

ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE

March 14, 2014

1:12 p.m.

MEMBERS PRESENT

Representative Wes Keller, Chair
Representative Bob Lynn, Vice Chair
Representative Gabrielle LeDoux
Representative Lance Pruitt
Representative Max Gruenberg

MEMBERS ABSENT

Representative Neal Foster
Representative Charisse Millett

COMMITTEE CALENDAR

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 JOINT RESOLUTION NO. 33

Proposing amendments to the Constitution of the State of Alaska to increase the number of members on the judicial council and relating to the initial terms of new members appointed to the judicial council.

- MOVED CSHJR 33(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 127

"An Act clarifying that the Alaska Bar Association is an agency for purposes of investigations by the ombudsman; relating to compensation of the ombudsman and to employment of staff by the ombudsman under personal service contracts; providing that certain records of communications between the ombudsman and an agency are not public records; relating to disclosure by an agency to the ombudsman of communications subject to attorney-client and attorney work-product privileges; relating to informal and formal reports of opinions and recommendations issued by the ombudsman; relating to the privilege of the ombudsman not to testify and creating a privilege under which the ombudsman is not required to disclose certain documents;

relating to procedures for procurement by the ombudsman; relating to the definition of 'agency' for purposes of the Ombudsman Act and providing jurisdiction of the ombudsman over persons providing certain services to the state by contract; and amending Rules 501 and 503, Alaska Rules of Evidence."

- HEARD & HELD

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 205

"An Act relating to traffic offenses committed in a school zone; and prohibiting changing lanes in a school zone."

- SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

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
02/28/14	(H)	Heard & Held
02/28/14	(H)	MINUTE(JUD)
03/03/14	(H)	JUD AT 1:00 PM CAPITOL 120
03/03/14	(H)	Heard & Held
03/03/14	(H)	MINUTE(JUD)
03/12/14	(H)	JUD AT 1:00 PM CAPITOL 120
03/12/14	(H)	-- MEETING CANCELED --
03/14/14	(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HJR 33

SHORT TITLE: CONST. AM: MEMBERSHIP OF JUDICIAL COUNCIL
SPONSOR(s): JUDICIARY

02/28/14	(H)	READ THE FIRST TIME - REFERRALS
02/28/14	(H)	JUD, FIN
03/05/14	(H)	JUD AT 1:00 PM CAPITOL 120
03/05/14	(H)	Heard & Held
03/05/14	(H)	MINUTE(JUD)
03/07/14	(H)	JUD AT 1:00 PM CAPITOL 120
03/07/14	(H)	Heard & Held
03/07/14	(H)	MINUTE(JUD)
03/12/14	(H)	JUD AT 1:00 PM CAPITOL 120
03/12/14	(H)	-- MEETING CANCELED --
03/14/14	(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 127

SHORT TITLE: OMBUDSMAN
SPONSOR(s): RULES BY REQUEST

02/18/13	(H)	READ THE FIRST TIME - REFERRALS
02/18/13	(H)	STA, JUD
03/12/13	(H)	STA AT 8:00 AM CAPITOL 106
03/12/13	(H)	Heard & Held
03/12/13	(H)	MINUTE(STA)
03/21/13	(H)	STA AT 8:00 AM CAPITOL 106
03/21/13	(H)	<Bill Hearing Rescheduled to 3/26/13>
03/26/13	(H)	STA AT 8:00 AM CAPITOL 106
03/26/13	(H)	Heard & Held; Assigned to Subcommittee
03/26/13	(H)	MINUTE(STA)
02/07/14	(H)	STA AT 3:00 PM CAPITOL 120
02/07/14	(H)	Work Session on above Bill
02/25/14	(H)	STA AT 8:00 AM CAPITOL 106
02/25/14	(H)	Heard & Held
02/25/14	(H)	MINUTE(STA)
02/27/14	(H)	STA AT 8:00 AM CAPITOL 106
02/27/14	(H)	Heard & Held
02/27/14	(H)	MINUTE(STA)
03/06/14	(H)	STA AT 8:00 AM CAPITOL 106
03/06/14	(H)	Moved CSHB 127(STA) Out of Committee
03/06/14	(H)	MINUTE(STA)
03/07/14	(H)	JUD AT 1:00 PM CAPITOL 120
03/07/14	(H)	<Bill Hearing Canceled>
03/10/14	(H)	STA RPT CS(STA) NT 1DP 1NR 3AM
03/10/14	(H)	DP: LYNN
03/10/14	(H)	NR: GATTIS
03/10/14	(H)	AM: KELLER, KREISS-TOMKINS, HUGHES
03/12/14	(H)	JUD AT 1:00 PM CAPITOL 120

03/12/14 (H) -- MEETING CANCELED --
03/14/14 (H) JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

REPRESENTATIVE BILL STOLTZE
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Testified as prime sponsor on HJR 18.

AVRUM GROSS
Sitka, Alaska

POSITION STATEMENT: Speaking in his capacity as a former attorney general, testified in opposition to HJR 18.

JOHN TODD
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HJR 33.

BETH LEIBOWITZ, Assistant Ombudsman
Office of the Ombudsman
Legislative Agencies and Offices
Juneau, Alaska

POSITION STATEMENT: Speaking on behalf of the Ombudsman's Office, presented an overview of HB 127.

