

**ALASKA STATE LEGISLATURE
HOUSE SPECIAL COMMITTEE ON EDUCATION**

April 5, 2005

5:40 p.m.

MEMBERS PRESENT

Representative Mark Neuman, Chair
Representative Carl Gatto
Representative Bob Lynn
Representative Bill Thomas
Representative Peggy Wilson
Representative Les Gara
Representative Woodie Salmon

MEMBERS ABSENT

All members present

OTHER LEGISLATORS PRESENT

Representative Paul Seaton
Representative Les Gara

COMMITTEE CALENDAR

HOUSE BILL NO. 161

"An Act relating to reemployment of and benefits for retired teachers and public employees and to teachers or employees who participated in retirement incentive programs and are subsequently reemployed as a commissioner; repealing secs. 5, 7, and 9, ch. 58, SLA 2001; providing for an effective date by amending the delayed effective date for secs. 3, 5, 9, and 12, ch. 57, SLA 2001, and repealing sec. 13, ch. 58, SLA 2001, which is the delayed effective date for secs. 5, 7, and 9, ch. 58, SLA 2001; and providing for an effective date."

- MOVED CSHB 161(EDU) OUT OF COMMITTEE

HOUSE BILL NO. 92

"An Act relating to the purchase of interests in corporations, including limited liability companies, by the University of Alaska."

- HEARD AND HELD

HOUSE BILL NO. 173

"An Act relating to school funding and adjusting the district cost factors; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: HB 161

SHORT TITLE: REEMPLOYMENT OF RETIREES

SPONSOR(S): REPRESENTATIVE(S) ELKINS

02/18/05 (H) READ THE FIRST TIME - REFERRALS
02/18/05 (H) EDU, HES, STA
04/05/05 (H) EDU AT 11:00 AM CAPITOL 106

BILL: HB 92

SHORT TITLE: UNIVERSITY OF ALASKA AND CORPORATIONS

SPONSOR(S): REPRESENTATIVE(S) KELLY

01/21/05 (H) READ THE FIRST TIME - REFERRALS
01/21/05 (H) EDU, HES
04/05/05 (H) EDU AT 11:00 AM CAPITOL 106

WITNESS REGISTER

JIM VAN HORN, Staff
to Representative Jim Elkins
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Presented HB 161 on behalf of the sponsor,
Representative Elkins.

REPRESENTATIVE JIM ELKINS
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Spoke as the sponsor of HB 161.

REX SHATTUCK, Staff
to Representative Neuman
House Special Committee on Education
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: During hearing of HB 161, answered
questions.

MIKE TIBBLES, Deputy Commissioner
Office of the Commissioner

Department of Administration
Juneau, Alaska

POSITION STATEMENT: During hearing of HB 161, answered questions.

ROBERT MCHATTIE
Fairbanks, Alaska

POSITION STATEMENT: Expressed concerns with HB 161.

LEO JOHN KERRIN
Fairbanks, Alaska

POSITION STATEMENT: Testified in opposition to HB 161.

KERRY JARRELL
Bering Strait School District
Unalakleet, Alaska

POSITION STATEMENT: Testified in support of HB 161.

CHRIS CHRISTENSEN, Deputy Administrative Director
Administrative Staff
Office of the Administrative Director
Alaska Court System
Anchorage, Alaska

POSITION STATEMENT: During hearing of HB 161, expressed the desire to continue the retire-rehire program.

BARBARA HUFF TUCKNESS, Director
Governmental and Legislative Affairs
Teamsters 959
Anchorage, Alaska

POSITION STATEMENT: Testified in support of CSHB 161, Version G.

CARL ROSE, Executive Director
Association of Alaska School Boards (AASB)
Juneau, Alaska

POSITION STATEMENT: Testified in support of CSHB 161, Version G.

REPRESENTATIVE MIKE KELLY
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Spoke as the sponsor of HB 92.

MARY GREEN, Associate General Council
University of Alaska - Fairbanks
Fairbanks, Alaska

POSITION STATEMENT: During hearing of HB 92, answered questions.

CRAIG DORMAN, Vice President
of Research and Academic Affairs
University of Alaska - Fairbanks
Fairbanks, Alaska

POSITION STATEMENT: Discussed the intent and need for HB 92.

ACTION NARRATIVE

CHAIR MARK NEUMAN called the House Special Committee on Education meeting to order at [5:40:12 PM](#). Representatives Wilson, Gatto, Lynn, Thomas, and Salmon were present at the call to order. Representative Gara arrived as the meeting was in progress.

HB 161-REEMPLOYMENT OF RETIREES

CHAIR NEUMAN announced that the first order of business would be HOUSE BILL NO. 161, "An Act relating to reemployment of and benefits for retired teachers and public employees and to teachers or employees who participated in retirement incentive programs and are subsequently reemployed as a commissioner; repealing secs. 5, 7, and 9, ch. 58, SLA 2001; providing for an effective date by amending the delayed effective date for secs. 3, 5, 9, and 12, ch. 57, SLA 2001, and repealing sec. 13, ch. 58, SLA 2001, which is the delayed effective date for secs. 5, 7, and 9, ch. 58, SLA 2001; and providing for an effective date."

