

HB

6

<TARGET><BILL>HB 6</BILL><SUBJECT>HB
6</SUBJECT><COMM>HJUD27</COMM></TARGET>

Member

Alaska State Legislature

House of Representatives

Standing Committees:

- Judiciary
- Rules
- State Affairs
- Transportation



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 Rep.Max.Gruenberg@legis.state.ak.us

Representative Max F. Gruenberg, Jr.
House District 20

Anchorage (Mountain View, Russian Jack, East Anchorage)
House Minority Floor Leader

received
 2/23/11 1:11pm

TO: Representative Carl Gatto, Chair
 House Judiciary Committee

FROM: Representative Max F. Gruenberg, Jr. *MFG*

DATE: February 16, 2011

RE: HB 6: Removing a Regent

Please consider this memorandum as a request for the House Judiciary Committee to schedule a hearing on House Bill 6. Accompanying this memo are the following documents:

- Sponsor Statement
- Sectional Analysis
- House Bill 6 (27-LS0027\A)
- CS for House Bill 6 (EDC) (27-LS0027\D)
- Explanation of changes
- Legislative Legal Counsel Memo from Jean Mischel April 17, 2007
- Informal Legal Opinion from Michael Barnhill, Assistant Attorney General February 2, 2007
- Relevant statutes upon which this bill was modeled

Thank you for considering my request for a hearing on House Bill 6. Please contact my legislative aide, Ted Madsen, at 465-2840 with any questions.

HOUSE BILL NO. 6

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES GRUENBERG, Peggy Wilson

Introduced: 1/18/11

Referred: Education, Judiciary

A BILL

FOR AN ACT ENTITLED

1 **"An Act authorizing the governor to remove or suspend a member of the Board of**
2 **Regents of the University of Alaska for good cause; and establishing a procedure for the**
3 **removal or suspension of a regent."**

4 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 * **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
6 to read:

7 **LEGISLATIVE FINDINGS AND PURPOSE.** (a) The legislature finds that

8 (1) the framers of the Constitution of the State of Alaska intended to insulate
9 the University of Alaska and the Board of Regents from politics, but did not intend to
10 immunize the University of Alaska and the Board of Regents from appropriate nonpolitical
11 legislative and executive branch oversight;

12 (2) under AS 14.40.170(b)(1), the legislature has delegated to the Board of
13 Regents the power to regulate itself, but the Board of Regents has not adopted self-
14 governance rules that authorize the board to remove or suspend a regent in appropriate

1 circumstances; and

#1
out

2 (3) the legislature has the power to create procedures under which the
3 governor may remove a regent for good cause or suspend a regent in appropriate
4 circumstances, if the procedures ensure that

5 (A) the regent is accorded due process; and

6 (B) the University of Alaska and the Board of Regents remain
7 insulated from politics.

8 (b) The purpose of AS 14.40.155, added by sec. 2 of this Act, is to

9 (1) clarify that the governor may not remove a regent without good cause;

10 (2) clarify that the governor may remove a regent with good cause;

11 (3) prescribe a due process procedure under which the governor may remove a
12 regent for good cause;

13 (4) prescribe a due process procedure under which the governor may suspend
14 a regent in certain circumstances; and

15 (5) accomplish each of the above purposes in a manner that ensures the
16 University of Alaska and the Board of Regents remain insulated from politics.

17 * **Sec. 2.** AS 14.40 is amended by adding a new section to read:

18 **Sec. 14.40.155. Removal and suspension of regents.** (a) The governor may
19 remove a member of the Board of Regents for good cause by providing to the member

20 (1) a copy of the allegations pertaining to the reasons for removal;

21 (2) an opportunity for a hearing on the allegations; and

22 (3) at least 30 days' notice of a hearing if a hearing is requested; the
23 notice must include the applicable rules governing the conduct of the hearing.

24 (b) After removal of a regent for good cause under (a) of this section, the
25 governor shall file with the lieutenant governor a copy of the allegations made against
26 the former regent, the governor's findings on each of the allegations, and a complete
27 record of the removal proceedings.

28 (c) The governor may, after providing notice and an opportunity for a hearing,
29 suspend a member of the Board of Regents while final disposition is pending on

30 (1) a criminal complaint, presentment, information, or indictment
31 involving a felony in any jurisdiction;

1 (2) an information or formal criminal charges of a misdemeanor
2 described under (g)(3) of this section; or

3 (3) allegations of nonfeasance in office described under (g)(4) of this
4 section under consideration by the governor.

#3
clarified

5 (d) A regent who has been suspended under (c) of this section may, at any
6 time, request a hearing to lift the suspension.

#2
out

7 (e) In a hearing involving the suspension of a regent under (c) of this section,
8 the governor or the governor's designee shall provide the regent an opportunity to
9 defend against the stated grounds for suspension or to show cause why the suspension
10 should be lifted after a suspension is imposed.

11 (f) The governor may delegate the conduct of a hearing under this section to
12 the office of administrative hearings under AS 44.64.030(b).

13 (g) In this section, "good cause" means

- 14 (1) a violation of AS 39.52 (Alaska Executive Branch Ethics Act);
- 15 (2) conviction of a felony in any jurisdiction;
- 16 (3) conviction of a misdemeanor in any jurisdiction if the misdemeanor

17 involves

- 18 (A) dishonesty;
- 19 (B) breach of trust; or
- 20 (C) the University of Alaska;
- 21 (4) nonfeasance in office, including
 - 22 (A) misconduct in office;
 - 23 (B) an inability to serve;
 - 24 (C) neglect of duty;
 - 25 (D) incompetence;
 - 26 (E) unjustified failure to perform the duties of the Board of

27 Regents;

- 28 (5) failure to possess the qualifications of a regent under AS 14.40.130.

29 * **Sec. 3.** The uncodified law of the State of Alaska is amended by adding a new section to
30 read:

31 **APPLICABILITY.** AS 14.40.155, added by sec. 2 of this Act, applies to all conduct

1 and acts occurring before, on, or after the effective date of this Act.

Member

Standing Committees:

Judiciary
Rules
State Affairs
Transportation

Alaska State Legislature

House of Representatives



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House District 20

Anchorage (Mountain View, Russian Jack, East Anchorage)
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House Bill 6: Removing a Regent Sponsor Statement

This bill creates a statutory due process procedure under which the governor may suspend or remove a University of Alaska regent for good cause.

This bill is in response to a 2007 incident in which a regent was federally indicted on multiple counts of fraud. He refused to resign his position until impeachment proceedings began. The board of regents' by-laws do not set forth a procedure remove a regent. The legislative legal counsel has concluded that regents serve at the pleasure of the governor and thus can be removed. An informal attorney general's opinion states that the governor does not have the authority to remove a regent without cause. That AG opinion concluded that the governor does have the authority to remove a regent so long as cause is established and due process granted.

It should be noted that during the 25th legislature letters were sent to the board of regents asking that it, under the authority of 14.40.170(b)(1), adopt procedures for the removal and/or suspension of a regent, but it has not done so.

It is important to acknowledge that the constitution does bear upon this bill due to the governor's powers being enumerated in Article III of the Alaska Constitution while the board of regents is established in Article VII, section 6. The Alaska Supreme Court has ruled that the UA is subject to a degree of legislative control. For example, the legislature can, without approval of the regents, dispose of UA land. Additionally, the legislature has, through law, provided the UA with a broad degree of autonomy; however, this implies the UA is still subject to laws enacted by the legislature. The legislature has been given broad authority under the constitution, indeed the only constitutional constraints on the power of the legislature to make laws regarding other agencies of the State of Alaska deal with the rules of court and the repeal of initiatives. In effect this legislation provides a check upon the powers of the university.

This bill secures the state's interest and the university's interest. This legislation will keep a cloud from hovering over the UA in a future scenario in which a regent must be removed or suspended for cause.

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House Bill 6: Removing a Regent Sectional Analysis for CS for HB 6 (EDC) (27-LS0027AD)

Section 1¹ sets forth the legislative findings and purposes of the bill. The legislature finds that the framers of the Alaskan Constitution intended to insulate the University of Alaska from politics, that the legislature delegated the power of self-governance to the UA under AS 14.40.170(b), and that the legislature has the power to create laws that pertain to the university. The purposes of the bill are to clarify that the governor may only remove a regent with good cause and that the governor must afford a regent due process in the proceedings dealing his or her removal or suspension. Finally, the legislative findings in this section affirm the political insulation of the university and the board of regents.

Section 2² adds a new section, AS 14.40.155, to AS 14.40 the chapter that governs the University of Alaska's Board of Regents. AS 14.40.155 is patterned after other statutory removal procedures for other boards, including the workers compensation appeals commission. See AS 23.30.007(j).

AS 14.40.155(a) sets forth the procedure for the governor to suspend a regent for good cause. The governor must provide the regent with notice and an opportunity for a hearing. Good cause is defined in subsection (g) to include a violation of the Executive Branch Ethics Act, a conviction of a felony, conviction of a misdemeanor involving a crime of dishonesty or the University of Alaska, malfeasance or nonfeasance in office, or failure to continue to meet the qualification requirements of a regent.

AS 14.40.155(b) allows the governor to remove a regent for good cause by providing the regent with an accusation and opportunity for a hearing and judicial review.

AS 14.40.155(c) details the procedure for a regent to either defend against a possible suspension or lift a suspension once it has been imposed.

AS 14.40.155(d) permits the governor to delegate the conduct of the hearing to the Office of Administrative Hearings. The standard of proof to be used in the hearing for removal for "good cause" is "clear and convincing," one of the highest standards.

¹ Page 1, lines 5-14 through page 2, lines 1-11

² Page 2, lines 12-31 through page 3, lines 1-30

AS 14.40.155(e) states that the Administrative Procedures Act (AS 44.62.330-44.62.630) applies to all of the proceedings of this section.

AS 14.40.155(f) sets out that the governor must file a copy of the allegations against the regent, the findings of the governor, and a complete record of the removal proceedings with the lieutenant governor.

Because this law deals with the conduct of the board of regents during their entire term in office it must apply retroactively to ensure that past violations do not go unchecked. **Section 3**³ is an applicability clause that allows AS 14.40.155 to apply to conduct occurring before, on or after the effective date of this Act.

³ Page 3, line 31 through page 4, lines 1-3

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House Bill 6:
Removing a Regent
Explanation of changes between
HB 6 (27-LS0027\A) to CS for HB 6 (EDC) (27-LS0027\D)

There are a number of changes between the “A” and “D” versions, including minor grammatical and stylistic changes, and substantive changes.

