

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

April 8, 2015

2:07 p.m.

MEMBERS PRESENT

Representative Gabrielle LeDoux, Chair
Representative Wes Keller, Vice Chair
Representative Bob Lynn
Representative Charisse Millett
Representative Matt Claman
Representative Neal Foster
Representative Max Gruenberg

MEMBERS ABSENT

Representative Kurt Olson (alternate)

COMMITTEE CALENDAR

HOUSE BILL NO. 123

"An Act establishing the Marijuana Control Board; relating to the powers and duties of the Marijuana Control Board; relating to the appointment, removal, and duties of the director of the Marijuana Control Board; relating to the Alcoholic Beverage Control Board; and providing for an effective date."

- MOVED CSHB 123(JUD) OUT OF COMMITTEE

HOUSE JOINT RESOLUTION NO. 14

Making application to the United States Congress to call a convention of the states to propose a countermand amendment to the Constitution of the United States as provided under art. V, Constitution of the United States; and urging the legislatures of the other 49 states to make the same application.

- MOVED CSHJR 14(STA) OUT OF COMMITTEE

HOUSE CONCURRENT RESOLUTION NO. 4

Relating to the duties of delegates selected by the legislature to attend a convention of the states called under art. V, Constitution of the United States, to consider a countermand amendment to the Constitution of the United States; establishing as a joint committee of the legislature the Delegate Credential Committee and relating to the duties of the committee; providing for an oath for delegates and alternates to a countermand

amendment convention; providing for a chair and assistant chair of the state's countermand amendment delegation; providing for the duties of the chair and assistant chair; providing instructions for the selection of a convention president; and providing specific language for the countermand amendment on which the state's convention delegates are authorized by the legislature to vote to approve.

- MOVED CSHCR 4(STA) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HB 123

SHORT TITLE: ESTABLISH MARIJUANA CONTROL BOARD

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

| | | |
|----------|-----|--------------------------------------|
| 02/23/15 | (H) | READ THE FIRST TIME - REFERRALS |
| 02/23/15 | (H) | L&C, JUD, FIN |
| 03/04/15 | (H) | L&C AT 3:15 PM BARNES 124 |
| 03/04/15 | (H) | Heard & Held |
| 03/04/15 | (H) | MINUTE(L&C) |
| 03/11/15 | (H) | L&C AT 3:15 PM BARNES 124 |
| 03/11/15 | (H) | Heard & Held |
| 03/11/15 | (H) | MINUTE(L&C) |
| 03/16/15 | (H) | L&C AT 3:15 PM BARNES 124 |
| 03/16/15 | (H) | Heard & Held |
| 03/16/15 | (H) | MINUTE(L&C) |
| 03/20/15 | (H) | L&C AT 3:15 PM BARNES 124 |
| 03/20/15 | (H) | Heard & Held |
| 03/20/15 | (H) | MINUTE(L&C) |
| 03/23/15 | (H) | JUD AT 1:00 PM CAPITOL 120 |
| 03/23/15 | (H) | Scheduled but Not Heard |
| 03/23/15 | (H) | L&C AT 3:15 PM BARNES 124 |
| 03/23/15 | (H) | Heard & Held |
| 03/23/15 | (H) | MINUTE(L&C) |
| 03/27/15 | (H) | L&C AT 3:15 PM BARNES 124 |
| 03/27/15 | (H) | Moved CSHB 123(L&C) Out of Committee |
| 03/27/15 | (H) | MINUTE(L&C) |
| 03/30/15 | (H) | L&C RPT CS(L&C) 1DP 3NR 3AM |
| 03/30/15 | (H) | DP: OLSON |
| 03/30/15 | (H) | NR: TILTON, HUGHES, KITO |
| 03/30/15 | (H) | AM: LEDOUX, JOSEPHSON, COLVER |
| 03/30/15 | (H) | JUD AT 1:00 PM CAPITOL 120 |
| 03/30/15 | (H) | Heard & Held |
| 03/30/15 | (H) | MINUTE(JUD) |
| 04/03/15 | (H) | JUD AT 1:00 PM CAPITOL 120 |

