

HOUSE FINANCE COMMITTEE
April 19, 2006
1:54 p.m.

CALL TO ORDER

Co-Chair Meyer called the House Finance Committee meeting to order at [1:54:39 PM](#).

MEMBERS PRESENT

Representative Mike Chenault, Co-Chair
Representative Kevin Meyer, Co-Chair
Representative Bill Stoltze, Vice-Chair
Representative Richard Foster
Representative Mike Hawker
Representative Jim Holm
Representative Reggie Joule
Representative Mike Kelly
Representative Beth Kerttula
Representative Carl Moses
Representative Bruce Weyhrauch

MEMBERS ABSENT

None

ALSO PRESENT

Representative Gabrielle LeDoux; Kim Wallace, Staff,
Representative Gabrielle LeDoux; Cliff Stone, Legislative
Liaison, Department of Public Safety; Anne Carpeneti,
Assistant Attorney General, Legal Services Section-Juneau,
Criminal Division, Department of Law; Susan Parks, Deputy
Attorney General, Criminal Division, Department of Law; Sue
Wright, Staff, Representative Mike Chenault; Representative
Paul Seaton; Katie Shows, Staff, Representative Paul Seaton;
Allison Elgee, Staff, Representative Reggie Joule

PRESENT VIA TELECONFERENCE

Stephen Saloom, Innocent Project, New York; Sidney
Billingslea; Lt. James Helgoe, Department of Public Safety

SUMMARY

HB 325 "An Act relating to post-conviction DNA testing;
and amending Rule 35.1, Alaska Rules of Criminal
Procedure."

CSHB 325 (FIN) was REPORTED out of Committee with
a "no recommendation" and with previously
published zero fiscal note #1 by the Department of
Corrections, with a new fiscal note by the

Department of Law, with a new indeterminate fiscal note by the Department of Public Safety, and with two new zero fiscal notes by the Department of Administration.

HB 399 "An Act establishing the office of elder fraud and assistance; and relating to fraud involving older Alaskans."

CSHB 399 (FIN) was REPORTED out of Committee with a "do pass" recommendation and with previously published zero fiscal note #1 by the Department of Health and Social Services, two new zero fiscal notes by the Department of Law and the Department of Public Safety, and with a new fiscal note by the Department of Administration.

HB 475 "An Act describing contributions to the health reimbursement arrangement plan for certain teachers and public employees; clarifying eligibility for membership in that health reimbursement arrangement plan; relating to the 'administrator' of the Public Employees' Retirement System of Alaska; and providing for an effective date."

CSHB 475 (FIN) was REPORTED out of Committee with a "no recommendation" and with a new zero fiscal note by the Department of Administration.

HB 29 "An Act relating to health care insurance and to the Comprehensive Health Insurance Association; and providing for an effective date."

HB 29 was scheduled but not heard.

CSSB 55(FIN)

"An Act instructing the commissioner of natural resources to issue a patent for the remaining interest in certain state land to the owner of the agricultural rights to that land."

CSSB 55(FIN) was scheduled but not heard.

CSSB 200(JUD) am

"An Act relating to defense of self, other persons, property, or services."

CSSB 200(JUD) am was scheduled but not heard.

[1:55:00 PM](#)

HOUSE BILL NO. 325

"An Act relating to post-conviction DNA testing; and amending Rule 35.1, Alaska Rules of Criminal Procedure."

REPRESENTATIVE GABRIELLE LEDOUX introduced HB 325, an Act relating to post-conviction DNA testing.

KIM WALLACE, STAFF, REPRESENTATIVE GABRIELLE LEDOUX, related that CS for HB 325 (JUD), Version X, was before the committee. It is "An act relating to post-conviction DNA testing and amending Rule 35.1 of the Alaska Rules of Criminal Procedure". Currently, 40 other states provide convicted persons access to DNA testing.

Ms. Wallace referred to a handout in the packets prepared by Legislative Research, dated February 1, 2006, which shows a sample of states that have adopted legislation pertaining to post-conviction DNA testing within the past 5-6 years. The Innocence Project states that since 1989, over 170 people imprisoned in the U.S. have been proven innocent through post-conviction DNA testing.

