

**ALASKA STATE LEGISLATURE
HOUSE EDUCATION STANDING COMMITTEE**

March 30, 2016
8:04 a.m.

MEMBERS PRESENT

Representative Wes Keller, Chair
Representative Liz Vazquez, Vice Chair
Representative Jim Colver
Representative Paul Seaton
Representative David Talerico
Representative Harriet Drummond
Representative Ivy Spohnholz

MEMBERS ABSENT

All members present

OTHER MEMBERS PRESENT

Representative Lora Reinbold

COMMITTEE CALENDAR

CONFIRMATION HEARINGS(S):

Professional Teaching Practices Commission (PTPC)

Frances Roberts - Homer

- CONFIRMATION(S) ADVANCED

State Board of Education and Early Development

Rebecca Himschoot - Sitka

- CONFIRMATION(S) ADVANCED

SENATE JOINT RESOLUTION NO. 2

Proposing an amendment to the Constitution of the State of Alaska relating to contracting state debt for postsecondary student loans.

- MOVED SJR 2 OUT OF COMMITTEE

HOUSE BILL NO. 357

"An Act relating to the Board of Education and Early Development; and relating to the Board of Regents of the University of Alaska."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: SJR 2

SHORT TITLE: CONST. AM: G.O. BONDS FOR STUDENT LOANS

SPONSOR(S): SENATOR(S) MACKINNON

01/21/15	(S)	PREFILE RELEASED 1/9/15
01/21/15	(S)	READ THE FIRST TIME - REFERRALS
01/21/15	(S)	STA, EDC, FIN
02/10/15	(S)	STA AT 9:00 AM BUTROVICH 205
02/10/15	(S)	Moved SJR 2 Out of Committee
02/10/15	(S)	MINUTE (STA)
02/11/15	(S)	STA RPT 3DP 2NR
02/11/15	(S)	DP: COGHILL, MCGUIRE, WIELECHOWSKI
02/11/15	(S)	NR: STOLTZE, HUGGINS
02/24/15	(S)	EDC AT 3:30 PM BUTROVICH 205
02/24/15	(S)	Heard & Held
02/24/15	(S)	MINUTE (EDC)
03/12/15	(S)	EDC AT 3:30 PM BUTROVICH 205
03/12/15	(S)	Moved SJR 2 Out of Committee
03/12/15	(S)	MINUTE (EDC)
03/13/15	(S)	EDC RPT 3DP 1NR
03/13/15	(S)	DP: DUNLEAVY, STEVENS, HUGGINS
03/13/15	(S)	NR: GARDNER
03/26/15	(S)	FIN AT 9:00 AM SENATE FINANCE 532
03/26/15	(S)	Heard & Held
03/26/15	(S)	MINUTE (FIN)
04/09/15	(S)	FIN AT 1:30 PM SENATE FINANCE 532
04/09/15	(S)	Moved SJR 2 Out of Committee
04/09/15	(S)	MINUTE (FIN)
04/10/15	(S)	FIN RPT 3DP 3NR
04/10/15	(S)	DP: MACKINNON, BISHOP, HOFFMAN
04/10/15	(S)	NR: KELLY, DUNLEAVY, OLSON
04/13/15	(S)	TRANSMITTED TO (H)
04/13/15	(S)	VERSION: SJR 2
04/13/15	(H)	READ THE FIRST TIME - REFERRALS
04/13/15	(H)	EDC, JUD, FIN
03/23/16	(H)	EDC AT 8:00 AM CAPITOL 106
03/23/16	(H)	Heard & Held
03/23/16	(H)	MINUTE (EDC)
03/30/16	(H)	EDC AT 8:00 AM CAPITOL 106

BILL: HB 357

SHORT TITLE: BOARD OF ED/BOARD OF REGENTS MEMBERS

SPONSOR(S): REPRESENTATIVE(S) VAZQUEZ

02/24/16	(H)	READ THE FIRST TIME - REFERRALS
02/24/16	(H)	EDC, FIN
03/28/16	(H)	EDC AT 8:00 AM CAPITOL 106
03/28/16	(H)	Scheduled but Not Heard
03/30/16	(H)	EDC AT 8:00 AM CAPITOL 106

WITNESS REGISTER

FRANCES ROBERTS, Appointee
Professional Teaching Practices Commission (PTPC)
Homer, Alaska

POSITION STATEMENT: Testified as appointee to the Professional Teaching Practices Commission (PTPC).