04/03/15 (H) -- MEETING CANCELED --
04/06/15 (H) JUD AT 1:00 PM CAPITOL 120
04/06/15 (H) Heard & Held
04/06/15 (H) MINUTE(JUD)
04/08/15 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HJR 14

SHORT TITLE: CALL FOR US COUNTERMAND CONVENTION
SPONSOR(s): HUGHES

02/11/15 (H) READ THE FIRST TIME - REFERRALS
02/11/15 (H) STA, JUD
03/19/15 (H) STA AT 8:00 AM CAPITOL 106
03/19/15 (H) Heard & Held
03/19/15 (H) MINUTE(STA)
03/24/15 (H) STA AT 8:00 AM CAPITOL 106
03/24/15 (H) Moved CSHJR 14(STA) Out of Committee
03/24/15 (H) MINUTE(STA)
03/25/15 (H) STA RPT CS(STA) 3DP 4NR
03/25/15 (H) DP: VAZQUEZ, LYNN, KELLER
03/25/15 (H) NR: TALERICO, STUTES, GRUENBERG,
KREISS-TOMKINS
04/08/15 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HCR 4

SHORT TITLE: US COUNTERMAND CONVENTION DELEGATES
SPONSOR(s): HUGHES

02/11/15 (H) READ THE FIRST TIME - REFERRALS
02/11/15 (H) STA, JUD, FIN
03/19/15 (H) STA AT 8:00 AM CAPITOL 106
03/19/15 (H) Heard & Held
03/19/15 (H) MINUTE(STA)
03/24/15 (H) STA AT 8:00 AM CAPITOL 106
03/24/15 (H) Moved CSHCR 4(STA) Out of Committee
03/24/15 (H) MINUTE(STA)
03/25/15 (H) STA RPT CS(STA) 3DP 4NR
03/25/15 (H) DP: VAZQUEZ, LYNN, KELLER
03/25/15 (H) NR: TALERICO, STUTES, GRUENBERG,
KREISS-TOMKINS
04/08/15 (H) JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

MICAELA FOWLER, Legislative Liaison
Special Assistant to the Commissioner
Office of the Commissioner

Department of Commerce, Community, and Economic Development
Juneau, Alaska

POSITION STATEMENT: During the hearing on CSHB 123, testified regarding changes in the CS and answered questions.

CYNTHIA FRANKLIN, Director
Alcoholic Beverage Control Board (ABC Board)
Department of Commerce, Community, and Economic Development
(DCCED)

Anchorage, Alaska

POSITION STATEMENT: During the hearing on CSHB 123, answered questions regarding regulating marijuana like alcohol.

REPRESENTATIVE SHELLY HUGHES

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Presented HJR 14, and HCR 4, in tandem as the prime sponsor.

STEWART CRUGER, Staff
Representative Shelley Hughes
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: During the hearings on HJR 14, and HCR 4, presented a sectional analysis.

CHARLES KACPROWICZ, Executive Director
Citizen Initiatives and Countermand Amendment
Spruce Pine, North Carolina

POSITION STATEMENT: During the hearings on HJR 14, and HCR 4, offered testimony.

ACTION NARRATIVE

[2:07:06 PM](#)

CHAIR GABRIELLE LEDOUX called the House Judiciary Standing Committee meeting to order at 2:07 p.m. Representatives Keller, Lynn, Millett, Claman, and LeDoux were present at the call to order. Representatives Foster and Gruenberg arrived as the meeting was in process.

HB 123-ESTABLISH MARIJUANA CONTROL BOARD

[2:08:01 PM](#)

CHAIR LEDOUX announced that the first order of business would be HOUSE BILL NO. 123, "An Act establishing the Marijuana Control Board; relating to the powers and duties of the Marijuana Control Board; relating to the appointment, removal, and duties of the director of the Marijuana Control Board; relating to the Alcoholic Beverage Control Board; and providing for an effective date."

