

ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE

February 28, 2014

1:04 p.m.

MEMBERS PRESENT

Representative Wes Keller, Chair
Representative Bob Lynn, Vice Chair
Representative Gabrielle LeDoux
Representative Charisse Millett (via teleconference)
Representative Lance Pruitt
Representative Max Gruenberg

MEMBERS ABSENT

Representative Neal Foster

COMMITTEE CALENDAR

HOUSE BILL NO. 269

"An Act providing immunity for certain licensed temporary health care providers who provide free health care services."

- MOVED CSHB 269(JUD) OUT OF COMMITTEE

HOUSE JOINT RESOLUTION NO. 18

Proposing amendments to the Constitution of the State of Alaska relating to the office of attorney general.

- HEARD & HELD

HOUSE BILL NO. 284

"An Act relating to an interstate compact on a balanced federal budget."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 269

SHORT TITLE: IMMUNITY FOR TEMP. HEALTH CARE PROVIDER

SPONSOR(S): REPRESENTATIVE(S) THOMPSON

01/21/14	(H)	READ THE FIRST TIME - REFERRALS
01/21/14	(H)	HSS, JUD
02/13/14	(H)	HSS AT 3:00 PM CAPITOL 106

02/13/14 (H) Moved CSHB 269(HSS) Out of Committee
02/13/14 (H) MINUTE(HSS)
02/17/14 (H) HSS RPT CS(HSS) NT 5DP
02/17/14 (H) DP: SEATON, PRUITT, KELLER, TARR,
HIGGINS
02/26/14 (H) JUD AT 1:00 PM CAPITOL 120
02/26/14 (H) Heard & Held
02/26/14 (H) MINUTE(JUD)
02/28/14 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HJR 18

SHORT TITLE: CONST. AM: ELECTED ATTORNEY GENERAL

SPONSOR(S): REPRESENTATIVE(S) STOLTZE

01/21/14 (H) PREFILE RELEASED 1/10/14
01/21/14 (H) READ THE FIRST TIME - REFERRALS
01/21/14 (H) STA, JUD, FIN
02/04/14 (H) STA AT 8:00 AM CAPITOL 106
02/04/14 (H) Heard & Held
02/04/14 (H) MINUTE(STA)
02/11/14 (H) STA AT 8:00 AM CAPITOL 106
02/11/14 (H) Moved Out of Committee
02/11/14 (H) MINUTE(STA)
02/12/14 (H) STA RPT 2DP 2NR 2AM
02/12/14 (H) DP: GATTIS, KELLER
02/12/14 (H) NR: KREISS-TOMKINS, LYNN
02/12/14 (H) AM: ISAACSON, HUGHES
02/19/14 (H) JUD AT 1:00 PM CAPITOL 120
02/19/14 (H) Heard & Held
02/19/14 (H) MINUTE(JUD)
02/28/14 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 284

SHORT TITLE: COMPACT FOR A BALANCED BUDGET

SPONSOR(S): REPRESENTATIVE(S) KELLER

01/29/14 (H) READ THE FIRST TIME - REFERRALS
01/29/14 (H) STA, JUD
02/13/14 (H) STA AT 8:00 AM CAPITOL 106
02/13/14 (H) Moved Out of Committee
02/13/14 (H) MINUTE(STA)
02/14/14 (H) STA RPT 6DP 1NR
02/14/14 (H) DP: MILLETT, GATTIS, KELLER, ISAACSON,
HUGHES, LYNN
02/14/14 (H) NR: KREISS-TOMKINS
02/21/14 (H) JUD AT 1:00 PM CAPITOL 120
02/21/14 (H) Heard & Held

02/21/14 (H) MINUTE(JUD)
02/28/14 (H) JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

JANE PIERSON, Staff
Representative Steve Thompson
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Reviewed the changes embodied in HB 269, Version C.

DAVID LOGAN, DDS
Alaska Dental Society (ADS)
Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 269.

MEGAN WALLACE, Attorney at Law
Legislative Legal and Research Services
Legislative Affairs Agency
Juneau, Alaska

POSITION STATEMENT: Answered questions on HB 269.

SARA CHAMBERS, Administrative Operations Manager
Division of Corporations, Business, and Professional Licensing
Department of Commerce, Community, and Economic Development
Juneau, Alaska

POSITION STATEMENT: Answered questions regarding HB 269.

REPRESENTATIVE Bill STOLTZE
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Testified as prime sponsor of HJR 18.

NICK DRANIAS, Director
Constitutional Policy and Development
Goldwater Institute
Phoenix, Arizona

POSITION STATEMENT: During hearing of HB 284, answered questions.

CHIP DEMOSS, President
Compact for America, Inc.
Houston, Texas

POSITION STATEMENT: Testified in support of HB 284.

MIKE COONS, Director

Citizens Initiative
Palmer, Alaska

POSITION STATEMENT: Testified in support of HB 284.

ERNEST PRAX, Staff
Representative Wes Keller
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Testified regarding HB 284.