REBECCA HIMSCHOOT, Appointee
State Board of Education and Early Development
Sitka, Alaska

POSITION STATEMENT: Testified as appointee to the State Board of Education and Early Development.

DIANE BARRANS, Executive Officer
Alaska Student Loan Corporation
Executive Director
Postsecondary Education Commission
Department of Education and Early Development (EED)

POSITION STATEMENT: Responded to questions during the hearing on SJR 2.

STERLING GALLAGHER
Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to SJR 2.

CHRIS CHRISTENSEN, Associate Vice President
State Relations
University of Alaska (UA)
Juneau, Alaska

POSITION STATEMENT: Testified in opposition to HB 357.

ACTION NARRATIVE

[8:04:29 AM](#)

CHAIR WES KELLER called the House Education Standing Committee meeting to order at 8:04 a.m. Representatives Keller, Vazquez, Colver, Seaton, and Talerico were present at the call to order. Representatives Drummond and Spohnholz arrived as the meeting was in progress.

CONFIRMATION HEARINGS(S):

[8:05:05 AM](#)

CHAIR KELLER announced that the first order of business would be advancement of appointments to the Professional Teaching Practices Commission (PTPC), and the State Board of Education and Early Development.

Professional Teaching Practices Commission (PTPC)

[8:05:24 AM](#)

FRANCES ROBERTS, Appointee, Professional Teaching Practices Commission (PTPC), described herself as a UA graduate, with a masters in mathematics, from Montana State University, which she has taught for 22 years. She said re-appointment to the PTPC allows her to continue to give back to her community.

[8:07:22 AM](#)

REPRESENTATIVE SEATON asked for a description of how the commission works.

The committee took an at-ease from 8:07 a.m. to 8:11 a.m.

[8:11:25 AM](#)

MS. ROBERTS outlined the duties of the commission, which is focused on the ethical behavior of teachers. When a report is received, the information is reviewed to determine whether the report represents a viable complaint or is dismissible. A viable complaint undergoes a process to determine the significance of the statutory violation, address all concerns, and formulate consequences.

[8:13:57 AM](#)

REPRESENTATIVE COLVER asked how the legislature might help teachers to do a better job, in light of the state and federal mandates that encroach on classroom time.

MS. ROBERTS predicted that the changes in the testing regulations, under the ESSA reauthorization, that may represent an improvement. She expressed support for state controlled assessment measures; however, the federally mandated testing, and the time required to ensure compliance, has not been particularly helpful, she opined.

[8:15:44 AM](#)

CHAIR KELLER asked if the PTPC hires a person to specifically receive and check into the complaints.

MS. ROBERTS responded that the PTPC is fully funded by the teacher certification process, is a self-sustaining program, and retains one employee. Currently the position is filled by a former educator, Jim Seitz, who has taught in the public schools, as well as the university sector. He is well versed in Alaskan education issues, she added.

[8:16:55 AM](#)

REPRESENTATIVE VAZQUEZ moved to advance the confirmation of Frances Roberts, appointee to the Professional Teaching Practice Commission, to a joint session of the House and Senate for consideration. Without objection the name of Frances Roberts will be advanced.

REPRESENTATIVE VAZQUEZ reminded members that signing the reports regarding appointments to boards and commissions in no way reflects individual members' approval or disapproval of the appointees, and that the nominations are merely forwarded to the full legislature for confirmation or rejection.

State Board of Education and Early Development

[8:17:18 AM](#)

CHAIR KELLER continued with the appointment of Rebecca Himschoot to the State Board of Education and Early Development, noting the response in the committee packet that was requested at a previous hearing [House Education Standing Committee 3/18/16].

REPRESENTATIVE VAZQUEZ moved to advance the confirmation of Rebecca Himschoot, appointee to the State Board of Education and

Early Development, to a joint session of the House and Senate for consideration. Without objection the name of Rebecca Himschoot will be advanced.

