

ALASKA STATE LEGISLATURE
SENATE STATE AFFAIRS STANDING COMMITTEE

March 22, 2005

3:40 p.m.

MEMBERS PRESENT

Senator Gene Therriault, Chair
Senator Thomas Wagoner, Vice Chair
Senator Charlie Huggins
Senator Bettye Davis
Senator Kim Elton

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE JOINT RESOLUTION NO. 14

Urging the United States Congress to amend the tax code to permanently repeal the federal estate and generation-skipping transfer tax.

MOVED SJR 14 OUT OF COMMITTEE

SENATE JOINT RESOLUTION NO. 8

Proposing amendments to the Constitution of the State of Alaska relating to and limiting appropriations from and inflation proofing the Alaska permanent fund by establishing a percent of market value spending limit.

HEARD AND HELD

HOUSE BILL NO. 90

"An Act requiring warrants drawn by the Department of Administration against the state treasury to be negotiable instruments."

MOVED HB 90 OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 97(FIN)

"An Act relating to the authority to take oaths, affirmations, and acknowledgments in the state, to notarizations, to verifications, to acknowledgments, to fees for issuing certificates with the seal of the state affixed, and to notaries public; and providing for an effective date."

MOVED SCS CSHB 97(STA) OUT OF COMMITTEE

SENATE BILL NO. 143

"An Act amending the definition of the term 'state agencies' as it applies under Executive Order No. 113; relating to information systems in the legislative branch and to the Telecommunications Information Council; and providing for an effective date."

HEARD AND HELD

SPONSOR SUBSTITUTE FOR SENATE BILL NO. 24

"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."

HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: SJR 14

SHORT TITLE: REPEAL FEDERAL ESTATE TAX

SPONSOR(s): SENATOR(s) HUGGINS

03/08/05 (S) READ THE FIRST TIME - REFERRALS
03/08/05 (S) STA, FIN
03/22/05 (S) STA AT 3:30 PM BELTZ 211

BILL: SJR 8

SHORT TITLE: CONST. AM: PERMANENT FUND P.O.M.V.

SPONSOR(s): RULES BY REQUEST OF LEG BUDGET & AUDIT

02/14/05 (S) READ THE FIRST TIME - REFERRALS
02/14/05 (S) STA, JUD, FIN
03/17/05 (S) STA AT 3:30 PM BUTROVICH 205
03/17/05 (S) Scheduled But Not Heard
03/22/05 (S) STA AT 3:30 PM BELTZ 211

BILL: HB 90

SHORT TITLE: STATE TREASURY WARRANTS

SPONSOR(s): STATE AFFAIRS

01/21/05 (H) READ THE FIRST TIME - REFERRALS
01/21/05 (H) L&C, STA
02/02/05 (H) L&C AT 3:15 PM CAPITOL 17
02/02/05 (H) Moved Out of Committee
02/02/05 (H) MINUTE(L&C)
02/04/05 (H) L&C RPT 5DP
02/04/05 (H) DP: LYNN, KOTT, LEDOUX, GUTTENBERG,
ANDERSON
02/08/05 (H) RULES TO CALENDAR PENDING REPORT
02/08/05 (H) STA AT 8:00 AM CAPITOL 106
02/08/05 (H) Moved Out of Committee
02/08/05 (H) MINUTE(STA)
02/09/05 (H) STA RPT 7DP
02/09/05 (H) DP: GARDNER, LYNN, GATTO, GRUENBERG,
RAMRAS, ELKINS, SEATON
02/09/05 (H) TRANSMITTED TO (S)
02/09/05 (H) VERSION: HB 90
02/10/05 (S) READ THE FIRST TIME - REFERRALS
02/10/05 (S) L&C, STA
03/03/05 (S) L&C AT 1:30 PM BELTZ 211
03/03/05 (S) Heard & Held
03/03/05 (S) MINUTE(L&C)
03/10/05 (S) L&C AT 1:30 PM BELTZ 211
03/10/05 (S) Moved HB 90 Out of Committee
03/10/05 (S) MINUTE(L&C)
03/14/05 (S) L&C RPT 3DP
03/14/05 (S) DP: BUNDE, ELLIS, SEEKINS
03/22/05 (S) STA AT 3:30 PM BELTZ 211

BILL: HB 97

SHORT TITLE: OATHS; NOTARIES PUBLIC; STATE SEAL

SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

01/21/05 (H) READ THE FIRST TIME - REFERRALS
01/21/05 (H) STA, JUD, FIN
01/26/05 (H) FN1: (GOV) - CORRECTED
02/03/05 (H) STA AT 8:00 AM CAPITOL 106
02/03/05 (H) Moved CSHB 97(STA) Out of Committee
02/03/05 (H) MINUTE(STA)
02/07/05 (H) STA RPT CS(STA) 6DP 1NR
02/07/05 (H) DP: LYNN, GATTO, ELKINS, GRUENBERG,
RAMRAS, SEATON;
02/07/05 (H) NR: GARDNER
02/16/05 (H) JUD AT 1:00 PM CAPITOL 120
02/16/05 (H) Moved CSHB 97(JUD) Out of Committee

02/16/05 (H) MINUTE(JUD)
 02/18/05 (H) JUD RPT CS(JUD) 5DP
 02/18/05 (H) DP: GRUENBERG, DAHLSTROM, COGHILL,
 GARA, MCGUIRE
 02/28/05 (H) FIN AT 1:30 PM HOUSE FINANCE 519
 02/28/05 (H) Heard & Held
 02/28/05 (H) MINUTE(FIN)
 03/08/05 (H) FIN AT 1:30 PM HOUSE FINANCE 519
 03/08/05 (H) Moved CSHB 97(FIN) Out of Committee
 03/08/05 (H) MINUTE(FIN)
 03/09/05 (H) FIN RPT CS(FIN) 2DP 7NR
 03/09/05 (H) DP: FOSTER, MEYER;
 03/09/05 (H) NR: HAWKER, MOSES, HOLM, STOLTZE,
 JOULE, KELLY, WEYHRAUCH
 03/17/05 (H) TRANSMITTED TO (S)
 03/17/05 (H) VERSION: CSHB 97(FIN)
 03/18/05 (S) READ THE FIRST TIME - REFERRALS
 03/18/05 (S) STA, FIN
 03/22/05 (S) STA AT 3:30 PM BELTZ 211

