

**ALASKA STATE LEGISLATURE  
HOUSE EDUCATION STANDING COMMITTEE**

February 7, 2022

9:00 a.m.

**MEMBERS PRESENT**

Representative Harriet Drummond, Co-Chair  
Representative Andi Story, Co-Chair  
Representative Tiffany Zulkosky  
Representative Grier Hopkins  
Representative Mike Prax  
Representative Ronald Gillham

**MEMBERS ABSENT**

Representative Mike Cronk

**COMMITTEE CALENDAR**

HOUSE BILL NO. 229

"An Act relating to the Alaska higher education investment fund;  
and relating to the Alaska Student Loan Corporation."

- HEARD & HELD

**PREVIOUS COMMITTEE ACTION**

BILL: HB 229

SHORT TITLE: ALASKA HIGHER EDUCATION INVESTMENT FUND

SPONSOR(S): REPRESENTATIVE(S) JOSEPHSON

|         |     |                                 |
|---------|-----|---------------------------------|
| 1/18/22 | (H) | PREFILE RELEASED 1/7/22         |
| 1/18/22 | (H) | READ THE FIRST TIME - REFERRALS |
| 1/18/22 | (H) | EDC, FIN                        |
| 1/21/22 | (H) | COSPONSOR(S): STORY, SCHRAGE    |
| 2/2/22  | (H) | EDUCATION AT 8:00 AM DAVIS 106  |
| 2/2/22  | (H) | <Bill Hearing Canceled>         |
| 2/2/22  | (H) | Minutes (HEDC)                  |
| 2/7/22  | (H) | EDUCATION AT 8:00 AM DAVIS 106  |

**WITNESS REGISTER**

REPRESENTATIVE ANDY JOSEPHSON

Alaska State Legislature

Juneau, Alaska

**POSITION STATEMENT:** As prime sponsor, presented HB 229.

ELISE SORUM-BIRK, Staff  
Representative Andy Josephson  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Gave a PowerPoint presentation and answered questions during the hearing on HB 229 on behalf of Representative Josephson, prime sponsor.

SANA EFIRD, Executive Director  
Alaska Commission on Postsecondary Education  
Juneau, Alaska

**POSITION STATEMENT:** Responded to questions during the hearing on HB 229.

CHAD HUTCHISON, Director of State Governmental Affairs  
University of Alaska  
Fairbanks, Alaska

**POSITION STATEMENT:** Provided invited testimony in support of HB 229.

ANDY HARRINGTON, Associate General Counsel  
University of Alaska  
Fairbanks, Alaska

**POSITION STATEMENT:** Answered questions during the hearing on HB 229.

#### **ACTION NARRATIVE**

[9:00:38 AM](#)

**CO-CHAIR HARRIET DRUMMOND** called the House Education Standing Committee meeting to order at 9:00 a.m. Representatives Zulkosky, Hopkins, Prax, Gillham, Story, and Drummond were present at the call to order.

#### **HB 229-ALASKA HIGHER EDUCATION INVESTMENT FUND**

[9:01:20 AM](#)

**CO-CHAIR DRUMMOND** announced that the only order of business would be HOUSE BILL NO. 229, "An Act relating to the Alaska higher education investment fund; and relating to the Alaska Student Loan Corporation."

[9:01:52 AM](#)

REPRESENTATIVE ANDY JOSEPHSON, Alaska State Legislature, as prime sponsor, presented HB 229. He offered a brief history of the constitutional budget reserve (CBR), established in 1990 as a savings mechanism to control spending. In 1994, there was an attempt to codify the meaning of "amount available for appropriation." Since the oil recession of 2014, the legislature has needed to access the funds in the CBR, which requires a two-thirds vote of both bodies to "reverse the sweep" of funding. That did not happen in 2021; consequently funds were swept and remain swept [into the CBR]. He explained that historically the higher education investment fund (HEIF) was not one of the accounts that were deemed sweepable, until 2019, when the administration declared it was.

