

ALASKA STATE LEGISLATURE
SENATE STATE AFFAIRS COMMITTEE

April 2, 2002
3:40 p.m.

MEMBERS PRESENT

Senator Gene Therriault, Chair
Senator Randy Phillips, Vice Chair
Senator Ben Stevens
Senator Bettye Davis

MEMBERS ABSENT

Senator Rick Halford

COMMITTEE CALENDAR

HOUSE JOINT RESOLUTION NO. 30
Relating to an amendment to the Constitution of the United States
prohibiting desecration of the Flag of the United States.

MOVED HJR 30 OUT OF COMMITTEE

CS FOR HOUSE CONCURRENT RESOLUTION NO. 20 (MLV)
Relating to declaring September 11, 2002, as a Day of
Remembrance.

MOVED SCS CSHCR 20 (STA) OUT OF COMMITTEE

HOUSE BILL NO. 162

"An Act relating to absences from the state under the longevity
bonus program."

HEARD AND HELD

HOUSE BILL NO. 262

"An Act relating to accounting for and appropriations of receipts
from fees collected by the Department of Labor and Workforce
Development for certain inspections and for certain plumbing and
electrical worker certificates of fitness; establishing a
building safety account; and providing for an effective date."

MOVED HB 262 OUT OF COMMITTEE

HOUSE BILL NO. 331

"An Act relating to appointment of persons to positions that
require confirmation by the legislature; and providing for an
effective date."

HEARD AND HELD

PREVIOUS COMMITTEE ACTION

HJR 30 - See State Affairs minutes dated 3/26/02
HCR 20 - See State Affairs dated 3/19/02 and 3/26/02
HB 162 - See HESS minutes dated 4/20/01 and 1/28/02 and
State Affairs minutes dated 3/26/02
HB 262 - See Labor and Commerce minutes dated 3/21/02
HB 331 - See State Affairs minutes dated 3/21/02

WITNESS REGISTER

Gary Berry
9070 North Douglas Highway
Juneau, AK 99801
POSITION STATEMENT: Testified on HJR 30

Gene Dau
P.O. Box 20995
Juneau, AK 99802
POSITION STATEMENT: Testified on HJR 30

Jim Routsala
Commander of VFW Post 559
Juneau, AK 99801
POSITION STATEMENT: Testified on HJR 30

Doug Letch
Alaska State Capitol, Room 428
Juneau, AK 99801-1182
POSITION STATEMENT: Introduced HCR 20

Representative Gretchen Guess
Alaska State Capitol, Room 112
Juneau, AK 99801-1182
POSITION STATEMENT: Introduced HB 162

Alison Elgee
Deputy Commissioner
Department of Administration
PO Box 110200
Juneau, AK 99811-0200
POSITION STATEMENT: Testified on HB 162

Rosalee T. Walker
1220 Glacier Ave.
Juneau, AK 99801
POSITION STATEMENT: Testified on HB 162

Amy Erickson
Aide to Representative Lisa Murkowski
Alaska State Capitol, Room 408

Juneau, AK 99801-1182
POSITION STATEMENT: Introduced HB 262

Remond Henderson
Director
Department of Labor & Workforce
Development
PO Box 21149
Juneau, AK 99802-1149
POSITION STATEMENT: Answered questions on HB 262

Rebecca Nance Gamez
Deputy Commissioner
Department of Labor & Workforce
Development
PO Box 21149
Juneau, AK 99802-1149
POSITION STATEMENT: Testified on HB 262

Linda Sylvester
Aide to Representative Kott
Alaska State Capitol, Room 204
Juneau, AK 99801-1182

ACTION NARRATIVE

TAPE 02-17, SIDE A

CHAIRMAN GENE THERRIAULT called the Senate State Affairs Committee meeting to order at 3:40 p.m. Present were Senators Davis, Stevens, Phillips and Chairman Therriault.

#HJR 30

HJR 30-DESECRATION OF U.S. FLAG

CHAIRMAN THERRIAULT announced the prime sponsor, Representative Pete Kott, was not available and he asked Senator Phillips to introduce the resolution.