[8:18:32 AM](#)

REPRESENTATIVE COLVER asked what goals, objectives and data would represent a meaningful assessment for the students of grades 3-10, in reforming the testing emphasis and priorities that the state anticipates.

REBECCA HIMSCHOOT, Appointee, State Board of Education and Early Development, said the high stakes testing has been removed, but it is still important to obtain assessment data to measure how students are progressing. The effectiveness of classroom content must be charted and feedback is required to understand areas that may need to be bolstered. An understanding for how to best support students individually and on a group basis, as well as a means for identifying schools in need of assistance, are areas that require scrutiny. Student progress assessments should also be comparable on statewide and national levels.

REPRESENTATIVE COLVER asked about deficiencies found in the current Alaska measures of progress (AMP) test.

MS. HIMSCHOOT responded that her contact with AMP has been limited, however, the data results have provided broad stroke assessments, and not the refined information necessary to address specific individual or group needs.

REPRESENTATIVE COLVER acknowledged that the lack of usable student data is an issue, and said he will look forward to her directing the board towards a means of obtaining more specific data.

MS. HIMSCHOOT agreed with the member's concerns, and said the districts and the department appear to be on the same page.

SJR 2-CONST. AM: G.O. BONDS FOR STUDENT LOANS

[8:23:41 AM](#)

CHAIR KELLER announced that the next order of business would be SENATE JOINT RESOLUTION NO. 2, Proposing an amendment to the Constitution of the State of Alaska relating to contracting state debt for postsecondary student loans.

[8:24:38 AM](#)

REPRESENTATIVE VAZQUEZ noted that the corporation has enough cash to meet its loan obligations. She directed attention to the committee packet handout titled, "State of Alaska Comprehensive Annual Financial Report, Fiscal Year Ended June 30, 2015," issued by the Division of Finance, Department of Administration, and the attached page 252, to review the column headed, Alaska Student Loan Corporation. The report provides that the assets of the corporation show cash and investments totaling \$35 million, with a bottom line total net position of nearly \$221 million. Thus, she surmised that the corporation doesn't appear to be strapped for cash and unable to fund loans. The costs reported during the previous hearing of SJR 2 [3/23/16], were about \$30 million. Thus, having to enter the bond market and making a change to the constitution to access that market, is not warranted, she opined. She questioned whether there might not be another avenue to explore, which would prove less draconian than changing the constitution.

[8:27:48 AM](#)

DIANE BARRANS, Executive Officer, Alaska Student Loan Corporation, Executive Director, Postsecondary Education Commission, Department of Education and Early Development (EED), responded that at issue is whether the commission can meet the volume of new loans, as well as the refinance requirements of existing, loans. The estimated volume of the combination for these two loan categories, in the first year, could exceed \$40 million. She reported that, minus operating costs, the corporation's capacity does not meet this level of demand. Speaking to the question of possible alternatives to using GO debt, she said the state, since 2009, has provided two different types of supports to the corporation. One was to enable the Department of Revenue (DOR) to serve as a stand-by bond purchase provider; an agreement whereby the corporation can access the market using the liquidity support from the state. The arrangement ensures that, in the event the corporation defaults on the obligation, the state will buy the outstanding bonds. In structuring that deal, she reported, the corporation was able to, at a relatively low cost, secure a liquidity provider letter of credit, but only on a standby basis. Thus, the loan structure allows access to the market, but it doesn't afford the cost reducing benefits that the GO bonds provide. The other type of assistance that the state offered was authorization in statute, allowing DOR to extend a \$100 million loan, of which \$70 million has been used. It was structured as a bridge loan,

which is not a viable long term strategy for meeting loan demands or for achieving the low cost interest rates that the corporation would like to offer to Alaskans.

[8:31:18 AM](#)

REPRESENTATIVE COLVER inquired whether the revenue bonds have been leveraged to finance student loans.

MS. BARRANS responded yes, and added that it has been the practice since 1988; however, with the change in the market it has become a costly method.

REPRESENTATIVE COLVER asked about the point spread between the revenue bonds versus GO financing.

MS. BARRANS answered that, if the state maintains its AAA credit rating, the spread would be about 120 basis points, but if the rating drops to AA it would be about 97 basis points.

[8:32:51 AM](#)

REPRESENTATIVE DRUMMOND asked for an average amount of an Alaska student loan.