There was one major change to **Section 1** of the bill. Subsection (a) paragraph (3) of the “A” version (page 2 lines 2-7) was deleted and subsection (a) paragraph (2) of the “D” version (page 1 lines 12-13) was added. The effect of this change is to show that the legislature has legislative authority over the University of Alaska.

There were a few changes to **Section 2** of the bill. Subsection (e) of the “A” version (page 3 lines 7-10) was deleted, as with the addition of new subsections in the “D” version it was unnecessary. Specifically, with designation that the proceedings in this section fall under the guidelines of the Administrative Procedures Act, the language in subsection (e) was not needed.

The other major change to **Section 2** of the “A” version was a reordering of the subsections to better reflect the flow of the proceedings.

FISCAL NOTE

STATE OF ALASKA
2011 LEGISLATIVE SESSION

Fiscal Note Number 1
Bill Version CSHB 6(EDC)
(H) Publish Date 2/23/11

HB006-DOA-OAH-02-07-11
Title An Act authorizing governor to remove university regent
Sponsor Representative Gruenberg & Representative Wilson
Requester House Education
Dept. Affected Administration
Appropriation Centralized Administrative Services
Allocation Office of Administrative Hearings
OMB Component Number 2771

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information						
		FY 2012	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
OPERATING EXPENDITURES								
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Services	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Commodities	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Capital Outlay	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Grants	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Other (please identify)	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2011) cost 0.0

POSITIONS

Full-time	0.0	0.00	0	0	0	0	0	0
Part-time	0.0	0	0	0	0	0	0	0
Temporary	0.0	0	0	0	0	0	0	0

Why this fiscal note differs from previous version (if initial version, please note as such)

Initial version.

Prepared by Terry L. Thurbon, Chief Administrative Law Judge
Division Office of Administrative Hearings
Approved by John Cramer, Deputy Commissioner
Department of Administration

Phone 465-1886
Date/Time 02/07/2011 11:39 a.m.
Date _____

FISCAL NOTE #1

STATE OF ALASKA
2011 LEGISLATIVE SESSION

BILL NO. CSHB 6(EDC)

Analysis

This bill authorizes the governor to remove a member of the University of Alaska Board of Regents for good cause and establishes procedures for removal. The procedures include an opportunity for a hearing. Under section 2, the hearing function could be delegated by the governor to the office of administrative hearings. Removals likely would be infrequent. OAH, therefore, does not anticipate that this bill would result in an appreciable increase in caseload and expect to be able to provide any hearing-related services required with existing authorized personnel. The cost to OAH of performing the services would be recovered from the Office of the Governor through interagency receipts, based on the time commitment required for hearings.

FISCAL NOTE

STATE OF ALASKA
2011 LEGISLATIVE SESSION

Fiscal Note Number 2
Bill Version CSHB 6(EDC)
(H) Publish Date 2/23/11

Identifier (file name) HB006-UA-Sysbra-2-9-11 Dept. Affected University of Alaska
Title Removing a Regent Appropriation University of Alaska
Allocation Sysbra
Sponsor Representative Gruenberg
Requester House Education OMB Component Number 1296

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information						
		FY 2012	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
OPERATING EXPENDITURES								
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants								
Miscellaneous								
TOTAL OPERATING		0.0	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES								
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CHANGE IN REVENUES								
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts								
1003 GF Match								
1004 GF								
1005 GF/Program Receipts								
1037 GF/Mental Health								
Other (please identify)								
TOTAL		0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2011) cost _____

POSITIONS

Full-time								
Part-time								
Temporary								

Why this fiscal note differs from previous version (if initial version, please note as such)

Prepared by Michelle Rizk
Division Statewide Budget, University of Alaska
Approved by Michelle Rizk
Statewide Budget, University of Alaska

Phone 450-8187
Date/Time 2/9/11 1:00 PM
Date 2/9/11 1:00 PM

FISCAL NOTE #2

**STATE OF ALASKA
2011 LEGISLATIVE SESSION**

BILL NO. CSHB 6(EDC)

Analysis

HB6 will have a zero fiscal impact on the Univeristy of Alaska

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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Mail Stop 3101

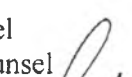
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MEMORANDUM

January 28, 2011

SUBJECT: Interpretation of statutory phrases defining "good cause" in HB 6
(Work Order No. 27-LS0027\A)

TO: Representative Max Gruenberg
Attn: Ted Madsen

FROM: Jean M. Mischel
Legislative Counsel 

You have asked for an interpretation of the phrases used in the definition of "good cause" at proposed sec. 14.40.155(g)(3) and (4) in section 2 of the above-referenced bill. Those phrases provide as follows:

- (3) conviction of a misdemeanor in any jurisdiction if the misdemeanor involves
 - (A) dishonesty;
 - (B) breach of trust; or
 - (C) the University of Alaska;
- (4) nonfeasance in office, including
 - (A) misconduct in office;
 - (B) an inability to serve;
 - (C) neglect of duty;
 - (D) incompetence;
 - (E) unjustified failure to perform the duties of the Board of Regents;

As you know, nothing in the bill defines or otherwise modifies the plain meaning of the above phrases. A court will construe undefined terms by applying the plain meaning and, if ambiguous, will look to legislative intent to determine the meaning. The committee records may be used in some cases of ambiguity. In addition, a court may rely by analogy on interpretations by agencies, courts, or the attorney general of similar phrasing used in other state statutes. A memorandum to you in 1991 describing the statutory instances of "removal for cause" is attached.

The term "nonfeasance" is defined in dictionaries and is used in at least two other instances for removal of a state officer. See, for example, AS 23.30.007 pertaining to the Workers' Compensation Appeals Commission. The term "dishonesty" is used in several instances in state law in relation to barrier crimes for licensing. See, for example,

Representative Max Gruenberg
January 28, 2011
Page 2

AS 05.15.105 pertaining to gaming and AS 06.50.020(a), pertaining to financial institutions.

With the exception of the term, "unjustified" as used in (g)(4)(E), I find nothing ambiguous in the phrases identified. A court would therefore interpret the wording according to its plain meaning, including dictionary definitions and common usage. The hearing officer, if one is appointed, or the governor must make the initial determination of what may be considered "justified" until a court is asked to interpret the term and looks to legislative intent.

If you wish to further define the terms used in the bill, let me know.

JMM:plm
11-040.plm

Enclosure

DIVISION OF LEGAL SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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Court Plaza, Room 500
Mail Stop 3101

MEMORANDUM

February 11, 1991

SUBJECT: Statutory Criteria for Dismissal of Members of Boards and Commissions (W.O. 7LS-0703)

TO: Representative Max Gruenberg

FROM: Terri Lauterbach
Legislative Counsel

You have asked several questions in regard to dismissal of members of boards and commissions in Alaska¹:

(I) Which statutes refer to dismissal for cause?² How is that term defined in Alaska Statutes or Alaska case law?

(II) What are the statutory criteria for dismissal in statutes that do not refer to dismissal for cause? How have those criteria been defined?

(III) What procedural protections, if any, are there for dismissed members?

These questions do not admit of short answers, so I'll just plunge into a discussion that I hope will give you the information you seek.³

¹ You also asked questions about dismissal of members of boards and commissions in other states. Those questions have been forwarded to the Legislative Research Agency.

² Your memo actually only referred to "just or good cause." However, since there is only one statute (AS 08.04.030) that refers to "just cause" and none that refer to "good cause," I have treated your questions as pertaining to "cause."

³ I do not attempt in this memo to determine whether any given statutory criteria would be upheld as constitutional. As I am sure you are aware, the legislature's power to inhibit the governor's power of removal may extend only to "section 26" boards and commissions. I understand your request to be one aimed at knowing what our current statutes say with regard to this area.

I. REMOVAL FOR CAUSE

May be removed for cause

There are 22 boards and commissions listed in AS 08.01.010 that are occupational licensing boards. According to AS 08.01.020, members of these boards and commissions "serve at the pleasure of the governor." However, the last sentence of AS 08.01.020 also states that "a board may provide by regulation that three or more unexcused absences from meetings are **cause** for removal."

This combination of serving at the governor's pleasure and being removable for cause also shows up in the specific statutes relating to three of the boards listed in AS 08.01.010. Statutes relating to the Board of Chiropractic Examiners, the Board of Nursing Home Administrators, and the Board of Pharmacy each provide

A member of the board may be removed from office by the governor **for cause**. The board may by regulation provide that unexcused absences from meetings constitute **cause** for removal.⁴

Another occupational licensing board, the Board of Public Accountancy, has a specific removal statute, too, even though it is also listed in AS 08.01.010 and is covered by the general language of AS 08.01.020. Its specific statute provides

The governor **shall** remove any member of the board whose certificate, license or permit has been revoked or suspended. The governor **may, after hearing**, remove any member for **neglect of duty** or **other just cause**.⁵

The members of boards and commissions can also be removed for cause under AS 39.52 (Alaska Executive Branch Ethics Act), which provides that violation of AS 39.52 "is grounds for removal of a board or commission member **for cause**."⁶

Members of the board of directors of the Alaska Science and Technology Foundation may be removed for cause under AS 37.17.040(a). Under AS 41.37.050, members of the Citizens' Advisory Commission on Federal Areas in Alaska "may be removed by the

⁴ See, respectively, AS 08.20.025, AS 08.70.055, and AS 08.80.105.

⁵ See AS 08.04.030.

⁶ See AS 39.52.410(b).

appointing authority **for cause after notice and hearing** or after missing three consecutive meetings of the commission."⁷

May be removed **only** for cause

In addition to the instances cited above where the statutes give the governor the discretion to remove a board member for cause, there are four statutes that provide specifically that the governor may remove members of certain agencies **only** for cause.

Members of the Labor Relations Agency, the personnel board, and the Alaska Public Broadcasting Commission may **only** be removed for "cause" under AS 23.05.360(c), AS 39.25.060(c), and AS 44.21.258(a).

The fourth statute providing that members may "only" be removed for cause relates to the Alaska Mental Health Board. It is a little more explanatory, providing that

Members may be removed **only** for cause, including, but not limited to, poor attendance or lack of contribution to the board's work.⁸

Definitions of "cause"

My research has not uncovered any definitions of "cause" in Alaska Statutes or in Alaska case law relating to dismissal of members of boards and commissions other than the reference to "poor attendance" and "lack of contribution" noted in the preceding quotation concerning the Alaska Mental Health Board.