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REPRESENTATIVE THOMAS moved to adopt CSHB 161, Version 24-LS0645\G, Craver, 4/5/05, as the working document.

REPRESENTATIVE NEUMAN objected for discussion purposes.

[5:42:03 PM](#)

JIM VAN HORN, Staff to Representative Jim Elkins, Alaska State Legislature, explained that HB 161 extends the sunset date for legislation enacted by House Bill 242 of the Twenty-Second Alaska State Legislature and Senate Bill 94 of the Twenty-Third Alaska State Legislature. This legislation allows the rehire of certain Public Employees' Retirement System (PERS) and Teachers' Retirement System (TRS) employees who retired with a normal

retirement. These rehires can continue to receive normal retirement benefits by waiving further participation in the retirement systems. During the period of reemployment, no contributions to PERS and TRS are required from the employee or the employer. This legislation, he noted, is scheduled to sunset on July 1, 2005.

MR. VAN HORN pointed out that the committee packet should include a copy of an Alaskan legislative report entitled, "Results of the Retiree Return Program" from the Division of Retirement and Benefits dated February 10, 2005. That report relates that as of November 30, 2004, there were a total of 211 retirees rehired under PERS and 124 under TRS, which amounts to one-tenth of 1 percent of all PERS and TRS participants. Mr. Van Horn then turned the committee's attention to page 4 of the report and highlighted that on September 14, 2004, the attorney general issued an opinion stating that once the current legislation sunsets, reemployed retirees can no longer receive retirement benefits while employed by a PERS or TRS employer. Furthermore, if the retiree continues employment after the sunset date, the retiree must make contributions to the retirement systems and stop retirement benefits. The aforementioned came as a complete surprise to many people, he related. The general opinion was that after the sunset, the legislature would review the program to determine whether it was successful and should continue or not. Mr. Van Horn noted that the original legislation was a component of a workforce development initiative that the state and a number of other employers undertook to address workforce shortages already being experienced.

MR. VAN HORN highlighted an article in the committee packet from the February edition of State News, which is published by the Council of State Governments (CSG). The aforementioned article illustrates that many other states are and will be suffering from retiring Baby Boomers. In fact, a 2002 study relates that 30 percent of the workforce of many states will be retirement eligible by 2006, which is compounded by an approaching worker shortage. A Rockefeller Institute of Government study confirms that nationally, 50 percent of government jobs are in occupations requiring specialized training, education, or job skills compared to 29 percent in the public sector. Mr. Van Horn opined that it's obvious that the workforce shortage problem will not go away, but will only intensify with time. Therefore, HB 161 will provide Human Resource managers with an excellent tool to retain workers for hard to fill positions and thus the sponsor urges passage of this extension.

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REPRESENTATIVE JIM ELKINS, Alaska State Legislature, pointed out that there are many rehires in the legislature. However, those retirees working for the legislature are exempt from HB 161.

CHAIR NEUMAN recalled that one of the questions arising from the original legislation addressing rehiring retirees was in regard to mechanisms that help find new people to fill the positions of retirees. This legislation seems to address this by proposing three years to train people. He mentioned incentives for municipalities and state government to start filling positions rather than rehiring retirees long-term. He recalled that another issue was in regard to having a certain amount of people who should be paying into a system because the state has to pickup the cost for any [employee] not paying into the system. This legislation includes a provision on page 2, line 12, that holds the state harmless on the aforementioned.

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REX SHATTUCK, Staff to Representative Neuman, House Special Committee on Education, Alaska State Legislature, pointed out that Version G has three sections that weren't in the original legislation. Section 1(a) recognizes that this opportunity needs to be available to hire retired individuals to work in areas where there are [employee] shortfalls. Section 1(b) relates that school districts and public employees must plan to meet future workforce needs without relying on retired workers. Therefore, it's the intent of the legislature that all participation in the retiree reemployment provisions will end July 1, 2009, unless extended by law. Section 1(c) encompasses a hold harmless clause such that employers benefiting from this proposal pay any increase in unfunded liabilities to the retirement systems. Sections 3 and 4 provide for the administrator to determine that reemployment of a retired [PERS or TRS member] causing an increase in the unfunded liability of the system to be paid by that particular subunit. Section 5 addresses the four-year extension and Section [6] requires that [the administrator of TRS] report to the legislature annually on the effect of HB 161.

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REPRESENTATIVE LES GARA inquired as to how hiring someone under the teacher incentive program impacts TRS such that it increases an unfunded liability to TRS.