The intent of HB 325 is to improve the Alaska Criminal Justice system for all Alaskans by providing a statutory right to DNA testing. Specifically, this Act establishes a procedure for application for DNA testing and the appointment of counsel. This legislation can help free an innocent person, and let law enforcement and the public know that a guilty and dangerous person is still at large.

Ms. Wallace reported that her office has collaborated with the Department of Public Safety, the Division of Juvenile Justice, the Department of Law, the Innocence Project, and members of the House Judiciary Committee to make HB 325 a better bill. There also was a House Judiciary subcommittee formed which met on three separate occasions before the bill was passed out of House Judiciary. Not every change that was requested was made; however, the bill mirrors the consensus of the subcommittee members.

Ms. Wallace related that an amendment that was made in House Judiciary, on page 3, lines 21-25, has been discussed with the Department of Public Safety, and the amender, Representative Max Gruenberg. The word "any" on line 21 can be deleted, and the words "any person" on line 22 substituted with "the applicant". This would help clarify the intent of section (D).

The majority of the fiscal notes came back as zero or indeterminate. The sponsor does not feel that this legislation will inundate the courts with frivolous claims from applicants and therefore asks this committee to

consider an indeterminate fiscal note for the Department of Law.

Ms. Wallace concluded that if HB 325 can help just one person prove their innocence, and the real perpetrator to be identified by DNA testing, then "we will have achieved what we set out to do".

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Representative Weyhrauch asked if the legal system allows this to happen already without the bill. Ms. Wallace responded that there are post-conviction release statutes under Title 12, Section 72. She thought that there has to be two criteria, newly discovered evidence or ineffective assistance of council. The bill sets forth a procedure for a judge to follow for post-conviction DNA testing.

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STEPHEN SALOOM, INNOCENCE PROJECT, NEW YORK, related that the passage of this legislation will enable Alaska to join the 40 other states that have addressed the potential that DNA has to prove the accuracy of the criminal justice system. The bill creates a route for considering applications to test evidence that could confirm guilt or find innocence. Across the country, 175 innocent people have been freed from prison. Other states have had a positive experience. There have been no reports that this law would be a burden on the court. He emphasized that no one benefits by an innocent person being convicted. The law addresses whether further testing of evidence could help settle claims of a mistaken conviction.

Mr. Saloom addressed the time limitation in the bill. Ms. Carpeneti suggested a due diligence standard in the bill. Mr. Saloom maintained that there is no such standard in any other state. Most states allow the tests to be requested at any time. Unnecessary litigation might be created by an open or vague due diligence standard.

Mr. Saloom addressed the Department of Law's fiscal note, which provides for hiring another attorney to deal with these situations. He maintained that this law would save money by providing the courts with a clear path for accessing requests to retest biological evidence for DNA, and thus, eliminate the need for litigation.

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CLIFF STONE, LEGISLATIVE LIAISON, DEPARTMENT OF PUBLIC SAFETY, addressed the preservation of evidence on page 3 of the bill. He suggested that the word "any" be deleted on page 3, line 21, and that in line 22, "any person" be

deleted. He said "the applicant" is acceptable wording. The crux of the preservation of evidence seems to be in the retention of evidence for the lifetime of the convicted person. The Department is not clear on who would qualify under the bill. He said that the bill would not have an immediate impact on the Department and on other law enforcement agencies. Evidence lockers would become problematic in the future because evidence needs to be kept forever so facilities will have to be enlarged.

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Representative Stoltze asked if Palmer's cramped facility, which is shared by all law enforcement agencies, is typical. Mr. Stone said it was typical. Mr. Stone projected that future management of evidence would require a new database and management adjustments, as well as more storage.

Representative Stoltze asked if the proposed crime lab would solve the problem. Mr. Stone said it would not. That consists of evidence that is sent and reduced to a database or a small storage space. He explained that biological evidence can range from 10 to 15 boxes worth of material, depending on the case, and can be retained for years. This law would mandate that evidence be kept for the next 99 years.

Co-Chair Meyer asked if there was a concern about line 21 on page 3. Mr. Stone replied that the word "any" seems to be all-inclusive and is not needed. On line 22, the drafter meant to say "the applicant" instead of "any person".

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Representative Holm asked about available technology and a statewide DNA agency. He suggested finding a storage facility before this bill passes.

