

ALASKA STATE LEGISLATURE
SENATE LABOR AND COMMERCE STANDING COMMITTEE

March 29, 2011

2:01 p.m.

MEMBERS PRESENT

Senator Dennis Egan, Chair
Senator Joe Paskvan, Vice Chair
Senator Linda Menard
Senator Bettye Davis
Senator Cathy Giessel

MEMBERS ABSENT

All members present

OTHER LEGISLATORS PRESENT

Representative Kurt Olson

COMMITTEE CALENDAR

SENATE BILL NO. 78

"An Act relating to liability of certain limited liability organizations holding liquor licenses."

- MOVED SB 78 OUT OF COMMITTEE

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 28(FIN)

"An Act relating to temporary courtesy licenses for certain nonresident professionals and to a temporary exemption from fees and other licensing requirements for active duty members of the armed forces."

- MOVED SCS CSHB 28(L&C) OUT OF COMMITTEE

SENATE BILL NO. 100

"An Act relating to employer contributions to the Public Employees' Retirement System of Alaska; relating to requirements that employers who terminate some or all participation in the Public Employees' Retirement System of Alaska pay termination costs; and making the changes retroactive."

- HEARD & HELD

HOUSE BILL NO. 13

"An Act relating to fees and charges for medical treatment or services as they relate to workers' compensation; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 78

SHORT TITLE: LIQUOR LICENSE HOLDER LIABILITY

SPONSOR(S): SENATOR(S) MCGUIRE BY REQUEST

02/04/11 (S) READ THE FIRST TIME - REFERRALS
02/04/11 (S) L&C, JUD
03/22/11 (S) L&C AT 2:00 PM BELTZ 105 (TSBldg)
03/22/11 (S) Heard & Held
03/22/11 (S) MINUTE(L&C)
03/29/11 (S) L&C AT 2:00 PM BELTZ 105 (TSBldg)

BILL: HB 28

SHORT TITLE: TEMP LICENSE/FEE WAIVER FOR PROFESSIONALS

SPONSOR(S): REPRESENTATIVE(S) THOMAS, HERRON, FEIGE

01/18/11 (H) PREFILE RELEASED 1/7/11
01/18/11 (H) READ THE FIRST TIME - REFERRALS
01/18/11 (H) L&C, FIN
02/07/11 (H) L&C AT 3:15 PM BARNES 124
02/07/11 (H) Moved CSHB 28(L&C) Out of Committee
02/07/11 (H) MINUTE(L&C)
02/09/11 (H) L&C RPT CS(L&C) NT 7DP
02/09/11 (H) DP: THOMPSON, SADDLER, JOHNSON, HOLMES,
MILLER, SEATON, OLSON
02/16/11 (H) FIN AT 1:30 PM HOUSE FINANCE 519
02/16/11 (H) Moved CSHB 28(FIN) Out of Committee
02/16/11 (H) MINUTE(FIN)
02/18/11 (H) FIN RPT CS(FIN) NT 11DP
02/18/11 (H) DP: FAIRCLOUGH, GARA, T.WILSON,
GUTTENBERG, JOULE, NEUMAN, COSTELLO,
EDGMON,
02/18/11 (H) DOOGAN, STOLTZE, THOMAS
02/23/11 (H) TRANSMITTED TO (S)
02/23/11 (H) VERSION: CSHB 28(FIN)
02/24/11 (S) READ THE FIRST TIME - REFERRALS
02/24/11 (S) STA, L&C
03/08/11 (S) STA AT 9:00 AM BUTROVICH 205
03/08/11 (S) Heard & Held
03/08/11 (S) MINUTE(STA)

03/22/11 (S) STA AT 9:00 AM BUTROVICH 205
03/22/11 (S) Moved SCS CSHB 28(STA) Out of
Committee
03/22/11 (S) MINUTE(STA)
03/22/11 (S) L&C AT 2:00 PM BELTZ 105 (TSBldg)
03/22/11 (S) <Bill Hearing Rescheduled to 3/24/11>
03/23/11 (S) STA RPT SCS 5DP SAME TITLE
03/23/11 (S) DP: WIELECHOWSKI, KOOKESH, PASKVAN,
MEYER, GIESSEL
03/24/11 (S) L&C AT 2:00 PM BELTZ 105 (TSBldg)
03/24/11 (S) Heard & Held
03/24/11 (S) MINUTE(L&C)
03/29/11 (S) L&C AT 2:00 PM BELTZ 105 (TSBldg)

BILL: SB 100

SHORT TITLE: PERS TERMINATION COSTS

SPONSOR(s): SENATOR(s) PASKVAN

03/14/11 (S) READ THE FIRST TIME - REFERRALS
03/14/11 (S) L&C, FIN
03/29/11 (S) L&C AT 2:00 PM BELTZ 105 (TSBldg)

