

**ALASKA STATE LEGISLATURE**  
**HOUSE STATE AFFAIRS STANDING COMMITTEE**

March 29, 2005

8:05 a.m.

**MEMBERS PRESENT**

Representative Paul Seaton, Chair  
Representative Carl Gatto, Vice Chair  
Representative Jim Elkins  
Representative Jay Ramras  
Representative Berta Gardner

**MEMBERS ABSENT**

Representative Bob Lynn  
Representative Max Gruenberg

**COMMITTEE CALENDAR**

HOUSE BILL NO. 201

"An Act relating to an application for a permanent fund dividend for a member of the armed forces of the United States serving on active duty outside of the state; and providing for an effective date."

- HEARD AND HELD

HOUSE BILL NO. 183

"An Act relating to the use of campaign contributions for shared campaign activity expenses and to reimbursement of those expenses."

- MOVED CSHB 183(STA) OUT OF COMMITTEE

HOUSE BILL NO. 170

"An Act relating to the qualifications of public members of the Public Employees' Retirement Board and the Alaska Teachers' Retirement Board."

- HEARD AND HELD

HOUSE BILL NO. 177

"An Act relating to employee and employer contributions to the teachers' retirement system and the public employees' retirement system; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

HOUSE BILL NO. 191

"An Act relating to defined contribution systems for members of the teachers' retirement system and the public employees' retirement system; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

**PREVIOUS COMMITTEE ACTION**

BILL: HB 201

SHORT TITLE: PERM. FUND DIVIDEND APPS OF MILITARY

SPONSOR(S): REPRESENTATIVE(S) CHENAULT

03/04/05	(H)	READ THE FIRST TIME - REFERRALS
03/04/05	(H)	MLV, STA
03/17/05	(H)	MLV AT 1:00 PM CAPITOL 124
03/17/05	(H)	Moved Out of Committee
03/17/05	(H)	MINUTE(MLV)
03/18/05	(H)	MLV RPT 6DP
03/18/05	(H)	DP: THOMAS, GRUENBERG, CISSNA, ELKINS, MCGUIRE, LYNN
03/29/05	(H)	STA AT 8:00 AM CAPITOL 106

BILL: HB 183

SHORT TITLE: CAMPAIGN FINANCE: SHARED EXPENSES

SPONSOR(S): REPRESENTATIVE(S) HAWKER

02/28/05	(H)	READ THE FIRST TIME - REFERRALS
02/28/05	(H)	STA, JUD
03/29/05	(H)	STA AT 8:00 AM CAPITOL 106

BILL: HB 170

SHORT TITLE: PUB EMPLOYEES/TEACHERS RETIREMENT BOARDS

SPONSOR(S): REPRESENTATIVE(S) KELLY

02/23/05	(H)	READ THE FIRST TIME - REFERRALS
02/23/05	(H)	STA, FIN
03/22/05	(H)	STA AT 8:00 AM CAPITOL 106
03/22/05	(H)	Heard & Held
03/22/05	(H)	MINUTE(STA)
03/29/05	(H)	STA AT 8:00 AM CAPITOL 106

**WITNESS REGISTER**

SHARALYN WRIGHT, Staff

to Representative Mike Chenault  
Alaska State Legislature  
Juneau, Alaska

POSITION STATEMENT: Introduced HB 201 on behalf of  
Representative Chenault, sponsor.

SHARON BARTON, Director  
Permanent Fund Dividend Division  
Alaska Department of Revenue  
Juneau, Alaska

POSITION STATEMENT: Answered questions regarding the PFD and HB  
201.

CHRIS POAG  
Civil Division  
Alaska Department of Law

POSITION STATEMENT: Answered questions regarding the legalities  
of HB 201.

REPRESENTATIVE MIKE HAWKER  
Alaska State Legislature  
Juneau, Alaska

POSITION STATEMENT: Presented HB 183 as sponsor.

BROOKE MILES, Executive Director  
Alaska Public Offices Commission (APOC)  
Anchorage, Alaska

POSITION STATEMENT: Answered questions on behalf of APOC during  
the hearing on HB 183.

HEATH HILYARD, Staff  
to Representative Mike Kelly  
Alaska State Legislature  
Juneau, Alaska

POSITION STATEMENT: Reviewed the previous discussion of HB 170  
from prior hearings on behalf of Representative Kelly, sponsor.

PAT WELLINGTON, Elected member  
Public Employees' Retirement (PERS) Board  
Anchorage, Alaska

POSITION STATEMENT: Testified and answered questions on behalf  
of the PERS Board during the hearing on HB 170.

JAY DULANY  
Eagle River, Alaska

POSITION STATEMENT: Testified on behalf of himself during the  
hearing on HB 170.

KEVIN RITCHIE

Alaska Municipal League (AML)

Juneau, Alaska

POSITION STATEMENT: Testified and answered questions on behalf of AML during the hearing on HB 170.

SAM TRIVETTE, President

Retired Public Employees of Alaska (RPEA)

Juneau, Alaska

POSITION STATEMENT: Testified on behalf of RPEA during the hearing on HB 170.

### **ACTION NARRATIVE**

**CHAIR PAUL SEATON** called the House State Affairs Standing Committee meeting to order at 8:05:00 AM. Representatives Elkins, Gatto, Gardner, and Seaton were present at the call to order. Representative Ramras arrived as the meeting was in progress.

8:06:31 AM

CHAIR SEATON discussed the meeting on Thursday, March 24. He clarified that the committee members made side-by-side comparisons of other bills towards producing the House State Affairs Standing Committee's forthcoming PERS/TRS bill.

