

**ALASKA STATE LEGISLATURE**  
**HOUSE HEALTH, EDUCATION AND SOCIAL SERVICES STANDING COMMITTEE**

May 8, 2007

3:04 p.m.

**MEMBERS PRESENT**

Representative Peggy Wilson, Chair  
Representative Bob Roses, Vice Chair  
Representative Anna Fairclough  
Representative Mark Neuman  
Representative Paul Seaton  
Representative Sharon Cissna  
Representative Berta Gardner

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

CONFIRMATION HEARING(S)

University of Alaska Board of Regents

Erik Drygas - Fairbanks

- CONFIRMATION(S) ADVANCED

HOUSE BILL NO. 252

"An Act requiring paid leave from employment for organ and bone marrow donation."

- MOVED HB 252(HES) OUT OF COMMITTEE

CS FOR SENATE BILL NO. 97(JUD)

"An Act relating to identification seals for certain articles created or crafted in the state by Alaska Native persons; relating to the Alaska State Council on the Arts; and making certain identification seal violations unfair trade practices."

- SCHEDULED BUT NOT HEARD

**PREVIOUS COMMITTEE ACTION**

BILL: HB 252

SHORT TITLE: LEAVE FOR ORGAN/BONE MARROW DONATIONS

SPONSOR(s): REPRESENTATIVE(s) LEDOUX

05/03/07 (H) READ THE FIRST TIME - REFERRALS  
05/03/07 (H) HES, STA  
05/08/07 (H) HES AT 3:00 PM CAPITOL 106

**WITNESS REGISTER**

ERIK DRYGAS, Appointee  
University of Alaska Board of Regents  
Fairbanks, Alaska  
POSITION STATEMENT: Testified as appointee to the University of Alaska Board of Regents.

REPRESENTATIVE GABRIELLE LEDOUX  
Alaska State Legislature  
Juneau, Alaska  
POSITION STATEMENT: Presented HB 252 as prime sponsor.

CHRISTINE MARASIGAN, Staff  
to Representative Gabrielle LeDoux  
Alaska State Legislature  
Juneau, Alaska  
POSITION STATEMENT: Answered questions during the hearing on HB 252 on behalf of Representative LeDoux, prime sponsor.

BRUCE ZALNERAITIS, Chief Executive Officer  
Life Alaska Donor Services  
Anchorage, Alaska  
POSITION STATEMENT: Offered statistics related to organ and bone marrow donations during the hearing on HB 252.

GREY MITCHELL, Director  
Central Office  
Division of Labor Standards & Safety  
Department of Labor & Workforce Development  
Juneau, Alaska  
POSITION STATEMENT: Addressed issues of enforcement and leave donations within collective bargaining groups and answered questions during the hearing on HB 252.

**ACTION NARRATIVE**

**CHAIR PEGGY WILSON** called the House Health, Education and Social Services Standing Committee meeting to order at [3:04:59 PM](#). Representatives Fairclough, Neuman, Gardner, and Roses were

present at the call to order. Representatives Seaton and Cissna arrived as the meeting was in progress.

[3:05:23 PM](#)

CONFIRMATION HEARING

University of Alaska Board of Regents

[3:05:58 PM](#)

CHAIR WILSON announced the first order of business would be a confirmation hearing for the University of Alaska Board of Regents.

[3:06:22 PM](#)

ERIK DRYGAS, Appointee, University of Alaska Board of Regents, offered a brief personal history to illustrate why he should be chosen as a member of the board.

[3:07:20 PM](#)

REPRESENTATIVE GARDNER stated that she has heard from those she has asked that Mr. Drygas has a reputation as a community activist and advocate.

[3:07:56 PM](#)

REPRESENTATIVE FAIRCLOUGH moved to advance the confirmation of Erik Drygas, appointee to the University of Alaska Board of Regents, to the joint session of the House and Senate. There being no objection, the confirmation of Erik Drygas was advanced.

HB 252-LEAVE FOR ORGAN/BONE MARROW DONATIONS

[3:09:07 PM](#)

CHAIR WILSON announced that the final order of business would be HOUSE BILL NO. 252, "An Act requiring paid leave from employment for organ and bone marrow donation."

