

**ALASKA STATE LEGISLATURE
HOUSE EDUCATION STANDING COMMITTEE**

April 1, 2016

8:05 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

MEMBERS PRESENT

Representative Tammy Wilson
Representative Daniel Ortiz

COMMITTEE CALENDAR

HOUSE BILL NO. 298

"An Act relating to school districts; and relating to layoff plans for tenured teachers."

- FAILED TO MOVE 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."

- FAILED TO MOVE OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HB 298

SHORT TITLE: LAYOFF OF TENURED TEACHERS

SPONSOR(s): REPRESENTATIVE(s) TILTON

02/05/16	(H)	READ THE FIRST TIME - REFERRALS
02/05/16	(H)	EDC

03/23/16	(H)	EDC AT 8:00 AM CAPITOL 106
03/23/16	(H)	Heard & Held
03/23/16	(H)	MINUTE (EDC)
03/28/16	(H)	EDC AT 8:00 AM CAPITOL 106
03/28/16	(H)	Heard & Held
03/28/16	(H)	MINUTE (EDC)
04/01/16	(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
03/30/16	(H)	Heard & Held
03/30/16	(H)	MINUTE (EDC)
04/01/16	(H)	EDC AT 8:00 AM CAPITOL 106

WITNESS REGISTER

REPRESENTATIVE CATHY TILTON
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented the proposed committee substitute (CS) for HB 298, as sponsor.

HEATH HILLYARD, Staff
Representative Cathy Tilton
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Provided the changes in the proposed committee substitute (CS) for HB 298, on behalf of Representative Tilton, sponsor.

SUSAN MCCAULLY, PhD, Interim Commissioner
Department of Education and Early Development (EED)
Juneau, Alaska

POSITION STATEMENT: Testified in opposition to HB 357.

DAVID NEES
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 357.

ACTION NARRATIVE

[8:05:16 AM](#)

CHAIR WES KELLER called the House Education Standing Committee meeting to order at 8:05 a.m. Representatives Keller, Talerico, Seaton, Colver, and Drummond were present at the call to order. Representatives Spohnholz and Vazquez arrived as the meeting was in progress.

HB 298-LAYOFF OF TENURED TEACHERS

[8:05:47 AM](#)

CHAIR KELLER announced that the first order of business would be HOUSE BILL NO. 298, "An Act relating to school districts; and relating to layoff plans for tenured teachers." [Before the committee, adopted as a work draft on 3/28/16, was the proposed committee substitute (CS) for HB 298, Version 29-LS1372\W, Glover, 3/24/16.]

[8:05:56 AM](#)

REPRESENTATIVE TALERICO moved to adopt the proposed committee substitute (CS), Version 29-LS1372\H, Wayne/Glover, 3/31/16, as the working document. Without objection Version H was before the committee.

[8:07:18 AM](#)

REPRESENTATIVE CATHY TILTON, Alaska State Legislature, said that the intent of HB 298 is not to jeopardize Alaska's strong tenure rights for teachers. The provisions and rights for teacher tenure are contained in entirely different statutes than the one to which the proposed committee substitute (CS) applies. She cited and synopsised: AS 14.20.150 regards acquisition and reacquisition of tenure rights; AS 14.20.155 is the effect of tenure rites; AS 14.20.158 contains the continued contract provisions; and AS 14.20.160 addresses the loss of tenure right. She emphasized:

This is important to this bill because ... this is the statute that stipulates a teacher layoff status, as covered in HB 298, does not lose their tenure rights.

[8:09:24 AM](#)

REPRESENTATIVE TILTON continued to describe the related statutes: AS 14.20.165 is the restoration of tenure rights; AS 14.20.170 discusses reasons for dismissal; AS 14.20.175 addresses non-retention; and AS 14.20.177 provides for reduction in force, which is the statute proposed for amendment under HB 298.

[8:10:22 AM](#)

REPRESENTATIVE TILTON said the CS addresses the concerns that were expressed through testimony, and the possibility that districts might apply the layoff provision in an indiscriminant fashion. She paraphrased from a prepared statement, which read as follows [original punctuation provided]:

The 29th Legislature is considering a wide range of measures intended to give our municipalities and school districts greater flexibility to address budget shortfall (local control), this is one such measure.