ACTION NARRATIVE

[1:04:55 PM](#)

CHAIR WES KELLER called the House Judiciary Standing Committee meeting to order at 1:04 p.m. Representatives Lynn, LeDoux, Gruenberg, and Keller were present at the call to order. Representatives Pruitt and Millett (via teleconference) arrived as the meeting was in progress.

HB 269-IMMUNITY FOR VOL. HEALTH CARE PROVIDER

[1:05:05 PM](#)

CHAIR KELLER announced the first order of business would be HOUSE BILL NO. 269, "An Act providing immunity for certain licensed temporary health care providers who provide free health care services." [CSHB 269(HSS) is before the committee.]

[1:05:35 PM](#)

REPRESENTATIVE GRUENBERG moved to adopt proposed committee substitute (CS) for HB 269, Version 28-LS1251\C, Wallace, 2/28/14, as the working document.

[CHAIR KELLER indicated an objection.]

[1:06:23 PM](#)

JANE PIERSON, Staff, Representative Steve Thompson, Alaska State Legislature, stated that in accordance with Representative Gruenberg's suggestion, on page 2, line 8, following the word "consent" the language **"in writing"** was inserted. Per the Board of Nurses suggestion on page 2, lines 14-18, the following language was inserted: **"; and (C) provides the person receiving health care services with written notice of the name of a licensed health care provider in the state that the person**

receiving health care services may contact for emergency follow-up care within 30 days after a procedure is performed."

1:07:30 PM

REPRESENTATIVE LEDOUX questioned whether the person contacted for emergency follow-up care is required to perform the service free of charge.

MS. PIERSON answered "No," it would not mean [free] although the MOM event is providing services for 30 days following the event.

REPRESENTATIVE LEDOUX further questioned Ms. Pierson whether it would not mean [free of charge], although the Alaska Mission of Mercy (AKMOM) event is providing [free] services for 30 days following the event.

1:08:21 PM

DAVID LOGAN, DDS, Alaska Dental Society, clarified that for the MOM event all care and follow-up care is provided without charge.

1:09:19 PM

CHAIR KELLER removed his objection. There being no further objection, Version C was before the committee.

1:09:33 PM

CHAIR KELLER re-opened public testimony.

1:09:41 PM

REPRESENTATIVE GRUENBERG referred to a 2/26/14 memorandum from Megan Wallace, Legislative Counsel, directed to Representative Wes Keller, which he assumed is a result of questions emanating before the bill arrived in the House Judiciary Standing Committee. He requested someone knowledgeable explain the memorandum so the committee can determine whether more work is required on the bill.

1:11:19 PM

MS. PIERSON, referring to the memorandum from Megan Wallace, dated 2/26/14, directed attention to the first question and offered her understanding that HB 269 does not specifically

affect AS 09.65.300(a), Military Courtesy License. However, it may create some ambiguity for temporary courtesy license holders as the bill currently includes only one type of temporary courtesy license and covers the definition of health care provider.

[1:12:01 PM](#)

REPRESENTATIVE GRUENBERG quiered whether it is the sponsor's desire that HB 269 be altered to also cover military courtesy licenses.

MS. PIERSON responded with her belief that [HB 269] does [cover military courtesy license]. She explained that if the goal is for temporary licenses to be under all health care providers and not specifically under dental providers licensed through boards, she directed attention to question 2 which reads that "the bill may create some ambiguity as it relates to the inclusion of these temporary licenses" since HB 269 only specifically includes temporary courtesy licenses issued under AS 08.01.062 [in the definition] of "health care provider." However, there is a chance the court could interpret the language to mean that only persons holding temporary courtesy licenses issued under the statute are eligible for immunity.

MS. PIERSON, referring to question 4, pointed out that if the goal is for all medical providers to be covered under this, then Ms. Wallace recommended revising the [new] language in Section 1(a)(1) to read: "in this paragraph, health care provider includes a health care provider who holds a temporary license or permit." The aforementioned would then cover chiropractors, physicians, nurses, and dentists.

[1:14:22 PM](#)

REPRESENTATIVE GRUENBERG stated his preference that language in the bill is clear rather than ambiguous.

[1:15:10 PM](#)

CHAIR KELLER questioned Representative Gruenberg regarding what he is specifically suggesting, as the language in Version C has reduced the ambiguity.

[1:15:29 PM](#)

REPRESENTATIVE GRUENBERG expressed the need to have language that is clear and relates the [sponsor's] preference. He said he didn't want to put forth legislation that would breed litigation.

[1:16:15 PM](#)

DR. LOGAN referred to the proposed language on page 2 [of the 2/26/14 memorandum] and opined that deleting the term "**courtesy**" and inserting [language to the effect of] "all temporary licenses and permits" would include courtesy licenses, temporary licenses, and locum tenens licenses and the language would only affect health care providers in this statute performing free health care services. Although the ADS does not mind the language speaking solely for courtesy licenses since the dental board does not offer temporary licenses, he proffered that there is wisdom in making it all inclusive to remove possible ambiguity.

