

**SENATE CS FOR CS FOR HOUSE BILL NO. 6(JUD)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 4/4/12

Referred: Rules

Sponsor(s): REPRESENTATIVES GRUENBERG, Peggy Wilson, Lynn, Gardner

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act authorizing the governor to remove or suspend a member of the Board of**  
2 **Regents of the University of Alaska for good cause; and establishing a procedure for the**  
3 **removal or suspension of a regent."**

4 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 \* **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section  
6 to read:

7 **LEGISLATIVE FINDINGS AND PURPOSES.** (a) The legislature finds that

8 (1) the framers of the Constitution of the State of Alaska intended to insulate  
9 the University of Alaska and the Board of Regents from politics, but did not intend to  
10 immunize the University of Alaska and the Board of Regents from appropriate nonpolitical  
11 legislative and executive branch oversight;

12 (2) the legislature has the power to pass laws that pertain to the University of  
13 Alaska; and

14 (3) under AS 14.40.170(b)(1), the legislature has delegated to the Board of

1 Regents the power to "adopt reasonable rules, orders, and plans with reasonable penalties for  
 2 the good government of the university and for the regulation of the Board of Regents";  
 3 however, it is not clear that the Board of Regents has the constitutional authority to suspend or  
 4 remove an officer who has been appointed by the governor and confirmed by the legislature.

5 (b) The purposes of AS 14.40.155, added by sec. 2 of this Act, are to

6 (1) clarify that the governor may remove a regent only for good cause;

7 (2) prescribe a due process procedure under which the governor may remove a  
 8 regent for good cause;

9 (3) prescribe a due process procedure under which, in certain circumstances,  
 10 the governor may suspend a regent; and

11 (4) accomplish each of the above purposes in a manner that ensures the  
 12 University of Alaska and the Board of Regents remain insulated from politics.

13 \* **Sec. 2.** AS 14.40 is amended by adding a new section to read:

14 **Sec. 14.40.155. Suspension and removal of regents.** (a) The governor may,  
 15 after providing notice and an opportunity for a hearing, suspend a member of the  
 16 Board of Regents while a final disposition is pending on

17 (1) a criminal complaint, presentment, information, or indictment  
 18 involving a felony in any jurisdiction;

19 (2) an information or formal criminal charges of a misdemeanor  
 20 described under (g)(3) of this section;

21 (3) a probable cause determination of a knowing ethics violation under  
 22 AS 39.52 that results in an accusation under consideration before the personnel board;

23 (4) a written complaint under consideration before the governor,  
 24 signed under oath by the person making the complaint, that alleges malfeasance or  
 25 nonfeasance in office as described in (g)(4) of this section, if the governor determines,  
 26 after an investigation, that there is probable cause to believe that malfeasance or  
 27 nonfeasance in office has occurred; a determination of probable cause under this  
 28 paragraph

29 (A) must specify with particularity the factual basis for the  
 30 determination;

31 (B) must include objective evidence of substantial and material

1 malfeasance or nonfeasance; and

2 (C) may not be based on political differences or the  
3 discretionary performance of a lawful act or a prescribed duty; or

4 (5) a formal allegation or charge by a professional or occupational  
5 licensing body alleging or finding a violation of licensing statutes or regulations that is  
6 related to the regent's ability or fitness to serve as a regent.

7 (b) The governor may remove a member of the Board of Regents for good  
8 cause by providing to the member an accusation and an opportunity for a hearing and  
9 judicial review.

10 (c) Notwithstanding the procedure under AS 44.62.390, a regent who has been  
11 suspended under (a) of this section may, at any time, request a hearing to

12 (1) defend against the grounds for the suspension stated in the  
13 accusation; or

14 (2) lift the suspension.

15 (d) If a hearing is to be held under this section, the governor shall delegate the  
16 conduct of the hearing to the office of administrative hearings under AS 44.64.030(b).  
17 If a hearing is requested, the hearing officer shall prepare a proposed decision under  
18 AS 44.62.500(b)

19 (1) to remove a regent based on clear and convincing evidence of good  
20 cause for removal;

21 (2) not to remove a regent; or

22 (3) to continue a suspension or lift a suspension of a regent.

23 (e) AS 44.62.330 - 44.62.630 apply to all proceedings under this section.

24 (f) After a final decision by the governor that suspends a regent under (a) of  
25 this section or removes a regent for good cause under (b) of this section, the governor  
26 shall file with the lieutenant governor a copy of the allegations made against the  
27 former regent, the governor's findings on each of the allegations, and a complete  
28 record of the suspension or removal proceedings.

