

ALASKA STATE LEGISLATURE
SENATE STATE AFFAIRS COMMITTEE

April 16, 2002
3:40 p.m.

MEMBERS PRESENT

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

COMMITTEE CALENDAR

CS FOR HOUSE BILL NO. 216(RES)

"An Act relating to the emergency order authority of the commissioner of fish and game and to meetings of the Board of Fisheries."

MOVED SCS HB 216(STA) OUT OF COMMITTEE

SENATE JOINT RESOLUTION NO. 13

Proposing amendments to the Constitution of the State of Alaska relating to inflation- proofing the permanent fund.

MOVED CSSJR 13(STA) OUT OF COMMITTEE

CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 254(FIN)

"An Act relating to the teachers' retirement system, the judicial retirement system, and the public employees' retirement system and to the tax qualification under the Internal Revenue Code of those systems; amending the definition of 'actuarial adjustment' in the teachers' retirement system and the public employees' retirement system; repealing certain provisions of the teachers' retirement system and the public employees' retirement system; amending the statutory limitation on payment of warrants to make an exception for warrants making benefit payments or refunds under various state retirement and benefit programs; and providing for an effective date."

MOVED CSHB 254(FIN) OUT OF COMMITTEE

SENATE CONCURRENT RESOLUTION NO. 9

Approving the open meetings guidelines proposed by the Select Committee on Legislative Ethics.

HEARD AND HELD

PREVIOUS COMMITTEE ACTION

HB 216 - See State Affairs minutes dated 4/9/02
SJR 13 - See State Affairs minutes dated 4/26/01, 2/21/02,
3/21/02
HB 254 - See State Affairs minutes dated 4/11/02
SCR 9 - No previous action to record.

WITNESS REGISTER

Joe Balash
Staff to Senate State Affairs Committee
Alaska State Capitol, Room 121
Juneau, AK 99801-1182
POSITION STATEMENT: Explained CS for SJR 13

Jim Kelly
Director of Communications
Alaska Permanent Fund Corporation
P.O. Box 25500
Juneau, AK 99802-5500
POSITION STATEMENT: Testified on SJR 13

Representative Drew Scalzi
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Sponsor HB 216

Shirley A. McCoy
Ethics Committee
P.O. Box 33475
Juneau, AK 99803
POSITION STATEMENT: Testified on SCR 9

ACTION NARRATIVE

TAPE 02-22, 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. Senator Halford arrived shortly.

#SJR 13

SJR 13-CONST. AM: PERMANENT FUND

JOE BALASH, staff to Senate State Affairs, explained the proposed committee substitute (CS) for SJR 13 differed considerably from the original amendment proposed by the trustees. Rather than describe all income as running into the fund itself and then putting a limit on how much may be appropriated from the fund,

all income would be deposited into a separate earnings account.

Section 2, subsection (b), establishes that appropriations would be made from the earnings reserve account. The purpose for doing that was to maintain a strict distinction between the earnings appropriations and the principal of the fund. Legal advice indicated the prior language could be problematic in that it used the word principal and restricted what principal could be used for, but then allowed appropriations from the fund. Rather than leave it an open question to be debated in court, they established the separate earnings reserve account within the fund.

A second change occurs on page 2, lines 2 through 4. The original proposal relied on a five-year market value for the fund. The CS adds a lag year so that when a governor is beginning to formulate the budget in late November or early December, there will be hard numbers as to how much of the permanent fund will be available for dividends and other uses. The affect would be to reduce the amount that would be available under the formula, but if the assumptions of the trustees were correct, 8.25 percent on an annual basis would result in about 4.5 percent being available for appropriation each year.

Section 3 is a transition section. There was a legal question about whether the earnings in the statutorily created earnings reserve account within the fund would be protected under the language proposed by the trustees. Rather than waiting for a court challenge, they propose that the transition section would transfer the amount in the statutorily created earnings reserve into the constitutionally created earnings reserve thereby protecting it and limiting its availability to the state.

CHAIRMAN THERRIAULT asked for further discussion on the lag year because Senator Halford was somewhat concerned about the five percent. However, when it all works together it reduces to a little less than five percent.

