

ALASKA STATE LEGISLATURE
HOUSE LABOR AND COMMERCE STANDING COMMITTEE

March 3, 2004

3:25 p.m.

MEMBERS PRESENT

Representative Tom Anderson, Chair
Representative Carl Gatto, Vice Chair
Representative Nancy Dahlstrom
Representative Bob Lynn
Representative Norman Rokeberg
Representative Harry Crawford
Representative David Guttenberg

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

CONFIRMATION HEARING(S)

Board of Marine Pilots

Robert (Tiny) Schasteen - Unalaska/Dutch Harbor

- CONFIRMATION(S) ADVANCED

HOUSE BILL NO. 464

"An Act extending the termination date of the Board of Certified Real Estate Appraisers."

- HEARD AND HELD

HOUSE BILL NO. 329

"An Act relating to retirement incentive programs for the public employees' retirement system, the judicial retirement system, and the teachers' retirement system; relating to separation incentives for certain state employees; and providing for an effective date."

- HEARD AND HELD

HOUSE BILL NO. 434

"An Act relating to the practice of naturopathic medicine; and providing for an effective date."

- BILL HEARING POSTPONED

PREVIOUS COMMITTEE ACTION

BILL: HB 464

SHORT TITLE: EXTEND BOARD OF REAL ESTATE APPRAISERS

SPONSOR(S): RULES BY REQUEST OF LEG BUDGET & AUDIT

02/16/04 (H) READ THE FIRST TIME - REFERRALS
02/16/04 (H) L&C
03/03/04 (H) L&C AT 3:15 PM CAPITOL 17

BILL: HB 329

SHORT TITLE: RETIREMENT INCENTIVE PROGRAM

SPONSOR(S): REPRESENTATIVE(S) MCGUIRE

05/21/03 (H) READ THE FIRST TIME - REFERRALS
05/21/03 (H) STA, L&C, FIN
01/13/04 (H) STA AT 8:00 AM CAPITOL 102
01/13/04 (H) <Bill Hearing Postponed>
01/29/04 (H) STA AT 8:00 AM CAPITOL 102
01/29/04 (H) Heard & Held
01/29/04 (H) MINUTE(STA)
02/05/04 (H) STA AT 8:00 AM CAPITOL 102
02/05/04 (H) <Bill Hearing Postponed>
02/17/04 (H) STA AT 8:00 AM CAPITOL 102
02/17/04 (H) Heard & Held
02/17/04 (H) MINUTE(STA)
02/19/04 (H) STA AT 8:00 AM CAPITOL 102
02/19/04 (H) Moved CSHB 329(STA) Out of Committee
02/19/04 (H) MINUTE(STA)
02/23/04 (H) STA RPT CS(STA) NT 2DP 5NR
02/23/04 (H) DP: GRUENBERG, LYNN; NR: SEATON,
02/23/04 (H) BERKOWITZ, HOLM, COGHILL, WEYHRAUCH
02/26/04 (H) CORRECTED CS(STA) NT RECEIVED
03/03/04 (H) L&C AT 3:15 PM CAPITOL 17

WITNESS REGISTER

REPRESENTATIVE RALPH SAMUELS

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Testified as chair of the Joint Committee
on Legislative Budget and Audit, which had requested HB 464.

RICK URION, Director

Division of Occupational Licensing
Department of Community & Economic Development (DCED)
Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 464, but pointed out problems he sees; discussed a proposed amendment.

STEVE TURNER, Chair
Board of Certified Real Estate Appraisers
Anchorage, Alaska

POSITION STATEMENT: During hearing on HB 464, spoke on his own behalf and answered questions; agreed to provide further direction from the board to the sponsor.

HEATH HILYARD, Staff
to Representative Lesil McGuire
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Introduced CSHB 329, Version U, on behalf of the sponsor, Representative McGuire.

MELANIE MILLHORN, Director
Division of Retirement and Benefits
Department of Administration
Juneau, Alaska

POSITION STATEMENT: Testified that the division has adopted a neutral policy position with regard to HB 329, but has concerns if there are costs to the systems, which are underfunded.

KATHY LEA, Retirement Supervisor
Division of Retirement and Benefits
Department of Administration
Juneau, Alaska

POSITION STATEMENT: Provided additional information and answered questions about HB 329.

FATE PUTMAN
Alaska State Employees Association (ASEA)
Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 329, but said ASEA would like it to apply to more employees.

CARL ROSE, Director
Association of Alaska School Boards (AASB)
Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 329 as a management tool if it pencils out.

BARBARA HUFF TUCKNESS, Director
Governmental and Legislative Affairs, Local 959
Alaska Teamsters
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 329, including the proposed changes incorporated into the bill.

ACTION NARRATIVE

TAPE 04-24, SIDE A

Number 0001

CHAIR TOM ANDERSON called the House Labor and Commerce Standing Committee meeting to order at 3:25 p.m. Representatives Anderson, Gatto, Dahlstrom, and Lynn were present at the call to order; Representatives Crawford and Guttenberg arrived shortly thereafter. Representative Rokeberg arrived as the meeting was in progress.

CHAIR ANDERSON informed members that the sponsor of HB 434, Representative Holm, had requested that dialog continue in the subcommittee; he noted that there were concerns from the medical community.

Number 0102

CHAIR ANDERSON announced that the first order of business would be to bring back the governor's nomination of Robert Schasteen to the Board of Marine Pilots for consideration.

CHAIR ANDERSON asked whether there was any objection to advancing Mr. Schasteen's name, which he'd held [at the 2/20/04 meeting] because he'd thought there might be a financial conflict; he'd changed his mind after talking to [Legislative Legal and Research Services]. While some individuals still ask that the nomination be held, Chair Anderson suggested the need to move it forward for debate by the full House [in a joint session]. He pointed out that signing the form doesn't indicate any intention to vote for or against his confirmation. In response to a question from Representative Lynn, he said:

The marine pilots contacted me - some ... members and some of their advocates - and said that there were some concerns; however, I still haven't received information. And at this stage, I have other folks

saying, "We'd ... really like you to move the name on," particularly the governor's office, ... who nominated him. And the question was, ... if a certain member and association has a concern, let it be debated on the floor. And that's fair, I think. And there's really not precedent to hold a name the entire session.

