

**ALASKA STATE LEGISLATURE
HOUSE STATE AFFAIRS STANDING COMMITTEE**

March 22, 2016

8:18 a.m.

MEMBERS PRESENT

Representative Bob Lynn, Chair
Representative Wes Keller, Vice Chair
Representative Louise Stutes
Representative David Talerico
Representative Liz Vazquez
Representative Jonathan Kreiss-Tomkins
Representative Ivy Spohnholz

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 299

"An Act excluding certain persons from participating in the Public Employees' Retirement System of Alaska."

- MOVED HB 299 OUT OF COMMITTEE

HOUSE BILL NO. 275

"An Act establishing the second Monday of October of each year as Indigenous Peoples Day."

- MOVED CSHB 275 (STA) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HB 299

SHORT TITLE: PERS PARTICIPATION: CONTRACTORS

SPONSOR(S): REPRESENTATIVE(S) WILSON

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|----------|-----|---------------------------------|
| 02/05/16 | (H) | READ THE FIRST TIME - REFERRALS |
| 02/05/16 | (H) | STA, L&C |
| 03/22/16 | (H) | STA AT 8:00 AM CAPITOL 106 |

BILL: HB 275

SHORT TITLE: INDIGENOUS PEOPLES DAY

SPONSOR(S): REPRESENTATIVE(S) DRUMMOND

01/25/16 (H) READ THE FIRST TIME - REFERRALS
01/25/16 (H) STA
02/09/16 (H) STA AT 8:00 AM CAPITOL 106
02/09/16 (H) -- MEETING CANCELED --
03/22/16 (H) STA AT 8:00 AM CAPITOL 106

WITNESS REGISTER

REPRESENTATIVE TAMMY WILSON
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 299, as prime sponsor.

MITCH FLYNN, Fire Chief
Steese Volunteer Fire Department (SVFD)
Fairbanks, Alaska

POSITION STATEMENT: Testified in support of HB 299.

KATHIE WASSERMAN, Executive Director
Alaska Municipal League (AML)
Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 299.

DAN WAYNE, Attorney
Legislative Legal Counsel
Legislative Legal and Research Services
Legislative Affairs Agency (LAA)
Juneau, Alaska

POSITION STATEMENT: Answered questions on HB 299.

REPRESENTATIVE HARRIET DRUMMOND
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 275, as prime sponsor.

ELIZABETH MEDICINE CROW, President/CEO
First Alaskans Institute
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 275.

CONNIE MUNRO
Alaska Native Sisterhood (ANS) Camp 2
Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 275.

KATHERINE HOPE
Alaska Native Sisterhood (ANS) Camp 2

Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 275.

JUNE DEGNAN, Chair

Haven House

Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 275.

ACTION NARRATIVE

[8:18:25 AM](#)

CHAIR BOB LYNN called the House State Affairs Standing Committee meeting to order at 8:18 a.m. Representatives Talerico, Stutes, Keller, Vazquez, Spohnholz, and Lynn were present at the call to order. Representative Kreiss-Tomkins arrived as the meeting was in progress.

HB 299-PERS PARTICIPATION: CONTRACTORS

[8:19:22 AM](#)

CHAIR LYNN announced that the first order of business would be HOUSE BILL NO. 299, "An Act excluding certain persons from participating in the Public Employees' Retirement System of Alaska."

[8:19:44 AM](#)

REPRESENTATIVE TAMMY WILSON, Alaska State Legislature, as prime sponsor of HB 299, read the following sponsor statement [original punctuation provided]:

HB 299, is being brought forward on behalf of the 501(C)3, nonprofit corporation volunteer fire departments within the Fairbanks North Star Borough, operating as "independent contractors". They are currently under contract with the borough to provide emergency response services. Each nonprofit fire department has both full time paid employees and trained volunteers as emergency responders. Each of these organizations provides benefit plans for all members. Dolan vs King County was a lawsuit between the County and independent non-profit organizations which provided indigent legal services to the county. Over a period of thirty years, King County asserted increasing budgetary and day to day authority over the

formerly independent non-profit organizations. In doing so, it asserted more control over the groups that provided the services. Employees of the organizations sued the County for the state employee benefits. They argued that the County's funding and control over their "independent" organizations essentially made them state employees for the purposes of participating in the Public Employees Retirement System (PERS) and under pertinent statutes and common law principles, the Supreme Court agreed that employees of the organizations were "employees" under state law, and, as such, were entitled to be enrolled in the PERS. HB 299 would clearly define who is eligible for the Public Employees' Retirement System of Alaska and give added protection to municipalities against such liability. In times of such fiscal strife this legislation would encourage the exploration and utilization of cost effective measures for services and promote independent organizations and business. This bill emphasizes the need, however, to maintain the proprieties of the independent relationship when contracting for the provision of essential public service.

REPRESENTATIVE WILSON noted during her reading of the sponsor statement that the benefit plans provided by the fire departments of the Fairbanks North Star Borough (FNSB) to their members include both health and retirement benefits.

[8:22:11 AM](#)

REPRESENTATIVE WILSON directed the committee members' attention to the letter from Kathie Wasserman, Executive Director, Alaska Municipal League (AML), and Attachment C of the Alaska Municipal League's Resolution #2016-08, both in the committee packet. She explained that within FNSB are fire service areas with mil rates to cover the services. She offered that the mil rates vary from area to area, and some areas have no fire protection service because they are unwilling to pay the extra cost.

REPRESENTATIVE WILSON purported that HB 299 would give the residents a choice of the level of fire protection service for which they are willing to pay as opposed to the municipality making that determination through the budgetary process. She read Attachment C, which read as follows [original punctuation provided]:

1.c. The risk of significant costs if government contractors were treated as employees qualified for inclusion in PERS or TRS.

3.a. Municipalities, particularly smaller municipalities in Alaska, often contract for government services; and

3.b. A municipality contracting for governmental services may, in order to ensure that public services are provided in a manner acceptable to the community, exercise more control over the contractor than what is normally seen in a purely contractual basis;

REPRESENTATIVE WILSON added that the main service areas in Fairbanks are the fire service areas and the road service areas. She alleged that FNSB has made it clear that it would like to take over the fire service areas and combine them into one service area. Ms. Wilson expressed her belief that fire protection services would not be better with this change but would just cost more. She voiced her support of smaller fire service areas with local control; however, she conceded that the buildings and equipment are owned by FNSB, not by the fire service areas. She stated her preference that FNSB give the buildings and equipment to the fire service areas.

[8:25:29 AM](#)

REPRESENTATIVE WILSON continued reading Attachment C of the Alaska Municipal League's Resolution #2016-08, under number 3, which read as follows [original punctuation provided]:

c. The Supreme Court of the State of Washington ruled in 2012 that employees of several private non-profit public defender agencies that provided services to King County by contract, were employees of the King County for purposes of the Washington PERS, resulting in a \$31 million PERS liability for King County; and

d. The Washington State Legislature subsequently modified the Washington State PERS statute to clarify that a governmental contractor is not an employer for purposes of the Washington State Retirement System, and that employees of governmental contractors are not eligible for state retirement system membership.

e. The Washington legislation also clarifies that the determination of whether an employee/employer relationship exists under the Washington State PERS is limited solely to the relationship between the government contractor employee and the retirement

system employer, and not the relationship between a government contractor and retirement system employer.

f. The unexpected and unplanned addition of employees entitled to potentially years of retroactive service credit in a governmental retirement plan like PERS, may adversely impact not only the particular employer, but all the participants in the system.

g. The intent in establishing Alaska's PERS was not to provide a retirement system to employees of government contractors.

REPRESENTATIVE WILSON emphasized that the proposed legislation would not eliminate anyone from PERS, as the FNSB fire department employees and volunteers receive benefits under the fire department's benefit plan.

[8:27:58 AM](#)

The committee took a brief at-ease at 8:28 a.m.