MS. BARRANS estimated \$6,000, and offered to provide further information. The allowed maximums have recently been raised, she said, and predicted that the average total will also increase.

REPRESENTATIVE DRUMMOND opined that, estimating an \$11,000 loan and considering 11,000 students, \$220 million doesn't go very far. She conjectured that, should the Performance Scholarship fund be jeopardized, the corporation will see an increase in loan applications.

[8:34:20 AM](#)

CHAIR KELLER noted that typically a getting out the vote investment will be made on either side of a ballot issue and asked who the corporation anticipates will get behind promoting, as well as opposing this legislation.

MS. BARRANS explained that when a state agency puts an item on a ballot the advocacy is not through the agency. Media relations would allow factual statements to be broadcast, but there is no expectation for promotional efforts.

CHAIR KELLER asked if there are any groups that might pursue advertising to advocate for or against the measure.

MS. BARRANS said there is no expectation of any campaigns being waged.

[8:37:01 AM](#)

REPRESENTATIVE VAZQUEZ returned to the testimony predicting a surge in loan applications and asked what information the prediction is based on.

MS. BARRANS replied that a number of moving pieces effect loan demand. The commission expects an increase in enrollment levels at the university in the coming years, and tuition costs are also expected to increase.

[8:38:21 AM](#)

STERLING GALLAGHER stated opposition to SJR 2, and described a personal history of financial work within the state, including commissioner of the DOR and underwriting state bonds. He said the Student Loan Corporation was designed around cash flow, and represents the weakest type of loan that the state can make, due to the lack of collateral. One thing that does make this type of loan work is the fact that it cannot be discharged through bankruptcy. The national average student loan is \$60,000, with high end profession graduate debt at about \$160,000. Because the commission is designed around cash flow, he opined, other means could be implemented for loan purposes and GO bonds reserved for construction programs and emergency situations. The loan program has been soundly run, he offered, but a young person carrying heavy student loan debt can become a socio-economic burden as their lives change. The national concern for the level of systemic student debt is on the fore burner, and there is pressure to change bankruptcy laws in order to accommodate the fallout, which in turn could affect the states credit rating. Collateral versus the states moral obligation would be a better approach, he suggested, and returned to the figures from the previously cited financial report to state that the need for further assets is appropriately noted. However, ways and means should be accomplished by drawing on other, sufficiently collateralized, state loan balances and programs.

[8:45:40 AM](#)

CHAIR KELLER asked about the current debt load carried by the state and its rating on Standard and Poor's.

MR. GALLAGHER said Alaska has about \$600 million in general obligation debts, and opined that, overall, the state is in good shape.

[8:47:35 AM](#)

REPRESENTATIVE COLVER asked for a general statement of the outlook for GO bonds in the state, and whether SJR 2 appears to present any problem. A state/national disaster would require GO bonds, he noted, and asked about other future needs.

MR. GALLAGHER responded that the state has ample flexibility at this point and federal matching funds continue to prove helpful. He suggested that other means could be employed to meet the current financial crisis in the state.

[8:51:32 AM](#)

REPRESENTATIVE SEATON asked what loans could be appropriated to the commission, without compromise.

MR. GALLAGHER answered that the fishermen loans would be one, with about \$130 million collaterally extended on quality assets.

REPRESENTATIVE SEATON surmised that fishermen loans are collateralized using fishing vessels and questioned how much money could actually be made available. If the loans were based on the payment receipts, it seems that it may be insignificant, he opined.

MR. GALLAGHER responded that other agency loans may be based more on cash flow and it's the quality of the cash flow that should be considered.

[8:53:46 AM](#)

REPRESENTATIVE VAZQUEZ asked if there is a link connecting the fishing loans, as made by the Division of Investments, Department of Commerce, Community & Economic Development (DCCED), and the Alaska Student Loan Corporation program.

MR. GALLAGHER responded no; however the fishing program has \$60 million in cash, in the till, earning about a half of a percent.

Thus, extending that cash to cover \$130 million in loans would be an appropriate leverage of funds.

REPRESENTATIVE VAZQUEZ clarified that the suggestion is to direct fishing loan funds to the commission.