BILL: HB 13

SHORT TITLE: WORKERS' COMPENSATION: MEDICAL FEES

SPONSOR(s): REPRESENTATIVE(s) OLSON

01/18/11 (H) PREFILE RELEASED 1/7/11
01/18/11 (H) READ THE FIRST TIME - REFERRALS
01/18/11 (H) L&C, FIN
02/11/11 (H) L&C AT 3:15 PM BARNES 124
02/11/11 (H) Moved Out of Committee
02/11/11 (H) MINUTE(L&C)
02/14/11 (H) L&C RPT 6DP
02/14/11 (H) DP: THOMPSON, SADDLER, JOHNSON, HOLMES,
MILLER, OLSON
03/08/11 (H) FIN AT 9:00 AM HOUSE FINANCE 519
03/08/11 (H) Moved Out of Committee
03/08/11 (H) MINUTE(FIN)
03/09/11 (H) FIN RPT 11DP
03/09/11 (H) DP: FAIRCLOUGH, T.WILSON, GUTTENBERG,
JOULE, GARA, NEUMAN, COSTELLO, EDGMON,
03/09/11 (H) DOOGAN, STOLTZE, THOMAS
03/18/11 (H) TRANSMITTED TO (S)
03/18/11 (H) VERSION: HB 13
03/21/11 (S) READ THE FIRST TIME - REFERRALS
03/21/11 (S) L&C, FIN
03/29/11 (S) L&C AT 2:00 PM BELTZ 105 (TSBldg)

WITNESS REGISTER

ESTHER TEMPLE

Staff to Senator McGuire
Alaska State Legislature
Juneau, AK

POSITION STATEMENT: Commented on SB 78 for the sponsor.

KACI SCHROEDER

Staff to Representative Thomas
Alaska State Legislature
Juneau, AK

POSITION STATEMENT: Commented on HB 28 for the sponsor.

SARA CHAMBERS, Program Coordinator for Professional Licensing
Division of Corporations, Business and Professional Licensing
Department of Commerce, Community and Economic Development
(DCCED)

Juneau, AK

POSITION STATEMENT: Supported HB 28.

MICHAEL LAMB, Chief Financial Officer
Fairbanks North Star Borough
Fairbanks, AK

POSITION STATEMENT: Supported SB 100.

LARRY SEMMENS, Manager

City of Soldotna
Soldotna, AK

POSITION STATEMENT: Supported SB 100.

MARK LYNCH, Manager

City of Cordova
Cordova, AK

POSITION STATEMENT: Supported SB 100.

JON BOLLING, City Administrator

City of Craig
Craig, AK

POSITION STATEMENT: Supported SB 100.

PATRICK COLE, Chief of Staff

City of Fairbanks
Fairbanks, AK

POSITION STATEMENT: Supported SB 100.

DANIELLE FEGLEY, Acting Director
Employee Relations
Municipality of Anchorage
Anchorage, AK
POSITION STATEMENT: Supported SB 100.

DIANE WOODRUFF, representing herself
Wasilla, AK
POSITION STATEMENT: Supported SB 100.

JIM DINLEY, Municipal Administrator
City of Sitka
Sitka, AK
POSITION STATEMENT: Supported SB 100.

MARV SMITH, Manager and Human Resource Person
Bristol Bay Borough
Naknek, AK
POSITION STATEMENT: Supported SB 100.

CATHY WASSERMAN, Executive Director
Alaska Municipal League (AML)
Anchorage, AK
POSITION STATEMENT: Supported SB 100.

MIKE BARNHILL, Deputy Commissioner
Department of Administration (DOA)
Juneau, AK
POSITION STATEMENT: No stated position on SB 100.

CATHY LEE, Acting Deputy Director
Division of Retirement and Benefits
Department of Administration (DOA)
Juneau, AK
POSITION STATEMENT: No stated position on SB 100.

REPRESENTATIVE KURT OLSON
Alaska State Legislature
Juneau, AK
POSITION STATEMENT: Sponsor of HB 13.

LINDA HALL, Director
Division of Insurance
Department of Commerce, Community and Economic Development
(DCCED)
Juneau, AK
POSITION STATEMENT: Supported HB 13.

MISTY STEED
CorVel Corporation
Anchorage, AK

POSITION STATEMENT: Supported HB 13.

ACTION NARRATIVE

[2:01:27 PM](#)

CHAIR DENNIS EGAN called the Senate Labor and Commerce Standing Committee meeting to order at 2:01 p.m. Present at the call to order were Senators Giessel, Paskvan, Menard and Egan.

SB 78-LIQUOR LICENSE HOLDER LIABILITY

[2:02:12 PM](#)

CHAIR EGAN announced SB 78 to be up for consideration.

[2:02:28 PM](#)

SENATOR DAVIS joined the committee.

ESTHER TEMPLE, staff to Senator McGuire, sponsor of SB 78, said she was available to answer questions.