SENATOR RANDY PHILLIPS explained this was a resolution requesting the United States Congress to pass House Joint Resolution 36 or Senate Joint Resolution 7, which would prohibit the physical desecration of the United States flag.

GARY BARRY testified he is a past department commander for the American Legion and they have spent the last five or six years trying to get this measure passed through the U.S. Congress. He expressed strong support for the resolution. The flag of the

United States of America should be treated with respect.

GENE DAU, Legislative Officer for Veteran's of Foreign Wars (VFW) Post 5559, testified in support of the resolution. He was taught to respect and protect the U.S. flag and sees no reason for people to treat it any differently today.

JIM ROUTSALA testified in support of HJR 30; his feelings are similar to Mr. Dau's. He is the Commander of VFW Taku Post 5559 and is representing the 204 members who also support HJR 30. The U.S. flag is a symbol of America and should not be desecrated.

There was no further testimony.

There was no proposed CS and no amendments. There was one zero fiscal note.

SENATOR PHILLIPS made a motion to move HJR 30 and attached fiscal note from committee with individual recommendations.

There being no objection, HJR 30 moved from committee.

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#HCR 20

HCR 20-SEPT 11 DAY OF REMEMBRANCE

DOUG LETCH, Aide to Representative Gary Stevens, testified the resolution was introduced to the committee several weeks ago. Since then they worked with committee aide, Joe Balash, and agree that the suggested changes are acceptable.

CHAIRMAN THERRIAULT stated there is no prepared committee substitute (CS) but they do have the suggested language changes.

MR. LETCH stated Representative Stevens thought the ideas were good.

CHAIRMAN THERRIAULT asked for a motion to adopt the proposed language so it could be incorporated into a CS.

SENATOR PHILLIPS made a motion to adopt the following language as amendment 1:

Delete all material from page 1, line 15 to page 2,
line 5

Insert the following in its place

WHEREAS, on September 11, 2001, at 9:43 a.m. Eastern the west side of the Pentagon building in Washington, D.C., causing the loss of all 64 lives aboard; and Daylight Time, hijacked American Airlines Flight 77 crashed into

WHEREAS, 125 service members, employees, and contract workers at the Pentagon building also lost their lives as a result of the crash of American Airlines Flight 77; and

WHEREAS, the passengers and crew onboard United Airlines Flight 93, aware of the earlier attacks on the World Trade Center towers, refused to stand by and allow the Boeing 757 to be used in the same manner; and

WHEREAS, passengers and crew onboard United Airlines Flight 93 put a plan into action to stop the hijacking signaled by the now famous words, "Are you guys ready: Let's roll"; and

WHEREAS, on September 11, 2001, at 10:00 a.m. Eastern Daylight Time, all 45 lives aboard United Airlines Flight 93 were lost when the plane crashed in southwestern Pennsylvania; and

There being no objection, the language was incorporated into a State Affairs CS.

There was one zero fiscal note.

SENATOR PHILLIPS noted November 11 was originally called Remembrance Day. That was changed to Armistice Day and it is now celebrated as Veteran's Day.

CHAIRMAN THERRIAULT asked for the will of the committee.

SENATOR DAVIS made a motion to move amended HCR 20 and attached fiscal note from committee with individual recommendations.

There being no objection, SCS CSHCR 20(STA) moved from committee.
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#HB 162

HB 162-ABSENCES UNDER LONGEVITY BONUS PROGRAM

CHAIRMAN THERRIAULT announced it was his intent to discuss the bill, but not to move the bill from committee that day.

REPRESENTATIVE GRETCHEN GUESS introduced HB 162 on behalf of Representative Fred Dyson. She had been working on the legislation with him.

The bill does two things to the Longevity Bonus Program.

1. It extends the paid leave absences from 30 to 60 days. The reason for that change is there are people who receive the bonus and cannot visit their families out of state because economics require that they drive and there isn't enough time to leave, visit and return in just 30 days.
2. It would change the unpaid leave time from 90 days to five years. Individuals who leave the state would not receive the bonus while they were gone, but they would be eligible to receive it again if they returned within five years.