MR. GALLAGHER responded that, instead of appropriating cash to the program, appropriate the loans.

[8:55:04 AM](#)

REPRESENTATIVE COLVER stated his understanding of the scenario being described and said it utilizes the cash flow for reinvestment.

MR. GALLAGHER answered yes, and said it's a smarter use of money and doesn't consume the available balances.

[8:56:29 AM](#)

The committee took an at-ease from 8:56 a.m. to 8:57 a.m.

[8:57:11 AM](#)

REPRESENTATIVE COLVER commented that amending the constitution is a weighty affair. He said he does not object to advancing the bill for further scrutiny and debate in the next committee of referral.

[8:58:42 AM](#)

REPRESENTATIVE TALERICO clarified that the members are not casting a vote to amend the constitution by passing this legislation out of committee. He said many facets will come into play as the bill advances forward. The voting public may be called upon for the final determination and opined that GO bonds may be the best financing alternative. He said he is neutral on the bill, but appreciates opportunities to put decisions before the voters.

[9:00:24 AM](#)

REPRESENTATIVE SEATON said student loan debt is a big problem nationwide, primarily due to the high interest rates that accumulate and compound debt, even as graduates enter the work force. Lowering the student loan interest rate could be very

beneficial, he opined, however, using money from other programs, such as the fishing vessel program, presents a concern.

[9:02:10 AM](#)

CHAIR KELLER opined that the committee has done its due diligence.

[9:02:42 AM](#)

REPRESENTATIVE VAZQUEZ commented that the student loan program is critical, especially in light of the tuition rate increases that may be imposed. She maintained her concern for amending the constitution, Article 9, and said that other mechanisms would be more appropriate.

[9:04:40 AM](#)

REPRESENTATIVE TALERICO moved to report SJR 2, 29-LS0010\W out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, SJR 2 was reported from the House Education Standing Committee.

[9:05:02 AM](#)

The committee took a brief at-ease at 9:05 a.m.

HB 357-BOARD OF ED/BOARD OF REGENTS MEMBERS

[9:05:13 AM](#)

CHAIR KELLER announced that the final order of business would be HOUSE BILL NO. 357, "An Act relating to the Board of Education and Early Development; and relating to the Board of Regents of the University of Alaska."

[9:07:42 AM](#)

REPRESENTATIVE VAZQUEZ described HB 357, paraphrasing from the sponsor statement, which read as follows [original punctuation provided]:

House Bill 357 places two legislators on the state Board of Education and Early Development and two legislators on the Board of Regents for the University of Alaska.

House Bill 357 affords improved communications between the legislature and each respective board. It opens dialogue, allows for a better understanding of successes and challenges, and provides insight into areas within each organization.

Having two legislatures serve as non-voting members on each board will allow the legislature to be better informed and more knowledgeable of each board, assists in the legislative process to support the goals and objectives of each organization, and gives improved insight to each board on the legislative process.

House Bill 357 will build the framework to shape a strong future for Alaska's educational needs.

[9:08:52 AM](#)

REPRESENTATIVE VAZQUEZ emphasized that the legislative board members would be non-voting, and acknowledged the concern regarding the possible violation of the separation of powers. The Legislative Legal Services counsel provided an opinion for review but may have overlooked AS 24.05.050, she said, and read the statute as follows:

Sec. 24.05.050. Membership on boards and commissions. A member of the legislature may serve on a board or commission of the state government only if the membership of legislators on the board or commission is specifically authorized by law.

[9:12:55 AM](#)

REPRESENTATIVE VAZQUEZ said that in addition there are legislators currently serving on 13 boards and commissions, which include: Alaska Aerospace Corporation seats a senator and a representative; Alaska Justice Commission seats a senator and a representative; Governor's Council on Disabilities and Special Education seats a representative; State Council on Education Opportunities for Military Children seats a senator; Citizens Advisory Commission on Federal Lands in Alaska seats a senator and a representative; State Council for Interstate Adult and Juvenile Offender Supervision seats a senator; Knik Arm Bridge and Toll Authority Board of Directors seats a senator and a representative; Alaska Native Language Preservation Advisory Council seats a senator and a representative; Pacific States Marine Fisheries Commission seats a senator; Alaska Commission

on Postsecondary Education seats a senator and a representative; Statewide Suicide Prevention Council seats two senators and two representatives; the Alaska Tourism Marketing Board seats a senator and a representative; and the now defunct Alaska Health Care Commission, seated a senator and a representative;. There are also three commissions and committees on which the governor serves, and the lieutenant governor serves on one commission. Seating the legislators as non-voting members satisfies the concern regarding separation of powers, she opined. These members will be important liaisons for the legislature as a whole, and given the 90 day session, will facilitate further understanding during the interim.