[1:18:14 PM](#)

REPRESENTATIVE GRUENBERG highlighted that the only person who has testified on the bill is Dr. Logan on behalf of the dentists. He recommended that prior to expanding the legislation to include physicians, nurses and chiropractors those boards should testify as to their preference to the committee. He then questioned whether the intent of the sponsor is to leave [the language to address only] temporary courtesy licenses with dentists.

MS. PIERSON related her belief that this goes to the original legal opinion Representative Thompson received from Legislative Legal and Research Services, which questioned why this bill is even necessary as the matter is already covered. However, since the Department of Law's (DOL) response was that it may or may not be covered, the sponsor decided to "tighten up" the language and ensure there is not a lengthy court case to determine whether or not these dentists are covered for this function. In further response to Representative Gruenberg, Ms. Pierson confirmed that the bill's language is sufficiently tight for the dentists.

[1:20:28 PM](#)

The committee took a brief at-ease.

[1:22:22 PM](#)

REPRESENTATIVE GRUENBERG questioned Ms. Wallace whether she believes the bill's intention is to cover this particular dental program [AKMOM] and no other licenses, and if there is ambiguity in the language.

MEGAN WALLACE, Attorney at Law, Legislative Legal Counsel, Legislative Legal and Research Services, Legislative Affairs Agency explained the bill currently is drafted to define health care provider to include courtesy licenses issued under AS 08.01.062. She opined that it is under Business and Professions, Centralized Licensing and that provision applies to a list of boards cited in AS 08.01.010. The legislation as drafted does not only pertain to dentists as it applies temporary courtesy licenses issued by any of the boards under AS 08.01.010 that issue a courtesy license through the provision in AS 08.01.062, she explained.

[1:23:57 PM](#)

REPRESENTATIVE GRUENBERG conveyed his impression that according to Ms. Wallace's testimony, the drafted legislation applies to more than dentists and more than this license. If the aforementioned is the case, he suggested the language in HB 269 should be clarified and clearly limited to dentists with temporary courtesy licenses.

SARA CHAMBERS, Administrative Operations Manager, Division of Corporations, Business, and Professional Licensing, Department of Commerce, Community, and Economic Development, advised that her understanding is concurrent with that of Ms. Wallace in that as HB 269 currently drafted, would include any health care provider as stated. She explained that the courtesy licensing section, AS 08.01.062, is a broad centralized authority that defers to [the state's] licensing boards and programs to then create regulations to manage how the boards and programs define and govern a courtesy license. This could be expressed in different ways by different boards and certainly health care provider is defined in the bill. Ms. Chambers offered to provide clarification of the difference between a temporary license and a courtesy license.

[1:25:59 P M](#)

CHAIR KELLER recalled earlier remarks that the bill may pose a problem for health care providers who have not been present to

testify and asked Ms. Chambers if she anticipated any concerns with the change embodied in HB 269.

MS. CHAMBERS, noting that she is not speaking on behalf of any of the boards, related that in the past she has not been presented with a situation that would seem to be in conflict [with HB 269]. Although from an administrative standpoint it would pose no additional conflict or burden, she deferred to the boards to make that determination.

[1:27:08 PM](#)

REPRESENTATIVE GRUENBERG expressed the need to be on firm ground before making a change. Therefore, Representative Gruenberg stated his preference to limit the language to temporary courtesy licenses for dentists.

[1:27:54 PM](#)

MS. PIERSON directed attention to the committee member's packets wherein there are letters of support from the Alaska Pharmacists Association and the Alaska State Medical Association. The concerns expressed by the Alaska Board of Nursing, have been alleviated and therefore she anticipated a letter of support from the board. Although the sponsor has not heard from the Board of Chiropractic Examiners, she said she does not know the amount of pro bono chiropractic work that is performed.

[1:28:46 PM](#)

CHAIR KELLER proposed the committee proceed forward with HB 269 as it had not yet been heard in the Alaska State Senate. He opined that the bill has been duly notified on the record and if the legislature has not heard from the Alaska State Board of Chiropractic Examiners by the time HB 269 is in the House Rules Standing Committee or in the Senate, it can be assumed there is not a problem.

[1:29:16 PM](#)

REPRESENTATIVE GRUENBERG noted that most of the referenced letters favor the extension [of immunity] to them.

[1:29:46 PM](#)

CHAIR KELLER closed public testimony.

[1:30:04 PM](#)

REPRESENTATIVE LYNN moved to report CSHB 269, Version 28-LS1251\C, Wallace, 2/28/14, out of committee with individual recommendations and the accompanying fiscal notes.

[1:30:34 PM](#)

REPRESENTATIVE GRUENBERG objected for discussion and directed a question to Ms. Wallace. He stated that the committee's [intent] is that the bill include the [Alaska State Medical Board, Alaska Board of Nursing, and the Alaska State Board of Chiropractic Examiners] and questioned Ms. Wallace whether she was aware of clarifying language to eliminate ambiguity in that regard.