Number 0225

REPRESENTATIVE LYNN objected, saying it was until he received more information.

CHAIR ANDERSON acknowledged the arrival of Representative Rokeberg and brought him up to date.

CHAIR ANDERSON, in response to a question from Representative Gatto, explained that Legislative Legal and Research Services had said there has to be a substantive financial interest - in the dock, in this instance. Saying it wasn't clear to him whether there was such a level of interest, he added that he'd spoken with the governor's office and was advised that the name should be advanced, although it could be held before it is brought to the [House] floor.

REPRESENTATIVE DAHLSTROM noted that the committee has Mr. Schasteen's testimony on record, surmised that he'd answered questions truthfully, and said she felt other information that came forward could be dealt with on the floor. She offered her belief that it was appropriate to move the name on.

REPRESENTATIVE GUTTENBERG asked what would happen if a majority [of committee members] didn't vote to advance the confirmation,

CHAIR ANDERSON said the report would stay in committee, and surmised that it would be noted during the floor session that the committee had failed to advance the name.

REPRESENTATIVE ROKEBERG pointed out that if the report doesn't move, there is no bill file to be read across.

Number 0461

A roll call vote was taken. Representatives Rokeberg, Guttenberg, Gatto, Dahlstrom, and Anderson voted in favor of advancing the confirmation of Mr. Schasteen. Representatives

Crawford and Lynn voted against it. Therefore, the confirmation of Robert Schasteen was advanced by a vote of 5-2.

HB 464-EXTEND BOARD OF REAL ESTATE APPRAISERS

CHAIR ANDERSON announced that the next order of business would be HOUSE BILL NO. 464, "An Act extending the termination date of the Board of Certified Real Estate Appraisers." [HB 464 was sponsored by the House Rules Standing Committee by request of the Joint Committee on Legislative Budget and Audit.]

Number 0552

REPRESENTATIVE RALPH SAMUELS, Alaska State Legislature, spoke as chair of the Joint Committee on Legislative Budget and Audit. He explained that HB 464 is the result of a legislative audit which recommended that the Board of Certified Real Estate Appraisers be extended into the future. The board's functions are to set standards for appraisers in the real estate industry, oversee examinations by which appraisers are certified, and adopt regulations to make sure that state and federal requirements are satisfied.

REPRESENTATIVE SAMUELS noted that the bill extends the board's sunset date to June 30, 2008. He said there were no recommendations from the legislative auditor. He apologized for having to leave the meeting, but noted that Rick Urion or Pat Davidson could answer questions.

CHAIR ANDERSON said he was willing to offer an amendment that had been recommended. He asked who could speak to that.

REPRESENTATIVE SAMUELS indicated Rick Urion or someone else from the Division of Occupational Licensing could do so.

Number 0659

REPRESENTATIVE LYNN disclosed that he is a licensed real estate broker in Anchorage and frequently deals with appraisers.

CHAIR ANDERSON requested that he vote on the bill nonetheless.

Number 0691

RICK URION, Director, Division of Occupational Licensing, Department of Community & Economic Development (DCED), testified:

Basically, we don't have a problem with extending the board. But I just want to tell you, one of the things I've learned in my tenure as director of occupational licensing is, one of the biggest drawbacks to licensing has been boards - board actions or inactions.

And I don't mean to be critical of this board or any other board or the people who serve on these boards; they're all good people, ... they're volunteers, and they do good work. But when I look at the board of real estate appraisers, I can tell you that it takes a long time to become a real estate appraiser. There are 187 people licensed in this state as real estate appraisers. ... We have what we call trainee licensees. ... For those people that are licensed as trainees, there are very few of them that ever get to be appraisers. And I think this board needs to look at what it can do to help license people in Alaska.

...

There are no education courses required to become [an appraiser] offered in Alaska. There's nothing they can do; they can't go on the web and do it, which they should be able to do. ... And there's lots of people in this state that could teach courses, and I'm sure they would be glad to, if we had some sort of program where it said, "Hey, we want somebody to teach courses." It would help people become licensed real estate appraisers.

MR. URION said he'd thought about asking for only a two-year extension, to provide a legislative boost to say, "Please come back with a program." The board only meets once a year, sometimes by teleconference, and he suggested perhaps a boost is needed in order to head in a different direction. He said he supports the bill, but wants the legislature to be aware of the problems he sees.

Number 0830

MR. URION turned attention to the proposed amendment, which read [original punctuation provided, but some formatting changed]:

Page 1, Line 6 insert sections:

* **Sec. 2** AS 08.01.065(c) is amended to read:

(c) Except as provided in (f) - (i) of this section, the department shall establish fee levels under (a) of this section so that the total amount of fees collected for an occupation approximately equals the actual regulatory costs for the occupation. If a board regulates more than one occupation, the department shall establish the fee levels so that the total amount of fees collected by that board and the department including fines and penalties imposed in disciplinary actions, approximately equals the total regulatory costs of the department and the board for all occupations regulated by that board. If the department regulates more than one occupation under another chapter of this title, the department shall establish the fee levels so that the total amount of fees collected by the department for all occupations regulated by the department under that chapter, including fines and penalties imposed in disciplinary actions, approximately equals the total regulatory costs of the department for all of those occupations.

The department shall annually review each fee level to determine whether the regulatory costs of each occupation are approximately equal to fee collections related to that occupation. If the review indicates that an occupation's fee collections and regulatory costs are not approximately equal, the department shall calculate fee adjustments and adopt regulations under (a) of this section to implement the adjustments. In January of each year, the department shall report on all fee levels and revisions for the previous year under this subsection to the office of management and budget. If a board regulates an occupation covered under this chapter, the department shall consider the board's recommendations concerning the occupation's fee levels and regulatory costs before revising fee schedules to comply with this subsection. [IN THIS SUBSECTION, "REGULATORY COSTS" MEANS COSTS OF THE DEPARTMENT THAT ARE ATTRIBUTABLE TO REGULATION OF AN OCCUPATION PLUS

(1) ALL EXPENSES OF THE BOARD THAT REGULATES THE OCCUPATION IF THE BOARD REGULATES ONLY ONE OCCUPATION;

(2) THE EXPENSES OF A BOARD THAT ARE ATTRIBUTABLE TO THE OCCUPATION IF THE BOARD REGULATES MORE THAN ONE OCCUPATION.]

