

**ALASKA STATE LEGISLATURE
HOUSE LABOR AND COMMERCE STANDING COMMITTEE**

April 16, 2004

3:40 p.m.

MEMBERS PRESENT

Representative Tom Anderson, Chair
Representative Carl Gatto, Vice Chair
Representative Nancy Dahlstrom
Representative Bob Lynn
Representative Norman Rokeberg
Representative Harry Crawford
Representative David Guttenberg

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

CONFIRMATION HEARING(S)

Occupational Safety and Health Review Board

Thor R. Christianson - Sitka, Alaska

- CONFIRMATION(S) ADVANCED

Personnel Board

Laura Plenart - Ketchikan

- CONFIRMATION(S) ADVANCED

State Board of Registration for Architects, Engineers, and Land Surveyors

Clifford E. Baker - Kenai
Boyd J. Brownfield - Anchorage
Richard A. Hughes - Fairbanks
Kenneth D. Maynard - Anchorage

- CONFIRMATION(S) ADVANCED

Alaska Labor Relations Agency

Gary P. Bader - Anchorage

- CONFIRMATION(S) HELD

Dennis S. Niedermeyer - Eagle River

- CONFIRMATION(S) ADVANCED

James S. Spalding - Anchorage

- CONFIRMATION(S) HELD

HOUSE BILL NO. 539

"An Act exempting a person who allows a student of the University of Alaska to gain practical work experience with the person while participating in a practicum from vicarious liability as an employer, and exempting the student participating in a practicum from the Alaska Wage and Hour Act and workers' compensation coverage."

- MOVED CSHB 539(L&C) OUT OF COMMITTEE

HOUSE BILL NO. 545

"An Act relating to the extension under the State Procurement Code of terms for leases for real estate and certain terms for certain state contracts for goods and services; and providing for an effective date."

- MOVED CSHB 545(L&C) OUT OF COMMITTEE

HOUSE BILL NO. 540

"An Act relating to workers' compensation insurance rates; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

HOUSE BILL NO. 148

"An Act instructing the State Board of Registration for Architects, Engineers, and Land Surveyors to adopt minimum technical standards relating to the practice of surveying."

- SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: HB 539

SHORT TITLE: UNIV. STUDENT PRACTICUM LIABILITY/WAGES

SPONSOR(S): JUDICIARY

03/18/04 (H) READ THE FIRST TIME - REFERRALS
03/18/04 (H) L&C, JUD
04/16/04 (H) L&C AT 3:15 PM CAPITOL 17

BILL: HB 545

SHORT TITLE: STATE REAL PROPERTY LEASE EXTENSIONS
SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

03/25/04 (H) READ THE FIRST TIME - REFERRALS
03/25/04 (H) L&C, JUD
04/07/04 (H) L&C AT 3:15 PM CAPITOL 17
04/07/04 (H) <Bill Hearing Postponed to 4/14>
04/14/04 (H) L&C AT 3:15 PM CAPITOL 17
04/14/04 (H) Heard & Held
04/14/04 (H) MINUTE(L&C)
04/16/04 (H) L&C AT 3:15 PM CAPITOL 17

WITNESS REGISTER

LARAINÉ DERR, Boards & Commissions Director
Office of the Governor
Juneau, Alaska

POSITION STATEMENT: Explained the process of appointment to boards and commissions.

JAMES S. SPALDING, Appointee
to the Alaska Labor Relations Agency
Anchorage, Alaska

POSITION STATEMENT: Testified as an appointee to the Alaska Labor Relation Agency.

DENNIS NIEDERMEYER, Appointee
to the Alaska Labor Relations Agency
Eagle River, Alaska

POSITION STATEMENT: Testified as an appointee to the Alaska Labor Relation Agency.

LAURA PLENART, Appointee
to the Personnel Board
Ketchikan, Alaska

POSITION STATEMENT: Testified as an appointee to the Personnel Board.

JOHN GIUCHICI
International Brotherhood of Electrical Workers (IBEW);

Fairbanks Central Labor Council
Fairbanks, Alaska

POSITION STATEMENT: Testified in opposition to the confirmation of Mr. Spalding to the Alaska Labor Relations Agency.

JAY QUAKENBUSH, President
Fairbanks Building Trades
Fairbanks, Alaska

POSITION STATEMENT: Indicated concern with the confirmation of Mr. Spalding to the Alaska Labor Relations Agency.

TIM SHARP
Laborers Local 942
Fairbanks, Alaska

POSITION STATEMENT: Testified in opposition to the confirmation of Mr. Spalding to the Alaska Labor Relations Agency.

RAY SMITH
Anchorage, Alaska

POSITION STATEMENT: As a former member of the Alaska Labor relations Agency, offered to answer questions.

ROBERTA DEMOSKI
International Brotherhood of Electrical Workers (IBEW)
Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to the confirmation of Mr. Spalding to the Alaska Labor Relations Agency.

DON VALESKO, President
Anchorage Central Labor Council;
Business Manager, Alaska District Council of Laborers;
Business Manager, Public Employees Local 71
Anchorage, Alaska

POSITION STATEMENT: Expressed concern with the nomination of Mr. Spalding to the Alaska Labor Relations Agency.

HEATH HILYARD, Staff
to Representative Lesil McGuire
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented CSHB 539, Version D, on behalf of Representative McGuire, Chair of the House Judiciary Standing Committee.

DON ETHERIDGE, Lobbyist
for the Alaska State American Federation of Labor and Congress of Industrial Organizations (AFL-CIO)

Juneau, Alaska

POSITION STATEMENT: Expressed concerns with workers' compensation under CSHB 539, Version D.

