley pointed out, the court administration view is that the existing law is unconstitutional and would not survive legal challenge. Mr. Christensen asserted it has been followed for 40 years, not because it is constitutional but simply as a matter of respect for the reasonable wishes of a coordinate branch of government. He stated the legislature is the funding authority and that the legislature has expressed a desire that cases are resolved within six months and also that the legislature historically has provided a level of funding through the judiciary branch to handle these cases in that timeframe. Therefore, he concluded, it would be unreasonable to not respect those wishes.

Mr. Christensen detailed that in the previous fiscal year there were approximately 150,000 new cases filed in the court system. That same year, he informed, about 150,000 old cases were disposed, which he commented is a lot of cases. Mr. Christensen continued that during the previous year there were 25 occasions in which an individual judge or justice could not sign the pay affidavit and subsequently had a paycheck withheld. He surmised that 25 delays out of 150,000 cases, under the performance measure established by the legislature, is a fairly good record. He predicted the average time period would still be reduced with the implementation of the new time standards.

Mr. Christensen explained the current law would not survive a legal challenge is based on events in other states. He estimated there are six states that take a judge's paycheck if assigned work is not completed within a certain amount of time. He added that such laws have been challenged not by the court system, but by individual judges, in three states: Nevada, Montana and Wisconsin. Each time, he stated, the law was thrown out for reasons directly applicable to the Alaska Constitution, which he described as follows.

Mr. Christensen elaborated the first issue that, Alaska's Constitution, the constitutions of the three aforementioned states, and most other state constitutions, provide that a judge's compensation shall not be diminished during the term of office except by a general law applied to all state employees. He remarked, "Money has a time value. When you take away a judge's paycheck for a period of time that has the effect of diminishing

it." He cited the record set 20 years ago by an Anchorage judge, who was carrying an active caseload of 800 cases, and because of one divorce case involving a court employee, that judge had a paycheck withheld for over four months. Mr. Christensen asserted, "It's difficult to argue that holding somebody's paycheck for more than four months is not a diminishment as prohibited by the constitution."

Mr. Christensen next detailed how, under our state constitution, the Supreme Court and not the legislature is charged with administering the judicial branch. He commented the six-month rule, as currently in effect is, "a form of micro-management that goes to the very heart of the Supreme Court's authority to administer our branch. It applies to the work of every judge, every day in every case."

Mr. Christensen told the Committee there are a number of court cases from other states in which the courts have considered the general question of whether the legislature could set timelines for the courts to do their work. He noted these are cases in which the legislature sets timelines but that they do not involve the withholding of a judge's paycheck. He stated the majority is "overwhelming, about 15 to one," that setting timelines for the judiciary is a "violation of fundamental separation of powers doctrine." He explained there is a rule of constitutional law that one branch can't set a timeline for another branch to carry out a constitutional function. Deciding cases, he informed, is a constitutional power of the courts not a statutory power. He noted this rule is generally invoked to protect legislative and executive branches from timelines set in court cases although "rules like this work both ways."

Mr. Christensen clarified that notwithstanding the court administration's longstanding belief that the existing law is unconstitutional, the court system as an institution, has never complained to the legislature. He noted that he does receive complaints occasionally from individual judges but, "our answer has always been the same: if you don't like the law, then file a suit. Otherwise comply with it."

Mr. Christensen asserted SB 161 is too far reaching and is likely to result in a challenge to the underlying six-month rule. He surmised that given the case law in other states, the rule would be struck down. He shared that as an administrator, he supports the six-month rule as it currently pertains to the trial courts, but does not support the expansion to apply to the Supreme Court and the Court of Appeals. He explained how if the assigned justice fails to present a majority decision within six months and the full

court is unable to release a final decision within the 12 months allocated in the bill, all members of that court lose their paycheck. In essence, he stated, an individual judge or justice could be performing duties in a timely manner yet have a paycheck withheld if a colleague has taken too long. He stressed that there are "serious constitutional problems" involving both the equal protection clause and the impairment of contract clause, which relates to taking one state employee's paycheck because a different state employee has not done their work on time.