HB 201-PERM. FUND DIVIDEND APPS OF MILITARY

8:07:28 AM

CHAIR SEATON announced that the first order of business was HOUSE BILL NO. 201, "An Act relating to an application for a permanent fund dividend for a member of the armed forces of the United States serving on active duty outside of the state; and providing for an effective date."

8:07:29 AM

SHARALYN WRIGHT, Staff to Representative Mike Chenault, Alaska State Legislature, introduced HB 201 on behalf of Representative Chenault, sponsor. She explained that the purpose of the bill is to permit a person who has a power of attorney for an active military duty person who's stationed outside of the State of Alaska to sign and file an Alaska Permanent Fund Dividend (PFD) application for the said individual. She presented an example

of an Alaskan man stationed in Japan who was then deployed to Afghanistan, and the PFD Division could not contact him; he didn't know that there was a problem with his PFD application until he returned to Alaska.

MS. WRIGHT continued:

So if someone back home had a power of attorney, that power of attorney allows you to make absolutely life-changing decisions: you can sign for a bank account, you can sign for real estate, you can make all kinds of decisions. And in the whole scope of things, the [PFD] shouldn't fit at the top or the bottom of that list; it should fit somewhere in the middle. And we should allow someone ... who's a trusted person in the military person's life, ... to sign that [PFD] application so that [the PFD check] comes in a timely manner.

[8:09:35 AM](#)

REPRESENTATIVE GARDNER remarked that there is the potential for problems if one or more persons applies on behalf of the person who's on active duty. She asked what would happen if the service person never got the money because someone else signed for the PFD check and took it.

MS. WRIGHT replied, "I would not imagine a responsible individual having more than one power of attorney, ... because when you have a power of attorney and you decide to change that, you also are required to revoke any previous powers of attorney."

[8:11:06 AM](#)

CHAIR SEATON commented that the bill would only allow the individual with the power of attorney to apply for the PFD. He asked who would be held responsible for fraud if a person applied for a PFD on behalf of another person who is not eligible to receive the PFD.

MS. WRIGHT responded that she believed that this issue would be dealt with by the PFD Division.

[8:13:23 AM](#)

SHARON BARTON, Director, Permanent Fund Dividend Division, Alaska Department of Revenue, explained that when filling out the PFD application, the power of attorney is attesting to all of the information on the application being true so far as that person knows it to be true.

CHAIR SEATON asked if the PFD Division sees any problems with HB 201.

MS. BARTON replied that logistically the division has no problem with the bill, as it won't put a large new workload on the personnel. She noted that the division is concerned about possible fraud situations. In addition, she pointed out:

We are also concerned about it being offered broadly to all military. Our military members across the world are filing very successfully this ... application period for their dividends. We know that those folks in Iraq or Afghanistan, places like that, don't have the ready access to mail and to the Internet, although they do, almost all of them, have access eventually. ... We have a lot of support built into our processing system now to allow plenty of time, all the time they need, to get their applications in when they return to a place in the world they can file or can supply that additional information they need. But if the committee is interested in making this available to military members, we would ask that you consider at any rate restricting it to those who are receiving hostile fire or imminent danger pay....

[8:16:59 AM](#)

CHAIR SEATON asked if Ms. Barton had any suggested language for that.

MS. BARTON responded that she did not have it with her but would be available to work on the language for an amendment.

[8:17:39 AM](#)

REPRESENTATIVE GARDNER asked Ms. Barton if she was implying that she didn't see the need for this bill.

MS. BARTON answered that division personnel have heard some complaints from people who have been frustrated with the current

system, mostly from family members of the military servicemen. She noted that she personally only knew of one particular such case. She said, "Staff tell me when I poll them that they've been able to work through every situation with the calls and letters and emails that they've received about the military. ... It mostly has to do with the delay in receiving the PFD check when they get back to the States. ... But in no case are we denying anyone."

REPRESENTATIVE RAMRAS commented that he felt HB 201 would make it easier for military personnel that are in harm's way to apply for the PFD.

[8:20:08 AM](#)

CHRIS POAG, Civil Division, Alaska Department of Law, explained:

A typical power of attorney has two parties: one's the principal - that's the person who's represented, the military person who goes overseas; and the other's the agent, or attorney-in-fact - that's the person who's going to do any benefit applications on behalf of the principal. In that scenario, ... the agent's responsible in a [PFD] application to make representations about whether or not the principal is in fact eligible. ... We have to assume that they'll get that information directly from the principal instead of from some sort of second-hand source. But when they make that information available in the application and they turn that application in, it more becomes a question probably in a prosecution sense of who made the representation.

MR. POAG explained that either the principal provided the agent with false information, or the agent made a mistake on the application. Fraud refers to false information that is purposefully provided, he noted, not unknowingly provided. Under HB 201, he said:

This is just going to be very hard, if not impossible to prosecute because you're going to have people pointing the finger at each other saying, 'Well, they told me this,' and 'They told me that.' And it's going to be real hard to prove beyond a reasonable doubt that anybody knowingly made false representations in that [PFD]. So I think pretty much

we'll be giving up any prosecutions in these cases. It would be very difficult to do otherwise.

8:22:07 AM

MR. POAG continued:

As you know, when you file for your [PFD] application, you have to make a representation that the information is correct, and that you intend to remain in Alaska indefinitely, or, if you're Outside, that you intend to return and remain indefinitely. Obviously an agent on behalf of a principal can't make intentional statements for them. So we also gave up that portion of our application requirement.