JAKE POOLE, Director
Tanana Valley Campus
University of Alaska - Fairbanks
Fairbanks, Alaska

POSITION STATEMENT: Testified on HB 539.

JAN GEHLER
University of Alaska - Anchorage
Anchorage, Alaska

POSITION STATEMENT: Testified on HB 539.

JAMO PARRISH
University of Alaska
(No address provided)

POSITION STATEMENT: During discussion of CSHB 539, Version D, answered questions.

PETE KELLY
University of Alaska
(No address provided)

POSITION STATEMENT: During discussion of CSHB 539, Version D, answered questions.

VERN JONES, Chief Procurement Officer
Division of General Services
Department of Administration
Juneau, Alaska

POSITION STATEMENT: Presented CSHB 545, Version D, on behalf of the governor.

ACTION NARRATIVE

TAPE 04-43, SIDE A

Number 0001

CHAIR TOM ANDERSON called the House Labor and Commerce Standing Committee meeting to order at 3:40 p.m. Representatives Anderson, Dahlstrom, Lynn, Rokeberg, Crawford, and Guttenberg were present at the call to order. Representatives Gatto arrived as the meeting was in progress.

CONFIRMATION HEARING(S)

CHAIR ANDERSON announced that the first order of business would be the confirmation hearings for the following boards: Occupational Safety and Health Review Board; Personnel Board; State Board of Registration for Architects, Engineers, and Land Surveyors; and Alaska Labor Relations Agency. Chair Anderson said that he would first take public testimony on the appointees.

Number 0173

LARAINÉ DERR, Boards & Commissions Director, Office of the Governor, explained that ordinarily a vacancy list is published on the Internet. Therefore, someone interested in serving would start there and submit an application. The application is filed in the appropriate board or commission. When a vacancy arises, the applications are reviewed in order to ensure that the applicants are qualified, then a recommendation is made to the governor. The governor then makes the appointment.

REPRESENTATIVE LYNN inquired as to the number of applications for the positions being considered today.

MR. DERR answered that there were seven applicants for the Alaska Labor Relations Agency and only one or two for the Personnel Board. Mr. Derr confirmed that the seven applicants for the Alaska Labor Relations Agency were reviewed and the governor made a decision among the seven.

Number 0360

REPRESENTATIVE ROKEBERG recalled that the Alaska Labor Relations Agency has seats designated for specific [groups in the field]. He pointed out that e-mails in the committee packet indicate that the seat to which Mr. James S. Spalding is being appointed is a "labor seat". Representative Rokeberg asked if the statute requires that the individuals on this agency be from a mix of backgrounds.

MR. DERR confirmed that the statute specifies that [the Alaska Labor Relations Agency] should consist of representatives from labor, two representatives of management, and two public seats. Furthermore, the statute specifies that the individuals must have a background in the specific area for which they are being appointed. In further response to Representative Rokeberg, Mr. Derr informed the committee that there was one opening in each of the three areas of the agency: labor, management, and the public seat. He further informed the committee that Mr. Gary P.

Bader is recommended for the public seat; Mr. Dennis S. Niedermeyer is recommended for the management seat; and Mr. Spalding is recommended for the labor seat.

REPRESENTATIVE ROKEBERG, turning to Mr. Spalding's background, asked if a background in human resources qualifies an individual to represent labor.

MR. DERR answered that human resources personnel deal with labor issues quite a bit. Furthermore, Mr. Spalding was a labor representative in the past.

Number 0529

REPRESENTATIVE CRAWFORD inquired as to the duties of those appointed to the Personnel Board.

MR. DERR explained that the Personnel Board reviews problems that are forwarded to it and essentially deal with management and labor issues. In further response to Representative Crawford, Mr. Derr related that for the Personnel Board individuals with "a good head on their shoulders and someone that ... has some experience dealing with people" are sought. The Personnel Board has no designated seats.

Number 0628

CHAIR ANDERSON requested that the committee forward the names of the following appointees to the following boards: Mr. Thor R. Christianson to the Occupational Safety and Health Review Board; and Mr. Clifford E. Baker, Mr. Boyd J. Brownfield, Mr. Richard A. Hughes, and Mr. Kenneth D. Maynard to the State Board of Registration for Architects, Engineers, and Land Surveyors.

REPRESENTATIVE ROKEBERG related that he is well acquainted with Mr. Maynard, who he believes will be an excellent appointee.

CHAIR ANDERSON concurred, and noted that he and Mr. Maynard served on the zoning board of examiners and appeals in the Municipality of Anchorage. Upon hearing no objection, Chair Anderson announced that the names of Mr. Christianson, Mr. Baker, Mr. Brownfield, Mr. Hughes, and Mr. Maynard will be forwarded to the full body for consideration.

Number 0696

JAMES S. SPALDING, Appointee to the Alaska Labor Relations

Agency, informed the committee that he has lived in Alaska since 1968 when he was stationed here. He related that during his time in Alaska he has spent most of his time in the field of human resources and labor relations, in both the public and private sectors. He explained that although he has primarily worked in management, he has some years of experience working for a labor organization, Alaska Public Employees Association (APEA). Mr. Spalding said that he believes he has a very good understanding of labor dynamics and labor laws. Furthermore, he opined that most people who have worked with him would agree that he presents a fair and objective picture and treats people in a fair and consistent manner. He recalled being before the Alaska Labor Relations Agency when he worked as the human resources manager for the City of Unalaska. Mr. Spalding related that he is honored to be selected for this position and felt it appropriate that he give something back to the state.

CHAIR ANDERSON informed the committee that Mr. Gary P. Bader, Appointee to the Alaska Labor Relations Agency, is out of state and has yet to submit his resume. Therefore, his name will be held until all the information necessary is obtained.