[3:09:27 PM](#)

REPRESENTATIVE GABRIELLE LEDOUX, Alaska State Legislature, presented HB 252 as prime sponsor. She noted that HB 252 would require employers who employ 100 people or more to grant paid

leave of absence to an employee for the purpose of making a personal organ or bone marrow donation. The employer would not be required to provide more than 80 hours of leave, but would be required to provide no less than 40 hours, unless the employee were to request fewer hours. Representative LeDoux said according to Life Alaska Donor Services, there are 160 patients waiting for a kidney transplant and under 100 people in Alaska awaiting a bone marrow transplant. She reported that the matching rate for bone marrow donors is rare: approximately 1 in 100,000. Blood Bank of Alaska - the entity that manages the bone marrow program in the state - reports that there are approximately 5 Alaskans per year donating bone marrow.

[3:11:06 PM](#)

REPRESENTATIVE FAIRCLOUGH acknowledged a possible conflict of interest, as she is a listed bone marrow donor. She offered support for the intent of the bill, and referred to a sentence on page 2, lines [17-20], which read as follows:

An employee who is covered by a collective bargaining agreement may donate leave to or receive donations of leave from an employee or officer who is not covered by a collective bargaining agreement, notwithstanding **AS 39.20.310(7) and (8)** [AS 39.20.310(8) AND (9)].

REPRESENTATIVE FAIRCLOUGH indicated that the issue of donating leave is usually left "to internal policies and procedures by individual corporations or companies," and she questioned whether the state would be overstepping its bounds.

[3:12:49 PM](#)

CHRISTINE MARASIGAN, Staff to Representative Gabrielle LeDoux, Alaska State Legislature, on behalf of Representative LeDoux, prime sponsor of HB 252, pointed out that the language in the aforementioned portion of the bill is permissive; it uses the word "may".

[3:13:23 PM](#)

REPRESENTATIVE FAIRCLOUGH maintained her concern regarding overall policy. Further, she expressed concern for an agency that has staff on 24/7 shifts, such as the Alaska State Ferry System. She explained that the employer may end up having to pay someone else "time and a half" to cover an employee leaving to make a donation.

[3:14:33 PM](#)

MS. MARASIGAN offered various scenarios involving employees using leave to make donations, even suggesting the possibility that the donor and the receiver may work for the same agency.

[3:16:04 PM](#)

REPRESENTATIVE LEDOUX noted that out of Alaska's entire population of over [670,000], there are only 160 patients waiting for kidney transplants and fewer than 100 people awaiting bone marrow transplants. Furthermore, the bill would only apply to employers who employ over 100 people.

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REPRESENTATIVE ROSES questioned who would enforce whether or not businesses were giving the proposed mandated leave. Further, he asked whether a donation of a kidney would be considered elective surgery or would be covered by insurance.

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MS. MARASIGAN replied that she does not think there would be any way to enforce the giving of leave, but indicated that the proposed bill language, once a part of statute, would facilitate asking for leave. Regarding Representative Roses' second query, she deferred to a representative of Life Alaska Donor Services, whose testimony would be forthcoming.

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BRUCE ZALNERAITIS, Chief Executive Officer, Life Alaska Donor Services, related that in the U.S., kidney disease is covered under Medicare through the End-Stage Renal Disease Act. In response to Representative Roses, he confirmed that insurance covers the procedure of the donor and recipient; however, the donor is not covered by insurance for travel expenses or time missed from work.

REPRESENTATIVE ROSES said if the procedure is covered by insurance than it is not considered to be elective surgery. In that case, he questioned if the procedure would be covered under the Family Medical Leave Act.

MR. ZALNERAITIS said although he is not an insurance expert, he knows that the surgical procedure for donating a kidney is covered by the same insurance that covers the recipient of the transplant. He reiterated that that coverage is found under the End-Stage Renal Disease Act.

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CHAIR WILSON clarified that the committee wants to figure out if the donor could receive leave benefits if the procedure is considered elective.

MR. ZALNERAITIS replied that since the donor is healthy and otherwise has no medical problems, his/her surgery would be considered elective.

