

HOUSE FINANCE COMMITTEE
March 26, 2019
9:00 a.m.

9:00:05 AM

CALL TO ORDER

Co-Chair Wilson called the House Finance Committee meeting to order at 9:00 a.m.

MEMBERS PRESENT

Representative Neal Foster, Co-Chair
Representative Tammie Wilson, Co-Chair
Representative Jennifer Johnston, Vice-Chair
Representative Dan Ortiz, Vice-Chair
Representative Ben Carpenter
Representative Andy Josephson
Representative Gary Knopp
Representative Bart LeBon
Representative Kelly Merrick
Representative Colleen Sullivan-Leonard
Representative Cathy Tilton

MEMBERS ABSENT

None

ALSO PRESENT

Nancy Meade, General Counsel, Alaska Court System; Lynn Gattis, Staff, Representative Tammie Wilson; Remond Henderson, Staff, Representative Tammie Wilson.

PRESENT VIA TELECONFERENCE

Russel Sampson, Self, Wasilla

SUMMARY

HB 48 TEMP STATE EMPLOYEES IN PART EXEMPT SVCE

HB 48 was HEARD and HELD in committee for further consideration.

HB 77 NUMBER OF SUPERIOR COURT JUDGES

HB 77 was HEARD and HELD in committee for further consideration.

Co-Chair Wilson reviewed the meeting agenda.

#hb77

HOUSE BILL NO. 77

"An Act relating to the number of superior court judges in the third judicial district; and providing for an effective date."

9:01:00 AM

NANCY MEADE, GENERAL COUNSEL, ALASKA COURT SYSTEM, relayed that the bill had been put forward by the Alaska Court System. She noted it was not very common for the courts to put legislation forward. She explained that the Court System needed legislative authorization to change the number of superior court judges. The legislation would increase the number of superior court judges by two (from 43 to 45 statewide) in the third judicial district. The court hoped to convert two existing district court judgeships located in Homer and Valdez to superior court judgeships. She explained that Homer and Valdez were the only locations in Alaska with a single judge who was a district court judge.

Ms. Mead detailed that superior court judges had general jurisdiction and could handle anything that came into the trial court. Their caseload was primarily comprised of felonies, child in need of aid (CINA) cases, divorce and child custody issues, and probate (such as mental commitments); superior court judges could handle anything that came in the door. In contrast, a district court judge had limited jurisdiction and could not handle felonies, CINA, divorce and child custody issues. The reason to convert the seats was to provide judges in Homer and Valdez expanded jurisdiction that would enable them to handle all cases locally.

Ms. Mead reported the timing for the change was ideal. The Valdez seat was vacant - the previous district court judge had been appointed as the new superior court judge in Juneau (as a result of legislation passed the previous

session that authorized the change for a Juneau judge). The district court judge in Homer had announced her retirement effective at the end of the fiscal year. She explained that if the bill passed, the Alaska Judicial Council would advertise the positions as superior court judge seats rather than district court judge seats.

Ms. Mead explained the current process in Homer in the absence of a superior court judge. She detailed that the district court judge handled all district court matters, but superior court cases (e.g. child in need of aid, divorce cases, and felonies) were handled by Kenai superior court judges traveling to Homer. Kenai judges had traveled to Homer 35 times in the past two years - their default schedule was to travel to Homer one week per month. She noted that the situation was not ideal. She elaborated that the situation could be rectified and improved by having a local judge with the ability to handle all filings.

[9:04:29 AM](#)

Ms. Mead addressed the situation in Valdez. The district court judge who had been in Valdez a lengthy period of time and had substantial experience and willingness had a temporary appointment by the state supreme court to handle numerous, but not all, superior court matters. She elaborated that sometimes Palmer or Anchorage judges would travel to Valdez. She explained that if a new [permanent district court] judge was appointed to the Valdez position by the supreme court, it was unlikely they would be appointed to handle any of the felony, divorce, and CINA cases. She suggested it was the time to fix the situation and rectify the inefficiencies.

Ms. Mead detailed that the Alaska Supreme Court had tried numerous ways to make the situation better. She elaborated that the Kenai and Homer courts were connected by video equipment and in the past couple of years more hearings could be held [via video] by the Kenai superior court judge while the defendant (e.g. in a felony or CINA case) was in the Homer court room. She noted that videoconferencing was not satisfactory for numerous proceedings; in many cases the parties needed to see the judge and the judge needed to see what was going on in the courtroom. She explained that videoconferencing was not a permanent or ideal solution.