[2:08:30 PM](#)

REPRESENTATIVE KELLER moved to adopt CSHB 123, Version 29-GH1110\P, Martin, 4/7/15, as the working document. There being no objection Version P was before the committee.

[2:09:02 PM](#)

MICAELA FOWLER, Legislative Liaison, Special Assistant to the Commissioner, Office of the Commissioner, Department of Commerce, Community, and Economic Development, said there are two changes in Version P responsive to concerns voiced during the last hearing ...

[2:09:22 PM](#)

The committee took an at-ease from 2:09 to 2:10 p.m., due to technical difficulties.

[2:10:44 PM](#)

MS. FOWLER referred to [Sec. 2, AS 17.38.080(b)(3)], page 2, line 17, which read:

(3) one person currently residing in a rural area;

MS. FOWLER advised that the word "currently" has been added to the rural seat and it is now required that one person currently residing in a rural area serve on the board. She referred to [Sec. 2, AS 17.38.080(g)(6)], page 3, lines 19-21, which read:

(6) "rural area" means a community with a population of 7,000 or less that is not connected by road or rail to Anchorage or Fairbanks, or with a population of 2,000 or less that is connected by road or rail to Anchorage or Fairbanks.

MS. FOWLER advised that the definition of "rural area" has been changed and it is closely related to a combination of other definitions of "rural area" in existing statute. She referred to [Sec. 3, AS 17.38.084(a)], page 4, lines 14-15, which read:

(a) The board shall control the cultivation, manufacture, and sale of marijuana in the state. ...

MS. FOWLER explained it removes the word "possession" from control of the board.

[2:12:27 PM](#)

REPRESENTATIVE GRUENBERG referred to an amendment Representative Foster wanted.

CHAIR LEDOUX advised that she believes the CS incorporated Representative Foster's concerns.

REPRESENTATIVE FOSTER stated that Chair LeDoux was correct.

[2:13:42 PM](#)

REPRESENTATIVE GRUENBERG requested a copy of AS 17, and a few minutes to review.

[2:13:57 PM](#)

The committee took a brief at-ease.

[2:14:24 PM](#)

MS. FOWLER responded to Representative Gruenberg and referred to [Version N, Sec. 2, AS 17.38.080(e)], page 2, lines 30-31, which read:

(e) The rural member of the board shall reside or have resided in a rural area for not fewer than 180 days within the five years preceding appointment.

MS. FOWLER pointed out that the section was removed when "currently" was added to [Version P], Sec. 2, line 17.

REPRESENTATIVE GRUENBERG confirmed that is yet another change.

MS. FOWLER answered yes.

[2:14:53 PM](#)

CHAIR LEDOUX said the Ms. Fowler indicated that "currently" had been put into the CS.

REPRESENTATIVE GRUENBERG offered that he "just wanted to be sure."

[2:15:33 PM](#)

REPRESENTATIVE LYNN moved to adopt Amendment 1, labeled 29-GH1110\E.1, Martin, 4/2/15, which read [original punctuation provided]:

Page 6, following line 8:

Insert a new bill section to read:

"* **Sec. 4.** AS 17.38.100 is amended by adding a new subsection to read:

(i) A marijuana establishment may not be registered under this chapter if a person who is an owner, officer, agent, or employee of the marijuana establishment has been convicted of

(1) a felony and less than five years have elapsed since the person's unconditional discharge from the conviction; or

(2) a misdemeanor involving a controlled substance in the last three years."

Renumber the following bill sections accordingly.

CHAIR LEDOUX objected.

[2:15:51 PM](#)

REPRESENTATIVE LYNN advised that Amendment 1 proposes that a marijuana establishment may not be registered under this chapter if a person is an owner, officer, agent or employee of a marijuana establishment and has been convicted of a felony and less than five years have elapsed since the person's unconditional discharge from the conviction, or a misdemeanor involving a controlled substance within the last three years. He stated that felonies or misdemeanors involving a controlled substance, which could be marijuana, has demonstrated a predilection not to follow established law. He described it as a state of mind, that the past is too often the predictor of the future, and the committee must be cautious as it is breaking new

ground in every aspect of marijuana laws. He stated that the committee must be extremely cautious in how it constructs the laws and urged the committee's approval of the amendment.