REPRESENTATIVE GATTO explained that when someone is hired, he/she pays into TRS, and therefore new employees are there to help fund employees who are going to retire. However, if a retired employee is rehired, the rehired retiree doesn't pay into the retirement system and nor does the school district. The system maintains the liability, although no new money is received for it.

REPRESENTATIVE GARA said that he wasn't sure that the language in Version G addresses the situation in the way it's intended.

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REPRESENTATIVE WILSON disagreed, and stated that the unfunded liability percent is already known. Therefore, the [language in HB 161] merely specifies that the employer, the school or the state, has to pay for [the rehired retiree's] unfunded liability.

CHAIR NEUMAN interjected that the provision on page 2, lines 12-14, is what Representative Wilson is describing.

REPRESENTATIVE GARA surmised then that the money being referred to is the money the [rehired retiree] is paying into the system that would go to other employees, but is no longer.

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MR. SHATTUCK explained that in the same way a regular employee's salary is added into the computation by the administrator, so is a new employee's salary. Therefore, whatever liability is incurred [by a rehired retiree] is the same as that of a nonretired employee.

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MIKE TIBBLES, Deputy Commissioner, Office of the Commissioner, Department of Administration, informed the committee that the actuaries were asked to relate the impact of pulling out an employee who is otherwise contributing to the past service rate. He informed the committee that when an employee returns after retiring, he/she is not paying the normal cost rate nor is he/she accruing any additional benefits. Therefore, it's

appropriate not to pay the normal cost rate. However, there's an unfunded liability that's assessed among all the PERS and TRS employers and employees. When a certain amount is pulled out, fewer members are contributing to the past service rate. Therefore, the actuaries were asked to determine at what point there is a cost to the system. He noted that PERS and TRS are different because TRS has a higher unfunded liability status and is a smaller group of individuals. The actuaries determined that at the point 100 employees are pulled out of the system and 100 retirees are brought back, there is a .02 percent impact on the base wage. Therefore, under the provision in Version G the point at which there are 100 participants in TRS, the administrator will calculate the employees' wage into the total base wage and assess the .02 percent across all the employers. The aforementioned will result in the collection of that portion that would've otherwise been collected to pay off the past service rate.

REPRESENTATIVE GARA turned attention to the language on page 2, line 31, and asked to whom the term "administrator" refers.

MR. TIBBLES answered that it refers to the administrator of the retirement system, which is the director of the Division of Retirement and Benefits.

REPRESENTATIVE GARA commented that having the director of the Division of Retirement and Benefits being the administrator is comforting because he/she is more likely to make a correct determination. He asked if the statutory language [on page 3, lines 1-5] is sufficient for a mathematical calculation.

MR. TIBBLES replied yes, adding that in PERS now, the impact is negligible and thus no dollar amount can be assigned. Furthermore, the [retired] participants in PERS would have to more than double before there would be an additional unfunded liability to the system.

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ROBERT MCHATTIE informed the committee that he is a retired PERS employee who is looking to protect PERS and those in PERS. When one considers the [legislation] that would raise PERS and TRS payments from employees, it seems unfair that a rehired retiree will receive a relatively larger check than nonretired employees. He then discussed situations in which an employee one level down from his/her supervisor may be looking to retire in the next five years and would like to move up, but the

retired supervisor returns. Furthermore, there are abuses such as in the case of the Fairbanks Police Department against the City of Fairbanks. Some PERS rehires in the Fairbanks Police Department had thought that they had bargained for a second retirement payment such that upon being rehired the employee would receive his/her full pay, full retirement pay, as well as additional retirement. Mr. McHattie noted that the city narrowly won the case, although the individuals could take the case to a higher court. If the individuals prevail, a precedent could be established such that others being rehired by the state would want a second retirement also. He informed the committee that the Department of Administration had to obtain an interpretation of the rules of this sunset in November. Furthermore, until March 8th no rules had been established by the department.

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CHAIR NEUMAN expressed hope that Mr. McHattie's concerns were addressed with Version G, which specifies that rehired retirees can only continue until July 1, 2009. Furthermore, Version G requires that people must be trained to replace them.

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REPRESENTATIVE GATTO posed a situation in which an employee had worked 25 years and was receiving a retirement check, was rehired and worked three more years. In the situation with the Fairbanks Police Department, was such an individual asking for a twenty-eight year retirement check or a three-year retirement check, he asked.

MR. MCHATTIE explained that the Fairbanks Police Department had cut a special deal with the mayor in order to receive extra medical payments. Because the city wasn't going to pay medical benefits, the rehires viewed it as money that they were losing and thus wanted it placed in a retirement fund. Mr. McHattie further explained that the individuals from the Fairbanks Police Department wanted to build toward another retirement on top of the retirement that they were collecting. However, this seems odd because police and troopers have argued for better retirement and even broke away from some of the more general unions because of the reported burnout at 20 years.