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REPRESENTATIVE NEUMAN said someone in Wage and Hour [within the Division of Labor Standards & Safety], informed him that state statute "sideboards" do not apply to persons covered under collective bargaining agreements.

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CHAIR WILSON surmised that that means [the proposed bill] would not affect state employees, because they would follow their union contract.

REPRESENTATIVE NEUMAN agreed. He asked if there would be a limit to the number of times an employee could receive paid leave [to be a donor].

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MS. MARASIGAN replied that that is not outlined in the bill. In response to a follow-up question from Representative Neuman, she said among other states with similar legislation, the amount of recuperation time that is allowed varies from approximately two to four weeks. She talked about the idea of flexibility, depending upon the situation.

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CHAIR WILSON turned the gavel over to Vice Chair Roses.

[3:25:03 PM](#)

REPRESENTATIVE FAIRCLOUGH opined that this legislation would be enforceable under wage and hour statutes. Referring again to page 2, lines 17-20 [text provided previously], and she said she interprets the language to state that the employee would make the decision whether or not to donate "in and outside of a bargaining agreement." She said she thinks an employee cannot make that decision. She called on personal experience to state an example, and said she does not know if leave donations can be made between two employees at different levels of pay and benefits.

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REPRESENTATIVE LEDOUX promised to work on that issue if the bill passes out of committee.

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GREY MITCHELL, Director, Central Office, Division of Labor Standards & Safety, Department of Labor & Workforce Development, at the request of Vice Chair Roses, addressed the aforementioned issues of enforcement and leave donations within collective bargaining groups. He stated his belief that the law would be enforceable, although he said he does not see it as a significant impact on Wage and Hour [within the Division of Labor Standards & Safety] or the department. He reminded the committee that the bill would pertain only to employers with 100 or more employees and only employees who work 30 or more hours per week. He said there really would not be a penalty associated with a violation; therefore, basically the law will be explained and the employer will be persuaded to do the right thing.

MR. MITCHELL, regarding the collective bargaining agreement, said the statute in Title 39 really deals only with public employees. He observed that the bill changes the reference in AS 39.20.310 to paragraphs (7) and (8). He stated, "I can't explain why this language is there. Maybe someone from Department of Administration, Division of Personnel, could speak to that issue, but I believe it's only applying to public employees."

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REPRESENTATIVE NEUMAN asked if a union that is not a public employees' union and has its own collective bargaining agreement would fall under the same guidelines under Alaska statute.

MR. MITCHELL offered his understanding that the Labor Management Relations Act requires union members to exhaust their collective bargaining grievance process before requesting the state to "pursue enforcement action of a statute."

[3:31:01 PM](#)

REPRESENTATIVE FAIRCLOUGH noted that paragraph (8) in this statute relates to the state ferry workers. She reemphasized her wish that the sponsor clearly state the intent that the bill does not support stepping "in the middle of a violation of Wage and Hour."

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VICE CHAIR ROSES asked if "this type of situation" would be covered under current regulation of the Family Medical Leave Act.

MR. MITCHELL answered that it would not. He explained that the donor would not be considered as suffering from a serious medical condition, which is the "primary trigger to be covered under the Family Medical Leave Act." Another accepted reason would be pregnancy leave.

[3:32:29 PM](#)

REPRESENTATIVE NEUMAN referred to language on page 1, [beginning on line 8 through line 10], which read as follows:

An employer who employs 100 or more employees shall provide a paid leave of absence to an employee for the purpose of making a personal organ or bone marrow donation.

REPRESENTATIVE NEUMAN confessed to having an aversion to mandates from government. He asked the sponsor to comment.

REPRESENTATIVE LEDOUX said replacing the word "shall" with the word "may" would gut the bill. She said that in most instances she would agree with Representative Neuman's philosophy, but with respect to employer/employee relations, there are many things that are mandated, such as overtime pay and minimum wage.

She concluded, "The potential benefits to the people that can benefit from this are so huge that I'd say this is one of those few cases where I think that the mandate would be appropriate."

REPRESENTATIVE NEUMAN asked if Representative LeDoux is saying that currently private industry must allow paid medical leave for a voluntary medical process.