[2:02:56 PM](#)

SENATOR PASKVAN moved to advance SB 78 from committee with individual recommendations and attached zero fiscal note. There were no objections and it was so ordered.

[2:03:19 PM](#)

At ease from 2:03 - 2:05 PM

HB 28-TEMP LICENSE/FEE WAIVER FOR PROFESSIONALS

[2:05:27 PM](#)

CHAIR EGAN announced HB 28 to be up for consideration [SCS CSHB 28() labeled 27-LS0192\G was before the committee].

[2:05:38 PM](#)

KACI SCHROEDER, staff to Representative Thomas, said she was available to answer questions.

SENATOR PASKVAN moved to adopt conceptual Amendment 1 as follows:

AMENDMENT 1

OFFERED TO SCS CSHB 28(STA)

Page 1, line 3, following "forces" insert "; authorizing temporary licenses for pawnbrokers not currently licensed by a municipality; and for an effective date"

Page 3, following line 14, insert two new bill sections to read:

"Sec. 2. The uncodified law of the State of Alaska is amended by adding a new section to read:

TRANSITION: CURRENT NON-MUNICIPAL PAWNBROKERS.
(a) Notwithstanding AS 08.76.100, enacted by sec. 5, ch. 49, SLA 2010, a person engaging in business in this state on July 1, 2011 for which a license is required by AS 08.76.100 and who does not hold a current municipal pawnbroker license on that date may continue to engage in business as a pawnbroker until December 31, 2011 without obtaining a license issued by the Department of Commerce, Community, and Economic Development if the unlicensed pawnbroker applies to the Department of Commerce, Community, and Economic Development for a temporary license on a form provided by the department on or before September 1, 2011. Upon receipt of the application, the Department of Commerce, Community, and Economic Development shall grant a temporary license as described in this subsection.

(b) A temporary license issued under this section is non-renewable and expires on December 31, 2011.

(c) Notwithstanding (a) and (b) of this section, an applicant for a license required by AS 08.76.100, enacted by sec. 5, ch. 49, SLA 2010, bears the burden of proving eligibility for the license.

***Sec. 3.** Section 2 of this Act takes effect immediately under AS 01.10.070(c)."

CHAIR EGAN objected for purposes of discussion.

MS. SCHROEDER said this is a cleanup amendment and then deferred comments to the department.

[2:06:56 PM](#)

SARA CHAMBERS, Program Coordinator for Professional Licensing, Division of Corporations, Business and Professional Licensing, Department of Commerce, Community and Economic Development (DCCED), explained that this amendment would establish a 120-day period in which to license those eligible for the state's new pawnbroker licensing program. She explained that SB 292 relating to the registration and operation of pawnbrokers allowed no window of time between the effective date of pawnbroker regulations and the effective licensing date of the affected parties. A 120-day temporary license would allow an opportunity for those required to be licensed under the new statute to become fully licensed in an efficient manner that provides ample opportunity for due diligence to be performed.

Those affected could become temporarily licensed and continue to legally operate following the July 1 effective date of the regulations providing the department ample time to notice licensing information to all known interested parties and legally accept payments for licensure and allow time for a potential licensee to ask questions and gather documentation required for initial licensing. Without this change, licensees would need to become licensed before regulations would come into effect rendering such an event impossible.

SENATOR GIESSEL pointed out that line 7 of the amendment says "Sec. 2" and it should actually be "Sec. 3" since there is already a Sec. 2 in the bill on the bottom of page 2.

CHAIR EGAN noted the change.

CHAIR EGAN withdrew his objection and Amendment 1 as amended was adopted.

SENATOR PASKVAN moved to advance SCS CSHB 28() as amended from committee with individual recommendations and attached fiscal note, if any. There were no objections and SCS CSHB 28(L&C) was moved from committee.

[2:10:37 PM](#)

At ease from 2:10:37 PM to 2:12:17 PM.

SB 100-PERS TERMINATION COSTS

[2:12:17 PM](#)

CHAIR EGAN announced SB 100 to be up for consideration.

SENATOR PASKVAN moved to bring SB 100, labeled 27-LS0272\D, before committee for discussion purposes.

CHAIR EGAN objected.

SENATOR PASKVAN explained the purpose of SB 100 arises out of his discussion with Michael Lamb, the Chief Financial Officer of the Fairbanks North Star Borough, in which they were talking about a problem that exists when a borough tries to be flexible in its programs and may want to do something for a couple of years and then transition to a different type of program. The question is when they potentially transfer those employees from one program to another there is this termination study that has a resulting cost burden that can be applied even if there is no change in the overall number of employees (of a particular municipality or school district). In short, as a result of that conversation he presented a bill a year ago and it quickly became apparent that the details were pretty significant.