When I sponsored this bill, I reflected on circumstances in businesses that I am involved in. I have had to make the difficult decision to let employees go, often valuable ones that I consider friends, because either the business didn't have sufficient revenue or they lacked the skills necessary to move into a consolidated position. This is the very same situation Alaska's school districts are facing.

I listened carefully to the testimony of our teachers last week and came up with a compromise. By putting sideboards on HB298 to ensure and give teachers comfort that school districts could NOT use the layoff statute in an indiscriminate fashion.

I believe the amendment before the committee achieves that balance.

I very much value Alaska's teachers, but I value our kids more. It is essential that we allow school districts to make those surgical management decisions to ensure that the teachers with the appropriate credentials are the ones instructing our most precious commodity - your children - your grandchildren - our students.

[8:11:46 AM](#)

HEATH HILLYARD, Staff, Representative Cathy Tilton, Alaska State Legislature, directed attention to the CS and said the original approach was to eliminate the two existing triggers; one dealing with school attendance and the other with basic need. The CS retains both of those provisions, previously proposed for deletion, and inserts a third trigger that encompasses the concerns expressed during testimony and adheres more closely to the sponsor's intent. He directed attention to the proposed CS, page 1, lines 9-13, which read as follows:

(3) the school district employs

(A) more tenured teachers who are qualified and available to teach in a specific program or subject area than the district needs; and

(B) an insufficient number of certificated teachers qualified to teach in another program or subject area.

MR. HILLYARD said this trigger is numerically driven, doesn't necessarily result in a net loss of teachers, and, under certain circumstances, allows a teacher to transfer between positions.

[8:13:33 AM](#)

REPRESENTATIVE DRUMMOND asked how the layoff status of a tenured teacher effects the portability of their tenure.

MR. HILLYARD said any teacher in layoff status does not lose their tenure rights. He cited statute proposed for amending, AS 14.20.177(c), which reads as follows:

Sec. 14.20.177. Reductions in force.

(c) Except as provided in this subsection, a school district may place a tenured teacher on layoff status only after the district has given notice of nonretention to all nontenured teachers. However, a school district may retain a nontenured teacher and place on layoff status a tenured teacher if there is no tenured teacher in the district who is qualified to replace the nontenured teacher.

[8:14:41 AM](#)

MR. HILLYARD stressed that the effort is to protect tenure rights while allowing flexibility to the districts.

REPRESENTATIVE DRUMMOND asked whether the length of the layoff status effects tenure.

MR. HILLYARD responded, "No."

[8:15:20 AM](#)

REPRESENTATIVE SEATON stated his understanding that this bill will allow districts to replace teachers, whether there is a reduction in staff or not. Further, the bill modifies AS 14.20.177(a), and he referred to the CS, page 1, lines [3]-5, which read as follows:

- * **Section 1.** AS 14.20.177(a) is amended to read:
 - (a) A school district may implement a layoff plan under this section if it is necessary for the district to reduce the number of tenured teachers because

REPRESENTATIVE SEATON asked for an explanation of how this allows districts to replace teachers, as well as to place qualified teachers appropriately, whether or not there is a reduction in staff. He pointed out that the law being modified is specific to a layoff plan that only applies to reduction of staff.

MR. HILLYARD deferred.

[8:17:52 AM](#)

REPRESENTATIVE VAZQUEZ moved to report the proposed (CS) for HB 298, Version 29-LS1372\H, out of committee with individual recommendations and the accompanying fiscal notes.

[8:18:09 AM](#)

REPRESENTATIVE COLVER objected, and stated that the CS may not align with the statute as expected. Additionally, he maintained that the CS requires further vetting.

[8:18:59 AM](#)

CHAIR KELLER said the bill is not about reduction of force.

[8:19:13 AM](#)

REPRESENTATIVE VAZQUEZ said the intent of the proposed CS was clearly explained: a trigger mechanism exists, the triggers no longer appear to be effective under certain circumstances, and this bill alleviates that situation.

[8:20:39 AM](#)

REPRESENTATIVE COLVER maintained his objection, and said this bill does not provided for a collaborative process. He agreed that problems exist, however, districts are responsible for maintaining an effective teaching staff, as well as other operations. Some of the facilities that have recently been built, require additional maintenance funds, he pointed out, and that has placed a further financial burden on districts. He described situations that currently exist, to illustrate his point. The solution will require a collaborative process, he stressed, not the top-down approach being proposed.

