

ALASKA STATE LEGISLATURE
HOUSE HEALTH, EDUCATION AND SOCIAL SERVICES
STANDING COMMITTEE

January 22, 2004
3:03 p.m.

MEMBERS PRESENT

Representative Peggy Wilson, Chair
Representative Carl Gatto, Vice Chair
Representative Paul Seaton
Representative Mary Kapsner
Representative Sharon Cissna

MEMBERS ABSENT

Representative John Coghill
Representative Kelly Wolf

COMMITTEE CALENDAR

HOUSE BILL NO. 282

"An Act relating to contracts between the University of Alaska and its employees involving research or other development of intellectual property and to the authority of the president of the University of Alaska regarding employee contracts for development of intellectual property."

- MOVED HB 282 OUT OF COMMITTEE

PRESENTATION BY THE GOVERNOR'S COUNCIL ON DISABILITIES AND SPECIAL EDUCATION

- HEARD [See 3:26 p.m. minutes for this date]

PREVIOUS COMMITTEE ACTION

BILL: HB 282

SHORT TITLE: UNIVERSITY EMPLOYEE RESEARCH CONTRACTS

REPRESENTATIVE(S): FATE, Guttenberg, Holm, Anderson, McGuire

04/23/03	(H)	READ THE FIRST TIME - REFERRALS
04/23/03	(H)	HES, L&C
05/15/03	(H)	HES AT 3:00 PM CAPITOL 106
05/15/03	(H)	Scheduled But Not Heard
01/22/04	(H)	HES AT 3:00 PM CAPITOL 106

WITNESS REGISTER

JIM POUND, Staff
to Representative Hugh Fate
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 282 on behalf of
Representative Fate.

WENDY REDMAN, Vice President for University Relations
University of Alaska
Fairbanks, Alaska

POSITION STATEMENT: Testified in support of HB 282 and answered
questions from the members.

ACTION NARRATIVE

TAPE 03-04, SIDE A

Number 0001

CHAIR PEGGY WILSON called the House Health, Education and Social Services Standing Committee meeting to order at 3:03 p.m. Present at the call to order was Representatives Wilson, Gatto, Kapsner, and Seaton. Representative Cissna arrived as the meeting was in progress. Chair Wilson announced for the record that Representatives Wolf and Coghill have been excused from the meeting, since they have been called back to their districts.

HB 282-UNIVERSITY EMPLOYEE RESEARCH CONTRACTS

Number 0050

CHAIR WILSON announced that the first order of business would be HOUSE BILL NO. 282, "An Act relating to contracts between the University of Alaska and its employees involving research or other development of intellectual property and to the authority of the president of the University of Alaska regarding employee contracts for development of intellectual property."

Number 0101

JIM POUND, Staff to Representative Hugh Fate, Alaska State Legislature, presented HB 282 on behalf of Representative Fate, sponsor. He explained that HB 282 will allow the University of Alaska to compete in the research and development arena. Across the nation universities have moved towards a research role as a means of supplementing the high cost of education. This

research has resulted in inventions and innovations that have moved into the private sector and sometimes created a profit, he said.

MR. POUND told the members that the University of Alaska system has been involved in research, but seldom development because of the lack of financial incentives based on the Alaska Executive Branch Ethics Act. He said AS 39.52.10, which is a declaration of policy, discourages those officers from acting upon personal or financial interests in the performance of public responsibilities. In AS 39.52.170 outside employment is restricted. A public employee may not render services to benefit a personal or financial interest, or engage in or accept employment outside of the agency the employee serves, he explained.

MR. POUND said this legislation will give the president of the university a recruitment tool whereby he/she will be able to negotiate an intellectual property agreement with a researcher who could then develop a product that is commercially viable. Based on that negotiation, the researcher and the university could both benefit financially from commercial enterprises through sales, entrepreneurial activities, or development of an industry here in Alaska. This agreement would allow researchers to continue advancing their work, which helps to maintain staff stability at the university. Mr. Pound summarized his comments by saying that this legislation will bring quality staff who will be working on projects that could bring new ideas, industry, and new non-general fund money to the University of Alaska. He asked the members to support HB 282.

Number 0259

CHAIR WILSON stated for the record that Representative Cissna has joined the meeting.

Number 0269

REPRESENTATIVE GATTO asked what would prevent an employee from taking his/her product home or to some other organization. What in this agreement encourages the employee to remain at the university and share in the profits?

Number 0306

MR. POUND responded that there would be initial negotiations and a contract between the university and the researcher/faculty

member. He explained that the advantages for researchers are the use of university facilities, equipment, and graduate student staff to assist him/her, which would not be available outside of the university system. Once the research produces results there would already be a contract in place for a joint venture between the university and the researcher, he reiterated.

Number 0352

REPRESENTATIVE GATTO posed a hypothetical example of a [researcher] who saw the election problems in Florida, and then went on to develop an optical scanner in his garage. Even though this person works at the university, does the university have any claim on his/her [invention], he asked. Representative Gatto pointed out that the university could make the argument that during this individual's years of employment he/she had plenty of ideas on developing an optical scanner. He asked what rights the university would have in a case like this.

Number 0392

MR. POUND responded that in a case such as the one posed by Representative Gatto, there would be a lawsuit involved. It would be necessary to determine how much of the university's resources were involved in the development of the optical scanner and how much of the development was done in his/her garage.

REPRESENTATIVE GATTO asked for clarification that the university would initiate a lawsuit in a case like this.

MR. POUND responded that is correct.