MR. BALASH explained that the amount depends on the assumptions made on whether the earnings amount would be 8 or 8.25 percent. A reasonable estimate for a five-year moving average as proposed by the trustees would result in 4.7 to 4.8 percent available for appropriation. Depending on the actual returns, adding a lag year would result in 4.5 percent to 4.7 percent being available for appropriation. The higher the growth in each subsequent year, the wider the gap would be over the course of the five years, which would reduce the effective payout rate.

CHAIRMAN THERRIAULT said the transition section says that money

is placed in a category that makes just the five percent averaged draw available. It's not available with a simple majority vote.

JIM KELLY, Director of Communications for the Permanent Fund Corporation, said the board hadn't had the opportunity to evaluate the proposed CS so he couldn't speak for the entire board. However, the intent to maintain the prohibition against spending principal as described by Mr. Balash is also the intent of the board and it appears as though the language accomplishes that intent. No problem was immediately apparent, but if a question arose they could discuss it in the next committee of referral.

There were no questions and no additional testimony.

CHAIRMAN THERRIAULT stated the bill would go to the Judiciary Committee next and as a member of that committee, he intended to continue to work with the trustees.

The Version R, Cook committee substitute (CS) was before the committee. There were no amendments offered and there was one \$1,500.00 fiscal note. He asked for the will of the committee.

SENATOR DAVIS made a motion to move CSSJR 13(STA) and attached fiscal note from committee with individual recommendations (Version R). There being no objection, it was so ordered.

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#HB 216

HB 216-BD OF FISHERIES MEETINGS/EMERGENCY ORDERS

CHAIRMAN THERRIAULT informed committee members he had prepared a committee substitute (CS) for HB 216. On page 2, line 19, new language was inserted into the intent section. His concern was that there are a number of statements under the findings section that use limiting language such as "rare instances" but the similar limiting language did not present itself in the first intent section clause that spoke to that section of the bill. He asked the drafters to insert language so the findings section flowed to the intent. His concern was that if the courts were looking at that section of statutes, they would look to the Legislature's intent. He didn't know that they would look at the findings and determine the stated finding was clearly legislative intent. This is of particular concern when an intent section doesn't have the same limiting language.

He asked Representative Scalzi whether he had any comments on the CS.

REPRESENTATIVE SCALZI said he was trying to understand the

comfort level, but he had no problem with the added language, "in rare circumstances where immediate action is necessary," on page 2, line 19.

CHAIRMAN THERRIAULT said his suggestion, as Chairman, was that if they couldn't make the clarification, he would have preferred to be silent on the intent and findings.

He asked Senator Halford whether he intended to make a motion to adopt his proposed amendment.

SENATOR HALFORD said he didn't intend to move the entire amendment and he needed a few moments before he could proceed.

CHAIRMAN THERRIAULT called a brief at ease at 4:55 p.m. and gaveled the meeting back to order at 4:57 p.m.

SENATOR HALFORD referred members to page 3, line 20 through 22 of the 4/12/02 CS (Version P). He made a motion to delete, "if the commissioner concurs in the determination of the board that a fishery conservation issue exists and that the issue cannot be resolved under current regulations,". The language substantially changes the relationship of the board and the commissioner to the detriment of the board. Other than the day-to-day management, the board should set the policy, not the department. This commissioner of this department is selected from a roster provided by the board. The board transitions through different governors and has more continuity than the commissioners.

CHAIRMAN THERRIAULT asked Representative Scalzi for verification that this section came from regulation and the language that would be deleted was the language he was trying to add into statute.

REPRESENTATIVE SCALZI replied that was correct. Senator Halford's proposed change would keep the language that is currently in regulation. It would be a moot point to the bill for that section. The intent is to get the commissioner in concurrence with the board and with the conservation issue that does exist. He agreed that the governor appoints the commission based on the applicants presented by the board. However, in the legislative intent, the commissioner is the biological manager and that is the argument of the bill. There must not only be consultation, but also concurrence that a biological issue or concern does exist. He said the commission is more than just a figurehead, he is the steward of the resource and that is why the language is written that way.

CHAIRMAN THERRIAULT said Senator Halford moved proposed amendment 1. He asked whether there was objection from committee.

SENATOR DAVIS asked the Chairman whether she missed something. She wondered why they weren't addressing the other parts of the proposed amendment.

SENATOR HALFORD said he didn't offer the entire amendment as written. He said he just offered the change as outlined above, but the sponsor said his amendment deletes Section 3 from the bill.