However, there is a definition of "cause" in the statute that allows the State Board of Education to dismiss the commissioner of education "for cause." It provides that, for purposes of that section, "cause" means

- (1) incompetency which is the inability or the unintentional failure to perform the duties of the commissioner;
- (2) immorality which is the commission of an act which, under the laws of the state, constitutes a crime involving moral turpitude; or
- (3) malfeasance or misfeasance in office which includes, but is not limited to, the failure of the commissioner to comply with the rules or regulations adopted by the board.⁹

⁷ Although this is the only statute I found that refers to removal for cause "after notice and hearing," it is likely that all removals for cause would be construed to require notice and hearing. See discussion of procedural protections that begins on page 6.

⁸ See AS 47.30.663(c).

Representative Max Gruenberg
February 11, 1991
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Other definitions of "cause," "just cause," and "good cause" may be found in general authorities like Corpus Juris Secundum and Black's Law Dictionary. (Excerpts enclosed.) For instance, Black's provides that "cause," as used with reference to the removal of an officer or employee, means

a just, not arbitrary, cause; one relating to a material matter or affecting the public interest; ...conduct indicating unworthy or illegal motives or improper administration of power; ...misfeasance or nonfeasance.¹⁰

C.J.S.'s general definition of "cause" is that which is

sufficient or necessary to authorize a removal from office..., that is, reasons which the law and sound public policy recognize as sufficient warrant for removal and not merely a cause which the appointing power in the exercise of discretion may deem sufficient.¹¹

II. REMOVAL FOR REASONS OTHER THAN "CAUSE"¹²

Misconduct, neglect of duty, etc.

Under AS 08.48.041, the governor "may" remove a member of the State Board of Registration for Architects, Engineers, and Land Surveyors for "misconduct, incompetency or neglect of duty."

Under AS 14.20.430, the governor "may" remove a member of the Professional Teaching Practices Commission for "misconduct, malfeasance or nonfeasance in office, or incapacity."

Under AS 16.05.280 and AS 41.17.045(a), respectively, the governor "may" remove a member of the Board of Fisheries or Game or the Board of Forestry for "inefficiency, neglect of duty, or misconduct in office."

⁹ See AS 14.07.145(f).

¹⁰ Black's Law Dictionary, page 279.

¹¹ 67 C.J.S. 487 (OFFICERS, sec. 120 b.)

¹² Some statutes cited in this section may be construed as referring to dismissal for cause for purposes of procedural protections; however, they do not use the term "cause" so they are discussed separately, as your memo requested.

Representative Max Gruenberg
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Under AS 18.60.057(b) and AS 18.67.020, respectively, the governor "may" remove a member of the OSHA Review Board or the Violent Crimes Compensation Board for "inefficiency, neglect of duty or malfeasance in office."

I have found no statutes defining terms like "misconduct," "misfeasance," "malfeasance," or "nonfeasance," but I have enclosed an excerpt from C.J.S. that discusses them.¹³

Other non-"cause" reasons for removal

Under AS 44.21.200(d), the Older Alaskans Commission "may" request the governor to remove a member who has failed to attend three consecutive meetings of the commission.¹⁴

Under AS 42.40.230(e), the members of the board of directors of the Alaska Railroad Corporation "may" recommend to the governor that a board member be removed for intentionally violating the conflict of interests provisions of AS 42.40.230.

Two other statutes do not refer to a specific reason for removal but do require that a statement of reasons be given. These statutes are AS 37.13.070(a) (Alaska Permanent Fund) and AS 44.33.705(c)(2) (members of the Alaska Tourism Marketing Council that are appointed by the trade association).

Removal not specifically addressed

My research indicates that there are at least 28 advisory boards and commissions. None of their statutes carries a reference to removal powers or reasons for removal. A few state that the members serve at the pleasure of the governor, but none speaks to removal, per se.¹⁵

III. PROCEDURAL PROTECTIONS.

Statutory protections

¹³ See 67 C.J.S. 490 - 495 (OFFICERS, sec. 121 - 124).

¹⁴ This is similar to the situation for occupational licensing boards covered by AS 08.01.010 and 08.01.020, but the Older Alaskans' statute does not use the term "cause." (Members of the Older Alaskans Commission serve "at the pleasure of the governor" under AS 44.21.200(c) just as the members of licensing boards do under AS 08.01.020.)

¹⁵ See AS 03.17.020; AS 14.40.087; AS 14.42.030; AS 18.07.011; AS 18.08.020; AS 18.60.030; AS 23.20.025; AS 37.14.120; AS 38.06.020; AS 41.15.310; AS 41.21.510 and 41.21.625; AS 41.23.430; AS 41.37.010; AS 44.19.101, 44.19.110, 44.19.120, 44.19.155, 44.19.165, 44.19.181, 44.19.255, and 44.19.561; AS 44.29.100; AS 44.46.030; AS 44.88.174; AS 46.30.020; and AS 47.07.110.

Only two Alaska statutes relating to removal for "cause" specify any procedures that must be followed. One says the removal must be "after hearing"¹⁶ and the other says "after notice and hearing."¹⁷

Three statutes that should probably be considered to be "cause" statutes, even though that term is not used,¹⁸ also specify some procedures to follow. One requires "due notice and hearing";¹⁹ two require "a written copy of charges," "an opportunity to be heard in person or through counsel at a public hearing...upon 10 days' notice," and allows the removed member to "confront and cross-examine witnesses."²⁰

Constitutional protections

Members of boards and commissions who serve "at the pleasure of the governor" probably are not entitled to any procedural protections attendant to their removal unless the governor removes them for cause. If they are removed for cause, they are probably entitled to reasonable notice of the charges and an opportunity to be heard, even if the statute governing their agency does not so provide.

The Alaska Supreme Court, in Breeden v. City of Nome, 628 P.2d 924, held that

A person who is employed "at the pleasure" of his employer has no "property" interest in continued employment that is protected by due process.

However, removal of persons serving "at the pleasure of the governor" is probably still governed by the same types of exceptions the courts have found applicable to the "at will" doctrine, e.g., discrimination, unfair labor practice, "whistleblower," and other violations of public policy.

Persons who are removed for cause, whether or not they had been serving at the pleasure of the appointing authority may be entitled to notice and an opportunity to be heard. This

¹⁶ AS 08.04.030 (Board of Public Accountancy).

¹⁷ See AS 41.37.050(a) (Citizens' Advisory Commission on Federal Areas in Alaska).

¹⁸ Although not using the term "cause," the statutes relating to the Boards of Fisheries and Game, the Violent Crimes Compensation Board, and the Board of Forestry all refer to removal for something akin to "cause," such as neglect of duty, misconduct in office, and malfeasance.

¹⁹ See AS 18.67.020 (Violent Crimes Compensation Board).

²⁰ See AS 16.05.280 (Boards of Fisheries and Game) and AS 41.17.045 (Board of Forestry).

Representative Max Gruenberg
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is so because removal for cause may tend to stigmatize them or injure their reputations; hence, they are entitled to defend themselves.²¹

IV. CONCLUSION.

Removal "for cause" is used in a number of Alaska Statutes relating to members of boards and commissions, but not uniformly and with no definition of the term. Only three statutes that use the term purport to restrict removal **only** to situations involving cause. Some members who are removable for cause serve at the pleasure of the governor; some do not.

Procedural protections afforded by statute are minimal, spelled out in less than a handful of statutes. Procedural protections arising from the constitution will vary, depending on the type of board or commission involved and whether or not dismissal was for cause.

I hope you find this memo and the enclosed information helpful. Please let me know if I can be of further assistance.

TML:gc
91-068.glc

Enclosure(s)

²¹ See 67 C.J.S. 538 (OFFICERS, sec. 148), copy enclosed.

LEGAL SERVICES**DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA**(907) 465-3867 or 465-2450
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Mail Stop 3101State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329**MEMORANDUM**

April 17, 2007

SUBJECT: Removal of a University Regent (HB 237)
(Work Order No. 25-LS0839\A)

TO: Representative Bob Lynn
Attn: Nancy Manly

FROM: Jean M. Mischel
Legislative Counsel

You asked whether the governor may remove a University regent. In my opinion, the answer is yes. In fact, the constitutional authority of the legislature to restrict or otherwise control the removal or suspension of a regent by the governor is the subject of considerable debate. Unlike boards and commissions controlled by art. III, sec. 26 of the constitution, nothing in art. VII, sec. 3, which establishes the Board of Regents, provides for legislative control over removal of the regents and therefore the governor's removal authority appears to be unrestricted.

Article VII, sec. 3 provides:

The University of Alaska shall be governed by a board of regents. The regents shall be appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session

A limitation on removal of some executive officers may be interposed by law, but arguably only as to persons who hold appointment under art. III, sec. 26 of the state constitution. Article III, sec. 26 states:

When a board or commission is at the head of a principal department or a regulatory or quasi-judicial agency, its members shall be appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session, *and may be removed as provided by law*

Even with the additional legislative authority over sec. 26 boards, the Alaska Supreme Court interpreted that authority very narrowly. When the Court was faced with the question of the extent of legislative authority over sec. 26 boards and commissions, the Court found that the confirmation power of the legislature provided in art. III, secs. 25 (principal department heads) and 26, is merely a limited delegation of the executive appointment power to the legislature and stated:

As to this issue, we think the provision of Sections 25 and 26 of Article III are clear and unambiguous. Thus, we conclude that Sections 25 and 26

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mark the full reach of the delegated, or shared, appointive function to Alaska's legislative branch of government. (Bradner v. Hammond, 553 P.2d 1, 7 (Alaska 1976))

The University's status as a "body corporate" does not imply a legislative role in removal of a regent (apart from the impeachment process available to the legislature as to all civil officers). Though the University, alone in the constitution, expressly holds corporate status, the Alaska Supreme Court has said that members of other public corporations established by law serve at the pleasure of the governor. (Walker v. Alaska State Mortgage Association, 416 P.2d 245 (Alaska 1966)) The Court stated:

The Association's three board members from the Board of Commissioners of the Alaska Housing Authority are appointed by the governor and serve at his pleasure. Therefore, the governor is empowered to remove any member of the governing board of the Association at his pleasure.

Id. at 240 (citations omitted).

I am aware of a recent informal attorney general opinion that suggests in a footnote that the legislature has some authority over removal of a regent without any judicial support for that position. The addition of legislative control over suspension of a regent is even more questionable. I do not know how a court would view the kind of intrusion proposed in HB 237 into the governor's appointment and removal authority, but perhaps the court would be persuaded by the governor's support of this concept.