Ms. Mead reported that the courts had tried having judges (who may have lighter caseloads) travel from other courts. The state supreme court was always looking at metrics for case filings and positions and trying to move things around as necessary, perhaps with temporary or traveling judges. However, due to the retirement in Homer and vacancy in Valdez, the courts were hoping to fix the problem to avoid inefficiency going forward.

[9:06:50 AM](#)

Representative LeBon asked about the differences in the qualifications, education, and training between the district and superior court judges.

Ms. Mead answered that there were minimum qualifications requiring superior and district court judges to be a resident and have a law degree. She believed superior court judges had to be actively practicing law for five years prior to applying. She thought the length of time may be four years for district judges.

Representative LeBon observed the stated difference was not major. He surmised that elevating oneself from a district court judgeship position to a superior court position was not a huge leap in terms of qualifications.

Ms. Mead replied that the statutory minimum qualifications were not substantially different; however, the workload was very different. She elaborated that often the advertisement for the positions attracted different types of candidates. There was a different pace in the two courts - the superior court required the writing of considerably more opinions and district court required a fast turnover of a large number of cases.

[9:08:18 AM](#)

Representative Knopp asked if the appointment process was the same for the [superior court and district court judgeship] positions. He asked if the Judicial Council would nominate three candidates for the positions.

Ms. Mead answered in the affirmative. She detailed that advertisements for any judgeship position went through the Judicial Council and the council needed to nominate at least two highly qualified people for each judgeship.

Representative Knopp asked for verification that at least four nominees would be forwarded for consideration.

Ms. Mead replied that the Judicial Council conducted the work by seat; therefore, the council would nominate at least two individuals for Valdez and in a separate process it would nominate at least two individuals for Homer.

Representative Knopp asked if the seats would be filled mid to late summer. Ms. Mead agreed and specified it took four to six months to fill a seat.

Representative Josephson provided a hypothetical scenario where a person filed an action in Homer. He asked if the person had the discretion to file action in Kenai instead. For example, he wondered if a person had to file in Homer if the act or events occurred in Seldovia.

Ms. Mead believed the person could file in Kenai or Homer.

Representative Josephson asked how the bill would impact the workloads of the public defenders, human services attorneys, and district attorneys.

Ms. Mead replied that it would not change workload because the bill had no impact on the number of cases filed. However, the bill could change the location where cases were handled. She believed the attorneys would be pleased to have the cases covered in those locations [Homer and Valdez] because perhaps it would involve less travel. She noted she would not speak for the agencies. She added that currently a felony filed in Homer was heard in Homer, but it required a Kenai judge to travel to Homer for the hearing. She considered that the bill may not have a significant impact on the agencies.

[9:10:45 AM](#)

Vice-Chair Ortiz asked about the net fiscal impact on the Court System if the bill passed. He recognized that a superior court judge would be paid more but there would be less travel.

Ms. Mead replied there was a fiscal note showing the difference in salary and benefits (a superior court judge was paid more than a district court judge). The note

included travel savings, which would occur primarily because Kenai judges would no longer travel to Homer. The total net impact was \$62,000 per year.

Vice-Chair Johnston noted that the supreme court had made the same change in Juneau [converting a district court judgeship seat to a superior court seat]. She thought it appeared people believed the change had been successful. She asked whether data had been collected in terms of time savings or effectiveness.

Ms. Mead replied that the data was not available; it was not possible to track how much more effective the Juneau court was. The sense was the Juneau court was working more efficiently and effectively because with the results of legislation the previous year there were three superior court judges and one district court judge. The bill had moved one district court judgeship seat up to a superior court seat. She reported that the flow of cases in the superior court had been good. The court did not have data showing whether precise cases were being resolved faster, but the sense was it was more efficient.

[9:13:06 AM](#)

Vice-Chair Johnston asked if there was a difference in backlog.

Ms. Mead thought there may not be a difference yet. She relayed that the new superior court judge had started a couple of months earlier and the coming Friday would be his formal installation. The sense was that things were working more efficiently.

Representative Carpenter understood the superior court in Kenai was backlogged and that it would be beneficial for Kenai if its judge did not have to travel one week per month. He asked if the Homer need for superior court cases equaled a full-time superior court judge. He wondered if the judge would have free time to help with other cases on the Kenai Peninsula.

Ms. Mead answered that the caseload in Homer was not so high that it would justify a full superior court judge, but the appointee would handle all of the district court filings as well. If the judge had extra time the plan was to provide increased flexibility to allow the judge help in

other locations (the Valdez superior court judge could help in Palmer and the Homer judge could help in Kenai to the extent feasible).