Mr. Stone said that idea deserves some merit. With Post-conviction DNA testing, evidence needs to be kept in case of a need to re-test. Representative Holm suggested using technology for the preservation and storage of evidence.

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Representative Kerttula MOVED to ADOPT Amendment 1, which, on page 2, line 7, would delete "and any lesser included offense".

Representative Stoltze OBJECTED for discussion purposes.

Representative Kerttula explained that the problem with the language is that it is too broad. Co-Chair Chenault asked for clarification. Representative Kerttula stated that the

problem lies with the application to be considered for re-testing. Now it states that the person must declare that they are innocent of everything before they can be considered. She shared a family story. She maintained that a person should only have to claim innocence of the crime for which they were convicted.

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Representative LeDoux said she could live with that amendment. She said she was aiming for someone who was totally innocent.

Representative Weyhrauch agreed that, in the context of the bill, the amendment makes sense. He gave an example of exoneration for committing another crime. He spoke in support of the amendment.

Representative LeDoux said she had thought of the example that Representative Weyhrauch gave, but such an offense would be considered separately.

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Representative Hawker requested an opinion from the Department of Law.

SUSAN PARKS, DEPUTY ATTORNEY GENERAL, CRIMINAL DIVISION, DEPARTMENT OF LAW, stated that the Department of Law does not support Amendment 1. She said her concern is that the amendment would allow a person who has been convicted of murder in the 1st degree to request DNA testing. The bill is not made for that purpose. It should not disturb a jury's conclusion.

ANNE CARPENETI, ASSISTANT ATTORNEY GENERAL, LEGAL SERVICES SECTION-JUNEAU, CRIMINAL DIVISION, DEPARTMENT OF LAW, presented the other side of the issue. The finality of judgment is very important in all courts. There are specific rules about how to attack a conviction after the fact. The bill has to be limited to support the finality of judgment and should be directed to the innocent person.

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Representative Kerttula asked for examples of lesser-included offenses that are possible under Murder. Ms. Parks responded "from Murder I down to Criminally Negligent Homicide". Representative Kerttula said it is technically correct to say not guilty to assault, all the way up to murder. The language that reads "any" is too broad. Ms. Parks agreed that it would include "any lesser included". Representative Kerttula related that all of the other

charges would have been made. If the person was not innocent, other things would preclude the person going free.

Ms. Parks countered that there are often stand-alone homicides. She explained how DNA testing would work. A new trial on everything could be requested if the DNA results were favorable. She urged the committee to keep criteria tight.

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Mr. Saloom shared that in other states the motions for DNA testing have been fought even after a person was released. Prosecutors held open the possibility of re-trying the person or fought the motion to vacate the conviction. If the person is innocent, but was found guilty, a talented attorney could argue that maybe that DNA exonerates the person from the higher crime, but the evidence shows that he or she was at the scene. He voiced a concern that skilled attorneys could prevent getting to the testing of the evidence.

A roll call vote was taken on the motion to ADOPT Amendment 1.

IN FAVOR: Kerttula, Weyhrauch, Joule
OPPOSED: Foster, Hawker, Holm, Kelly, Chenault, Meyer

The MOTION FAILED (3-6).

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Representative Hawker MOVED to ADOPT Amendment 2, which deletes all material on page 2, lines 30-31 and on page 3, line 1, and inserts, "(1) by clear and convincing evidence, that if the DNA testing requested produces the results claimed by the applicant and had been admitted at trial, no reasonable trier of fact would have convicted the applicant;". It also deletes on page 4, lines 9-10, "Notwithstanding any law or rule of procedure that bars an application for post-conviction relief as untimely, an", and inserts "an".

Co-Chair Meyer OBJECTED.

Ms. Carpeneti noted that the right approach to protecting victims and perfectly good convictions is a very limited one. The jury is the one to make that decision. The test in Section 210, the standard upon which a judge will decide whether or not to order post-conviction DNA testing, ought to be clear. It should say that the court will order the testing when the results of the test will conclusively show that the person is innocent of the crime. The first part of

Amendment 2 does that and is very similar to the original form of the bill, which was a much better standard.