MS. WALLACE advised that the bill will cover temporary courtesy licenses for the professions listed in the centralized licensing statute. She noted that the only possibility for ambiguity is whether the definition of health care provider is to include persons or health care providers who hold "other kinds of temporary licenses or permits." In other words, [the ambiguity] is whether the [sponsor] is limiting the scope of AS 09.65.300(a) to only cover health providers who have a temporary courtesy license under AS 08.01.062 or whether the bill is to also include health care providers who hold temporary licenses or permits under other statutes.

[1:32:15 PM](#)

REPRESENTATIVE GRUENBERG clarified that the question has become the type of license that may be covered is not normally a question within the House Judiciary Standing Committee's jurisdiction. Although the committee is aware of the dentist's licensing structure, there has not been any testimony from the other professions or their types of licenses.

[1:33:04 PM](#)

The committee took a brief at-ease.

[1:34:15 PM](#)

MS. PIERSON assured the committee that as HB 269 moves forward, she will endeavor to work with Ms. Chambers and the boards regarding health care providers under "other" temporary licenses and permits to determine what they are and what is covered. She

noted that if there is a problem, the bill will go to the House Rules Standing Committee before going to the House floor.

[1:34:57 PM](#)

REPRESENTATIVE GRUENBERG requested a list of professions and licenses covered under HB 269 before it goes to the floor.

REPRESENTATIVE GRUENBERG removed his objection. There being no objections CSHB 269(JUD) was reported from the House Judiciary Standing Committee.

HJR 18-CONST. AM: ELECTED ATTORNEY GENERAL

[1:36:46 PM](#)

CHAIR KELLER announced the next order of business would be HOUSE JOINT RESOLUTION NO. 18, Proposing amendments to the Constitution of the State of Alaska relating to the office of attorney general.

[1:36:51 PM](#)

CHAIR KELLER briefly summarized testimony from the previous committee meeting on HJR 18, and also stated there have been no amendments, and announced that public testimony is still open.

[1:38:10 PM](#)

REPRESENTATIVE Bill STOLTZE, Alaska State Legislature, stated he is available to answer questions and noted he has responded in writing to all questions that have been posed thus far.

[1:40:06 PM](#)

CHAIR KELLER closed public testimony.

[1:40:33 PM](#)

REPRESENTATIVE GRUENBERG remarked that he cannot support the passage of HJR 18 and virtually no amendment would change his mind.

[1:41:23 PM](#)

CHAIR KELLER stated he has no commitment or promise or intention of moving HJR 18 until all questions have been laid out before the committee and thoroughly discussed.

[1:41:42 PM](#)

REPRESENTATIVE GRUENBERG referred to page 1, lines 14-16, regarding the language which relates that the election for attorney general is at the same time and term as the governor. He then recalled that during the 2/19/14 House Judiciary Standing Committee there was a discussion regarding whether the governor and attorney general would possibly run on the same ticket.

REPRESENTATIVE STOLTZE interjected that he had responded to the discussion and did not recall advocating.

[1:42:16 PM](#)

REPRESENTATIVE GRUENBERG then questioned whether there was a reason the resolution calls for the [governor and attorney general] to be elected during the same election rather than during intervening elections, which would seem to offer a sense of continuity.

REPRESENTATIVE STOLTZE stated his belief that [electing the governor and attorney general at the same time] is logical and consistent as Alaska has only one statewide election for a state constitutional officer that heads the state. He noted that critics have remarked the resolution could cause the governor and attorney general to be of separate parties while others having remarked it creates a partisan ticket. Representative Stoltze related his preference to defer to the voters on this issue, which is the premise of the resolution, as he does not have the same allegiance to the Alaska Bar Association as others.

[1:44:43 PM](#)

REPRESENTATIVE LEDOUX, noting that members of the Alaska Bar Association have differing opinions on this matter and commented she believes in the concept of letting the people vote, particularly since an elected attorney general may not have qualms investigating the administration. She then pointed out that Alaska is in the minority of states that appoint their attorney general.

[1:47:12 PM](#)

REPRESENTATIVE GRUENBERG offered that his position is based on his own analysis. He then referred to page 2, [lines 6-7] which limits the amount of successive terms an attorney general can serve to only two full successive terms, which would be 8 years. He recalled that at least one attorney general, Bruce Botelho, served under governors of both parties; two years under Governor Walter J. Hickel and eight years under Governor Tony Knowles. He opined there are very good arguments why the attorney general should not be term limited, and particularly if the position is an elected position as it is the chief law enforcement officer and the chief attorney for the state. He likened term limited [for an elected attorney general] to removing a senior partner of a law firm with extensive experience. Term limits for the attorney general should be up to the voters, he opined.

[1:49:47 PM](#)

REPRESENTATIVE STOLTZE informed the committee that the average tenure of an attorney general in Alaska is close to 18 months. He then stated what is proposed in HJR 18 is consistent with the state's limits on the only two constitutional statewide officers, the governor and the lieutenant governor which he opined, made sense.