[2:14:17 PM](#)

MICHAEL LAMB, Chief Financial Officer, Fairbanks North Star Borough, said he is also president of the Board of the Municipal League Investment Pool and co-chairman of the Alaska Municipal League's Finance sub-committee. He said his comments on SB 100 are supported by the Alaska Municipal League (AML). He thanked them for the opportunity to testify on how crucial PERS employers feel getting SB 100 passed into law this session is. The following statement captures what he said:

Given the very real press of time for legislative action this session, my comments today are going to be purposely direct. I'm going to be as transparent as I can conveying what AML member employers feel that there exists a compelling need to adopt the disciplined and exactly focused limited change to those parts of state law that order termination studies. Very simply, because of the 'shall' language in state statutes, regulatory action cannot fix the problems I'm going to explain to you today. Regulation cannot override statutory directives, thus the need for this legislative fix to a few detrimental and unanticipated consequences of certain language adopted in SB 125.

Let me commence by addressing three significant questions that some may have about SB 100. With these relevant questions addressed, you can cast them from

your minds and I can focus my time on why passage of SB 100 is so critical and compelling.

2:17:11 PM

Number one, first and foremost, let me convey with no ambiguity at all, SB 100 has absolutely nothing, nothing and nothing to do with the defined benefit, DB versus defined contribution, the DC issue. That controversy, that discussion, is real as it is and I acknowledge that has no place and should be given no standing when considering SB 100. For purposes of SB 100, the DB versus DC issue is not relevant - period - other than to create and foster fear when any PERS legislation is under consideration. Let us not let fear rule the day or impede our doing the correct and proper thing that is so demanded and so clearly obvious.

Secondly, it is the view and formal position of AML PERS member employers that their desire and their respectful request to legislators is that there be no amendments made to SB 100. It is exacting in what it accomplishes and should be adopted exactly as drafted. Should SB 100 be used to hang any amendment to it for any purpose, absolutely and unequivocally NO. It is a single-issue focus bill to fix a specific problem and it should be left untainted by any other legislative issues.

Thirdly, and let me say with clarity and purpose, that my integrity and my reputation and my credibility are sacred to me and I stand as a vanguard to them always. And knowing that this, what if so, if I were asked are PERS employers trying to sidestep their obligation to help pay down the unfunded obligation or asked has SB 100 been in any way constructed or intended to be used for this purpose, I unequivocally say NO. I guess I would also say with some confidence that no one has talked or communicated with more people and/or communities on this issue in this state than me and I say to you not in one conversation, not in one e-mail and not in one letter relating to the termination study issues has it ever been discussed in any way, shape or form that PERS employers could sidestep their financial obligation or shift any PERS funding responsibilities to the state through or by this legislation.

MR. LAMB recalled that in 2008 the Alaska State Legislature passed SB 125 that helped Alaska's PERS employers tremendously by adopting the flat statutory 22 percent rate. It brought predictability, affordability and stability to the employers' rate. When SB 125 was crafted, legislators did not intend to create any inequitable financial damage to any PERS member employer nor negatively interfere with the current or future delivery of any member services or programs which the termination study law clearly and conclusively does.

2:21:30 PM

MR. LAMB said that Marvin Smith, Manager, Bristol Bay Borough told Representative Edgmon and Senator Hoffman that presently they have decided not to add or delete any positions until this issue is resolved. Therefore, their government can't expand or shrink as good management should be allowed to do.

He said that "2AAC 35.235 (calculation of termination costs) states (a) an employer that proposes to terminate coverage of the department, group or other classification employee or terminate participation of the employer must have a termination study completed by the plan actuary to determine the actuarial cost to the employer for future benefits due employees whose coverage is terminated.

He said that defined contribution employees have no future actuarial costs. Further, (b) says in addition to the cost calculated in (a), the employer is required to pay to the plan until the past service liability to the plan is extinguished an amount calculated by applying the current past service rate adopted by the board for salaries of the terminated employees. This payment shall be made each payroll period.

2:22:48 PM

MR. LAMB said the problem is if a PERS employer reduces his employee count because it made a decision to change or suspend one of its program or services or simply moved some of its human resources to where they are most needed (even a single person, such as a single disaster response coordinator at a school district), then per 2AAC 36.235, PERS very possibly will send that employer three bills: the first will be for the cost of doing an actual termination study (\$2,500-5,000), the second will be what the study says you owe the system due to the employee changes you made and the third bill is the one that will require the employer to pay the past service cost on each of the positions salaries the PERS said you needed to opt out of

PERS; currently that's \$18.63 until the unfunded obligation is paid off - maybe 30 years from now.

He explained that as he reads about the assumption, he and Larry Semmens, who both have a great deal of understanding of the system, wonder if the past service liability ever actually gets extinguished, essentially making these termination payments perpetual payments on the backs of PERS employers.