Number 0805

REPRESENTATIVE DAHLSTROM inquired as to Mr. Spalding's current position with Matanuska Electric Association (MEA).

MR. SPALDING answered that he is the director of human resources and corporate affairs. He confirmed that in the aforementioned position he represents management and does so when in arbitration.

REPRESENTATIVE DAHLSTROM asked if it's necessary for Mr. Spalding to take management's viewpoint in those arbitrations.

MR. SPALDING answered, "Well, generally speaking, yes." For example, when interpreting contract language, it's his job to defend the way in which [management] interprets the contract. In further response to Representative Dahlstrom, Mr. Spalding confirmed that he reports directly to management.

REPRESENTATIVE DAHLSTROM asked if in Mr. Spalding's position he ever represents labor.

MR. SPALDING explained that there are times when he acts as an advocate for individual employee issues. For instance, he might help an individual in the case of a benefit problem. "Even

times when an employees might have issues that I think that they're understanding of the contract may be correct and it's up to me to convince my peers and my superiors that their [the employee's] view is correct. But in a formal sense, I am a representative of management," he related. In further response to Representative Dahlstrom, Mr. Spalding confirmed that he represents management in unfair labor practices or labor disputes.

REPRESENTATIVE DAHLSTROM inquired as to whose side Mr. Spalding is on during collective bargaining negotiations.

MR. SPALDING replied that he would sit on the management side. In further response to Representative Dahlstrom, Mr. Spalding confirmed that during his tenure with MEA and the City of Unalaska he hasn't represented labor.

Number 0963

REPRESENTATIVE DAHLSTROM informed the committee that the correspondence she has received in opposition to Mr. Spalding's confirmation have nothing to do with his character or quality of work. The concern has been in regard to the view that there is a lack of balance with regard to the labor side [of the Alaska Labor Relations Agency].

REPRESENTATIVE LYNN echoed Representative Dahlstrom's comments. He noted his concern that Mr. Spalding would represent the management side rather than the labor side on this agency.

REPRESENTATIVE GUTTENBERG asked if Mr. Spalding was asked to apply for this position.

MR. SPALDING replied yes. In further response to Representative Guttenberg, Mr. Spalding related that at the time he applied, it wasn't clear to him that there were designated seats. Mr. Spalding said that he didn't believe the application related for which seat it would be, rather it was simply an application for the agency. Given his background in labor, Mr. Spalding felt that he [has the qualifications].

REPRESENTATIVE GUTTENBERG inquired as to why Mr. Spalding, coming from a background in management, would believe he is fit for a seat representing the other side.

MR. SPALDING said that he isn't sure that the seat is designated for the labor side. Furthermore, the question of fairness in a

quasi-judicial role isn't limited to one's position, but rather being fair, paying attention to the law, and being consistent in decisions and rulings isn't unique to either side, he opined. Mr. Spalding said that he has amassed quite a bit of knowledge in this area over the last 30 years.

REPRESENTATIVE GUTTENBERG inquired as to Mr. Spalding's view as to why the statute has different designations for positions. He also inquired as to why Mr. Spalding feels that a person could be on many sides of an issue and be able to represent different aspects of the issue.

MR. SPALDING related that he has spent time on both sides of the table, and therefore has an appreciation for that. The aforementioned, he opined, provides some level of qualification.

Number 1210

DENNIS NIEDERMEYER, Appointee to the Alaska Labor Relations Agency, offered to answer any questions or concerns. In response to Representative Rokeberg, Mr. Niedermeyer said that it's his understanding that he is to fill a seat that is statutorily required to have a background in management. Mr. Niedermeyer informed the committee that for the last 21 years he has worked for the Lake and Peninsula School District as the district business manager and as such has been actively involved in the management of the organization.

Number 1270

LAURA PLENART, Personnel Board, informed the committee that she has lived in Alaska since 1990 and has worked in management with McDonalds for the last 20 years. She noted that she has dealt with all different levels of employees. Her belief that she could contribute is why she applied when asked to serve.

REPRESENTATIVE GUTTENBERG asked if McDonalds provides any ethics training and diversity training.

MS. PLENART replied yes, and related that she hasn't had to deal with many problems. She further related that currently she works with a franchisee in a one-store situation.

REPRESENTATIVE GATTO observed that Ms. Plenart went from crew to manager in seven years. He asked if one could expect that if he or she is a "go getter".

MS. PLENART said that she didn't believe it to be extraordinary but rather that anyone who wanted to succeed could do so.

CHAIR ANDERSON now turned to the public testimony on these appointees.

Number 1387

JOHN GIUCHICI, International Brotherhood of Electrical Workers (IBEW) and the Fairbanks Central Labor Council, related his strong opposition to the confirmation of Mr. Spalding to the labor seat on the Alaska Labor Relations Agency. Mr. Giuchici informed the committee that for quite a few years Mr. Brickely, Golden Valley Electric Association (GVEA), served on the employer seat for the Alaska Labor Relations Agency. For that seat to be filled by a human resources person isn't acceptable, he opined. In response to Representative Guttenberg, Mr. Giuchici stated that he hasn't negotiated with MEA.

Number 1461

JAY QUAKENBUSH, President, Fairbanks Building Trades, said he believes the seat [to which Mr. Spalding is being appointed] was placed in statute as a labor seat to provide balance on the agency. Mr. Quakenbush remarked that he wished someone in labor in Fairbanks had been called to apply.