[2:17:25 PM](#)

CHAIR LEDOUX asked Cynthia Franklin, Micaela Fowler, and/or Harriet Milks to explain their view of the amendment and how things are done with respect to the alcohol industry.

[2:17:50 PM](#)

CYNTHIA FRANKLIN, Director, Alcoholic Beverage Control Board (ABC Board), Department of Commerce, Community, and Economic Development (DCCED), responded that with regard to alcohol in Title 4, there is 10 year look back period on felonies but no outright prohibition on individuals with felony convictions being licensed for purposes of operating or holding a liquor license. She advised that in the event the person applying for a license has been convicted of a felony within the past 10 years they must appear before the ABC Board to explain their conviction, the board has the discretion to grant the license in spite of the conviction or to deny the license on the basis of the conviction. She noted that it is a bit more open than proposed Amendment 1, but it is a different substance and alcohol has not recently been in the Controlled Substances Act. In fact, she explained, marijuana may remain in the Controlled Substances Act depending upon the fate of bills in the legislature. She stated that a clear prohibition will decrease board time spent on this issue, but she imagines that individuals who plan to apply for licenses might have more to say about it in terms of their opinion.

[2:19:24 PM](#)

CHAIR LEDOUX asked whether there is anything with respect to misdemeanors in the ABC Board.

MS. FRANKLIN responded no.

CHAIR LEDOUX questioned whether the look back provision with respect to felonies is in the statute or in regulation.

MS. FRANKLIN answered that it is in regulation.

[2:19:58 PM](#)

CHAIR LEDOUX surmised that since this is offered in the alcohol industry regulations, she would like marijuana regulated the same as alcohol. She said she will not withdraw her objection.

[2:20:44 PM](#)

MS. FRANKLIN added that there is a prohibition similar to proposed Amendment 1, in SB 62, but she could not recall whether the bill contains a prohibition related to misdemeanor convictions. She reiterated that the five year felony prohibition is present in the current version of SB 62.

[2:21:11 PM](#)

REPRESENTATIVE CLAMAN agreed that it should be under marijuana regulations, and questioned whether the condition of CSHB 123 adequate to give the Marijuana Control Board regulatory authority to create the same as the ABC Board has or should there be a change to the bill if desiring that the Marijuana Control Board has that authority.

MS. FRANKLIN responded that the language is adequate.

REPRESENTATIVE CLAMAN advised that he shares Chair LeDoux's objection.

[2:22:01 PM](#)

REPRESENTATIVE KELLER referred to time saved for the board by having these parameters implies that the 10 year look back period takes a considerable amount of time. He asked whether Ms. Franklin had to make decisions that were controversial in her look back experience.

MS. FRANKLIN responded that she has only been to three board meetings, and there was an applicant with a felony conviction. She advised that she wouldn't say it takes a significant amount of time although it does involve the board going into executive session because an individual's criminal history is private. Typically, she offered, because the board discovers the criminal convictions through the Alaska Safety Planning and Empowerment Network (ASPEN) security clearance that the enforcement officers have, and the authority the board has to look at an individual's criminal history who applies for a license. She reiterated that board goes into executive session at the board meeting for the board to discuss that history with the applicant. She further reiterated that it does not take a significant amount of time

and that it add a human element to the board process in the particular case she observed. It allowed the board to consider rehabilitation efforts the individual had made and it was a controlled substance conviction and was a long time prior. She advised the individual had circumstances she wanted to explain to the board and the license she was applying for was a beer and wine license at a "hamburger/wings joint," and the board was able to consider the age of the conviction, type of license applied for, and weigh the various determinations as opposed to a bright line scheme where the simple fact of the conviction would automatically preempt the person from holding such a license.

[2:24:25 PM](#)

REPRESENTATIVE KELLER related that five years and three years is reasonable, wherein comparing five years to ten years is not apples to apples. He remarked that proposed Amendment 1 is good.