[8:28:12 AM](#)

MITCH FLYNN, Fire Chief, Steese Volunteer Fire Department (SVFD), stated that the Steese Volunteer Fire Department (SVFD) is a 501(c)(3) organization that contracts independently with FNSB to provide fire services and emergency medical services (EMS) to a pre-defined service area. He said that in recent years FNSB has notified SVFD concerning problems with the contract that could pose a financial liability to the fire and EMS service area's tax-paying residents. He said FNSB has made changes to the contract to reduce the liability threat; however, SVFD is concerned that there still exists a liability threat related to the possibility of current or past employees suing for PERS benefits because of the way the contracts were administered.

MR. FLYNN stated his belief that HB 299 would eliminate the threat to PERS and prevent employees currently not in PERS from receiving PERS benefits. He asserted that it is not the intent of the bill to interfere with the contracts or remove employees currently eligible to receive benefits from PERS. He cited examples of fire departments providing contractual services to FNSB and rightfully being in the PERS system, and he stated that they should remain so. He maintained that SVFD has its own retirement system and was never expected to participate in the state PERS system. He reiterated his support for protecting PERS for those legally entitled to it.

[8:31:34 AM](#)

REPRESENTATIVE VAZQUEZ asked Mr. Flynn how many volunteers he supervises.

MR. FLYNN responded that he supervises approximately 28 volunteers and 10 paid employees.

REPRESENTATIVE VAZQUEZ asked if the ten employees are eligible for PERS.

MR. FLYNN answered that SVFD has its own retirement system and is not in PERS. He said the benefits consisted of an IRA 401(k) plan, full medical benefits, accidental death and dismemberment benefits, catastrophic incidence benefits, and Workers' Compensation Insurance.

REPRESENTATIVE VAZQUEZ asked for confirmation that Mr. Flynn's interest in the proposed legislation is to ensure that independent contractors would not be included in PERS.

MR. FLYNN responded that his testimony is that his current and past employees are not a legal threat to PERS as they have their own benefit plan.

[8:33:39 AM](#)

REPRESENTATIVE TALERICO asked if the SVFD contract with FNSB addresses the use of FNSB facilities.

MR. FLYNN confirmed that FNSB owns the equipment and the building, and the contract allows SVFD the use of them. Other fire departments own or rent equipment and buildings according to how contracts were set up 30 years ago.

[8:34:51 AM](#)

REPRESENTATIVE STUTES asked the sponsor if there is any opposition to HB 299.

REPRESENTATIVE WILSON responded that the University Fire Department (UFD) expressed concern, but she added that for UFD, the fire services contract is between the university and FNSB; therefore, the employees would remain in PERS.

[8:35:56 AM](#)

KATHIE WASSERMAN, Executive Director, Alaska Municipal League (AML), stated that PERS has been AML's most important issue recently and cited Senate Bill 125 and House Bill 385 as examples of legislation increasing liability for municipalities. She said that due to concern about changes to PERS and taking on more debt, AML supports HB 299.

[8:37:23 AM](#)

REPRESENTATIVE VAZQUEZ asked in what way PERS has become one of the major issues for AML.

MS. WASSERMAN answered that municipalities are incurring increasing amounts of debt due to PERS liability and the smaller communities cannot afford it. She also mentioned that she has heard rumors that the municipality percentage of the PERS liability, currently at 22 percent, may be increased.

REPRESENTATIVE VAZQUEZ asked why AML specifically supports HB 299.

MS. WASSERMAN responded that municipalities cannot afford a court decision like the Dolan v. King County decision against King County, which added another group of people - the independent contractor - to the retirement benefit pool.

[8:39:46 AM](#)

REPRESENTATIVE TALERICO asked if Ms. Wasserman agreed that the large number of contract workers all over Alaska increases concern for the municipalities that these workers could suddenly qualify for benefits.

MS. WASSERMAN answered, "Exactly."

REPRESENTATIVE TALERICO reiterated that the PERS liability is always a big concern for the smaller municipalities.

[8:42:03 AM](#)

REPRESENTATIVE KELLER related a story about a constituent supplementing his income by teaching part time, who was required to have health care insurance through his employer rather than stay on his own plan, because of the Affordable Care Act.