[1:52:11 PM](#)

REPRESENTATIVE GRUENBERG, referring to subsection (c), page 2, lines 8-12, surmised that the election of the attorney general would take place at the first general election date that is at least 6 months after the vacancy. He further surmised that the interim appointment could be up to two years and five months, which according to the sponsor; the interim appointment would be longer than the tenure of most of Alaskan attorneys general to date. According to the language of HJR 18, he opined, an attorney general may be elected from a different party than the governor and, in fact, may be a member of the minority party in the legislature. The way HJR 18 reads, he explained, is if there is a vacancy, the [governor's] appointee may come from the party opposite of the party from which the attorney general was from, as it is strictly a gubernatorial appointment subject to confirmation. He believes that HJR 18 is fraught with danger in that the language reads that the position of attorney general is determined by voters, and then [due to a vacancy] it is turned over to the governor and the legislature. In the past, through an initiative, the [people] did not agree to [the above] process

for a U.S. Senate seat and, he believes, a special election was held.

REPRESENTATIVE STOLTZE stated that the proposal in HJR 18 is similar to a current Alaska State Constitutional provision replacing the lieutenant governor. He recalled when there was a vacancy in the lieutenant governor's position and the legislature confirmed Craig Campbell; there was no legal requirement that Mr. Campbell be a democrat, republican, Alaska independent, or libertarian, and the governor could have picked any one of his commissioners. The constitutional process in replacing a lieutenant governor is very similar to the proposal in HJR 18 and, he noted, the core of the resolution is having an [attorney general] that is accountable to the people. He stated that the succession in replacement is an interim issue and is subject to collective ideas.

[1:58:21 PM](#)

REPRESENTATIVE GRUENBERG explained to Representative Stoltze that there is a difference between the process of selecting the lieutenant governor and the process proposed in HJR 18 under this resolution for electing the attorney general. The law requires the lieutenant governor to be a member of the governor's party and run as a ticket in the general election, which is quite the opposite of HJR 18, he opined.

[1:59:08 PM](#)

REPRESENTATIVE STOLTZE stated that he would investigate [the law] in preparation for the next House Judiciary Standing Committee meeting on the resolution.

[1:59:19 PM](#)

CHAIR KELLER announced that set HJR 18 would be set aside.

[1:59:26 PM](#)

REPRESENTATIVE GRUENBERG advised he will be a do not pass out of this committee, and will not offer amendments on the resolution.

[2:01:01 PM](#)

REPRESENTATIVE GRUENBERG advised he has not sought out witnesses and assumes the time is too late for witnesses.

[2:01:15 PM](#)

The committee took a brief at-ease.

[2:01:48 PM](#)

CHAIR KELLER remarked that as Representative Stoltze intends for a deliberative process he will open public testimony on Monday.

[2:03:47 PM](#)

REPRESENTATIVE LEDOUX asked whether the sponsor intends to bring witnesses from states with elected attorneys general to testify as to how the process works in their state.

REPRESENTATIVE STOLTZE advised that in 1998 Attorney General Grant Woods of Arizona testified, but noted he has not sought out witnesses.

REPRESENTATIVE LEDOUX suggested that if the committee is going to hear from people who oppose the resolution, then perhaps the committee should hear from someone who has lived the experience.

[2:04:46 PM](#)

REPRESENTATIVE GRUENBERG remarked he would send an email to people who might be interested as this may be the best committee for a record of people on both sides of this resolution.

[2:06:25 PM](#)

CHAIR KELLER announced that HJR 18 would be held over and passed the gavel to Representative Lynn.

HB 284-COMPACT FOR A BALANCED BUDGET

[2:07:38 PM](#)

VICE CHAIR LYNN announced the next order of business would be HOUSE BILL NO. 284, "An Act relating to an interstate compact on a balanced federal budget."

[2:08:09 PM](#)

CHAIR KELLER speaking as the prime sponsor of HB 284 stated that during his consideration of sponsoring the bill he reviewed the "debt clock" that totaled \$17.1 trillion for the national debt

in mid-January, and it was \$17.4 trillion dollars yesterday; a difference of 3/10 of a trillion dollars which amounts to \$300 billion dollars. For reference, he pointed out that \$300 billion would carry the State of Alaska's total budget for 20-25 years. He reminded the committee of the slide shown during the last committee meeting that depicted the steep rising ramp of debt that equated to \$55,000 for every man, woman and child [in the U.S.]. The bill uses a U.S. Constitution, Article V, state compact approach to amend the constitution and it proposes a cap to the debt limit. One of the proposals is that the balanced budget amendment be passed by 38 other states and become a constitutional amendment. The bill proposes a cap at 105 percent of the national debt at the time of the [effective date] of the amendment. He explained that instead of Congress controlling whether there is an increase in the cap, as is the current case, the cap could be increased by a simple majority of the states. Although the proposal is draconian in one sense as people are accustomed to the continual increase, it is not draconian as it allows for creation of new taxes, reform type taxes. The compact puts the states back into the equation where, he opined, the states once were. He explained that HB 284 contains the specific text of the proposed amendment in the compact, the Article V application to Congress that is used as a call for a convention of which Congress may resolve to call the ratification convention, and the organization of the interstate commission. The compact includes delegate appointments and instructions, convention locations, rules, ratification referral for the congressional resolution, and the ultimate ratification of the amendment later. Theoretically, he opined, with the compact being defined in one piece of legislation it creates a system wherein the constitution could be amended in one year if the states are in agreement. He believes Alaska is very fortunate to be selected as a state wherein the Goldwater Institute is spending resources to provide technical support. Alaska is one of three to four states making progress. If Alaska is the first state to pass the compact there is an advantage of a leadership role in the compact, which is part of his motivation, he mentioned.