REPRESENTATIVE SCALZI agreed. The purpose of the bill is the sentence Senator Halford wanted to remove by amendment. It is currently the board's regulatory language except for the addition that the commissioner concurs in the determination of the board. He wants the regulatory language and also the concurrence of the commissioner that a conservation issue exists.

SENATOR STEVENS asked the sponsor for further explanation.

REPRESENTATIVE SCALZI replied the board could amend their own agenda, that's not an issue. An agenda change request, which is what the bill speaks to, is to add something to the agenda in an out of cycle meeting. If they were to take up an issue out of cycle, they would do it for one of three reasons (1) address an unforeseen consequence (2) correct an error in regulation (3) a conservation issue or purpose. So they don't take it out of cycle as an abuse to the system, scientific data should be presented to show that a conservation issue does exist. You get that concurrence with the commissioner of fish and game.

CHAIRMAN THERRIAULT added you would get that concurrence through the area manager.

REPRESENTATIVE SCALZI said the commissioner would have to go to the biologists to get the correct data.

SENATOR STEVENS asked if that wasn't the same pool of resource that the board of fish is supposed to draw their scientific knowledge from so in reality it would all be the same scientific evidence. Both the commissioner and the board would be using the same pool to concur.

REPRESENTATIVE SCALZI said that is correct. The board has the same pool. They have the ability to listen to their biological managers.

SENATOR STEVENS said that by passing this law they would be forcing the board to use the scientific information that is there because if they don't the commissioner will.

REPRESENTATIVE SCALZI said they couldn't choose to ignore it if this legislation is passed.

SENATOR HALFORD said the issue is the basic philosophy of whether this department is run at the will of the board or the board is run at the will of the department. This is their own internal agenda. The catch all that they use to go back to another issue is the one that is being amended to require the concurrence of the administration. He believes this substantially reduces the power of the board in terms of what it is going to consider. If they wanted to do that they would probably have the legislative liaison in charge of the executive branch in charge of the Rules Committee.

CHAIRMAN THERRIAULT said he has heard that the workload of the board is heavy and in part that is because of all the out of area and out of turn issues that are put on the agenda.

SENATOR HALFORD replied the board's attorney said he didn't think the board would support the legislation. It's a matter of balance shift. He believes the administration has a great deal of power in the process and this would enhance the executive branch direct power and reduce the constitutionally created authority of this board system of management. He agreed they have lots to do, but during his tenure the up river down river, commercial non-commercial interests have gone back and forth on this issue depending on whether they feel they have board or administration support. This legislation proposes to change a basic process that has been in existence for a long time. "I think it's balanced now and I think this would change that balance."

SENATOR STEVENS said if the effort were for a power shift they would be addressing the commissioner's concurrence to all three of the components. This only goes to the one conservation issue. The board still has the authority to amend the agenda based on an error or unforeseen consequences of a regulation.

SENATOR HALFORD replied this is a board that frequently ends up in court on specific issues. To correct an error you must prove it was done in error and something in the record is wrong. Regarding unforeseen consequences, if a minority on the board argued that something was going to happen and then it did, it's not an unforeseen consequence. It was expected but not the prevailing side of the issue. This is a board that has a

continuous record of challenges on these types of issues. The point that is proposed for amendment is challenged the most and he thought Representative Scalzi would agree.

REPRESENTATIVE SCALZI said he did agree. Seven times in the last ten years they have used that point in one area in particular. They used it twice in the Copper River area and the legislative intent is that there is stability in the board process. Recently in the Lower Cook Inlet and Kodiak area he had sports fisherman angry with him because they limited the Kodiak area to five King Salmon. He told them it is an allocation issue and the board's purview. They responded the board didn't base it on scientific data and they were told the board didn't have to. He believes the integrity of the board process is at stake and that's what the public is asking for. It has nothing to do on how they manage the issues, but if something is taken out of cycle the conservation argument shouldn't be used without scientific verification.

CHAIRMAN THERRIAULT objected to the amendment and asked whether there were any questions.

SENATOR DAVIS asked Representative Scalzi for verification that he did not support the amendment.

REPRESENTATIVE SCALZI replied he did not support the amendment. Although the Senate and the House have cut the budget of the board of fish because they were taking too many meetings out of cycle, it didn't change the behavior. This would be a more productive and stabilizing action.