MR. LAMB said these three bills could cumulatively run from hundreds of thousands of dollars to several millions of dollars per each termination study incident. The underlying fear that certain PERS employers would purposely act in a manner that jeopardized payment of the unfunded obligation and thus shrink the salary base that pays the unfunded obligation simply has not happened. The total PERS salary base must be sustained and have reasonable growth, which it has to the tune of about 19.50 percent since June 30, 2008 when the floor was set. It's important to absorb and digest the fact that the statutes already have a salary base floor that all PERS employers must pay the 22 percent on even if they completely exited the system, he said. SB 100 actually statutorily reinforces this obligation by its amendment to Sec. 1 of AS 39.35.255, which added a new subsection (i) that reads:

(i)After an employer's participation in the plan terminates with regard to some or all of the employer's employees who are active members of the system, the employer remains obligated to make contributions under (a) of this section (which is the greater of 22 percent times your current salary or the 6/30/08) until the plan does not have a past service liability.

[2:26:16 PM](#)

He said the future stability of PERS employers and their ability to efficiently and effectively manage the delivery of their programs and services is being directly and negatively impacted by 2AAC 35.235. What is exceedingly frustrating for all other PERS employers, except for the state, is that equitable and consistent application of the state's termination law does not seem to be occurring, nor likely can it ever occur given the uniqueness of all PERS employers' positions.

A law like this that has such a material financial impact on PERS employers should, at a minimum, be able to fairly, equitably and consistently be applied to all PERS employers. Yet

the Division of Retirement and Benefits has taken the position that the state with half of the PERS salary base (\$1 billion of a \$2 billion annual salary base) is exempt from termination studies and their financial impacts. A simple straight-line calculation of the unfunded liability tells one that one-half of the obligation must belong to the state, but the state as the biggest PERS employer isn't subject to that portion of the law per retirement benefits. The state is subject to the June 30, 2008 portion of the law for retirement benefits but not the termination portion of the law and this significantly disturbs other PERS employers (an understatement).

[2:27:29 PM](#)

MR. LAMB said that he has talked to many attorneys and none of them have found any such written exception or exclusion in the law. Just as concerning is the fact that the termination language inescapably creates an inequitable impact on small PERS employers. Many small communities have only one employee for a program or a service. If they lose a grant or simply are faced with budget constraints have to cut one person, say their only school nurse, then they would be required to have a termination study done; then pay all of the related costs - just because they actually cut a function or a group. A large employer could cut 10 nurses, but as long as they kept at least one nurse employed no termination study would be required. Only the small school districts get financially impacted by the currently law.

MR. LAMB said, "If you want to drive some of our very limited education dollars right out of the classroom then keep the law the way it is. SB 100 effectively helps keep education dollars in the classroom."

[2:29:10 PM](#)

He explained that amazingly and contrary to good public policy, termination studies negatively impact decisions and the ability to accept grants because of their potential future termination study liability. Grant-funded positions may become subject to the termination studies once the positions are terminated due to grant funding ending even if brand new DC employees were hired with those grant funds. An extract from a communication between Larry Semmens, city manager for Soldotna, posed this question:

The city of Soldotna recently received a grant to fund the new police position for three years. Part of the grant application was to create a lieutenant position. The city has not had this position previously. My concern is that at the end of the four year period if

the city is unable to fund the position and eliminates the lieutenant's position, the city will be on the hook for a termination study and paying the past service liability rate for an unlimited time period on this position, which didn't come into existence until FY2011.

I base this on my assumption the Division of Retirement and Benefits would determine that the single position constitutes a group since it is the only position with the title 'lieutenant.'

MR. LAMB said this response was sent:

I see from your email that the City of Soldotna chose to pursue grant funding for a new police position and have created a lieutenant position as part of that grant application. You are correct that if this lieutenant position is the only one in the city, then it constitutes the only of its classification. If the position created is PERS eligible and the city's participation agreement is not amended to exclude it from PERS, termination costs will be calculated when the city removes it from PERS.

Taking advantage of grant opportunities to improve services to the public is a decision for local officials to make for themselves. Part of that decision process must include consideration whether the positions resulting from the grant should or should not be included in PERS. Our recommendation for any position which has uncertain future funding is that it not be placed in the PERS.

[2:31:27 PM](#)

MR. LAMB said that employers could find themselves paying the past service cost rate on former grant funded position salaries with and from other finite revenues once those grant funded positions are ended. It was amazing to him that the Division of Retirement and Benefits suggests excluding grant funded positions from PERS as its solution to the problem. He exclaimed:

Why would we as a policy seek to minimize or reduce the total salary base used to pay down the unfunded obligation by excluded grant salary dollars? That solution is 180 degrees off course. We ought to be

finding every grant dollar we can and do all we can to be sure as many dollars as is reasonably possible are salary dollars helping to pay down the unfunded obligation.

He said it is also surprising that no offsets are taken into account for salary increases in one area or decreases in another area. In other words, the ability for entities to adjust their programs and services to meet their constituents' needs is negatively impacted by the current law.

