

ALASKA STATE LEGISLATURE
SENATE STATE AFFAIRS STANDING COMMITTEE

April 14, 2010

9:06 a.m.

MEMBERS PRESENT

Senator Linda Menard, Chair
Senator Kevin Meyer, Vice Chair
Senator Hollis French
Senator Albert Kookesh

MEMBERS ABSENT

Senator Joe Paskvan

COMMITTEE CALENDAR

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 225(FIN)(CORRECTED)

"An Act relating to the State Procurement Code; relating to the procurement of supplies, services, professional services, construction services, state fisheries products, state agricultural products, state timber, and state lumber; relating to procurement preferences; relating to procurement by the office of the ombudsman, the Alaska Industrial Development and Export Authority, the Alaska Energy Authority, and other state agencies and public corporations; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 348(JUD)

"An Act relating to the membership of the state personnel board."

- MOVED CSHB 348(JUD) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HB 348

SHORT TITLE: PERSONNEL BOARD MEMBERSHIP

SPONSOR(S): REPRESENTATIVE(S) LYNN

02/17/10	(H)	READ THE FIRST TIME - REFERRALS
02/17/10	(H)	STA, JUD
03/11/10	(H)	STA AT 8:00 AM CAPITOL 106
03/11/10	(H)	Heard & Held

03/11/10 (H) MINUTE(STA)
 03/16/10 (H) STA AT 8:00 AM CAPITOL 106
 03/16/10 (H) Moved CSHB 348(STA) Out of Committee
 03/16/10 (H) MINUTE(STA)
 03/17/10 (H) STA RPT CS(STA) 3DP 1NR 2AM
 03/17/10 (H) DP: PETERSEN, SEATON, LYNN
 03/17/10 (H) NR: GATTO
 03/17/10 (H) AM: GRUENBERG, P.WILSON
 03/29/10 (H) JUD AT 1:00 PM CAPITOL 120
 03/29/10 (H) Moved CSHB 348(JUD) Out of Committee
 03/29/10 (H) MINUTE(JUD)
 03/31/10 (H) JUD RPT CS(JUD) 4DP 2NR
 03/31/10 (H) DP: LYNN, GRUENBERG, GATTO, HOLMES
 03/31/10 (H) NR: HERRON, RAMRAS
 04/07/10 (H) TRANSMITTED TO (S)
 04/07/10 (H) VERSION: CSHB 348(JUD)
 04/08/10 (S) READ THE FIRST TIME - REFERRALS
 04/08/10 (S) STA, JUD
 04/14/10 (S) STA AT 9:00 AM BELTZ 105 (TSBldg)

WITNESS REGISTER

MICHAEL SICA

Staff to Representative Bob Lynn
 Alaska State Legislature
 Juneau, AK

POSITION STATEMENT: Presented HB 348 for the sponsor.

DOUG WOOLIVER, Administrative Attorney
 Alaska Court System
 Anchorage, AK

POSITION STATEMENT: Testified that the court is neutral on HB 348 but is uncomfortable being in the position of forwarding names for boards and commissions.

MIKE FORD, Attorney
 Civil Division
 Department of Law (DOL)
 Juneau, AK

POSITION STATEMENT: Raised two concerns about HB 348.

NICKI NEAL, Director
 Personnel and Labor Relations
 Department of Administration and
 Secretary,
 Personnel Board

POSITION STATEMENT: Testified that the personnel board is neutral on HB 348.

ACTION NARRATIVE

[9:06:37 AM](#)

CHAIR LINDA MENARD called the Senate State Affairs Standing Committee meeting to order at 9:06 a.m. Present at the call to order were Senators Meyer, Kookesh, and Menard.

SENATOR MENARD announced that HB 225 would not be heard today.

HB 348-PERSONNEL BOARD MEMBERSHIP

[9:07:55 AM](#)

SENATOR MENARD announced consideration of HB 348. [CSHB 348(JUD) was before the committee.]

[9:08:11 AM](#)

SENATOR MENARD called a brief at ease pending the arrival of the bill sponsor.

[9:09:18 AM](#)

SENATOR MENARD called the meeting back to order.

[9:09:28 AM](#)

MICHAEL SICA, Staff for Representative Bob Lynn, said HB 348 attempts to help a board that has become of great interest to the public in recent years. The personnel board deals with complaints against the governor, the lieutenant governor and the attorney general (AG). The board has other duties, but their powers and duties on the Alaska Executive Branch Ethics Act have become very public. In recent years, the board has become more involved with public policy, dealing with issues such as balancing the high cost of defending against ethics complaints with confidentiality or having the AG look into recovering fees from people who file frivolous complaints. Board members work hard and do not get paid. Though they are a public entity involved in issues of interest, the sponsor feels they deal with a lot of heat that is not deserved.