JIM POUND, Staff
Representative Wes Keller
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Speaking on behalf of Chair Keller, presented an amendment to HB 127.

ACTION NARRATIVE

[1:12:02 PM](#)

CHAIR WES KELLER called the House Judiciary Standing Committee meeting to order at 1:12 p.m. Representatives Lynn, LeDoux, Pruitt, Gruenberg, and Keller were present at the call to order.

HJR 18-CONST. AM: ELECTED ATTORNEY GENERAL

[1:12:22 PM](#)

CHAIR KELLER announced that the first order of business would be HJR 18, Proposing amendments to the Constitution of the State of Alaska relating to the office of attorney general.

[1:12:55 PM](#)

REPRESENTATIVE GRUENBERG requested that testifiers be allowed to speak as amendments are offered.

[1:13:27 PM](#)

CHAIR KELLER closed public testimony.

[1:14:06 PM](#)

[Due to technical difficulties, there is no audio from 1:14:09-1:14:19, 1:14:28-1:14:44.]

[1:14:45 PM](#)

REPRESENTATIVE LEDOUX moved to adopt Amendment 1 to HJR 18, labeled 28-LS1216\A.3, Bullard, 3/12/14, which read:

Page 1, line 16:
Delete "not"

Page 2, line 1:
Delete "unless the person meets the
qualifications for a superior court judge"

Insert "if the person is licensed to practice law
in the State"

[1:15:43 PM](#)

REPRESENTATIVE GRUENBERG objected.

[1:15:54 PM](#)

REPRESENTATIVE LEDOUX referred to page 1, line 16, through page 2, line 1, which read: "A person is not eligible to serve as attorney general unless the person meets the qualifications for a superior court judge." She explained that Amendment 1 allows an individual to serve as attorney general if he/she is "licensed to practice law in the State." She noted the sponsor considers Amendment 1 a friendly amendment.

REPRESENTATIVE GRUENBERG maintained his objection.

[1:16:52 PM](#)

REPRESENTATIVE BILL STOLTZE, Alaska State Legislature, prime sponsor of HJR 18, indicated his agreement that Amendment 1 is a friendly amendment and is an attempt to improve HJR 18. He opined that there was confusion regarding qualifications of a superior court judge as some thought it would invite the Alaska Judicial Council process. For the most part, he opined that the qualifications and experience are adequate and is certainly higher than for other important offices. An [attorney general] must be 30 years old, a citizen of the United States, have lived in Alaska 7 years, and not be a felon. Alaska's chief executive has a much lower threshold and has the judgment to appoint the attorney general, he pointed out.

[1:18:36 PM](#)

CHAIR KELLER clarified that Amendment 1 removes the word "not" on page 1, line [16], and changes the qualifications for attorney general to be "licensed to practice law in the State." Whereas the original language required the qualifications be that of a superior court judge.

[1:19:10 PM](#)

REPRESENTATIVE LYNN surmised that if the committee adopts Amendment 1, any individual licensed to practice law in Alaska could be elected attorney general with the vote of the people.

REPRESENTATIVES STOLTZE and LEDOUX responded "yes."

REPRESENTATIVE LYNN related his understanding that within the current structure the governor has the opportunity to vet the qualifications of whoever he/she might appoint as attorney general. However, voters do not have the same opportunities to interview or compare applicants [as the governor]. Therefore, he suggested there should be a higher standard. He then stated his opposition to Amendment 1.

[1:20:17 PM](#)

REPRESENTATIVE LEDOUX responded that is the whole idea of voting during an election. She questioned whether Representative Lynn is not supporting Amendment 1 because he doesn't trust the people to vet the attorney general. If so, she noted it appears

he wouldn't support HJR 18 in its entirety. She opined that either Representative Lynn believes people are capable of vetting the attorney general through the election process or not. She indicated the only other alternative would be for the Alaska Judicial Council to determine which candidate is qualified and only those people could run for the office of attorney general.

[1:21:18 PM](#)

CHAIR KELLER inquired as to the qualifications for a superior court judge.

[1:22:14 PM](#)

REPRESENTATIVE STOLTZE expressed that his personal reason for sponsoring HJR 18 is the potential for the Alaska Judicial Council to insert itself in the process.

[1:22:38 PM](#)

CHAIR KELLER read from information provided by his staff, "The judge of the superior court shall be a citizen of the United States and of the state, a resident of the state for five years preceding appointment, have been engaged for not less than five years immediately preceding the appointment in the act of the practice of law but need not be licensed to practice law in any of the United States, and the act of practice of law shall be as defined for Justices of the Supreme Court." He opined that there is a difference.

[1:23:36 PM](#)

REPRESENTATIVE STOLTZE conveyed that when the governor appointed Attorney General Renkes he was not admitted to the bar at the time and had to scurry to obtain his credentials after being appointed. Representative Stoltze remarked he was not certain it was a legal requirement as it may have been more of a political requirement. However, an attorney general would have had to have a license to appear before the Alaska Supreme Court, and yet a governor made an appointment of someone without a current Alaska Bar Association License. More protection is provided under HJR 18 than the current system, he opined.