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MR. TIBBLES related his understanding that in the Fairbanks situation there was a desire to move some of the individuals out of PERS and into a separate retirement system. However, the liability of each employer isn't "wiped clean" by moving an employee out of one system and placing him/her into another system. The \$5 million liability exists and has to be paid. He said that there are some specifics in the Fairbanks case that can't be applied universally. However, there are some things that aren't specific to Fairbanks, which he reviewed. He explained that those who came in on a 242 waiver, who retired, and were rehired were told that they could stay on the program so long as they remained employed with the current employer. Although the window may close and no more participants can be accepted into the program, it doesn't mean that individuals are required to "unrip" when the window closes. After checking with the Department of Law, it was determined not to be the case. Mr. Tibbles acknowledged that this is of concern because there are potential liability issues with employees who made life decisions based on the fact that they were told they could remain in the program and not be kicked off. He also expressed concern that if these individuals lose their retirement checks on July 1 unless they separate from service, there will be huge workforce issues with various occupations throughout the state.

CHAIR NEUMAN asked if Mr. Tibbles feels that Version G addresses Mr. McHattie's concerns.

MR. TIBBLES answered that Version G definitely guarantees that no additional liability will accrue to the retirement system. He then returned to Mr. McHattie's concern regarding rehiring individuals which may prevent someone else from moving up to that position. He pointed out that the governor signed an administrative order that would require agencies to recruit and post vacancies for a certain number of days, and then demonstrate why no one has the knowledge, skills, and ability to fill the position. There will also be a test of fewer than five qualified applicants that are available and interested in the position. The administrative order requires that a workforce plan be established if a retiree is rehired so that the knowledge specific to that position can be transferred to another employee. Mr. Tibbles opined that the combination of HB 161 and the administrative order put in place safeguards to meet the original intent of having a management tool that's used only when qualified individuals can't be found.

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REPRESENTATIVE WILSON asked if the administrative order would cover municipal employees.

MR. TIBBLES answered that the administrative order will only apply to state agencies. Therefore, municipalities won't be bound by the administrative order.

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LEO JOHN KERRIN spoke in opposition to HB 161. He informed the committee that he works for the Department of Natural Resources (DNR) and as a 58-year old he has been working for three years and supporting PERS with about 58 percent of his salary that he will never see. However, he said that he didn't begrudge the aforementioned because it's his decision to do so. Mr. Kerrin said that one of the reasons he opposes HB 161 is because only a select few can take advantage of the opportunity. If this program is so great and necessary, he questioned why only the highest paid PERS [positions] are being offered the 60 percent pay raise. Furthermore, the Senate's [companion] legislation makes exemptions for commissioners such that they wouldn't have to pay the penalty as part of the early retirement agreement under which some retired. Furthermore, Mr. Kerrin couldn't believe the argument that the system will be a savings to the state. He opined that it's really just a transfer from the general fund to PERS and now there are discussions regarding the insolvency of PERS and the need to increase payments to PERS. Mr. Kerrin then pointed out that the proposal [in HB 161] acts as an incentive to retire on time. He noted that just before the sunset, there was a flood of PERS employees in DNR to retire [so that they can] receive a 6 percent pay increase. In fact, these people aren't cleaning out their desks and their e-mail accounts aren't being closed. Moreover, decisions are sometimes stopped because the boss will be returning in 30 days. Mr. Kerrin stated that those who aren't offered this rehire option are the ones who are forced to work continuously to support the system. Mr. Kerrin then refuted the notion that there is a workforce shortage, and questioned why a succession plan wasn't implemented. Furthermore, those who an agency is unable to replace can be hired back under a contract, which has been done for years. With regard to the administrative order, he doubted that it would change anything.

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KERRY JARRELL, Bering Strait School District, provided the following testimony:

For many years, Alaskans have retired early Alaska Association of School Administrators, as well as most school districts, firmly believe that Alaska is well-served by keeping such experienced professionals in our state. School districts, both large and small, have recently used the retire-rehire option to fill needed vacancies. I'd like to make four simple points. The first is this: The legislation has been successful in assisting school districts in filling important vacancies. In short, it has worked; districts have been able to attract and keep capable educators. While the number of persons exercising the option has not been large, those individuals have been important to the organizations that have hired them. Our district learned years ago that there is a wealth of talent and ability in retirees. We sought motivated retirees from other states to fill key positions in school administration, special education, reading, curriculum development, and other professional positions. Until this legislation passed, we could not offer similar positions to Alaska retirees. The practice seemed to discriminate against our own people. The number of persons who have been hired under this plan has [been] relatively small ... one-tenth of 1 percent of the workforce. And in our school district it's a little less than 2 percent of our total workforce. However, their contributions have been enormous. The second point: ... Much has been said about the abuse of this provision. We are unaware of what may have happened elsewhere or in Fairbanks or even with the state, but in our school district and with rural school districts, which I have worked with closely, I haven't seen any abuse. We rarely have multiple applicants for any job, whether certified or classified. A recent opening that we had for an electrician took us three months to get one applicant. The applicant pool for school principals is so thin that entire job fairs can pass without a single applicant emerging. In rural Alaska it's absolutely ludicrous to think that there's a problem with people staying too long in their jobs. Given current salary rates, our problem is the inability to attract and retain qualified personnel at all levels. If there's a question of people staying in one job too long, we would be agreeable to a limit on the total years that a job