[9:04:25 AM](#)

REPRESENTATIVE JOSEPHSON said as a legal matter, those funds were swept; however, he posited that "as an accounting matter, we don't know whether that's really happened." He said litigation was filed by the former attorney general on behalf of four universities declaring that the money should not have been swept. He indicated that the legal argument was that the monies in HEIF were established with the intent that students would have access to scholarships and other education grants. Countering this is the successful power cost equalization (PCE) lawsuit, which suggests the funds are broadly available for appropriation. He explained that a benefit of the PCE counter lawsuit is that it establishes that "it's okay for the Alaska Legislature to create separate or special funds." He offered examples, as listed by Judge Garten of the Alaska Supreme Court. He explained that HB 229 attempts to do just that: place HEIF in a separate fund. He indicated that the proposed legislation would address the issue of insecurity over the availability of HEIF for students, so that they can rely on the fund and be secure about their financial means of completing their education.

[9:09:22 AM](#)

REPRESENTATIVE JOSEPHSON said a reverse sweep is one way to ensure the funds; however, the legislature has shown that it can prevent the reverse sweep, which makes that method unreliable. Another method is to change the Constitution of the State of Alaska, which is incredibly challenging. The third option is to pass a law to establish that HEIF is separate. The problem is, he explained, that the funds are not there; they would have to be recapitalized.

[9:12:06 AM](#)

REPRESENTATIVE ZULKOSKY asked how the outcome of the litigation would impact HB 229.

REPRESENTATIVE JOSEPHSON explained that superior court decisions are "utterly binding on whoever's in the courtroom." Beyond that they can be persuasive. However, in this case, he said he thinks the case was binding "on the entire class." He proffered, "If these students win, this bill is mostly moot." Notwithstanding that, he said it is within the legislature's discretion to write such a law to establish that HEIF is not in the general fund (GF) and, thus, not sweepable.

[9:16:20 AM](#)

REPRESENTATIVE PRAX asked whether the lawsuit would become moot if HB 229 were to pass.

REPRESENTATIVE JOSEPHSON speculated what may happen.

[9:17:36 AM](#)

CO-CHAIR DRUMMOND mentioned arguments by Ms. Lindeman and noted the use of the term "unified fund." She asked the bill sponsor for an explanation.

REPRESENTATIVE JOSEPHSON responded that one year's appropriation cannot be cut away from the balance; "it's all part of the piece," as intended by the legislature. Ms. Lindeman's key argument was that when the legislature appropriated the money [to HEIF], it was flowing; Representative Josephson likened it to a faucet. In response to Co-Chair Drummond, he confirmed that the plaintiffs in the case are recipients of HEIF grant monies in higher education.

CO-CHAIR DRUMMOND noted that Representative Josephson had said that if HB 229 is passed, then the legislature would have to "recapitalize this fund." She asked whether that would require a two-thirds vote.

REPRESENTATIVE JOSEPHSON answered no because it would be "new money." It would require a majority vote, plus the cooperation of the governor.

[9:20:43 AM](#)

REPRESENTATIVE HOPKINS asked whether HB 229 would "take the \$400 million that's in the CBR and move it over" or "take general funds and create a new fund."

[9:21:00 AM](#)

ELISE SORUM-BIRK, Staff, Representative Andy Josephson, Alaska State Legislature, on behalf of Representative Josephson, prime sponsor of HB 229, answered that HB 229 deals with the structure of the fund itself, not the recapitalization. She then gave a sectional analysis of HB 229 [available in the committee packet]. She explained HEIF would be moved from the GF into the Alaska Student Loan Corporation (ASLC), which would be allowed to create a subsidiary from the purpose of administering HEIF. Further, the Alaska education grant account and Alaska performance scholarship award account would be moved into ASLC.

[9:23:21 AM](#)

MS. SORUM-BIRK, in response to Co-Chair Drummond, offered her understanding that under HB 229, HEIF would continue to be managed by the Department of Revenue "in much the same manner that it's already managed."

[9:24:11 AM](#)

MS. SORUM-BIRK, in response to a question from Representative Prax, explained that ASLC is the entity already attached to both the Alaska performance scholarship and the Alaska education grant; ASLC deals with these things in its capacity as the Alaska Commission on Postsecondary Education (ACPE). She concluded that that is why the bill sponsor thought ASLC would be a logical place to put [HEIF].

[9:26:17 AM](#)

REPRESENTATIVE HOPKINS noted that in 2017 the legislature took an ad hoc draw from the higher education fund to support payments to the Public Employees Retirement System (PERS) and the Teachers Retirement System (TRS). He asked whether HB 229 would allow future legislatures "to make an ad hoc draw from the fund itself."