BILL: SB 143

SHORT TITLE: STATE INFO SYSTEM PLAN: LEGISLATURE/UNIV
 SPONSOR(s): STATE AFFAIRS

03/16/05 (S) READ THE FIRST TIME - REFERRALS
 03/16/05 (S) STA
 03/22/05 (S) STA AT 3:30 PM BELTZ 211

BILL: SB 24

SHORT TITLE: REEMPLOYMENT OF RETIREES
 SPONSOR(s): SENATOR(s) STEVENS G

01/11/05 (S) PREFILE RELEASED 12/30/04
 01/11/05 (S) READ THE FIRST TIME - REFERRALS
 01/11/05 (S) HES, STA
 01/26/05 (S) SPONSOR SUBSTITUTE INTRODUCED-REFERRALS
 01/26/05 (S) HES, STA
 03/07/05 (S) HES AT 1:30 PM BUTROVICH 205
 03/07/05 (S) Heard & Held
 03/07/05 (S) MINUTE(HES)
 03/08/05 (S) FIN REFERRAL ADDED AFTER STA
 03/14/05 (S) HES AT 1:30 PM BUTROVICH 205
 03/14/05 (S) Heard & Held
 03/14/05 (S) MINUTE(HES)
 03/16/05 (S) HES AT 1:30 PM BUTROVICH 205
 03/16/05 (S) Moved CSSSSB 24(HES) Out of Committee
 03/16/05 (S) MINUTE(HES)

03/18/05 (S) HES RPT CS 1DP 3NR 1AM NEW TITLE
03/18/05 (S) NR: DYSON, WILKEN, OLSON
03/18/05 (S) DP: ELTON
03/18/05 (S) AM: GREEN
03/22/05 (S) STA AT 3:30 PM BELTZ 211

WITNESS REGISTER

Deborah Grundmann,
Aide to Senator Huggins
Alaska State Capitol
Juneau, AK 99801

POSITION STATEMENT: Presented SJR 14 for the sponsor

Mike Williams
Department of Revenue
PO Box 110400
Juneau, AK 99811-0400

POSITION STATEMENT: Answered questions about the fiscal impact of SJR 8 on the state

Mike Burns,
Chief Executive Officer
Alaska Permanent Fund Corporation
801 W 10th St., Suite 302
Juneau, AK 99802

POSITION STATEMENT: Answered questions about SJR 8

Laura Achee
Alaska Permanent Fund Corporation
801 W 10th St., Suite 302
Juneau, AK 99802

POSITION STATEMENT: Answered questions about SJR 8

Representative Max Gruenberg
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Presented HB 90

Kim Garner,
Director of Finance
Department of Administration
PO Box 110204
Juneau, AK 99811-0204

POSITION STATEMENT: Supported HB 90

ACTION NARRATIVE

CHAIR GENE THERRIAULT called the Senate State Affairs Standing Committee meeting to order at [3:40:25 PM](#). Senators Davis, Huggins and Chair Therriault were present. Senators Elton and Wagoner arrived during the course of the meeting.

SJR 14-REPEAL FEDERAL ESTATE TAX

CHAIR GENE THERRIAULT announced SJR 14 to be the first order of business.

SENATOR ELTON joined the meeting.

[3:41:03 PM](#)

DEBORAH GRUNDMANN, Staff to Senator Charlie Huggins, told members SJR 14 urges Congress to amend the tax code to permanently repeal the federal estate and generation-skipping transfer tax. Individuals accumulate assets using after tax income and then the heirs pay additional tax on those assets in the form of inheritance tax.

In 2001 Congress and President Bush enacted bi-partisan legislation to phase out and eventually repeal the estate tax until 2010. In 2011 the tax will be reinstated at its old rate of up to 55 percent with an exemption level of \$1 million.

SJR 14 expresses support for the legislation that has been introduced in both bodies of Congress to permanently repeal the estate tax.

[3:42:36 PM](#)

CHAIR THERRIAULT asked Mr. Williams if the state would be impacted one way or the other.

MIKE WILLIAMS, Alaska Department of Revenue, participated via teleconference. He read the following from the fiscal note analysis that he had prepared:

This resolution requests Congress to permanently repeal the federal estate and generation-skipping transfer tax. [The] Alaska state tax, AS 43.31, is based upon the state's death tax credit allowed under federal law. In 2001, Congress changed the Internal Revenue Code to phase out the state death tax credit by December 31, 2004. Since Alaska's estate tax was

effectively reduced to zero by the change in federal law, permanent repeal of the federal estate tax will have no fiscal impact to general fund revenue.

CHAIR THERRIAULT asked whether the Murkowski Administration had taken a position on SJR 14.

MR. WILLIAMS answered he was not aware of an official position.

SENATOR ELTON said given that state collections are predicated on federal law, why wouldn't a general fund increment show in FY 2011 if the federal estate tax disappears in 2010.

MR. WILLIAMS clarified that the estate tax would spring back to life in calendar year 2011. Estate tax for anyone who passed away in that year wouldn't be due until 15 months after the date of death so any return to the State of Alaska would come in FY 2012 or later.

SENATOR ELTON asked how much the state collected prior to the change in federal law.

MR. WILLIAMS estimated the amount to average out at about \$2 million per year.

SENATOR ELTON asked if a general fund increment of that amount would show after 2012.

MR. WILLIAMS said that's correct.

CHAIR THERRIAULT remarked that would be dependent on whether or not Congress permanently repeals the estate tax.

He said estate tax does have a negative impact and many people devote considerable time and effort in estate planning. Its repeal reduces the need for individuals to spend money on attorneys and accountants to reduce estate size, which could provide an ongoing savings to constituents.

SENATOR HUGGINS told members that he believes Representative Don Young would be in full support of SJR 14.

[3:48:30 PM](#)

CHAIR THERRIAULT set SJR 14 aside.

SJR 8-CONST. AM: PERMANENT FUND P.O.M.V.

CHAIR THERRIault announced SJR 8 to be up for consideration. He explained that the Alaska Permanent Fund trustees asked him to bring the idea forward for discussion in the State Affairs Committee because it's the logical place to hear proposals about the management of the Permanent Fund.

[3:49:23 PM](#)

MIKE BURNS, Chief Executive Officer of the Alaska Permanent Fund Corporation (APFC), recapped why the trustees believe the Percent of Market Value (POMV) method is the best way to manage the fund. He emphasized that the trustees do not view the POMV as a fiscal plan. It wouldn't allow the Legislature greater access to the earnings and most years it would reduce the amount available for appropriation.

Implementation of POMV and the use of earnings are entirely separate issues. POMV is predictable and understandable, but most people are confused by the arcane nature of the current distribution formula of the permanent fund. Most fund trustees manage their funds on a real return methodology - the total return of the fund less inflation. Most pension fund and endowment fund managers view their fiduciary duties in the same way.

MR. BURNS said the trustees have proposed the POMV method because the current statutory realized-income based distribution formula is broken. When the fund was created it was prudent to restrict its investment authority to a bond only strategy. A bond portfolio generates income in two ways: interest or coupon income and capital gains from bonds that are sold at appreciated prices. This formula made perfect sense at that time for that portfolio. However, because the fund's asset allocation now incorporates investments that generate significant unrealized gains and realized income, the current payout methodology and protection of principal doesn't serve the fund as well as it did previously.

Only a POMV payout limited by the sustainable yield from the fund can provide the necessary protection for the future while allowing current generations an equitable share of fund earnings. The only way to ensure full protection of the fund is to place constitutional limitations.

The POMV proposal allows no more than 5 percent of the average market value of the fund averaged over the previous 5 years may

be appropriated from the fund. This protects a minimum of 95 percent of the fund from being spent in any given year.