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Representative Kerttula voiced a concern about Amendment 2 and the possibility that testing would never be ordered due to the wording, which sets an impossible standard. Ms. Carpeneti argued that the wording refers to "no reasonable person". The wording is asking for testing, but hoping to find innocence. Representative Kerttula suggested that this is the first stage of trying to get the information tested. She maintained that it an impossible task to prove "no reasonable trier of fact". Ms. Carpeneti countered that this is the language that was in the original bill. She suggested the wording, "a reasonable trier of fact would not have convicted the person". Representative Kerttula thought that would present the same problems.

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Ms. Carpeneti addressed the second part of Amendment 2, which removes the due diligence standard for a person applying for post-conviction DNA testing. She addressed "escape hatches", which prevents a person from sitting on evidence for years. She disagreed with Mr. Saloom's testimony that this would cause excessive litigation.

Representative Kerttula asked if this could potentially bar someone who is completely innocent from ever getting the test. Ms. Carpeneti responded that it would depend on the circumstances. She referred to the Osborne case where the evidence is overwhelming. She questioned if a person is innocent and has a chance to bring the matter before the court, and they doesn't, why they should be excused from doing so. Representative Kerttula maintained that they should have that relief. Ms. Carpeneti countered that it depends on the definition of due diligence under the circumstances.

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Representative Holm commented that normally people are convicted beyond a reasonable doubt. Ms. Carpeneti said always. Representative Holm said if due diligence is applied correctly, people should not fall between the cracks. He wondered if there is some way to preserve a conviction based upon the fact that there is "justice among a jury of our peers". Ms. Carpeneti explained the right to appeal. She noted that there are not many mistakes and it is important to uphold convictions. A challenge ought to be "it will" exonerate the person.

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Representative LeDoux commented on Amendment 2. She agreed with Ms. Carpeneti's conclusions on the first part of the amendment. She concurred with Representative Kerttula on the second part. She related an example from the victim's perspective. She addressed due diligence. The subcommittee came to the conclusion that a reasonable person, upon finding evidence of innocence, should take action immediately, but many people don't act reasonably. A conclusion was reached that it doesn't matter when the claim is brought if there is evidence of innocence. She said she does not like Amendment 2, especially the first part.

Representative Joule addressed the idea of "reasonable" by rural standards. He said he could easily picture such a situation when action was not taken when evidence of innocence was known.

Representative Weyhrauch MOVED to divide Amendment 2 into two parts, 2 A and 2 B.

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Representative Kerttula inquired if there could be cultural differences in the response to due diligence. Representative LeDoux agreed that there are cultural differences. She wondered if someone should be put to death because they didn't ask for due diligence. She indicated that the same reasoning could be used for not keeping an innocent person in prison.

A roll call vote was taken on the motion to ADOPT Amendment 2 A.

IN FAVOR: Moses, Wehyrauch, Hawker, Holm, Meyer
OPPOSED: Foster, Joule, Kelly, Kerttula, Chenault

The MOTION FAILED (5-5).

A roll call vote was taken on the motion to ADOPT Amendment 2 B.

IN FAVOR: Hawker, Chenault, Meyer
OPPOSED: Weyhrauch, Foster, Holm, Joule, Kelly, Kerttula, Moses

The MOTION FAILED (3-7).

[2:57:39 PM](#)

Representative Hawker MOVED to ADOPT Amendment 3. Co-Chair Meyer OBJECTED.

Ms. Wallace said that the sponsor agrees to Amendment 3:

Page 3, line 21, following "preserve"
Delete "any"

Page 3, line 22, following "which"
Delete "any person"
Insert "the applicant"

Representative Weyhrauch OBJECTED. He suggested that the word "relevant" should replace the word "any". Representative Hawker deferred to Mr. Stone.

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Mr. Stone related that the department does not have a problem with Amendment 3. He agreed with Representative Weyhrauch's suggestion.

Representative Weyhrauch MOVED to AMEND Amendment 3 to add "relevant" after "preserve" on line 21. There being NO OBJECTION, it was so ordered.

Representative Kerttula voiced a concern about removing the word "any" because of a chance that what is relevant evidence may be judged incorrectly. Mr. Stone responded to Representative Kerttula's idea. He explained that the officer in the field is going to collect all pertinent evidence possible and the crime lab will process it. He requested Lt. Helgoe's opinion.

Representative Weyhrauch commented that he is trying to make the bill workable and practical.

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Representative Kerttula suggested "preserved any identified".