[9:14:00 AM](#)

CHRIS CHRISTENSEN, Associate Vice President for State Relations, University of Alaska (UA), stated opposition to HB 357, and said the intent for improved communications is commendable. However, having legislative members would create strong grounds for legal challenges to specific actions that are taken by the board. He noted that legislators and staff are welcomed to attend board meetings. In 2015, he reported, the regents met 20 times. Five of the meetings were multi-day affairs that entertained hours of public testimony. Often legislators appear at these meetings and frequently testify. The seating of legislators, however, would subject board action to legal challenge for three specific reasons: violation of separation of powers between the executive and legislative branches; violation of the constitutional prohibition on dual office-holding by legislators; and inconsistency with the stated intent of the framers of the constitution to insulate the university from politics.

[9:15:41 AM](#)

MR. CHRISTENSEN, addressing the concern for separation of powers, cited the relevant constitutional provision as being Article 7 Sec. 3, a clear and unambiguous statement, which reads as follows:

SECTION 3. Board of Regents. The University of Alaska shall be governed by a board of regents. The regents shall be appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session. The board shall, in accordance with law, formulate policy and appoint the

president of the university. He shall be the executive officer of the board.

MR. CHRISTENSEN opined that the appointment of regents by the legislature would directly encroach on the governor's exclusive authority, under the constitution, to appoint board members.

[9:16:12 AM](#)

MR. CHRISTENSEN, addressing the concern for dual office-holding, cited Article 2 Sec. 5, which reads as follows:

SECTION 5. Disqualifications. No legislator may hold any other office or position of profit under the United States or the State. During the term for which elected and for one year thereafter, no legislator may be nominated, elected, or appointed to any other office or position of profit which has been created, or the salary or emoluments of which have been increased, while he was a member. This section shall not prevent any person from seeking or holding the office of governor, secretary of state, or member of Congress. This section shall not apply to employment by or election to a constitutional convention.

MR. CHRISTENSEN reported that the Alaska Supreme Court has ruled that this section should be read and enforced literally. The position of regent is a constitutional office. A legislator appointed to serve as regent would, thus, clearly hold two offices in violation of this section. A ruling in 1976 stated that judges, a governor, and legislators, may not serve as a regent while at the same time retaining such office.

[9:17:09 AM](#)

MR. CHRISTENSEN, addressing the concern for inconsistency with the stated intent of the framers of the constitution to insulate the university from politics, said that placing legislators on the board inevitably injects politics directly into the internal operations of the university. The constitutional convention hosted debate to separate partisan politics from education in general, and specifically from the university. For example, during the framers debate on the provision that creates the executive branch, concerns were raised regarding the appropriate place for the university in the new state government. Concerns were repeatedly expressed in terms of the need to insulate the

university from politics. He cited a 2007 opinion provided by an attorney general, which he summarized as follows:

After reviewing the minutes of the convention, it was fair to draw two conclusions: the framers intended to create a very strong governor with full appointive power, but that, despite the strong governor model, the convention never the less intended to insulate the university from politics, including from the governor.

9:18:15 AM

MR. CHRISTENSEN said that placing legislators on the board would be the exact opposite of insulating the university from politics, and serve to insert legislative politics into the internal decision making. The legislators hold the ultimate authority over the university, but that authority is meant to be exercised in the confines of the Capitol through the budget and bill processes. He maintained that the framers of the constitution worked to create these protections. A seated, non-voting legislator would influence decisions, he opined, and said voting is not the only means by which a member of a public body participates or influences decisions of that public body. Even as the committee debates the bill proposed today, the debate itself will influence the outcome of the final decision on the legislation. The executive branch ethics act, to which all regents are subject, states:

Refraining from voting is not sufficient to avoid taking official action. Advice, participation, or assistance is enough.

