

ALASKA STATE LEGISLATURE
SENATE STATE AFFAIRS STANDING COMMITTEE

March 26, 2009

9:02 a.m.

MEMBERS PRESENT

Senator Linda Menard, Chair
Senator Kevin Meyer, Vice Chair
Senator Hollis French
Senator Joe Paskvan

MEMBERS ABSENT

Senator Albert Kookesh

COMMITTEE CALENDAR

SENATE BILL NO. 126

"An Act amending the State Personnel Act to place in the exempt service the chief economist and state comptroller in the Department of Revenue and certain professional positions concerning oil and gas within the Department of Natural Resources; relating to reemployment of and benefits for or on behalf of reemployed retired teachers and public employees by providing for an effective date by amending the delayed effective date for secs. 3, 5, 9, and 12, ch. 57, SLA 2001 and sec. 19, ch. 50, SLA 2005; and providing for an effective date."

HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 126

SHORT TITLE: REEMPLOYMENT OF RETIREES; EXEMPT SERVICE

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

02/27/09	(S)	READ THE FIRST TIME - REFERRALS
02/27/09	(S)	STA, L&C, FIN
03/24/09	(S)	STA AT 9:00 AM BELTZ 211
03/24/09	(S)	Heard & Held
03/24/09	(S)	MINUTE(STA)

WITNESS REGISTER

GINGER BLAISDELL, Director
Division of Administrative Services
Department of Revenue (DOR)

Juneau AK

POSITION STATEMENT: Presented SB 126.

JIM DUNCAN, Business Manager
Alaska State Employee Association (ASEA)
Juneau AK

POSITION STATEMENT: Spoke in opposition to SB 126.

BARB ANGAIK, President
National Education Association (NEA) Alaska
Bethel AK

POSITION STATEMENT: Spoke in opposition to SB 126.

KEVIN BANKS, Director
Division of Oil and Gas
Department of Natural Resources (DNR)

POSITION STATEMENT: Spoke in favor of SB 126.

NICKI NEAL, Director
Personnel and Labor Relations
Department of Administration
Juneau AK

POSITION STATEMENT: Answered questions regarding SB 126.

ACTION NARRATIVE

[9:02:47 AM](#)

CHAIR LINDA MENARD called the Senate State Affairs Standing Committee meeting to order at 9:02 a.m. Senators Paskvan, Meyer, French, and Menard were present at the call to order.

SB 126-REEMPLOYMENT OF RETIREES; EXEMPT SERVICE

[9:03:29 AM](#)

CHAIR MENARD announced the consideration of SB 126.

GINGER BLAISDELL, Director, Division of Administrative Services, Department of Revenue (DOR), said SB 126 contains two distinct personnel issues. The 2 staff positions in the DOR and the 23 positions in the Department of Natural Resources (DNR) are not tied to the retiree-rehire provision in the bill. She was asked in the last hearing if this is a must-have bill for the governor. The retiree-rehire provision affects local governments and schools, especially in rural Alaska. "The few state employees have initiated knowledge transfer plans so that associated staff can learn the skills needed to fill that job one day." If that provision is not extended, there may be 124

jobs in schools, courts, local governments, and state offices left vacant. The individuals may seem like they get additional income, but their retirement has been earned and would be paid whether they worked in a government position or in the private sector. A retiree can only be offered the job if there are no other qualified candidates. The 23 professional oil and gas positions are at risk for high turnover as their jobs are temporary and project-oriented. If a private company offered these individuals similar pay but with longevity, it will be a challenge for the state to retain them.

[9:06:52 AM](#)

MS. BLAISDELL said turnover would be unacceptable during the state's efforts in natural gas development. There is no fiscal impact for that. The risk of losing these professionals is not one that the state should take. The chief economist position in the DOR will probably remain vacant due to low pay. The person responsible for the revenue forecast also reviews a wide variety of fiscal systems that impact Alaska. Leaving this position vacant will leave the state at a disadvantage in this global economy. The state comptroller is currently filled. "We can only hope that this person will remain even though like positions in the private sector are paid 20 to 30 percent more. With the position turnover rate averaging one per year, the learning curve is reliant on lower level staff, and the state cannot grow positively in its cash management practices." It is critical to pass all three components of SB 126 so the state won't suffer high turnover and high vacancy. She urged passage of the bill so that the state can progress in developing a gas pipeline, compete in a global economy, educate its children in rural communities, and adequately staff the courts.