[2:24:44 PM](#)

REPRESENTATIVE GRUENBERG stated that when Chair LeDoux mentioned some things that might be issues for the regulatory authority to consider, he does not want the record to reflect that those would be the only issues. He offered that other issues might include whether a person would have a right to appear before the board, and also whether this activity may have occurred in a different jurisdiction with different laws. He offered a scenario of a person with a little marijuana in a baggie in their car glove compartment charged within the last three years as to whether that person should be disqualified. He said he agrees with taking it to the regulatory authority.

[2:25:46 PM](#)

REPRESENTATIVE LYNN responded to Representative Gruenberg that prior to this initiative a small baggie of marijuana would have been illegal which showed a predilection to not obeying the law.

REPRESENTATIVE GRUENBERG answered that it depends upon the case.

[2:26:26 PM](#)

CHAIR LEDOUX referred to the alcohol context and questioned whether the prohibition is applied to simple employees of the bar or just someone with a license.

MS. FRANKLIN replied that it is the applicant for the license or applicant for the transfer.

CHAIR LEDOUX surmised that it would not affect hiring an employee with an Alcohol Education Card (TAM) for example.

MS. FRANKLIN answered, correct.

[2:27:00 PM](#)

REPRESENTATIVE CLAMAN offered a further note in support of the regulatory approach in that the legislature wants people who now may be in the marijuana growing business to register and participate. He stated he would rather have a person, with a misdemeanor conviction for marijuana possession in the last three years, licensed and identified rather than being in the black market.

[2:28:04 PM](#)

REPRESENTATIVE LYNN referred to Ms. Franklin testimony wherein she stated the board would go into executive session because convictions are private. He questioned whether the convictions are really private in that anyone can go on the internet or courthouse to locate convictions of anything.

MS. FRANKLIN answered that it depends on whether it is an Alaska conviction and in Courtview then anyone can see it. In the event it is a federal conviction or out-of-state conviction that is located on ASPIN, it is not viewable by the public. The board is governed by processes created in regulation in terms of how to treat the criminal history during public meetings. She explained that the process is that an applicant applies, the ASPIN history is run, and if there is an item on the history that would cause the applicant to fall under that regulation the information is shared solely with the director, and then the board in executive session versus being on the board's public agenda.

[2:29:35 PM](#)

REPRESENTATIVE LYNN opined that the state is entering an entirely new ground and in the event there is an error it should be on the side of caution. He offered that instead of five years for felony it could have ten or twenty, but he was attempting to reach a reasonable compromise and the same goes

with a misdemeanor as it could have been any number of years and three years was chosen as reasonable for controlled substances only, not for any other misdemeanors.

[2:30:33 PM](#)

A roll call vote was taken. Representatives Keller and Lynn voted in favor of Amendment 1. Representatives Gruenberg, Foster, Millett, Claman, and LeDoux, voted against it. Therefore, Amendment 1 failed to pass by a vote of 2-5.

[2:31:07 PM](#)

CHAIR LEDOUX quiered whether this bill gives the board the authority to create whatever license or license type it deems necessary in order to effectively regulate the industry.

MS. FRANKLIN advised that it does.

[2:31:29 PM](#)

REPRESENTATIVE GRUENBERG questioned whether the Marijuana Control Board will have the authority to create crimes.

MS. FRANKLIN responded "No," that by regulation the board will not be creating crimes, but if through regulation if criminal activity is identified there can be some penalty work performed by regulation. In terms of creating offenses and putting an individual into jail the answer is no, as obviously AS 17.38 gives whichever regulatory board that has authority over this substance the ability to create civil penalty fines relating to violation of the rules created by the board, she explained.

[2:32:48 PM](#)

REPRESENTATIVE GRUENBERG paraphrased Ms. Franklin's previous statement that the board may be able to do something with respect to criminal penalties.

MS. FRANKLIN replied that the statement is based on a discussion pre-session with the board's attorneys in terms of how far the regulations might go if no amendments to AS 17.38 occurred. She said she would have to refresh her memory on that before putting it on the record. Generally speaking, she offered, with regard to Title 4, the regulations clarify statutes and she knows the board cannot create crimes.