8:23:54 AM

REPRESENTATIVE GATTO stated that a crooked person could file as power of attorney for someone and have the PFD check placed into his or her own account. He asked what the PFD Division could do about this.

MR. POAG replied:

It depends a lot on the form of the power of attorney that's been drafted. And it depends probably a little bit on the way this legislation's drafted as well. A typical power of attorney that has normal powers, not specific powers, ... would be entitled to [have] that check ... put into the account that they designated; they are [the] agent, they make decisions as to where the money goes and how it's spent and all of those sorts of decisions. So that crooked person could end up with [the principal's] PFD in their [own] account.

REPRESENTATIVE GATTO asked who becomes the liable person in this case.

MR. POAG replied that it would depend on who made the misrepresentation. He commented that the state will have a difficult time determining which one was lying if they are blaming one another.

8:25:54 AM

MR. POAG, in response to Representative Gatto, stated that a person cannot fill out a PFD application for his/her spouse.

REPRESENTATIVE GATTO commented that the bill would then be saying that the power of attorney trumps marriage.

MR. POAG responded:

I think this is probably why ... allowing power of attorneys has been a sort of a guarded exception. It's been for, essentially, a parent on behalf of a child [to make] ... representations as to whether or not their child intends to return or remain in Alaska and stay there indefinitely. And this [bill] is a situation where we're broadening the scope of that exception.

MR. POAG pointed out that current law allows for a military person to late file after he/she has returned from the hot zone.

[8:28:05 AM](#)

REPRESENTATIVE RAMRAS stated that Fort Wainwright and Fort Richardson will both be having large deployments this year, and he saw that the deployment newsletters address issues like how to give one's spouse the power of attorney. He asked for confirmation that the bill would make the power of attorney applicable specifically to the PFD because it comes under the purview of the State of Alaska.

MR. POAG replied that current PFD law says that only the individual can apply for his or her own PFD, and the only exceptions for that are for a child or for somebody who is incapacitated. He stated that HB 201 would create a third exception for military persons. He noted, "The bill as drafted doesn't have any 'hot zone' language. As drafted it would be anybody in the military outside of the United States."

[8:29:25 AM](#)

REPRESENTATIVE RAMRAS commented that this was a particularly timely bill because of the large deployments scheduled for this year.

REPRESENTATIVE GARDNER asked if there is any reason that those individuals being deployed this fall couldn't apply for the PFD before they leave.

MR. POAG replied that they can apply between January 1 and March 31.

[8:30:36 AM](#)

REPRESENTATIVE GARDNER asked if a military person doesn't come back, for any reason, if the spouse or power of attorney can continue to apply for the PFD on behalf of that person year after year.

MR. POAG replied that if the principal abandoned his/her intent to return to Alaska, then the agent or spouse should not be filing on the principal's behalf. He stated that if the agent was representing in the application that the principal was outside of Alaska, at some point the principal would no longer qualify for an Outside allowable absence exception. He said that if the language of this bill were to be drafted such that the agent can only file while the principal is in the hot zone outside of the United States, then that would at some point expire, and the agent would probably be caught. He noted, "It would depend on the drafting of this bill."

[8:32:12 AM](#)

MR. POAG, in response to Chair Seaton, reiterated that as the bill is currently drafted, it allows anyone on active duty outside of the United States to apply through a power of attorney, even if the individual is not in a hot zone and is gone for a long time. He said that if the bill were limited to hot zones, it would be easier for the PFD Division to investigate possible frauds.

[8:33:14 AM](#)

REPRESENTATIVE GATTO asked if there is any place in the world that does not qualify as a hot zone.

MR. POAG replied that as he understood it, being in a hot zone would require a person to qualify for a certain type of military pay status.

REPRESENTATIVE GATTO asked if the term "hot zone" is actually defined.

MR. POAG replied yes; it's an official pay status that one receives in the military.

CHAIR SEATON closed public testimony.

[8:34:32 AM](#)

CHAIR SEATON asked Ms. Wright to address the issue of the inability to enforce an intent to return provision if the PFD application is completed through a power of attorney.

MS. WRIGHT presented an example of an individual who defrauded the PFD Division and was reported, but the division never pursued the case. She said, "I guess in life we have to realize that if somebody is out to circumvent the system, they're going to circumvent it no matter what rule we come up with, no matter what changes we make." She reiterated that the purpose of the bill is to allow the military personnel to have an easier way to apply for the PFD. She noted that hot zone pay can change quickly. She said, "I strongly believe this 'hot zone' language should not be in [the bill]." Representative Chenault's office devotes a lot of time to military-PFD problems, she stated.

[8:38:51 AM](#)

REPRESENTATIVE ELKINS asked why the power of attorney couldn't specify that it was only good for applying for the dividend.

MS. WRIGHT answered that there is an area on the power of attorney [application] that would allow a person to write in that the agent has permission to file for a PFD.

[8:40:46 AM](#)

REPRESENTATIVE RAMRAS reiterated that soldiers from Alaska will be deployed overseas this year and the military has recommended that the soldiers set up a power of attorney. He emphasized that the bill should be passed quickly.

MS. WRIGHT concurred with Representative Ramras and said the bill is long overdue. She said, "We have afforded the [PFD] Division every opportunity. At the beginning of session we brought them in, told them what the problem was, gave them every opportunity to repair it, and [they] chose not to."

[8:42:30 AM](#)

REPRESENTATIVE GARDNER said that she applauds the effort of the bill, but she wonders if a better plan would be to make the application available early for people who are leaving.