could be filled or a limit on the total years that a person could work under a waiver. Point three: Participating employees in districts were initially assured that the status of the employees in the program would remain unchanged after the House Bill 242 sunset provision. Our school district made staffing and budget decisions based on those assurances. If the waiver option is revoked for those employees, the impact on our budget, this upcoming year alone, will be the equivalent of the lose of four of five teaching positions. And for us, that's a huge cost. Finally, the legislative report issued by the Division of Retirement & Benefits in February 2005 ... shows the cost for classified employees to be minimal and only slightly more for certified employees. We do not expect the retirement system to absorb any loss whatsoever from this program. Therefore, we would gladly support a plan that would annually bill the employer and employee for any costs associated with it. HB 161 already requires the division to prepare a report annually to the legislature on the cost of the programs. The employers and employees benefiting from the legislation should pay those costs, whatever they are. We support the continuation of the retire-rehire statute; it is one additional tool that schools have to attract talented and experienced Alaskans who have much to contribute. It's our hope that you will support extending a responsible retire-rehire provision indefinitely.

[6:28:18 PM](#)

CHRIS CHRISTENSEN, Deputy Administrative Director, Administrative Staff, Office of the Administrative Director, Alaska Court System, informed the committee that the retire-rehire program has been very helpful to the court system, and therefore the court system hopes that it will be extended. He informed the committee that the court system has approximately 650 nonjudicial employees; of which only about 10 are participating in the retire-rehire program. Although 10 doesn't sound very significant, it is because of the nature of the positions. Mr. Christensen related that this program has helped address problems, such as the unique one-person job class. A unique one-person job class creates a problem in providing continuity of services to the public. Furthermore, there is no one to assist or cover a vacant one-person job class. Furthermore, for some supervisory positions no qualified

applicants have been received, which has meant keeping supervisors on. He informed the committee that most of the court system's employees are Ranges 6, 8, or 10, which leads to much turnover. He informed the committee that the turnover rate is about 50 percent after about five years, which he attributed to low pay and steadily declining benefits. Turnover, he opined, means that there are fewer qualified people to promote into supervisory positions. For reasons of financial responsibility, the Alaska Court System has, over the past 10 years, imposed a mandatory 30-day hiring freeze on every position. Only the administrative director can waive the aforementioned. Mr. Christensen specified that with the high turnover rate and the mandatory 30-day hiring freeze, it's particularly necessary that supervisors be well qualified and able to manage the caseload and keep it moving, even with vacancies. "In essence, the ... program has enabled the court system to continue to function in an efficient manner because of our ability to hire back experienced and knowledgeable employees in the one-person classes and in certain rare cases in supervisory positions, and we hope the legislature does continue it," Mr. Christensen related.

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REPRESENTATIVE THOMAS inquired as to how folks are trained for the one-person job class.

MR. CHRISTENSEN acknowledged that it's very difficult, and pointed to the State Law Librarian position as probably the best example. He pointed out that there are no law schools in Alaska and the only law librarians are the few who work for the court system. Therefore, there is no one in state to hire for the position and thus a national search was done for the person beneath the state law librarian in order to provide that person a year's worth of training with the Alaska courts. However, the problem is that in many states this number two position is often paid more than Alaska pays its Chief Justice. In response to Representative Gara, Mr. Christensen confirmed that since judges have a separate retirement system from PERS and TRS, this legislation wouldn't apply to them.

REPRESENTATIVE WILSON commented that she sees only one solution to the problem, which she said would be to implement a fiscal policy by which everyone's pay is increased.

[6:33:05 PM](#)

BARBARA HUFF TUCKNESS, Director, Governmental and Legislative Affairs, Teamsters 959, related support for CSHB 161, Version G. She also related that out of a little over 2,000 municipal employees, 18 applied [for this program] [of which] 12 are working within the Municipality of Anchorage. Through the municipality's collective bargaining process, some provisions were negotiated to establish some sideboards. Within the Municipality of Anchorage, a position is required to be vacant for over 30 days, the position is advertised, and the only positions considered [for the retire-rehire program] are key positions. For example, the flood plain coordinator at public works is a key position.

CHAIR NEUMAN inquired as to how the flood plain coordinator obtained the knowledge he has for his position.

MS. HUFF TUCKNESS said that the employee in the coordinator position prior to the current individual [worked with the current coordinator for about five years prior]. However, due to budget cuts there have been fewer trainee positions available. With regard to the legislation that passed last year, the Municipality of Anchorage saved over \$600,000. Although she didn't know the municipality's position with regard to the liability from such a program as that proposed, she didn't see it as a problem. Therefore, she encouraged the committee to listen to all the testimony to consider passing the legislation.

