

**ALASKA STATE LEGISLATURE**  
**SENATE STATE AFFAIRS STANDING COMMITTEE**

April 29, 2003

1:42 p.m.

**MEMBERS PRESENT**

Senator Gary Stevens, Chair  
Senator John Cowdery, Vice Chair  
Senator Fred Dyson  
Senator Gretchen Guess  
Senator Lyman Hoffman

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

HOUSE BILL NO. 14 am

"An Act relating to an absence from the state while providing care for a terminally ill family member for purposes of determining eligibility for a permanent fund dividend; and providing for an effective date."

HEARD AND HELD

HOUSE BILL NO. 45

"An Act adding a second verse to the official Alaska state song."

SCHEDULED BUT NOT HEARD

HOUSE CONCURRENT RESOLUTION NO. 7

Proposing an amendment to the Uniform Rules of the Alaska State Legislature relating to executive sessions of legislative bodies; and providing for an effective date for the amendment.

MOVED HCR 7 OUT OF COMMITTEE

SENATE BILL NO. 145

"An Act relating to reemployment of and benefits for retired teachers or employees, including those who participated in retirement incentive programs, and to the employment as teachers of members of the public employees' retirement system who participated in a retirement incentive program; and providing for an effective date."

MOVED CSSB 145(STA) OUT OF COMMITTEE

SENATE BILL NO. 63

"An Act relating to municipal property taxation in annexed and detached areas; and providing for an effective date."

MOVED CSSB 63 OUT OF COMMITTEE

**PREVIOUS ACTION**

HB 14 - No previous action to record.

HCR 7 - No previous action to record.

SB 145 - No previous action to record.

SB 63 - See Community and Regional Affairs minutes dated 2/26/03 and State Affairs minutes dated 4/24/03.

**WITNESS REGISTER**

Jim Pound

Staff to Representative Hugh Fate

Alaska State Capitol, Room 128

Juneau, AK 99801-1182

**POSITION STATEMENT:** Introduced HB 14

Representative Bruce Weyhrauch

Alaska State Capitol, Room 102

Juneau, AK 99801-1182

**POSITION STATEMENT:** Sponsor HCR 7

Tamara Cook

Legislative Affairs Agency

Alaska State Capitol

Juneau, AK 99801-1182

**POSITION STATEMENT:** Answered questions on HCR 7

Debbie Ossiander

President, Association of Alaska School Boards

316 W 11th St.

Juneau, AK 99801

**POSITION STATEMENT:** Testified on SB 145

Fred Esposito

Director, Alaska Vocational Technical Center (AVTEC)

Department of Education &

Early Development

801 W 10<sup>th</sup> St.

Juneau, AK 99801-1894

**POSITION STATEMENT:** Testified on SB 145

Kevin Sweeney

Legislative Liaison

Department of Education &  
Early Development  
801 W 10<sup>th</sup> St.  
Juneau, AK 99801-1894  
**POSITION STATEMENT:** Testified on SB 145

Tim Steele  
Vice President, Anchorage School Board  
P.O. Box 196614  
Anchorage, AK 99519-6614  
**POSITION STATEMENT:** Testified on SB 145

Guy Bell  
Director, Division of Retirement and Benefits  
Department of Administration  
PO Box 110200  
Juneau, AK 99811-0200  
**POSITION STATEMENT:** Testified on SB 145

Mary Jackson  
Staff to Senator Thomas Wagoner  
Alaska State Capitol, Room 427  
Juneau, AK 99801-1182  
**POSITION STATEMENT:** Testified on SB 63

Dan Bockhorst  
Local Boundary Commission  
Department of Community & Economic Development  
550 West Seventh Avenue, Suite  
Anchorage, Alaska 99501-3510  
**POSITION STATEMENT:** Testified on SB 63

**ACTION NARRATIVE**

**TAPE 03-23, SIDE A**

**CHAIR GARY STEVENS** called the Senate State Affairs Standing Committee meeting to order at 1:42 p.m. Present were Senators Dyson, Cowdery, Guess, Hoffman and Chair Gary Stevens.

The first order of business was HB 14.

**HB 14-PERMANENT FUND ALLOWABLE ABSENCES**

JIM POUND, staff to Representative Hugh Fate, paraphrased from the sponsor statement.