MS. BARTON replied that Representative Gardner's proposal could perhaps be worked into the law. She noted that the problem is that the eligibility period covers the full year prior to the dividend, from January 1 to December 31. If someone filled out the application in August, "it's unknown what might occur to them between August and January as far as their eligibility for the dividend." The law requires that the applicant attest to the fact that during the prior eligibility year certain things have been true, she said.

[8:44:35 AM](#)

CHAIR SEATON requested that for the next hearing, Ms. Barton present data on the number of applications that have had problems on this particular aspect of the PFD application "so we have a good handle on the numbers and those that were denied, or missed or filed late under the current existing law."

[8:44:54 AM](#)

MS. BARTON, in response to Representative Gatto, replied that under the law, a person would be committing fraud if he/she filled out a spouse's application with the spouse's e-signature.

[HB 201 was heard and held.]

HB 183-CAMPAIGN FINANCE: SHARED EXPENSES

[8:45:53 AM](#)

CHAIR SEATON announced that the next order of business was HOUSE BILL NO. 183, "An Act relating to the use of campaign contributions for shared campaign activity expenses and to reimbursement of those expenses."

[8:45:57 AM](#)

REPRESENTATIVE MIKE HAWKER, Alaska State Legislature, as sponsor of HB 183, said the bill is a common sense fix that affects every person running for office in the state of Alaska. Under current statute, he said, a vendor has to break a bill into separate components and each candidate has to pay separately. The proposed legislation would allow one candidate to pay the

bill, as long as the other candidates involved completely reimburse their share of that expense within 48 hours. He said the decision to make it 48 hours is reasonable. He indicated that what usually happens is that one candidate writes the check and the other candidates hand him/her a check almost simultaneously for ease of record keeping. The bill would clearly place the responsibility for campaign finance compliance upon the candidates themselves.

[8:48:34 AM](#)

REPRESENTATIVE HAWKER said that Legislative Legal and Research Services has recommended the format in which the bill is written, specifically listing what candidates "may not do." He offered further details. He noted that there is a zero fiscal note in the committee packet.

[8:49:08 AM](#)

REPRESENTATIVE GARDNER agreed that the concept of the bill is common sense. Notwithstanding that, she directed attention to page 2, line 17, which would require that the candidate [or group participating in the activity] **"receives, within 48 hours after payment of the expense, complete reimbursement of the amount of campaign contributions used for payments made on behalf of another candidate or group participating in the activity."** She said her concern is that if she were the candidate responsible for receiving that money, she can't control when the others reimburse her. She said she can only control when she asks them for the money.

[8:50:06 AM](#)

REPRESENTATIVE HAWKER said Alaska has some of the strictest campaign finance laws in the U.S. He stated his intent in crafting the bill was to be careful not to create a loophole that would be too wide, but rather to make a specific provision. He explained, "We didn't want to have an open window that would allow candidate A to make a payment that candidate B could get around to paying sometime, someday, a month in the future." He said it's a judgment call.

[8:51:03 AM](#)

REPRESENTATIVE GARDNER clarified that the bill should specify that the debtor is in violation in law if he/she doesn't pay within 48 hours.

REPRESENTATIVE HAWKER said that's worth considering.

[8:51:39 AM](#)

CHAIR SEATON said he can foresee that 48 hours might be [too short] a period, depending on weekend timing and mail delivery time.

[8:51:56 AM](#)

REPRESENTATIVE GATTO said he is looking for a way a person may attempt to conceal a campaign contribution by paying the other person substantially more than a fair share of the bill. He said it would be much more difficult to track because the payment is not made to the vendor and there is no paper trail. He spoke of having 60 days to pay a vendor versus the 48 days to pay a candidate. He asked, "This is an option rather than a requirement, right?"

[8:53:32 AM](#)

REPRESENTATIVE HAWKER confirmed that "this just provides an option." He said each expense needs to be documented by an invoice, and each candidate is required to maintain the documentary evidence of his/her expenditures. The way the campaign law is structured, the prohibition is against making a contribution to another candidate or group. He added, "We had to structure this exemption within the framework of an overall law that prohibits making contributions." Regarding getting the reimbursement in a situation where there is a bill from a vendor that can be unpaid for 60 days, the trigger, for example, would be when the person pays on behalf of another candidate. In that instance, he/she would then have 48 hours to be paid back. He added, "We're not creating two different time cycles here."

[8:54:46 AM](#)

BROOKE MILES, Executive Director, Alaska Public Offices Commission (APOC), noted that the commission reviewed the bill at its last meeting and understands the practical reasons for it, since the current law is so restrictive. She said APOC is "fine with the bill," although it takes a neutral position on it. She said the bill speaks to candidates and groups. She pointed out that it is common for political candidates to join together to share a campaign activity, but it is not common for

groups to do so. Because of that, she suggested only providing the exemption for candidates.

[8:57:16 AM](#)

MS MILES, in response to a question from Chair Seaton, said the repayment time for expenditures that a candidate makes on his/her own behalf is "reasonably consistent business practices." In other words, whatever the vendor allows. She noted that most standard business practices don't go beyond 60 days.

[8:57:38 AM](#)

CHAIR SEATON, regarding "other timing," stated his understanding that if a candidate makes personal expenditures, his/her campaign has to repay that amount within 72 hours.

[8:58:00 AM](#)

MS. MILES answered that's correct. She added that if the committee thinks it would be more reasonable to expand the 48 hours to a 72-hour period, she doesn't think that would cause the commission concern either.

[8:58:13 AM](#)

REPRESENTATIVE GATTO asked how APOC would treat "in a timely manner" rather than within 48 hours.