[9:08:49 AM](#)

SENATOR FRENCH said, "We're sort of caught in a funny position where we've got these highly valuable state employees occupying senior positions who have served for a long time, retired, and then come back to fill the job they used to have in state service; they're blocking the advancement of lower employees." That must be frustrating for the ones being blocked. The 124 jobs can be compared to 124 leaks in a roof. "When do we fix the roof? When do we ... offer the pay and benefits necessary to attract people to fill these extremely important jobs, other than double dippers?"

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MS. BLAISDELL said when she last looked at this situation there were 227 waivers, and 123 of them have termed out. "Obviously

the knowledge transfer plan worked." The jobs were filled with non-retired people. It is working. It is attrition as the knowledge is being passed on and as other qualified candidates become available. The knowledge transfer plan is key, and the Division of Personnel is following up on it to make sure that lower level positions have training.

SENATOR FRENCH said the big question is when does Alaska get out of this loop? When does Alaska get to a place where the people working for the state are all regular, fulltime employees who are getting wages and benefits and are paid enough. What is the administration's plan?

MS. BLAISDELL said the sunset on this bill is 2012.

CHAIR MENARD asked why the legislature is being asked for another five years. She suggested a one-year sunset to make a statement that "we want people to be able to climb the ladder and to be able to be advanced." Did it take five years for the state to drop from 200 to 124, or was it just last year?

MS. BLAISDELL said that was a four-year cycle from 2005 to 2009. The Anchorage school district began with 45 retirees, and now they only have 11. That is a positive move.

[9:14:02 AM](#)

CHAIR MENARD asked if those are with the mentor programs.

MS. BLAISDELL said she is not sure, but the school district was able to find enough qualified candidates that it has not had to request a waiver. She explained the waiver system. In order to hire a retired individual there must be fewer than five applicants that meet the minimum qualifications. The job must be offered to a qualified, non-retired applicant. It is truly a last choice [to hire a retired applicant]. Otherwise the position would need to be downgraded to fit the qualifications of other applicants, or it would be left vacant. That could be a critical mistake. "So whether they're using a mentoring program or whether they're using a knowledge-transfer plan or however each school district or local government or state government is working to fill those positions, it might be reclassing jobs so that lower-level people can move in and maybe be reclassified upward again. It's a choice of the employer."

[9:15:43 AM](#)

SENATOR PASKVAN said from an administration standpoint this is an effective tool to bring in and retain the most qualified

employees. "If we have \$6 million in retirement benefits that's being paid at the same time full salaries are being paid, if we don't allow this, we can save \$6 million a year in retirement expenditures." Returning to the defined benefit system only costs \$14 million. "If we can save \$6 million in an instant by not approving this, then the net effect is ... we can return to a defined benefit for \$8 million a year on approximately a \$3 billion payroll." So if this is statistically insignificant, why isn't \$14 million statistically insignificant?

MS. BLAISDELL said if "Sally" retires, she has earned that income - it's her earned retirement - at any tier. Tier III people are beginning to retire. So Sally will be making, let's say, \$50,000 per year in retirement. There will still be a vacant position and that will have to be paid. Even if Sally works at Fred Meyer, she still gets paid that \$50,000. And the state will still pay for the state position.

SENATOR PASKVAN said it is still double dipping. The issue is "whether you pay a full salary position and block someone from advancing, as Senator French was questioning, and pay from the retirement system, or if you're going to be a full-time employee of the state, that you can't be part of the system. So if the \$6 million that wants to be paid out now, if it's statistically insignificant, then \$14 million for the defined benefit is also statistically insignificant. That's my point."

MS. BLAISDELL said \$6 million and \$14 million is not insignificant. It is a small portion of the payroll, but in this economy any money is significant. "Does it matter if the person is receiving a retirement from an IRA and we hire them to work for the state?" It shouldn't make a difference. Whether the state is paying both is a personal choice for the individual. The state would still pay both regardless of who takes the position. The person who has retired has earned that benefit.

[9:19:46 AM](#)

SENATOR PASKVAN said the question is if a person retires and then wants to work for the state full time, then he or she can't stay retired.

MS. BLAISDELL said this provision would allow someone to stay retired and work for the state. Whether there are two people or one person, it is the same amount of money. The opportunity to allow someone to stay retired but fill a position that otherwise would be impossible to fill is an advantage that the state might want to have in its back pocket. It is just how it is perceived.

CHAIR MENARD said part of the problem is that there are 16,000 state employees, and she can't believe that the state can't find people who want these jobs that aren't retirees and allow others to come in. She has a bias on the sunset clause. It was five years and then another five years, and yet there are still a significant number of people. There are many legislators who are interested in SB 23, which addresses defined benefits. It ties into that. She encouraged the governor to look at that.