MR. BURNS concluded: "As I noted earlier, POMV is not a fiscal plan and with oil at \$50 plus, your interest in and focus on a fiscal plan may well be elsewhere. But is this not the opportune time to modernize and increase the transparency of the fund so it can, not only be managed in harmony with its distribution formula, but also be understood by Alaskans when other decisions must be made?"

He urged committee members to support the trustees' proposal for reasons of modernization, clarity, and better protection.

[3:54:25 PM](#)

SENATOR WAGONER arrived.

[3:54:43 PM](#)

CHAIR THERRIAULT asked if the primary motivation is to ensure that inflation proofing is guaranteed for the future.

MR. BURNS replied inflation proofing is built in. The belief is that over time a real return of 5 percent in addition to inflation proofing is attainable. Over time a return of 5 percent allows a distribution to the Legislature, protects the fund from inflation, and allows the fund to grow.

CHAIR THERRIAULT asked if the inflation proofing is deposited with an annual appropriation and whether there is concern that during tight times the appropriation might not be made.

MR. BURNS said the annual appropriation for inflation proofing is in the province of the Legislature so a question about what a future Legislature might do is clearly a legitimate question.

CHAIR THERRIAULT said if the goal is for the fund to be multi-generational, that goal couldn't be achieved if the fund's purchasing power isn't protected.

MR. BURNS agreed.

SENATOR ELTON said he had two questions. Legislators have frequently heard that over time a 5 percent withdrawal is workable. He wondered whether using the "over time argument" because of language on page 2, line 2. He questioned whether use

of the word "annual" precludes the ability of looking at a multi-year strategy.

MR. BURNS replied if line 2 were read in conjunction with a 5-year average, the 5-year average would be the controlling number. With respect to whether or not 5 percent is attainable over time he said:

If you take our example of 8 percent and the fund grows each year, it's 5 percent of the maximum amount only in one year. And you go back the trailing 5 years - the actual amount of the fund is smaller. And I think if you use a straight 8 percent growth on the balance of the fund, the payout actually is less than 4.7. It's 5 percent but it's 5 percent of a smaller year - 5 a little bit bigger - year 4 a little bigger still. So it's only 5 percent of the very last year in the 5-year formula - if you think of a stair-step.

SENATOR ELTON said he assumed POMV supplants the 5-year rule and he questioned whether Mr. Burns was saying that the 5-year rule would still control when the Legislature makes the annual decision.

MR. BURNS said yes, the formula is based on taking 5 percent of the average of the last 5 years.

CHAIR THERRIAULT added the 5 percent would turn out to be less than 5 percent each year because it is based on the 5-year average of a growing balance.

MR. BURNS said that is correct and the trustees' have estimated the amount to be 4.65 percent each distribution year.

CHAIR THERRIAULT asked about the average return over the life of the permanent fund given recent down markets.

MR. BURNS said the return has been about 10 percent over the life of the fund. Last year, the return was 14.1 percent.

SENATOR ELTON questioned whether the word "predictable" on page 2 would constrain the Legislature from deciding to appropriate less than 5 percent.

MR. BURNS responded it's what the fund makes available to this process. Whether the Legislature distributes that amount or not is a separate issue.

SENATOR ELTON said the annual appropriation would be predictable, but it isn't if the percentage varies from year to year. He again questioned whether the word "predictable" would constrain the Legislature from appropriating a lower percentage.

[4:02:52 PM](#)

LAURA ACHEE, Communications and Research Liaison, Alaska Permanent Fund Corporation, said the Legislature would not be constrained to take 5 percent. The word "predictable" goes to two issues. First is knowing that no more than 5 percent of the market value for the previous five years would be available. The other side of the issue is that as the Legislature contemplates use of earnings using a funding source that has a lot of volatility makes it difficult for the Legislature to know that in any given year they're going to have 5 percent of the average market value of the fund available to them.

[4:05:20 PM](#)

CHAIR THERRIault read from page 2, line 2:

...and limited so the real value of the permanent fund is preserved over time.

He asked if the trustees would be tracking the value of the fund and the added inflation-proofing amount. If a protracted down market occurred and the 5 percent allowed an erosion of the fund going forward, he questioned whether that would put a limit on the 5 percent.

MR. BURNS said not as currently proposed. In a down market you could actually take 5 percent of principal or reserved assets.

MS. ACHEE said keep in mind it would take several years of protracted down markets before dipping into the fund would occur. At that point, the same mechanism that stair stepped up would kick in as well because the annual appropriation would be 5 percent of values that were going down.

Certainly it should be within the Legislature's purview to take the full 5 percent or to not withdraw any money. She pointed out that a few years ago - because of market changes - the realized earnings account was almost dry so paying any dividend was questionable.

SENATOR ELTON noted the current proposal contains language such as "predictable" and "real value" that weren't discussed last year.

[4:08:04 PM](#)

MS. ACHEE said that's correct. Both resolutions in the last Legislature started out reading as SJR 8 does but one body removed that language in an early committee hearing.

SENATOR ELTON noted it would be instructive for the committee to find out why those words were removed.

MR. BURNS responded this proposal has been the trustees' starting point over a number of years.

CHAIR THERRIAULT asked about the dollar amount outside of the protected principal.

MR. BURNS estimated that about 11 percent isn't protected today, but that number jumps to about 16 percent if one goes through the process of realizing the unrealized gains.

CHAIR THERRIAULT calculated that there would be a starting \$5 billion cushion above and beyond the protected principal if POMV is adopted.

MR. BURNS said yes but it would all be protected principal if the POMV method were adopted.

CHAIR THERRIAULT offered the opinion that many citizens don't understand that under the Alaska State Constitution, the Legislature has access to about \$5 billion.

MS. ACHEE clarified, "Of that \$5 billion some of it is - at this point - considered principal. However it is unrealized gains so it's merely the matter of realizing." They're partially protected because until realized they are part of the principal.

[4:11:15 PM](#)

WAYNE STEVENS, President and CEO of the Alaska State Chamber of Commerce, stated support for SJR 8. The chamber business advisory committee lists the adoption of a state fiscal plan as a priority and one part is to statutorily establish the POMV management tool for the Alaska Permanent Fund.

"Recognizing that SJR 8 speaks to a constitutional percentage of market value we would support that. But as an intermediate step perhaps one would consider a statutory percent of market value." He suggested that had the POMV method been adopted last year, Alaskans wouldn't have seen a significant change in the dividend checks. The chamber supports steadying the budget process now and in the future and SJR 8 would help accomplish that.

CHAIR THERRIAULT noted there was no further testimony and announced that he would set SJR 8 aside.

SJR 14-REPEAL FEDERAL ESTATE TAX

[4:13:27 PM](#)

CHAIR THERRIAULT returned to SJR 14 and recapped the issue for Senator Wagoner. He noted there were no questions and asked for a motion.

SENATOR WAGONER moved SJR 14 from committee with individual recommendations and accompanying fiscal note.

CHAIR THERRIAULT announced that without objection, the motion carried.