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LT. JIM HELGOE, DEPARTMENT OF PUBLIC SAFETY, said it is a bright line and the word "any" draws a clearer line. He questioned what is "relevant" evidence.

Representative Kerttula MAINTAINED an OBJECTION to the amendment to Amendment 3.

Representative Weyhrauch WITHDREW the amendment to Amendment 3.

Representative Kerttula commented that the language deleting "any person" and inserting "the applicant" is just technical. Representative LeDoux agreed. Representative Kerttula WITHDREW her objection to adopting Amendment 3.

There being NO further OBJECTION, Amendment 3 was adopted.

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Susan Parks addressed the fiscal note from the Department of Law. She expressed that the new version of the bill, which would change the application requirements for the DNA test, would increase the Department workload. The fiscal note reflects the cost of a half-time lawyer. She stated that the Department believes the fiscal note is an accurate portrayal of the increased workload. She also proposed that the legislation would increase the number of DNA cases to be tried.

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Representative Hawker asked if the amendments had passed, whether the fiscal note would be zero. Ms. Parks replied yes.

Representative Foster MOVED to REPORT CSHB 325 (FIN) out of Committee with individual recommendations and the accompanying fiscal notes. There being NO OBJECTION it was so ordered.

CSHB 325 (FIN) was REPORTED out of Committee with a "no recommendation" and with previously published zero fiscal note #1 by the Department of Corrections, with a new fiscal note by the Department of Law, with a new indeterminate fiscal note by the Department of Public Safety, and with two new zero fiscal notes by the Department of Administration.

HOUSE BILL NO. 399

"An Act establishing the office of elder fraud and assistance; and relating to fraud involving older Alaskans."

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In response to a question by Representative Joule, Representative Chenault confirmed that the committee had previously adopted the Committee Substitute for HB 399, 24-LS1517F\F.

Co-Chair Chenault MOVED Conceptual Amendment 2:

(e) Subject to the discretion of the court and regulations promulgated by the office of public advocacy, and taking into consideration the financial condition of the parties to a civil suit brought under this section, the office of public advocacy may seek recovery of partial or full litigation costs and fees

from any party, including costs incurred during the investigation of the case, whether the office of public advocacy prevails or settles in the best interest of the client. The office of public advocacy shall enter a fee agreement with any party it represents in accordance with this section, the Alaska Rules of Court, and the Alaska Rules of Professional Responsibility.

Co-Chair Meyer OBJECTED.

SUE WRIGHT, STAFF, REPRESENTATIVE MIKE CHENAULT, testified regarding the amendment. It was suggested by Josh Fink, Public Advocate, Office of Public Advocacy, in order to allow the Office of Public Advocacy to recover partial litigation costs from any party should they be successful in prosecuting elder fraud.

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Co-Chair Chenault discussed questions raised regarding an earlier amendment, as to whether monies would be taken from seniors who had received a settlement.

Ms. Wright pointed out that the fees are in accordance with the Alaska Rules of Court and the Alaska Rules of Professional Responsibility, and could include monies over and above any recovery issued by the court.

Co-Chair Meyer REMOVED his OBJECTION. There being no other objection, Conceptual Amendment 2 was ADOPTED.

[3:13:55 PM](#)

Co-Chair Chenault discussed the fiscal note from the Department of Administration, which was originally \$638,000 and represented five full-time positions. He noted that his office has worked with the Department, as well as with constituents, to reduce the fiscal note. He explained that, while that number of employees may eventually be needed, the focus was to get the program started.

Ms. Wright related that the bill authorizes one Attorney III, one part-time investigator and one part-time paralegal. She also noted an added cost for the current caseload, including a very egregious case. She outlined details of this case, and its urgency. She commended Mr. Fink for containing costs, while providing services to the elderly clients.

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Representative Joule referred a March 6 fiscal note prepared by Mr. Fink that showed \$96,000 for employing an Attorney

III. Ms. Wright confirmed that the position was indeed Attorney III, and the amount was adjusted in the new fiscal note.

Co-Chair Meyer named the four fiscal notes: previously published zero fiscal note #1 by the Department of Health and Social Services, two new zero fiscal notes by the Department of Law and the Department of Public Safety, and a new fiscal note by the Department of Administration

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Representative Foster MOVED to REPORT CSHB 399 (FIN) out of Committee, as amended, with individual recommendations and the accompanying fiscal notes. There being NO OBJECTION, it was so ordered.