[1:23:53 PM](#)

REPRESENTATIVE KELLER announced that Representative Gruenberg removed his objection, but Representative Lynn had not removed his objection.

[1:24:56 PM](#)

REPRESENTATIVE GRUENBERG remarked the language in Amendment 1 is unclear in terms of the term "qualifications" on page 2, line 1, as it could mean the statutory qualifications or going through the Alaska Judicial Council. He pointed out that an individual cannot become a superior court judge unless nominated by the Alaska Judicial Council, which he said he did not believe is the intent of HJR 18. He then noted his opposition to Amendment 1 for the aforementioned reasons. If the attorney general is to be elected, he opined that it is better for the individual to meet the qualifications of a [superior court] judge. He related a scenario wherein an individual could practice law but work for Legislative Legal Services under a temporary license, or an individual could have been a federal official, quasi-official, or even a bankruptcy judge who was not a member of the Alaska Bar Association. He surmised Representative Stoltze's intent is for an attorney general to meet statutory qualifications rather than going through the Alaska Judicial Council.

REPRESENTATIVE STOLTZE responded the whole point of HJR 18 is to not have the governor, or the Alaska Judicial Council, or the Alaska Bar Association [involved], but to give the [vote on the attorney general] to the people of Alaska. He admitted he may have been careless with the use of the original language, but is concerned whenever there is an invitation for the Alaska Bar Association to get between the people of Alaska.

[1:28:49 PM](#)

REPRESENTATIVE LEDOUX advised that under AS 22.05.070 Qualification of [Justices for the Supreme Court], that former Attorney General Dan Sullivan would not have qualified as being in the active practice of law or anyone who is in an elective office. She remarked that she trusts the people and whatever candidate has qualifications will come out in the election process.

[1:29:39 PM](#)

REPRESENTATIVE GRUENBERG advised that AS 22.10.090, [Qualification of Judges of the Superior Court] includes the language "... be licensed to practice law in this state." If

the committee is reviewing the language analytically and it is left up to the people, he questioned why the attorney general should have to have a license to practice in Alaska. He clarified that he was putting up "sidebars" on the argument that not just anyone can be the attorney general, as they must at least be licensed to practice law.

[1:31:30 PM](#)

REPRESENTATIVE LYNN questioned if a person could be fully qualified to be a superior court judge, but not necessarily nominated.

REPRESENTATIVE LEDOUX responded "yes."

REPRESENTATIVE STOLTZE stated that many qualified people get cut off during the nominee stage, which is a central part of this discussion.

[1:32:49 PM](#)

REPRESENTATIVE PRUITT questioned whether the [attorney general] qualifications should be attached to the statute, which can be changed by 21, 11, a majority vote in the House and Senate respectively, and the governor. If the intent is for the [attorney general] to be "licensed to practice law in the state" and that is the extent of it, then perhaps that's it rather than tying it to a statute that has the possibility of being changed. Therefore, he opined that the language should be clear regarding the qualifications.

[1:34:03 PM](#)

REPRESENTATIVE GRUENBERG informed that the qualifications to practice law and standards for the Bar exam are set by the Supreme Court as delegated in statute; and constitutionally the Alaska Bar Association is under the Alaska Supreme Court. The phrase "licensed to practice law in this state" is one of the qualifications in HJR 18, which he interpreted under the Alaska State Constitution to mean an active license rather than an inactive or retired license because one is not able to practice law with an inactive license.

[1:36:16 PM](#)

The committee took a brief at-ease.

[1:37:32 PM](#)

CHAIR KELLER requested Representative LeDoux withdraw Amendment 1 in order to obtain the testimony of former Attorney General Avrum Gross on the unamended resolution.

[1:38:14 PM](#)

REPRESENTATIVE LEDOUX withdrew Amendment 1.

[1:38:42 PM](#)

CHAIR KELLER, in response to Representative Stoltze, said in the event Representative Stoltze's attorney cared to testify he/she would be heard as the committee will hear anyone that calls or comes before it.

[1:39:04 PM](#)

REPRESENTATIVE LYNN noted that he was considering offering an amendment that involves the attorney general running on the same ticket as the governor and lieutenant governor.

[1:40:01 PM](#)

CHAIR KELLER announced HJR 18 would be heard on Monday at 1:00 p.m.

[1:40:23 PM](#)

AVRUM GROSS informed the committee he was an assistant attorney general under former [Attorney General] Ralph Moody and Governor William Egan at statehood, and then attorney general under Governor Jay Hammond for six years. He noted he has been an Alaskan resident for more than 50 years and lives at the old Chatham Cannery located in Sitko Bay, across Chatham Straits from Angoon.

MR. GROSS noted that this issue was intensely debated at the Alaska Constitutional Convention and introduced in at least 10 or 12 legislatures since then. Each body that has considered this issue in depth, be it Republican, Democrat, Liberal, or Conservative, has concluded that the present system works well for Alaska and an elected system would cause unwanted problems, he opined. In Alaska, the responsibility granted to the attorney general is unusual in that every single legal function of the state is performed under the auspices of the attorney

general and the assistants he/she appoints to the department. Furthermore, the attorney general is responsible for all legal advice to state agencies and the myriad of daily problems, such as permits, whether regulations qualify under statutes, qualifications for benefits by an applicant, federal/state conflicts for fish and game, et cetera. The aforementioned occupies a huge amount of the department's efforts. Moreover, the Department of Law is responsible for offering [legal advice] to the governor's office, which is the only office with that responsibility. He explained that the attorney general is the sole state official who has standing to represent the state in court and is responsible for enforcing all of the criminal laws of the state through appointed district attorneys and assistant district attorneys.