***Sec. 3** AS 08.01.065(f) is amended to read:

(f). [NOTWITHSTANDING (c) OF THIS SECTION, THE DEPARTMENT SHALL ESTABLISH FEE LEVELS UNDER (a) OF THIS SECTION SO THAT THE TOTAL AMOUNT OF FEES COLLECTED BY THE STATE BOARD OF REGISTRATION FOR ARCHITECTS, ENGINEERS, AND LAND SURVEYORS APPROXIMATELY EQUALS THE TOTAL REGULATORY COSTS OF THE DEPARTMENT AND THE BOARD FOR ALL OCCUPATIONS REGULATED BY THE BOARD.] The department shall set [THE] fee levels **under (a) of this section** [FOR THE ISSUANCE AND RENEWAL OF A CERTIFICATE OF REGISTRATION [sic] ISSUED UNDER AS 08.48.211] so that the fee levels are the same for all occupations regulated by the **State Board of Registration for Architects, Engineers and Land Surveyors under AS 08.48** [BOARD].

***Sec. 4** AS 08.01.065(g) is amended to read:

(g) [NOTWITHSTANDING (c) OF THIS SECTION, THE DEPARTMENT SHALL ESTABLISH FEE LEVELS UNDER (a) OF THIS SECTION SO THAT THE TOTAL AMOUNT OF FEES COLLECTED BY THE DEPARTMENT FOR ALL OCCUPATIONS REGULATED UNDER AS 08.11 APPROXIMATELY EQUALS THE TOTAL REGULATORY COSTS OF THE DEPARTMENT FOR ALL OCCUPATIONS REGULATED BY THE DEPARTMENT UNDER AS 08.11.] the department shall set [THE] fee levels **under (a) of the section** [FOR THE ISSUANCE AND RENEWAL OF LICENSES UNDER AS 08.11] so that the fee levels are the same for all occupations regulated by the department under AS 08.11

***Sec. 5** AS 08.01.065(i) is amended to read:

(h) [NOTWITHSTANDING (c) OF THIS SECTION, THE DEPARTMENT SHALL ESTABLISH FEE LEVELS UNDER (a) OF THIS SECTION SO THAT THE TOTAL AMOUNT OF FEES COLLECTED BY THE DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT FOR SPECIALTY CONTRACTORS, HOME INSPECTORS, AND ASSOCIATE HOME INSPECTORS APPROXIMATELY EQUALS THE TOTAL REGULATORY COSTS OF THE DEPARTMENT [sic] FOR THOSE THREE REGISTRATION CATAGORIES [sic].] The department shall set [THE] fee levels **under (a) of this section** [FOR THE ISSUANCE AND RENEWAL OF A CERTIFICATE OF REGISTRATION ISSUED UNDER 08.18] so that the fee levels are the same for **specialty contractors, home inspectors, and associate home inspectors under AS 08.18** [ALL THREE OF THESE REGISTRATION CATAGORIES [sic]] and so that the fee level for a home inspector with a joint registration is not different from the fee level for a home

inspector who does not have a joint registration. In this subsection, "joint registration" has the meaning given in AS 08.18.171.

***Sec. 6** AS 37.05.146(c)(24) is amended to read:

(24) receipts of the Department of Community and Economic Development under AS 08.01.065 and from civil fines and penalties collected in license disciplinary actions for occupations listed in AS 08.01.010 [AS 08.01.065(a), (c), and (f)].

MR. URION explained that a number of years ago, the Division of Occupational Licensing was directed that all of its licensing programs pay for themselves. Its accounting system is such that whatever the total cost to license any profession is divided by the number of people getting a license. He remarked, "We're a self-sustaining group." He explained:

A lot of the cost in licensure is disciplinary actions. Sometimes it's a very high cost for disciplinary actions for the lawyers involved and all the time involved. So that can make the cost of licenses go up. ... And [from] our disciplinary actions, we get fines. ... The people in the profession are charged what it takes to get those fines, but when the fine is collected, ... this amendment before you will let that money be credited to their account.

We've been doing this since the beginning of time. But it's been pointed out to us by those legal experts ... that we shouldn't be, because it's not legal to do that. And this merely ... makes legal what ... has been done forever, and lets us take the fines and put them into the pot ... toward the profession ... that regulates that profession that paid the fine. It looks like a long amendment, but that's simply all it does.

Number 0940

CHAIR ANDERSON related his understanding that this changes the procedure for fine collection for all state's boards and commissions, not just this bill. He asked whether a fee that's collected goes into a kitty, for example.

MR. URION replied that currently it goes into a kitty and then is divided up. He said it's like the license fees, and the fines will all go into that pot.

REPRESENTATIVE GATTO asked what the alternative would be, and how it would balance out unless that is done.

MR. URION replied that some say the fines should go into the general fund.

REPRESENTATIVE GUTTENBERG asked if the Board of Architects, Engineers and Land Surveyors currently has the same fees for all three [professions].

MR. URION answered in the affirmative.

REPRESENTATIVE GUTTENBERG said that board has had problems in the past with regard to wanting to raise its own fees in order to pay for things it wants to be done. He asked whether there had been complaints during Mr. Urion's tenure in this regard.

MR. URION said no, not that he knew of.

REPRESENTATIVE GATTO conveyed his understanding that if excessive fees were collected, they could apply to the following year, thus lowering the cost of licenses.

MR. URION agreed that a balance is carried forward, using a two- or three-year average; this might bring the cost of a license down [in a given year].

Number 1143

CHAIR ANDERSON returned attention to the amendment.

REPRESENTATIVE LYNN asked if this is an example of "Christmas treeing" whereby an amendment for all licensees in the state [is tacked] onto a bill that addresses only real estate appraisers.

MR. URION reiterated that it's a sort of a housekeeping measure that codifies how work has been done for years and will be absolutely nothing new.