If I may be of further assistance, please advise.

JMM:med
07-247.med

MEMORANDUM

State of Alaska
Department of Law

To: Talis J. Colberg Attorney General	Date: February 2, 2007
Thru: Craig J. Tillery Deputy Attorney General	File No.: 663-06-0103
	Tel. No.: (907) 465-3600
	Fax: (907) 465-2520
From: Michael A. Barnhill Assistant Attorney General Labor and State Affairs Section	Subject: Governor's Power to Remove a University of Alaska Regent

We have been asked whether the Governor has the power to remove a University of Alaska regent without cause. In our view, the answer is no.

We acknowledge that this question has been posed to different counsel and different conclusions reached. Legislative counsel has concluded in a written opinion that regents serve at the pleasure of the governor and may be removed at any time. University of Alaska counsel has concluded in a verbal opinion that a regent may be removed only through impeachment by the legislature.

For the reasons set forth below, we do not fully agree with the conclusions of either legislative counsel or university counsel. That being said, we do agree with both legislative counsel and university counsel that impeachment is an option that may be pursued in order to remove a regent. But we disagree with university counsel that it is the only option.

The basis for our views is grounded primarily in the constitution and discussions of the framers regarding the University of Alaska during the constitutional convention. We start there.

I. Historical Background

The University of Alaska was created by the territorial legislature in 1935. ch. 49, SLA 1935. The Board of Regents was created at that time as well, with the governor empowered to appoint regents subject to confirmation by a joint session of the legislature. *Id.* at sec. 3. The term of a regent was eight years and a regent was to serve "until their successors are appointed and have qualified." *Id.* The original statute made no mention

of how a regent should be removed. This law has essentially remained unchanged through today, though the number of regents was increased to eleven in 1975. *See* AS 14.40.120; 14.40.140; AS 14.40.150.

From the University's inception through statehood we are aware of no instance of a governor removing a regent prior to the end of a regent's term. We recognize that it is possible such could have happened, but it would take further historical research to determine this.

The constitutional convention considered the University of Alaska several times during the course of the convention. Before considering these passages, however, it is important to understand that the territory of Alaska had suffered from a fragmented executive branch with several elected officials and multiple governing boards designed to erode the power of the federally appointed governor. A fundamental goal of the convention was to establish a strong governor who was completely in control of the executive branch of government.¹

During the consideration of the executive branch article, however, concerns were raised regarding the appropriate place for the University of Alaska within the constitutional design for the new government. These concerns were often expressed in terms of the need to insulate education from politics. Alaska Constitutional Convention Proceedings at 2043, 2246. During the discussions of the provisions that ultimately

¹ Delegate Fischer later wrote, "[Territorial] government was neither responsible nor responsive to the people. As a result, convention delegates were ready to make basic structural changes so the people could hold the governor wholly responsible for the conduct of state administration." V. Fischer, *Alaska's Constitutional Convention at 106* (1975).

became sections 25 and 26 of Article III,² questions were raised concerning the extent to which these sections governed appointments to the Board of Regents. The chair of the Executive Branch Committee, Victor Rivers, and a member of that Committee, Katherine Nordale, both responded that section 26 of Article III only applied to "principal departments" and that the University of Alaska was not a principal department. Alaska Constitutional Convention Proceedings at 2034, 2037, 2246. Therefore, in their mind, the University of Alaska did not fall under section 26 of Article III.

Other delegates, however, remained concerned that in order to insulate the University from politics it needed to be made explicit that the University was not subject to section 26 of Article III. In particular, certain delegates were concerned that if section 26 did apply to the University, that the Board of Regents' appointment of a president would be subject to approval by the governor. Accordingly, these delegates sought to amend section 26 to state that the provision did not apply to the University of Alaska. Alaska Constitutional Convention Proceedings at 2245-2258. Ultimately, these attempts failed because the members of the Executive Branch committee persuaded the convention that section 26 simply did not apply to the University of Alaska. Alaska Constitutional Convention Proceedings at 2246, 2257. Moreover, several delegates noted that a separate article was being drafted to govern the University of Alaska. *Id.* at 2247-48, 2250, 2255.

During the debate, some delegates expressed observations as to the status of the University. The chair of the Executive Committee, Victor Rivers, stated that the Executive Branch article would have no impact on the University:

² Section 25. Department Heads. The head of each principal department shall be a single executive unless otherwise provided by law. He shall be appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session, and shall serve at the pleasure of the governor, except as otherwise provided in this article with respect to the secretary of state.

Section 26. Boards and Commissions. When a board or commission is at the head of a principal department or a regulatory or quasi-judicial agency, its members shall be appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session, and may be removed as provided by law. They shall be citizens of the United States. The board or commission may appoint a principal executive officer when authorized by law, but the appointment shall be subject to the approval of the governor.

Walsh: May I ask a question, Mr. Rivers? I think to clarify in the minds of several people here it might be well for me, that [as] one of those serving on the Board of Regents of the University of Alaska, composed of eight members, and the Board of Regents select the President of the University. The governor, as I understand it, does not have the power of the removal of the president of the University. It is a matter for the Board. Would this situation change that, Mr. Rivers?

Rivers: No, in regard to the University, this would not affect their present setup. They are a private corporation, or rather a nonprofit corporation, and under the specific law providing for their make-up, and you would still have a board of regents appointed by the governor and confirmed by the legislature, and the powers as you now have them would be identical to what they now are as I visualize them.

Id. at 2033-34. Delegate Taylor stated that the "University is not a part of the Territorial government whatsoever; it is an independent agency." *Id.* at 2253. Notably, Delegate Nordale expressed the view that by explicitly putting the University in a separate article it would "make it very clear that it can never be dissolved and that it is not part of the executive branch of government." *Id.* at 2256.

Later in the convention, the Executive Branch committee proposed language regarding the University. Chair Rivers introduced the language as follows:

Mr. President, you have heard the reading of this article and it was considered important that in the constitution there be included an article of this type. It gives the University, as a corporate body, the authority to receive and hold property which will be granted to them under the enabling act. It also gives them the authority for administering and disposing of that according to law. It sets up the board of regents and the governing body of the University, and I think the main point of this article has is that constitutionally the University of Alaska shall be the only state university in Alaska.

Id. at 2792. Perhaps notably, the Executive Branch committee saw fit to clear the language of the proposed article with the President of the University prior to bringing it to the floor of the convention.³ *Id.*

II. Analysis

With this summary of the constitutional history of the University in mind, we think it is fair to draw the following conclusions. First, the convention intended to create a very strong governor with full appointive power. Second, despite the strong governor model, the convention nevertheless intended to insulate the University from politics, including the governor. Third, the convention intended that the University would not be subject to section 26 of Article III of the Alaska Constitution. Fourth, the convention intended to constitutionalize the existence of the University. Finally, some members of the convention believed that the University resided outside the executive branch of government in 1955 and that the constitution preserved that status.⁴

Nowhere in the convention minutes is there any discussion regarding removal of a regent.⁵ But the above conclusions are sufficient to give us pause that the governor's power to remove certain executive branch appointees without cause extends to the University Board of Regents. This view is consistent with the views previously expressed by this office. In 1979, we opined:

Under the state constitution, the University of Alaska is 'governed' by the Board of Regents. Alaska Const., art. VII, § 3. The regents are appointed by the governor, subject to confirmation by the legislature. *Id.* They serve for terms of eight years. Thus, while the regents are appointed by and are responsible to the governor, they do not serve at his pleasure but rather for fixed terms, and they may, therefore, be

³ In other words, it is doubtful that President Patty, the University president at the time, would have approved this language if he thought it allowed the governor to remove a regent without cause.

⁴ By observing this latter point, we do not conclude that in fact the convention succeeded in fully removing the University from the executive branch.

⁵ Though at one point, Chair Rivers states that "[t]he law could provide no doubt for means of removal . . ." *Id.* at 2255-56. He appears to be referring to the chief executive of the University, not the regents, however.

removed from office solely for cause. 67 C.J.S. Officers § 120 (1978); 63 Am. Jur.2d Public Officers and Employees § 189 (1972). As a result, the governor's supervision over the university is made distinctly indirect. Unless the members of the Board of Regents commit acts of malfeasance, misfeasance, or nonfeasance sufficient to constitute cause for their removal, the governor possesses no check upon them and no power to direct their activities.

1979 Inf. Op. Att'y Gen. 1 (Jan. 23; J-66-103-79). We have reiterated this view over the years⁶ and see no reason to stray from it today.

For the reasons expressed above, the University is accorded unique constitutional status. We must be mindful of these reasons when considering the applicability of Alaska Supreme Court precedents. A number of these cases have been cited by other counsel, but we doubt that a court would find them controlling on the issue of whether the governor may remove a regent without cause. For instance, *Walker v. Alaska State Mortgage Assoc.*, 416 P.2d 245 (Alaska 1966) does not involve the University of Alaska, but rather pertains to a board of a public corporation that does not have a unique constitutional status. The cases involving the University do not have issues that directly implicate the political independence of the University, one of the reasons for the University's unique constitutional status. See, e.g., *University of Alaska v. Nat'l Aircraft Leasing*, 536 P.2d 121 (Alaska 1975) (University is instrumentality of state for purposes of sovereign immunity); *McGrath v. University of Alaska*, 813 P.2d 1370 (Alaska 1991) (legislature may subject University to Administrative Procedures Act). Instead, we think a court if faced with the issue of whether the governor may remove a regent without cause would be more likely to focus on the constitutional history of the University set forth above.

Finally, legislative counsel contends that under AS 39.05.060(d) regents serve at the pleasure of the governor and may be removed at any time. This interpretation is at odds with the express intention of the constitutional convention that the University be insulated from politics. Moreover, review of the fairly lengthy legislative history of this statute demonstrates that the legislature never intended AS 39.05.060(d) to reach the

⁶ In 1998, an assistant attorney general stated that, "Regents are considered to be sort of in a class by themselves. We've always advised the governor that it's inadvisable to remove the regents at a change of an administration. Legal complications may ensue." 1998 Anchorage Daily News (quoting AAG James Baldwin).