[2:15:31 PM](#)

VICE CHAIR LYNN questioned whether the language in the compact could be amended.

CHAIR KELLER replied no, and advised that due to the nature of the bill 38 states must act with identical language for the balanced budget amendment. Although as the states move forward,

there is an allowance for some changes, all of the legislatures involved would have to agree to any change. Therefore, he opined that it would be more difficult to make any changes.

2:16:54 PM

VICE CHAIR LYNN further questioned whether there is a provision allowing necessary increases in the budget to handle an unexpected national emergency or a natural disaster.

CHAIR KELLER explained that the compact relies on the action of 51 percent, 26 states, to expand [the budget], which he opined is as efficient as is currently in place. A simple resolution by the states would be required to increase [the budget]. Since it is not a hard cap as it is up to 105 percent, [an emergency] requiring overnight response is unlikely, and there should be time leading up to [the emergency] for the states to respond intelligently and carefully consider [the matter], he opined.

2:18:40 PM

NICK DRANIAS, Director, Constitutional Policy, Policy and Development, Goldwater Institute, noted that his 16 years as an attorney he has spent 8 years focused on the 10th Amendment and Article V Constitutional Law. He provided the following testimony:

Representative Keller is essentially correct. On the first question ... whether the compact needs to be identical; the compact needs to be identical substantially at the point where any convention would be organized which is when 38 states join it. But up until that point, the compact can be tweaked as any compact is. If you look around the country you'll find about 200-plus compacts. The average state is a member of 20 or more and many of those compacts are tweaked from year to year in minor and substantial respects ... the key thing is for the initial compact to be formed with the initial 2 states to form it as a compact that would have to be substantially identical. Thereafter, until you reach the 38th state point of organizing the convention, it could obviously be tweaked with unanimous consent of all parties to the compact.

2:21:12 PM

The committee took a brief at-ease due to technical difficulties.

[2:21:53 PM](#)

MR. DRANIAS continued his testimony as follows:

The second question was how to handle a crisis with this amendment. If the amendment were in place, it is important to recognize that the initial debt limit would be set with a 5 percent cushion, 5 percent in addition to whatever outstanding debt currently exists. So if we had a \$20 trillion outstanding debt, that means there would be \$1 trillion in additional borrowing capacity before the debt limit would kick in. Now that gives a current borrowing and spending rates of about \$650 billion a year, that gives us just under 2 years or more to get a plan in order to deal with further increases in the debt if it were deemed necessary and sell it to the states to get 26 states to approve it. Now Congress could, in requesting an increase in the debt limit in that time frame, it could conceivably identify crisis contingencies for borrowing in the proposal that they would make to the states. And so, it is really up to Congress how they want to deal with crisis contingencies. They could specify them any increase in the debt limit, but it would be up to the states to make the call on whether or not that was a legitimate crisis exception or just a loop hole for more spending. So, the key thing to understand here is there is flexibility in this debt cap. What it reforms is who makes the ultimate call on that flexibility. The policy reason for that is we believe the real cause of the spiraling national debt is having the debtor retain sole and unilateral control over its own credit limit. We believe that any system in which the debtor maintains unilateral control over its credit limit will eventually crash because the debtor will give himself as much credit as he can get away with. So primary reform in this effort is to bring outside intervention from the states and to ensure that whatever proposal is made for more debt, whether it is for a crisis or whether it is for working capital, that an outside board of directors consisting of legislators just like you are making that call in 26 states.

[2:24:34 PM](#)

CHIP DEMOSS, President, Compact for America, Inc., advised that Compact for America, Inc., is the sister organization working with the Goldwater Institute in order that the Compact for America is passed in the three states mentioned. He then noted his support for [HB 284]. With regard to changing the compact, he explained that provisions built into the compact allow states to make specific changes with regard to their delegates and "several other minor provisions," he opined. Therefore, the compacts do not have to be identical in those aspects.

[2:26:11 PM](#)

MIKE COONS, Director, Citizens Initiatives, related his support of the balanced budget amendment embodied in HB 284. However, Article 1, Section 10, in part, says no state shall, without the consent of Congress, enter into any agreement or compact with another state. Therefore, he questioned how to "get around" that part of the U.S. Constitution. He then inquired as to the consequences if Congress determines it will not consent to the states entering into a compact or agreement.