Representative Carpenter remarked that the fiscal note included savings in travel. He asked if the savings would not materialize because the new superior court judge in Homer would travel to help in other locations when necessary.

Ms. Mead answered there could be additional travel having the Homer superior court judge help in Kenai. However, she believed the Homer judge would be busy in Homer most of the time with the combination of superior and district court work. There were always some travel costs because judges were fluid and filled in where needed throughout districts.

[9:16:01 AM](#)

Representative Josephson asked how many itinerant judge calendars would remain in Alaska if the bill passed. He cited Unalaska as an example and recalled cases where a judge flew from Dillingham to Anchorage to Unalaska.

Ms. Mead answered there were a number of small court locations without a resident judge. Those locations, such as Unalaska, had a magistrate judge who handled lower level proceedings - there were 40 court locations and sometimes a court only had a deputy magistrate. She explained that in those situations a judge in Anchorage was assigned to any felonies that arose. For example, a judge from Anchorage was traveling to Saint Paul for a felony case in the coming month; the caseload in Saint Paul was not large enough to warrant a superior or district court judge. She elaborated that certain judges, typically in Anchorage, were assigned to carry the caseload in places like Sand Point and Unalaska.

Co-Chair Wilson OPENED and CLOSED public testimony.

HB 77 was HEARD and HELD in committee for further consideration.

#hb48

HOUSE BILL NO. 48

"An Act removing from the exempt service of the state persons who are employed in a professional capacity to make a temporary or special inquiry, study, or examination as authorized by the governor and including those persons in the partially exempt service of the state."

[9:17:55 AM](#)

LYNN GATTIS, STAFF, REPRESENTATIVE TAMMIE WILSON, introduced the bill by reading the bill title:

An Act removing from the exempt service of the state persons who are employed in a professional capacity to make a temporary or special inquiry, study, or examination as authorized by the governor and including those persons in the partially exempt service of the state.

Ms. Gattis reviewed the sponsor statement (copy on file):

AS 39.25.110(9) was supposed to allow the governor to appoint someone for some "temporary and special inquiry". Because they are temporary, exempts do not get PERS or regular State leave, health insurance or other State benefits. However, the statute has not been used in that manner. It has instead been used to establish positions without the intent of the positions being temporary, which would then entitle employees to PERS and all other benefits.

The purpose of HB 48 is to discontinue the historical practice by the Executive Branch of using AS 39.25.110(9) to unilaterally establish highly paid executive level temporary exempt positions that have no salary limits. There are positions established many years ago using this statute that still exist today. Some are unbudgeted and do not appear in agency position counts. Several attempts have been made to obtain a complete list of these positions and current salary levels, but these attempts have been unsuccessful.

HB 48 is intended to eliminate the establishment of "temporary exempt" positions and instead place these positions in the partially exempt service. Persons may be "appointed" to partially exempt positions, however,

they will be subject to salary limits like all other state employees. HB 48 will force the administration to be more transparent and allow all employees to be treated fairly.

[9:20:40 AM](#)

Vice-Chair Johnston asked if the statute associated with the bill [AS 39.25.110(9)] was limited to the executive branch or could be used in state enterprise units like Alaska Industrial Development and Export Authority (AIDEA), Alaska Housing Finance Corporation (AHFC), or Alaska Permanent Fund Corporation (APFC).

REMOND HENDERSON, STAFF, REPRESENTATIVE TAMMIE WILSON, answered the statute allowed and defined those individuals covered by partially exempt, exempt, and classified service. Partially exempt service positions included deputy and assistant commissioners, directors of major divisions, attorneys in the Department of Law, the Public Defender's Office, one executive secretary for each department, principal executive officers of councils and commissions (e.g. the Alaska Public Broadcasting Commission and the Parole Board). The positions Vice-Chair Johnston was referencing were covered under exempt service (e.g. AIDEA).

Vice-Chair Johnston asked for verification that some of the state's enterprise units would not be using the loophole in statute. She surmised it was more of an administration function.

Mr. Henderson believed anyone could use the statute because it allowed something to be approved by the governor's office. There was also recent policy instituted by the governor's office requiring the governor's approval for not only those positions established under the statute, but for positions above a [pay] Range 18 or salary of \$150,000 or more.

[9:23:14 AM](#)

Representative Sullivan-Leonard asked for the number of positions identified under the previous administration that fell under the purview of the bill. She asked if they were looking at salary ranges of \$300,000 or more.