CHAIR ANDERSON requested that Representative Rokeberg review Sections 3-6 of the bill, in light of his legislative experience, and make sure they are concurrent with the idea of putting fines into an account.

Number 1258

REPRESENTATIVE ROKEBERG concurred with the concept. He asked how many boards and commissions would be affected by this provision. He noted that all aren't mentioned.

MR. URION replied that 20 licensing boards would be affected. He emphasized the need to overhaul all of the licensing statutes at some point. He said this is a piece of that major project. In response to further questions from Representative Rokeberg, he said the board of real estate appraisers is an example of a board that licenses only one occupation. He also agreed there needs to be a title amendment.

REPRESENTATIVE ROKEBERG pointed out what he considered key language in subsection (c) [of the amendment], relating to Section 2 of the bill.

Number 1435

CHAIR ANDERSON asked Mr. Urion if the committee could have the legislative drafters provide [a formal version of] the amendment and a title change. He committed to bringing the bill back before the committee on Friday, March 5, 2004.

MR. URION agreed.

REPRESENTATIVE GATTO asked about the validity of previous appraisals done by an appraiser who is subsequently sanctioned by the board. Can a complaint nullify an appraisal?

Number 1522

STEVE TURNER, Chair, Board of Certified Real Estate Appraisers, said he was speaking on his own behalf and noted that he has been an appraiser for the past 27 years. He answered Representative Gatto's question as follows:

In our view, one bad appraisal is one bad appraisal. It doesn't negate the other work any more than a physician ... makes a surgical error on one patient, and all of his other patients that he's done surgery on ... have been permanently injured in some way. So it's somewhat the same way. ... His other ... appraisals may be just fine.

The state has, on a number of occasions, investigated; in fact, even now I have an ongoing ... review of one appraiser's work because of mistakes they found in some of his work. So ... they do random samplings ... to see that he's [doing] a good job.

Number 1580

MR. TURNER turned to the bill itself and said:

The governor had his Conference of Alaskans, where he turned to the citizens of the state to provide input into the state's current fiscal crisis. And I think state boards serve that same function. We are a resource available to the state. And this board serves at no cost. At the last meeting, I got an \$11 check from the state, and parking cost me [\$]10 and I bought my own lunch. And it was an all-day meeting.

And we take our job seriously. We, in fact, in the last two years, have revised a number of regulations addressing distance education and online education. And we serve at the request of the governor, and we are volunteers who want to do a good job for the state. And I think it's a resource that should ... continue to be utilized.

REPRESENTATIVE ROKEBERG noted a letter in the file from Mr. Turner regarding licensure versus certification.

MR. TURNER said that's the response to the audit. He said the office had determined that there were references to "licensed appraisers", when it's actually "certified". He remarked that it's "a bit of a complication in the sense that ... we certainly function under the licensing laws of the state," but said the technical term for licensing appraisers in this state is "certification", which comes from the federal guidelines because there is some federal oversight as to how states set up their regulations. Explaining that there are two categories of appraisers - "licensed" and "certified" - he said:

It was determined when this law was written - and I wasn't part of that process - that they would just go with the certification of appraisers, rather than licensing, because it was a higher standard. And rather than have two standards out there, one lower

than the other, ... they just settled on the certification ... terminology.

REPRESENTATIVE ROKEBERG asked if this caused problems or was simply a case of lack of consistency in the statute.

MR. TURNER offered his belief that it was just a lack of consistency.

REPRESENTATIVE ROKEBERG asked whether the board wants an amendment to the statute.

MR. TURNER said he couldn't speak for the board, but when he'd brought it up to the board, they were supportive of changing the terminology in the statute to "certification". "But we were cautioned that that was (indisc.) with the law, and that we should maybe find a Representative who would propose that for us," he added. "So maybe this is the time."

Number 1734

REPRESENTATIVE ROKEBERG agreed it is the time, but expressed the need to know what the board wants. He suggested that the board be polled, for example.

MR. TURNER answered, "Technically, because of ex parte communications, I don't know how far I can go with this. I do know that we discussed this and we were in agreement with the change." Acknowledging this caught him off guard, he suggested that the terminology be changed as the audit recommends.

CHAIR ANDERSON asked Mr. Turner to analyze it, talk to the board members, and then contact Representative Samuels' office. He read from page 16 of the audit, which stated in part:

During our review of the board's composition, we noted AS 08.87.010 requires two of the board members to be "licensed" real estate appraisers in the State of Alaska.

In the statutes, real estate appraisers are referred to as being certified, but state law does not use the term licensed. We encourage the department, when proposing sunset extension legislation, to consider amending AS 08.87.010 and make the nomenclature consistent within the statute.

CHAIR ANDERSON asked, "Is that something that we should do now?"

MR. TURNER answered that if he met with the board, they would just be addressing that issue. "And we did agree that that change should occur," he added.

CHAIR ANDERSON again asked Mr. Turner to look into it and get back to Representative Samuels.

Number 1829

REPRESENTATIVE ROKEBERG remarked that the statute could provide that "certification of licensure" and "certification" are interchangeable for purposes of qualifying for federal loans, for example.

MR. TURNER pointed out that it's a different set of educational standards, however.

CHAIR ANDERSON indicated he'd provided a note to Representative Samuels requesting a committee substitute or amendment with a sectional analysis and title change for the committee to look at. He said on its face, he supports it, but it would be nice to have the sectional analysis.

CHAIR ANDERSON announced that HB 464 would be held over.

HB 329-RETIREMENT INCENTIVE PROGRAM

CHAIR ANDERSON announced that the final order of business would be HOUSE BILL NO. 329, "An Act relating to retirement incentive programs for the public employees' retirement system, the judicial retirement system, and the teachers' retirement system; relating to separation incentives for certain state employees; and providing for an effective date."

Number 1905

CHAIR ANDERSON moved to adopt CSHB 329, Version 23-LS1109\U, Craver, 3/3/04, as a work draft. Hearing no objection, he announced that Version U was before the committee.