[2:28:23 PM](#)

REPRESENTATIVE GRUENBERG speaking to all witnesses asked whether any witnesses had received any legal memorandum suggesting there may be U.S. Constitutional problems with HB 284. He then requested that the attorney work-product privilege be waived and all such memoranda delivered to this legislature.

[2:29:38 PM](#)

MR. DRANIAS explained that the Goldwater Institute has fully analyzed all legal issues and raised every conceivable legal question. He then reminded the committee of the 10 emails directed to each member of the House Judiciary Standing Committee regarding the compact approach to Article V amendments and the joint publication by the Goldwater Institute, States United for a Balanced Budget, American Academy for Constitutional Education, Coalition of Freedom, and Compact for America, Inc., entitled "Using a Compact for Article V Amendments: Experts Answer FAQs," herein (Experts Answer FAQs), dated January 24, 2014, which provides the analysis and opinions of Ilya Shapiro, Cato Institute Senior Fellow in Constitutional Studies; Shane Krauser, Director, American Academy for Constitutional Education; Dr. Kevin Gutzman, Attorney, Professor

of History at Western Connecticut State University, and New York Times best-selling historian; Harold DeMoss, Senior Judge of the United States Court of Appeals, Fifth Circuit in his personal capacity and not to be regarded as an opinion of the United States Court of Appeals, Fifth Circuit; and Nick Dranias as the Goldwater Institute's Constitutional Policy Director. The publication includes critiques by various peer individuals of legal issues raised in every conceivable manner regarding Article V amendments. He emphasized that nothing is being hidden and the publication also reflects the critique of a peer debate opponent and addresses her concerns. Issues are specifically raised and then addressed in the analysis and, he opined, there is not a better source for analyzing the legal issues than the way the Goldwater Institute has addressed each of the 12 Experts Answer FAQs with detailed citations and analysis by multiple scholars, and at least one federal judge.

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MR. DRANIAS, in response to Mr. Coons, offered that the Goldwater Institute is anticipating co-opting Congress into supporting this effort with a counter-part resolution that would give consent to the compact and simultaneously fulfill every role that Congress has in the Article V process, including both the call for the convention and the prospective ratification referral if the amendment is approved by the convention. In order to avoid repeatedly approaching Congress, one resolution would be passed once in Congress and because the Goldwater Institute uses conditional enactments in some states, contingent effective date in other states, the Congressional consent, the Congressional call for a convention, and the Congressional ratification referral is in one omnibus resolution with each of those components only going live at the time required by the text of Article V. He opined, in that manner the [state] can approach Congress and ask it to pass this resolution on its own timetable and there may only be 2, 3, 5, or 10 states in the compact. In the event a simple majority exists in both the House and Senate, the compact could basically achieve Congress's entire role in a single resolution, which would lay dormant until such time as it fulfills the requisites of the Article V process and triggers it.

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REPRESENTATIVE GRUENBERG reiterated his question as to whether Mr. Dranias is in possession of any memoranda with the opposite position that has not been fully disclosed to the committee. He

opined that individuals who come before the House Judiciary Standing Committee have an ethical obligation if they have opposing legal opinions to fully present these to this committee.

MR. DRANIS stated that the analysis of the aforementioned publication "Experts Answer FAQs," is exactly what the Goldwater Institute analyzed and concluded internally. He further stated there is no contrary analysis, opinion, or conclusion that has been hidden from the committee. There is no issue the Goldwater Institute has internally spotlighted or with which was concerned about that is not analyzed and spotlighted in the aforementioned document. He said he would stake his reputation and licenses on his statements. The Goldwater Institute, Judge Harold DeMoss of the Fifth Circuit Court of Appeals, and himself take pride in taking on issues honestly, openly and transparently to determine that all issues are exposed, challenged, and debated. Most of the theories advanced, analyzed, and considered in the publication entitled "Experts Answer FAQs" have been part and parcel of a number of different postings with the National Constitution Center in Philadelphia and with the Law & Liberty web site. He noted that he has attended and participated in numerous federal society debates with opposing points of view to ensure that every [issue] has been tested and analyzed thoroughly. He stated he could not count the number of emails the Goldwater Institute has reiterating the analysis with various legislators and citizens across the country. Furthermore, there is absolutely not a single legal issue the Goldwater Institute believes even remotely significant that has not been analyzed and arguments on both sides disclosed, arguments on both sides which is evident within the publication.

[2:37:56 PM](#)

MR. COONS requested a lay man's response to the question of what happens if Congress does not consent and asked whether there is an avenue of approach outside of this. He also asked how the compact will be passed with the Congress that is currently in place.