HB 14 makes changes to existing statute and defines the legal definition of family. Once passed into law, the Permanent Fund Division of the Department of Revenue will be able to clearly consider the family through first cousins for the purpose of granting this exemption.

By changing the language, a family member will be able to provide care for a terminally ill family member in their final days without being penalized by the state. This expansion of existing language defines a legal family member as related through blood to the second degree, under the rules of canon law, marriage, adoption, or guardianship.

This addition to existing language will show Alaskans that we do believe the family is more than one or two generations. The family is still the strongest single unit that makes this state great, and we as legislators need to acknowledge that by passing HB 14.

He noted there were several proposed amendments. When the House amended the bill on the floor, the definition of family became too broad. The amendments address that oversight.

SENATOR COWDERY asked if the definition of family member included those involved in same-sex marriages and long-term non-marriage relationships.

MR. POUND replied same-sex marriages are specifically not included.

SENATOR COWDERY asked how divorced individuals would be affected.

MR. POUND explained the bill uses canon law to define family, which would affect members of a divorced family.

SENATOR COWDERY questioned the number of people that might be impacted.

MR. POUND acknowledged he didn't know.

CHAIR GARY STEVENS informed members the discussion centered on version \A.A and the proposed amendment was \AA.1.

SENATOR FRED DYSON expressed bewilderment.

CHAIR GARY STEVENS pointed to page 3, lines 3-5 and read, "'family member' means a person legally related to the individual through blood to the second degree of kindred computed under the rules of canon law, marriage, adoption, or guardianship." The proposed amendment would delete "marriage, adoption, or guardianship" and insert "through blood, marriage, or adoption" on line 5. It would also delete "blood" on page 3, line 4 and insert "guardianship or,".

MR. POUND agreed.

SENATOR HOFFMAN noted that the phrase on page 2, line 7 "parent, spouse, sibling, child, or stepchild;" was replaced with "family member;" but wasn't changed in paragraph (6).

MR. POUND acknowledged it was an oversight.

SENATOR DYSON questioned whether there was discussion about grandparents.

MR. POUND said the original bill was directed strictly toward grandparents and during the House floor debate they expanded the term to "family" in the event the definition of a family was changed in the future.

SENATOR DYSON asked if it was Mr. Pound's understanding that grandparents are included as family members through blood relation to the second degree.

MR. POUND said second degree, without the amendments, stretches to second cousin, which is part of the reason for the proposed amendments. That expansion is greater than intended, but grandparents are certainly included as written.

SENATOR DYSON asked how the amendment included grandparents.

MR. POUND replied it was based on canon law and the marriage process. The canon law definition of marriage deals primarily with three generations of the existing family.

SENATOR DYSON asked that it be part of the record that it is clearly understood that the canon law concept includes grandparents and that Representative Fate and the House of Representatives is not against grandparents.

MR. POUND assured him that was correct.

CHAIR GARY STEVENS agreed that the term "canon law" didn't make it clear that grandparents were included.

SENATOR GRETCHEN GUESS wasn't sure why the term canon law was used. She then asked whether second cousins were included or excluded.

MR. POUND advised second cousins would not be included if the amendments were adopted.

SENATOR GUESS requested an explanation for using canon law.

CHAIR GARY STEVENS said he was interested in the explanation as well.

MR. POUND replied Representative Kerttula wanted to use the term to define family.

SENATOR DYSON suggested holding the bill so that Representative Kerttula could offer an explanation for using canon law.

CHAIR GARY STEVENS agreed he wasn't comfortable passing the bill from committee at that time.

SENATOR COWDERY had no objection.

SENATOR HOFFMAN asked that Mr. Pound also find out how many people were affected currently and the projected number if the bill were to pass. In addition, he asked how many members from one family could qualify under the providing care provision.

MR. POUND pointed out page 2, line 11 makes it clear just one person would qualify.

SENATOR GUESS said it wasn't clear that just one family member could qualify.

CHAIR GARY STEVENS pointed out the bill didn't limit the number of family members who could qualify to travel.

SENATOR GUESS added she would be interested to learn why paragraph (7) was changed while (6) and (8) were not.