MR. GROSS described other states with an elected attorney general as very different from Alaska. For instance, in Washington and California criminal prosecutions are handled by elected district attorneys and are not subject to the attorney general's supervision at all. In every state with an elected attorney general, the governor has an extensive staff of attorneys just to advise his office and in many of these states individual departments have their own attorneys hired by and responsible to commissioners. This system makes consistency with regard to the legal advice dictated from the attorney general's office difficult or impossible as the attorney general is called in after the fact. When the attorney general is the sole legal official of the state, the attorney general's actions have an enormous impact on the day-to-day operations of state government, including the fact that prosecution of criminal law is an important public function in which the public is seriously interested. Maintaining a smooth operation of state government under consistent legal advice is critical. Moreover, he said, advising the governor of legal problems before they occur is very important to the success of the governor's administration. Alaska's framers desired centralized executive power and determined that the attorney general should be appointed by the governor who, under the Alaska State Constitution, is solely responsible to the people of Alaska for the effective operation of state government. The governor is the one statewide elected official who cannot make excuses or blame anyone else. He recalled a statewide call-in show when Governor Hammond, in response to a caller, said he, as the governor was the chief law enforcement official in the state.

MR. GROSS posed a scenario depicting why the attorney general appointment and control by the governor is so integral to state

policy. Suppose a gubernatorial candidate who runs on a platform addressing domestic violence is elected and this governor directs the commissioner of the Department of Public Safety [and the elected attorney general] that he wants more energy spent on the domestic violence issue, a task force established, et cetera. When the governor is then up for re-election and the public complains that he/she didn't lower domestic violence, the governor can point to the elected attorney general and say it is his/her fault. The elected attorney general can blame the governor and say he gave it every priority he thought it deserved in the context of the overall criminal justice operation. He questioned, who Alaskans are supposed to believe under those circumstances. Under the Alaska State Constitution, the theory is that the governor is to be responsible for everything as the governor has the authority to appoint people to carry out his programs.

MR. GROSS noted that the Department of Law is no different than any other department and should ensure that state government runs well and that the governor is responsible for what happens. He noted that most of the efforts for change are based around the notion that the attorney general is a mouthpiece for the governor, that the attorney general is too involved in the political process, and that making him the people's attorney by electing the attorney general would alleviate that problem. However, that is not the case. During his nine years of experience and from everything he knows about the Department of Law, he opined that if an attorney general wants to help the governor, politically or otherwise, he does the governor service by telling the truth, as in reality. He remarked that the governor is no different than any other client-attorney relationship. The attorney general in this state is not the law, but he's a lawyer who gives opinions to the governor, and to the state agencies. If he/she gives a bad opinion and gets the governor in trouble, people have access to freely use the courts. He reiterated that the attorney general does the governor no favor by not telling him the best legal course he could follow, or that what the governor plans to do is not consistent with law, he opined.

[1:52:16 PM](#)

MR. GROSS continued that elected attorneys general have their own political agenda and it could be that the attorney general position is a stepping stone to the position of governor or senator, so it is often not in the attorney general's best interest to make the governor look good. He questioned how the

elected attorney general is going to raise money and from whom, trial lawyers or corporations. He opined that the present system is not broken as it has worked very well, and suggested the legislature not fix it. Thank you for the opportunity to testify. I would be happy to answer any questions.

[1:55:13 PM](#)

CHAIR KELLER announced HJR 18 would be set aside.

HJR 33-CONST. AM: MEMBERSHIP OF JUDICIAL COUNCIL

[1:57:18 PM](#)

CHAIR KELLER announced that the last order of business would be HJR 33, "Proposing amendments to the Constitution of the State of Alaska to increase the number of members on the judicial council and relating to the initial terms of new members appointed to the judicial council." [Before the committee is CSHJR 33, Version 28-LS1509\U, Wallace, 3/3/14.]

[1:58:11 PM](#)

CHAIR KELLER opened public testimony.

[1:58:18 PM](#)

JOHN TODD stated he fully concurs with the language of HJR 33 but it does not go far enough to address other serious issues in the legal system. He related his own experience with a court violating its own laws as set out in the Alaska Rules of [Professional] Conduct, specifically Rule 11. He stated support for HJR 33. He then highlighted a statement from Mike Huckabee in which he referred to the judicial system as immoral, and noted that U.S. Senator Lisa Murkowski had rather derogatory comments about the legal system at the national level. The current process is one of selecting lawyers to be considered for judgeships with input from fellow lawyers who will defend their own regardless of the facts, he opined. This legislation goes a long way toward correcting a flawed process.

[2:03:58 PM](#)

CHAIR KELLER closed public testimony.

[2:04:40 PM](#)

The committee took a brief at-ease.