2:32:42 PM

Essentially the same salary dollars that were shifted could be billed not only at the 22 percent, but the 18 percent past service cost rate on top of it - for an effective PERS rate of 40 percent on those salaries. A communication from DRB to Senator Paskvan's aide, Mr. Stepp, on February 14 promised him a response today regarding their review an analysis of AS 39.35.625 and AS 39.35.255 and it said they recognized and agreed that the construction of the two statutes would result in employers being double-charged for contributions on salaries of employees for whom coverage is terminated.

MR. LAMB said that SB 100 fixes this travesty and that there is no regulatory authority to fix or override the statutes for this issue. Once you start shifting employee resources from one area of responsibility to another and start paying 40 percent, you start a negative downward spiral in program and services delivery. And the consequence of the termination study is that it effectively nullifies the intent of SB 125, which was that employers pay the exact same rate. It is clear that one result of these termination studies is that different employers will be paying different net rates and therefore there will not be a single uniform contribution rate for all PERS employers. The adoption of SB 125 was based on the acknowledgement that the state did not have a single agent multiple employer system, but a consolidated although inequitable cost share system. The intent of SB 125 was that all employers would pay the exact same rate. That cannot happen when each employer pays different termination cost amounts or they pay none at all.

It is clear that all PERS employers support a sustainable salary base to pay off the PERS unfunded obligation. It also is crystal clear that the termination language in SB 125 was a solution to a problem that never materialized and is not needed. The negative consequences, the additional charges and the payments that result from the termination language were never

contemplated or intended by the legislature and they are destructive and divisive.

[2:36:12 PM](#)

AS 39.35.625, which requires termination studies and any other similar statute or regulation should be repealed, Mr. Lamb concluded, and that is precisely what SB 100 accomplishes.

[2:40:01 PM](#)

CHAIR EGAN asked Mr. Semmens if he wanted to add anything.

[2:40:32 PM](#)

LARRY SEMMENS, Manager, City of Soldotna, said he is a CPA and was very involved in the process of adopting SB 125 in 2008. Given this involvement, he said he was embarrassed to say that he didn't know how these termination studies were going to work until the Division of Retirement and Benefits adopted the regulations and began enforcing the law. After much discussion with DRB, he is now convinced that a statutory change is needed. He is very concerned about the impact of the law particularly on small municipalities or school districts because it apparently requires a termination study to be conducted at any time a department group or other classification that was paying into the system for any reason stops paying into the system.

He explained that in small municipalities a group is often made up of a single position; consequently they will be required to pay the state's actuary to conduct a termination study, pay the resulting cost identified in the study and pay the past service rate contribution on the salary projected - even though there is no continuing salary. It makes it impossible for PERS employer members to manage staffing levels.

He emphasized that SB 100 does not eliminate termination studies for everyone. If a member employer terminates all participation in the plan, that employer will still be required to conduct a termination study and pay the resulting costs. And employers are still required to pay their fair share in that the 2008 salary floor is still in place. This was the provision that was intended to prohibit a PERS employer from escaping their obligation for unfunded liability of the system. Setting a floor for contribution calculations ensures that one employer is not going to contract out a significant portion of their operation thus reducing salaries and thus avoiding paying their fair share of the debt.

MR. SEMMENS said he supported Mr. Lamb's testimony and is also shocked that the Division of Retirement and Benefits considers the state, which is the largest member of PERS, to be exempt from these regulations. All large employers are minimally impacted because typically they have larger departments and larger groups of employees and are able to eliminate positions without eliminating an entire group. But it's extremely punitive to small school districts. He urged them to act swiftly on the bill.

[2:45:45 PM](#)

MARK LYNCH, Manager, City of Cordova, said he supported all previous testimony. The city understands they have to pay their fair share of unfunded the liability, but he needs to be able manage personnel so that his decisions are in the best interests of his community. He needs the law to be clear so that he won't end up somewhere down the road paying both a past service liability and the current PERS retirement fee on the same individual or position. He said he honestly believes that PERS believes that statute provides it with the right to hold cities on the hook indefinitely for any position that is terminated from PERS and the picture is as bleak as Mr. Lamb painted it. His city attorney believes the same.

[2:48:32 PM](#)

JON BOLLING, City Administrator, City of Craig, said he supported SB 100. He said Craig is a first class municipality with a population of 1,201 persons and has two departments that are caught up in these very difficult circumstances. Without passage of SB 100 the financial impacts will be very difficult for them to manage.

[2:49:51 PM](#)

PATRICK COLE, Chief of Staff, City of Fairbanks, stated support of SB 100.