CHAIRMAN THERRIAULT asked for a roll call on amendment #1. The amendment failed three to two with Senators Stevens, Davis and Chairman Therriault voting no and Senators Phillips and Halford voting yes.

There were no other amendments offered. There was one zero fiscal note. He asked for the will of the committee.

SENATOR STEVENS made a motion to pass \P version SCS CSHB 216(STA) from committee with attached fiscal note and individual recommendations. There being no objection, it was so ordered.

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#HB 254

HB 254-STATE RETIREMENT SYSTEMS/WARRANTS

CHAIRMAN THERRIAULT reminded members that amendment 1 was on the

table.

SENATOR HALFORD announced he intended to pursue the issue but he would withdraw the amendment at that time.

CHAIRMAN THERRIAULT stated the version of the bill that was passed from the House was before the committee. He had no prepared CS and there were no amendments offered. He asked for the will of the committee.

SENATOR STEVENS made a motion to move CSSS HB 254(FIN) and attached fiscal note from committee with individual recommendations. There being no objection, it was so ordered.
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#SCR 9

SCR 9-APPROVING LEG. OPEN MEETINGS GUIDELINES

SHIRLEY McCoy, representative from the Select Committee on Legislative Ethics, said the Legislature enacted a law in 1993 requiring that they abide by open meeting guidelines. The Select Committee of Legislative Ethics was formed in 1994 and they were mandated to provide the Legislature with a guide to allow closed caucuses and private informal meetings to discuss political strategy without violating open meeting guidelines. The Ethics Committee has done that; they have submitted guidelines, held public hearings, talked with Legislators and the public. They have spent considerable time trying to get guidelines to Legislators that allowed them to do their best job for the State of Alaska while honoring the public's desire to know what that business is. To date the guidelines have not been enacted.

SENATOR HALFORD said the things that are prohibited include a group of Legislators representing a geographic area or political subdivision. Any time as few as two people decide or agree upon a course of action with regard to their particular region or area they could be affected by this prohibition. This standard is very broad and could be violated in conversation on a continuous basis. He asked whether there was a specific number that would constitute a group.

MS. McCoy replied her understanding is that the proposed guideline would not prohibit conversations between any number of people. They gave a definition for both a meeting and a vote, which clears up some of the ambiguities that have been felt.

CHAIRMAN THERRIAULT thought Senator Halford was concerned about

the concept of a legislative body taking action or agreeing upon a course of action because the definition of a legislative body could include the Interior delegation. They could fall under this prohibition when they get together to strategize on how to deal with another geographic area.

MS. McCoy replied the problem some public members have is defining the difference between caucuses versus legislative bodies and other gatherings. The public would generally prefer all meetings to be open, but realizes this isn't always possible because of political strategizing.

The Ethics Committee feels the guideline gives Legislators the opportunity to complete the business that needs to be completed without prohibitions.

SENATOR PHILLIPS asked what she meant when she says the general public wants this.

MS. McCoy replied, "define general public, the people in the State of Alaska that aren't legislative members."

SENATOR PHILLIPS then asked whether "somebody stopped you in the store."

MS. McCoy replied they have had lots of members of the public ask, "When are we going to get open meetings. Why haven't open meeting guidelines been adopted?" The committee is mandated to submit guidelines by January 16 every year and they have faithfully done so since 1995. The committee realizes the entire legislative body will probably never totally agree on the guidelines but there must be a starting point. Most of the committee members, some of whom are Legislators, felt that the current resolution didn't go to the extremes that most of the public would like to see, but it was a beginning.

SENATOR PHILLIPS asked what other states have in this regard.

MS. McCoy didn't believe the majority of states have a closed caucus and most don't require an ethics committee to establish guidelines.

SENATOR HALFORD apologized for saddling Ms. McCoy with the job and complemented her on her diligence in trying to complete an impossible task. The Legislature should have kept this within their own purview and not asked her to continue to make recommendations that would probably never be accepted.

MS. McCoy agreed the task was formidable then noted the Legislature has passed laws requiring adherence from every other elected official, but they won't do the same for themselves.

SENATOR PHILLIPS replied, "Alaska is full of paradoxes." He then commented on access and said he'd like to see more people at the meetings and the guidelines could come later.

CHAIRMAN THERRIAULT closed public comment on SCR 9 and held it in committee.

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ADJOURNMENT

There being no further business before the committee, the Senate State Affairs Committee meeting was adjourned at 4:15 p.m.