REPRESENTATIVE JOSEPHSON surmised that it would, and he deferred to Ms. Sorum-Birk for further response.

MS. SORUM-BIRK said she thinks Representative Josephson is correct, and she offered further illustration.

[9:28:18 AM](#)

CO-CHAIR DRUMMOND remarked that the ad hoc draw was an overdraw but "grew and recovered." She suggested a percent of market value (POMV) needs to be included as part of the structure of "how we draw on this account," and this could be subject for another discussion.

[9:29:12 AM](#)

MS. SORUM-BIRK showed a depiction of the market value of HEIF throughout the years, which reflects the dip just mentioned, as well as substantial returns in 2021, which boosted the value of the fund. She emphasized the value of a structured draw. In response to Representative Prax, she said she did not have information regarding the average performance of the fund since 2013. She continued by giving a history of HEIF, which was created by the Twenty-Seventh Alaska State Legislature and capitalized with \$400 million. She noted the times when there were ad hoc draws. She said HEIF was meant to be a trust, but trust is not in the name. In 2021, the three-quarter vote to reverse a sweep did not happen.

[9:33:48 AM](#)

CO-CHAIR DRUMMOND noted that in 2015, monies to libraries were actually put to broadband capacity in schools. She also noted that of the funds that were given to PERS and TRS, she thinks most went to TRS; however, monies going to PERS, she opined, were outside the scope of the fund.

[9:34:25 AM](#)

MS. SORUM-BIRK noted that Hickel v. Cowper is the only Alaska case that addresses the CBR sweep and what it takes to spend from the CBR. One parameter outlined in the case is that anything available for appropriation or in the GF, or both, is subject to the sweep provision. She defined "available for appropriation" as "all funds over which the legislature has retained power to appropriate, and which are not available to pay expenditure without further legislative appropriation." She reiterated that trust receipts are treated differently; that includes federal funds, funds given to the state for specific purpose, and appropriations from trust accounts. She mentioned

a footnote that suggests monies of public corporations should be treated similarly to trust receipts, which is why the bill sponsor wants to move HEIF into ASLC. She named some exclusions. She said one question in a current case is whether or not the funds are "already validly appropriated." So, the question is whether the \$400 million were validly appropriated when the legislature declared in 2012 that the \$400 million was for a scholarship account.

[9:37:18 AM](#)

MS. SORUM-BIRK remarked on notable changes that would be made under HB 229. She said the higher education investment account, the Alaska education account, and the Alaska performance scholarship account would be relocated from the GF into ASLC. The bill would allow ASLC to create a subsidiary specifically for managing the higher education investment [capital] and associated funds. She pointed out that the Alaska Housing Capital Corporation was established in April 2006, under Senate Bill 232, with an appropriation of \$300 million for the purpose of funding capital projects, with the intent that the monies be transferred in the same year to subsidiaries. The subsidiary was created under the Alaska Nonprofit Corporation Act. She remarked, "They say placement of funds within a corporate subsidiary exempts them from the annual sweep of funds available into the CBR."

CO-CHAIR DRUMMOND proffered that because the \$400 million was appropriated in 2012 but not put into a separate subsidiary fund means it is not allowed to "have that status" but "this bill proposes to do that."

MS. SORUM-BIRK confirmed that is correct. She said HB 229 also includes language clarifying that "these are all separate funds." The bill states that scholarship and grant funds are available without further appropriation, which they already are, but the bill sponsor wanted that point clarified under HB 229. She noted that HB 229 also adds WWAMI [the University of Washington School of Medicine's multi-state medical education program for Washington, Wyoming, Alaska, Montana, and Idaho, pronounced "whammy"] to the statutory uses of HEIF. She mentioned a 7 percent draw and deferred to Ms. Efird.

[9:41:39 AM](#)

SANA EFIRD, Executive Director, Alaska Commission on Postsecondary Education, confirmed that up to this point there

has been enough in the fund to cover WWAMI. She added that it would need to be determined whether that would continue to be the case. In response to a hypothetical question from Co-Chair Drummond, she said over the last three years there has been \$11.75 million available for the Alaska performance scholarship, and last year only about \$9.3 million of that total was expended. What is not spent "lapses," which Ms. Efird explained means that it stays in the fund. In response to another question, she said up until last year, the loan repayments from WWAMI students have been going back to the GF; however, last year's budget bill contained language that allowed those payments to go back to HEIF.