29 (g) In this section, "good cause" means

30 (1) a violation of AS 39.52 (Alaska Executive Branch Ethics Act) that  
31 results in a recommendation of removal under AS 39.52.410(b)(3);

- 1 (2) a conviction of a felony in any jurisdiction;
- 2 (3) a conviction of a misdemeanor in any jurisdiction if the
- 3 misdemeanor involves
- 4 (A) dishonesty;
- 5 (B) breach of trust; or
- 6 (C) the University of Alaska;
- 7 (4) substantial and material malfeasance or nonfeasance in office that
- 8 is not based on political differences or the discretionary performance of a lawful act or
- 9 prescribed duty; in this paragraph "malfeasance or nonfeasance in office" includes
- 10 (A) misconduct in office;
- 11 (B) an inability to serve for an extended period of time;
- 12 (C) neglect of duty;
- 13 (D) incompetence;
- 14 (E) unjustified failure to perform the duties of the Board of
- 15 Regents;
- 16 (5) a violation of a professional or occupational licensing statute or
- 17 regulation that is related to the regent's fitness to serve as a regent, resulting in the
- 18 revocation or suspension of a professional or occupational license issued under state
- 19 law; or
- 20 (6) a failure to possess the qualifications of a regent under
- 21 AS 14.40.130.

22 \* **Sec. 3.** AS 44.64.030(a) is amended to read:

- 23 (a) The office shall conduct all adjudicative administrative hearings required
- 24 under the following statutes or under regulations adopted to implement the statutes:
- 25 (1) AS 04.11.510(b)(1) and (c) (alcoholic beverages license);
- 26 (2) AS 05.15 (charitable gaming);
- 27 (3) AS 05.20 (recreational devices);
- 28 (4) AS 05.90.001 (special racing events);
- 29 (5) AS 06 (banks, financial institutions, and fund claims), except as
- 30 provided otherwise by AS 06.60.590;
- 31 (6) AS 08 (occupational licensing), other than AS 08.08,

1 AS 08.18.125, and AS 08.62.046;

2 (7) AS 10.06 (Alaska Corporations Code);

3 (8) AS 10.13 (Alaska BIDCO Act);

4 (9) AS 10.25.375 (Electric and Telephone Cooperative Act);

5 (10) AS 10.50.408 (limited liability companies);

6 (11) AS 14.11.016 (education-related facility grants);

7 (12) AS 14.18 (discrimination in public education);

8 (13) AS 14.25.006 (teachers' retirement system);

9 (14) AS 14.25.175 (waiver of adjustments under teachers' defined  
10 benefit plan);

11 **(15) AS 14.40.155 (suspension and removal of regents);**

12 **(16)** [(15)] AS 14.48 (postsecondary educational institutions);

13 **(17)** [(16)] AS 17.20 (Alaska Food, Drug, and Cosmetic Act), other  
14 than AS 17.20.060 and 17.20.360;

15 **(18)** [(17)] AS 21.09, AS 21.22.190, AS 21.27, except under  
16 AS 21.27.420(d), AS 21.34, AS 21.36, AS 21.69, AS 21.86.200, AS 21.87, and  
17 AS 21.96 (insurance);

18 **(19)** [(18)] AS 25.27 (child support services);

19 **(20)** [(19)] AS 32.06 (Uniform Partnership Act);

20 **(21)** [(20)] AS 34.45 (unclaimed property);

21 **(22)** [(21)] AS 34.55.024 and 34.55.026 (Uniform Land Sales Practices  
22 Act);

23 **(23)** [(22)] AS 36.30 (State Procurement Code), other than  
24 AS 36.30.627(a)(2);

25 **(24)** [(23)] AS 38.05.065 (contracts for sale of state land);

26 **(25)** [(24)] AS 39.30.165 (supplemental benefits system);

27 **(26)** [(25)] AS 39.30.335 (teachers' and public employees' health  
28 reimbursement arrangement plan);

29 **(27)** [(26)] AS 39.35.006 (public employees' retirement system);

30 **(28)** [(27)] AS 39.35.522 (waiver of adjustments under public  
31 employees' defined benefit plan);

- 1                    **(29)** [(28)] AS 39.45.055 (public employees' deferred compensation  
2                    program);
- 3                    **(30)** [(29)] AS 39.52 (Alaska Executive Branch Ethics Act);
- 4                    **(31)** [(30)] AS 43.23 (permanent fund dividends);
- 5                    **(32)** [(31)] AS 43.70 (Alaska Business License Act);
- 6                    **(33)** [(32)] AS 44.50 (notaries public);
- 7                    **(34)** [(33)] AS 44.77 (claims against the state);
- 8                    **(35)** [(34)] AS 45.48.080(c) (breach of security involving personal  
9                    information);
- 10                   **(36)** [(35)] AS 45.30.040 (mobile homes);
- 11                   **(37)** [(36)] AS 45.55 (Alaska Securities Act);
- 12                   **(38)** [(37)] AS 45.57 (Takeover Bid Disclosure Act);
- 13                   **(39)** [(38)] AS 46 (water, air, energy, and environmental conservation),  
14                   other than AS 46.03.820, 46.03.850, AS 46.39, and AS 46.40;
- 15                   **(40)** [(39)] AS 47.32 (licensing by the Department of Health and  
16                   Social Services);
- 17                   **(41)** [(40)] AS 47.45 (longevity bonuses).