MR. DRANIAS, in response to Mr. Coons, stated that as a first approach the Goldwater Institute designed the compact to co-opt Congress rather than conflict with Congress. If it proves impossible to co-opt Congress then it will fall to other Article V efforts that have chosen conflict with Congress as its primary model. He reiterated that the Goldwater Institute's philosophy is that it prefers to pursue co-option first, and that all of

the Article V efforts that do not use compacts are available for back up and as a compliment to this effort because this is not a mutually exclusive effort. He related that the Goldwater Institute's political judgment is that if Congress would be willing to call a convention for a balanced budget amendment in any form, the political will for that is essentially the same political will needed for [Congress] to consent to this compact. Should Congress agree with the Article V process it will exist with a compact as everything is fully defined in advance and there are no questions or concerns about the process that might animate people in Congress. Again, if Congress will not consent and there are not simple majorities in the House and Senate to consent, the Goldwater Institute's hope is that its sister efforts on the left and right - if they are directed to good policy - will provide the backup needed to deal with conflict in forcing Congress to perform its constitutional duty.

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REPRESENTATIVE GRUENBERG advised he is not entirely satisfied with Mr. Dranias's answer and believes there are arguments on the other side that have not been properly presented. In general, he stated, it is a matter of credibility and this committee is dependent on full and complete disclosure on these grave and weighty issues. He again offered Mr. Dranias an opportunity to set the record straight.

MR. DRANIAS responded to that the Goldwater Institute has played devil's advocate to the best of its ability. Furthermore, the compact was peer reviewed by Andrew Schlafly of the Eagle Forum, and by Joe Wolverton of the John Birch Society, both of which oppose every form of an Article V convention. Mr. Dranias related that he debated with Mary Margaret "Meg" Penrose, Texas A&M University School of Law Professor who peer reviewed the fact document itself. He expressed that every substantive significant legal issue or argument that has been presented to the Goldwater Institute and that it could conceive has been raised and thoroughly addressed. Although there may be arguments it has not considered, he assured the committee that the Goldwater Institute did go after this issue, especially since the advisory council consisting of Professor Lawrence Lessig of Harvard Law School who has a different ideological slant than Mr. Dranias. The Goldwater Institute considered in every reasonable manner the opposing points of view which are the reason it uses a compact, which is a means to be as cooperative as possible in an effort to generate an amendment from the states, he opined.

[2:44:27 PM](#)

VICE CHAIR LYNN questioned Chair Keller if he was aware of any negative communications.

REPRESENTATIVE KELLER replied no, although he acknowledged that there have been questions. He then challenged Representative Gruenberg to bring forward any opposing views on this approach so that it can be addressed.

VICE CHAIR LYNN pointed out that the committee meeting on HB 284 has been properly noticed and people can testify in favor or in opposition to the bill.

[2:45:57 PM](#)

MR. COONS related that he disagrees with the terminology of the conflict in Article V, which calls for an application of the legislatures of two-thirds of the states to call for a convention to propose amendments. In the event the compact is not accepted and approved by Congress under Article 1, Section 10, the Citizens Initiative is pursuing an Article V application for a call for a convention of states to propose specific amendments. Citizens Initiative is prepared to do the same thing with the balanced budget amendment, and thus would be partners in the event Congress will not allow the compact, he opined.

[2:47:33 PM](#)

ERNEST PRAX, Staff, Representative Wes Keller, Alaska State Legislature, explained that within each member's packet is the Goldwater Institute's publication "Experts Answer FAQs." He noted that one question specifically addresses the compact question and discusses the history of the Supreme Court rulings on this issue and within the footnotes are cites of lawsuits.

[2:48:40 PM](#)

VICE CHAIR LYNN, upon determining no one else wished to testify, closed public testimony.

[2:48:47 PM](#)

REPRESENTATIVE LEDOUX advised that originally she liked the whole idea of the compact, but at this point she would feel more

comfortable reviewing opposing materials as a U.S. Constitutional Amendment is a big deal.

[2:49:25 PM](#)

CHAIR KELLER commented that HB 284 is significant legislation and if members require more time to review the court cases or look at opposing positions he proposed that the bill be held over.

[2:50:30 PM](#)

REPRESENTATIVE GRUENBERG questioned if any state has yet passed the compact.

[2:51:27 PM](#)

CHAIR KELLER requested a [status] report from Mr. Dranias or Mr. DeMoss regarding the Compact for America. He opined that it is his understanding two state house legislatures passed the Compact for America.

[2:52:32 PM](#)

REPRESENTATIVE LEDOUX related that in previous committee meetings regarding amending the Alaska Constitution, the committee heard impassioned testimony from both sides. Therefore, to not hear anyone in opposition to amending the United States Constitution seems strange, she expressed.

[2:53:35 PM](#)

CHAIR KELLER indicated there is "really not much to hang onto to oppose it" as the compact is designed to attract 38 states. He opined there is not much in the bill to attack as people do not want additional national debt.

[2:54:17 PM](#)

REPRESENTATIVE LEDOUX commented that in this legislature she has heard more passion on special orders at the end of the House floor sessions than on this very substantial bill.

[2:55:36 PM](#)

VICE CHAIR LYNN announced that HB 284 would be held over. [Representative Lynn returned the gavel to Chair Keller.]

2:57:17 PM

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned a 2:57 p.m.