The Department of Administration suggested the five year time period to help them clear their books. House members discussed changing the unpaid five-year sabbatical but they didn't act. They understand Senator Halford is interested in reducing the five years and they are receptive to a change. A change should not impact the fiscal note. The fiscal note is negative because people are currently flying back to Alaska to remain eligible for a month and then flying back out. Extending the unpaid leave saves the state money and provides seniors additional flexibility.

CHAIRMAN THERRIAULT asked her to explain the current bill language on page 2, lines 18 through 23.

REPRESENTATIVE GUESS explained it defines an unqualified person as someone who would be eligible for the longevity bonus but they were not qualified because they were incarcerated.

CHAIRMAN THERRIAULT restated that those individuals would meet all the criteria but, because they are incarcerated, they do not get the bonus. He asked whether they would receive the bonus once they are paroled.

REPRESENTATIVE GUESS deferred the question to the Department of Administration.

ALYSON ELGEE, Deputy Commissioner with the Department of Administration, stated they made several assumptions in the preparation of the fiscal note. They have data that enabled them to develop a cost estimate for extending the paid leave from 30

to 60 days. They looked at a year's records and figured the cost to pay those people who had been absent for over 30 days an additional one-month check.

When they looked at the provisions for allowing extended absences they had to make some guesses about what people's behavior might be. To estimate the cost savings, and they believe one will occur, they assumed that an average of 10 percent of the longevity bonus recipients would be absent one month longer than they currently are today thereby forgoing one month's check. This would result in an estimated savings to the state of \$435,000 a year and the estimate may well be conservative.

The program was closed in 1997 and all recipients are 70 years or older. Loosening some of the provisions would allow those seniors much appreciated flexibility so they can spend more time visiting with family and friends outside the state. There are numerous anecdotal stories about seniors who gave up their bonus when they moved from the state only to find that they didn't like living out of Alaska. However, by the time they returned to the state they were no longer eligible for the longevity bonus even though they may have spent a majority of their life in Alaska. This would help such cases. As Representative Guess stated, they selected the five-year limitation so they could purge their rolls and have an idea of their potential clientele for the program.

SENATOR PHILLIPS asked how many individuals currently receive the longevity bonus.

MS. ELGEE replied that, on average, they issue between 18,000 and 19,000 longevity bonus checks per month. There are always more people who are eligible, but they are absent for some reason.

SENATOR PHILLIPS then asked about the breakdown for the different payment amounts.

MS. ELGEE replied the information is available, but she would have to provide it later.

SENATOR PHILLIPS asked her to provide the average state residency for the bonus recipients.

MS. ELGEE said that information is not readily available.

SENATOR PHILLIPS said his reason for asking the questions is that he remembers that 10 to 20 percent of the recipients had lived in the state two years or less.

MS. ELGEE said she would check on information that relates to length of residency.

CHAIRMAN THERRIAULT announced he was interested in that information as well. It is frustrating to him that there are some who got into the program with minimum residency while some who lived here for 50 years, but weren't quite old enough to qualify before the program was closed get nothing. If this legislation passed, those that qualified with minimum residency would be able to leave the state for up to five years then return and start receiving the bonus again. In a lot of people's opinion, they shouldn't have gotten the benefit in the first place.

MS. ELGEE pointed out that when seniors are out of state for more than 30 days, for any reason, they are not paid.

CHAIRMAN THERRIAULT said Senator Halford has some concerns over the necessity of section 2, which is the five-year cutoff. He asked for an explanation of how that section helps clear the roll.

MS. ELGEE replied they wanted some time frame within which they could clean up the longevity bonus rolls. When people leave the state they are suspended from the program, but they may stay suspended forever. If they never hear from people again, they have no way of knowing whether they are deceased or if they are gone from the state forever. Currently they project that the last bonus check will be paid in approximately 2030. At that time, they don't want to have 10,000 people on the roll even if they are only paying two of them. They were hoping to be able to purge the rolls along the way, but five years was subjective.

CHAIRMAN THERRIAULT asked what the shortest workable period would be.

MS. ELGEE said one to two years is reasonable. One of the current problems is that medical absences are allowed, but there is no provision for an accompanying spouse.

CHAIRMAN THERRIAULT asked if there wasn't a provision allowing a one-year absence from the program after which the individual could re-qualify.