CSHB 399 (FIN) was REPORTED out of Committee with a "do pass" recommendation and with previously published zero fiscal note #1 by the Department of Health and Social Services, two new zero fiscal notes by the Department of Law and the Department of Public Safety, and with a new fiscal note by the Department of Administration.

HOUSE BILL NO. 475

"An Act describing contributions to the health reimbursement arrangement plan for certain teachers and public employees; clarifying eligibility for membership in that health reimbursement arrangement plan; relating to the 'administrator' of the Public Employees' Retirement System of Alaska; and providing for an effective date."

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At-Ease

[3:21:53 PM](#)

Representative Kerttula MOVED Amendment #2, 24-LS1685\L.1, Wayne, 4/11/06:

Page 2, line 2, following "**program;**":
Insert "**providing for an effective date by amending sec. 148, ch. 9, FSSLA 2005, which contains an effective date;**"

Page 2, following line 3:
Insert new bill sections to read:
"*** Section 1.** AS 14.25.009 is amended to read:
Sec. 14.25.009. Applicability of AS 14.25.009 - 14.25.220. The provisions of AS 14.25.009 - 14.25.220

apply only to members first hired before July 1, 2008 [2006].

* **Sec. 2.** AS 14.25.012(c) is amended to read:

(c) Employees first hired after June 30, 2008 [2006], are not eligible to participate in the plan established in AS 14.25.009 - 14.25.220."

Page 2, line 4:

Delete "**Section 1**"

Insert "**Sec. 3**"

Renumber the following bill sections accordingly.

Page 3, following line 12:

Insert a new bill section to read:

"* **Sec. 7.** AS 14.25.310 is amended to read:

Sec. 14.25.310. Applicability of AS 14.25.310 - 14.25.590. The provisions of AS 14.25.310 - 14.25.590 apply only to teachers who first become members on or after July 1, 2008 [2006], or to members who transfer into the defined contribution plan under AS 14.25.540."

Renumber the following bill sections accordingly.

Co-Chair Meyer OBJECTED.

Representative Kerttula explained that the amendment is a two-year delay to enable more work to be done on the issues just mentioned. It would allow time for corrections of numerous problems and time for a reasonable decision to be made.

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At-Ease

[3:25:15 PM](#)

Representative Kerttula clarified that the amendment would delay the Committee Substitute for two years.

REPRESENTATIVE PAUL SEATON commented that Amendment 2 would delay SB 141 for two years. He noted that that HB 475 is for technical cleanups to SB 141, and the amendment is a definite policy change, rather than a technical change. He proposed that the other body and the Administration would not agree with the amendment, and it would prevent HB 475 from going into affect. He suggested that this would create compliance problems with the IRS, and prevent the establishment of a new Tier Five.

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Representative Kelly commented that the amendment would cause implementation problems and is irresponsible, since Retirement and Benefits has already been tasked with the job to implement SB 141 smoothly. He proposed that the legislature should take advantage of the work already completed. He suspected that there would be attempts to bring more people into the plan, and suggested that this would not, in affect, occur.

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At-Ease

[3:37:06 PM](#)

Representative Hawker offered a Conceptual Amendment to Amendment 2 to delay the implementation one year to July 1 of 2007.

Representative Kelly OBJECTED to the Conceptual Amendment to Amendment 2. He maintained that the implementation should not be delayed at all.

Representative Hawker spoke to the Conceptual Amendment to Amendment 2. He referred to last year's testimony on the bill stating no need for changes to be made. Now there are 34 pages in HB 475 to correct issues. He pointed to extensive testimony about unknown liabilities and IRS issues. He maintained that a 2-year deferral is a very comfortable deferral in order to resolve the many problems. The Conceptual Amendment offers a more reasonable time period to clean up issues. He termed it a sensible approach.

Representative Kelly said if SB 141 is delayed, over 8,000 new employees will come into this failed system. He voiced concern about the \$5.7 billion unfunded liability. He emphasized that it is irresponsible to delay the bill any longer.