MR. CHRISTENSEN stressed that under existing Alaskan law mere participation by board members is enough to constitute official action, even when not voting.

9:20:09 AM

MR. CHRISTENSEN referred to the boards and commissions, which seat legislators, and said statutes do not override the language of the constitution. He pointed out that the board of regents is one of only four constitutional boards. The boards and commissions listed earlier by Representative Vazquez were created under statute, by the legislature, with enabling legislation to allow for that service/seating. He underscored the significance of the regents being a constitutional board, and said it often takes controversial actions, such as tuition

increases, allocation of declining budgets between campuses and programs, law suits filed/defended, transactions of investment bonds and real estate, and hiring a president. Unhappy parties may, and have, brought legal suit challenges to the board for reasons such as the ones named, he reported. One significant power of the board, which is especially relevant at this time, is the power to reduce or discontinue academic programs and the power to declare financial exigency. These actions permit the university to reduce faculty and staff without the normal constraints or notice periods that are ordinarily required by contracts, law, or regulation. People dissatisfied with decisions in this area will seize on any uncertainty regarding the board's authority and use that uncertainty to delay or disrupt necessary actions. Litigation often ensues during aggressive, reorganizational periods, which is what the university is currently undergoing to meet budgetary demands. During the financial crash that occurred in the 1980's the university underwent a restructuring phase, absorbing the community campus system, which resulted in significant, lengthy litigation, which was sustained by a faculty union. The uncertain legality of seating legislators on the board will provide fodder for opponents of other actions; claim could be brought due to this technicality versus actual merit. Argument would be made that the disagreeable action taken by the board was illegal because some members of the board were illegally seated. The risk of this type of technical challenge outweighs any benefits of increased communication.

[9:23:45 AM](#)

MR. CHRISTENSEN underscored the importance for improved communication, and offered examples of how that might be handled without legislators being seated or enactment of additional legislation. Inner branch advisory commissions exist throughout the state, some are university commissions and seat legislators. When President Jim Johnson assumed office, in 2015, he created the Alaska Higher Education Roundtable, for the purpose of advising him, and the invited membership included business leaders as well as the Alaska House of Representatives and State Senate education and finance committee chairs.

[9:24:51 AM](#)

REPRESENTATIVE COLVER asked for the names of the four boards established by order of the constitution.

MR. CHRISTENSEN responded: University of Alaska Board of Regents, the Judicial Council, the Commission on Judicial Conduct, and the local boundary [commission].

[9:25:26 AM](#)

REPRESENTATIVE DRUMMOND asked when the regent meetings are held.

MR. CHRISTENSEN answered that 5 multi-day meetings are held in February, April, June, September, and December. In addition 15 single day meetings are held throughout the year. The multi-day meetings are held on the three different main campuses, and the single day meetings are often accomplished via telecommunications to minimize travel costs.

[9:26:27 AM](#)

CHAIR KELLER opined that the university appears to hold a low opinion of the legislature. He suggested that the board would be aware of the political presence and any undue partisan concerns would be identified and managed appropriately. Also, he questioned whether there are constitutional prohibitions for seating a legislator.

[9:28:15 AM](#)

MR. CHRISTENSEN cited the roundtable invitation to the chair and his colleagues.

CHAIR KELLER opined on the difference of attending a roundtable, philosophical discussion versus sitting with a decision making body. He acknowledged the concerns for possible complications and enhancement as an invitation for litigation; however, that may not have been tested and remains a theory.

MR. CHRISTENSEN agreed that policy making bodies and advisory bodies are very different, and it's that distinction which the opinions of attorneys general have pointed towards when considering the dual office holding and separation of powers provisions, as well as the insertion of politics beyond the oversight level of the Capitol. The constitution states that the governor shall appoint, and the use of the term "shall" would be held in court as a limitation, he predicted.

CHAIR KELLER maintained that it hasn't been tested in court.

MR. CHRISTENSEN reiterated that a number of attorneys general have issued and held the same opinion for over 40 years that serving on a non-advisory board violates the dual office-holding provision, as well as the separation of powers provision. One Alaska Supreme Court reading cautions close adherence to the dual office-holding provision, with allowances made strictly for military service and service as a member of a constitutional convention. The court has said that, because these two exceptions are made, they are to be held to without expansion. This is a similar provision as is written in the U.S. Constitution and 45 other states, where the topic has undergone extensive litigation. He agreed to provide copies of the opinions to the committee.