REPRESENTATIVE LEDOUX answered no. However, she pointed out that currently there is no law prohibiting employers from granting that leave.

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REPRESENTATIVE NEUMAN said he has a problem with this issue.

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REPRESENTATIVE GARDNER said she shares Representative Neuman's concern. She stated her belief that donating blood, bone marrow, or any organ is a wonderful gift, and she approves of efforts to encourage those acts. She said she would seriously consider a state program along these lines. Out of the approximately 30 states that have made requirements similar to those proposed in HB 252, 23 have requirements that apply only to state employees. She said it crosses the line to tell a private employer that he/she must also make a gift of leave time in response to an employee making a donor's gift. She said while she would like to think that many big company employers would want to do that, she does not think it is necessary that the state make that a mandate.

REPRESENTATIVE LEDOUX said it is a policy call as to where the line is drawn, but she explained that the sponsor decided that the line would be "appropriately drawn" at the figure of 100 or more employees.

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REPRESENTATIVE FAIRCLOUGH, in response to Representative Seaton, said AS 39.20 addresses compensation, allowances, and leave for state workers.

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MR. MITCHELL noted that Title 23.10 addresses the Wage and Hour Act and employment practices and working conditions for private employers.

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REPRESENTATIVE LEDOUX pledged to work to resolve any issues brought up by future committees.

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REPRESENTATIVE SEATON asked if the leave time that would be granted to the donor would cover the time it takes to be tested and qualify.

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MS. MARASIGAN indicated that the intent of the bill is to cover "the actual act of doing the donation itself and recuperation time." However, in response to a follow-up question, she said the bill "doesn't specify how much time would be used for the screening process or for the actual procedure itself or for the recuperation time"; it would just make getting leave possible for those who want to be donors.

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MR. ZALNERAITIS relayed that the process of determining the eligibility of a kidney donor involves the following three main steps: psychosocial; medical suitability - to ensure the donor is healthy; and immunological. He said the donor can have all these steps completed while still in Alaska, but most likely will fly to Seattle for the actual procedure.

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REPRESENTATIVE SEATON said he is trying to determine whether the bill would require the employer to give paid leave to the donor for that evaluation process.

[3:46:04 PM](#)

VICE CHAIR ROSES asked Mr. Zalneraitis, "Do you define testing for organ donation the same as you do making a personal organ or bone marrow donation? Do you consider those to be the same?"

MR. ZALNERAITIS answered no. He clarified, "Testing would involve the establishment of health and the establishment of an immunologic match with the recipient candidate, which is a series of blood tests."

VICE CHAIR ROSES said he thinks that clarification "takes away" the question that Representative Seaton is asking, which is: "Does testing require then that the employer grant leave?" He said the way he reads the language, it just requires that leave "for the donation."

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REPRESENTATIVE LEDOUX stated that was not the intent of the bill to make the employer pay for the testing, and she said she doesn't think the bill implies that; however, she would support an amendment to clarify the issue.

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REPRESENTATIVE NEUMAN noted that the first sentence of the second paragraph of the sponsor's statement [included in the committee packet], read:

For living donors, paid leave may be needed for a screening process, the procedure to obtain bone marrow or kidneys, and recuperation time.

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MS. MARASIGAN explained:

The reason why that language is in there is because ... the nature of testing is different for kidney donation than it is for bone marrow donation. And I think Mr. Zalneraitis, you'd talked about what it would mean to be screened for kidney donation. Correct me if I'm wrong, but there is not only the whole screening process where ... you're checking on the health of the donor, et cetera ..., but you also have to do certain kinds of blood tests, even close to the time right before the person has to make a donation in order for that person to donate a kidney.

MR. ZALNERAITIS responded:

Yes, again, we're concerned about the health prior to and up until the surgery itself, and so, testing is done for matching as well as for health reasons.

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VICE CHAIR NEUMAN, in response to a discussion comparing the language of the bill to that of the sponsor's statement, asked, "You're just asking for the actual procedure to be covered by the employer, not the testing - is that correct?"