HB 90-STATE TREASURY WARRANTS

[4:14:59 PM](#)

CHAIR THERRIAULT announced the next order of business to be HB 90. He noted that the prime sponsor is Representative Paul Seaton, but that Representative Gruenberg would introduce the bill.

REPRESENTATIVE MAX GRUENBERG told members similar legislation passed the House last year, but didn't make it through the Senate. HB 90 simply codifies the National Bank of Alaska v. Univentures 1231 decision, which dealt with whether state warrants are negotiable instruments.

The Legislature has never adopted the use of checks to pay state debts; it uses warrants. Until that case was decided, the state's position was that it didn't have to consider warrants as negotiable instruments in the technical sense. That means the state could stop payment on a warrant even after a bank had made payment on it.

HB 90 specifically states that warrants drawn by the state are negotiable instruments under the Uniform Commercial Code. That makes it clear the state must honor the checks unless requirements and procedures set out in the Uniform Commercial Code are followed. Certainly, the state could dishonor a check if it notifies the bank before it is cashed.

CHAIR THERRIAULT asked what a negotiable instrument allows that wasn't allowed on a warrant.

REPRESENTATIVE GRUENBERG answered a negotiable instrument is defined in AS 45.03.104(a) as a document drawn on a bank that is to be served as evidence of a debt to be paid. If properly drawn and presented, it must be honored unless proper notice is given to the bank in advance. That allows the bank to rely on the bona fides of that instrument.

Although the state pays a lot of its debts electronically rather than with checks, those that it does pay would be honored under the Uniform Commercial Code.

[4:20:07 PM](#)

KIM GARNERO, Director of Finance, Department of Administration, affirmed that HB 90 simply codifies a 1992 Alaska Supreme Court ruling. Since that decision, the state has administered its warrants as negotiable instruments so no administrative changes are necessary if this legislation passes.

SENATOR HUGGINS asked why, if the court ruling was in 1992, there is a rush to do something about it now in 2005.

MS. GARNERO responded it's not a bad idea to align the statutory language with the Alaska Supreme Court ruling.

CHAIR THERRIAULT recapped this would align statutes with the findings of the court.

MS. GARNERO said that is correct.

[4:22:02 PM](#)

REPRESENTATIVE GRUENBERG maintained that in the area of commercial law, financial institutions and lawyers look to the statutes rather than case law.

CHAIR THERRIAULT added HB 90 would reduce confusion because someone could reference the statutes and they would have to know that the court overrode it.

REPRESENTATIVE GRUENBERG agreed.

CHAIR THERRIAULT noted there was no further testimony. He mentioned the zero fiscal note and asked for a motion.

SENATOR WAGONER moved HB 90 out of committee with individual recommendations and attached fiscal note.

CHAIR THERRIAULT announced that without objection, the motion carried.

[4:23:52 PM](#)

CSHB 97(FIN)-OATHS; NOTARIES PUBLIC; STATE SEAL

CHAIR THERRIAULT announced HB 97 to be up for consideration. He reminded members that they heard the Senate version at the same time that HB 97 was undergoing changes in the House Judiciary Committee. The decision was to wait for the House vehicle to come forward.

SCOTT CLARK, Office of the Lieutenant Governor, reported that the House Judiciary Committee amended the bill to remove obstacles to electronic notarizations. The House Finance Committee then amended the bill to take into consideration a person convicted of a felony that didn't serve jail time. It also combined the two revocation sections and clarified that any decision to revoke a notary commission could be appealed.

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CHAIR THERRIAULT remarked the House Finance Committee questioned why anyone convicted of a felony could act as a notary.

MR. CLARK replied the ten-year waiting period was a compromise.

CHAIR THERRIAULT asked if the lieutenant governor would have the power to permanently ban a notary who abused his or her notary power.

MR. CLARK answered it's a technical problem with the current version of the bill. Currently a person loses the ability to

apply for a future commission any time a commission is revoked. The House Finance Committee amended the bill to add the 10-year provision so if a commission is revoked, the notary must wait 10 years to reapply.

A commission could also be revoked for technical reasons such as a notary that moved out of state. In that instance the person shouldn't have to wait 10 years to reapply if they were to move back to the state. The lieutenant governor proposed an amendment to further refine the concept of revocation.

CHAIR THERRIault said he would sponsor Amendment 1. It proposes to differentiate between notaries whose commission was revoked because they moved from the state and notaries whose commission was revoked as a result of conviction for commission of a felony offense.

MR. CLARK clarified the felony offense is a different section, but it's based on the same idea that a person with a felony conviction could have his or her commission revoked and he or she couldn't reapply for 10 years.

SENATOR HUGGINS asked Mr. Clark to restate the explanation.

MR. CLARK reiterated a notary commission could be revoked under the bill for several reasons. Revocation would occur for violation of the terms of the notary statutes or if a notary moved out of state. If the revocation occurred because the person moved out of state, he or she wouldn't have to wait 10 years to reapply after moving back to the state.

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SENATOR HUGGINS restated the explanation.

MR. CLARK said the amendment is to clarify the revocation process and not inadvertently penalize people.

CHAIR THERRIault asked if revocation due to abuse of the notary power could preclude a person from reapplying for 10 years.

MR. CLARK said yes.

SENATOR HUGGINS said, "I thought they are precluded."

ANNETTE KREITZER, Chief of Staff to Lieutenant Governor Loren Leman, clarified that they are precluded currently. The intent

of Amendment 1 is to address those people who have not complied with the law. She pointed out that AS 44.50.068 (a)(2) and (3) lists the reasons for revocation and suspension. The Department of Law crafted the language in Amendment 1, which sorts out when a 10-year revocation would occur based on incompetence and malfeasance. That type of revocation is separate from someone who simply moved from the state and had his or her commission revoked. The latter could reapply after moving back to the state without waiting 10 years.

SENATOR ELTON recollected there were no revocations when he worked in the Lieutenant Governor's Office. If a notary moved out of state the commission simply lapsed. He questioned how often revocations occur.

MS. KREITZER acknowledged that the Lieutenant Governor doesn't currently have the power to revoke any commission. Anyone with a complaint must file under the Administrative Procedures Act.

Last year notaries were included in the administrative hearing officer bill so if this legislation passes a hearing officer would hear appeals. Because some problems have come up relating to notaries, her office has looked at the specific issues very carefully as the bill was crafted.

Complaints about notaries would come in one of two ways. First, the notary administrator in the Lieutenant Governor's Office would have direct dealings with notaries and would be aware of compliance or lack thereof. If a notary doesn't comply the notary administrator would determine whether a discipline letter is required. If compliance isn't forthcoming a suspension might occur. If the notary still doesn't comply then the Lieutenant Governor would have no option but to revoke. However, the notary would have the option of the administrative hearing officer appeal process.

A second way that complaints would be generated is when a member of the public becomes dissatisfied and contacts the Lieutenant Governor's Office with a complaint.

MR. CLARK said although serious complaints have been lodged, the current process doesn't allow the Lieutenant Governor's Office to follow up on those complaints.