[9:31:34 AM](#)

REPRESENTATIVE VAZQUEZ asked whether the constitution prohibits legislators from serving on the Board of Regents.

MR. CHRISTENSEN opined that it's difficult to confine some responses to a non-elaborated yes or no, and said "I believe that yes it does, if I were to limit it to one of those two words."

REPRESENTATIVE VAZQUEZ said, "And that is your interpretation."

MR. CHRISTENSEN responded, "It's also the interpretation of the attorney general going back over 40 years."

REPRESENTATIVE VAZQUEZ asked whether statute prohibits legislators from serving on the Board of Regents.

MR. CHRISTENSEN answered no, because the constitution overrides statute, and the concern is specifically addressed in the constitution.

REPRESENTATIVE VAZQUEZ pointed out that state statute allows members to sit on 13 other boards.

MR. CHRISTENSEN explained that the boards, previously named, were established by legislation. Some are disallowed, he added, and said the ones that are allowed do so primarily because they have not been tested in court. The Board of Regents is held differently than any of those agencies. He reiterated that given the law of unintended consequences, if a union takes issue with any action taken by the Board of Regents and the court upholds that a seated member was serving in violation, it's

conceivable that legislators may be unseated from the other boards and commissions.

[9:34:40 AM](#)

REPRESENTATIVE VAZQUEZ surmised that distinguishing between a voting versus non-voting member is a factor and the objection is to the mere legislative presence.

MR. CHRISTENSEN restated that influence occurs during debate, thus constituting official action.

REPRESENTATIVE VAZQUEZ maintained that every bureaucracy has its own politics.

MR. CHRISTENSEN agreed, and said that is why the framers worked to insulate facets of politics from the Board of Regents.

[9:36:55 AM](#)

CHAIR KELLER closed public testimony.

[9:37:18 AM](#)

REPRESENTATIVE SEATON referred to the committee packet and the three page Legal Services memorandum, dated 3/26/16, with the subject "Constitutionality of HB 357 (Work Order No. 29-LS1520\A), issued by Kate S. Glover, Legislative Counsel, and said it covers the topic of advisory board versus executive action, as well as a detailed explanation of the dual office-holding prohibition, contained in Article 2, Section 5 of the state constitution.

[9:39:15 AM](#)

CHAIR KELLER commented that the issue of whether politics should be involved, and avoidance for including legislators on any board or council is an undefined, overused term to avoid interaction by the legislature. He opined that this puts the legislature at a disadvantage, despite the members being elected officials representing constituents. Partisan politics should not be brought to bear, he opined, and said:

The role of a legislator is much more than that - it's one of communicating and interacting and, frankly, debate. Debate is a way to get to the truth.

9:41:14 AM

REPRESENTATIVE SPOHNHOLZ expressed concern of politics entering into the decisions of the university. Legislative participation appears to be welcomed by the regents; however, a non-voted legislative member would exert an element of influence through the act of participating. Additionally, the means by which the legislators would be selected, is in itself a political action. The bill removes a level of insulation that is important in ensuring a separation of power. The intent for improving communications is commendable, but there may be other vehicles to accomplish that end. The separation of bodies, as outlined in the constitution may be jeopardized by HB 357, and said it's naïve to think that the bill would not inject politics into the deliberations of the Board of Regents.

9:45:29 AM

REPRESENTATIVE DRUMMOND said that, as a member of the Anchorage Municipal Assembly, she was required to resign her seat in order to assume her position at the legislature. She reviewed the regent's 2016 schedule: 15 single day meetings and 5 multi day conferences. In order for a legislator to participate, especially during a 90 day legislative session, the time constraints could prove to be prohibitive and possibly disruptive to the schedule. However, she pointed out, legislative members are not precluded from auditing board meetings.

CHAIR KELLER announced HB 357 as held over.

9:48:18 AM

ADJOURNMENT

There being no further business before the committee, the House Education Standing Committee meeting was adjourned at 9:48 a.m.