[2:50:29 PM](#)

DANIELLE FEGLEY, Acting Director, Employee Relations, Municipality of Anchorage, supported SB 100. Reinforcing this position is their experience with the weatherization program. She explained that the MLA decided not to renew a state grant for providing weatherization services. Instead they arranged for another entity to resume the responsibility for administering the program. Some of the employees moved into other jobs and others were relocated to the new entity. When the process of eliminating the positions associated with this grant was started, they learned of the possibility of an ongoing financial

obligation for the unfunded PERS liability of potentially reaching and exceeding \$5 million. The MLA supports the changes to restore an equitable process that maintains a sustainable salary base currently described in the existing legislation - without the termination study. They support this legislation because it maintains a sustainable salary base, it creates a flexible workforce that is responsive to market conditions and available funds, it applies an equitable treatment across participating employers, both large and small, and overall it simplifies administration costs and is easily enforceable.

2:52:38 PM

DIANE WOODRUFF, representing herself, Wasilla, said she wanted to add to the comments the committee had already received from their finance director today. She said she is a CPA and has had the pleasure of sitting in on Mr. Lamb's committee with the Alaska Municipal League. She absolutely supports SB 100 seeing what an effect it has on her community. It is inequitable for small communities, but it is not without impact on larger ones like Wasilla. They find themselves in the same position as Cordova regarding the hiring of a temporary police chief in the form a retired Alaska State trooper. They are also looking at a program for which they may receive reduced grant funding, which may cause them to reduce that program and eliminate it altogether. If they do eliminate it they will be in the same boat as the smaller communities.

2:55:01 PM

JIM DINLEY, Municipal Administrator, City of Sitka, said he supported SB 100. The future of applying for grants to offer programs to local citizens is in jeopardy if a termination study is required upon layoff of personnel paid by the grant, he said. The study would negatively impact Sitka's decision and their ability to accept grants because of the potential future liability. Sitka currently has two personnel-related grants on the books and he doesn't want the risk of accepting these two positions under the present scenario. It's too great a risk for a small city to accept these grants with no continuation of any future grant money. They support Mr. Lamb's and Mr. Semmens' testimonies.

2:57:10 PM

MARV SMITH, Manager and Human Resource Person, Bristol Bay Borough, Naknek, said he supported SB 100. Their borough is very small and decided this year not to add any new positions because their whole economy is based on the fishing industry which isn't always stable. They can't either expand or shrink their

positions because of potential future costs related to the termination studies.

[2:59:51 PM](#)

CATHY WASSERMAN, Executive Director, Alaska Municipal League (AML), said they worked closely with the Senate during crafting of SB 125 and thought that SB 100 would really help right what is a wrong in it. Laws shouldn't be on the books that keep government from operating efficiently. Further, she stated that the AML was very active with HB 106, the Coastal Zone Management (CZM) bill. If that goes away, then "a bunch of communities" will have to pay the past service cost on those coastal zone management workers. Many municipalities rely on Cox grants and if they go away, that will cause some cost impacts also.

SENATOR MENARD mused that they knew about the small and large employers and employees that were part of the termination study and asked if "any red flag" went off at that time.

MS. WASSERMAN answered that she relies for most of her PERS information on Mr. Lamb or Mr. Semmens; and they all did not understand the ramifications or they would have done something then.

SENATOR MENARD said it appears to be such a "debacle" that she is having a hard time wrapping her mind around it.

SENATOR MENARD asked for someone from the administration to come forward.

[3:03:44 PM](#)

MIKE BARNHILL, Deputy Commissioner, Department of Administration (DOA), said he would offer a different perspective on the issue. He explained that the state retirement systems have a big unfunded liability that they learned about in 2003; at that point it was just over \$4 billion (PERS/TRS combined). Today it is approximately \$10 billion. Prior to passage of SB 125 in 2008 roughly speaking in the PERS system the responsibility for that liability was allocated 50/50 between the State of Alaska and the other 156 PERS employer participants. SB 125 reallocated the responsibility for that by capping the total amount that municipal employers would have to pay to the PERS system at 22 percent.

He explained that the unfunded liability is a zero sum game. If the municipal employers are not paying essentially what amounts to a mortgage payment, then the state has to pay it; that is

essentially what SB 125 does - shift the responsibility from the municipalities to the state general fund. Since its passage, "we're closing in on the general fund picking up approximately \$1 billion worth of payments to the PERS system on behalf of municipal employers." He said it's really important to understand that whenever one party does not pay into the system, someone else has to pay it.

MR. BARNHILL said he understands Mr. Lamb saying they are not trying skirt their responsibility and they are paying their fair share under SB 125, but the bottom line is the effect of this bill will shift some costs to state general fund. He said they would be submitting a fiscal note soon.

MR. BARNHILL said a presentation to Senate Finance a few weeks ago identified the history of the termination study issue to date. The state's actuary indicated that in 2010 there were five terminations; each study cost \$2500. The one-time termination costs contemplated by the statute range from \$10,364 - \$21,373 and in the context where the state general fund is going to pay \$1 billion relatively soon on behalf of the PERS municipal employers to the PERS system, these are relatively small costs. He understands the legitimate concerns about the employers wanting to be nimble and to have flexibility and said he is willing to continue discussing a way to arrive at some solution to this that achieves fairness to the system without shifting undue costs to the state.