Attorney General Colberg
Re: Removal of University Regent

February 2, 2007
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Board of Regents. This statute was originally enacted as part of the State Organization Act of 1959, under which the executive branch of the new State of Alaska was formed. *See* ch. 64, SLA 1959. The University of Alaska is not within the scope of this Act—it was not mentioned in the Act and was left out of the organization of the executive branch accomplished by this Act. *Id.* When initially enacted, AS 39.05.060 only referred to boards that were explicitly mentioned in the State Organization Act of 1959. While the scope of AS 39.05.060 has both expanded and contracted over the years, it has never been broadened to include the Board of Regents.⁷

In summary, we conclude that the Governor may only remove a regent if cause is established, preferably at a hearing prior to removal. We would be happy to address in another memo the evidence necessary to establish cause, and the criteria for an appropriate hearing process.

MAB:ajh

⁷ We note, however, that it may be possible for the legislature to provide for removal of a regent through enactment of a statute consistent with the constitution. Such a statute would have to preserve the University's politically independent constitutional status and probably could only provide for removal if it were for some cause that was established at a hearing prior to removal.

Westlaw.

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C**ALASKA STATUTES**

Title 23. Labor and Workers' Compensation.

Chapter 30. Alaska Workers' Compensation Act.

Article 1. Administration.

Sec. 23.30.007 Workers' Compensation Appeals Commission.

(a) There is established in the Department of Labor and Workforce Development the Workers' Compensation Appeals Commission. The commission has jurisdiction to hear appeals from final decisions and orders of the board under this chapter. Jurisdiction of the commission is limited to administrative appeals arising under this chapter.

(b) The commission consists of five members appointed by the governor and confirmed by a majority of the members of the legislature in joint session. The members shall be appointed as follows:

(1) a member appointed as chair who meets the requirements of (c)(2) of this section;

(2) two members who meet the qualifications in (c)(1) of this section and, because of their employment or affiliations, may be classified as a representative of employees covered by this chapter;

(3) two members who meet the qualifications in (c)(1) of this section and, because of their employment or affiliations, may be classified as a representative of employers covered by this chapter.

(c) To be eligible for appointment under this section,

(1) a member must

(A) be a citizen of the United States;

(B) be a resident of the state for the five years preceding the appointment;

(C) have not been convicted of either a

(i) felony; or

(ii) misdemeanor related to workers' compensation; and

(D) have served for a total of not less than 18 months as a member of the Alaska Workers' Compensation Board;

(2) the chair must

(A) meet the criteria specified in (1) of this subsection, except for the requirement in (1)(D) of this subsection;

(B) be licensed to practice law in this state and be a member in good standing with the Alaska Bar Association; and

(C) have engaged in the active practice of law for at least five years with experience in workers' compensation in this state.

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(d) An individual seeking appointment as a member or as chair shall submit an application to the chief administrative law judge appointed under AS 44.64.010. The application must show that the applicant meets requirements in (c) of this section that are applicable to the position for which the application is submitted. For each vacant position, other than the chair, the chief administrative law judge shall select not less than two eligible individuals and submit the names of those individuals to the governor. For the chair, the chief administrative law judge shall select not less than three for submission to the governor.

(e) The term of service on the commission is five years. A member may be reappointed so long as the reappointment complies with the provisions of this section, including the application and appointment process described in (d) of this section.

(f) A vacancy arising in the commission shall be filled by appointment by the governor and confirmed by a majority of the members of the legislature in joint session. Except as provided in AS 39.05.080(4), an appointee selected to fill a vacancy shall hold office for the unexpired term of the member whose vacancy is filled. A vacancy in the commission does not impair the authority of a quorum of members to exercise all the powers and perform all the duties of the commission.

(g) A member may act and receive compensation under this section from the date of appointment until confirmation or rejection by the legislature.

(h) The chair of the commission is in the exempt service under AS 39.25.110 and shall receive a monthly salary that is not less than Step A nor more than Step F of Range 27 of the salary schedule in AS 39.27.011(a) for Anchorage, Alaska.

(i) An appeal to the commission shall be heard and decided by a three-member panel of the commission. An appeal panel shall consist of the chair of the commission and two members of the commission assigned by the chair, one member classified as representing employees, and one member classified as representing employers. At other meetings to conduct commission business, the number of commission members classified as representing employees must equal the number of commission members classified as representing employers. The chair of the commission and two representative members of the commission, one classified as representing employees and one classified as representing employers, constitute a quorum.

(j) A member of the commission may be removed from office by the governor for good cause. To be removed for cause, a member of the commission shall be given a copy of the charges and afforded an opportunity to be heard in person or by counsel in the member's own defense upon not less than 10 days' notice. If the member is removed for cause, the governor shall file with the lieutenant governor a complete statement of all charges made against the member, the governor's findings on the charges, and the record of any proceedings. In this subsection, "good cause" includes

(1) misconduct in office or violation of AS 39.52;

(2) conviction of a felony;

(3) conviction of a misdemeanor related to workers' compensation;

(4) inability to serve, neglect of duty, incompetence, unjustified failure to handle the caseload assigned, or similar nonfeasance of office; and

(5) failure to continue to meet the requirements of this section relating to qualification for office.

(k) Representative members are entitled to compensation in the amount of \$400 a day for each day spent in actual

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hearing of appeals or on authorized official business incidental to their duties, and to transportation and per diem as provided by law. Compensation shall be paid pro rata for each portion of a day spent in actual hearing of appeals or on authorized official business.

(f) A member of the commission may not hear an appeal under this chapter if

(1) a party is an employee or was, in the past seven years, an employee of the commission member or of a business that employs the commission member; this paragraph does not apply to the chair of the commission when the State of Alaska is or was the employer of a party;

(2) a party is a member or was, in the past seven years, a member of the same union or employee association as the commission member;

(3) a party has a contractual relationship with the commission member, a business that employs the commission member, or a union or employee association of which the commission member is a member;

(4) the commission member is unable to be fair, impartial, and unbiased toward the appeal participants; or

(5) participation in the appeal is a violation of AS 39.52.

(m) If the chair of the commission is unable to hear an appeal for reasons of absence or illness in excess of 10 days, or for reasons set out in (f) of this section, the chief administrative law judge appointed under AS 44.64.010 shall appoint a person who meets the qualifications of this section to serve as chair to hear the appeal as chair pro tempore. The person shall receive the compensation provided in (k) of this section. Appointment of a chair pro tempore does not require legislative confirmation.

(n) Each member of the commission, before entering upon the duties of office, shall take and subscribe to the oath prescribed for principal officers of the state. A member of the commission, during tenure, may not

(1) hold or campaign for elective office;

(2) be an officer of a political party, political committee, or group;

(3) permit the member's name to be used, or make any contributions whatsoever, in support of or in opposition to a candidate or proposition or question that appears on any ballot in the state including but not limited to that of a municipality; however, contributions may be made to a candidate for the office of President of the United States;

(4) participate in any way in an election campaign or participate in or contribute to any political party; or

(5) lobby, employ, or assist a lobbyist.

(o) The offices of the commission shall be physically separate from the offices of the division.

(p) Notwithstanding (e) of this section, the terms of the individuals initially appointed to the commission shall be as follows:

(1) the chair, five years;

(2) one member, four years;

(3) one member, three years;

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(4) one member, two years;

(5) one member, one year.

(§ 8 ch 10 FSSLA 2005)

HISTORICAL NOTES

Effective dates. -- Section 8, ch. 10, FSSLA 2005, which enacted this section, took effect on November 7, 2005.

A. S. 23.30.007, AK ST § 23.30.007

Current through all 2006 Legislation, Annotations current through Opinions
Decided as of July 1, 2006.

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Westlaw.

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C

ALASKA STATUTES

Title 31. Oil and Gas.

Chapter 05. Alaska Oil and Gas Conservation Act.

Article 1. Administration.

Sec. 31.05.007 Term of office; vacancy; removal.

(a) The term of office of each member is six years. A commissioner, upon the expiration of a term, shall continue to hold office until a successor is appointed and qualified.

(b) A vacancy arising in the office of a commissioner shall be filled by appointment by the governor and confirmed by the legislature in joint session, and, except as provided in AS 31.05.080(4), an appointee selected to fill a vacancy shall hold office for the balance of the full term for which the predecessor on the commission was appointed.

(c) A vacancy in the commission does not impair the authority of a quorum of commissioners to exercise all the powers and perform all the duties of the commission.

(d) The governor may remove a commissioner from office for cause including but not limited to incompetence, neglect of duty or misconduct in office. A commissioner, to be removed for cause, shall be given a copy of the charges and afforded an opportunity to be publicly heard in person or by counsel in the commissioner's own defense upon not less than 10 days' notice. If a commissioner is removed for cause, the governor shall file with the lieutenant governor a complete statement of all charges made against the commissioner and the governor's finding based on the charges, together with a complete record of the proceedings.

(§ 1 ch 158 SLA 1978; am § 10 ch 168 SLA 1990; am § 10 ch 80 SLA 1996)

HISTORICAL NOTES

Opinions of attorney general. -- For a discussion of the effect of the term "appointed and qualified" as set out in (a) of this section to appointment to the commission, see June 8, 1995, Op. Atty. Gen.

A. S. 31.05.007, AK ST § 31.05.007

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AK ST § 08.04.030

Page 1

AS 08.04.030

ALASKA STATUTES
Title 8. Business and Professions.
Chapter 04. Accountants.
Article 1. Board of Public Accountancy.
Sec. 08.04.030 Removal of members.

The governor shall remove any member of the board whose certificate or license has been revoked or suspended. The governor may, after hearing, remove any member for neglect of duty or other just cause.

(§ 2(2) ch 187 SLA 1960; am § 2 ch 66 SLA 1997)

HISTORICAL NOTES

Delayed amendment of section. -- Under §§ 4 and 58, ch. 16, SLA 2006, effective January 1, 2008, this section will read as follows: "Removal of members. The governor shall remove any member of the board whose license has been revoked or suspended. The governor may, after hearing, remove any member for neglect of duty or other just cause."

HISTORICAL NOTES

Effect of amendment. -- The 1997 amendment, effective July 1, 1997, rewrote this section.

A. S. 08.04.030, AK ST § 08.04.030

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AK ST § 04.06.070

AS 04.06.070

Page 1

C

ALASKA STATUTES

Title 4. Alcoholic Beverages.

Chapter 06. Alcoholic Beverage Control Board.

Sec. 04.06.070 Appointment and removal of director.

The governor shall appoint a director to serve as the executive officer of the board. The board may remove the director at its pleasure, and the governor may remove the director for misconduct, misfeasance, or malfeasance in office. The governor may not remove the director unless the director is given a copy of the charges and afforded an opportunity to be publicly heard, in person or by counsel, in defense against the charges upon at least 10 days' notice. If the director is removed for cause, the governor shall file with the lieutenant governor a complete statement of all charges made against the director and the findings based on the charges, together with a complete record of any hearing.