[8:58:23 AM](#)

MS. MILES replied that APOC wouldn't have a problem, but she stated concern that there may be public perception that candidates are "landing" money or giving money to another candidate, which she said are practices that those interested in campaign finance reform are trying to stop.

[8:59:01 AM](#)

CHAIR SEATON asked the sponsor if he has any objection to [Ms. Miles' suggestion to only provide the exemption to candidates].

[8:59:17 AM](#)

REPRESENTATIVE HAWKER noted that a conjunction is used: "candidate or group". He said, "So, we have not in any way

invaded the other provisions of statute which specifically make those prohibitions against partnering between groups and candidates."

CHAIR SEATON asked Representative Hawker if he could give some examples of when there would be different groups that would "be having this shared activity."

REPRESENTATIVE HAWKER speculated perhaps during joint fund raising or a joint media expense.

[9:01:15 AM](#)

REPRESENTATIVE RAMRAS suggested that a situation in which there was a majority House fundraiser including several individual candidates would be the mixing of a group and individual, because there would be the opportunity for specific campaign donations to an individual candidate as well as for the House majority.

[9:01:39 AM](#)

REPRESENTATIVE HAWKER stated his understanding that that sort of an action would be prohibited under current statute. He said he would defer to APOC for a more correct interpretation. He reiterated his emphasis of the conjunctive "or".

[9:02:13 AM](#)

MS. MILES reiterated that two or more groups don't usually share fundraising events very often. She indicated that she is fine with the language, particularly after hearing the clarification from the sponsor that there is no intent to permit group/candidate combinations that would be problematic with the other provisions of law.

[9:03:29 AM](#)

CHAIR SEATON, after ascertaining that there was no one else to testify, closed public testimony.

[9:03:47 AM](#)

CHAIR SEATON encouraged a motion from someone to change "48 hours" to "72 hours", because there exists a 72-hour timeframe for candidates to reimburse themselves and it seems [prudent] to

keep the times the same to avoid "inadvertent mix-ups of timelines."

[9:04:02 AM](#)

REPRESENTATIVE GATTO moved Amendment 1, as follows:

On page 2, line 17:

Delete "within 48 hours"

Insert "within three working days"

[9:04:24 AM](#)

CHAIR SEATON objected for the purpose of discussion.

[9:04:45 AM](#)

MS. MILES, in response to a question from Chair Seaton, confirmed that the amount of time [that a candidate has to reimburse his/her campaign] is 72 hours. She said she does not see a problem with using the phrase "within three working days".

[9:05:06 AM](#)

REPRESENTATIVE GATTO explained that "these things" often occur on a Friday night, so this amendment would allow the individual "some opportunity besides the weekend."

[9:05:26 AM](#)

REPRESENTATIVE HAWKER said as long as he has the tacit concurrence from APOC that "within three working days" would not be a problem, he would be happy to defer to the wisdom of the committee.

[9:05:49 AM](#)

CHAIR SEATON removed his objection to Amendment 1. There being no further objections, Amendment 1 was adopted. He added that the amendment is conceptual.

[9:06:44 AM](#)

REPRESENTATIVE GARDNER moved Amendment 2, as follows:

On page 2, line 17:

Delete "receives"  
Insert "submits"

On page 2, line 19:

Between "on behalf of" and "candidate"  
Delete "another"  
Insert "the"

REPRESENTATIVE GARDNER said that would put the onus on the person that owes the money, not the one to whom it is owed.

[9:07:49 AM](#)

CHAIR SEATON objected for the purpose of discussion.

REPRESENTATIVE GATTO said hand delivery, postmark, and check date would probably be covered under "submit".

REPRESENTATIVE GARDNER said, as a candidate, she doesn't want to be responsible for when someone else repays her, only for when she repays him or her.

[9:08:08 AM](#)

REPRESENTATIVE HAWKER stated opposition to Amendment 2. He said it is important to be cautious when making changes within the framework of existing statute to consider the entire framework in which the language is being constructed.

The committee took an at-ease from [9:09:06 AM](#) to [9:10:49 AM](#) due to technical difficulties.

[9:10:51 AM](#)

REPRESENTATIVE HAWKER restated for the record his opposition to Amendment 2. He explained that when changes are made in statute, a consideration has to be made that language is being added within the overall construct of the larger campaign finance statutes. He noted that the "largest prefacing comment" is on page 1, line 5, [in Section 1, which amends] AS 15.13.112(b), and which read: "Campaign contributions held by a candidate or group may not be". Following that is a list of things that the candidate may not do with his/her contributions. [Paragraph (7)] - the seventh prohibition in the list - shows that [those campaign contributions] may not be "used to make

contributions to another candidate or to a group". He stated, "This is the provision that has been interpreted to say that I cannot make a payment on behalf of a group of candidates, because I would be contributing value or benefit to that group." Representative Hawker said the exemption that is necessary, in order to be consistent with the structure of statute, is that the person making that payment is the one who is in peril if they make the payment in violation of statute. He continued:

So, we create an exemption that protects the payor candidate from that peril, by saying that they are not held in violation of [Paragraph] (7) here if they receive back from the other candidate ... the ratable reimbursement. And it's important here, because the ... candidate who is making the payment - placing themselves in peril - that is a risk they are assuming on themselves. And ... if they, in fact, do not have ... arrangements made with the other candidate to receive that money back, ... they have made ... an illegal contribution, in that they are the risk-taker in this piece. ... I believe the onus should be on the paying candidate, not trying to shift this into the other candidate paying.