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Representative Hawker offered a point of clarification. He indicated that the governor's budget had 400 employees in it. He questioned the number of employees mentioned by Representative Kelly. Co-Chair Meyer clarified that it would be 4,000 employees statewide, including municipalities.

Representative Seaton said the number is about 4,400 per-year turnover of new employees. He clarified that changes to SB 141 that were made on the floor and in conference committees added complexity to the bill. Those are what are being cleared up in HB 475.

A roll call vote was taken on the motion to ADOPT the Conceptual Amendment to Amendment 2.

IN FAVOR: Hawker, Joule, Kerttula, Moses

OPPOSED: Foster, Holm, Kelly, Stoltze, Wehyrauch, Meyer, Chenault

The MOTION FAILED 4-7.

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Representative Kerttula addressed Amendment 2. She noted that it would be responsible to work for two years more on the bill. Representative Hawker stated strong support for Amendment 2. It is the financially responsible and conservative approach to properly implement the policy decision made last year to adopt SB 141.

A roll call vote was taken on the motion to ADOPT Amendment 2.

IN FAVOR: Hawker, Joule, Kerttula, Moses

OPPOSED: Weyhrauch, Foster, Holm, Kelly, Stoltze, Meyer, Chenault

The MOTION FAILED 4-7.

Representative Joule MOVED to ADOPT Amendment 3:

Page 2, line 15, following "**AS 14.25.065.**":

Insert "**The maximum change in the contribution rate for an employer from one year to the next shall be not more than five percentage points, as actuarially calculated, whether the change is an increase or a decrease.**"

Page 3, line 1:

Delete "The"

Insert "Subject to the limitation on maximum change from one year to the next under (a) of this section, the"

Page 16, line 2, following "section.":

Insert "**The maximum change in the contribution rate for an employer from one year to the next shall be not more than five percentage points, as actuarially calculated, whether the change is an increase or a decrease.**"

Page 17, line 9:

Delete "The"

Insert "Subject to the limitation on maximum change from one year to the next under AS 39.35.250(a), the"

Co-Chair Meyer OBJECTED for discussion purposes.

[3:50:15 PM](#)

ALLISON ELGEE, STAFF, REPRESENTATIVE JOULE, addressed Amendment 3. She related that this amendment would limit the Alaska Retirement Management Board to rate adjustments for the retirement systems in any one year to 5 percent, both up and down. Previously, the PERS Board adopted a regulation that limited those rate adjustments to 5 percent per year, and that has been the experience for the last several years. This would put into statute what has in the past been effective regulation.

Representative Hawker spoke against Amendment 3. He related that the policy call in SB 141 was to bankrupt the old plan, trigger a public bailout, and put a new plan in place to pick up where the old plan left off. It would be irresponsible not to start funding it as soon as possible. This amendment would dig the hole deeper.

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Representative Joule said he raised the issue because there has been no discussion on the amount of money that would be involved. There is \$40 million in TRS alone. He wanted to draw attention to the fear that the schools and cities will carry the brunt of the cost.

Ms. Elgee said that based on the underfunding just for the school districts, the amount is approximately an additional \$200 million to the foundation formula to cover the cost, were it to go to the full actuarial calculated cost in 2008.

Representative Joule asked if that is a check the legislature is willing to write next year.

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Representative Seaton appreciated the mention of the unfunded liability. He stated that the purpose of the bill is for a long-term plan. The amendment would delay the money for the unfunded liability. He agreed with Representative Hawker.

Representative Joule stated that this is not going to be a liability. Representative Seaton drew attention to education funding with the 5 percent increase, and no lack of funding for TRS. He stated full commitment to fund TRS, as it is included in the formula.

Representative Weyhrauch recalled that this was an amendment offered last year to HB 141. He concurred with

Representative Hawker's view that "we are going to have to pay for the problem". He opined that Amendment 3 is not the correct solution.

[3:57:58 PM](#)

Representative Kelly said that we should resist going the route of Amendment 3. It will take work by the state, the cities, and the schools to solve the problem. BUCK provides actuarial services to many state and local government pension systems. This is the first time BUCK has had a client that was prohibited from increasing deductibles, full pays, and prescription drugs for its retirees. In normal circumstances, there would be some way to have assistance from those being served. He spoke against the amendment, but said it is in the right spirit.

Representative Joule said he raised this idea because it involves real dollar figures. He urged caution in the future with the respect to school districts. He WITHDREW Amendment 3.