[9:22:11 AM](#)

JIM DUNCAN, Business Manager, Alaska State Employee Association, Juneau, said he opposes both sections of SB 126. He opposes moving the DNR and DOR employees "from Section 9 to Section 14." The constitution provides for a merit system of employment. Putting people into the exempt service erodes that system. "We need to be very careful ... in putting people into exempt service." There are some positions that should be there and are required to be there by statute. It is OK to put a position into exempt service for a specific project for a period of time. That statute was constructed very carefully to retain the constitutional merit system as much as possible. The DNR positions were hired under subsection 9 of AS39.25.110. That says that persons employed in professional capacities to make a special inquiry as authorized by the governor may be temporarily placed in exempt service. This bill would move the positions.

[9:25:48 AM](#)

MR. DUNCAN said there are only two reasons to do that. One reason would be if they have exceeded the constraints of subsection 9, and they are no longer temporary. These positions were put in place in the first years of a former administration, so they have been there for a number of years. Temporary doesn't mean four or five years. The collective bargaining agreement considers temporary positions to be less than 12 months; it should become a permanent position after that. He has been told that a legal opinion from the attorney general prompted the introduction of the bill. So there is currently a violation of the statute. The second reason to do this legislation now is that these positions are performing duties that can be performed in the classified service. There is no longer a special inquiry or study. For those reasons he opposes this portion of the legislation. Statute allows some positions to be exempt for very good reasons, then when that short-term project is done, those positions should be moved into classified service or disappear. He has heard the argument that the state can't afford to pay

these people so they need to be in exempt service to receive higher salaries.

9:28:51 AM

MR. DUNCAN said management should evaluate the state's current pay plans. "They should be talking with those of us who represent members in the classified service to determine how we can adjust our pay plans and our contracts to accommodate the needs of those positions." It should be negotiated as part of the collective bargaining agreement. That has not been done, and that should be the first step.

9:30:02 AM

MR. DUNCAN guesses that the study has been done and that is why the change is being made. Exempt service people can be removed easily from political pressure. Regarding the retiree-return language of SB 126, he opposes it. He is a former legislator who worked on this very statute for 24 years, and he was the commissioner of the Department of Administration when the first retiree-return program was enacted. The intent was to address a short-term issue and not to continue the retiree-rehire program into the future. Back then, there was a serious problem with recruitment in certain job classifications.

9:32:05 AM

MR. DUNCAN said he was asked how to address that. The program was proposed by his director. Mr. Duncan was less than enthusiastic about it, but a serious problem needed a quick fix. He authorized the request to introduce legislation but with the provision that it would have a three-year sunset. It was never intended to continue for many years. It served a purpose at that time. It was intended as a quick fix that would be followed with an assessment of the long-term problem with recruitment. The state still needs to do that. There has been progress in a couple of areas, but there have also been some steps backward. The erosion of a good pension system in Alaska was a step backward. It made it more difficult to recruit and retain people. The state needs to look at adequate compensation and a good benefit system. The retiree-return program restricts the ability of employees to advance.

9:34:39 AM

MR. DUNCAN said his union has various classifications to advance up the career ladder. Employees should have every opportunity to advance. The program can be abused. It was to be a short-term fix while the administration looked at the long term.

[9:36:20 AM](#)

BARB ANGAIK, President, National Education Association (NEA) Alaska, Bethel, said she started teaching in a small village in 1980. She now teaches in Bethel, which is the district that has been the biggest beneficiary of being able to hire retirees. This program has been used for hard-to-fill positions, but the district also allowed almost any retiree, administrators and teachers, to come back into service in any capacity. The district had a very broad interpretation of what this program allowed as every teaching position became eligible. There are still retired people who have been rehired for positions that were not hard to fill. Administrators were also allowed to double dip, including the former superintendent with "no advertisement; no process for trying to find a specific, narrowly-defined superintendent for the school district." The district was having a hard time trying to fill principal positions in village schools, but it used the program for all administrative positions.

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MS. ANGAIK said that her current superintendent told her that even if the program continues, he would probably not opt to participate. It prolongs being able to recruit and train people. The original intent was good, but it has not solved the problem.