Number 1915

HEATH HILYARD, Staff to Representative Lesil McGuire, Alaska State Legislature, spoke on behalf of Representative McGuire, sponsor. He referred to Version Q [CSHB 329(STA)], saying there

are two substantive policy changes. The first is on page 2, lines 16-23, in particular, lines 18-21. He explained that in addition to the requirement that someone be a Tier I employee, this further restricts the proposed retirement incentive program [RIP] to employees who have 20 years of service and are 50 years of age; the one [differentiation] is with regard to peace officers and fire fighters, lines 20-21. He remarked, "Because they are a 20-and-out system, we went ahead and made that provision at 17 years of service." He continued:

Similar comments have been made with regard to the TRS [Teachers' Retirement System] members, the teachers. And I believe that the sponsor would have no objection to making, also, an appropriate change, either in this committee ... or prior to being heard in [the House Finance Committee]. But that was simply an oversight. ... We were including a general blanket policy - 20 years of service and 50 years of age - as a way to further mitigate concerns that [the Division of] Retirement and Benefits has expressed with respect to the actuarial soundness of this program. There is concern about ... unusually young people retiring and the long-term effects on the actuarial soundness. So that was an attempt to address that.

Number 2005

MR. HILYARD drew attention to page 3, lines 21-22, Version U, subsection (d), with regard to all the sections discussing the indebtedness rates. He noted that it says, "plus an appropriate share of the administrative costs of the program." He remarked that in addition to the indebtedness rates, the respective employees will pay an appropriate share of the administrative costs of the program - basically, the cost to administer the program "at the Department of Administration and [Division of] Retirement and Benefits level." He said this was added after [CSHB 329(L&C), in Version U].

MR. HILYARD highlighted two amendments added in the House State Affairs Standing Committee [thus included in CSHB 329(STA)] that the sponsor wholly concurred with and that he said ultimately make the bill better. He first pointed out page 8 of Version U, lines 23-27; noting that this amendment was made by Representative Gruenberg, Mr. Hilyard said the respective retirement systems or boards can stop the RIP if it begins to threaten the actuarial soundness. He then referred to [page 12, lines 7-9], credited Representative Weyhrauch, and said, "We

wanted to make it clear that in no way would this ... retirement incentive program threaten the benefits currently received by those individuals ... who are already under retirement."

Number 2079

MR. HILYARD, in reply to questions from Representative Rokeberg, said this whole bill is only for Tier I employees in either [TRS or the Public Employees' Retirement System (PERS)]. The statutory reference is on page 2, lines 16-17 [AS 14.25.110]. He explained:

As we've been working on this bill, both through the interim and during the session, having conversations with the Department of Administration and [Division of] Retirement and Benefits, our deep concern was to offer a retirement incentive program that would be of value to state agencies, municipalities, and school districts and that ultimately ... would yield the greatest cost savings.

There's been some concern expressed by, particularly, school districts that ... allowing some of the more senior Tier IIs to be included might decimate the ... experienced teacher levels to such an extent that it would be problematic. And so that's one of the reasons why we wanted to make it Tier I only, particularly for the school districts.

Number 2185

REPRESENTATIVE GATTO asked why there are two separate dates - July 1, 1990 and July 1, 1986 - on page 2, lines 16-17.

MR. HILYARD replied that AS 14.25.110 refers to options under the TRS system, for which the Tier I cutoff date is July 1, 1990; AS 39.35.370 refers to options under the PERS system [for which the Tier I cutoff date is July 1, 1986].

REPRESENTATIVE GUTTENBERG referred to page 3 [line 22], "plus an appropriate share of the administrative costs of the program." He asked if that [share] has been calculated.

MR. HILYARD pointed out that there was a fiscal note from the Department of Administration regarding the overall cost of administering the program, but he couldn't say exactly what an individual's share would be. Noting that a reasonable estimate

could be extrapolated, however, he said approximately 1,800 people retired under the 1989 program; to the best of his knowledge, about 1,200 retired under the 1996 RIP. He added:

Our overall point here was, the employer also has to pay ... the actuarial adjustment. And so, in order to mitigate the Department of Administration's fiscal note and perhaps, hopefully, zero that out, our intent was to suggest that in deciding whether or not to opt in to the retirement ... program, ... employees would have to consider that factor as well. ...

I have a spreadsheet that was included in your packet from Melanie Millhorn, from [the Division of] Retirement and Benefits, and there was a number, ... administrative costs, that cited something to the effect of \$300-and-some-odd and change as an administrative cost; I believe that's an actuarial adjustment, but that was roughly our idea, ... something in that neighborhood in terms of the overall ... cost to the individual employee who might elect ... to retire under the retirement incentive program. So we're not looking for exorbitant numbers. We are simply trying to mitigate the cost to the Department of Administration.

Number 2280

[Chair Anderson handed the gavel to Vice Chair Gatto.]

REPRESENTATIVE GUTTENBERG asked if people taking advantage of the RIP would be penalized by having to pay a higher cost to retire early than they'd have paid otherwise, and whether the administrative costs were [the only additional costs].

MR. HILYARD suggested either Ms. Millhorn or Ms. Lea from the Division of Retirement and Benefits could answer that better, but said, "At least our intent, and the way I read the current language, is that this would just cover any additional costs as a result of applying for the RIP itself."

VICE CHAIR GATTO posed the question of whether the forgiveness equals the penalty, and whether any difference is large or small.

MR. HILYARD said he couldn't answer that, noting that this provision about the administrative fee had just been added in

Version U and that he hadn't had a chance to closely look at the figures.

Number 2370

REPRESENTATIVE CRAWFORD recalled bills in the House State Affairs Standing Committee the last couple of years in response to a [shortage of teachers].

TAPE 04-24, SIDE B

Number 2345

REPRESENTATIVE CRAWFORD asked whether there's a surplus now. He told of a state trooper who retired under a RIP but has worked every year since then as a state trooper. He asked where the savings is, if that's the case.