MS. WASSERMAN responded that she was not aware of such a scenario.

[8:44:07 AM](#)

REPRESENTATIVE VAZQUEZ asked for clarification of HB 299 as it related to Mr. Flynn's testimony.

REPRESENTATIVE WILSON offered her understanding that Mr. Flynn's testimony was that SVFD employees don't need to be in PERS since they have their own benefits. She stated that the intent of the proposed legislation was to be proactive in light of what could happen as evidenced under Dolan v. King County, [WA. Sup. Ct. Docket No. 82842-3 (Washington State Supreme Court, August 18, 2011)].

REPRESENTATIVE VAZQUEZ asked if an independent contractor working for SVFD could decide to be part of the SVFD retirement system.

REPRESENTATIVE WILSON replied that she thought not.

[8:46:56 AM](#)

DAN WAYNE, Attorney, Legislative Legal Counsel, Legislative Legal and Research Services, Legislative Affairs Agency (LAA), responded to the question from Representative Vazquez by distinguishing between a private retirement plan, which comes under federal jurisdiction, and a public retirement plan, which could be changed by the state.

REPRESENTATIVE VAZQUEZ asked Mr. Wayne if an independent contractor working for SVFD could sue to be included in the SVFD retirement system.

[8:48:39 AM](#)

MR. WAYNE responded that a contract employee would be free to sue and, just like Dolan, the court could determine whether the person was an employee under common law or was, in fact, a contractor. The issues considered would be the control of the employer over the contractor's activities and the facts of their relationship.

REPRESENTATIVE VAZQUEZ asked whether a local government, with its own retirement system, would have the same vulnerability as PERS under Dolan.

MR. WAYNE responded that if a local government had its own retirement system instead of PERS, the state could not pass a law without running the risk that the law could be preempted by federal law.

[8:51:03 AM](#)

REPRESENTATIVE VAZQUEZ asked Ms. Wasserman what retirement systems exist within the municipalities other than PERS.

MS. WASSERMAN responded that most municipal retirement systems are under PERS, adding that it is costly to withdraw from the PERS system. She offered that a few municipalities did not sign up with PERS in the beginning, and she stated her belief that most of those municipalities offer no retirement system. She mentioned that she has recommended Nationwide and the International City/County Management Association to municipalities not covered under PERS.

[8:52:15 AM](#)

REPRESENTATIVE VAZQUEZ asked Mr. Wayne whether, even if HB 299 was passed, a municipality that factually controls all activities of an independent contractor could still be ordered by a court to award retirement benefits because of overreaching by the local government. She suggested that the proposed legislation would not prevail in every situation.

MR. WAYNE responded that HB 299 clarifies what is intended under PERS but doesn't eliminate the common law principle. He offered that an employer's degree of control over a worker is a critical factor in settling the question of whether they are an employee.

[8:53:56 AM](#)

REPRESENTATIVE VAZQUEZ agreed that HB 299 should not cover outright employment situations. She said that HB 299 clarifies the issue, but she maintained that municipalities should be aware that if they exert too much control over independent contractors, then this statute would not help them [avoid being sued for retirement benefits].

REPRESENTATIVE TALERICO asked how road service areas are managed.

REPRESENTATIVE WILSON responded that there are over 100 road service areas in FNSB, managed by local volunteer boards, and road work is done by private contractors.

[8:56:45 AM](#)

REPRESENTATIVE WILSON asked Mr. Wayne if the proposed legislation would affect legislative staff under contract with the state.

MR. WAYNE responded that he did not believe so. He paraphrased AS 24.10.060(f), which read, "An employee of the legislative branch of state government who is employed under a personal services contract is not entitled to membership in the public employees' retirement system (SD 39.35) for employment under the contract."

CHAIR LYNN closed public testimony on HB 299.

[8:58:14 AM](#)

REPRESENTATIVE STUTES voiced her support for HB 299 and noted the impact that PERS can have on small communities.