Mr. Christensen stated, "Constitutional issues aside, this is an issue of fundamental fairness. The bill proposes to take a paycheck from someone because of circumstances beyond their control. A person could be performing the duties of the office diligently and efficiently and in a timely manner and still be deprived of a paycheck because of something someone else didn't do." He relayed an instance where a justice was hospitalized and the progression of cases was delayed as a result.

Mr. Christensen surmised the question ultimately is what harm this bill is trying to prevent. Currently, he reported, there are 465 cases in front of the Supreme Court of different types and in various stages of completion. Of this amount, he disclosed, 20 cases are more than one year old, which he calculated as less than five percent. He assured he did not want to make excuses and that the Chief Justice agrees that 20 overdue cases is too many.

Mr. Christensen stressed there is a reason the court does not always resolve cases as quickly as desired. He stressed that, unlike most Supreme Courts, the Alaska Supreme Court is not a Certiorari (cert) court with regards to the civil caseload. He defined cert court as having discretion as to reject cases, and thus control the caseload. In contrast, he explained, the Alaska Supreme Court must hear and decide every civil case that is appealed to it, regardless of the merits of the case and regardless of the significance of the issues to the public at large.

Mr. Christensen gave comparisons of the caseloads of several cert courts to the Alaska Supreme Court. He stated the US Supreme Court is a cert court with nine justices to share the workload of issuing 86 written opinions in the previous year. He noted this is the number of cases the US Supreme Court determined it could decide in the time period. He then pointed out three states close to Alaska: also have cert courts. He listed the California Supreme Court, with seven justices, issued written opinions in 88 cases during 1999. He pointed out this is an average of 13 opinions per justice. He continued with the Oregon Supreme Court noting the seven justices issued 98 opinions during the same time period at 14 per justice,

and the Washington Supreme Court with nine judges, issued opinions on 148 cases at 16 per justice. In contrast, he informed that the Alaska Supreme Court with only five members issued written opinions on 153 cases, at an average of 31 per justice, which he stressed is twice the number of written opinions issued by the other courts in that are able to control the workload.

Mr. Christensen asserted that in order to guarantee that all cases leave the Alaska Supreme Court within 12 months, the court would need to change to a cert court, as has been done in the aforementioned states. He explained the process of creating a new intermediary court of civil appeals, as has been done in the other three states. He pointed out the legislature established such a court about 20 years ago to address criminal cases because the state Supreme Court caseload became too great.

Mr. Christensen noted the Alaska Court System fiscal note for this bill reflects the cost establishing an intermediary court. He qualified that the legislation has an effective date of 2004 so this court would not need to be created immediately. He surmised it is unlikely the legislature would expend the money to establish a new appeals court to speed up the Supreme Court's caseload when only less than five percent of that caseload is over one year old.

Mr. Christensen shared that the 20 cases open after one year typically exist because they are more complex, involve more issues and are more likely to have a split decision, which he stated require dissenting opinions to be written after the majority opinion is issued. At that time, he continued, the majority opinion is rewritten to include a response to the dissenting opinion.

Mr. Christensen added that some overdue cases exist because of a turnover in the court. He pointed out that three seats on the Alaska Supreme Court turned over in the last five years and that unlike trial courts, the existing caseload is not reassigned to other courts while a seat is vacant or a justice has an illness. He stressed that this legislation would not eliminate these problems. He asserted, despite the court's best efforts and despite its success in getting the average case resolved in less time, there would always be a few cases that take longer than a year.

Mr. Christensen remarked if SB 161 were in statute in fiscal year 2000, no member of the court would have received a paycheck for the entire year in spite of the number of written opinions issued at twice the rate of other states. He asserted if the bill became law today, all members of the Supreme Court would lose their paycheck immediately.

Mr. Christensen opined the matter is made worse with the inclusion of Sections 3 and 5 of the legislation, which changes the way in which the six-month rule is calculated. He detailed that currently when a case goes before the Supreme Court or the Court of Appeals, the parties have the option of requesting an oral argument. He described that currently when the court hears an oral argument, a conference is held immediately following the arguments, a vote is taken and the opinion is assigned, whereby the six-month timeframe begins. If no oral argument is requested, he continued the opinion is assigned at the point and time when an oral argument would have occurred. He stated this means all parties are treated equally, whether or not an oral argument is presented. Under the bill if no oral argument is requested the six-month rule begins immediately, which results in the loss of two of the allocated six months.