[2:33:43 PM](#)

REPRESENTATIVE GRUENBERG requested that a written follow-up answer to his question be delivered to the committee and in that manner he could determine if there is a problem.

MS. FRANKLIN responded that she is willing to prepare a written follow-up.

[2:34:37 PM](#)

REPRESENTATIVE KELLER moved to report CSHB 123 out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 123(JUD) was reported from the House Judiciary Standing Committee.

[2:34:56 PM](#)

The committee took an at-ease from 2:34 to 2:39 p.m.

HJR 14-CALL FOR US COUNTERMAND CONVENTION
HCR 4-US COUNTERMAND CONVENTION DELEGATES

[2:39:21 PM](#)

CHAIR LEDOUX announced that the next order of business would be HOUSE JOINT RESOLUTION NO. 14, Making application to the United States Congress to call a convention of the states to propose a countermand amendment to the Constitution of the United States as provided under art. V, Constitution of the United States; and urging the legislatures of the other 49 states to make the same application, and HOUSE CONCURRENT RESOLUTION NO. 4, Relating to the duties of delegates selected by the legislature to attend a convention of the states called under art. V, Constitution of the United States, to consider a countermand amendment to the Constitution of the United States; establishing as a joint committee of the legislature the Delegate Credential Committee and relating to the duties of the committee; providing for an oath for delegates and alternates to a countermand amendment convention; providing for a chair and assistant chair of the state's countermand amendment delegation; providing for the duties of the chair and assistant chair; providing instructions for the selection of a convention president; and providing specific language for the countermand amendment on which the state's convention delegates are authorized by the legislature to vote to approve.

[2:39:31 PM](#)

REPRESENTATIVE SHELLY HUGHES, Alaska State Legislature, said she will present HJR 14, and HCR 4, in tandem. She then referred to Article V, of the United States Constitution, which read:

The Congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three fourths of the several states, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; provided that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the Senate.

REPRESENTATIVE HUGHES described the resolutions as an Article V effort and stated that the word "countermand" means veto. She advised this would give state legislatures veto power over certain decisions being decided upon in Washington, D.C., if a certain number of states agree. She pointed out that HJR 14 is the call to the Congress, and HCR 4 gives the delegates instructions and contains the actual language that would be added at the bottom of the Constitution, which would be Article XXVIII if it were to be amended. She explained that calling a convention requires two-thirds of the states (34 states), to ratify an amendment it takes three-fourths of the states (38 states). She remarked that within this countermand amendment there is a mechanism to give the states veto power over federal decisions, and the amendment itself takes three-fifths of the states (30 states) to veto a federal decision. She pointed to the problems Alaska has with federal overreach and that she has been surprised with how often on the House floor a resolution is passed with the theme of overreach. She described those as important statement made, but questioned whether it moved the needle to restore the balance of power that Alaskans request be restored. She stated these resolutions are an actionable step in a long Article V process as other states would have to come on board in order to do this. She described it as a necessary

step and is important for Alaska to take in that the founders put it in the Constitution at the time. She offered that when this nation was formed the states initially came together and formed the Articles of Confederation. As it turns out, she explained, the states retained too much power and within the U.S. Constitution is the idea of a proper balance between state and federal government. Issues occurred over the decades and centuries, including the power to tax and once the federal government held the purse strings it gained a lot of power. She offered that the resolutions are not partisan as they are about restoring the power between the state and federal government. She noted there has been concern that the U.S. Constitution is a sacred document so there has been apprehension about opening it up and having a convention. She related that this is not a constitution convention as it is a single amendment convention and sideboards would prevent it from being any other topic so the Constitution would not be unraveled.