Number 0431

WENDY REDMAN, Vice President for University Relations, University of Alaska, testified in support of HB 282 and answered questions from the members. The issue that Representative Gatto brought up addresses how the university plans to make money, which is through joint patents and copyrights, she said. The university does have a right to claim a portion [of the profits as a result of research developed at the university]. She explained that it varies from campus to campus and project to project as to the portion of patent or copyright produced by faculty members during a time he/she is employed. This would really have to go to the courts, Ms.

Redman commented, because even if a person developed a product in the garage, if he/she were employed by the university at the time, it is likely the university would be entitled to a portion of the patent or copyright.

Number 0501

REPRESENTATIVE GATTO asked if staff members occasionally enter into an agreement with the university at the beginning of their employment. He asked if staff come to the university with an idea and ask for the use of their facilities to develop something.

MS. REDMAN responded that it has not been a normal occurrence in the past, but it is becoming much more common now. This is particularly true of high-technology fields where students come out of college with good ideas, but not the laboratory facilities at their disposal. She noted that it is becoming more common to recruit those kinds of faculty.

Number 0578

CHAIR WILSON asked if the university hires non-teaching faculty to do research or is it mandatory that researchers also teach.

MS. REDMAN responded that faculty can be hired for research [purposes]; however, the research cannot be paid for with state funds. If a faculty member has a research grant which covers his/her salary 100 percent, plus the overhead to run the laboratory, then this faculty member would not have to teach. She added that the University of Alaska has many productive research faculty.

CHAIR WILSON asked what advantage there is for individuals to work with the university if it is necessary for them to provide the grants to pay all the expenses.

MS. REDMAN responded that the advantage is that the researchers will be working with peers, graduate students, and have access to laboratory space that they could not [otherwise provide for] themselves. The university also assists in getting inventions patented. An added benefit of being associated with the university occurs when working with research institutes that are affiliated with [other] colleges and universities, she said.

Number 0689

REPRESENTATIVE KAPSNER prefaced her question by saying that she is uncertain if this relates to [HB 282]. She explained that the Native community is concerned about [the theft of] intellectual property in terms of cultural stories and myths. For example, if someone documents [stories and myths] and then capitalizes on them, there is concern that these stories or myths either would not be correct or would be taken and used for capital gain. Representative Kapsner asked how that would fit in [HB 282].

Number 0729

MR. POUND responded that unless the individual [who took the stories] was a university employee, it would have no effect whatsoever.

REPRESENTATIVE KAPSNER asked: What if [the individual who took the stories or myths] was a university employee?

MR. POUND said intellectual property does cover copyrights on written material. He pointed out that under this bill a two-party agreement exists between the researcher and the university. In this instance, there are three parties involved.

CHAIR WILSON asked Ms. Redman what would happen if a Native professor at the university used [family stories and myths].

MS. REDMAN commented that she understands the dilemma Representative Kapsner is addressing. This bill does not deal with intellectual property and inappropriate use of intellectual property by someone at the university. There are other mechanisms at the university to deal with that situation, she added. Ms. Redman offered to talk in detail about what is in place to address this kind of situation, and emphasized that this bill would not have any impact on that dilemma.

Number 0804

REPRESENTATIVE CISSNA told the members that her office requested a legal opinion on [the subject of] immunity for the university [with respect to a] business, since it would be jointly involved in a business and possible litigation. She asked if the university has looked into this issue and what the ramifications could be.

Number 0844

MS. REDMAN told the members that [immunity] is one aspect that would be covered under this bill; however, it really covers broader kinds of consultations. The specific issue of owning a business is something the [university] has been looking into for a great deal of time. Dean Case, who is the dean of the College of Business and Management at the University of Alaska Anchorage, is very interested in this [issue] and has been researching what other colleges and universities around the country are doing, she said. There are a great number of colleges and universities that have gotten into the process of owning their own businesses. This is particularly true with the school of business, where students take over businesses and then turn it over once it is up and running. Ms. Redman explained that some of these [universities] have formed 501(3)(c) [nonprofit corporations]. Other states provide liability protection, she added. She said that it is a very interesting issue and offered to provide more information on the research the university has done.

Number 0929

CHAIR WILSON asked Ms. Redman for clarification in the case where an individual who is not an employee is given a grant by the university.

MS. REDMAN responded that the university does not normally award grants to individuals outside of the university [system]; however, the university's attorney makes it clear that anything that is produced, thought of, dreamed up, or developed under the aegis of the university is owned by the university.

Number 0988

REPRESENTATIVE GATTO asked, for example, if the university is working to design a "nano-engine" to operate the "Spirit [Mars] Rover" and someone else gets the contract, whether the university absorbs the loss or the researcher bears some of the financial responsibility.

MS. REDMAN responded that the university is not anticipating involvement in that level of high-risk endeavors. Normally, those research projects are accomplished through separate 501(c)(3)[nonprofit corporations]. Theoretically, the university would absorb the risk; however, she reiterated that the university is not looking at that high-level risk. Ms. Redman said generally the federal government or the private sector is involved in this kind of risk.

Number 1102

MR. POUND summarized his comments by saying that this is the kind of program that is growing in the country. For example, Duke University is involved with huge numbers of medical research and development [projects] where there are intellectual property agreements between those researchers and the university. He told the members when he was researching this issue he used [an Internet] search engine that provided approximately 15,000 hits and almost all of them were universities that are using this program as an incentive to keep highly qualified professors and researchers.

Number 1145

REPRESENTATIVE SEATON moved to report HB 282 out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HB 282 was reported from the House Health, Education and Social Services Standing Committee.

The House Health, Education and Social Services Standing Committee took an at-ease at 3:20 p.m. in order to prepare for the overview. [For the overview of the Governor's Council on Disabilities and Special Education, see the 3:26 p.m. minutes for this date.]