MS. MARASIGAN answered that is correct, but emphasized that because of the nature of the donation, sometimes a donor is screened right up until the time he/she goes into surgery.

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REPRESENTATIVE FAIRCLOUGH highlighted the language on page 1, line 9, that read "a paid leave". She indicated that she interprets that to mean that "a leave bank would not be taken away to do this; that this is a benefit that we're considering passing on."

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REPRESENTATIVE FAIRCLOUGH reviewed some questions and answers that had been discussed before his arrival to the meeting.

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REPRESENTATIVE CISSNA asked how many transplants or bone marrow donations occur in Alaska annually.

[3:54:33 PM](#)

MR. ZALNERAITIS replied that there are 6-10 living kidney donations made per year.

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REPRESENTATIVE SEATON referred to page 2, subsection (b), [line 9], which would allow an officer or employee, "with the approval of the person authorizing the employment", to donate accrued personal or annual leave to "another officer or employee only for use as leave for medical reasons." He questioned whether this would create "another type of leave that could be donated."

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REPRESENTATIVE FAIRCLOUGH paraphrased the first paragraph of AS 39.20.245(a), which read as follows:

(a) An officer or employee may donate one or more days of personal leave a year to the memorial education revolving loan fund, or to an education loan account in the fund, under AS 14.43.250 - 14.43.325.

REPRESENTATIVE FAIRCLOUGH stated, "That's what 245 is speaking to. So, if you wanted to donate to the memorial education fund, you could do so, but that's not tying our hands when it comes to the ... donation of bone marrow or an organ."

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MR. MITCHELL observed that in Section 3, the only change that is proposed for AS 39.20.245(b) is the numbering of the paragraphs. He observed that the only other change to statute seems to be in Section 6, which renumbers some of the exceptions. He said there doesn't look like there would be any change to existing state law.

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REPRESENTATIVE FAIRCLOUGH clarified the renumbering of exceptions.

[4:01:25 PM](#)

REPRESENTATIVE NEUMAN asked if the bill would require an employer of 100 or more employees to give leave to a donor, even if that donor had already used up his/her personal and/or sick leave.

AN UNIDENTIFIED SPEAKER answered yes.

[4:02:04 PM](#)

VICE CHAIR ROSES opined that it would be helpful to have a leave bank created through a grant and matching funds.

[4:03:10 PM](#)

REPRESENTATIVE CISSNA reported that her late husband received a kidney through transplant and lived for ten additional years,

and she said she understands many others have been helped, as well. Notwithstanding that, she noted that small business owners are struggling, and she asked how open the sponsor would be to adopting changes, such as that proposed by Vice Chair Roses.

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VICE CHAIR ROSES closed public testimony.

[4:05:09 PM](#)

REPRESENTATIVE LEDOUX said she thinks a business with 100 employees does not constitute a small business; however, she offered to raise the number to 150.

REPRESENTATIVE ROSES proffered that some businesses - such as canneries - have over 100 employees seasonally, but hire less than 100 other times of the year. He asked Representative LeDoux whether or not her intent is that the over 100 requirement mean year-round.

REPRESENTATIVE LEDOUX responded that most of the canneries are run by huge, multi-national corporations.

[4:07:15 PM](#)

REPRESENTATIVE NEUMAN moved to adopt Conceptual Amendment 1, as follows:

On page 1, line 9:

Delete "shall"

Insert "may"

REPRESENTATIVE NEUMAN said the relationship between an employer and employee is one that should be struck between those two individuals only. He reiterated that he has a problem with allowing the state to interfere in that relationship by making mandates regarding employee benefits.

REPRESENTATIVE FAIRCLOUGH objected to Conceptual Amendment 1.

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REPRESENTATIVE FAIRCLOUGH admitted that she had voiced the same concern at one point, but had been willing to let it go to

facilitate a broader discussion of the bill in the House State Affairs Standing Committee. She noted that "we" provide time off for jury duty to encourage participation in the judicial system and workers' compensation to encourage safe practices and healthy employees. She said when people are on Medicaid, Medicare, or extended leave while waiting for a donor to become available, that costs the state in many ways, and there is a social and economic benefit to providing a donor to get that person waiting off the list so that he/she can reenter society. She mentioned a preference for the bill to affect only state employees/employers.