MR. HILYARD responded that those concerns have been mentioned before, and that the Matanuska-Susitna ("Mat-Su") School District has been one of the most vocal school districts about wanting this RIP, but also somewhat mindful of the long-term effects of a lack of qualified people to replace those who either take normal retirement or would retire early under this bill. He said:

We've made a specific provision under Section 10, which begins on page [9, lines 24-28] ... with regard to reemployment, particularly of teachers to school districts: ... "the individual may accept employment with a school district as a substitute teacher" - and that was for all individuals; then, to go on further, "an individual who participated in the teachers' retirement system may accept employment with a school district if the employment is on an hourly basis and does not entitle the individual to receive retirement, health, or leave benefits."

And our intent there was not necessarily to encourage teachers - retirees, if you will - to "double dip," but to provide an opportunity, in the event that after these individuals RIPed out, ... the school district would not be left in the lurch for an indeterminate period of time without not only more seasoned or experienced educators, but educators in general.

Number 2280

MR. HILYARD continued:

So, our intent was to say, "We want to offer this as a management tool that will attempt to allow you to reduce personnel costs [and] at the same time, offer you a small loophole ... as it applies particularly to substitute teaching and then those teachers that want to come back in unspecified positions on an hourly, contractual basis, to fill potential, temporary gaps." So our intent there was to provide an opportunity for any school districts to rehire ... their individuals at reduced personnel costs.

Now, there has been some discussion of that constituting double dipping, and I understand the general concern. However, in particular, Mat-Su has expressed that this RIP would be particularly beneficial to them ... for reduction of personnel costs; at the same time, they've said, "Well, we are somewhat concerned about our ability to find appropriate substitutes or to rapidly fill those positions vacated by RIPed teachers." So, we made a creative policy decision to try to address both of those issues.

Number 2234

VICE CHAIR GATTO added that Mat-Su had an undesirable experience during the last RIP: it paid to have teachers retire early; discovered that it needed them back; and was prevented by the RIP from rehiring them. He said this clause eliminates that "prevention" and allows an opportunity for them to come back. He said he hadn't heard of an hourly contract, and expressed concern about contractual language such as an agreement with a union that might preclude hiring teachers "permanently as a substitute."

MR. HILYARD reported that this particular change was recommended by Robert Doyle, head of the Matanuska-Susitna School District; he said, however, that this creative policy decision could potentially benefit a number of school districts throughout the state. He pointed out that it is each school district's decision as to whether to offer a RIP to its employees. He noted that some school districts have remained silent as to whether they'd offer it; some have said, given their fiscal scenarios, it is unlikely they will; and the general consensus he's heard from the senior levels of administration from various

school districts seems generally supportive of having another option for managerial decisions. As an additional check, he said, the commissioner of [the Department of] Administration has final authority with regard to whether to accept plans that are proposed to the department, for example, if a plan is predicted, upon review, to cause more long-term damage than it's worth.

VICE CHAIR GATTO added, "That's why they have a financial officer who will run the numbers, do the math, and decide whether that's good or not good for the district. We'll leave it ... in their hands to make that decision."

Number 2088

REPRESENTATIVE GUTTENBERG asked whether the legislature has any hourly employees now.

MR. HILYARD said he didn't know, but could find out.

REPRESENTATIVE GUTTENBERG asked whether this program leaves out any group or subset from the possibility of "RIPing" and then returning on an hourly or contractual basis.

MR. HILYARD replied that the only reemployment option that was limited in any way was referred to on page 9, lines 26-28 [quoted above], which says someone who participated in TRS may accept unemployment in the school district on an hourly basis. He continued:

Now, with respect to being reemployed as a substitute, that would apply to anyone who RIPed who was eligible under that school district's provisions to be a substitute. For instance, some school districts ... may not require a college degree, whereas others do. Now, that's a different provision. But this says, not including whatever restrictions an individual school district may have, if you've RIPed under this, you are still eligible to be a substitute teacher.

My understanding is, all the other ... exemptions apply to anyone who would take this retirement incentive program, with the exception of that hourly contractual basis for school districts.

Number 2038

VICE CHAIR GATTO remarked:

Just a thought: if you have a teacher that RIPPed under a previous program, in that statute they are not allowed to return. Now we have a teacher - and it doesn't address this individual statute, but an individual who participated in a teacher retirement system, without mentioning any specific one - may accept [reemployment] with the school district. So I have this conflict that this allows a teacher, without reference to which retirement system they RIPPed from, to be reemployed, while the previous statute prevents the teacher from being reemployed under the previous statute.

MR. HILYARD said he doesn't think that's the case. He referred to page 8 [Section 10], continuing to page 9, line 3, and mentioned AS 39.35, AS 14.25, and AS 14.40.661. He read from page 9, line 3, "after appointment to retirement under this Act", which relates to forfeiture of the incentive credit. He offered his belief that the language all the way down applies only to people who retire under this particular RIP.

VICE CHAIR GATTO replied, "So, these teachers are reemployable and the previous teachers are not." He suggested it would be nice to decide to reemploy teachers that had retired under [any] RIP, rather than classify them in separate groups.

MR. HILYARD related his understanding that then-Representative and now-Senator [Gary] Stevens had a similar bill in both Houses, but said he doesn't know what happened with it. He said he'd talked to [Senator Stevens'] office briefly about some of the language therein, and believes that was his intent.

VICE CHAIR GATTO suggested there might be a conceptual amendment offered in that regard. He called on Ms. Millhorn.

Number 1926

MELANIE MILLHORN, Director, Division of Retirement and Benefits, Department of Administration, testified that the division had adopted a neutral policy position with regard to HB 329, but has concerns if there would be costs to the system. She pointed out that PERS and TRS are underfunded: for 2003, PERS has approximately a \$2.9 billion shortfall, with a funding ratio of 75 percent; and TRS has a \$1.4 billion shortfall, with a funding ratio of 68 percent. Noting that the funding ratio compares

assets to liabilities, she said the funding target is 100 percent.

Number 1845

VICE CHAIR GATTO asked what needs to be done to get to 100 percent someday.

MS. MILLHORN replied, "We have to look at the employer contribution rates; ... the employers are ultimately responsible to bring up the short-funded status." In further response, she expressed hope that it would take less than [10 years]. Mentioning talking to [the House Finance Committee and Senate Finance Committee], she added, "We have been through two cycles in a 25-year period of being in funded ratios where we are presently."