MR. POUND acknowledged it was an oversight due to the House floor amendments.

CHAIR GARY STEVENS recapped the requested changes and held HB 14 in committee.

**HCR 7-UNIFORM RULES: EXECUTIVE SESSIONS**

REPRESENTATIVE BRUCE WEYHRAUCH, bill sponsor, reported the bill was drafted on behalf of the House State Affairs Committee after they conducted hearings on homeland security for the State of Alaska. The commissioners of veterans and military affairs and public safety testified in a public forum on matters that did not interfere with any security issues. After that, he asked the committee go into executive session excluding the public and staff so the commissioners could more fully disclose areas of homeland security that may have led to the need for additional policy discussions, legislation, or appropriations.

As a result of September 11, homeland security has become a significant part of what legislators do as government policy makers. However, difficulties arose when he asked Legislative Legal and Research Services to invoke certain statutory provisions so that the committee could go into executive session to discuss homeland security. HCR 7 amends the Uniform Rules to allow a legislative body to call an executive session, and specifically exclude the public, to discuss matters that might affect the security of the state or nation or a government unit or agency. The House Rules Committee amended the bill to include the adjective "adversely" to make it clear that adverse affect is what would be discussed in those executive sessions. As a policy matter, the Legislature wants to discuss things as openly as possible with the public, but they must also balance that with protecting the public on matters of security.

CHAIR GARY STEVENS asked Ms. Cook to discuss paragraph (3), which refers to discussion of a matter that may, by law, be required to be confidential and whether the current statute already addresses the issue.

TAMARA COOK, Director of Legislative Legal and Research Services, advised that lends itself to consideration of information such as tax records that an agency may possess. That type of material is listed in statute as confidential, but information an agency might possess that relates to security matters wouldn't necessarily be outlined as such in statute. That is partly because individual offices may be struggling with pragmatic and practical decisions about how to keep their office physically safe and yet there is no specific statute that says that type of concern is confidential information. In fact, it

would be difficult to draft a statute that would take into account all the possibilities that could arise when considering a security matter.

SENATOR COWDERY asked if there were parameters to determine allowable security for calling an executive session.

REPRESENTATIVE WEYHRAUCH replied it would depend on the expertise and concerns raised by those providing information to the committee. Information from an executive session could always be opened to the public at a later time if it was determined that was in the public's best interest. This is cutting new ground and there is no clear answer.

SENATOR DYSON said, "You're right on the mark and I'm surprised that we didn't have this provision and I commend you for doing it." He asked if there had been any significant criticism.

REPRESENTATIVE WEYHRAUCH said any criticism was philosophic in nature. It's a balancing act between the public's right to know and the public's need to be protected and is not to be used to evade the natural and necessary public watchfulness on what is happening in government.

Paragraph (3) covers not just tax records, but also personnel matters that are required, by law, to be confidential. Many Rule 22 issues are the types of thing Legislative Council discovers when it discusses personnel evaluations or litigation, which makes it more likely that they would invoke that protection as opposed to a legislative committee. Paragraph (4) is an uncommon type of invocation, but there was nothing in statute that made it easy to enter executive session to address homeland security issues.

SENATOR DYSON said he agreed with the bill and would like to move it whenever the Chair was ready to entertain a motion.

SENATOR GRETCHEN GUESS agreed with Senator Dyson, but wanted to know who would decide on entering executive session.

REPRESENTATIVE WEYHRAUCH replied the House State Affairs Committee went into executive session twice to discuss homeland security after talking with each of the commissioners and each member of the committee. After each executive session, he publicly reported what the committee was doing and why.

SENATOR GUESS appreciated that approach, but asked Ms. Cook if a specific process would be outlined if the bill were to pass.

MS. COOK replied Representative Weyhrauch pointed out that the three existing provisions for going into executive session would depend on the good faith and responsible judgment of the particular legislative body. By the nature of going into executive session, there is no way for an outside person to challenge the decision.

She reminded members that when a legislative body goes into executive session, it does not have the power to exclude other legislators. Additionally, a group of legislators' peers could make a collective judgment if they determine a committee was abusing the power to go into executive session.

SENATOR COWDERY asked whether a caucus was exempt as an executive session.