[4:34:55 PM](#)

CHAIR THERRIAULT moved Amendment 1 and noted that without objection it was adopted.

A M E N D M E N T 1

Page 8, lines 17-19

Delete "may not, within 10 years before the commission takes effect, have committed acts for which a notary public commission may be denied or revoked under this chapter; and"

Insert "may not, within 10 years before the commission takes effect,

- (i) have had the person's notary public commission revoked under AS 44.50.068(a)(2) or (3) or under the notaries public laws of another state; or
- (ii) have been disciplined under AS 44.50.068 or under the notaries public laws of another state if the disciplinary action prohibits the person from holding a notary public commission when the person applies for a commission; and"

CHAIR THERRIAULT noted that electronic signature user groups had been contacted as he had requested. He questioned whether the Alaska Bar Association (ABA) had taken a position on the use of electronic signatures.

MR. CLARK said he had contacted the ABA, but it didn't send a letter. However, his office had received several letters from outside notary organizations and notary law organizations.

CHAIR THERRIAULT said the lobbyist for Wells Fargo didn't express any concerns and he hadn't sensed concern from any other organizations that rely on notaries.

He recapped HB 97 extends the power to the Lieutenant Governor's Office to write regulations and use electronic notarizations, even though it has no immediate plans to do so.

MS. KREITZER said that is correct, but she wanted to clarify that the bill deals with electronic notarizations. A separate law deals with electronic signatures.

"I have confidence that whoever's in the Lieutenant Governor's Office when the technology catches up to it will be able to do this in a way that's going to benefit the business community," she said. With passage of HB 97 there wouldn't be need to return to the Legislature and ask for amendment. As previously discussed, one of the reasons this effort has failed in other states is because those Legislatures defined an electronic notarization too narrowly. HB 97 intends to remove the impediments. The Lieutenant Governor's Office would write the regulations and the Administrative Regulation Review Committee would review the regulations that are promulgated to ensure that they are fair.

CHAIR THERRIault asked if person-to-person contact with a notary would be required when an electronic signature is used.

MR. CLARK said that is required in the bill. The technical nature of the notary's signature is left open in this bill, but the signatory would have to be present and the notary would check the identification. "Nothing would change along those lines," he assured.

CHAIR THERRIault drew attention to the positive fiscal note and asked for a motion.

[4:39:35 PM](#)

SENATOR WAGONER moved SCS CSHB 97(STA), [amended \I version] from committee with individual recommendations and attached fiscal note. There being no objection, it was so ordered.

SB 143-STATE INFO SYSTEM PLAN: LEGISLATURE

[4:40:08 PM](#)

CHAIR THERRIault announced SB 143 to be up for consideration. He informed members this legislation springs from the discussion the committee had with regard to Executive Order 113 relating to information technology (IT) functions. He asked Ms. Brakes to introduce the bill.

[4:40:30 PM](#)

HEATHER BRAKES, Staff to Senator Therriault and to the Senate State Affairs Committee, read the following into the record:

Under art. III, sec. 23 of the Alaska Constitution, the Governor may, by executive order, make changes in the organization of the executive branch. As the committee might remember, it received an overview from the Administration on Executive Order 113, which, in effect, dissolves the Telecommunications Information Council and transferred the powers and duties of the Council to the commissioner of the Department of Administration. The legislature under that same provision has 60 days to consider the order. The order subsequently took effect March 14. The definition of 'state agency' as currently defined under the order includes the legislature and, in doing so, effectively places the legislative branch under the jurisdiction of the executive branch as it relates to telecommunications operations.

SB 143 removes the legislative branch from that definition and sets the legislature apart from the executive branch.

Mr. Chairman, Karla Schofield, the deputy director of the Legislative Affairs Agency and Curtis Clothier, the manager of Data Processing for the agency, are both here to speak to the specific provisions of the bill and the proposed amendment that members should have before them. Just one further point, if you would turn to page 11 on the executive order, line 20, it appears the word 'under' is missing so that the line would read 'transferred under this order.' So that might be something the committee might consider sending a memo to the legislative attorneys to bring to their attention.

[4:43:34 PM](#)

CHAIR THERRIAULT asked Ms. Schofield to come forward.

KARLA SCHOFIELD, Deputy Director, Legislative Affairs Agency, stated support for SB 143. The passage of SB 143 would reflect how the Legislature actually operates within the state's data processing community and would allow the legislative branch the same autonomy as the judicial branch.

The Legislative Affairs Agency has always had a cooperative relationship with data processing services within the Department

of Administration and SB 143 would allow the agency to continue to work with, but not be under the department.

The Legislative Affairs Agency has its own data processing group and it makes its own long and short-range goals, which are approved by the Legislative Council IT subcommittee. It is important for the agency to have the flexibility to develop its own programs because legislative branch goals sometimes differ from those that the executive branch might have for the entire state.

[4:45:29 PM](#)

CHAIR THERRIAULT asked Ms. Schofield if she had comments on the proposed amendment.

MS. SCHOFIELD replied the agency supports the proposed amendment. It is similar to the public records law procedures that the agency follows and the Legislative Council oversees.

CHAIR THERRIAULT introduced Amendment 1, labeled F.1.

24-LS0746\F.1
Craver
3/22/05

A M E N D M E N T 1

OFFERED IN THE SENATE

TO: SB 143

Page 1, following line 4:

Insert a new bill section to read:

"* **Section 1.** AS 24.20 is amended by adding a new section to read:

Sec. 24.20.055. Information systems. The executive director of the Legislative Affairs Agency shall establish information systems guidelines and prepare a short-range and long-range information systems plan for the legislative branch. The guidelines and plan must be adapted to the special needs of the legislative branch as determined by the Alaska Legislative Council and, when it is in the agency's best interest, consistent with the telecommunications information guidelines and plan adopted

by the commissioner of administration under AS 44.21.350 - 44.21.390."

Page 1, line 5:

Delete "**Section 1**"

Insert "**Sec. 2**"

Renumber the following bill sections accordingly.

SENATOR ELTON questioned why the amendment directs the executive director of the agency and not the Legislative Council to establish the plan.

CHAIR THERRIAULT acknowledged it could read, "The Legislative Council shall establish..." and the executive director of the agency would probably fulfill that role.

SENATOR ELTON said it would then be the designee of the Council. He suggested that would take care of a situation in which the executive director's position were vacant.

CHAIR THERRIAULT asked Mr. Clothier to come forward.

CURTIS CLOTHIER, Data Processing Manager, Legislative Affairs Agency, stated support for SB 143. He said the existing language is dated and needs to be cleaned up to reflect reality. Legislative Affairs is in a separate branch of government from the executive branch and as such the data processing section in the agency has its own plans and procedures and has been purchasing its own equipment, supplies and materials. They work closely with the executive branch and serve jointly on several committees and work groups. With passage of SB 143 that relationship wouldn't change; it would merely put the agency on the same footing as the judicial branch.

[4:49:43 PM](#)

CHAIR THERRIAULT said Ms. Brakes pointed out that the drafter patterned this language after the language used in the Executive Order page 2, line 17.