[4:01:59 PM](#)

Representative Weyhrauch MOVED to ADOPT Amendment 4:

Page 4, line 8:

Delete "AS 14.25.485 and 14.25.487"

Insert "AS 14.25.310 - 14.25.590"

Page 9, lines 21 - 23:

Delete "[BENEFICIARIES] based on the deceased member's gross monthly compensation at the time of occupational death

[(1)]"

Insert "[BENEFICIARIES BASED ON THE DECEASED MEMBER'S GROSS MONTHLY COMPENSATION AT THE TIME OF OCCUPATIONAL DEATH

(1)]"

Page 19, lines 12 - 13:

Delete "AS 39.35.890 and 39.35.892"

Insert "AS 39.35.700 - 39.35.990"

Page 25, lines 26 - 28:

Delete "[BENEFICIARIES] based on the deceased employee's gross monthly compensation at the time of occupational death

[(1)]"

Insert "[BENEFICIARIES BASED ON THE DECEASED EMPLOYEE'S GROSS MONTHLY COMPENSATION AT THE TIME OF THE OCCUPATIONAL DEATH

(1)]"

Representative Weyhrauch related that on pages 4 and 9 of HB 475, the statutory reference has been changed to include all disability and death benefits. He explained that without the change it is too narrow. This amendment would allow employer contributions to be collected in order to fund death and disability benefits. The second part of the amendment, on pages 19 and 25, clarifies that the calculation of the employer contribution is for survivor pension benefits, as well. An unnecessary reference is also deleted.

[4:03:26 PM](#)

Representative Seaton said Amendment 4 is a clean-up amendment and not a policy call.

Representative Kerttula asked how it was figured out without the amendment, and how it is changed with the amendment.

[4:04:36 PM](#)

KATIE SHOWS, STAFF, REPRESENTATIVE PAUL SEATON, explained that with the amendment, the employer contribution rate for death and disability benefits would be calculated in the same manner. It provides a shorter mechanism to get to that point. In Section 55 for PERS, and in Section 16 for TRS, the benefit formula is laid out, which takes 13 percent of the deceased member's gross monthly salary at the time of death and multiplies it by the number of years until that member would have reached normal retirement. That figure is then actuarially calculated for a percentage of contribution that the employer will have to make annually. It does not change the way that the benefit is calculated.

Co-Chair Meyer WITHDREW his objection.

Representative Hawker OBJECTED to the motion to adopt Amendment 4. He noted that he has been repeatedly told that the bill needs no changes. He asked what else should be changed.

Co-Chair Meyer noted that the sponsor is in favor of Amendment 4.

A roll call vote was taken on the motion to ADOPT Amendment 4.

IN FAVOR: Holm, Joule, Kelly, Stoltze, Weyhrauch, Foster,
Meyer
OPPOSED: Hawker, Kerttula, Moses

The MOTION PASSED 7-3.

[4:08:06 PM](#)

Representative Foster MOVED to REPORT CSHB 475 (FIN) out of committee with individual recommendations and the accompanying fiscal note.

Representative Weyhrauch OBJECTED.

4:08:38 PM

At ease.

4:10:08 PM

A roll call vote was taken on the motion to move HB 475 out of Committee.

IN FAVOR: Holm, Kelly, Stoltze, Foster, Hawker, Meyer, Chenault

OPPOSED: Joule, Kerttula, Moses, Weyhrauch

The motion passed 7-4.

CSHB 475 (FIN) was REPORTED out of Committee with a "no recommendation" and with a new zero fiscal note by the Department of Administration.

HOUSE BILL NO. 29

"An Act relating to health care insurance and to the Comprehensive Health Insurance Association; and providing for an effective date."

HB 29 was scheduled but not heard.

CS FOR SENATE BILL NO. 55(FIN)

"An Act instructing the commissioner of natural resources to issue a patent for the remaining interest in certain state land to the owner of the agricultural rights to that land."

CSSB 55(FIN) was scheduled but not heard.

CS FOR SENATE BILL NO. 200(JUD) am

"An Act relating to defense of self, other persons, property, or services."

CSSB 200(JUD) am was scheduled but not heard.

ADJOURNMENT

The meeting was adjourned at 4:11 PM.