The sponsor of HB 348 feels some sting can be taken out of accusations by showing that the board is not a rubber stamp for the governor who appoints them. Currently, the personnel board is described as an independent agency appointed by the governor. HB 348 proposes that the Chief Justice nominate lists of people

for the personnel board while allowing the governor to request additional lists. The process of the Chief Justice forwarding names, which the governor still picks from, respects the governor's power and insulates the board by showing some impartiality.

He noted the fiscal note is zero and summarized the intent of HB 348: To achieve broad representation and decrease the likelihood of one governor appointing all members by increasing the members from three to five; to have the governor make appointments from a list provided by the chief justice, thereby creating an important layer of insulation; and to ensure diversity of opinion by having at least one member from the political party of the candidate for governor with the highest number of registered voters and with the second highest number of registered voters. Also, a conflict section, similar to that in Alaska Public Offices Commission (APOC) and the Select Committee on Legislative Ethics, creates an important standard.

[9:13:24 AM](#)

SENATOR MEYER said the legislative ethics board is selected by the chief justice.

MR. SICA confirmed this.

SENATOR MEYER asked why the same thing is not done for the personnel board.

MR. SICA said the legislature decided to put the ethics board together this way. The sponsor wanted to allow the governor to maintain more power to set the qualifications for the personnel board. To have the legislature set the qualifications for another branch through a third branch could give rise to a separation-of-powers issue.

[9:14:39 AM](#)

SENATOR MEYER asked if changes to the personnel board should be coming from the governor's office.

MR. SICA said that argument could be made. But in the absence of action by the governor's office, we all work together in the checks and balances of government.

SENATOR MEYER said if the legislature can only go so far due to the separation of the three branches, then perhaps the executive branch should come up with their own changes. He is concerned that the governor can indefinitely reject the chief justice's

lists. While he thinks involving the chief justice is a good idea, he suggested the chief justice select the personnel board.

MR. SICA said Representative Lynn would likely be open to that idea.

SENATOR MEYER asked how the executive branch or governor's office feels about HB 348.

MR. SICA said the Department of Law (DOL) has been very polite and will speak for itself.

[9:17:08 AM](#)

SENATOR MENARD said she believes not having good lists is a problem with all boards and commissions. The governor is often put in position of nominating people for boards and commissions when no one has come forward and offered. She supports adding a list for this board.

[9:18:03 AM](#)

MR. SICA pointed out that a lot of other boards and commissions provide nominating lists for the governor. He noted that APOC, under the governor, has five members, four of which come directly from the central committee of political parties. He felt that brings up a separation of powers issue.

SENATOR MENARD added that APOC is one major reason why people do not put their names forward for boards and commissions. Many great leaders have been successful and must expose everything, creating a privacy issue and a challenge to getting qualified people on boards.

SENATOR MEYER conceded that the legislature is partly to blame. People on boards and commissions are volunteering their time. Their resume, pros and cons, are discussed and not everyone wants everything public.

[9:20:41 AM](#)

SENATOR FRENCH joined the meeting.

[9:21:00 AM](#)

DOUG WOOLIVER, Administrative Attorney, Alaska Court System, said the court does not support or oppose legislation. The court is generally uncomfortable being in the position of forwarding names although there is a history of the court doing so. The court has forwarded names for legislative confirmation for the legislative ethics committee since 1986. That system has worked

well. The chief justice also makes the fifth selection for the redistricting board which can be politically awkward. HB 348 proposes a similar role for the executive branch and this is not a role the court cherishes. The personnel board is different because it has a limited oversight role for the entire personnel and executive branch, giving final approval to the personnel act or rules for the entire executive branch. They make some decisions about who is in the classified and exempt services. Even an indirect and minor role in the personnel of another branch is something the court is uncomfortable with. He would like it on the record that this is not something the court likes to do.

[9:23:31 AM](#)

SENATOR MEYER clarified that the chief justice brings forward a list of names for the legislative ethics board and the legislature confirms them.

MR. WOOLIVER said that is correct.

SENATOR MEYER asked if this process has been controversial or if the legislature has ever rejected the judge's selection.

MR. WOOLIVER replied that the legislature initially rejected all the applicants on the first set of names that came up, which was in 1993 or 1994. Some political maneuvering was going on. Since that time all the names have been confirmed and he does not believe there has been controversy.