MR. CLOTHIER said he understands Senator Elton's concern that the executive director could be gone for an extended period, but the opposite could be true when the Legislative Council chair isn't in town or the position is in flux.

CHAIR THERRIAULT announced that without objection, Amendment 1 was adopted.

He noted that the University of Alaska requested exemption from executive branch oversight. The Alaska Railroad Corporation and judicial branch are currently exempt and the University argues that it is involved with levels of technology that are above and beyond that of the state agencies.

The committee could leave the language as is and take the matter up on the Senate floor or make that policy call today. A member of the executive branch told him that exempting the University is the Legislature's call, but if there was a move to take out other quasi-judicial groups that could cause concern. He asked whether members had a feeling one way or another.

[4:53:27 PM](#)

SENATOR ELTON said there is a beauty to centralizing the telecommunications system as much as possible, but he would like to hear a response from both the University and the executive branch. The larger issue for him is why the Alaska Railroad Corporation is exempted.

CHAIR THERRIAULT held SB 143 in committee to await testimony from the University.

SB 24-REEMPLOYMENT OF RETIREES

[4:55:22 PM](#)

CHAIR GENE THERRIAULT announced SB 24 to be up for consideration. He remarked the committee heard an overview on the issue but hadn't heard the bill. He asked whether the sponsor would be addressing his comments to the sponsor substitute.

CHAIR GARY STEVENS, Sponsor, said he would address his comments to the Senate HESS committee substitute. [CSSSSB 24(HES)]

The committee took an at-ease and reconvened at [5:00:29 PM](#).

SENATOR GARY STEVENS explained that SB 24 extends the retiree rehire program established in 2001. That program allowed retired state workers and teachers to rejoin the workforce without

giving up retirement payments. He reminded members that no employee of an early Retirement Incentive Program (RIP) is allowed to return unless employed as a commissioner.

Employers who use the program are required to pay any resultant increase to the unfunded liability in the retirement system. It also requires the PERS and TRS administrators to give an annual report to the Legislature on the effect of the program. Municipalities or public organizations that use the program would be required to adopt a policy and resolution that permits the employment of retirees. In addition, they must show that a true shortage of qualified applicants exists.

TRS employees already have such a program and Governor Murkowski just issued Administrative Order 225, which sets very strict sideboards for recruitment of state employees.

Extending the program would help public employers attract and retain qualified workers in hard-to-fill positions. It would give employers four more years to transition the current workforce before the reemployment provisions sunset. Finally, it is cost neutral in that it eliminates any additional retirement credit during re-employment.

[5:03:46 PM](#)

SENATOR HUGGINS said he can see the merit in the proposal, but he is concerned that this would allow older employees to remain in the workforce and prevent entrance to younger employees. He recalled a graph from the Department of Administration that showed seven teachers aides were rehired and several rehires were in urban areas. He suggested the qualifications for those positions aren't that high and many people would probably apply. He said, "That's my case in point and concern of what we do is we choose, through the good old boy network, we just retain our buddies."

SENATOR STEVENS said he became interested in the issue when he realized several outstanding teachers in his district had retired and decided they wanted to return to work a few years later but were precluded from doing so. Those teachers were lost to Oregon, which is a terrible shame. It's not his intention to create a good old boys club. Rather, this extension would allow retirees to be rehired for hard-to-fill positions. It requires employers to begin thinking about how they will eventually replace certain positions.

SENATOR WAGONER said he understands the intent, but this program is one of the most abused programs he has ever seen. He suggested other approaches could be taken to address shortages in the education area. He pointed to SB 98, which lists the villages that have difficulty recruiting teachers and suggested limiting the bill's application to specific areas.

[5:08:31 PM](#)

SENATOR GARY STEVENS said he appreciated the concern and certainly there have been abuses, but this is an effort to tighten the program. In addition, Administrative Order 225 does a fine job of setting up sideboards for the rehiring process for public employees. He repeated TRS retirees have already been addressed and a true shortage of applicants must be demonstrated before this could occur.

SENATOR KIM ELTON declared a potential conflict of interest, because he is a retired public employee.

[5:10:20 PM](#)

SENATOR ELTON said the sponsor has noted that the employer would pick up any hit on either of the retirement accounts. However, this bill goes further in that it has a retroactive clause for both TRS and PERS accounts.

He agreed with Senator Wagoner that the previous extension assumed good behavior on the part of all employers, but abuses probably did occur. This bill makes the director of the Division of Retirement and Benefits the responsible party and he or she would have to certify that the employer proved a failed recruitment and they would have to demonstrate how in-house training would occur to bring skills up to date to "bring in new blood." He credited the Murkowski Administration with stepping forward to address abuses.

He offered two instances for consideration. First is the community hospital, which is a PERS employer that has rehired retired nurses. Recruiting nurses has been difficult because the field is competitive and the hospital is no longer competitive. Without this program, service in each of the elements in the hospital would be impacted.

The second instance relates to the potential impact on local school districts with regard to hiring long-term subs. According to statewide contract provisions, any sub that is hired for

longer than 20 days automatically becomes a TRS member. Having to pay the employer TRS contribution creates an additional cost to the school district and without this program school districts couldn't rehire a retired teacher as a long-term sub.

A number of different issues come into play regarding rehiring retirees, and the last two situations speak to the need for a rehire program in place that is better written and precludes abuse, he concluded.

5:15:16 PM

SENATOR BETTYE DAVIS declared herself a retired public employee.

SENATOR WAGONER declared himself a retired TRS member with no thought of coming out of retirement.

Acknowledging recruitment and pay scale issues in the nursing field, he suggested that this type of program could be used to get around increasing pay scales. He opined that when people retire the ulterior motive is to change lifestyle, but the ulterior motive of this process has become nothing but money. People are retiring and returning to work to substantially increase their annual income. For instance the Alaska Department of Fish and Game has at least 37 rehired employees that are affected. "It became a good old boys system," he asserted. He urged members to be very careful before re-enacting the program. "Even with the sideboards that are there, I'm not very comfortable with it," he said.

5:17:57 PM

SENATOR GARY STEVENS declared himself to be a retired TRS member. Responding to the comment that it's nothing more than money, he said a retiree could go anywhere and get a job and continue to work while collecting retirement. "I don't know that it should be seen as such a negative thing that someone wants to have retirement and earn a salary," he said. And remember, this is only for a year at a time

Certainly everyone recognizes the difficult situation with PERS and TRS and from the start the intention was to ensure that PERS and TRS weren't impacted. "I think we've achieved that," he concluded.

5:19:13 PM

CHAIR THERRIault declared he isn't old enough to retire.

Referencing demographic information from the 2/10/05 overview on the impact of the retiree/rehire program, he noted that 45 people age 45 to 49 retired from TRS and were subsequently rehired. He suggested that the general public's discontent with the program stems in part from the fact that the system allows a person to draw retirement after working for 20 years when he or she is clearly not of retirement age. However, the situation isn't outside the norm in his district that has two military installations. It's not at all uncommon for military personnel retire after 20 years. "Certainly if you've spent 20 years in the military moving around and possibly in active duty, I don't begrudge people the right to do that," he said.