REPRESENTATIVE SPOHNHOLZ stated that she also supported HB 299 and reiterated Representative Vazquez's concern about the overreach and over-mandating of government in regard to private contracts.

REPRESENTATIVE VAZQUEZ said that she strongly supports HB 299. She cautioned that if a local government exerts too much control over independent contractors, it then can become an employer.

[9:00:45 AM](#)

REPRESENTATIVE KELLER moved to report HB 299 out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HB 299 was reported from the House State Affairs Standing Committee.

[9:00:53 AM](#)

The committee took an at-ease from 9:01 a.m. to 9:07 a.m.

HB 275-INDIGENOUS PEOPLES DAY

[9:07:15 AM](#)

CHAIR LYNN announced that the final order of business would be HOUSE BILL NO. 275, "An Act establishing the second Monday of October of each year as Indigenous Peoples Day."

[9:07:18 AM](#)

REPRESENTATIVE HARRIET DRUMMOND, Alaska State Legislature, as prime sponsor of HB 275, stated that at a time when Alaska is facing an unprecedented economic crisis, "let's remember those who have gone before us and who faced far greater challenges than we do, and who adapted, and engineered, and created, and survived." She said that "indigenous people have ties to the landscape that are immeasurable and are reflected in their spirituality, culture, and life." Representative Drummond said that Alaska's indigenous people include the Dena'ina and Kenaitze of Southcentral Alaska, the Chugachmuit, Eyak, and Alutiiq people of the Alaska Peninsula and Kodiak Island, the many Athabascan tribes of the Interior, the Inupiaq of the Northwest Arctic and North Slope, the Yupik and Chupik people of Western Alaska, the Aleut people of the Aleutian chain and the Pribilofs, and the Tlingit, Haida, and Tsimshian of Southeast Alaska. She continued as follows:

Our history as Americans is one of interactions between peoples of many cultures: some of these interactions have been violent; some interactions have been borne of mutual misunderstanding; and some have given birth to the cultural, societal, and civic ties that we share as Americans and as Alaskans.

REPRESENTATIVE DRUMMOND went on to say that America was built by indigenous people, explorers, pioneers, settlers, and immigrants, whose descendants live in the world their ancestors made. She said the celebration of Columbus Day recognizes "just one shared piece of our shared story." The proposed legislation would broaden recognition to also include "the indigenous people of North America and around the world who have weathered great indignities and dire circumstances and have emerged as key leaders, role models, and partners around the globe and here in Alaska."

REPRESENTATIVE DRUMMOND stated that HB 275 would establish Indigenous Peoples Day "to remember, not just our debt to and respect for Alaska's first people, but to acknowledge our shared destiny as we confront our challenges today." She mentioned that Governor Walker proclaimed the second Monday in October as

Indigenous Peoples Day for 2015, and the proposed legislation would establish Indigenous Peoples Day as a yearly tradition.

[9:11:15 AM](#)

ELIZABETH MEDICINE CROW, President/CEO, First Alaskans Institute, testified in support of HB 275 on behalf of the First Alaskans Institute. She thanked Representative Drummond and her staff for their work on the proposed legislation. She stated her belief that establishing Indigenous Peoples Day would commemorate the legacy of the indigenous people in Alaska throughout their 10,000-year history. She maintained that Alaska is home to the largest population of indigenous people in the United States; indigenous people make up almost 20 percent of the state's population. She suggested that HB 275 would have importance nationally, as well as, in Alaska. She reiterated Representative Drummond's claim that "the indigenous peoples across the world have played significant roles in shaping the landscape and the destiny of their land, and in Alaska, embracing the indigenous peoples and the history and the legacy that we have here is an embracing of not just our past but also our future."

[9:14:04 AM](#)

MS. MEDICINE CROW, in response to Chair Lynn, stated that the First Alaskans Institute is a nonprofit organization that represents Alaska Natives and is involved in leadership development, policy, and community engagement.