(§ 1 ch 131 SLA 1980)

A. S. 04.06.070, AK ST § 04.06.070

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AK ST § 42.04.020

Page 1

AS 42.04.020

C**ALASKA STATUTES**

Title 42. Public Utilities and Carriers.

Chapter 04. Regulatory Commission of Alaska.

Article 1. Commission and Staff.

Sec. 42.04.020 Commissioners.

(a) The commission consists of five commissioners appointed by the governor and confirmed by the legislature in joint session. To qualify for appointment as a commissioner, a person must be a member in good standing of the Alaska Bar Association or have a degree from an accredited college or university with a major in engineering, finance, economics, accounting, business administration, or public administration. Actual experience for a period of five years in the practice of law or in the field of engineering, finance, economics, accounting, business administration, or public administration is equivalent to a degree.

(b) The term of office of each member is six years. A commissioner, upon the expiration of a term, shall continue to hold office until a successor is appointed and qualified.

(c) A vacancy arising in the office of a commissioner shall be filled by appointment by the governor and confirmed by the legislature in joint session, and, except as provided in AS 39.05.080(4), an appointee selected to fill a vacancy shall hold office for the balance of the full term for which the predecessor on the commission was appointed.

(d) A vacancy in the commission does not impair the authority of a quorum of commissioners to exercise all the powers and perform all the duties of the commission.

(e) The governor may remove a commissioner from office for cause, including incompetence, neglect of duty, inability to serve, or misconduct in office or because the member, while serving on the commission, is convicted of a misdemeanor for violating a statute or regulation related to public utilities or is convicted of a felony. A commissioner, to be removed for cause, shall be given a copy of the charges and afforded an opportunity to be publicly heard in person or by counsel in the commissioner's own defense upon not less than 10 days' notice. If a commissioner is removed for cause, the governor shall file with the lieutenant governor a complete statement of all charges made against the commissioner and the governor's finding based on the charges, together with a complete record of the proceedings.

(f) Members of the commission are in the exempt service and are entitled to a monthly salary equal to Step C, Range 26, of the salary schedule in AS 39.27.011(a) for Juneau, Alaska. The chair of the commission is entitled to a monthly salary equal to Step C, Range 27, of the salary schedule in AS 39.27.011(a) for Juneau, Alaska.

(g) Each commissioner, before entering upon the duties of office, shall take and subscribe to the oath prescribed for principal officers of the state.

(§ 1 ch 25 SLA 1999)

A. S. 42.04.020, AK ST § 42.04.020

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AK ST § 08.01.020

AS 08.01.020

Page 1

C

ALASKA STATUTES

Title 8. Business and Professions.

Chapter 01. Centralized Licensing.

Sec. 08.01.020 Board organization.

Board members are appointed by the governor and serve at the pleasure of the governor. Unless otherwise provided, the governor may designate the chair of a board, and all other officers shall be elected by the board members. Unless otherwise provided, officers of a board are the chair and the secretary. A board may provide by regulation that three or more unexcused absences from meetings are cause for removal.

(§ 1 ch 59 SLA 1966; am § 2 ch 94 SLA 1987)

A. S. 08.01.020, AK ST § 08.01.020

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MEMORANDUM

March 17, 2011

SUBJECT: Separation of powers issue (HB 6; Work Order No. 27-LS0027\A)

TO: Representative Steve Thompson
Attn: Jane Pierson

FROM: Jean M. Mischel
Legislative Counsel 

You have asked about the constitutionality of HB 6. The constitutional authority of the legislature to restrict or otherwise control the removal or suspension of a regent by the governor is the subject of considerable debate and raises a significant possibility of a separation of powers challenge. Unlike boards and commissions controlled by art. III, sec. 26 of the constitution, nothing in art. VII, sec. 3, which establishes the Board of Regents, provides for legislative control over removal of the regents and therefore the governor's removal authority appears to be unrestricted.

Article VII, sec. 3 provides:

The University of Alaska shall be governed by a board of regents. The regents shall be appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session. . . .

A limitation on removal of some executive officers may be interposed by law, but arguably only as to persons who hold appointment under art. III, sec. 26 of the state constitution. Article III, sec. 26 states:

When a board or commission is at the head of a principal department or a regulatory or quasi-judicial agency, its members shall be appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session, *and may be removed as provided by law.* . . .

Even with the additional legislative authority over sec. 26 boards, the Alaska Supreme Court interpreted that authority very narrowly. When the Court was faced with the question of the extent of legislative authority over sec. 26 boards and commissions, the Court found that the confirmation power of the legislature provided in art. III, secs. 25 (principal department heads) and 26, is merely a limited delegation of the executive appointment power to the legislature and stated:

As to this issue, we think the provision of Sections 25 and 26 of Article III are clear and unambiguous. Thus, we conclude that Sections 25 and 26

Representative Steve Thompson
March 17, 2011
Page 2

mark the full reach of the delegated, or shared, appointive function to Alaska's legislative branch of government.

Bradner v. Hammond, 553 P.2d 1, 7 (Alaska 1976).

The University's status as a "body corporate" does not imply a legislative role in removal of a regent (apart from the impeachment process available to the legislature as to all civil officers). Though the University, alone in the constitution, expressly holds corporate status, the Alaska Supreme Court has said that members of other public corporations established by law serve at the pleasure of the governor. Walker v. Alaska State Mortgage Association, 416 P.2d 245 (Alaska 1966). The Court stated:

The Association's three board members from the Board of Commissioners of the Alaska Housing Authority are appointed by the governor and serve at his pleasure. Therefore, the governor is empowered to remove any member of the governing board of the Association at his pleasure.

Id. at 240 (citations omitted).

I am aware of an informal attorney general opinion that suggests in a footnote that the legislature currently has some authority over removal of a regent without any judicial support for that position. I do not know how a court would view the kind of intrusion proposed in this draft into the governor's appointment and removal authority, but perhaps the court would be persuaded by the governor's support of this concept.

If I may be of further assistance, please advise.

JMM:ljw
11-177.ljw

Alaska State Legislature

House of Representatives



Representative Max F. Gruenberg, Jr.

House District 20

Anchorage (Mountain View, Russian Jack, East Anchorage)

House Minority Floor Leader

Member

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House Bill 6:

Removing a Regent

Sectional Analysis for CS for HB 6 () (27-LS0027\T)

Section 1¹ sets forth the legislative findings and purposes of the bill. The legislature finds that the framers of the Alaskan Constitution intended to insulate the University of Alaska from politics, that the legislature delegated the power of self-governance to the UA under AS 14.40.170(b), and that the legislature has the power to create laws that pertain to the university. The purposes of the bill are to clarify that the governor may only remove a regent with good cause and that the governor must afford a regent due process in the proceedings dealing his or her removal or suspension. Finally, the legislative findings in this section affirm the political insulation of the university and the board of regents.

Section 2² adds a new section, AS 14.40.155, to AS 14.40 the chapter that governs the University of Alaska's Board of Regents. AS 14.40.155 is patterned after other statutory removal procedures for other boards, including the workers compensation appeals commission. See AS 23.30.007(j).

AS 14.40.155(a) sets forth the procedure for the governor to suspend a regent for good cause. The governor must provide the regent with notice and an opportunity for a hearing. Good cause is defined in subsection (g) to include a violation of the Executive Branch Ethics Act, a conviction of a felony, conviction of a misdemeanor involving a crime of dishonesty or the University of Alaska, malfeasance or nonfeasance in office, or failure to continue to meet the qualification requirements of a regent.

AS 14.40.155(b) allows the governor to remove a regent for good cause by providing the regent with an accusation and opportunity for a hearing and judicial review.

AS 14.40.155(c) details the procedure for a regent to either defend against a possible suspension or lift a suspension once it has been imposed.

AS 14.40.155(d) permits the governor to delegate the conduct of the hearing to the Office of Administrative Hearings. The standard of proof to be used in the hearing for removal for "good cause" is "clear and convincing," one of the highest standards.

¹ Page 1, lines 5-14 through page 2, lines 1-11

² Page 2, lines 12-31 through page 4, lines 1-3

AS 14.40.155(e) states that the Administrative Procedures Act (AS 44.62.330-44.62.630) applies to all of the proceedings of this section.

AS 14.40.155(f) sets out that the governor must file a copy of the allegations against the regent, the findings of the governor, and a complete record of the removal proceedings with the lieutenant governor.

Because this law deals with the conduct of the board of regents during their entire term in office it must apply retroactively to ensure that past violations do not go unchecked. **Section 3**³ is an applicability clause that allows AS 14.40.155 to apply to conduct occurring before, on or after the effective date of this Act.

³ Page 4, lines 4-7

Member

Standing Committees:

Judiciary
Rules
State Affairs
Transportation

Alaska State Legislature

House of Representatives



Representative Max F. Gruenberg, Jr.
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House Minority Floor Leader

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House Bill 6:
Removing a Regent
Explanation of changes between
HB 6 (EDC) (27-LS0027\M) to CS for HB 6 (EDC) (27-LS0027\T)

There are a few of changes between the "E" and "T" versions.

There are no changes to **Section 1** of the bill.

There are a few changes to **Section 2** of the bill. Changes were made to (a)(3)-(5) (page 2, lines 20-26). The change to (a)(3) (page 2, lines 20-21) reflected that mere allegations of an ethics violation under consideration by the Alaska Public Offices Commission should not be enough to suspend a regent. Instead this was changed to a determination of probable cause of a knowing ethics violation that results in a complaint being considered by the personnel board. The change to (a)(4) (page 2, lines 22-23) also reflected that mere allegations should not be enough to suspend a regent. Instead it must be a verified complaint. Paragraph (a)(5) was added to include that if a regent faces misconduct proceedings before a professional or occupational licensing body that relate to his or her ability to serve as a regent then he or she may be suspended.

The final change to **Section 2** of the bill is in (g)(5) (page 3, line 31-page 4, lines 1-2 of the "T" version. This paragraph was changed to reflect that only misconduct before a professional or occupation licensing body related to a regent's ability to serve should be grounds for removal.

There are no changes to **Section 3** of the bill.