TIM SHARP, Laborers Local 942, related his strong opposition to the appointment of Mr. Spalding to the Alaska Labor Relations Agency, which he characterized as the governor attempting to manipulate the Alaska Labor Relations Agency by stacking it with essentially three management seats. The intent of a tri-partite board is one of balance. Mr. Sharp said:

Apparently under this administration balance threatens some of our leaders in Juneau. The effort goes well beyond partisanship and even the hint of fairness. If the agenda was simple partisanship, I could deal with that. Looking for labor people with an "R" attached to their name, simply come to a Ted Stevens' event or Don Young fundraiser and you'll find hundreds of them. Even look to some of the unions here that have endorsed Governor Murkowski, again, many qualified people that would've been happy to serve. I don't know Mr. Spalding and I don't need to know him, he could well be a very good man. And that, of course, is not the point here today as everyone knows. He

sits on the other side of the table; he's not from labor. Let workers continue to have at least one voice in the process that was designed to give them fair elections and contracts. This move also goes well beyond the (indisc.); it's insulting to the people that represent workers as well as dangerous for the workers who happen to be appealing to this board for fairness in their decision-making. ... It also further lends to the mistrust of the system in general. I guess at some point you have to ask who's running the circus there sometimes. Candidates ask me why some of labor tends to support Democrats instead of Republicans. These are ... the very types of moves that the folks in the majority promised us they would never support, when talking to organized labor during the election process. These are also the very type of thing the minority talks about that will happen under a Republican administration. Is it the handiwork of the administration or the Republican party or are your strategists so shortsighted or just arrogant? If you allow this to happen, what do you think will be thrown up in your faces for you to remember the next time when you come to us for support? Please put him [Mr. Spalding] back into the management slot where he belongs, we could support that.

REPRESENTATIVE LYNN said that no one part of any group should be painted with such a broad brush.

MR. DERR informed the committee that Mr. Spalding is a registered Democrat.

Number 1670

RAY SMITH informed the committee that he is a former member of the Alaska Labor Relations Agency on which he served for six years. He offered to answer any questions.

ROBERTA DEMOSKI, IBEW, informed the committee that she knows Mr. Spalding personally as she works with him on a daily basis and has sat across the table from him in negotiations, arbitration, unfair labor practices, federal litigation, and state litigation. Unequivocally, Mr. Spalding is a very competent and knowledgeable advocate for management, and therein lays the problem. For Mr. Spalding to be appointed to the labor seat violates the spirit and the intent of the statute, she opined. Ms. Demoski informed the committee that she has served on the

Alaska Labor Relations Agency and found it invaluable that each member has to listen to the perspective brought to the table by the other members. This isn't about being fair and unbiased, rather it's about being forced to listen to the various perspectives of the other members. Therefore, Ms. Demoski strongly opposed the appointment of Mr. Spalding to the Alaska Labor Relations Agency.

Number 1778

DON VALESKO, President, Anchorage Central Labor Council; Business Manager, Alaska District Council of Laborers; Business Manager, Public Employees Local 71; addressed the seat to which Mr. Spalding is being appointed. He said that the issue isn't about the individual, but rather providing a level playing field for issues that come before the agency. Mr. Valesko related that after 26 years of working on the labor side, it would be difficult for him to really see management's perspective. Mr. Valesko expressed concern with the Alaska Labor Relations Agency because it seems that three management representatives are being strategically placed on it. Therefore, Mr. Valesko requested that the committee seriously consider Mr. Spalding's name.

MR. DERR turned to the statute concerning the makeup of the Alaska Labor Relations Agency. The statute specifies that two seats of this agency must have a background in management, two seats must have a background in labor, and two seats must be from the general public. The applications and recommendations were considered and the three people up for confirmation filled the [qualifications] and were sorted in regard to the open seats. From that the people were chosen who would do the best job.

Number 1939

CHAIR ANDERSON commented that Mr. Spalding qualifies in terms of competence and is a nice person. With regard to testimony regarding the solicitation for boards and commissions, Chair Anderson said that he wasn't aware that such occurs. He assumed that there are web sites and information [available regarding applying to be a member of a board or commission]. Therefore, he felt it was a bit disingenuous to suggest that the governor would contact folks.

MR. DERR interjected that there are times when folks are contacted, such a when there aren't applicants. In further response to Chair Anderson, Mr. Derr said that no one from labor

solicited membership.

CHAIR ANDERSON surmised that Mr. Derr believes "it's the governor's prerogative ... as long as it's within the statutory reference, anyway."

MR. DERR agreed.

CHAIR ANDERSON opined that from the testimony today, including that of Mr. Spalding, it seems that Mr. Spalding brings more of a management perspective.

MR. DERR said that many things have to be balanced, including the political affiliation. He reiterated that Mr. Spalding is a Democrat. As with any appointment, a judgment call is made.

CHAIR ANDERSON acknowledged that it's the prerogative of the governor to make nominations, but the legislature should analyze and balance [those nominations]. In this case, it seems that the Alaska Labor Relations Agency is a bit too far toward the management side. If other members agree, then Mr. Spalding's name will be held.

REPRESENTATIVE ROKEBERG stated a point of order, and related that it isn't the committee's duty to hold this nominee.

CHAIR ANDERSON remarked that he didn't recall Representative Rokeberg objecting when the committee held the name of the marine pilot. He said there is precedence with the committee for holding an appointee for further evaluation.

Number 2085

REPRESENTATIVE GUTTENBERG related his understanding that Mr. Derr didn't view the statutory language referring to a representative of labor to necessarily refer to organized labor.

MR. DERR agreed, and reiterated that the statute specifies that the appointee have a labor background.

REPRESENTATIVE GUTTENBERG pointed out that each [appointee] to the Alaska Labor Relations Agency being considered today is a member of labor management. In the same context, Representative Guttenberg surmised that Mr. Derr would consider them all eligible for the management position.

MR. DERR explained that it would depend upon who applied and his

or her background.