[9:14:58 AM](#)

CONNIE MUNRO, Alaska Native Sisterhood (ANS) Camp 2, stated that she was testifying in support of HB 275 on behalf of the ANS Camp 2 legislative committee. She emphasized the importance of HB 275 to the Tlingit community and the non-Tlingit community as ANS and Alaska Native Brotherhood (ANB) are open to anyone. She maintained the importance of recognizing Alaska Natives as partners in life. She lamented that the second verse of the Alaska Flag song, recognizing Alaska Natives, was never made official by the governor. She emphasized the importance of Indigenous Peoples Day, especially in October when it could be recognized in the schools. She urged full support from the House of Representatives and the Senate for HB 275.

[9:19:24 AM](#)

KATHERINE HOPE, Alaska Native Sisterhood (ANS) Camp 2, stated that she supports HB 275 and wants her children and grandchildren to be recognized on Indigenous Peoples Day and be proud of who they are. She said that she was taught respect for all Native clans at Sheldon Jackson High School. She also said that she is a lead host for Mount Roberts Tramway and promotes indigenous people of Alaska to tourists from all over the world.

[9:21:35 AM](#)

JUNE DEGNAN, Chair, Haven House, stated that Haven House, in Juneau, Alaska, is a transitional home for women. She opined that it is important for people to recognize that Alaska is the home of Alaska Natives. She went on to say that her father, Frank A. Degnan, was the co-founder of Alaska Federation of Natives (AFN) and the first Yupik elected to the territorial legislature. She expressed her belief that the indigenous people are in the background in Alaska. She cited the role of AFN in securing title to 44 million acres of land for 12 Native corporations and 200 tribes. She emphasized the importance of the state recognizing the partnership with Alaska Natives, especially in light of the budget deficit. She claimed that as a teacher and professor, she was unable to be hired in Alaska due to racism. She urged the state to engage all Alaskans as equal partners and stated her belief that recognizing a day honoring indigenous peoples will help toward that end. She cited the high incarceration rates of Alaska Natives - 48 percent of the incarcerated population - to explain her motive for forming her own 501(c)(3) to start Haven House.

[9:25:44 AM](#)

MS. DEGNAN, in response to Chair Lynn, reaffirmed that she was unable to secure a job with the state and stated that she has Master's degrees both in library information science and public administration.

CHAIR LYNN, after ascertaining no one wished to testify, closed public testimony on HB 275.

[9:27:08 AM](#)

REPRESENTATIVE KELLER moved to adopt Amendment 1, which read as follows:

Page 1, line 1:

Delete "**the second Monday of October of each year**
as"

Page 1, line 6:
Delete "second Monday"
Insert "18th day"

Page 1, line 6, following "year":
Insert ", also known as Alaska Day"

CHAIR LYNN objected for purpose of discussion.

REPRESENTATIVE KELLER expressed his recognition of the pain and frustration of indigenous people. He conceded that Alaska Natives have had a tremendous influence on shaping Alaska. He noted his positive interactions with Alaska Natives during the summers he spent in communities in the North Slope Borough. He mentioned specific Alaska Native individuals who shaped Alaska, including Walter Sobeloff and Samuel Simmonds. Representative Keller explained that the proposed amendment would change the title of HB 275 and the day of recognition for Indigenous Peoples Day to the 18th day of October, which is also known as Alaska Day.

[9:33:20 AM](#)

REPRESENTATIVE STUTES stated her support for the date change and expressed her belief that HB 275 would give significant recognition to Native people and their contributions. She related the experiences of her grandparents as teachers in Native communities in Alaska in the '20s.

[9:35:26 AM](#)

REPRESENTATIVE KREISS-TOMKINS asked if the sponsor of HB 275 had thoughts on Amendment 1.

REPRESENTATIVE DRUMMOND offered her support for the date change in the proposed amendment.

CHAIR LYNN removed his objection to Amendment 1. There being no further objection, Amendment 1 was adopted.

REPRESENTATIVE KELLER moved to report HB 275, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 275(STA) was reported out of the House State Affairs Standing Committee.

9:37:35 AM

ADJOURNMENT

There being no further business before the committee, the House State Affairs Standing Committee meeting was adjourned at 9:37 a.m.