[9:46:16 AM](#)

MS. SORUM-BIRK listed that which HB 229 would not change: the overall structure of how the higher education fund is administered under statute; and the overall structure of how the fund is administered. She commented on potential amendments to HB 229: adding "trust" to the name of HEIF; reassessing the amount of the draw; and adjusting the division of the draw to ensure a portion goes to WWAMI.

CO-CHAIR DRUMMOND speculated another amendment could be to ensure that the money paid back from those WWAMI graduates that choose not to practice in Alaska goes into HEIF.

[9:49:06 AM](#)

REPRESENTATIVE JOSEPHSON noted there had been debate about that topic, and he expressed his concern that "we move with alacrity." He characterized the provisions of HB 229 as layers of armor that would shield the funds.

[9:50:46 AM](#)

REPRESENTATIVE HOPKINS expressed concern about setting an amount for the draw, since tuitions and attendance change over time. He asked for clarification regarding lapsed funds.

REPRESENTATIVE JOSEPHSON recalled Ms. Efird had said the funds were directed back into HEIF last year.

MS. SORUM-BIRK noted that it was the WWAMI fund that was designated last year; the other funds do lapse back into HEIF regularly. In response to a follow-up question, she said she thinks that is in statute but would have to check to be certain.

[9:52:54 AM](#)

CO-CHAIR STORY stated the importance of keeping interest rates high, and she asked whether there would be oversight of the investment rate structure.

[9:54:25 AM](#)

MS. SORUM-BIRK indicated she had learned that the Department of Revenue (DOR) has taken over "investments" for the student loan corporation, and she expressed her hope that HEIF "would still be managed by DOR."

[9:55:04 AM](#)

REPRESENTATIVE PRAX asked the bill sponsor whether he had requested a formal opinion on HB 229 from Legislative Legal Services.

[9:55:21 AM](#)

REPRESENTATIVE JOSEPHSON answered that he had not. He pointed to "the Hickel decision" and "the Garten trial decision" as providing "a fair amount" of knowledge regarding the legal implications of the proposed legislation.

[9:55:53 AM](#)

CO-CHAIR DRUMMOND announced that HB 229 would be held for further consideration following a recess of the committee.

[9:56:06 AM](#)

#### **ADJOURNMENT**

CO-CHAIR DRUMMOND recessed the House Education Standing Committee meeting to 3:30 p.m.

[3:32:54 PM](#)

CO-CHAIR DRUMMOND called the House Education Standing Committee back to order at 3:33 p.m. Representatives Story, Prax, Gillham, Hopkins, Cronk, Zulkosky (via teleconference), and Drummond were present at the call back to order.

#### **HB 229-ALASKA HIGHER EDUCATION INVESTMENT FUND**

[3:33:27 PM](#)

CO-CHAIR DRUMMOND announced that the final order of business would be a return to HOUSE BILL 229, "An Act relating to the Alaska higher education investment fund; and relating to the Alaska Student Loan Corporation."

[3:33:56 PM](#)

CHAD HUTCHISON, Director of State Governmental Affairs, University of Alaska, testified in support of HB 229. He spoke about instability in funding and the importance of scholarships and grants for students, as well as the need for medical students in Alaska. He spoke about support for HEIF, including from the Board of Regents. He echoed the need for speed when it comes to moving this legislation. He mentioned Hickel v. Cowper and said he thinks the track that Representative Josephson is on is "a wide one." He confirmed the importance of separating the fund in ASLC.

[3:37:39 PM](#)

MR. HUTCHISON listed the following current statistics related to Alaskans under the umbrella of HEIF: 2,807 Alaskans receiving the Alaska performance scholarship, totaling \$9.3 million; 2,680 Alaskans receiving the needs-based Alaska education grant, totaling \$5.7 million; and 80 WWAMI students, totaling \$3.2 million. He emphasized the importance of WWAMI. He offered to answer questions and noted that Mr. Harrington, the legal counsel for the University of Alaska, was also available to answer questions.

[3:41:32 PM](#)

REPRESENTATIVE HOPKINS asked whether the university joined the law suit.