REPRESENTATIVE GUTTENBERG said all but one [of the appointees to the Alaska Labor Relations Agency] are management. Theoretically, all members of organized labor holding an administrative position would be considered [as eligible for a management position]. However, he suggested such would be viewed as folly in most situations.

Number 2148

MR. DERR, in response to Representative Gatto, specified that the appointees to the Alaska Labor Relations Agency include one for each designation: public, management, and labor.

REPRESENTATIVE GATTO opined that folks are picking on Mr. Spalding, although it could be the case for any of the appointees. Therefore, he questioned why there has been so much testimony on one individual when it could've been directed at any of the others.

MR. DERR said that most of the time [his recommendations] are based on the applications and references. The references for Mr. Spalding were excellent. He restated that sometimes it comes down to a judgment call.

CHAIR ANDERSON reminded everyone that there is a public process during which the public is able to comment on these appointments, which is what occurred here.

REPRESENTATIVE ROKEBERG stated that the legislature and the committee has a duty to interpret its own statutes, which is what is being done here.

REPRESENTATIVE LYNN clarified that he isn't criticizing Mr. Spalding, but rather the nomination.

REPRESENTATIVE DAHLSTROM said that the communications she has received on Mr. Spalding's appointment have been in regard to whether his appointment falls within the bounds of the statute.

Number 2269

REPRESENTATIVE CRAWFORD opined that if Mr. Spalding had been nominated for the management seat, then there wouldn't have been a problem. He likened it to the perception of himself in that he has been on the management side at some points during his

career, although he has mainly been on the labor side. He surmised that anyone who knew him would object to him receiving a management [designated] seat. "I'm labor, this ... man ... he's management and I think it's clear that this ... is a labor chair and the man's management ... it's just that it's not right to put him in a labor chair," he said.

Number 2310

CHAIR ANDERSON asked if there is any objection to forwarding the names of the following appointees to the following boards: Mr. Niedermeyer, Alaska Labor Relations Agency; Mr. Plenart, Personnel Board. There being no objection, those names will be forwarded to the full body for consideration.

CHAIR ANDERSON asked if there is any objection to forwarding the name of Mr. Spalding, Alaska Labor Relations Agency, to the full body for consideration.

REPRESENTATIVE LYNN objected.

CHAIR ANDERSON announced that he would hold the name of Mr. Spalding.

REPRESENTATIVE ROKEBERG indicated that it would be appropriate to hold the name of an appointee for the purpose of further investigation. However, it's not proper to object to the nomination and not forward the name.

CHAIR ANDERSON specified that Mr. Spalding's name is being held for further investigation.

REPRESENTATIVE ROKEBERG clarified that it's not the committee's purpose to say whether it approves or disapproves of the nomination, that's the purpose of the joint session of the legislature. He acknowledged that one can verbalize that there's a problem with the nomination in terms of the statutory construction, although that doesn't preclude the committee from forwarding the name.

REPRESENTATIVE GATTO stated a point of order, and asked if it's the committee's duty to determine whether an appointee qualifies or to determine whether or not "we like him."

CHAIR ANDERSON specified that the committee is charged with determining whether an appointee qualifies. Chair Anderson noted that the Senate Labor and Commerce Standing Committee has

held Mr. Spalding's name as well.

The committee took an at-ease from 4:26 p.m. to 4:30 p.m.

hb539

HB 539-UNIV. STUDENT PRACTICUM LIABILITY/WAGES

TAPE 04-43, SIDE B

CHAIR ANDERSON announced that the next order of business would be HOUSE BILL NO. 539, "An Act exempting a person who allows a student of the University of Alaska to gain practical work experience with the person while participating in a practicum from vicarious liability as an employer, and exempting the student participating in a practicum from the Alaska Wage and Hour Act and workers' compensation coverage."

Number 2316

REPRESENTATIVE LYNN moved to adopt CSHB 539, Version 23-LS1837\D, Craver, 4/16/04, as the working document. There being no objection, Version D was before the committee.

HEATH HILYARD, Staff to Representative Lesil McGuire, Alaska State Legislature, informed the committee that there are two substantial differences between Version A and Version D. In Section 1 of Version D, lines 11-13 were inserted in order to clarify that university interns aren't paid for their services. With regard to workers' compensation claims, the language on page 4, line 5-31, of Version A was deleted per conversations with the university. Mr. Hilyard related that in general this legislation limits vicarious liability for the employers of university practicum students. The university feels the aforementioned is necessary. Furthermore, Representative McGuire decided to sponsor this legislation on behalf of the House Judiciary Standing Committee because university practicum programs are valuable in gaining on-the-job work experience. The university practicum programs are particularly [useful] in the construction- and health-related industries. This legislation clarifies that the employer of these students is responsible for its liability, the university for its, and the intern is responsible for any liability as a result of the practicum. There is no desire to extend the liability for the intern's actions to the employer or the university, which this legislation clarifies.

Number 2179

DON ETHERIDGE, Lobbyist for the Alaska State American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), related that he has been working with the university on this legislation. He explained that both are trying to determine the best way to exempt the student from being allowed the minimum wage. A concern regarding workers' compensation remains. The concern is in regard to what happens if a student intern is hurt on the job because when exempted from the minimum wage, there is no employer-employee relationship. Therefore, he didn't believe the student intern would be covered under workers' compensation.

REPRESENTATIVE CRAWFORD inquired as to what would happen if a student intern was injured due to negligence.

MR. ETHERIDGE related his understanding that if a student intern is injured due to negligence on behalf of the employer, the student intern would be allowed to sue the employer. However, if the injury is due to the student intern's own negligence the student intern couldn't bring forth a lawsuit.