[2:47:10 PM](#)

STEWART CRUGER, Staff, Representative Shelley Hughes, Alaska State Legislature, said HJR 14 is the State of Alaska's call on Congress for an amendment convention for the sole purpose of sending the countermand amendment back to the states for ratification as is written in the first Resolved. The second Resolve states that the U.S. Congress will convene a convention within 60 days after the day it receives the 34th call for that convention from state legislatures. The third Resolve states that this is a continuing application and it will remain with Congress until the 34th application is received. The fourth Resolve encourages legislatures of the other 49 states to pass a similar resolution. With regard to HCR 4, Resolved one authorizes the legislature to appoint and summon delegates for the amendment convention. Resolved two gives the legislature authority to decide the qualifications and total number of delegates to send to the convention. Resolved three gives the legislature the ability to add or remove delegates. Resolved four provides parameters and instructions for the state's delegates at the convention and prohibits delegates from voting for any other amendment outside the countermand amendment at the convention. Resolved five reserves the countermand amendment as the only amendment for consideration for ratification by the legislatures. Resolved six states that upon a call for a convention by 34 states this resolved allows for establishing of the delegate credential committee within the Alaska Legislature with duties listed in Section (A) later in this document. Specifically, the Speaker of the House of Representatives shall

appoint three members from the House, one being a minority caucus member. The President of the Senate shall appoint three members of the Senate, one being a minority member.

[2:49:51 PM](#)

MR. CRUGER pointed out that Resolved seven provides for the replacement procedure for members of the delegate credential committee. Resolved eight allows for a selection of co-chairs of the delegate credential committee, one being from the House and one from the Senate. Resolved nine establishes when the delegate credential committee can meet. Resolved ten acknowledges that the delegate credential committee will continue until the first day of the thirtieth Alaska State Legislature and also requests that it be reevaluated by subsequent legislatures. Resolved eleven requests that the delegate credential committee be considered for reestablishment during the thirtieth Alaska State Legislature. Resolved twelve provides for removal and replacement procedure for members of the credential committee in that members are removed or replaced by the presiding officer that appointed them. Resolved thirteen provides for the duties of the delegate credential committee. He advised that this is a majority vote on decisions, official facilitator for the legislature, appointment of delegates, provide a committee report on selected delegates, appoint a chair and assistant chair of the delegation, properly vet and confirm delegates, issue convention passes to delegates, notify legislature of financial needs of the convention, administer oaths to the delegates, alternates, chair, and assistant chair, monitor activities of Alaska's delegation, submit quarterly reports to the legislature on events, progress and recommendations for the convention, and authority to recommend removal of a delegate or alternate for approval by the legislature. Resolved thirteen, Section B, provides for the duties of the chair of Alaska's state delegation and the president of the convention. He offered that the chair is responsible for communicating with other state delegations to open convention for business, identifying other legislatures that have approved the delegate resolution, build consensus with at least 26 state delegations to require that each state delegation at the convention has only one vote, require a simple majority vote at all roll calls, nominate convention officials, require a quorum of 26 states to conduct business, build a consensus of at least 26 states to support sending the countermand amendment for ratification, work to conclude the convention in 21 days or no longer than 180 days, nominate a candidate for convention president from Alaska's delegation or

work to elect a president from delegate resolution state. Resolved thirteen, Section B, Subsection J, under duties of the Alaska delegation chair include supporting the following duties of the convention president: securing a vote for this delegate resolution to be the rules of order at the convention, focus on the purpose of sending the countermand for ratification by the states, request security measures as needed, oversee installment of officers at the convention, establish convention agenda, provide equal time for floor discussion for all states, prohibit introduction of any other subject other than the countermand amendment, call for a vote for sending countermand amendment to the states, report to 50 state legislatures ...

[2:53:38 PM](#)

CHAIR LEDOUX asked Mr. Cruger to point out the highlights as opposed to simply reading from the resolution.

MR. CRUGER stated that the above addresses the duties of the president of the entire convention. Resolved thirteen, Section C addresses the duties and responsibilities of the convention delegates. Resolved thirteen, Section D addresses the duties and responsibilities of delegate alternates. Resolved thirteen, Section E provides the text of the countermand amendment. He advised that Mike Schechter, from the Department of Law Charles Kaeprowicz, from Citizens Initiatives, on line for questions.