MS. ELGEE replied that was an amendment that Senator Tim Kelly sponsored several years ago. It provides for a one year unpaid sabbatical once every five years.

CHAIRMAN THERRIAULT asked whether she had other examples of how

the 30 day limitation is unduly burdensome.

MS. ELGEE replied that the House HESS Committee developed that provision.

ROSALEE WALKER, President of the local AARP and board member of the Older Persons Action Group (OPAG), testified in support of HB 162. She asked that members pay attention to the negative fiscal note. The bill requires a simple modification, but it would mean a lot to the recipients. The program was started as a reward for a specific group, but there was a lawsuit and that's when people started moving to Alaska to receive the bonus. Because of this, legislators decided to phase the program out over time. Nonetheless, the bonus is a very important part of many seniors' income.

CHAIRMAN THERRIAULT said the court case did explode the participating pool for the bonus program so the Legislature had to take action. At the time that they were considering change, some of his constituency that were long time Alaskans expressed an interest in doing away with the program altogether rather than grandfathering in people who had been in Alaska for just two or three years. The proposed changes would give those newcomers increased flexibility for travel and that won't sit well with some long term Alaskan seniors. That needs to be factored into the decision to make changes.

SENATOR DAVIS asked Ms. Walker about her thoughts on the five-year term.

MS. WALKER said she hadn't really considered that point because if she leaves for two years she won't come back. Alaska has been her home for 35 years, but if she were gone for two years it would be for an extreme reason. Five years is certainly more than fair and she could personally accept less.

CHAIRMAN THERRIAULT said it's important to keep in mind that there is currently a one-year non-paid sabbatical allowed every five years. The proposed section 2 would allow a continuous absence above and beyond what is allowed by the sabbatical.

He asked Representative Guess to comment on when they decided to extend paid absences from 30 to 60 days and whether it was part of the original idea.

REPRESENTATIVE GUESS replied the 30 to 60 day change came first and was the result of a constituent request. Her research indicated that the 30 day limit was a subjective decision. The

difficulty is the free rider problem, the people that qualified with just two or three years of residency. Everyone wants to provide flexibility to the seniors that lived in Alaska in the 1940s, 1950s and 1960s, but along with those come the newcomers. Because of the court decision, it's unclear what can be done about that.

The bill began with the 30 to 60 day change and the department asked for the change from the 90 day allowed absence to a five year unpaid sabbatical. This would provide more flexibility to seniors who were flying into and then back out of Alaska to maintain their eligibility. This is the part of the bill that provides the overall negative fiscal note. It's a way to save the state money and provide seniors more flexibility at the same time.

CHAIRMAN THERRIAULT asked whether the original bill had just the 30 to 60 day change so there was a cost of implementation.

REPRESENTATIVE GUESS replied that in working with the department on the 30 to 60 day change they suggested the 90 day to five year change. When they put those together, the result was a negative fiscal note.

CHAIRMAN THERRIAULT closed testimony on HB 162 and held the bill in committee.

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#HB 262

HB 262-BUILDING SAFETY ACCOUNT

AMY ERICKSON, staff to Representative Murkowski, read the following into the record:

House Bill 262 is a fees-for-service measure establishing a building safety account to allow the Department of Labor to collect fees to support its mechanical inspections program and, more importantly, to catch up on a serious and sizeable backlog of elevator and boiler inspections.

Currently the mechanical inspection section generates just over \$1 million in general funds and is allotted about \$695,000. HB 262 allows the department to collect fees and gives the authority to utilize the money generated for those fees. The fees range from \$40 to about \$105 depending on the type of vessel.

Certificates of fitness for both electricians and plumbers also generate fees. The sizeable backlog of boiler and elevator inspections is a growing safety concern. The boiler backlog has reached about 6,000 and for elevators it's about 350.

Instantly the Americans with Disabilities Act has caused the number of elevators to roughly double in the last eight years. Passage of HB 262 will give the mechanical inspections program the ability to restore three new inspectors to the program and to generate enough funds to eliminate the backlog of boilers and elevators in approximately two years.

CHAIRMAN THERRIAULT verified that this wouldn't increase fees and would not impose new fees on classes of work that currently have not had fees. It's simply allocating the funds that are generated from that program.