REPRESENTATIVE GATTO inquired as to where the burden of proof lays in the situation mentioned by Mr. Etheridge.

MR. ETHERIDGE said that he didn't know and deferred to an attorney.

Number 2067

JAKE POOLE, Director, Tanana Valley Campus, University of Alaska - Fairbanks, related that a number of programs at the Tanana Valley Campus require students to participate in practicum programs as part of the degree program. The Tanana Valley Campus averages about 50-75 students each semester that look to complete such training. The practicum programs range from the allied health arena to early childhood [development], culinary arts, and to the trades. The key point is that this legislation will allow the students to be placed in a practicum setting that is the best for the students while ensuring that the practicum providers and students are in the best position with regard to workers' compensation and any liability.

REPRESENTATIVE GUTTENBERG noted that some legislative offices have university interns, who receive a stipend to cover some of their costs and expenses while in Juneau. He asked if other programs pay stipends.

MR. POOLE specified that those individuals involved in a practicum aren't paid and students in a paid position are in an internship. In further response to Representative Guttenberg, Mr. Poole related that at the Tanana Valley Campus there are practicum programs for dental assisting, medical assisting, phlebotomy, culinary arts, early childhood [development], some trades, and the paralegal program.

Number 1934

JAN GEHLER, University of Alaska - Anchorage, said she would like to echo Mr. Poole's comments. She highlighted that the employer partners are critical to student success. She related that there are practicum programs established for the allied health programs, radiographic technology, a series of medical and clinical laboratory instruction, dental assisting, and medical assisting. There are also [practicum programs] for transportation power or automotive and diesel technology programs as well as the culinary arts, occupational safety and health technology, and a suite of aviation programs. Ms. Gehler mentioned that [the university] does distinguish between internships of which some are paid and some are not and practicums, which are usually driven by some program accreditation standards that require no pay be received. She explained that those students in a field-based learning experience have a structured program of study that's overseen by a faculty member and collaborated with someone on site. Up to this point, developing the memorandum of agreements (MOAs) have been fairly straightforward. However, in this era it's a fairly laborious process negotiating with risk management personnel from employers, who are understandably concerned about their exposures. Ms. Gehler opined that this legislation will go a long way to help the faculty and support staff return to the business of instruction rather than negotiating language in MOAs. She characterized the legislation as a step in the right direction.

REPRESENTATIVE ROKEBERG said that he didn't see the workers' compensation language in Version D. He asked if the university is in agreement with the exclusion of workers' compensation requirements.

Number 1779

JAMO PARRISH, University of Alaska, informed the committee that the legislation was originally drafted to cover vicarious liability, minimum wage, and workers' compensation. However,

there was an objection to workers' compensation by organized labor, AFL-CIO. He expressed hope that practicum sites would be attracted without the workers' compensation provision.

REPRESENTATIVE ROKEBERG asked if traditionally the practicum programs provide workers' compensation.

MR. PARRISH related that among the complaints from practicum sites is that they would be responsible for workers' compensation. However, under Alaska law it's not clear how it would work. Therefore, Mr. Parrish would let it "ride" on the basis of whatever the court would decide. He related that there are cases outside of Alaska that have held that the benefit the student receives from the practicum site and the education is sufficient consideration for an employment relationship such that workers' compensation would apply. The aforementioned was of concern for the practicum sites as well as [minimum wage] and vicarious liability. Therefore, the hope is that addressing two of the three issues would allow [the legislation] to go forward.

REPRESENTATIVE ROKEBERG expressed concern because it sounds as if the university wants to gamble and allow those employers participating in the practicum program to make their own judgment and allow the courts to make a decision. However, Representative Rokeberg viewed this as a matter of public policy. Representative Rokeberg opined that the students should either have workers' compensation or not have it. He predicted that he would probably side with the university because he believes [requiring workers' compensation] may be a deterrent to the successful continuation of these practicum programs if additional burdens are placed on the employers. However, the participants should have coverage if injured, he said.

REPRESENTATIVE GUTTENBERG indicated concern with placing a student in a vulnerable situation in which the remedy after being injured is to go to court.

Number 1635

REPRESENTATIVE ROKEBERG reminded the committee that the growing workers' compensation claims are accelerating health care costs and health care insurance costs. He suggested that perhaps one way to address this is to require that a student in one of these programs have basic health care coverage, which would be the primary coverage for any injury.

REPRESENTATIVE GATTO posed a scenario in which a student is

injured and the student applies for his or her insurance, which says that the claim sounds like a workers' compensation claim. In such a situation the student would be abandoned unless he or she obtained representation, which is often difficult. Representative Gatto inquired as to how that would be resolved.

REPRESENTATIVE ROKEBERG suggested that the legislature make the policy.

MR. PARRISH said that he would agree with everything related to protecting the student if it didn't result in losing practicum sites. He opined that the university is trying to get good jobs for Alaskans. To the extent that the university is impeded from good practicum sites, the students aren't going to be educated. Mr. Parrish highlighted that the difference between the student and the employee is that the student isn't doing the job for the employer, and thus it's not fair to saddle the practicum sites with workers' compensation. Although it would be best to resolve the issue via statute, for the university it would be best to eliminate workers' compensation. He noted that although the university has some health insurance that it offers students in most practicums, it's not very generous insurance. Furthermore, students make the decision to attend school and choose programs that require practicums and thus students can make the decision regarding whether they want to learn. Mr. Parrish concluded by saying that he believes the student should be provided the opportunity, and the responsibility should lay with each individual for his or her own fault.

REPRESENTATIVE LYNN related his understanding from Mr. Parrish that the intern doesn't provide any benefit to the site. If that's the case, he questioned why anyone would host an intern program.