Mr. Christensen noted there are technical problems with the bill, but stated he would not address these specifically because fixing them would not make the existing law constitutional and would not resolve the constitutional problems with the bill itself.

Mr. Christensen reiterated the bill is not constitutional and that this has not been refuted in two hearings of the Senate Judiciary Committee nor has the Division of Legislative Legal and Research Services issued an opinion to the contrary.

Mr. Christensen continued that in addition of the unconstitutionality of the legislation, the bill makes statutory changes that "are simply unfair," by punishing people who have completed their work. He hoped these two facts would be enough to give the Committee pause. If not, he requested the Committee perform a risk analysis. He shared that as a court administrator who does not want to lose the existing six-month rule, he has done a risk analysis and found that if this bill were to become law and survived challenge, the only achievement would be 20 cases resolved more quickly. He warned if the bill became law and was struck down under challenge, the existing six-month rule for all courts would be lost. He surmised that with the removal of the six-month rule, "human nature" would dictate that the progression of the annual 150,000 trial court cases would slow considerably.

Mr. Christensen concluded by stating, "I've done the math and quite frankly, SB 161 scares me."

Co-Chair Donley asked what would be the position of the court administration if the legislature adopted state policy that appellate courts should produce their opinions within one year. He pointed out this policy could be violated by the courts, but would serve as a guideline.

Mr. Christensen responded legislatures set many statutory policies for the courts that establish specific timelines for individual types of cases. He noted that many of these laws have been overturned in other states and that no challenge has been brought for the Alaska statutes. He deemed SB 161 as setting policy, although the courts have followed legislative policy for several years.

Co-Chair Donley restated his suggestion adding the statute would stipulate guidelines but that salary would not be withheld as a penalty. He explained this would set a goal for the courts to achieve and provide notification in the voter's guide if the guidelines are not followed.

Mr. Christensen replied the legislature has authority to set such policy and that as the funding authority it is reasonable make expressions of policy to the Alaska Court System. He commented that when the legislature expresses a policy and provides adequate funding so the courts could meet the guidelines, he expected the courts to "make a sincere effort" to follow them.

Co-Chair Donley requested the court administration's position on Section 1 of the bill regarding publication of a judge's compliance with the guidelines in the voter's pamphlet.

Mr. Christensen responded there are two types of information the bill instructs the courts to provide, how many times a judge has had a paycheck withheld info on how many times judge has paycheck withheld and a breakdown of the amount of time each judge has taken to render a decision in each case. He detailed the salary information is already compiled and available upon request and that the legislature could require it to be printed in the OEP. He noted however, the Department of Administration has advised that release of this information violates the state personnel laws, although the court administration disagrees. He addressed the breakdown requirement emphasizing the court's current computer system could not accommodate this task. He noted the new system could "conceivably" accomplish this once it is online, which would be in three years. He informed that judges "get dozens and dozens of orders across their desk every day and most of them are no-brainers that you sign a minute after you've read it." He was unsure whether this collection of information would be of any value since most items are completed within the first four-month breakdown.

Co-Chair Donley suggested holding the bill in Committee and working with the court system regarding adopting a state policy providing that citizens are entitled to a decision within one year and

inclusion of each judge's success on this in the voter's guide. He noted judges would have an opportunity to offer a response and explanation in the voter guide individual statements. He also wanted to clarify the Department of Administration no longer denies the public and the judicial counsel access to this information, which he stressed is part of the judge's constitutional responsibility. He also wanted to address Section 2, part 2 of the bill and possibly remove it.

Co-Chair Kelly ordered the bill HELD in Committee.

#SB92

SENATE BILL NO. 92

"An Act relating to removal of members of the board of trustees of the Alaska Permanent Fund Corporation; and providing for an effective date."

This was the first hearing for this bill in the Senate Finance Committee.