[2:04:59 PM](#)

CHAIR KELLER pointed out that the next committee of referral for HJR 33 is the House Finance Committee and there is a companion [resolution] to HJR 33 in the Senate that is headed to the House Finance Committee. He then noted his preference for moving HJR 33 out of the House Judiciary Standing Committee today.

REPRESENTATIVE GRUENBERG suggested that the House or Senate version of HJR 33 [be assigned] to the House Judiciary Standing Committee rather than "punting" it to another committee, otherwise this committee will not have an opportunity to review the Senate's revisions.

CHAIR KELLER assured the committee that the Senate Judiciary Standing Committee is giving the resolution a thorough vetting as is the House Judiciary Standing Committee. The two versions will come together in the [House] Finance Committee, he explained.

[2:07:05 PM](#)

REPRESENTATIVE LYNN moved to report CSHJR 33, Version 28-LS1509\U, Wallace, 3/3/14, out of committee with individual recommendations and the accompanying fiscal notes.

[2:07:44 PM](#)

REPRESENTATIVE GRUENBERG objected, noting that his questioning and statements on the record speak for themselves. He then opined that members of this committee should have an opportunity to weigh in on potential Senate Judiciary Standing Committee changes. This is an Alaska State Constitutional amendment dealing with the judiciary and not an Alaska State Constitutional amendment dealing with the financial process in this institution. He related his impression that people are anxious to pass the bill, yet it is too important to rush through. He opined that the House Judiciary Standing Committee has a responsibility and if the committee does not exercise that responsibility on an issue like this, then members can hardly complain at what happens in the rest of the process. The committee cannot endorse HJR 33 if the committee has not vetted it themselves and this is something to be taken seriously, he opined.

[2:09:22 PM](#)

CHAIR KELLER offered that the committee agrees that HJR 33 is a very important and serious matter as it proposes a vote to go before the people, particularly on this topic. Therefore, he surmised that Representative Gruenberg did not mean to say that the House Judiciary Standing Committee hasn't given HJR 33 a thorough vetting.

REPRESENTATIVE GRUENBERG noted his agreement that the House Judiciary Standing Committee has had opportunities [to vet HJR 33], but pointed out he does not know where the companion to HJR 33 is in the Senate and whether it is identical to Version U that is before this committee. If the Senate's resolution is identical he said he would feel more comfortable. However, there are unknowns in terms of what the companion bill will be if it passes the Senate. He reiterated that the judicial system works well, the system of selecting judges works well, and the Alaska State Constitution is relatively new.

[2:11:15 PM](#)

CHAIR KELLER interrupted Representative Gruenberg and asked that he speak to his objection as his comments are clearly on the record by prior testimony and discussion. He said he does not want the committee to get into a debate.

REPRESENTATIVE GRUENBERG responded that he thought this was the time to debate HJR 33.

CHAIR KELLER related that HJR 33 has been debated and currently there is a motion to move HJR 33. He reminded Representative Gruenberg of his objection and that he should be speaking to his objection to moving HJR 33 out of committee.

REPRESENTATIVE GRUENBERG, noting that he is not arguing with Chair Keller, related his understanding that this is the time to debate the main issue on the content of HJR 33 and whether it should move out of committee.

[2:12:19 PM](#)

The committee took a brief at-ease.

[2:13:12 PM](#)

CHAIR KELLER explained that when legislation is before the committee for debate the legislation is first before the committee for presentation during which questions can be asked and members can interact with the sponsor and hear from various witnesses who call in to testify. After questions are answered, the legislation is then moved before the committee for discussion. He explained that in this case, when he closed public testimony and said the resolution is before the committee for discussion, instead of discussion there was a motion to move the resolution out of committee to which Representative Gruenberg objected. Therefore, the question before the committee is whether or not HJR 33 should move from committee.

[2:14:32 PM](#)

The committee took a brief at-ease.

[2:15:34 PM](#)

CHAIR KELLER then requested that Representative Gruenberg speak to a procedural motion to move the resolution out of committee, but not to go beyond that. In further response to Representative Gruenberg, Chair Keller clarified that a non-debatable procedural motion is before the committee and he will call the roll. He then requested the roll call vote be taken.

A roll call vote was taken. Representatives LeDoux, Lynn, Pruitt, and Keller voted in favor of reporting CSHJR 33, Version 28-LS1509\U, Wallace, 3/3/14, from committee. Representative Gruenberg voted against it. Therefore, CSHJR 33(JUD) was reported from the House Judiciary Standing Committee by a vote of 4-1.

[2:17:45 PM](#)

The committee took an at-ease from 2:17 p.m. to 2:29 p.m.

HB 127-OMBUDSMAN

[2:31:22 PM](#)

CHAIR KELLER announced that the final order of business would be HB 127, "An Act clarifying that the Alaska Bar Association is an agency for purposes of investigations by the ombudsman; relating to compensation of the ombudsman and to employment of staff by the ombudsman under personal service contracts; providing that

certain records of communications between the ombudsman and an agency are not public records; relating to disclosure by an agency to the ombudsman of communications subject to attorney-client and attorney work-product privileges; relating to informal and formal reports of opinions and recommendations issued by the ombudsman; relating to the privilege of the ombudsman not to testify and creating a privilege under which the ombudsman is not required to disclose certain documents; relating to procedures for procurement by the ombudsman; relating to the definition of 'agency' for purposes of the Ombudsman Act and providing jurisdiction of the ombudsman over persons providing certain services to the state by contract; and amending Rules 501 and 503, Alaska Rules of Evidence." [Before the committee is CSHB 127(STA).]