AMY ERICKSON agreed and said Remond Henderson could speak to the fiscal note.

CHAIRMAN THERRIAULT noted that general fund dollars could be used now to restore three new inspectors to the program, but this provides a tracking mechanism.

AMY ERICKSON agreed.

REMOND HENDERSON, Director of Administrative Services for the Department of Labor and Workforce Development, said he was there to testify on the fiscal note and answer questions on it. He could answer program questions to a limited degree.

The fiscal note requests that positions be established for two boiler inspectors and one elevator inspector. In FY 03 those three inspectors would cost \$234,600 for a ten month period while their inspections would generate \$242,800. In FY 04 they show the additional cost for extra two months of \$41,400 and the additional two months of revenue generated of \$49,700. FY 07 shows a reduction of one position because they expect to be caught up with the backlog of inspections by that time.

The Fund Source section of the note shows a reduction of the general funds that are currently in the budget by \$345,700, takes away the general program receipts, and replaces those with the new Building Safety Account fund that is established.

CHAIRMAN THERRIAULT noted the building safety account has a fund source code.

MR. HENDERSON said the 1172 code was just established.

CHAIRMAN THERRIAULT asked if it was already established or whether it would be established by passage of the bill.

MR. HENDERSON said it would be established by passage of HB 262.

CHAIRMAN THERRIAULT asked whether this wouldn't be a general fund building safety account.

MR. HENDERSON replied it is showing a reduction in general funds because that is where funds are currently budgeted and they don't currently have authority for a Building Safety Account.

CHAIRMAN THERRIAULT wanted confirmation that the Building Safety Account would be a general fund account.

MR. HENDERSON confirmed it would be a general fund account.

CHAIRMAN THERRIAULT asked whether it would show up as general fund spending and take separate legislative action to put it into the non general fund column.

MR. HENDERSON explained it wouldn't. In setting up the account it appears as a non-general fund account so it is technically off budget.

CHAIRMAN THERRIAULT said Mr. Balash pointed out that section of the bill to him and he understands.

SIDE B
4:25 p.m.

CHAIRMAN THERRIAULT asked where the request for the three additional positions figured into the Governor's submitted budget.

MR. HENDERSON replied those positions are requested in the operating budget as general fund increments. They aren't completely comfortable with that and prefer this method. With the passage of the bill, this is the proper vehicle to show that those positions would generate the additional proceeds to pay for themselves. He agreed that there are funds that are generated now, but they don't have the authority to spend those.

SENATOR PHILLIPS asked Ms. Erickson who requested the bill.

MS. ERICKSON responded it was the Department of Labor.

SENATOR PHILLIPS then asked Mr. Henderson whether the department contacted the Governor to introduce the bill.

MR. HENDERSON thought Representative Murkowski introduced the bill at the request of the Governor's Office and the Department of Labor.

SENATOR PHILLIPS asked whether the Governor could do it himself.

MR. HENDERSON said he probably could have.

REBECCA NANCE GAMEZ, the Deputy Commissioner for the Department of Labor, said Commissioner Flanagan discussed this with the Governor, received his approval and then approached Representative Murkowski to introduce the legislation.

CHAIRMAN THERRIAULT commented this is not an unusual course of action.

There was no prepared committee substitute and no amendments were offered.

SENATOR DAVIS made a motion to move HB 262 and attached fiscal note from committee with individual recommendations.

There being no objection, HB 262 moved from committee.

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#HB 331

HB 331-PRESENTMENT OF GOVERNOR'S APPOINTEES

LINDA SYLVESTER, legislative aide to Representative Pete Kott, introduced HB 331 and read the preamble to AS 39.05.070 that clarifies how presentments of the Governor are handled:

The purpose of this section of statute is to provide the procedural uniformity in the exercise of appointive powers conferred by the Legislature to eliminate, insofar as possible, recess or interim appointments except in the event of death, resignation, inability to act or other removal from office and the exercise, insofar as possible, of appointive powers only when the Legislature is in session.