REPRESENTATIVE WEYHRAUCH made it clear the intent of HCR 7 was not for going into caucus.

SENATOR COWDERY asked whether there had ever been any court challenges to a provision of this type.

MS. COOK explained The League of Women Voters sued to question whether AS 44.62.310 was violated when the Senate Finance Committee met privately to craft an alternative budget in the last days of a legislative session. Ultimately, a budget was adopted, which was the result of that meeting. The meeting was not a caucus. In that suit, the lower court determined a violation had occurred in the open meeting statute. They held the public enjoyed the constitutional right to access committee meetings. On appeal, the Alaska State Supreme Court said there is no constitutional requirement that the Legislature open any of its proceedings to the public. Furthermore, the statute, which did apply to the Legislature, clearly applied to the Finance Committee and could not be enforced by a court against the Legislature itself. As a result of the holding, the Legislature has elected to enact, in its ethics provision, a requirement that meetings of the Legislature be held according to open meetings principles.

At this time, it is a violation of the Legislative Ethics Act for a legislative committee to be held in a way that would obstruct public access. She advised the Uniform Rules probably have no application to caucuses at all. A caucus has been

determined to be a private organization and is not a legislative body in the same sense a committee would be. Up until now, caucuses have established their own rules with respect to their meetings being public or private.

**4:10 p.m.**

CHAIR GARY STEVENS said amending Rule 22, as described, would say that a legislative body may call an executive session for security issues and that a legislative body would include any subdivision of the Alaska State Legislature.

MS. COOK agreed.

REPRESENTATIVE WEYHRAUCH stated that was the intent.

CHAIR GARY STEVENS expressed amazement this wasn't already in place, but mused it wasn't an issue just a short time ago.

REPRESENTATIVE WEYHRAUCH replied that although it's discouraging to think about, there is a need.

SENATOR DYSON made a motion to move HCR 7 from committee with individual recommendations and zero fiscal note. There being no objection, it was so ordered.

#### **SB 145-REEMPLOYMENT OF RETIRED TEACHERS**

CHAIR GARY STEVENS asked for a motion to adopt the proposed committee substitute (CS) as the working document.

SENATOR COWDERY made a motion to adopt CSSB 145 \H version as the working document.

CHAIR GARY STEVENS reported it was two years ago that the Legislature allowed school districts to rehire retired teachers. SB 145 would provide school districts with an additional tool, which would allow them to reemploy teachers who had retired through the Retirement Incentive Program (RIP). This would also allow the Department of Education and Early Development (DEED) and the Department of Labor (DOL) to hire regular and RIP retired teachers for their schools and programs such as Mount Edgecumbe and the Alaska Vocational Technical Center. In addition, DEED could hire a RIP retiree as a commissioner.

Those who RIPed and want to return to work are required to pay a penalty of 110 percent of the benefit that they received on

retirement, which has been a great disincentive to return to teaching. Because the full cost of RIP retirements were paid at the time of retirement, there is no actuarial impact on either PERS or TRS and therefore the bill has a zero fiscal note.

SENATOR COWDERY asked if teachers were unavailable or unwilling to teach in certain areas of the state.

CHAIR GARY STEVENS explained there is a real teacher shortage in many areas of the state and, although the bill wouldn't force districts to rehire retired teachers, it would give them that option. He reminded members that RIPs were no longer available to teachers and, as a school board president during the time they were offered, he regretted having agreed to the unsuccessful program.

DEBBIE OSSIANDER, President of the Association of Alaska School Boards, spoke on behalf of the association, which is comprised of school board members across the state. Because salaries in Alaska are no longer as competitive as they used to be and training in state is inadequate and bureaucratic mandates have caused special education teachers to drop their certification, it has become increasingly difficult to draw teachers and administrators to remote areas of the state. The ability to rehire teachers that have left the profession would help to alleviate those difficulties.

The association strongly supports the bill and has followed, with great interest, the new Administration's difficulties associated with finding a new commissioner. This bill would help school districts fill teaching and administrative positions.

SENATOR COWDERY asked how many teachers have taken advantage of a RIP.

MS. OSSIANDER replied she was from Anchorage and that district did not participate in state RIPs.