[6:36:45 PM](#)

CARL ROSE, Executive Director, Association of Alaska School Boards (AASB), said that he wanted to align his comments with Kerry Jarrell. Mr. Rose emphasized that the request and support of this bill is based on need. The ability to attract and retain employees [in the school district] is very difficult. In fact, the number of applicants for superintendents has decreased over the last five years from about 70 applicants per search to about 5-10 applicants. Mr. Rose stated that the ability of school districts to attract employees is directly tied to salary, which is tied to the base student allocation. The ability to retain employees is tied to retirement benefits, which is currently under discussion with the "Reform Act." Therefore, to remove this option would be shortsighted, he opined. "The travesty of this whole situation is rather than being able to attract young people into our schools to seek a career in education, we're going to people who have currently retired to fill the gap while we try to train people to get into

these positions," he said. Mr. Rose concluded by reiterating AASB's support of [Version G].

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CHAIR NEUMAN, upon determining there was no one else who wished to testify, closed public testimony.

CHAIR NEUMAN removed his objection to the adoption of Version G as the work draft.

REPRESENTATIVE WILSON expressed the desire to be sure that municipalities are able to take advantage of this. She questioned whether the language "public employers" on page 2, line 1, would include municipalities.

REPRESENTATIVE WILSON moved that the committee adopt Conceptual Amendment 1:

Page 2, line 1, following "for";
Insert "municipalities,"

CHAIR NEUMAN indicated the need for Conceptual Amendment 1 to also do the following:

Page 2, line 3, following "that";
Insert "municipalities,"

[6:41:36 PM](#)

MR. TIBBLES said that the terminology "public employers" would include the state and all the municipalities that are part of PERS. He clarified that municipalities are included in the intent language and any indebtedness would be collected from them, but beyond that the municipalities would be free to formulate their own sideboards similar to what they have done at the state level.

REPRESENTATIVE WILSON withdrew her amendment.

REPRESENTATIVE THOMAS inquired as to what statute defines "administrator" as the director of the Division of Retirement & Benefits.

MR. TIBBLES specified that under AS 39.35.680 the administrator is defined as a person appointed by the commissioner of the Department of Administration under AS 39.35.050. The

commissioner appoints the director of the Division of Retirement & Benefits.

[6:43:54 PM](#)

REPRESENTATIVE THOMAS moved to report CSHB 161, Version 24-LS0645\G, Craver, 4/5/05, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 161(EDU) was reported from the House Special Committee on Education.

HB 92-UNIVERSITY OF ALASKA AND CORPORATIONS

CHAIR NEUMAN announced that the next order of business would be HOUSE BILL NO. 92 "An Act relating to the purchase of interests in corporations, including limited liability companies, by the University of Alaska."

The committee took an at-ease from 6:45 p.m. to 6:49 p.m.

[6:49:16 PM](#)

REPRESENTATIVE MIKE KELLY, Alaska State Legislature, sponsor, said that HB 92 would affect the University of Alaska in a "positive way." He explained that this legislation relates to the purchase of interests in corporations, including limited liability corporations (LLC), by the University of Alaska. The University of Alaska has proven to be a valuable tool in Alaska's economic development. In order to allow the university to continue and expand its vital role, HB 92 proposes a much needed change in Alaska's corporate liability laws intended to protect the university from liability arising from the "piercing of the corporate veil concept." He said:

The "piercing of the corporate veil" concept is a judicial process whereby the court will disregard the usual immunity of corporate entities from liability for wrongful corporate activities perpetrated fraud. The doctrine which holds that the corporate structure with its attendant limited liability of stockholders may be disregarded and personal liability imposed upon stockholders, officers, and directors in the case of fraud or other wrongful acts done in the name of the corporation. Generally ... we believe this is a sound policy intended to protect consumers from fraudulent corporate abuses and encourage good corporate citizenship. However, in the university context the

application of this theory has the unintended consequence of discouraging university investment in new corporate endeavors resulting from intellectual property generated by faculty research

The university cannot support various types of economic development initiatives or associate with public groups through nonprofit corporations without the fear of liability under the piercing of the corporate veil theory. As described above, the university could become liable for the tort obligations of a corporate entity it may start up, where the entity was not adequately capitalized or insured. In one such immediate example, the university rejected a 501(c)(3) nonprofit corporation to lead the business enterprise institute because of potential corporate veil liability. Likewise, the university has not been supportive of efforts by faculty members with intellectual property to start up corporations, recognizing that if liability were incurred by such a corporation, there would be a substantial risk that such liability could pass on to the university

Our intent with HB 92 is to specifically define a university/corporate liability structure intended to encourage new university investment in limited liability and nonprofit corporations resulting from research-generated intellectual property or companies created and managed on university lands.