[9:24:42 AM](#)

SENATOR MEYER said he has never seen the legislature reject the chief justice's recommendation in the last 12 years. He asked if Mr. Wooliver is concerned that HB 348 could possibly result in the governor indefinitely asking for a new list of names, all outside of the legislature.

MR. WOOLIVER said it is possible that the governor could reject names repeatedly. He assumed that is unlikely and this system for the personnel board would work like the system for the legislative ethics board.

CHAIR MENARD commented that it depends on how reasonable the governor is.

[9:26:04 AM](#)

MIKE FORD, Attorney, Civil Division, Department of Law (DOL), said the department would like to raise two concerns. First, the

Article 3, Section 26, of the constitution provides a process whereby the governor appoints members and the legislature confirms them. HB 348 tries to add a third step whereby the chief justice selects people. The cleanest way to create this new process is to amend the constitution. Statutory restriction on the governor's power raises the separation of powers question. The last effort to change the process was in the 1970's. The legislature attempted to expand the confirmation process to include deputy commissioners and some division directors. The court struck down that statute and found that it was beyond the power of the legislature to amend the process. Here, the same problem exists: the legislature is attempting to restrict the governor's power of appointment by requiring the chief justice to provide a list.

The second issue is about the actual effect on the process. He said, "the target is misplaced here". Ethics complaints against the governor over the last few years have not been resolved by the personnel board. If HB 348 became law, expanding the board and adding the chief justice to the process, an independent council would still rule on these complaints, not the personnel board. The process would be the same in spite of these changes.

SENATOR MENARD asked Mr. Ford if he had an opinion about increasing the board from three to five members.

[9:29:12 AM](#)

MR. FORD replied that is not a legal concern.

SENATOR MEYER asked if DOL's legal concerns would be satisfied if this legislation were to come from the governor.

MR. FORD answered no. He would not propose legislation unless there was substantial legal standing for it.

[9:30:35 AM](#)

SENATOR MEYER said he believes this issue is coming up because of the numerous frivolous ethics charges brought forward. If concerns weren't made public until after the ethics board ruled, perhaps so many ethic charges would not be brought forward. However, he understands, and would like to get it on the record, that ethics concerns have to be made public.

MR. FORD said he thinks Senator Meyer is asking how confidentiality of an ethics complaint is maintained. Confidentiality must be balanced with a person's right of free speech. For example, the legislative process requires that a

complaint be dismissed if confidentiality is breeched. Incorporating that approach into the executive branch has been suggested but there are serious concerns about that also. It is unfortunate when a complaint becomes public before it should. The law clearly says that they are confidential and should not be disclosed; there is not a solution for that problem.

SENATOR MEYER said legislative and executive branches are very different. Everyone in the legislative branch is elected; the temptation to bring forth an ethics charge for political reasons is a greater than bringing one against someone in the executive branch. The media and public attention to ethics charges that ended up being unsubstantial has brought a lot of this to where we are today.

[9:33:08 AM](#)

MR. FORD reiterated that if HB 348 becomes law, the process will not change. The independent council will weigh in first to determine if the validity of a complaint. The changes being contemplated with HB 348 will not make a difference to the process. Whether it changes the view of the public, he cannot say.

[9:33:48 AM](#)

NICKI NEAL, Director, Personnel and Labor Relations, Department of Administration and, Secretary, Personnel Board, said the personnel board is neutral. A zero fiscal note was prepared in spite of the increase in board members. Board members are volunteers and typically meet quarterly over the lunch hour, via teleconference.

[9:35:20 AM](#)

SENATOR MEYER asked if board members serve four years.

MS. NEAL answered that she believes they serve six years.

SENATOR MEYER asked if board members can serve more than one term.

MS. NEAL replied yes. She is not aware of a term limit.

SENATOR MEYER commented that turnover on the board is good.

[9:36:38 AM](#)

SENATOR FRENCH noted that the next committee of referral is Judiciary and he would be interested in Alpheus Bullard's, [Legislative Legal], views on the separation of powers arguments

raised by the DOL this morning because they are worth considering.

CHAIR MENARD concurred.

9:37:03 AM

SENATOR MENARD closed public testimony.

9:37:14 AM

SENATOR MEYER commented that there are major legal concerns, such as the separation of powers. The State Affairs committee is not the place to address those, so he agrees with passing HB 348 on to judiciary where legal issues can be scrutinized.

SENATOR MEYER moved to report CS for HB 348 from committee with individual recommendations and accompanying fiscal notes. There being no objection, CSHB 348(JUD) moved from the Senate State Affairs Standing Committee.

9:38:40 AM

CHAIR MENARD, seeing no further business to come before the committee, adjourned the meeting at 9:38 a.m.