Following is the sponsor summary:

HB 331 eliminates ambiguities in AS 30.05.080 making it clear that presentment of the governor's appointees to boards and commissions may only occur during regular sessions of the legislature. This bill eliminates the

potential for confirmation sessions occurring during special sessions and it also reconciles potentially conflicting language regarding the timing of the appointee's presentation.

This issue arose at the end of the 2001 regular session, following the failed confirmation bid of a Game Board appointee. In response to that event, under paragraph (3), the governor made a new appointment and presented the name to the Legislature within 20 days following notification of the failed nomination. As to that Game Board vacancy, the Governor was correct under paragraph (3) in appointing and presenting the name, but since the regular session of the Legislature had adjourned, under paragraph (1), that presentment was ineffective.

The waters become muddy because the 20-day requirement (that the governor has to name a candidate following a failed confirmation) of paragraph (3) is a direct conflict with paragraph (1), which states that only presentment that occurs during a regular session constitutes presentment. To further complicate the issue, AS 39.050.080 by:

- Removing the 20-day requirement in paragraph (3) and keeping the requirement of paragraph (1) stating that only presentment during a regular session is valid;
- Inserting as appropriate throughout the section, **"regular,"**
- Removing "within five calendar days" from the latter part of paragraph (1) because the five-day presentment requirement in paragraph (1) is just as problematical as the 20-day presentment requirement since the fifth day could be outside the regular session even if the appointment were made during the regular session.

MS. SYLVESTER explained the following changes:

On page 2, line 3, after "expire" insert "on or before" and on line 6, delete the words "within five calendar days after the appointment is made," and insert "immediately." The five day presentment requirement was problematic because the fifth day could be outside the regular session even if the appointment was made during the regular session.

On page 2, lines 8-9 delete, "The deadline may be extended by the Legislature by the approval of a concurrent resolution." and insert "immediately." It is

unconstitutional to modify a statute by concurrent resolution; a statute can only be modified by adoption of another statute.

CHAIRMAN THERRIAULT asked whether Legislative Legal said that point was unworkable.

MS. SYLVESTER said they have something that says it is unclear whether or not an appointee can be confirmed during the special session.

CHAIRMAN THERRIAULT restated his question concerning the constitutionality of extending the deadline by passage of a concurrent resolution.

MS. SYLVESTER replied that was unconstitutional.

On page 2, lines 24-28, the following is deleted: "The new appointment shall be presented for confirmation to the Legislature within 20 calendar days following receipt by the governor of the legislature's notification of its refusal to confirm the prior appointment."

CHAIRMAN THERRIAULT recapped using a hypothetical situation that might occur at the end of a regular legislative session if an appointee is turned down and the regular session is over the following day. The Governor would make a locum tenens appointment and the powers for that position would come under paragraph (4), page 3, lines 5-25. When the Legislature next convened in regular session eight or nine months later, the Governor would present his appointee within the first 30 days and the Legislature would confirm or deny the appointment.

He noted the board member would be participating and making decisions for almost a year after which they might be denied the appointment.

MS. SYLVESTER said the Governor's Office proposed inserting language saying that the Governor would refrain from making appointments within the last fourteen days of the regular legislative session. They believe this is problematic because the Legislature wouldn't have the authority to limit the Governor and he could simply ignore it or the law would be unconstitutional. The other problem is that if the Governor does make a presentment to the Legislature during the last few days of a regular session the Legislature could act if it weren't limited by the fourteen day rule. Additionally, on page 3, lines 3 and 4 the statute stipulates that if the Legislature does not act by the end of the regular session that is tantamount to declination. They have added the word "regular" before the word "session" here and every place "session" occurs to make it very clear that it takes place during

the regular session.

CHAIRMAN THERRIAULT asked for the administration's position on the bill in general.

MS. SYLVESTER replied they liked the fact that it was a clean-up bill, but they wanted the fourteen days. They weren't very receptive to the word, "immediate."

CHAIRMAN THERRIAULT wanted to take time to think about the implications of the legislation, but asked Ms. Sylvester to assure Representative Kott that he didn't have a specific problem with the bill.

HB 331 was held in committee.

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ADJOURNMENT

There being no further business before the committee, the Senate State Affairs Committee meeting was adjourned at 4:45 p.m.