They have heard today about unfair double-counting of salaries. He has discussed this with the Department of Law (DOL) that has advised that it can be addressed through a regulation project. This is underway and they hope to have it on the books relatively soon. This probably won't solve of Mr. Lamb's and Mr. Semmens' concerns, but it will go part way while still maintaining fairness to the system and the state.

SENATOR PASKVAN asked if he agrees that SB 100 does not in any way lessen the salary floor set in 2008.

MR. BARNHILL answered no, it does not.

SENATOR PASKVAN asked if he agrees that the municipalities and school districts potentially are at risk because of accepting grants - for example, police grants.

MR. BARNHILL answered no; they can accept whatever grants they want. The issue becomes, if they terminate those positions when

the grant runs out, that potentially triggers a termination study requirement under current law.

SENATOR PASKVAN asked if he believed there might be a connection between the possibility of the lack of employment at the end of a grant and that affects the decision making at the beginning as whether you would even accept the grant.

MR. BARNHILL said he sees the concern. But it's an issue of trying to balance the tensions that are inherent in this issue.

SENATOR PASKVAN asked on a yes or no basis, if the State of Alaska is subject to a termination study process.

MR. BARNHILL replied that is an interesting question. The bottom line is that under the cost shifting rubric he talked about, any additional costs they system incurs under SB 125 will come out of the state general fund.

SENATOR PASKVAN said, "So, you don't have an answer."

MR. BARNHILL said "Can I get one?" and asked Cathy Lee to help with an answer.

3:11:35 PM

CATHY LEE, Acting Deputy Director, Division of Retirement and Benefits, Department of Administration, said the reason the State of Alaska doesn't need a termination study is that under PERS statutes, AS 39.35.120, the state must mandatorily participate in PERS. Participation by all political subdivisions or school districts is voluntary. The State of Alaska has no participation agreement in all of the termination statutes that are in .600-630 that refer to "changes to a participation agreement." It refers to the *voluntary* participation of the political subdivisions or school districts. When the State of Alaska makes changes or when it reduces employees, while it may not have a termination study and may not have to amend an agreement, it still has to pay the liability. So, no liability is shifting to any of the other employers because of the state's personnel actions. "The state pays them itself."

SENATOR PASKVAN stated that he knows they have received a resolution in support of SB 100 from Nome and asked that other municipalities and school districts from around the state submit letters as well.

CHAIR EGAN thanked everyone for their testimony and said SB 100 would be held for further work.

HB 13-WORKERS' COMPENSATION: MEDICAL FEES

[3:14:46 PM](#)

CHAIR EGAN announced HB 13 to be up for consideration.

REPRESENTATIVE KURT OLSON, sponsor of HB 13, said that this bill made it through both bodies last year, but didn't quite make it. It would update the state's workers' compensation medical fee schedule that hasn't been updated for a long time. The current schedule died on December 31 and was extended by the governor by an Emergency Regulation; it will expire again on June 30, 2011. The current schedule is missing over 2000 service codes; this bill covers a total of 7000. A new schedule would take into account geographic areas, services provided and will be using a national database that is considered to be accurate by the people who are using it now.

[3:17:09 PM](#)

LINDA HALL, Director, Division of Insurance, Department of Commerce, Community and Economic Development (DCCED), explained that the medical services fee schedule was inadvertently left out of 2004 legislation. Since that time that fee schedule has been in place and they merely made CPI increases to it, which has resulted in the missing of approximately 2000 procedure codes. { A graph shows the medical benefits cost in Alaska is 75 percent of the system cost compared to 58 percent system cost countrywide. It shows the cost per case in Alaska of \$37,000 as compared to \$27,000 countrywide. The point of the charts is to show how high the medical costs are in Alaska, which has resulted in for a number of years Alaska having the highest workers' compensation costs in the country. She said she was really pleased this year that Alaska was number two.

MS. HALL said generally this bill provides base fee schedule not to exceed "usual, reasonable and customary" fees as established by the board. And the fee schedule will be based on a credible profile of bill charges that are constructed on geographical areas called "geo-zips" and Alaska has three. The only vendor she is aware of at this time that can construct a code for the state is "Ingenix."

[3:20:05 PM](#)

MISTY STEED, CorVel Corporation, Anchorage, said she has worked quite extensively on some of the programs with the Medical

Services Review Committee, specifically on the fee schedule. Her company supports HB 13 the biggest fear being that the employer will not be able to afford its workers' compensation rates in the future, because rates would increase due to the increasing cost of medical procedures if the fee schedule is not in place.

[3:21:33 PM](#)

CHAIR EGAN thanked everyone for their testimony and held HB 13 for further work. Finding no further business to come before the committee, he adjourned the meeting at 3:21 p.m.