ROBERT STORER, Executive Director, Alaska Permanent Fund Corporation, Department of Revenue, outlined the two commissioner and four members of the public, make-up of the board. He noted the public members serve staggered four-year terms. He stated the legislation provides removal for just cause language consistent with 19 other State of Alaska boards and commissions, including the Pensions and Investment Board, which is charged with managing the assets of the state's retirement system.

Mr. Storer told the Committee he has been involved in managing institution funds for over 20 years, and has seen how managing funds has become increasingly sophisticated, thus requiring time for board member's to "get up to speed." This legislation, he stated, would ensure continuity in fund management and allow institutional memory to be passed along from outgoing board members.

Senator Wilken recalled that the legislature attempted to pass similar legislation approximately five years ago, but the governor vetoed it. He asked what was different about this bill that the governor would support.

Mr. Storer affirmed Governor Knowles vetoed the same language in a different bill, early in his administration. Mr. Storer stated that the governor has indicated he now supports this provision after speaking to former trustees and giving the matter consideration.

Senator Ward requested a copy of governor's veto message on the earlier bill.

Co-Chair Donley asked if the governor has issued a position on the current legislation.

Mr. Storer responded that before introducing this bill, representatives of the Corporation including himself, spoke with the governor and were told he would support this legislation.

Co-Chair Donley suggested that since this language had been vetoed, a written statement from governor in support of this bill, with an explanation of why his position changed, is appropriate.

Senator Green asked if "only for cause" is a legal term.

RON LORENSEN, outside counsel for the Alaska Permanent Fund Corporation, responded that there is "a large body of law" dealing with the subject of "for cause". He stated rather than providing a definition, these laws review a specific situation and the court determines whether there is just cause. He referenced a legal opinion he prepared on the subject of just cause for the Corporation, which he offered to share with the Committee.

Senator Green requested a copy of the opinion.

Mr. Lorenson said he would provide this. He summarized his findings, saying, "fair-minded people would know it when they see it" when taking into consideration performance and conduct. He said the opinion also states that traditionally the legislature has not given specific definitions of "for cause".

JOHN KELSEY, former trustee, Alaska Permanent Fund Corporation, testified via teleconference from Anchorage that he served continuously on the Board under three different governors from 1987 to 1995. He noted that he served as chair three different times and was in that position during two occasions when all trustees, except him, were replaced. He stressed that during these times, he was the only trustee with the institutional knowledge about the fund's operation.

Mr. Kelsey urged the Committee to pass SB 192. He cited his experiences as giving him "great cause" in supporting this bill. He emphasized he did not wish to denigrate new trustees, attesting they are excellent appointees. However, he stressed the need for experienced trustees on the Board to help guide newer trustees. He asserted the replacement of numerous trustees at one time is,

"unfair to new trustees and it is certainly unfair to the stakeholders of the fund who own the assets." He asserted that a new board is understandably cautious and usually fails to make timely actions. He offered to detail specific occurrences if requested.

Mr. Kelsey informed he was twice forced into the "uncomfortable" situation of training a new board, which he surmised was not the intent of the legislature that created the Corporation.

Mr. Kelsey remarked that passage of this legislation would ensure "historical experience will be provided for all future boards, thus assuring that which was intended by the enabling legislation, which provided for staggered terms for trustees."

Co-Chair Donley asked if Mr. Kelsey knew why the governor vetoed the earlier legislation.

Mr. Kelsey replied that he had no way of telling.

Co-Chair Donley reiterated it would be helpful to have the governor's veto message related to the earlier legislation and a written statement regarding the current legislation.

Senator Ward noted Mr. Storer said he would provide this information.

Co-Chair Donley suggested holding this bill until this information was received.

Senator Wilken agreed this information was important but suggested moving the bill at this time and reviewing the information before the bill comes before the full Senate.

Co-Chair Donley stated he wanted to hold the bill until the next day.

Senator Wilken noted he just received the governor's veto message.

Co-Chair Donley ordered the bill HELD in Committee.

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ADJOURNMENT

Co-Chair Donley adjourned the meeting at 11:00 AM