[2:34:09 PM](#)

BETH LEIBOWITZ, Assistant Ombudsman, Office of the Ombudsman, Legislative Agencies and Offices, explained that Section 1 would unfreeze the ombudsman's salary and allow step increases as the position is a high level salary that is not set like a commissioner or director; rather it is currently frozen at Range 26, Step A. Therefore, the ombudsman, unlike her staff, currently never receives a pay increase.

[2:35:05 PM](#)

REPRESENTATIVE GRUENBERG related his understanding that the ombudsmen is not under the jurisdiction of the State Officers Compensation Commission.

[2:35:33 PM](#)

MS. LEIBOWITZ replied yes, explaining that since the ombudsman is in the legislative branch, the executive salary setting has nothing to do with the ombudsman's office.

[2:35:44 PM](#)

REPRESENTATIVE GRUENBERG inquired as to whether the ombudsman would prefer to be under the State Officers Compensation Commission.

MS. LEIBOWITZ responded "No," specifying that the ombudsman would simply like the salary provision to remain similar to what it is now, but allow step increases. In further response to

Representative Gruenberg, Ms. Leibowitz confirmed the language of HB 127 is sufficient to allow the step increases.

[2:36:14 PM](#)

MS. LEIBOWITZ, returning to her review of HB 127, explained that Section 2 clarifies an ambiguous issue regarding the ombudsman's office ability to use the personal services contract provision that is provided for other legislative agencies under AS 24.10.060(f). She opined that Legislative Affairs Agency personnel believe the ombudsman's office can [use the personal services contract]. However, the ombudsman's office would like this [confirmed] so it is not required to go through the legislative history of several different versions of Title 24.

[2:37:01 PM](#)

REPRESENTATIVE GRUENBERG questioned whether any legislative contracts have to go through the State Procurement Code or solely through Legislative Council. In the event HB 127 passes, what provision would apply: the State Procurement Code, Legislative Council, or both.

MS. LEIBOWITZ answered that neither is the case as personal services contracts basically allow temporary staff on board. Since it is not a procurement matter, it does not require Legislative Council. As the ombudsman's office has to budget, she related her understanding is that the ombudsman can make this determination, she opined.

[2:37:52 PM](#)

MS. LEIBOWITZ deferred to Chair Wes Keller regarding Sections 3-5 as the ombudsman's office does not support those sections.

[2:38:12 PM](#)

CHAIR KELLER stated he was the sponsor of [the amendments] to those sections in the House State Affairs Standing Committee. He then noted there is an amendment pending in the House Judiciary Standing Committee which would increase reporting and formalize the interaction process between the ombudsman's office and the legislature. The ombudsman's office is complaint driven and these sections request information on the complaints the ombudsman decides not to investigate, he explained.

[2:39:01 PM](#)

MS. LIEBOWITZ, returning to her presentation, explained that Section 6 deals with the ombudsman's powers during an investigation. Currently, AS 24.55.160(a)(4) provides that "notwithstanding other provisions of law, have access at all times to records of every state agency, including confidential records, except sealed court records, production of which may only be compelled by subpoena, and except for records of active criminal investigations and records that could lead to the identity of confidential police informants." She highlighted that this is the one reference as to "state agency" in the Ombudsman Act rather than "agency." Since the ombudsman has jurisdiction over municipalities and school districts that opt in, and within the criminal division section over some private contractors within HB 127 the intention of HB 127 is to delete "**state**" so the legislation simply refers to an agency, she explained.

[2:40:30 PM](#)

REPRESENTATIVE GRUENBERG questioned if "state agency" or "agency" is defined.

MS. LIEBOWITZ specified that "agency" is defined in AS 24.55.330.

REPRESENTATIVE GRUENBERG asked if "state agency" is defined.

MS. LIEBOWITZ responded "No," and explained that the ombudsman statute references "agency" and that is included in the definition "state departments" and goes through a long list of state and municipal entities that can be included.

[2:41:21 PM](#)

MS. LEIBOWITZ, continuing her presentation, stated that Section 7 adds an anti-waiver provision specifically targeted to allow state agencies or other entities to share advice it has received from the Department of Law should the agency so choose, as the ombudsman's office does not have mandatory access. In the past, state agencies have provided communications with the Department of Law and on occasion it has happened by accident and sometimes deliberately in order to explain what appeared to be an otherwise unexplainable action on the agency's part. She related the ombudsman's understanding that agencies sharing communications from the Department of Law with the ombudsman's office places the agency in danger of completely waiving its

attorney-client privilege in a manner that could harm it in litigation with a private litigant. Therefore, the ombudsman's office requests that the state agencies be allowed to be candid without causing them additional damage.

REPRESENTATIVE GRUENBERG pointed out that AS 25.55.330(2) is a lengthy definition of agency.

[2:43:08 PM](#)

MS. LEIBOWITZ remarked that within Section 8, the ombudsman currently has the privilege not to testify in a judicial proceeding, which is typical of ombudsman acts created by state governments. She explained that the ombudsman's privilege is not express regarding its files and documents acquired [during an investigation]. Although the aforementioned has not been an active problem, she related that the ombudsman would like the privilege made very clear that it does not testify or produce documents from its office.