27-LS0027\T
Mischel
2/25/11

CS FOR HOUSE BILL NO. 6()

**IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SEVENTH LEGISLATURE - FIRST SESSION**

BY

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVES GRUENBERG, Peggy Wilson

A BILL

FOR AN ACT ENTITLED

1 **"An Act authorizing the governor to remove or suspend a member of the Board of**
2 **Regents of the University of Alaska for good cause; and establishing a procedure for the**
3 **removal or suspension of a regent."**

4 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 * **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
6 to read:

7 **LEGISLATIVE FINDINGS AND PURPOSES.** (a) The legislature finds that

8 (1) the framers of the Constitution of the State of Alaska intended to insulate
9 the University of Alaska and the Board of Regents from politics, but did not intend to
10 immunize the University of Alaska and the Board of Regents from appropriate nonpolitical
11 legislative and executive branch oversight;

12 (2) the legislature has the power to pass laws that pertain to the University of
13 Alaska; and

14 (3) under AS 14.40.170(b)(1), the legislature has delegated to the Board of

1 Regents the power to regulate itself, but the Board of Regents has not adopted self-
2 governance rules that authorize the board to remove or suspend a regent in appropriate
3 circumstances.

4 (b) The purposes of AS 14.40.155, added by sec. 2 of this Act, are to

5 (1) clarify that the governor may remove a regent only with good cause;

6 (2) prescribe a due process procedure under which the governor may remove a
7 regent for good cause;

8 (3) prescribe a due process procedure under which, in certain circumstances,
9 the governor may suspend a regent; and

10 (4) accomplish each of the above purposes in a manner that ensures the
11 University of Alaska and the Board of Regents remain insulated from politics.

12 * **Sec. 2.** AS 14.40 is amended by adding a new section to read:

13 **Sec. 14.40.155. Suspension and removal of regents.** (a) The governor may,
14 after providing notice and an opportunity for a hearing, suspend a member of the
15 Board of Regents while final disposition is pending on

16 (1) a criminal complaint, presentment, information, or indictment
17 involving a felony in any jurisdiction;

18 (2) an information or formal criminal charges of a misdemeanor
19 described under (g)(3) of this section;

20 (3) a probable cause determination of a knowing ethics violation under
21 AS 39.52 that results in a complaint under consideration by the personnel board;

22 (4) a verified complaint of malfeasance or nonfeasance in office
23 described under (g)(4) of this section under consideration by the governor; or

24 (5) proceedings involving misconduct that is related to the regent's
25 ability to serve as a regent under consideration by a professional or occupational
26 licensing body.

27 (b) The governor may remove a member of the Board of Regents for good
28 cause by providing to the member an accusation and an opportunity for a hearing and
29 judicial review.

30 (c) Notwithstanding the procedure under AS 44.62.390, a regent who has been
31 suspended under (a) of this section may, at any time, request a hearing to

1 (1) defend against the grounds for the suspension stated in the
2 accusation; or

3 (2) lift the suspension.

4 (d) The governor may delegate the conduct of a hearing under this section to
5 the office of administrative hearings under AS 44.64.030(b). If a hearing is requested,
6 the hearing officer may prepare a proposed decision under AS 44.62.500(b) to

7 (1) remove a regent based on clear and convincing evidence of good
8 cause for removal;

9 (2) not remove a regent; or

10 (3) continue a suspension or lift a suspension of a regent.

11 (e) AS 44.62.330 - 44.62.630 applies to all proceedings under this section.

12 (f) After a final decision by the governor that removes a regent for good cause
13 under (b) of this section, the governor shall file with the lieutenant governor a copy of
14 the allegations made against the former regent, the governor's findings on each of the
15 allegations, and a complete record of the removal proceedings.

16 (g) In this section, "good cause" means

17 (1) a violation of AS 39.52 (Alaska Executive Branch Ethics Act);

18 (2) conviction of a felony in any jurisdiction;

19 (3) conviction of a misdemeanor in any jurisdiction if the misdemeanor
20 involves

21 (A) dishonesty;

22 (B) breach of trust; or

23 (C) the University of Alaska;

24 (4) malfeasance or nonfeasance in office, including

25 (A) misconduct in office;

26 (B) an inability to serve;

27 (C) neglect of duty;

28 (D) incompetence;

29 (E) unjustified failure to perform the duties of the Board of

30 Regents;

31 (5) misconduct related to the regent's ability to serve as a regent and

1 resulting in the revocation or suspension of a professional or occupational license
2 issued under state law;

3 (6) failure to possess the qualifications of a regent under AS 14.40.130.

4 * **Sec. 3.** The uncodified law of the State of Alaska is amended by adding a new section to
5 read:

6 APPLICABILITY. AS 14.40.155, added by sec. 2 of this Act, applies to all conduct
7 and acts occurring before, on, or after the effective date of this Act.

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MEMORANDUM

March 22, 2011

SUBJECT: Misdemeanors (CSHB 6 () (Work Order No. 27-LS0027\T))

TO: Representative Max Gruenberg
Attn: Ted Madsen

FROM: Jean M. Mischel 

You have asked for examples of misdemeanors in the state that may be construed to involve a breach of trust or dishonesty and for others that do not for purposes of interpreting the above-referenced bill.

A court would form its own interpretation of the phrases as used in the bill when presented with a specific set of facts. If the phrase is considered to be ambiguous the legislative history of the bill, including committee minutes, may be relied upon.

In my opinion, two examples of a misdemeanor involving a breach of trust are endangering the welfare of a vulnerable adult in the second degree, AS 11.51.210, and endangering the welfare of a child that results in physical injury to the child under AS 11.51.100.

For a misdemeanor involving dishonesty, a court would likely consider whether an element of the crime is knowledge or intent. For example, aiding the nonpayment of child support in the second degree under AS 11.51.122 requires proof that the person knows of an obligor's duty to pay child support. Another example of a misdemeanor involving dishonesty is theft in the third degree under AS 11.46.140. A third example is issuing a bad check under AS 11.46.280.

Some examples of misdemeanors that do not involve a breach of trust or dishonesty would likely involve personal use or possession of a small amount of a controlled substance. Criminal trespass in the first degree under AS 11.46.320 may not involve a breach of trust or dishonesty.

If I may be of further assistance, please advise.

JMM:plm
11-173.plm

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE GRUENBERG

TO: CSHB 6(), Draft Version "T"

1 Page 3, line 17, following "Act)":

2 Insert "that results in a recommendation of removal under AS 39.52.410(b)(3)"

3

4 Page 3, line 26, following "serve":

5 Insert "for an extended period of time"

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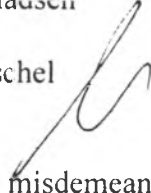
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11-173.plm

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4 Page 3, line 26, following "serve":

5 Insert "for an extended period of time"

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE GRUENBERG

TO: CSHB 6(), Draft Version "T"

- 1 Page 2, line 21:
- 2 Delete "a complaint"
- 3 Insert "an accusation"

February 28, 2011

Representative Carl Gato, chairman House Judiciary Committee

On February 22, 2011 I sent the following e-mail to you and other members of the House Judiciary Committee:

I am stunned that the House Education Committee has advanced House Bill 6 and sent it on to the Judiciary Committee. The bill's introduction is a knee-jerk reaction to a problem several years ago that has been solved under current law. If I read the bill correctly, it allows the governor to suspend a regent for a variety of real or imagined reasons including those listed on Lines 18-28 of Page 3. Under this bill, if the governor does not like the way a regent votes on some issue, or even the way the regent combs his or her hair, the sitting governor can suspend that regent and force the regent to show why he or she should not be removed from office. That is quite a threat, and it also seems to go against the idea that a person is innocent until proven guilty. If this bill is put into law it will be possible for a governor to pack the board of regents with members of his own party or persons who share his opinions on various issues such as evolution, abortion or other that could affect how the regent might vote on issues facing the governance of the University of Alaska. In essence, this bill puts the regents in the position of serving in office at the pleasure of the governor, and thereby voids the protection afforded by AS 14.40.140. This is a bad bill, detrimental to higher education in Alaska. If it comes to you for a vote, I strongly urge you to reject it--T. Neil Davis, professor emeritus and alumnus, University of Alaska Fairbanks

I now wish to thank Representative Max Gruenberg, co-sponsor of House Bill 6, for telephoning me on February 23 and 24, 2011 to discuss my objections to the bill. In these discussions Rep. Gruenberg stated that the intent of the bill was to speed up the current process for removal of a University of Alaska Regent as stated in Article 2 Section 20 of the Alaska Constitution:

All civil officers of the State are subject to impeachment by the legislature. Impeachment shall originate in the senate and must be approved by a two-thirds vote of its members. The motion for impeachment shall list fully the basis for the proceeding. Trial on impeachment shall be conducted by the house of representatives. A supreme court justice designated by the court shall preside at the trial. Concurrence of two-thirds of the members of the house is required for a judgment of impeachment. The judgment may not extend beyond removal from office, but shall not prevent proceedings in the courts on the same or related charges.

I understand that such impeachment currently is the only way a University of Alaska regent can be removed from office because of the guarantee afforded by the Alaska Constitution Article 7, § 3. Board of Regents stating, "The University of Alaska shall be governed by a board of regents. The regents shall be appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session. The board shall, in accordance with law, formulate policy and appoint the president of the university. He shall be the executive officer of

the board,” and Alaska Statute § 14.40.140 which says, “Except for a student regent as specified in AS 14.40.150(b), the term of office of a regent is eight years. The term of office begins on the first Monday in February of the year in which the appointment is made. Each regent serves until a successor is appointed and qualifies.”

I note that the governing board of the University of Alaska (initially called Trustees and later Regents) has been in existence for 94 years and that 145 Alaskans have served on the board. In only one instance has there been cause to initiate impeachment proceedings against a sitting regent, James C. Hayes in 2007, and that he then resigned at that point.

In view of these facts I contend that the wording of the Alaska Constitution and existing statutes have proven capable of solving all problems that have occurred during the course of almost a full century. Therefore, I further contend that there is no need for the drastic actions allowed by House Bill 6, and that such actions run counter to the intent of the framers of the Constitution of the State of Alaska to insulate the University of Alaska and the Board of Regents from inappropriate political action.

In our discussions of the matter Rep. Gruenberg stated that he believed the existing process for removal of a regent was too slow, and HB 6 would allow for rapid removal of a regent. I contend that the removal of a regent is a matter of serious nature that deserves deliberate due process spelled out by Article 2 Section 20 of the Alaska Constitution, describing the impeachment process. It should not be possible for the executive branch or the legislature to avoid such due process in seeking to remove a regent from his or her duties.