MR. PARRISH indicated that there is a misunderstanding between a practicum student and an intern. Practicum students aren't doing work like interns do and practicum students aren't paid as interns usually are. Basically, practicum students follow the worker and occasionally are involved in the tasks of the worker, but only if the worker is with the practicum student. The benefit these [host] sites receive is by contributing to the education of people such that they can work in the industry. Students aren't sent out to advance the labor interests of employers, rather they are sent out to learn. The aforementioned is carefully monitored.

Number 1337

REPRESENTATIVE CRAWFORD related that his wife did a practicum when she was obtaining her degree as a mental health counselor. Sometimes counselors are injured by their patients. Had his wife been injured during the practicum, it seems that her recourse would've been through workers' compensation with either the university or the clinic. Representative Crawford expressed the need for there to be a policy regarding who is actually liable.

MR. PARRISH opined, "I almost think we'd be better off without a bill than imposing workers' comp liability on the practicum site." He predicted that imposing workers' compensation liability on the practicum sites would damage the program. He noted the possibility that "they" could obtain workers' compensation.

CHAIR ANDERSON, noting that he is also the chair of the Labor & Workforce Development Committee for National Conference of State Legislatures, said that he understands the concerns on both sides. He added that he isn't particularly concerned. Chair Anderson related his understanding that the next committee of referral for HB 539 is the House Judiciary Standing Committee. He further related that he wanted to forward this legislation, although he didn't want to kill the legislation with a vote.

REPRESENTATIVE ROKEBERG said that he shared Chair Anderson's concerns. He noted that the original HB 539 included the workers' compensation exclusion language, which he preferred so that the university could continue to operate. Representative Rokeberg related that although he is willing to forward the legislation, he suggested that for this legislation to have any success it would need to encompass [the workers' compensation exclusion language] in the next committee of referral. Although he indicated that this committee should do the aforementioned, time is getting short. He offered to make a conceptual amendment. Representative Rokeberg said that his intention would be to statutorily allow the university to have a practicum and allow the employers to not have workers' compensation coverage on those practicum students.

Number 1118

PETE KELLY, University of Alaska, said that he believes adding Section 3 in HB 539 to Version D would be Representative Rokeberg's conceptual amendment.

REPRESENTATIVE GUTTENBERG said he wasn't sure of the effect of such a conceptual amendment. Therefore, he indicated his preference for [forwarding] the legislation without the conceptual amendment. He pointed out that students in practicum situations are often in high risk situations and should be afforded some coverage whether from the [host] employer or the practicum [program] itself.

REPRESENTATIVE ROKEBERG questioned why an employer would host a practicum student, if the employer would face an increased rate [in workers' compensation].

CHAIR ANDERSON inquired as to Mr. Kelly's preference in regard to forwarding the legislation to the next committee of referral or adopting the conceptual amendment.

MR. KELLY related that the university would prefer the [conceptual] amendment as described earlier. However, discussions had led to [Section 3 of the original legislation] being eliminated in Version D. He said he would rather return to discussions with organized labor before reinserting [Section 3 of the original legislation]. Mr. Kelly also agreed with Representative Rokeberg's earlier mention regarding time growing short. Mr. Kelly committed to the committee that he would get back with it regarding the language and if it's a problem, the university will have to go without the legislation this year.

Number 0950

REPRESENTATIVE DAHLSTROM moved to report CSHB 539, Version 23-LS1837\D, Craver, 4/16/04, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 539(L&C) was reported from the House Labor and Commerce Standing Committee.

HB 545-STATE REAL PROPERTY LEASE EXTENSIONS

CHAIR ANDERSON announced that the final order of business would be HOUSE BILL NO. 545, "An Act relating to the extension under the State Procurement Code of terms for leases for real estate and certain terms for certain state contracts for goods and services; and providing for an effective date."

Number 0890

VERN JONES, Chief Procurement Officer, Division of General Services, Department of Administration, reminded the committee

that at the last hearing Representative Rokeberg mentioned some concerns, which have been addressed [in the proposed committee substitute (CS)]. The first concern was the vague nature of establishing a market rate for which to base a reduction in rent. The aforementioned concern is addressed on page 1, lines 10-12, which read: "The market rental value must be established by a real estate broker's opinion of the rental value or by an appraisal of the rental value." With regard to the section addressing the extension of contracts for goods or services, that section has been removed [in the proposed CS] and its title. Therefore, the proposed CS deals strictly with extensions of real estate or office space leases.

Number 0815

REPRESENTATIVE ROKEBERG moved to adopt CSHB 545, Version 23-LSGH2150\D, Bannister, 4/15/04, as the working document. There being no objection, Version D was before the committee.

REPRESENTATIVE ROKEBERG noted that [Version D] no longer includes the "brother-in-law section". He also noted that Version D references the court system on page 1, line 7, which the drafter indicated may be a separation of powers issue [because] the legislature has granted to the judicial branch the ability to have its own procurement code. He related that he has checked with the judicial branch, which has related its support of this legislation and lack of concern with regard to the possible separation of powers issue.

REPRESENTATIVE ROKEBERG said he has only one remaining concern, which is the [cost savings] of 5 percent below the market rental value of the real property. The aforementioned is the trigger of the statute. Representative Rokeberg recalled that the original statute allows an extension [when there are cost savings of] 10 percent and [the lessor] agrees to make modifications to comply with the Americans with Disabilities Act of 1990 (ADA) or [when there are cost savings of] 15 percent below the current rate in the lease without ADA. He explained that the change [encompassed in Version D] reflects fundamentally higher market values and the prevailing rates at the time, and therefore has universal applicability. By going to the 5 percent at a higher barrier, it seems that it would be appropriate to have a 10 percent [barrier] in order to prevent potential mischief.