REPRESENTATIVE GRUENBERG asked if this applies only to judicial or administrative proceedings, but not to legislative hearings. He posed a scenario wherein the ombudsman prepared a report leading to a legislative hearing under oath with subpoena powers, and the ombudsman's office could be compelled to testify as it is a branch of the legislature.

[2:44:34 PM](#)

MS. LEIBOWITZ confirmed that the ombudsman has not attempted to remove itself from legislative subpoena power. Returning to her presentation, she referred to Section 9, which would allow the ombudsman to adopt procurement regulations similar to those used by the remainder of the legislative branch. The language in Section 9 also makes it clear that when the ombudsman uses her/his discretion to hire an investigator it does not require a procurement request for proposals or competitive bids, she opined.

CHAIR KELLER requested Ms. Leibowitz skip Sections 10-11 as they are proposed to be deleted.

[2:45:45 PM](#)

REPRESENTATIVE GRUENBERG, speaking as a member of the Legislative Council, asked whether the intention is to prepare regulations that solely apply to the ombudsman's office. He

opined that Legislative Council would likely benefit from knowing the thinking of the ombudsman's office regarding whether regulations should be adopted for other aspects of legislative procurement.

MS. LEIBOWITZ agreed to share the ombudsman's office regulations with Legislative Council as it is the only legislative branch entity that actually does any form of procurement regulations. Since the ombudsman's office has been given this particular status, it wants it to work as well as possible, she opined.

[2:46:34 PM](#)

MS. LEIBOWITZ moved on to Section 12, which would require a two-thirds majority to ratify a statute change that would affect Rules of Evidence 503 regarding attorney-client privilege and a change to the existing statutory privilege against testifying.

REPRESENTATIVE GRUENBERG commented that this is the constitutional way to do an indirect court rule amendment.

[2:47:43 PM](#)

MS. LEIBOWITZ, continuing her presentation, advised that since Section 13 deals with the effective date for Sections 10-11 and there are amendments to delete Sections 10-11, she would not comment further. Section 14 is similar to Section 12 in that it deals with indirect court rule amendments and basically provides that Sections 7-8 will only take effect if it a two-thirds majority vote is received.

[2:48:35 PM](#)

CHAIR KELLER reiterated that the ombudsman's office is part of the legislature and the legislature not only chooses the ombudsman but sets the salary, can fire the ombudsman, and sets the rules. The ombudsman's office has investigative powers and is complaint driven. Therefore, a citizen of Alaska who feels he/she has received a raw deal by the administration can lodge a complaint with the ombudsman's office which has a process with which to respond, investigate, and determine if the complaint has merit. He remarked there are important "clean up" provisions in HB 127.

[2:50:08 PM](#)

MS. LEIBOWITZ characterized Chair Keller's summary as reasonable, although she pointed out that the legislature originally and deliberately created the ombudsman, established the salary in statute, and established the procedures of the office that would be set by the ombudsman. The legislature appoints the ombudsman and can fire the ombudsman, but very deliberately made the decision that this entity that responds directly to citizens would function independently to a large extent, she opined.

[2:50:43 PM](#)

CHAIR KELLER agreed, announced public testimony was closed, and stated HB 127 is before the committee for amendments and debate.

[2:51:08 PM](#)

CHAIR KELLER moved to adopt Amendment 1, labeled 28-LS0088\E.1, Gardner, 3/11/14.

Page 2, line 11, following "if":
Delete "the chair of"

Page 2, line 12, following "requests an":
Insert "ombudsman"

Page 2, line 18, following "complainant":
Delete "consents to disclosure"
Insert "requests"

REPRESENTATIVE PRUITT objected for purposes of discussion.

[2:51:34 PM](#)

JIM POUND, Staff, Representative Wes Keller, Alaska State Legislature, advised that Sections 3-5 of this legislation are based upon communications directly between the ombudsman's office and the legislature via the Administration Regulation Review Committee, which has the authority to operate and meet year round and represents both houses of the legislature. Amendment 1 proposes on page 2, line 11, deleting of the language, "the chair of" which would then read "if the Administrative Regulation Review Committee requests an investigation on behalf of the legislature or". He explained that the full committee votes and if the committee decides to investigate it will submit an investigation request. Also, the ombudsman does have the right to say "no," as it is a "may"

investigate scenario, he opined. In response to a committee member's concern that the language in HB 127 authorizes the Administrative Regulation Review Committee the power to investigate, following the language "requests" the language "ombudsman" was inserted specifically to state the Administrative Regulation Review Committee has the authority to "request" the ombudsman to investigate. With regard to the concern by the ombudsman's office as to how an individual files a complaint and whether or not they intend for their name to be attached to the [complaint], the language "consent to disclose" on page 2, line 18, was changed to "requests", which requires the actual complainant to request their name be included if they so choose.