REPRESENTATIVE HAWKER offered a hypothetical example.

[9:14:37 AM](#)

CHAIR SEATON maintained his objection.

[9:14:48 AM](#)

REPRESENTATIVE GATTO responded as follows:

I guess where I'm going is: I didn't do it in 72 hours or three working days ..., and now I'm in violation. So, I figure, "Well, I can get out of this if I simply go directly to the vendor." But the other guy's already paid the vendor. And now the vendor has money from the other guy and me; now he has to make a reimbursement to my ... rich friend. [Are] there any violations? Have I successfully gotten out of trouble by doing that?

[9:15:19 AM](#)

REPRESENTATIVE HAWKER responded that he is not in the position to say how APOC would rule on a specific case. Notwithstanding that, he surmised that in that case it would be legitimate to interpret that the wealthy candidate in fact overpaid his/her portion to the vendor and did not make a loan, because "it had been paid by the 'poor' candidate, who paid directly." At that point, it would be incumbent upon the rich candidate who had overpaid the vendor to receive a reimbursement from the vendor. He added, "I think the doctrine of common sense would apply in the interpretation here."

[9:16:00 AM](#)

REPRESENTATIVE GATTO clarified that a person could delay his/her reimbursement by three months because the vendor is satisfied. He queried, "My rich friend is simply willing to leave himself in that hole of me turning [up] three months later and paying the vendor?" Representative Gatto commented, "No, I can't do that."

[9:16:27 AM](#)

CHAIR SEATON clarified that "it has to be not only the amount, but it has to be received, otherwise you as the ... rich candidate are in violation." He said [Amendment 2] would shift the burden to the poor candidate whether or not he/she submits or not, instead of saying that the rich candidate "only can do this if they're going to get reimbursed within the three working days."

[9:16:56 AM](#)

REPRESENTATIVE GARDNER said that's the heart of what she is trying to get at, and she reiterated her previous statements about not being able to be in control of what someone else does.

[9:17:13 AM](#)

A roll call vote was taken. Representatives Gardner and Gatto voted in favor of Amendment 2. Representatives Ramras, Elkins, and Seaton voted against it. Therefore, Amendment 2 failed by a vote of 2-3.

[9:18:41 AM](#)

REPRESENTATIVE ELKINS moved to report [HB 183, as amended] out of committee with individual recommendations and the

accompanying fiscal notes. There being no objections, CSHB 183(STA) was reported out of the House State Affairs Standing Committee.

HB 170-PUB EMPLOYEES/TEACHERS RETIREMENT BOARDS

[9:19:39 AM](#)

CHAIR SEATON announced that the next order of business was HOUSE BILL NO. 170, "An Act relating to the qualifications of public members of the Public Employees' Retirement Board and the Alaska Teachers' Retirement Board."

[9:19:58 AM](#)

HEATH HILYARD, Staff to Representative Mike Kelly, Alaska State Legislature, on behalf of Representative Kelly, sponsor, reviewed the previous discussion of the bill from prior hearings.

[9:21:20 AM](#)

PAT WELLINGTON, Elected member, Public Employees' Retirement (PERS) Board since 1977, commended Representative Kelly for realizing that "probably the solution to the problem is not throwing out the two boards and starting all over again." In HB 170, the three public members would be appointed by the governor and two would never have worked for "a participating political subdivision." He stated that he is not certain of the purpose of that. He said right now the governor has the authority to appoint three members to the PERS Board. He listed the current appointed members. He said Representative Kelly indicates in the proposed bill that there "should be a need for some expertise in administration, finance, accounting, or economic development." He opined that it is necessary to consider the responsibility of the PERS Board, and to realize that the board is not in the asset management end of the program.

[9:23:54 AM](#)

MR. WELLINGTON estimated 80 percent of the board's work centers around appeals "from the administrator." He explained, "If a person is injured on a job and wants to apply for occupational or nonoccupational disability, and the director turns them down, the board hears those appeals with two doctors." The board also hears administrative appeals regarding retirement benefits, overpayments, or underpayments. The board meets once a year to

set the employers' contribution rate, which is brought to the board by the administration, with the input it has received from its actuarial consultant - in this case, Mercer Human Resource Consulting. The board then acts upon that consolidated contribution rate. He stated that he has found the actuarial science interesting, and that information is what the board must rely on. He said, "That is about the only area of responsibility in the financial end that we would have any say in." He predicted the experts that Representative Kelly wants on the board would get bored "sitting there listening to a lot of disability appeals."

[9:25:42 AM](#)

MR. WELLINGTON said the board also advises the administration on health insurance for retirees; however, that program is solely the responsibility of the commissioner of administration, who has the sole authority to make whatever changes to the health insurance he/she feels appropriate. He recognized that the largest current under funding is within the health insurance component. He said that the board has worked with the administration over the years to attempt to reduce costs. He said there is a health insurance subcommittee made up of two members from PERS and two from TRS, and he has sat on that subcommittee for the last 10 years. He noted one of the money-saving ideas that has been instituted with the administration has been the use of generic drugs and "an educational process," which he indicated has resulted in an annual savings of about \$1 million. He indicated that health insurance may rank even higher in importance than the paycheck to most retirees.

[9:27:49 AM](#)

MR. WELLINGTON concluded by reiterating that it isn't necessary to put people on the board with expertise as [proposed in the bill], because "that's really not the area that this board deals in."

[9:28:21 AM](#)

CHAIR SEATON, regarding the board setting the contribution rates, asked Mr. Wellington if he would find it problematic if the legislature were to establish a floor that the board could not drop below.