MS. MILLHORN explained the two fiscal notes [both dated February 13, 2004]. The first, number 5, addresses operational costs to the system. It was prepared looking at the 1996-1999 costs to the division and at the staffing levels necessary to administer the RIP for that three-year period: \$742,000 for FY 05 [fiscal year 2005], \$569,000 for FY 06, and \$569,000 for FY 07. She said:

Those figures are based on PERS-eligible retirees, and there were 1,359 that retired between '96 and '99 for PERS. And for TRS, there were 850. So based on ... Mr. Hilyard's testimony, I think we may need to redo this fiscal note after we look at the further narrowing and limitation of the actual population who may be eligible.

Number 1737

MS. MILLHORN addressed the second fiscal note, number 4, relating to the cost to employers. She explained that [Mercer Human Resource Consulting ("Mercer"), the actuarial consultant, looked at the entire "universe" of the population; at what those costs would be, given the three-year credit; and what those costs would have been when compared with "if the person ... would have received those otherwise, if eligible." Thus for an eligible PERS employee, the employer would have to be able to support about \$98,000 in savings. For TRS, it's a little higher, about \$120,000 over a three-year period.

Number 1666

MS. MILLHORN, in response to a question from Vice Chair Gatto, brought attention to testimony by Bob Reynolds [of Mercer] in a House State Affairs Standing Committee hearing, where she'd taken notes in order to explain the actuarial process. She said Mr. Reynolds had testified that for this fiscal note, the estimated value of the benefits to be provided under HB 329 were compared with the value of the benefits the member expected to be eligible to receive in the absence of HB 329. Looking at the incremental costs of the proposed legislation, she said they'd noted that for PERS, it is \$786,000,000 for 8,008 eligible members; for TRS, it is \$431,000,000. If the actual universe of who is eligible is divided by the actual cost, it results in \$98,000 for PERS members and \$120,000 for TRS members.

MS. MILLHORN also noted that Jack Kreinheder [of the Office of Management & Budget], who was involved with the legislation for the 1996-1999 RIP, had testified that the average cost to the employer was \$28,000. However, she said the cost for this proposed RIP is significantly higher because of increased costs for benefits. That includes a change in the year 2000 from using the 1984 mortality tables to using the 1994 tables, resulting in 2.7 years of extra benefits for each recipient. Furthermore, the "health care trend" was changed in 2002 from "a trend analysis," an increase of 7.5 to 12 percent. She reported that those costs are reflected in the second fiscal note, to which Mercer has attached its actuarial analysis.

VICE CHAIR GATTO asked: If the employee says there will be \$60,000 in savings over a three-year period, but the employer sees that it will cost \$120,000, could the employer say the employee must make up the other \$60,000 in some manner?

MS. MILLHORN replied that the employer has a number of options, including eliminating a position, but would have to be able to demonstrate the \$120,000 in savings.

VICE CHAIR GATTO surmised that if a teacher retired early and returned immediately as a substitute teacher, significant savings could be demonstrated.

Number 1511

KATHY LEA, Retirement Supervisor, Division of Retirement and Benefits, Department of Administration, replied, "That wouldn't be able to happen." She explained that a member cannot return to what is normally a TRS-participating position as an hourly

employee for more than one school year. The teacher could be issued a long-term substitute-teaching contract for up to one school year, but if it exceeds that, it's a permanent position and the RIP penalties apply.

MS. MILLHORN acknowledged that it would behoove her division to prepare new fiscal notes based on [Version U] and the further limitation.

VICE CHAIR GATTO agreed to the necessity of that.

Number 1454

MS. LEA, in response to a question from Representative Guttenberg, said each employer would calculate savings individually; in general, though, hiring someone in a nonpermanent or contract position isn't considered in [the calculation] unless the employer was looking at eliminating the position and then having a temporary contract person take it. She said the key to contract or hourly work is that it cannot be in a position that normally participates in the retirement systems. It's more temporary in nature. She added, "In a personal services contract arrangement, we would look at whether or not there still is an employee-employer relationship, in other words, if the person ... has other clients, or are they really an employee."

REPRESENTATIVE CRAWFORD asked, then, if the savings to the employer come mainly from eliminating positions, rather than hiring someone else at lower pay. He asked whether this will only work if those public employee or teacher employee positions are eliminated.

MS. MILLHORN replied:

You are correct. That is what we believe would be the circumstance now for this RIP legislation, as compared to the '96-'99, because the employer cost at that point was \$28,000. So the employer had vastly more flexibility in a couple of different things. Either they could reclassify the position downward, thereby having a cost savings; they could leave it vacant for a period of time and then refill. So they have many more options to actually find that cost savings.

Now, with the high cost of almost 100,000 or 120,000 [dollars], we believe it has very much narrowed those

opportunities, to the extent that you would almost have to delete the position ... in many instances - not all, but normally speaking, your discretion to reclassify a position downward may not offset your ability to actually demonstrate the cost savings; it may not pencil out.

Number 1247

REPRESENTATIVE CRAWFORD asked Ms. Millhorn whether she sees a lot of areas where teachers or public employees can be laid off.

MS. MILLHORN said she wasn't certain and hasn't heard of a surplus, but has heard there are highly compensated individuals; in those instances, employers would like to be relieved of the personal services costs and be able to bring in lower-cost personnel.

Number 1202

VICE CHAIR GATTO said he thinks the RIP is a great idea. He asked whether Ms. Millhorn could submit a new fiscal note by [March 5, 2004].

MS. MILLHORN replied that it took Mercer almost a week to recalculate the last one, she thought it would take that long again, and she didn't think that target could be met.

Number 1133

REPRESENTATIVE ROKEBERG asked about analyses of the past RIPs' savings and costs.

MS. MILLHORN referred to audit control number 024404-91, dated November 1991, prepared for the RIP in 1989. She said the comments in the audit report, prepared by the Division of Legislative Audit, indicate that while it appears the RIP was able to realize the savings, caveats in the back of the audit indicate that the cost savings in some instances were not actually realized. She explained:

Certain things can happen. You can project a cost savings and say that the position would be eliminated, but three years after, you could recreate the position and the person could come back. So, the initial realized savings that you were projecting then ... could go away. And there were those kinds of

instances, so that's why there are some caveats in the very back of this audit report that indicate that those cost savings are somewhat elusive. And because there's not a subsequent, actual case-by-case to see later ... if those savings were realized, ... that was problematic.