The University of Alaska is a valuable component to Alaska's economic engine and this bill will go to great lengths to expand its ability to increase economic development in our state.

REPRESENTATIVE KELLY highlighted that the legislation sets forth that the University Board of Regents would have oversight of the act of the university being involved in a corporation.

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REPRESENTATIVE GATTO offered a hypothetical scenario regarding the invention of a device, and inquired as to who would own the patent of the invention if the inventor was employed as a researcher of the university.

REPRESENTATIVE KELLY deferred to others who are better suited to answer.

REPRESENTATIVE THOMAS inquired how the university would generate revenue to start-up or purchase companies.

REPRESENTATIVE KELLY deferred to others who are better suited to answer.

REPRESENTATIVE GARA related his understanding that Section 1(c) says that should the university purchase a corporation, it isn't liable for any of the obligations of that corporation. He offered a hypothetical situation in which the university purchases a business that owes payroll and vendors. If the university isn't responsible for prior [debt] obligations, who pays the [debt incurred], he asked.

REPRESENTATIVE KELLY again deferred to the legal expertise waiting online.

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MARY GREEN, Associate General Council, University of Alaska - Fairbanks, in response to Representative Gatto's question, said the ownership of patent rights depends upon whether the inventor is a member of the United Academics Union, staff of the university, or a member of the Alaska Community College Federation of Teachers (ACCF). A member of the United Academics Union who developed an invention entirely on his/her own would own the entire patent and its proceeds. However, if the inventor was paid by the university to do the work or asked specifically [by the university] to do the project, the university would own all the proceeds. Ms. Green noted that what is most common is university-supported research in which there is some use of personnel or facilities of the university, in which case the proceeds are split. She detailed the three-way split. If the inventor isn't a member of the United Academic Union, the federal patent law controls who owns the matter whether the invention is university-sponsored or independent work. Most of the inventions in which the university would have an interest are university-supported in which some aspect of university property or money is used in the development of the invention. She then detailed the split that would occur under such a situation.

REPRESENTATIVE GATTO asked if there are any situations in which an inventor refuses to share the proceeds because he/she has

used a minimal amount of the university facilities and has done the majority of the work.

MS. GREEN replied, "Very rarely."

REPRESENTATIVE GATTO surmised that there are "clearly" specific protocols in place.

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REPRESENTATIVE WILSON asked how the university has managed without the specifications in this legislation for so long.

MS. GREEN replied that the university has managed by being "cautious" and refusing to participate in start-up corporations with faculty members or with certain 501(c)(3) charitable nonprofit corporations that requested university involvement and investment.

REPRESENTATIVE WILSON inquired as to the opportunities that would become available to the university through this legislation.

MS. GREEN answered that primarily this will allow the university to participate with faculty members in start-up companies. The primary investment would be the university's share of the patent royalties. In addition, it would allow university participation with charitable organizations such as research groups composed of other universities and the federal government that form 501(c)(3) organizations. She opined that the university is not going to be involved in investment in small corporations, such as in Representative Gara's aforementioned example. She highlighted that the university is in the business of education and promoting public interest by participating in such ventures.

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REPRESENTATIVE THOMAS opined that start-up ventures cost money. He alluded to the notion that start-up companies are risky business and are based solely on an individual's idea. He asked why the university should be able to pierce the corporate veil while other entities cannot. He also asked if the university has addressed the high costs of start-ups.

MS. GREEN reiterated that the university has not been involved in start-up corporations, but this legislation would allow the option of involvement in some small start-up proposals. She

related, "The money [the university] put in ... [it would] not be getting out," and the university is concerned about the piercing of the corporate veil coming back and exhausting the university's assets as opposed to the money that was devoted to the start-up.

REPRESENTATIVE THOMAS recalled discussions regarding the potential liability for the state, which, after a compromise, was eventually capped at \$500 per day. However, this legislation asks the legislature to waive the aforementioned compromise that protects the state from liability. He inquired as to where the university would get the money to invest.

MS. GREEN answered the university is not looking at any general fund money. Instead, the university is looking at the value of the university royalty interests, which would be the primary and start-up corporations, and other funds. Other funds would be income earned by the foundation, which helps support the university, or from research grants.

REPRESENTATIVE THOMAS opined that the aforementioned investment types should provide sufficient funding without the legislature's additional help. He questioned why the university should receive immunity while other Alaskan corporations try to establish the same thing [and do not receive immunity].

MS. GREEN related her belief that the university is different. She highlighted that there are two public policy issues involved in the piercing of the corporate veil. The first issue regards protection of the public from underfunded corporations and in the university's case this is more unlikely to occur. Secondly, through sponsorship of start-ups with university faculty members or through public interest nonprofits, the university would be able to meet the public interest. She opined that the general population of corporations doesn't serve the public interest like a university.