[8:24:14 AM](#)

CHAIR KELLER opined that the bill does provide local control and is not restrictive, which is an argument in favor of the bill.

[8:24:29 AM](#)

REPRESENTATIVE COLVER maintained his objection.

A roll call vote was taken. Representatives Talerico, Vazquez, and Keller voted in favor of CSHB 298. Representatives Drummond, Spohnholz Seaton, and Colver voted against it. Therefore, CSHB 298 failed by a vote of 3-4.

[8:25:16 AM](#)

The committee took a brief at-ease at 8:25 a.m.

HB 357-BOARD OF ED/BOARD OF REGENTS MEMBERS

[8:25:29 AM](#)

CHAIR KELLER announced that the final only 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."

[8:26:33 AM](#)

REPRESENTATIVE TALERICO moved to adopt the proposed committee substitute (CS) for HB 357, Version 29-LS1520\H, Glover, 3/31/16, as the working document. Without objection Version H was before the committee.

[8:26:56 AM](#)

REPRESENTATIVE LIZ VAZQUEZ, Alaska State Legislature, said the CS removes the Board of Regents, as seating two non-voting legislative members, and seats them instead on the State Board of Education and Early Development. She explained that the constitution directly, and explicitly charges the legislature with maintaining a system of state education. Legislators are prohibited from dual office-holding in a position of profit and, she stressed, this bill does not provide compensation for the non-voting seats. The legislators will provide a voice, which may prove critical in times of 90 day legislative sessions. She cited AS 24.05.050, which reads 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.

REPRESENTATIVE VAZQUEZ recalled the previous hearing on HB 357 [3/30/16] and the list of 13 boards and commissions that presently seat members of the legislature. The issue of separation of power is lessened by the fact that the legislators seated on the board will be non-voting. The opinions provided from the attorney general's (AG) office are simply opinions, she stressed, and only a court has the authority to issue a ruling. Neither do the opinions that the AG's have offered address the State Board of Education and Early Development.

[8:30:24 AM](#)

SUSAN MCCAULLY, PhD, Interim Commissioner, Department of Education and Early Development (EED), said the concerns held by the department mirror those presented at the previous hearing of HB 357 [3/30/16] by Chris Christensen, which are: separation of powers doctrine, dual office-holding, and constitutionality of injecting politics into the educational system. These concerns are based on the opinion received from the Department of Law (DOL). The opinion considers it irrelevant whether the members are voting or non-voting. Neither does it speak to the difference between the board of education and the boards and

commissions currently seating legislators. The nuance may be that the board of education is a regulatory board with authority as the head of the department to direct departmental activities, but the legal opinion does not distinguish.

[8:32:05 AM](#)

REPRESENTATIVE COLVER clarified that the boards of education are regulatory bodies, and expressed concern for how it could work out to have a legislator passing statute, as well as contributing to promulgating regulation. He asked whether that type of situation would place into question the legality of the regulations adopted by the board.

DR. MCCAULLY responded that a primary role of the State Board of Education is in passing legislation to implement statute; it lacks the authority to opine on whether a statute should or should not have been adopted. The board then, moves to promulgate regulation to implement the statute. The action of having a legislator work to pass statute, then also work to promulgate regulation to implement the statute, calls into question the prudence of the arrangement.

[8:34:14 AM](#)

CHAIR KELLER said the state board does more than uphold laws, it provides essential direction and guidance.

[8:35:01 AM](#)

DR. MCCAULLY agreed, and said upholding laws is a large part of the board's authority, and is a role which makes it unique among the other task forces or advisory boards.

CHAIR KELLER added that the state board also hears disputes and hires the commissioner.

[8:36:36 AM](#)

REPRESENTATIVE VAZQUEZ asked if there is a court decision in Alaska that prohibits seating a legislator on the board.

DR. MCCAULLY deferred to DOL.

REPRESENTATIVE VAZQUEZ asked whether she is familiar with Title 34, wherein the legislature has the authority to review regulations issued by the departments.

DR. MCCAULLY responded, "No."

[8:37:14 AM](#)

REPRESENTATIVE VAZQUEZ 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, page 3, and paraphrased 9 lines into the last paragraph, which read as follows [original punctuation provided]:

The Alaska Supreme Court has not decided a case addressing this issue, so I cannot provide a definitive analysis.

REPRESENTATIVE VAZQUEZ asked whether the commissioner has had an opportunity to read the opinion.

DR. MCCAULLY responded, "No."