Mr. Henderson replied they had not been successful in identifying the number of positions that existed. The positions were buried in a large list of hundreds of positions. He explained the process involved trying to identify a position control number (PCN) by looking for the word "temporary." It was very difficult to ascertain the number of positions created in that manner. He elaborated that the best source of information was the individual departments. He reported that when they attempted to get the information from the departments, the response had varied. At one point they had been told the information would be compiled by the Department of Law, then they had been told it would be compiled by the Department of Administration, and it had ultimately come from the Office of Management and Budget. He noted they had never received a complete list of the positions.

Representative Sullivan-Leonard surmised the legislation would bring the issue to the forefront to identify the number of positions and the salary ranges. She construed the bill would fix an existing problem.

Mr. Henderson replied in the affirmative.

Representative Sullivan-Leonard asked if the bill also pertained to positions identified in the legislative branch.

Mr. Henderson replied in the negative. The sponsor's office had not identified any positions in the legislative branch that had been created under the statute.

[9:25:36 AM](#)

Co-Chair Wilson added that her office had also found the issue was not limited to listed PCNs. She explained that if a department had money from other resources, it was able to use those funds to pay for the individuals. She agreed that as the budget was developed, the legislature would see the positions, job descriptions, and how the salary had been handled.

Vice-Chair Ortiz appreciated the intent of the bill and was supportive. He asked for further detail on the language in the sponsor statement stating that the bill would force the administration to be more transparent and allow all employees to be treated fairly. He asked for detail on how

employees had not been treated fairly. He wondered if there was any downside to adopting the bill.

Co-Chair Wilson answered that temporary positions did not go through the same process as all other state employees. The deletion of the statute would mean all employees would go through the same process - the state would have to consider the job description and how much an individual was paid and would not be able to randomly determine the person's salary. She stated the issue was about employees who went through the [general hiring] process versus employees who were currently hired via the loophole.

[9:27:38 AM](#)

Vice-Chair Ortiz asked for verification that the individuals would be treated more fairly because they would go through the same hiring process.

Co-Chair Wilson replied in the affirmative.

Vice-Chair Ortiz asked if there were any opportunity costs associated with the bill. Mr. Henderson replied there were no additional costs to the bill. He reported that the department had prepared a zero fiscal note for the bill.

Vice-Chair Ortiz clarified he was not talking about financial cost but opportunity costs. For example, perhaps past administrations had used the statute to attract more highly qualified people for a position.

Mr. Henderson answered that he saw the bill as a cost savings measure.

Vice-Chair Ortiz understood. He clarified he was wondering if the statute had been used in the past to attract highly qualified people or talented individuals, which would no longer be possible if the bill was adopted.

Mr. Henderson replied that the bill would not prevent the administration from maintaining that practice. The state would still be allowed to seek those individuals for hire but would have to provide written justification to pay individuals above a certain range. He explained that written justification was not currently required.

[9:29:41 AM](#)

Representative Josephson asked how the positions would be more transparent to the finance committee, legislature, and public.

Mr. Henderson answered that as the statute was currently used, individuals could be appointed to the positions without salary limitations. He explained that the positions were not subject to a classification pay plan. The bill would require the individuals to be placed in partially exempt service where there was a statutory provision that identified the positions covered under partially exempt service and the associated salary scales.

Representative Josephson asked if the positions moved to partially exempt service that it meant the employees may not receive healthcare or retirement benefits. Alternatively, he wondered if the individuals would still be eligible for the benefits.

Mr. Henderson replied that the individuals would be entitled to healthcare and benefits provided to other employees.

Representative Carpenter understood the concept of increased transparency. He asked what would happen if there was a need for a temporary employee in a timely manner. He noted the bill's provision that would require hiring a person through the normal process. He asked if the bill eliminated the executive branch's ability to bring in a person with subject matter expertise.

Mr. Henderson replied in the negative. The bill would not prohibit the administration from hiring someone immediately that they found qualified for a temporary position.

[9:32:21 AM](#)

RUSSEL SAMPSON, SELF, WASILLA (via teleconference), supported the bill. She thanked Co-Chair Wilson for sponsoring the bill.

Co-Chair Wilson CLOSED public testimony.

Co-Chair Wilson reported amendments were due the following day by 5:00 p.m.

HB 48 was HEARD and HELD in committee for further consideration.

Co-Chair Wilson discussed the schedule for a meeting the following day. She reported the next meeting was that afternoon.

#

ADJOURNMENT

9:34:02 AM

The meeting was adjourned at 9:34 a.m.