[2:54:29 PM](#)

CHAIR KELLER, reminding the committee that the ombudsman does not support the inclusion of Sections 3-5, explained that he proposed Amendment 1 because he determined that the legislature has an interest in reviewing what the ombudsman's does and the degree of independence the office holds from the legislature, so that the legislature can evaluate whether or not the complaints are valid. He opined it is completely appropriate for the committee to consider these amendments, and added that future amendments can be brought forth that will further refine or remove Sections 3-5, at the discretion of the House Judiciary Standing Committee.

[2:55:38 PM](#)

REPRESENTATIVE GRUENBERG moved that Amendment 1 be broken into three parts, with one for each section involved in HB 127.

[2:56:27 PM](#)

CHAIR KELLER announced that he would withdraw Amendment 1 until the next meeting and put the changes in and work from a [committee substitute], although he stated he would rather the amendment not be split due to time restrictions.

[2:56:45 PM](#)

REPRESENTATIVE GRUENBERG withdrew his [motion].

[2:57:42 PM](#)

REPRESENTATIVE PRUITT related his understanding that Amendment 1 allows the Administrative Regulation Review Committee authority to request an investigation, while requests to include the name of the complainant on the complaint and the reason the ombudsman does not investigate complaints will only go to the chair of the Administrative Regulation Review Committee. Therefore, the initial investigation [request] comes from the whole committee, while the communications back is only required to go to the chair.

MR. POUND responded "That is correct."

[2:58:58 PM](#)

REPRESENTATIVE PRUITT removed his objection. There being no further objection, Amendment 1 was adopted.

[2:59:18 PM](#)

REPRESENTATIVE PRUITT moved to adopt Amendment 2, labeled 28-LS0088\E.3, Gardener, 3/12/14.

Page 1, lines 8 - 11:

Delete "**relating to the definition of 'agency' for purposes of the Ombudsman Act and providing jurisdiction of the ombudsman over persons providing certain services to the state by contract or grant and over instrumentalities of the state;**"

Page 4, lines 7 - 30:

Delete all material.

Renumber the following bill sections accordingly.

Page 5, lines 15 - 18:

Delete all material.

Renumber the following bill section accordingly.

Page 5, line 22:

Delete "sec. 12(a)"

Insert "sec. 10(a)"

Page 5, line 24:

Delete "sec. 12(b)"

Insert "sec. 10(b)"

CHAIR KELLER objected.

[2:59:38 PM](#)

REPRESENTATIVE PRUITT explained stated that Amendment 2 deletes Sections 10, 11, and 13, with Sections 10-11 being the key pieces. The ombudsman's office requested in Section 10 that the legislature clarify whether or not the ombudsman has jurisdiction over the Alaska Bar Association, which is essentially "instrumentality," and adds to its current jurisdiction contracts awarded by state agencies that provide prison, or halfway house, or similar residential services. He specified that Amendment 2 deletes those provisions.

REPRESENTATIVE LEDOUX surmised then that under Amendment 2 the legislature is not only taking out the prison, halfway house, [or similar residential services on behalf of the Department of Corrections], HB 127 is also taking out "instrumentality." She asked if the Alaska Bar Association will clearly not be subject to the jurisdiction of the ombudsman if Amendment 2 passes

[3:01:52 PM](#)

CHAIR KELLER responded "Definitely not," as under AS 08.08.010 the Alaska Bar Association was created by the Alaska State Legislature and the ombudsman is an investigative arm of the legislature, and therefore has the authority to investigate the Alaska Bar Association. However, he added that this is a provision has a history of contention as essentially the ombudsman is requesting clarification on whether or not the Alaska Bar Association is under the investigative jurisdiction of the ombudsman's office. By passing Amendment 2, the legislature does not clarify that, and avoids the question for now.

[3:03:03 PM](#)

REPRESENTATIVE LEDOUX questioned as to why the legislature would not want to clarify [whether or not the Alaska Bar Association is under the investigative jurisdiction of the ombudsman's office]. What is the down side of determining whether it is under the jurisdiction or not, she asked.

REPRESENTATIVE PRUITT explained that he does not want HB 127 to not pass because of the controversy and potential jurisdiction issues surrounding this particular piece of it. Therefore, he proposed Amendment 2.

REPRESENTATIVE LEDOUX surmised then that if the ombudsman requests clarification, it would be best to place the clarifying language in an entirely separate bill so HB 127 can make its way through the legislature.

CHAIR KELLER suggested that is a good question to ask the ombudsman as this is the ombudsman's housekeeping legislation.

[3:06:12 PM](#)

REPRESENTATIVE GRUENBERG stated he previously made a mistake in that he would prefer not to include Amendment [1] in the [committee substitute] but rather to divide the [pieces] of Amendment 1 as he prefers to debate each separate piece. He said the ombudsman should have jurisdiction to investigate regarding the Alaska Bar Association. He then requested the committee not incorporate [Amendment 2] into a committee substitute, and also revisit Amendment 1 and debate each separate piece.

[3:07:23 PM](#)

CHAIR KELLER offered that Representative Pruitt could withdraw his motion [to adopt Amendment 2] and noted there was extensive testimony in the House State Affairs Standing Committee regarding concerns contractors have had.

[3:08:06 PM](#)

CHAIR KELLER withdrew his objection to Amendment 2.

REPRESENTATIVE PRUITT withdrew proposed Amendment 2.

[HB 127 was held over.]

[3:10:13 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:10 p.m.