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CHAIR NEUMAN referred to Section 1(c), and inquired as to the circumstances under which ["the president of the university signs a written agreement on behalf of the university that expressly states that the university is liable for the obligations of the corporation and the obligations for which the university is liable are identified in the written agreement."] could or would happen.

MS. GREEN said, "I am not sure that I can predict that." She related that she doesn't think that it will be invoked very frequently.

CHAIR NEUMAN asked if HB 92 would provide additional revenue by ownership of the corporations' intellectual property rights.

MS. GREEN answered:

We certainly hope so. We have some promising deals that we might be able to go into, but it takes a lot of work and a lot of effort to actually make those things turn money. And so, it's not something that we are absolutely counting on, but it is something that we would like to see. As far as universities across the country go, some are very successful in programs like start-ups with their faculty members, others are less so. And we don't know where we would fit.

CHAIR NEUMAN asked if the aforementioned work and effort would be completed by the professor while he/she is a paid employee of the university.

MS. GREEN related that is not the intent, but rather the professor would work on the project on his/her time rather than on university time.

CHAIR NEUMAN asked if there have been any circumstances in which the university incurred a loss of revenue because it invested substantial research money, but didn't own the intellectual property rights to the research.

MS. GREEN relayed that she was unaware of any such circumstance. However, there are some patents that are paying royalties. In further response to Chair Neuman, Ms. Green answered that some of the patents are owned by the professor(s) or the university, while other patents are owned by both.

CHAIR NEUMAN asked whether some of the aforementioned patents came about through research conducted while the professors were employed at the university.

MS. GREEN echoed earlier testimony that the ownership of the patent is dependent upon how the patent came about. For those developed while working for the university, the university would own at least part of [the patent]. If the research was conducted independently, the ownership of the patent would not

be shared. In further response to Chair Neuman, Ms. Green replied that in the scenario of a university employee inventing something independently, the university would stand to lose revenue. However, if the inventor was an employee who used university time and resources, then the university should gain shared patent rights and revenue.

REPRESENTATIVE GARA noted that he likes the university's involvement in advanced technological developments. He returned to his concern regarding subsection (c), and opined that regardless of its intent it allows the university a blanket ability to purchase corporations and "wipe out" previous liabilities owed to the community. He asked why the university wouldn't be subject to the same liability rules as any shareholder would be under corporate law.

MS. GREEN related that currently the university is treated as "an ordinary person" and as such the university has such a conservative attitude toward its fiscal responsibility that it wouldn't enter into these ventures. Therefore, in order to protect the university's assets, there needs to be some piercing of the corporate veil. In the example of a company with lots of debt, Ms. Green opined that the Board of Regents wouldn't allow the university to purchase it because they're responsible to the public. She reiterated that the university cannot go into start-up ventures, cooperatives, and charitable nonprofits without protection because the university has assets upon which Alaskans depend.

REPRESENTATIVE GARA said that he is somewhat comfortable with the existing rules of corporate law, and thus he indicated that the university should be treated the same with regard to corporate status.

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REPRESENTATIVE THOMAS commented that investors usually divest when a company changes its policy from a "conservative" to high risk, so he questioned why the university would choose to make such a change of position.

MS. GREEN replied it would not be a change in the university's overall investment strategy. The university's intention is to start small and help those who have "really good ideas" without risking the assets of the entire university. Similar to other corporate stockholders, what the university invests will be at

risk. However, the underlying assets of the university would not be at risk, she clarified.

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CHAIR NEUMAN announced that due to the number of questions, HB 92 would be held. He said he would like to get the university to answer the committee's questions in writing.

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CRAIG DORMAN, Vice President of Research and Academic Affairs, University of Alaska - Fairbanks, highlighted AS 14.40.458, subsection (a), which states the purpose of [HB 92] is to advance the mission of the university pursuant to the policies of the Board of Regents. He said the aforementioned section is fundamental to the university's intentions, and details that the purpose is not to invest heavily in corporations in order to generate "a lot of money." This legislation supports federal law with the intent of receiving federal funds, which is where the vast majority of research funding is derived. He said the intent of this legislation is to bring benefit to the state as well as the university. He related his belief that it's "effective and appropriate" to stimulate economic development through the development of spin-off corporations and encourage faculty in a much more intensive manner than it has been able to in the past. Additionally, this legislation pertains to the university's participation in nonprofit companies and corporations, particularly 501 (c)(3) organizations. Currently the university is involved with the Alaska Ocean Observing System. In fact, the university is in the process of establishing rules and governance processes whereby it becomes part of the national federation of regional agencies and thus it could accrue significant federal funding, he noted. Although the university wants to be involved in such ventures, there is concern with regard to the university being seen as a "deep pocket." Therefore, the intent [of HB 92] is to avoid losing the university's assets by allowing it to participate in start-up ventures and charitable nonprofits.

[HB 92 was held over.]

ADJOURNMENT

7:28:15 PM

There being no further business before the committee, the House Special Committee on Education meeting was adjourned at 7:28 p.m.