[9:29:08 AM](#)

MR. WELLINGTON answered no. He indicated that a number of years ago the PERS board made recommendations for a ceiling and floor. He said the [TRS board] doesn't "have that same provision." He said he thinks the ceiling is a good provision. Mr. Wellington said he thinks there has been some misconception that the PERS board has reduced the actuarial rate below what has been recommended by the consultant. He emphasized that the board has never done that, but has, in fact, set the rate higher than recommended. He explained, "We were trying to maintain about 100-102 percent funding for PERS and, had we adopted the rate as recommended by the administration at Mercer, we would have dropped below that. And it was a collective decision of the board not to do that."

[9:30:26 AM](#)

CHAIR SEATON said the committee is not familiar with how the board works, and he indicated that he appreciates knowing that 90 percent of the board's time is involved in disability appeals.

[9:30:39 AM](#)

MR. WELLINGTON noted that the board also does some administrative appeals. He offered an example. He said he thinks that that appellants who come before the board feel that they will get "a fair shake."

[9:31:31 AM](#)

REPRESENTATIVE RAMRAS recognized the service of Mr. Wellington and of the late Robert Boko, "a spiritual, powerful member who left an extraordinary mark on the ... TRS board." He asked Mr. Wellington to list the governors under which he has served.

[9:32:40 AM](#)

MR. WELLINGTON listed Governors: Jay Hammond, Bill Sheffield, Steve Cowper, Walter Hickel, Tony Knowles, and Frank Murkowski.

[9:32:59 AM](#)

REPRESENTATIVE RAMRAS remarked that Mr. Wellington has seen the PERS fund living and breathing for many years.

[9:33:35 AM](#)

MR. WELLINGTON said comments are made that "we probably couldn't invest our way out of the predicament that we're in today," but he said he thinks it's important to look at the whole picture. He said when the board considered a hybrid program in the past, it was basically told to stay on track. He said he thinks a better approach would have been to look at the whole system and to conduct a study to consider the medical portion of the program. He said the state's participation in the SBS program costs about \$40 million per year, and perhaps there could be some reduction in that. He mentioned near-term, mid-term, and long-term results, and said he looks at defined contribution as a long-term [solution]. Mr. Wellington said, "I think a better approach would have been to study this, look at what's available, and then recommend the changes." He said he did not feel comfortable in recommending a "title only-type situation." He said, as a former law enforcement officer, he would not "sign off" on anything he had not had the opportunity to study in detail. He admitted that he may be overcautious, but said he has seen those who are not [cautious] get into trouble. He said he thinks the board would support a change, but not until it sees "what it would look like."

[9:37:08 AM](#)

MR. WELLINGTON, in response to a question from Representative Ramras, spoke of his former career in law enforcement. He noted that he also sits on the Alaska State Pension Investment Board [ASPIB].

[9:37:30 AM](#)

REPRESENTATIVE RAMRAS asked Mr. Wellington if the PERS board is looking out for the worker or the institution.

[9:38:20 AM](#)

MR. WELLINGTON responded that the board looks out for the system and the worker. He said, "We're a finder of facts, and develop the facts as presented. We do take in ... - through consideration - the evidence that the worker brings forth to us, but the bottom line is that our decisions have to stand the test of time, because there is an appeal process." He noted that, since he's been on the board, [both] the state [and] the appellant has had the right to appeal to the superior court. He offered further details. He said he knows a lot of people in Alaska, but doesn't let that interfere with his work.

[9:39:40 AM](#)

CHAIR SEATON asked Mr. Wellington to describe the differences between the PERS and TRS Boards.

[9:39:54 AM](#)

MR. WELLINGTON said the TRS Board includes certified teachers and deals only with occupational disability, while the PERS Board addresses both occupational and non-occupational disability. He said historically there have been two separate boards, and their constituency is a little different. He noted that the TRS Board is not as busy, because they don't have the same amount of appeals. He said the boards could be combined if the new single board was made bigger; however, he said he doesn't know that "bigger is always better." He indicated that the current boards function well and "it doesn't cost a lot to meet."

[9:41:20 AM](#)

MR. WELLINGTON, in response to a question from Representative Ramras, noted that the [PERS] Board meets 4-5 times a year. Appeals take up a vast majority of the meeting. The upcoming meeting is scheduled to last four days. He offered an example of a fireman working for the municipality who fell off a ladder, but had preexisting conditions from a football injury. The board decided that falling off the ladder was not sufficient cause for disability, but the court told the board to reconsider the case under more liberal interpretations, whereby the fireman was given the disability. He offered more examples. He said, "Every once in awhile the system has to step up to the plate and say, 'We made a mistake.'"

[9:44:39 AM](#)

CHAIR SEATON offered his understanding that every member of the current board has been employed at one time with PERS.

[9:44:49 AM](#)

MR. WELLINGTON noted that Bronk Jorgensen has never been in the system. He said the governor can appoint whomever he/she wants. He said being a board member is a time-consuming job; for every day spent in hearings, hours are spent at home in preparation, without compensation.

[9:45:48 AM](#)

CHAIR SEATON offered his understanding that currently there are no PERS employers represented [on the board] from municipalities or school districts.

[9:46:02 AM](#)

MR. WELLINGTON said, "Not currently."

[9:46:07 AM](#)

CHAIR SEATON asked Mr. Wellington if he would think it a positive move toward diversity of opinion if there was a requirement for "some participation by an employer within ... PERS."

[9:46:17 AM](#)

MR. WELLINGTON responded that he thinks that would be good, because people don't feel they have a voice at the table.