FRED ESPOSITO, Director of the Alaska Vocational Technical Center (AVTEC), reported that they deliver quality technical training to over 1,800 Alaskans every year. To do so, they rely on the ability to hire highly competent technical instructors, which has become increasingly difficult. SB 145 is important to the center and they support it fully.

KEVIN SWEENEY, legislative liaison with DEED, pointed out the bill not only allows RIP participants to return to work, but

also clarifies the law the Legislature passed in 2001. This allowed school districts and REAAs to hire retired teachers who hadn't RИPed and they could continue to receive their benefit. Due to an oversight when that bill was passed, the DEED was not given this ability even though they run schools in the state. The Teaching and Learning Support Division has positions that have been unfilled for more than a year and this bill would allow them to take advantage of the incentive to get both RИP and non-RИP teachers to return to the profession and perhaps fill some of those positions.

CHAIR GARY STEVENS thanked Mr. Sweeney for clarifying that DEED was left out of the 2001 legislation.

**TAPE 03-23, SIDE B**  
**4:30 p.m.**

TIM STEELE, Vice-President of the Anchorage School Board, testified in support of SB 145. The district has experienced difficulty in drawing teachers back to work and he reported that certain specialty positions are particularly difficult to fill. He noted that while the No Child Left Behind Act has requirements for highly qualified teachers in every subject area, it's the experienced teachers that were previously encouraged to leave as a cost saving measure. Although Anchorage didn't participate in the state RИP, they support the bill, which would encourage the return of experienced teachers.

GUY BELL, Director of Retirement and Benefits, reported the department submitted a zero fiscal note because the legislation has no actuarial impact on the retirement funds. In response to previous questions, he advised there are 862 RИP retirees in the state and 568 outside the state, all of whom could potentially return to teaching. They have received just 84 TRS waivers from school districts since its inception more than two years ago so it's used on a very limited basis.

CHAIR GARY STEVENS asked him to clarify that retired teachers could return to substitute teach as well.

MR. BELL agreed that was correct. A retired teacher could return full time, part time, or as a substitute teacher.

CHAIR GARY STEVENS asked what the latitude would be regarding the agreement the district would come to with the returning RИPed teacher and also for confirmation that the returning teacher would not be accruing additional retirement benefits.

MR. BELL replied the person would return under the waiver provision, which means they continue to receive their retirement benefit and would not accrue another retirement benefit during the return to employment.

CHAIR GARY STEVENS asked about tenure and salary.

MR. BELL advised that would be between the school district and the employee; the retirement system does not enter into those discussions.

SENATOR COWDERY made a motion to move SB 145 from committee with individual recommendations and attached zero fiscal note. There being no objection, it was so ordered.

### SB 63-MUNICIPAL ANNEXATIONS AND DETACHMENTS

MARY JACKSON, staff to Senator Thomas Wagoner, reported the committee substitute (CS) \H version was adopted during the previous hearing. At that time, the Local Boundary Commission (LBC) expressed concern regarding intent language. Because intent language does not have the force of law, Senator Wagoner directed her to have Legislative Legal and Research Services draft an amendment that would be placed into statute. The LBC has since reviewed and approved the amendment and Mr. Bockhorst would speak to the amendment.

DAN BOCKHORST, staff to the LBC, said the commission endorsed the CS adopted during the previous hearing, but they were concerned it might be construed to limit the commission's discretion to define reasonable and appropriate transition measures. Because of this concern, they asked for clear language indicating they would not be so limited.

In addition to annexations, detachments and incorporations, the LBC deals with four other issues. The concern was that if the transition measures were addressed with regard to just the three issues listed above, it might be construed that there was some intent to erode the commission's authority on decision making with regard to the other four issues. The amendment addresses their concern and they endorse the measure.

**4:40 p.m.**

MS. JACKSON pointed out page 1, line 1 changed the title making it purposefully tight.

SENATOR COWDERY made a motion to adopt amendment 1 dated 4/29/03 Cook \H.3 version. There was no objection.

SENATOR GUESS made a motion to move CSSB 63(STA) from committee with individual recommendations and zero fiscal note. There being no objection, it was so ordered.

There being no further business to come before the committee, Chair Gary Stevens adjourned the meeting at 4:45 pm.