[9:40:56 AM](#)

KEVIN BANKS, Director, Division of Oil and Gas, Department of Natural Resources (DNR), said 23 of his employees are under subsection 9, and that language includes "temporary or special inquiry". It doesn't say "and". There is no bar under that subsection to hire permanent employees. It is a semantic question, "and not necessarily meaningful with respect to what is actually happening on the ground here. As to the question of whether or not these staffers are doing work that classified employees should be doing, I'm always surprised when my words come back out somewhere else and from someone else." But his point is that if a person in a position is doing the work of a classified employee, a classified employee should have that job. That is the constitutional direction, and a merit system is needed. There are concerns that the constitutional imperative not be eroded, and he agrees. But these positions cannot be done by classified employees. These people are doing work that is certainly not at the level that he would hope a classified-level employee would be expected to do. They are "the point of the spear" for the division in conducting business with the oil companies. They form the leadership team. They are not

implementing policy, they are making it, so they are legally and importantly hired under subsection 9.

9:44:10 AM

MR. BANKS said the question is why he wants to make them part of "14". It will demonstrate to these staff that they need not be concerned that in performing their functions they are "not subject to some rule that could be interpreted as Mr. Duncan would have us do." By hiring a commercial analyst as a commercial analyst or a petroleum geophysicist as a petroleum geophysicist, because of the skills they bring to the job and because of the requirements of that position, they can be assured that they will be retained even when they give unpalatable advice. It is a commitment to these employees that they can take uncomfortable stands under pressure regarding the industry. "Under '9' perhaps there is more potential for ... a kind of loophole that I think Mr. Duncan should be concerned about, but under '14' and by identifying very particular positions within the division we can avoid that."

9:46:03 AM

SENATOR FRENCH said he has an enormous amount of respect for the work of Mr. Banks and his staff, but he takes issue with the interpretation of the word "special" in subsection 9. "I take the word 'special' to mean not regular, and therefore I believe that 'special' carries a strong connotation of temporary." Exploiting that word to capture long-term employees is not appropriate. Maybe he is agreeing with Mr. Banks that the employees "should be pushed down into subsection 14," but he wanted to express his views on the definition of "special".

9:47:11 AM

CHAIR MENARD suggested separating the provisions into two bills.

SENATOR PASKVAN said that is worthy of consideration.

SENATOR FRENCH said the committee doesn't have the power to split the bill in two; it can only delete sections. "We can't suddenly create a new bill."

CHAIR MENARD suggested a one-year sunset.

SENATOR MEYER asked if anyone oversees the retiree rehires to make sure the program isn't abused. One position is a custodian in Ketchikan, and there surely must be qualified people that could fill that position as well as for the administrative

assistant, executive secretary, and student service director positions on the list.

NICKI NEAL, Director, Personnel and Labor Relations, Department of Administration, said the executive branch oversees it, and she personally approves the appointments of retiree rehires in the classified service of the executive branch. There first must be a 30-day open recruitment. If there are fewer than five qualified applicants, she will entertain a request to appoint a retiree, but she needs to be shown why any other qualified applicant cannot learn to perform the duties by the end of the probationary period. Since 2005, there have been two instances where there was another applicant that met the qualifications when she allowed the hiring of the retiree. It was demonstrated that the other applicant couldn't learn the duties within the probationary period. There were only two cases after HB 161, which put strict sideboards on the program. It is very, very rare that there are other applicants in the pool.

SENATOR MEYER said there is technical expertise needed for the positions in Kevin Banks' office where others would not be qualified, so he can see why this option is very important and likely necessary. But he is afraid it may be abused. A one-year extension might be a good compromise.

[9:52:44 AM](#)

MS. NEAL said one year will give time for planning. In terms of what the administration is doing to increase recruitment and retention, the DOA will be issuing an intent-to-award. "We did a request for proposal for a state-wide salary survey. For many, many years we've internally aligned for the purposes of setting salaries in the classified service." In some areas the state has fallen well below the market. She expects that the salary survey will be complete by next fall, and DOA will prepare to seek any funding necessary to implement the survey results.

SENATOR FRENCH said he looked at the jobs that are filled by retirees. Alaska has a 10 percent unemployment rate. There should be Alaskans who would be interested in filling those positions, including administrative assistant I, mechanic, correctional superintendent I, food service, and others. How aggressively does the state recruit for these positions once they have been filled? Are there ads being run? They have crummy benefits, in his opinion, but decent salaries. He suggested inserting language that requires advertising these jobs on an ongoing basis. It would give the labor representatives some comfort. That is one way to find out if there are people

interested in these jobs. It would be uncomfortable for the employee to know that his or her job is being advertised, "but that's the point." The point is to phase this out.

CHAIR MENARD asked for language.

SENATOR FRENCH said he would need legal help.

SENATOR MEYER suggested creating a committee substitute.

SENATOR FRENCH said he will probably prepare an amendment.

SB 126 was held over.

[9:57:08 AM](#)

The meeting was adjourned at 9:57 a.m.