CHAIR LEDOUX opened public testimony

[2:55:09 PM](#)

CHARLES KACPROWICZ, Executive Director, Citizen Initiatives and Countermand Amendment, said he has worked on amendments for the U. S. Constitution either through Congress or state legislatures, under Article V, for over 40 years. The difference he proposes is the idea that state legislatures, under Article V, are sovereign and are the final law in all constitutional matters. He highlighted that [America] is a constitutional republic which is why there is a constitution to protect that. The U.S. Constitution, Article IV, Section 4, guarantees every state a republican form of government which means every state has one vote, regardless of the population which goes into the convention as well. He highlighted that the biggest problem existing during the constitution convention and before deliberations started, was sovereignty. George Witt, delegate, notable attorney, professor and distinguished gentleman at the time, headed up a committee and put eight rules

together. He described an important rule being the recommendation that each state has an equal vote, the convention agreed and went forward as a republican form of convention. He stated that this issue has to be settled at every Article V Convention, and noted that currently there could be 534 politically charged delegates. He pointed out that the states will probably be allotted the same number of representatives the states have in Congress. He said the point to address here is to ascertain that sovereignty is retained by state legislatures as sovereignty trumps legal precedent, convention experience, historical events, and is the one thing the legislatures must not advocate as if they do, they will not get it back. He stated that every Article V Convention has to be protected so rather than letting the 534 delegates decide the matter, the state legislatures are the deliberative body in deciding matters related to the states including how to use Article V. He related that as the deliberative body, the legislature determines what these delegates do at the convention as they are ambassadors and not free agents. As a result, he remarked, the outcome of that convention will be successful and will be completed in approximately seven days.

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MR. KACPROWICZ advised that the amendment itself will allow the State of Alaska to address some of the most critical issues it has to currently deal with. He pointed out that Nevada has approximately 82 percent of its land controlled by the federal government and Alaska has approximately 67 percent. He reminded the committee Alaska recently received an Executive Order locking up more land and preventing Alaska from using the land for whatever purposes it chooses. The Countermand Amendment can address that issue as there are 38 energy producing states and only 30 Countermand Amendments are necessary. Should Alaska decide to countermand a particular EPA, or BLM ruling, it would send it to the appropriate federal agencies together with an invitation to the other 49 states inviting them to countermand the same law. He opined that Alaska will more than likely get the 30 states necessary just on the issue of energy. As a result, it will put the state legislatures in a respected role by the federal government, he explained.

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CHAIR LEDOUX closed public testimony after ascertaining no one further wished to testify.

[3:03:03 PM](#)

REPRESENTATIVE CLAMAN said the idea of trying to make it the framework in which states can take up certain acts of Congress may have some validity, but advised that this proposal, unless it was modified, probably goes too far. For example, page 11, on CSHCR 4, the provisions allowing a state's vote to overturn a judicial decision as well as the U.S. Senate action approving a treaty are both going farther than is appropriate in terms of a state's role in America's constitutional democracy. He described it as a positive idea that needs refining before it is ready for prime time.

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REPRESENTATIVE KELLER stated that generally that this is a good effort and there are many Article V's out there with low risk to the Alaska State Legislature. He referred to the Article V effort passed last year on the balanced budget amendment that 4 states have now joined and that the effort takes time. He explained that he has been involved with the Assembly of State Legislators which is a national group of legislators working on approximately the same thing as the countermand process, but the effort there is to attempt to come up with the rules and agenda for the first convention. He pointed out that there are several Article V's out there, and they all help Alaska because they are raising awareness that states have the option of using Article V, which was intended for states to use.

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REPRESENTATIVE KELLER moved to report CSHJR 14(STA) out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHJR 14(STA) moved out of the House Judiciary Standing Committee.

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The committee took an at-ease from 3:05 to 3:08 p.m.

[3:08:45 PM](#)

REPRESENTATIVE KELLER moved to report CSHCR 4 out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHCR 4 moved out of the House Judiciary Standing Committee.

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ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:09 p.m.