He acknowledged that a number of constituents offered the opinion that, at the very least, the system needed sideboards. It's still not clear whether or not the sideboards established through Administrative Order 225 are adequate.

SENATOR ELTON commented the retired PERS employees who were "20 and out" are generally in public safety. For those PERS employees who weren't in the line of fire, the earliest retirement age was age 50 and that was considered an early retirement.

[5:21:39 PM](#)

SENATOR WAGONER indicated the savings of \$1,091,720 is correct as far as it goes. However, had the retirees not been allowed to return under contract and had other people taken those jobs contributions would have been made to the PERS/TRS accounts. The number is misleading, he argued, because rehires create a negative impact on those accounts and if new people had been hired the impact would have been positive.

SENATOR HUGGINS agreed with the previous statement then reported that reemployment after military retirement has sideboards.

He asked that the administration discuss the net effect to the people currently working under the provision if it's renewed. Taking exception to the comment that a retired teacher is the best substitute teacher, he said that if he were making the decision he would insist on hiring a new person rather than a retiree. That way the new hire could gain experience. This is a contrast in styles he said. There isn't a right or wrong answer.

CHAIR THERRIAULT told members he was ready to take testimony from the public.

SENATOR ELTON referenced Senator Wagoner's comment and said his understanding is that bringing a retired teacher into the system is preserving the status quo and if a new person is brought in it would increase the unfunded liability.

SENATOR WAGONER didn't believe that to be the case and said the Division of Retirement and Benefits could weigh in.

CHAIR THERRIAULT said he had questions on the fiscal note, but would open teleconference testimony first.

5:26:20 PM

ROBERT MCHATTIE, retired PERS employee from Fairbanks, said he is interested in protecting the PERS retirement program against too many people occupying state, borough, or municipal jobs while not paying into PERS or TRS. The argument that experienced employees can't be replaced doesn't wash because employees go on vacation, become ill, die and are terminated and the various organizations don't fall apart as a result. Every employee is replaceable and it's an administrator's job to ensure that the rehiring effort is effective, aggressive and one in which a competitive wage is offered.

His experience is that state human resource personnel tend to be passive when replacing high-level employees and he suggested following:

- Consider the retirement check to be a payment for retirement, not just a quasi pay increase.
- Find a replacement since one will be necessary sooner or later.
- If a person must be rehired, hire that person as a temporary and continue to look for a replacement. Allow one year for this process.
- Increase mentoring or training so that the workplace can move on when a person retires.

5:30:30 PM

CHARLES SWANTON, 20-year employee with the Alaska Department of Fish and Game (ADF&G), testified via teleconference. He is currently under the 30-year retirement program and his comments related strictly to ADF&G.

He opposed the retiree rehire program in its current form as it is a benefit to a select few and won't benefit the department's core employees, who are unlikely to be offered participation in a similar program in the future. It's ironic, he said, that most department employees who currently participate in the program are making more money than the department commissioner.

MR. SWANTON said the basis for the 2001 legislation was ill founded and without appropriate instruction for application. He commended the sponsor of SB 24 for the addition of the application criteria, however he continued to oppose the bill on a number of elements.

PERS needs fiscal input from all current active employees to remain semi-solvent. If the program didn't exist the department would be provided an opportunity for a new era of positive change. Specialized knowledge and skills is acquired while working up through the ranks and can be replaced albeit with some bumps. "Keeping the bumps from occurring are worth what to the state in terms of cost?" He offered the opinion that several program participants are very deserving of additional compensation, but they are the exception and not the rule. This program has and will continue to diminish departmental morale. "And at what cost," he asked.

[5:32:58 PM](#)

SENATOR WAGONER asked what the program has done to the overall morale of employees that are trying to work up the ladder to administrative level.

MR. SWANTON said he could best describe it as a kick in the gut.

[5:33:48 PM](#)

TIM VIAVANT, Fairbanks resident and current ADF&G employee, testified via teleconference to urge members to oppose SB 24. The concept goes against the principle of how PERS is supposed to work. Language in the CS requires the employer to make up the shortfall in contributions, but the employee's share wouldn't be added to the PERS account.

The concept has a negative affect on employee morale and on the recruitment of new employees. In addition it has a negative affect on retaining employees who may not yet be vested in PERS. Certainly the argument about a potential "brain drain" has been overblown. Finally, the whole idea of recruitment and retention

would be less problematic if adequate cost-of-living allowances had been negotiated in contracts over the last 18 or 19 years.

[5:36:59 PM](#)

JACK KERIN, testified from Fairbanks, to comment on previous testimony about rehired retirees who were incorrectly told they would be grandfathered in when the original legislation sunset. Concern has been expressed about possible litigation if the employees aren't grandfathered, but he questioned whether there shouldn't be greater concern about litigation from all retirement age employees over the discriminatory process used to determine who is offered the "platinum parachute benefit." The concept is poor and the program needs to sunset.

With regard to the argument that the program is cost neutral, he suggested that the actuaries for Tier I employees who don't retire because they can't afford to are often overlooked. Those employees aren't offered the opportunity to receive a double salary and they're supporting PERS with 50 to 58 percent of their salary.

[5:39:56 PM](#)

TINA HABIB testified from Craig in opposition to the bill. She is a retired PERS employee working for the municipality. She agreed with former comments about animosity among employees and how the system is abused. She reminded members that PERS has been in existence since 1961 and for 40 years the provision was unnecessary. Employers and employees have had 5 years to get prepared for the July 1 sunset.

With regard to the argument that the sunset would impact cities she pointed out that Craig's employer obligation is 20.33 percent so it's already an impact. The more people that are out of PERS the greater the impact, she said.

[5:41:44 PM](#)

MIKE TIBBLES, Deputy Commissioner, Department of Administration spoke in support of SB 24. He said he would highlight two important goals that SB 24 would provide then discuss two main concerns that were raised and how the department has worked to resolve those concerns.

SB 24 would allow the approximately 335 employees currently working under the HB 242 waiver to continue receiving retirement

benefits beyond the original sunset date. That's important for several reasons. First, it's unfortunate but a number of those employees were told they would be able to stay on after July 1. Also, if the issue isn't addressed a number of senior employees might exit the system to retain their retirement benefits. This would have a great impact on school districts, municipalities, and the state. Finally, SB 24 would provide an effective management tool to help employers fill positions they aren't otherwise able to fill, which was the intent of the original legislation.

MR. TIBBLES pointed out the state is facing severe recruitment challenges; it can't compete with the 25 percent federal COLA and it doesn't pay market wages. The system is based on internal alignment so the state classification and pay system isn't based on market wages. For example, it doesn't allow salary increases based on inequities between the State of Alaska and Providence Hospital. To ensure internal alignment, the system compares a nurse working for the state to like duties and responsibilities in another state position such as a social worker. What the program can do is fill those positions on a short-term basis.