MR. HUTCHISON answered no, just the four students, but the university is watching intently. He deferred to Mr. Harrington as to whether the University Foundation filed an amicus.

[3:42:35 PM](#)

ANDY HARRINGTON, Associate General Counsel, University of Alaska, stated neither the University of Alaska nor the University Foundation has filed an amicus brief in the case, but

the foundation is trying to help with the cost of representation.

MR. HUTCHISON, in response to Representative Hopkins, discussed the issue of capacity as it relates to WWAMI.

[3:45:22 PM](#)

REPRESENTATIVE PRAX asked about the timing of oral arguments in the case and whether a date has been indicated when the court would issue an opinion.

MR. HUTCHISON said the law suit was filed just three weeks prior, the oral argument would be tomorrow, and the projected timing of the decision is February 22, which could be considered an expedited process. In response to a follow-up question, he addressed the issues of equity and return on investment for the state. In response to further query, he clarified there are grants and loans involved in the programs, and he said the university believes there is good return on investment; however, ultimately the legislature decides which benefits the state receives. He told Representative Prax he would do his best to provide information regarding how the university documents the return on investment.

[3:52:52 PM](#)

CO-CHAIR DRUMMOND clarified that HB 229 does not propose to comingle the funds.

[3:54:33 PM](#)

MS. EFIRD told Representative Prax there are two separate entities. There was an appropriation that set up ASLC, and she offered her understanding that it was \$400 million at one time. She said HEIF was also set up with an appropriation of \$400 million by legislature. She concluded that under HB 229, ASLC would manage those separately. In response to a follow-up question, she clarified that the amount to ASLC is not \$400 million now.

[3:56:54 PM](#)

MS. SORUM-BIRK reviewed that the proposed legislation would not create any new programs; its focus is on perpetuating the existing HEIF by separating it to ensure it is not subject to the CBR sweep provision.

[3:57:34 PM](#)

CO-CHAIR DRUMMOND pointed to the performance results of HEIF previously highlighted in Ms. Sorum-Birk's presentation. She noted that this last year, HEIF performed better than the Alaska permanent fund did. The dollars swept into the CBR do not earn much - 1 to 2 percent, at best. She echoed Representative Josephson's previous remark that time is of the essence.

[3:58:35 PM](#)

CO-CHAIR STORY remarked that HB 229 would help to grow Alaska's workforce. She asked about the percentage of workers that go out of state to train and do not come back, and indicated the goal is to keep students in state. She discussed the uncertainty of students whether they will receive the money they have earned, and she asked about the University of Washington's take on this issue.

MR. HUTCHISON answered he thinks it is "an open question," since there is litigation happening and other legislation in play. In response to a follow-up question regarding how much WWAMI students pay, he explained that it is "a phased model."

[4:02:29 PM](#)

MR. HUTCHISON responded to questions from Co-Chair Drummond. He said he would find out how many WWAMI students come from the other states involved. In response to another question, he offered that there are versions of [HEIF] in other states, the details of which he would provide. To another question, he said the Alaska education grants are based on need and cover all opportunities, not just limited to the university system.

CO-CHAIR DRUMMOND expressed interest in receiving a list of programs for which students are using the funds received.

[4:08:37 PM](#)

REPRESENTATIVE PRAX remarked on students that leave Alaska for university educations.

CO-CHAIR DRUMMOND commented on the funds that can be used by those students.

REPRESENTATIVE HOPKINS suggested HB 229, and refinancing loans, as ways to get students to come back.

[4:10:00 PM](#)

MS. EFIRD, in response to a question from Representative Gillham, clarified that both the Alaska performance scholarship and Alaska education grant have to be used in the state of Alaska at an institution authorized by ACPE. A student could [use the funds] to attend Northern Industrial Training, for example, and the student would not go through the University of Alaska to do so.

[4:12:14 PM](#)

CO-CHAIR DRUMMOND opened public testimony on HB 229. After ascertaining there was no one who wished to testify, she closed public testimony.

CO-CHAIR DRUMMOND set an amendment deadline for Thursday at noon.

[4:13:00 PM](#)

CO-CHAIR DRUMMOND announced that HB 229 was held over.

[4:13:24 PM](#)

#### **ADJOURNMENT**

There being no further business before the committee, the House Education Standing Committee meeting was adjourned at 4:13 p.m.