And we have not, as a division, gone back to, say, the RIP legislation for '96-'99 and ... looked at what the projected savings were by the different departments and then said, "OK, ... they are projected to be savings and they look like savings, but through the system are they actually still savings?" And that's ... not known to us, because we never did an analysis thereafter to see what happened.

Number 0963

REPRESENTATIVE ROKEBERG pointed out that the fiscal note indicates this could cost the state \$1.1 billion. He emphasized the difference between the projected costs for the prior program and this one, from \$28,000 to [\$120,000]. He said [Ms. Millhorn's] testimony indicates to him that without laying people off or eliminating positions, savings couldn't be achieved and thus the objective of the bill will be a failure without eliminating positions. He asked if that's a fair statement.

MS. MILLHORN replied that on a case-by-case basis, there are far fewer opportunities for an employer to do something other than eliminate the position.

REPRESENTATIVE ROKEBERG asked if a logical conclusion is that the only way to achieve savings is to reduce the number of Tier I teachers in the state. He said during the previous RIP the objective was to replace [personnel] at lower wages so that there wouldn't be positions eliminated, but would be a savings in the overall job costs.

Number 0811

VICE CHAIR GATTO asked, if [teaching] positions are eliminated, whether there is any way to avoid increasing class sizes.

REPRESENTATIVE ROKEBERG also asked what amount the employee had to contribute to retire early.

MS. MILLHORN indicated Representative Rokeberg was correct in his analysis of her testimony. In response to further questions, she referred to page 3 and said the teacher would pay 25.9 percent of compensation for the school year. The employer's cost for PERS is \$100,000, and for TRS it's \$120,000. She said in the last RIP there was teacher indebtedness of approximately \$14,000 to \$18,000, but noted that this bill also assigns [the teacher] an appropriate share of the administrative cost; thus it would be higher.

REPRESENTATIVE ROKEBERG surmised a figure of \$20,000 and asked whether it's a one-time payment.

MS. MILLHORN said yes. It can be done by making payments; by taking an actuarial reduction in benefits; or by a combination, using leave to pay for the actual cost.

Number 0648

REPRESENTATIVE ROKEBERG asked about prepaying some of these obligations if the bill is implemented, and whether that would reduce future obligations.

MS. MILLHORN answered that this program is designed to be cost-neutral to the system, with employers paying for their costs and employees paying for their costs. However, there are caveats, shown in the fiscal note as prepared by Mercer; it indicates in the analysis on page 2 that the RIP was designed to be cost-neutral under the actuarial assumptions and methods presently in use, and that while these assumptions are best estimates, future changes such as improvements in longevity or higher-than-anticipated medical-cost increases may affect the ultimate cost-neutrality of the program.

MS. MILLHORN reiterated her example about how mortality tables were changed in 2000. She added that the system is designed to collect all costs at the point at which a person is appointed to retirement, but when these kinds of changes happen actuarially, they don't allow for that necessary collection. In response to a further question, she said, "I believe that they are using those actuarial assumptions in place right now, which have been adopted, which is a 12 percent increase in the next seven years."

REPRESENTATIVE ROKEBERG asked how much it will cost to have Mercer produce another fiscal note.

MS. MILLHORN replied that it is very expensive, \$400 an hour at a minimum. She offered to find out more information.

Number 0336

FATE PUTMAN, Alaska State Employees Association (ASEA), noted that ASEA is the general government unit of state employees. He testified in support of HB 329 in its present form, but said his organization would like to see it applicable to all employees, regardless of tier status, although age-eligibility could be applied. Indicating his organization first proposed the idea of a RIP, he noted that government is downsizing and said his organization sought a method to allow the high-end employees to retire and be replaced by new hires, rather than using a "last hired, first fired" approach. He said [ASEA] thought the best way to approach this would be to allow anyone eligible for retirement [in any tier] to participate, which is how the legislation began. He said he understands about the fiscal constraints and limitations, but would also support widening the universe of employees that this program would apply to.

VICE CHAIR GATTO asked whether there'd been an indication that Tier II employees might be taken care of in a different bill.

MR. PUTMAN said no.

Number 0173

CARL ROSE, Director, Association of Alaska School Boards (AASB), testified:

We support this legislation. ... Our initial testimony on this bill was that we wanted to ensure that the fund was solvent; we wanted to assure that no one would be adversely affected. And we agree with this having to be shown a savings would be made.

What I've heard here today tells me that the economy is having a tremendous impact on what will and will not pencil out. And I would share with you, in the case of your district in Mat-Su, according to testimony in the last committee, ... about 50 percent of their employees were eligible for this. And I would have to say that if you were to pencil out a large number of those people taking advantage of this RIP, it would probably work for them.

In other areas of the state, it may not pencil out because of the competition that's going to be created to have to replace these people. So we still support the bill as an option, as a management tool, if it pencils out. ... If solvency cannot be attained, if cost savings cannot be realized, ... we need to pencil that out and see if it works for us. If it can't work, the commissioners are going to have to give the approval, and the overall plan has to be ... actuarially sound.

MR. ROSE concluded by saying he understands that the economics are such that it's going to be very expensive for employees and more expensive for employers.

TAPE 04-25, SIDE A

Number 0001

BARBARA HUFF TUCKNESS, Director for Governmental and Legislative Affairs, Local 959, Alaska Teamsters, testified in support of HB 329, including the proposed changes that have been incorporated into the bill. She said she would echo the last two speakers, and views this bill as a proactive management tool in a time when many public-sector employees, including those in municipalities, could be impacted. She asked: "If it is cost-effective, why not lay it on the table?" She requested it move from committee.

VICE CHAIR GATTO announced that testimony was concluded and thanked participants. He noted that HB 329 would be held over.

ADJOURNMENT

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at 5:03 p.m.