Representative Gruenberg stated to me that one objective of the proposed bill was to make certain that the full 11-member board was in existence at all times, and that the attendance of the full board was necessary for the board to conduct its duties. It is not clear to me that the proposed bill accomplishes this aim or that the attendance of the full board is necessary, since only a quorum of six is required to conduct business. In this connection I note that of the last eleven regent meetings during only six was the full board in attendance (see Board Minutes).

In the Legislative Findings and Purpose of HB 6 are the strange statements:

- (2) under AS 14.40.170(b)(1), the legislature has delegated to the Board of Regents the power to regulate itself, but the Board of Regents has not adopted self-governance rules that authorize the board to remove or suspend a regent in appropriate circumstances;
- (3) the legislature has the power to create procedures under which the governor may remove a regent for good cause or suspend a regent in appropriate circumstances....

Regarding the first of these statements: AS 14.40.170(b)(1) states that the Board of Regents may (not shall) “adopt reasonable rules, orders, and plans with reasonable penalties for the good government of the university and for the regulation of the Board of Regents.” It likely would be unconstitutional for the regents to adopt any rules that would allow them to suspend or remove a member. Similarly, with regard to the second statement, the Alaska Constitution does not award the legislature the power to cause removal of a regent for any reason whatsoever other than by impeachment.

One final point:

During our discussion, Rep. Gruenberg verified that the passage of HB 6 would allow a governor to notify a regent of suspension, and the suspension would be effective immediately

and remain in effect until the regent called for a hearing and the result of the hearing would not justify the suspension. So if the regent did not try to defend self, that would, at least temporarily, terminate the regent's service on the board. Even if without any justification whatsoever, such an act would cast doubt on the character of the regent and perhaps do irreparable damage to the regent's reputation. Just the knowledge that such an act could be committed is a threat to the aforementioned clear intent of the framers of the Constitution of Alaska to insulate the University of Alaska and the Board of Regents from politics.

Please reject this bill. And remember, there is good reason why the Constitution establishes the regent's term of office at not less than eight years—it is to insulate the regents from politics as much as possible.—Neil Davis, 375 Miller Hill Road, Fairbanks, AK 99709, 479-2732, neildavs@mosquionet.com

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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Mail Stop 3101

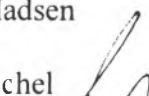
State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

March 22, 2011

SUBJECT: Misdemeanors (CSHB 6 () (Work Order No. 27-LS0027\T))

TO: Representative Max Gruenberg
Attn: Ted Madsen

FROM: Jean M. Mischel 

You have asked for examples of misdemeanors in the state that may be construed to involve a breach of trust or dishonesty and for others that do not for purposes of interpreting the above-referenced bill.

A court would form its own interpretation of the phrases as used in the bill when presented with a specific set of facts. If the phrase is considered to be ambiguous the legislative history of the bill, including committee minutes, may be relied upon.

In my opinion, two examples of a misdemeanor involving a breach of trust are endangering the welfare of a vulnerable adult in the second degree, AS 11.51.210, and endangering the welfare of a child that results in physical injury to the child under AS 11.51.100.

For a misdemeanor involving dishonesty, a court would likely consider whether an element of the crime is knowledge or intent. For example, aiding the nonpayment of child support in the second degree under AS 11.51.122 requires proof that the person knows of an obligor's duty to pay child support. Another example of a misdemeanor involving dishonesty is theft in the third degree under AS 11.46.140. A third example is issuing a bad check under AS 11.46.280.

Some examples of misdemeanors that do not involve a breach of trust or dishonesty would likely involve personal use or possession of a small amount of a controlled substance. Criminal trespass in the first degree under AS 11.46.320 may not involve a breach of trust or dishonesty.

If I may be of further assistance, please advise.

JMM:plm
11-173.plm

27-LS0027AR
Mischel
3/25/11

CS FOR HOUSE BILL NO. 6()

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SEVENTH LEGISLATURE - FIRST SESSION

BY

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVES GRUENBERG, Peggy Wilson

A BILL

FOR AN ACT ENTITLED

1 **"An Act authorizing the governor to remove or suspend a member of the Board of**
2 **Regents of the University of Alaska for good cause; and establishing a procedure for the**
3 **removal or suspension of a regent."**

4 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 * **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
6 to read:

- 7 LEGISLATIVE FINDINGS AND PURPOSES. (a) The legislature finds that
- 8 (1) the framers of the Constitution of the State of Alaska intended to insulate
 - 9 the University of Alaska and the Board of Regents from politics, but did not intend to
 - 10 immunize the University of Alaska and the Board of Regents from appropriate nonpolitical
 - 11 legislative and executive branch oversight;
 - 12 (2) the legislature has the power to pass laws that pertain to the University of
 - 13 Alaska; and
 - 14 (3) under AS 14.40.170(b)(1), the legislature has delegated to the Board of

1 Regents the power to regulate itself, but the Board of Regents has not adopted self-
2 governance rules that authorize the board to remove or suspend a regent in appropriate
3 circumstances.

4 (b) The purposes of AS 14.40.155, added by sec. 2 of this Act, are to

5 (1) clarify that the governor may remove a regent only with good cause;

6 (2) prescribe a due process procedure under which the governor may remove a
7 regent for good cause;

8 (3) prescribe a due process procedure under which, in certain circumstances,
9 the governor may suspend a regent; and

10 (4) accomplish each of the above purposes in a manner that ensures the
11 University of Alaska and the Board of Regents remain insulated from politics.

12 * **Sec. 2.** AS 14.40 is amended by adding a new section to read:

13 **Sec. 14.40.155. Suspension and removal of regents.** (a) The governor may,
14 after providing notice and an opportunity for a hearing, suspend a member of the
15 Board of Regents while final disposition is pending on

16 (1) a criminal complaint, presentment, information, or indictment
17 involving a felony in any jurisdiction;

18 (2) an information or formal criminal charges of a misdemeanor
19 described under (g)(3) of this section;

20 (3) a probable cause determination of a knowing ethics violation under
21 AS 39.52 that results in an accusation under consideration by the personnel board;

22 (4) a verified complaint of malfeasance or nonfeasance in office
23 described under (g)(4) of this section under consideration by the governor; or

24 (5) proceedings involving misconduct that is related to the regent's
25 ability to serve as a regent under consideration by a professional or occupational
26 licensing body.

27 (b) The governor may remove a member of the Board of Regents for good
28 cause by providing to the member an accusation and an opportunity for a hearing and
29 judicial review.

30 (c) Notwithstanding the procedure under AS 44.62.390, a regent who has been
31 suspended under (a) of this section may, at any time, request a hearing to

1 (1) defend against the grounds for the suspension stated in the
2 accusation; or

3 (2) lift the suspension.

4 (d) The governor may delegate the conduct of a hearing under this section to
5 the office of administrative hearings under AS 44.64.030(b). If a hearing is requested,
6 the hearing officer may prepare a proposed decision under AS 44.62.500(b) to

7 (1) remove a regent based on clear and convincing evidence of good
8 cause for removal;

9 (2) not remove a regent; or

10 (3) continue a suspension or lift a suspension of a regent.

11 (e) AS 44.62.330 - 44.62.630 applies to all proceedings under this section.

12 (f) After a final decision by the governor that removes a regent for good cause
13 under (b) of this section, the governor shall file with the lieutenant governor a copy of
14 the allegations made against the former regent, the governor's findings on each of the
15 allegations, and a complete record of the removal proceedings.

16 (g) In this section, "good cause" means

17 (1) a violation of AS 39.52 (Alaska Executive Branch Ethics Act) that
18 results in a recommendation of removal under AS 39.52.410(b)(3);

19 (2) conviction of a felony in any jurisdiction;

20 (3) conviction of a misdemeanor in any jurisdiction if the misdemeanor
21 involves

22 (A) dishonesty;

23 (B) breach of trust; or

24 (C) the University of Alaska;

25 (4) malfeasance or nonfeasance in office, including

26 (A) misconduct in office;

27 (B) an inability to serve for an extended period of time;

28 (C) neglect of duty;

29 (D) incompetence;

30 (E) unjustified failure to perform the duties of the Board of
31 Regents;

1 (5) misconduct related to the regent's ability to serve as a regent and
2 resulting in the revocation or suspension of a professional or occupational license
3 issued under state law;

4 (6) failure to possess the qualifications of a regent under AS 14.40.130.

5 * **Sec. 3.** The uncodified law of the State of Alaska is amended by adding a new section to
6 read:

7 APPLICABILITY. AS 14.40.155, added by sec. 2 of this Act, applies to all conduct
8 and acts occurring before, on, or after the effective date of this Act.

Member

Standing Committees:

Judiciary
Rules
State Affairs
Transportation

Alaska State Legislature

House of Representatives



Representative Max F. Gruenberg, Jr.
House District 20

Anchorage (Mountain View, Russian Jack, East Anchorage)
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Rep.Max.Gruenberg@legis.state.ak.us

House Bill 6:
Removing a Regent
Explanation of changes between
CS for HB 6 () (27-LS0027\T) to CS for HB 6 () (27-LS0027\R)

There are a few of changes between the "T" and "R" versions.

There are no changes to **Section 1** of the bill.

There are a few changes to **Section 2** of the bill. The phrase "a compliant" (page 2, line 21 of the "T" version) was changed to "an accusation" (page 2, line 21 of the "T" version). The phrase "that results in a recommendation of removal under AS 39.52.410(b)(3)" was added to page 3, line 17 of the "T" version (now page 3, lines 17-18 of the "R" version). The last change was to add "for an extended period of time" following "an inability to serve" (page 3, line 27 of the "R" version).

There are no changes to **Section 3** of the bill.

27-LS0027\R.1
Keller
03/21/2011

Conceptional Amendment

OFFERED IN THE HOUSE
TO: CS HB 06

BY: REPRESENTATIVE KELLER

Page 2 line 5

Delete all language and insert

05 (1) clarify that the governor may remove a regent for good cause, or a determination that the good of the university requires it;

27-LS0027\R.2
Keller
04/04/2011

Conceptional Amendment

OFFERED IN THE HOUSE
TO: CS HB 06

BY: REPRESENTATIVE KELLER

Page 2, line 14

after the word "suspend"

Add

14 ...with or without pay....

27-LS0027\R.3
Keller
04/04/11

Conceptional Amendment

OFFERED IN THE HOUSE
TO: CS HB 06

BY: REPRESENTATIVE KELLER

Page 2 line 28

after "good cause" insert

28 ... or for the good of the university,....