[8:38:34 AM](#)

The committee took a brief at-ease at 8:38 a.m.

[8:38:41 AM](#)

CHAIR KELLER opened public testimony.

[8:40:55 AM](#)

DAVID NEES, stated support for HB 357, and said having a non-voting member on the board to improve communication would be helpful. He asked, rhetorically whether members have had occasion to attend meetings of the Alaska State Board of Education [a majority of heads nodded]. It's time that the legislature be at the meetings and send a strong message of intended involvement.

CHAIR KELLER noted the unanimous nodding of members heads, to the witness' question.

[8:43:09 AM](#)

REPRESENTATIVE VAZQUEZ asked for Mr. Nees background.

MR. NEES said he taught mathematics in the Anchorage School District (ASD) for 28 years, served on the Sustainable Education Task Force, and volunteers with the Alaska Policy Forum on Education, with a focus on historical issues.

[8:43:48 AM](#)

CHAIR KELLER closed public testimony.

[8:44:00 AM](#)

REPRESENTATIVE SEATON said the constitution may have been misread for purposes of HB 357, and referred to Article 2, Sec. 5, which read:

No legislator may hold any other office or position of profit under the United States or the State.

REPRESENTATIVE SEATON pointed out that this statement addresses two items: position of profit, and dual office-holding. He opined that the commonsense reading indicates that the school board is an office, and being a seated member would clearly be in violation of the dual office-holding prohibition. Additionally, if the legislator exercises executive branch powers or duties, the action is likely to violate the separation of powers doctrine. The Board of Regents are an executive branch board, and this would be a clear violation of that doctrine. It would be a similar action to a legislator being appointed as a deputy commissioner or other departmental head. A connection should be noted of how the legislature is responsible for establishing and ensuring the mission of each department. He described a scenario of a single legislator being seated on the State Board of Education, representing either party, entering into negotiations, participating on the board and charged with implementing statute, while being a member of the legislative body in control of the budget. As a participating, non-voting, board member, debating opinion, there will be a significant amount of influence held by the seat. Although it may not have been proven as unconstitutional, the action appears to fly in the face of the oath as sworn to by legislative members to uphold the state constitution. Opinions have been received from both the executive and legislative branch stating that the action represents a dual office-holding situation, he stressed, and said he cannot support the bill.

[8:48:29 AM](#)

CHAIR KELLER noted that constitutional discussions can be lively and stimulate strong opinions. He pointed out that the AG is appointed by the governor, and said some situations require being tested in court. He stated support for the bill.

[8:50:42 AM](#)

REPRESENTATIVE TALERICO said the non-voting status changes the picture, and is what defines how the statute is applied.

[8:52:01 AM](#)

REPRESENTATIVE COLVER said that regarding education policy, it is made via the authority of the committee members. He suggested this bill puts members on both sides of the table, and it negates the division that maintains actions to be above reproach. Further, it is important to reconcile the AG opinions that have been issued. The bill puts at risk the entire board process and ties up decisions while the court debates the legality. Appropriate policy influence is held by the committee, he opined, and stated opposition to HB 357.

[8:55:54 AM](#)

REPRESENTATIVE TALERICO moved to report the proposed committee substitute (CS) for HB 357, Version 29-LS1520\H, Glover, 3/31/16, out of committee with individual recommendations and the accompanying fiscal notes.

[8:56:15 AM](#)

REPRESENTATIVE SEATON objected.

[8:56:20 AM](#)

REPRESENTATIVE SEATON added that the appointment procedure is specified in the bill indicating that one person will be selected by the Speaker of the House to serve on the board. Thus, the House seat is handled through an elected or decisional process other than the speaker's selection.

[8:57:28 AM](#)

CHAIR KELLER pointed out that the Speaker of the House is selected by the majority of the legislature.

[8:57:37 AM](#)

The committee took a brief at-ease at 8:57 a.m.

[8:57:44 AM](#)

REPRESENTATIVE SEATON maintained his objection.

A roll call vote was taken. Representatives Talerico, Vazquez, and Keller voted in favor of CSHB 357. Representatives Spohnholz, Seaton, Colver, and Drummond voted against it. Therefore, CSHB 357 failed by a vote of 3-4.

[8:59:02 AM](#)

ADJOURNMENT

There being no further business before the committee, the House Education Standing Committee meeting was adjourned at 8:59 a.m.