MR. TIBBLES referenced the cost and savings aspects and explained that individuals that come back on a 242 waiver don't accrue any additional retirement benefits and the employer doesn't contribute the normal cost rate on the employee's behalf. However the cost comes into play because the pool of employees that are otherwise contributing to pay off the unfunded liability becomes smaller. The actuaries indicate that there is currently an impact for the TRS system at a rate of \$106,000 per year. The impact can be quantified by .02 percent of the base salary.

The savings of bringing someone back who is no longer contributing the normal cost rate is 12.75 percent for the PERS system. So even though there's a cost to the system, there's a larger savings for that employer. SB 24 requires that employers pay into the system at the point that a cost is triggered. The computation involves taking the wage base of the employee and calculating it into the past service rate. That contribution would still represent a savings to the employer.

As was previously stated, "There's been a \$1 million savings to the State of Alaska since this program's been in place because the state is not contributing for those individuals to a normal cost rate - not in the past service rate."

MR. TIBBLES addressed the concern about making sure the program is used as intended, which is only when there are demonstrated recruitment difficulties. Referencing Administrative Order 225 he said the requirements are:

- That agency is going to have to competitively recruit the position.
- If somebody would like to retire then come back they could take the risk that that position is going to be competitively recruited for a minimum of 15 days.

SENATOR WAGONER suggested that the person that retires from a position should be excluded from the pool of future applicants until after the position is competitively advertised and the pool is generated.

MR. TIBBLES said under AO 225 the individual could apply but the recruitment must be statewide and once the applicant pool is gathered a recruitment challenge would have to be demonstrated to the Division of Personnel indicating why no other candidate has the knowledge, skill, and ability to perform the job. Also, if the recruitment brings more than five qualified applicants then the retiree wouldn't be eligible. "It's in effect and it has been working," he said.

Because the process of bringing people back is a short-term solution, the Division of Personnel in the Department of Administration will be very proactive in working with departments that want to bring people back from retirement to make sure they are building workforce plans.

[5:53:38 PM](#)

CHAIR THERRIAULT asked Mr. Tibbles touch on the highlights so that public testimony could be closed. Ms. Steinberger from the Attorney General's Office was on line to talk to the committee under an executive session about the possible legal ramifications of grandfathering or not grandfathering.

[5:54:35 PM](#)

MR. TIBBLES advised that Administrative Order 225 requires the following before an agency could bring someone back from retirement to fill a position:

- The position must be recruited through a competitive process
- The competitive process must post the position for a minimum of 15 days

- The hiring authority must consider all applicants not just a selected pool
- All individuals brought back under 242 must be separated from state service for a minimum of 30 days
- Before a position is offered to an applicant, the administrative order would require that the recruitment process result in an applicant pool of fewer than 5 qualified, eligible and available applicants
- The hiring authority must demonstrate why no other individual has the knowledge, skills and ability to perform those duties
- The approval for hire must be secured in writing from the director of personnel
- Within 60 days after receipt of the director of personnel's approval for a waiver, the department seeking the waiver must identify the critical components of the position
- The department must identify the knowledge skills and abilities that need to be developed in the workplace to assure that the work can be accomplished when the rehired retiree separates from service again
- A development plan that accomplishes a transfer of knowledge is required
- Applicable statutes and personnel rules will apply
- State agencies are encouraged to develop a strategic view of human resource needs including development of a workforce plan with the assistance of the division of personnel

[5:57:51 PM](#)

SENATOR HUGGINS commented, "There's something fundamentally wrong that a person says, 'I'm going to retire.' and they turn the switch off and they come back to work in 30 days in the same job."

MR. CHRIS CHRISTENSEN, Deputy Administrative Director, Alaska Court System, informed members that the court system has found the retiree rehire program to be very helpful and it hopes the program will be extended. The court system has approximately 650 non-judicial employees of which 10 participate in this program. Given the nature of those positions, those employees are significant to court system operations.

The program has helped address two problems. First, the court system has a large number of one-person job classifications such as the state law librarian. When the primary responsibility of a position is unique, continuity of service is problematic. When such a position becomes vacant, no one on staff can pick up the work.

He stressed the importance for these one-person job classes to remain filled with knowledgeable and experienced people. Internal recruitment is difficult because the positions often require an advanced degree and in the court system most employees are range 15 or less clerical workers.

Another problem is that the court system frequently has few qualified applicants for its supervisory positions so supervisors are often retained. The fundamental problem and reason for this is high turnover. More than 50 percent of court system employees are paid at ranges 6, 8 or 10 so an annual 50 percent turnover is typical. Forty percent of the court system's employees are located in Anchorage so it is competing with the Municipality of Anchorage (MOA). Although the salary structure is similar, MOA pays more employee benefits. In some rural locations the court system has experienced 100 percent turnover in one year. Certainly public service doesn't have the draw it did years ago and the court system would be struggling without the retiree rehire program.

The RIP program became extremely problematic for the court system and the retire rehire program partially compensates for those problems.

CHAIR THERRIAULT asked if he had requested that the Legislature not participate in the RIP program.

MR. CHRISTENSEN didn't recall.

[6:03:12 PM](#)

MS. BARBARA HUFF-TUCKNESS, Director of Governmental and Legislative Affairs for Teamsters Local 959, stated support for SB 24. She represents employees with the MOA who have participated in this program and for whatever reason MOA hasn't suffered from the program.

When this program first went into effect, language was negotiated in the collective bargaining agreements that addressed the retiree rehire issue. Of the 18 waivers requested

by the MOA, 12 retirees were rehired in a system that has over 2,025 employees.

MOA has a tremendous number of retired military that have returned to classified, non-classified and politically appointed positions. This isn't viewed as a negative because they bring valuable resources and knowledge to the workplace.

The program has been used very successfully in the engineering and public health sectors because it's been difficult to keep up with cost of living increases, health benefit changes, and competition with the private sector.

Individuals that are currently enrolled in the program and are within MOA were under the belief that they would be grandfathered in. In fact many structured work and retirement plans based on that fact. "For the record I would request that the least that could be done here would be grandfather in those particular individuals that are currently participating in the program," she said.

The Municipality of Anchorage has saved over \$.25 million with the 12 individuals that have been participating in the program. She urged the committee to seriously look at the pros and cons of the program and move the bill from committee.

[6:07:26 PM](#)

SENATOR WAGONER announced that U.S. Senator Ted Stevens mentioned that this might be the last year that federal employees living in Alaska receive the cost of living allowance differential.

CHAIR THERRIault noted there was no further testimony.

He asked for a motion that the committee move into executive session to take testimony from the Department of Law on whether the grandfathering question raises a legal issue.

SENATOR WAGONER moved that the Senate State Affairs Committee go into executive session under AS 44.62.310 to consider matters the immediate knowledge of which could clearly have an adverse affect upon the finances of the State of Alaska. There being no objection, the committee went into executive session.

SB 24 was held in committee.

CHAIR THERRIault reconvened the meeting after the executive session and adjourned at [6:51:52 PM](#).