CHAIR ANDERSON passed the gavel to Vice Chair Gatto.

MR. JONES agreed, but noted that leases that aren't ADA compliant would be an exception. Therefore, it would generally be [a cost savings of] 15 percent, which he viewed as too high. He opined the importance of the rate being tied to a reduction of the market value rather than the existing rates paid. It was thought that 5 percent is reasonable. "But that in itself, isn't as critical as tying it to the market rate," he stated.

REPRESENTATIVE ROKEBERG agreed. He posed a situation, what he indicated to be a typical situation, in which there is a \$.02 per square foot rental rate. In such a situation, 5 percent would only be \$.10 per square foot. Representative Rokeberg asked if Mr. Jones felt that 10 percent along with the market rate barrier would be workable.

MR. JONES responded that 10 percent would be better than the current statute.

REPRESENTATIVE ROKEBERG pointed out that this would allow the department to move forward with a sole source type contract, and he expressed the need to avoid the appearance of any noncompetitive type of acquisition or continuation of lease.

MR. JONES said that 10 percent seems fully reasonable and achievable.

Number 0465

REPRESENTATIVE ROKEBERG moved that the committee adopt the following amendment:

Page 1, line 9;
Delete "five"
Insert "ten"

REPRESENTATIVE CRAWFORD objected for discussion purposes. Representative Crawford said that if the market continues as it is, it would seem to make sense. However, if the market becomes "over built" and demand falls to the level of the 1980s, he questioned what would happen with a 10-year lease. He asked if in such a situation, any negotiation could happen [when the market changes].

REPRESENTATIVE ROKEBERG pointed out that the legislation specifies "up to ten years", and therefore one could have a one-year lease and this would still work. He explained:

What we're doing here is going away from looking at the ... baseline number, currently is the current lease value. What we're doing is changing to the market value. So, that would allow you to go into the market For example, ... if you were renting space for \$1.00 a foot and the market was now \$2.00 a foot, under the current statute you couldn't stay there because the guy couldn't afford to lower your rent. That means you have to go out and rebid it so ... you know you're going to end up paying the \$2.00 and you couldn't extend where you were, even for \$1.10 because of the current statute. This would allow you to renew it at anywhere below that market rate, at least 10 percent below it and stay where you're at so that you could gain the savings. So it's a much better standard.

REPRESENTATIVE ROKEBERG, in further response to Representative Crawford, related that in a down market the differential would be "squeezed" because the prevailing rate would be declining. However, the percentage wouldn't go down with it. He opined that typically in commercial real estate quotations of valuations will occur rather than specifics. "It's actually going to require the department to get a specific, single quote now," he stated. "I think you need to have enough of a distinction to grant you the sole source capability ...," he opined.

Number 0229

REPRESENTATIVE CRAWFORD removed his objection. [The conceptual amendment was treated as adopted.]

VICE CHAIR GATTO asked if the "real estate broker's opinion of the rental value" and "an appraisal of the rental value" are considered of equal value.

REPRESENTATIVE ROKEBERG, speaking as a real estate broker, replied yes, and added that real estate brokers are a lot cheaper. In a major commercial building, to obtain a full appraisal could be extremely expensive and not necessarily appropriate. "Having a broker's opinion of value ... would be more consistent with testing and providing a defensible prevailing market rate for the purposes of the statute," he said.

REPRESENTATIVE LYNN, as an associate broker, agreed with Representative Rokeberg.

VICE CHAIR GATTO surmised that although the language [on page 1, lines 10-12] allows either, it seems there will be a conflict later regarding who will insist on the more expensive appraisal.

REPRESENTATIVE ROKEBERG remarked that with a 30,000 square foot facility with a five- to ten-year deal, it might warrant an appraisal due to the scope and dollar amount of the project. The intention of the CS, he opined, is to provide the department flexibility to call for a broker's opinion versus an appraisal depending upon the scope of the project.

VICE CHAIR GATTO surmised that whether the market goes up or down, the existing value will be relied upon when there is a lease extension.

REPRESENTATIVE ROKEBERG replied yes and likened it to the price of oil going up and down.

TAPE 04-44, SIDE A

VICE CHAIR GATTO further surmised that whether [the market] goes up or down, the ability to extend the lease is based on the existing value. He asked if this legislation guarantees the right to extend the lease.

REPRESENTATIVE ROKEBERG explained that the legislation allows the Department of Administration to enter into negotiations and an agreement for a lease extension with existing premises if a bargain can be made below the prevailing market rate. In further response to Vice Chair Gatto, Representative Rokeberg confirmed that he would like [the bargain] to be at least 10 percent [below the prevailing market rate] otherwise it would need to go out to market. He noted that there is a danger with sole sourcing, and therefore the incentive needs to be sufficient enough to avoid it.

VICE CHAIR GATTO recalled from a prior hearing that moving expenses, rewiring, equipment replacement, and down time are all significant issues [to consider] for a lease extension.

Number 0142

REPRESENTATIVE ROKEBERG related that under the current procurement provisions, unless the standard is met, [a lease extension] would have to go out to bid.

MR. JONES informed the committee that he just received a call from the director of Libraries informing him that the facility [lease] in Anchorage is due to expire. The current cost of \$1.25 is being offered under an extension while the prevailing market rate is around \$2.00 not to mention the costs encountered in a move.

Number 0199

REPRESENTATIVE DAHLSTROM moved to report CSHB 545, Version GH2150\D, Bannister, 4/15/04, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 545(L&C) was reported from the House Labor and Commerce Standing Committee.

ADJOURNMENT

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at 5:20 p.m.