[4:12:14 PM](#)

REPRESENTATIVE CISSNA objected to Conceptual Amendment 1, because she said it would gut the bill.

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REPRESENTATIVE GARDNER offered to work with the sponsor to rework the bill so that it would apply only to state employees. Regarding other examples of mandatory pay for leave, she mentioned jury duty, but she said it is not optional, but is an obligation. In response to Vice Chair Roses, she stated her intent would be to offer an amendment to Conceptual Amendment 1.

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VICE CHAIR ROSES suggested that Conceptual Amendment come to a vote as is. He objected to Conceptual Amendment 1.

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A roll call vote was taken. Representative Neuman voted in favor of Conceptual Amendment 1. Representatives Gardner, Roses, Fairclough, Seaton, and Cissna voted against it. Therefore, Conceptual Amendment 1 failed by a vote of 1-5.

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REPRESENTATIVE GARDNER moved to adopt Conceptual Amendment 2, that the provision apply only to state employees.

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REPRESENTATIVE NEUMAN objected and stated that people can contribute their own leave time on a voluntary basis to support their co-workers.

[4:16:50 PM](#)

REPRESENTATIVE FAIRCLOUGH reiterated that she had raised the same concerns to the bill sponsor. She said the administration has related that the bill is already within the confines of labor agreements and employment opportunities. She explained that the donor would be getting time off but no more money than he/she typically would receive in a given year.

[4:18:01 PM](#)

REPRESENTATIVE NEUMAN said if the donor has used all of his/her leave time, "it's got to come from somewhere; ... this money just doesn't appear."

VICE CHAIR ROSES said in most large organizations there are provisions regarding donated leave. He continued:

When they calculate an employee's salary and benefits, and they build that into the budget, they calculate in the average number of days that are taken in any one year by employees for leave.

VICE CHAIR ROSES surmised that if a person did use his/her leave, that time could be converted to days towards retirement.

[4:19:50 PM](#)

REPRESENTATIVE CISSNA proffered that when a person gives a transplant, the recipient comes back into the labor pool in an incredibly productive way.

[4:20:59 PM](#)

A roll call vote was taken. Representatives Cissna, Gardner, Roses, Fairclough, and Seaton voted in favor of Conceptual Amendment 2. Representative Neuman voted against it. Therefore, Conceptual Amendment 2 passed by a vote of 5-1.

[4:22:46 PM](#)

REPRESENTATIVE SEATON moved to adopt Conceptual Amendment 3, as follows:

On page 1, line 13, following "requests fewer hours."

Insert "This section does not require the employer to grant paid leave for a separate screening process."

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REPRESENTATIVE GARDNER objected to Conceptual Amendment 3 for discussion purposes. She stated concern that leave coverage for a donor would not be limited.

[4:24:07 PM](#)

REPRESENTATIVE SEATON explained, "That's why I put the word 'separate' in there." He said the sponsor noted she did not intend the bill to cover donors "going out to be tested."

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REPRESENTATIVE GARDNER removed her objection. There being no further objection, Conceptual Amendment 3 was adopted.

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REPRESENTATIVE SEATON moved to adopt Conceptual Amendment 4, which would specify that the leave class created by the bill could not be donated like other leave can be. There being no objection, Conceptual Amendment 4 was adopted.

[4:26:21 PM](#)

REPRESENTATIVE FAIRCLOUGH moved to report HB 252, as amended, out of committee with individual recommendations and the accompanying fiscal notes.

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REPRESENTATIVE WILSON objected to hear a review of the amendments that had passed.

CHAIR ROSES offered that review.

[4:27:40 PM](#)

REPRESENTATIVE WILSON removed her objection. There being no further objection, CSHB 252(HES) was reported out of the House Health, Education and Social Services Standing Committee.

[4:27:45 PM](#)

[Vice Chair Roses returned the gavel to Chair Wilson.]

**ADJOURNMENT**

There being no further business before the committee, the House Health, Education and Social Services Standing Committee meeting was adjourned at [4:28:16 PM](#).