CHAIR SEATON, in response to a request by Representative Ramras and the ensuing remarks by Mr. Wellington, suggested that a biography of each of the PERS Board members could be provided to the committee.

[9:51:36 AM](#)

JAY DULANY, testifying on behalf of himself, noted that he is a member of the Retired Public Employees Association (RPEA). He stated that it would be difficult to improve on the current makeup of the boards, and keeping those with experience in the system off the boards would be unwise. In particular, he said, removing the ability to elect the two members on the PERS board "kind of flies in the face of our representative democracy." Furthermore, he stated his belief that the TRS board should be changed to allow two elected members. Regarding having an employer on the boards, he said the governor certainly could appoint an employer; however, he doesn't see a problem with specifying that an employer be on the board.

[9:53:09 AM](#)

KEVIN RITCHIE, Alaska Municipal League (AML), mentioned a recent meeting that had taken place. He stated that about 63 percent of PERS and TRS systems are in schools, municipalities, and the

university. Currently, he noted, there is no structural connection between those three to the program, so "this is a program which is obviously key to employers." He said it would certainly be reasonable to add seats.

9:55:09 AM

MR. RITCHIE, in response to a question from Chair Seaton regarding combining the two boards, said AML has been meeting for about six months, and that issue has not been addressed. He stated his personal experience with "this board" is that it has a very open system. For example, he said several months ago AML was invited to the table to work through the Mercer information. He concluded, "I do agree that the boards are functioning very openly [and] very well right now."

9:55:59 AM

SAM TRIVETTE, President, Retired Public Employees of Alaska (RPEA), revealed that his involvement with RPEA began in 1998. He said RPEA represents thousands of the ten thousands of retirees from PERS, TRS, and other public retirement systems, and opposes the proposed legislation for a number of reasons. He paraphrased his written testimony as follows:

For all of the public members the governor has the authority to appoint, this bill would, for no good reason, exclude well over 50,000 Alaskans from being considered for the positions, just because they have at some time in their lives, worked for a public employer. Furthermore, the bill excludes numerous other Alaskans from appointment that have significant public sector experience - but not private sector experience - in administration, financing, accounting or economic development.

Not having seen a [sponsor's] explanation of the bill, it is unclear to me what the purposes of these sections were. Having attended numerous PERS & TRS board meetings in the last 5 years, ... I understand what their duties and responsibilities are and what they spend most of their time on. A majority of the [board's] time is spent hearing appeals from members of the system. The board members need to be very familiar with Alaska employee and retiree laws & benefits, and how the system really works.

Let me say that [in] my observations of current and past PERS/TRS Board members at their meetings in the last half decade, an observer would not know who was elected, who was appointed, who was a former public employee or not, based upon their comments and actions at the meeting. They all understood their statutory and fiduciary responsibilities, no matter what the issue was. I would add that the members without public employee experience tended to lean upon board members with the public employee experience to effect the best possible outcome for the state and any individuals involved.

The boards have a history of fair and equitable hearings. Many potential court appeals are avoided, as employees and retirees are more accepting of even adverse decisions when they know the board members understand the system and the appellant believes they are getting reasonable consideration.

Clearly, having board members with public employment experience has enhanced the ability of the state to make many changes to the retirement benefits system that has resulted in many millions of dollars of savings in recent years. Without [the] excellent cooperation of the current [Division of] Retirement & Benefits staff ..., retired PERS and TRS board members, and RPEA volunteers, the fund balances would be in much worse shape today.

... I'm assuming this bill does not tamper with the two ... elected ... PERS Board members, and I think if it were to tamper with that ... you would find yourself in a potential diminishment of benefits situation, which, if that were the case, ... would certainly be subject to legal challenges.

I've worked with organizations for over 40 years .... In spite of individual PERS and TRS Board member views, I've not seen a group - even with changes over time and many new board members of the last 2-plus years - that has better served the interest of ... all of the citizens of Alaska. They are efficient - they use their time wisely; they are effective - they find ways to contain and reduce costs; and they are beholden to no one - including employers, retirees, [the Division of] Retirement & Benefits, [and] consultants.

[10:01:18 AM](#)

MR. TRIVETTE, regarding combining the two boards, said he is not an expert but has spent time talking with TRS Board members. He pointed out that PERS and TRS statutes were enacted at different times and the boards have different types of teachers. In terms of how the money is paid out of the system, TRS and PERS are quite different; the average payment for PERS is approximately \$1,500, while the average payment for TRS is \$2,500. He noted that many of the university employees fall under PERS, rather than TRS. He said he doesn't want to tell the committee members that it would be impossible to combine the two boards, but he suggested they withhold judgment and raise those questions with some of the other PERS and ... TRS board members that would be in town next week. He also suggested that the committee speak with some of the former members of the PERS and TRS boards; he estimated there are probably five or six members that have been replaced in the last couple of years. Another person of note, he said, would be the board attorney, who is not a member of the board, but has been working with the board for many years.

[10:02:55 AM](#)

CHAIR SEATON recognized that Representative Mike Kelly, sponsor, had just joined the committee. After discerning that Representative Kelly did not wish to add further testimony at this time, he closed public testimony.

[10:03:45 AM](#)

CHAIR SEATON announced that the House State Affairs Standing Committee draft for a PERS/TRS bill should be read across the House floor today or tomorrow. He discussed further calendar issues.

#### **ADJOURNMENT**

There being no further business before the committee, the House State Affairs Standing Committee meeting was adjourned at [10:04:13 AM](#).