

**ALASKA STATE LEGISLATURE
HOUSE STATE AFFAIRS STANDING COMMITTEE**

March 19, 2015

8:32 a.m.

MEMBERS PRESENT

Representative Wes Keller, Vice Chair
Representative Liz Vazquez
Representative Louise Stutes
Representative Jonathan Kreiss-Tomkins

MEMBERS ABSENT

Representative Bob Lynn, Chair
Representative David Talerico
Representative Max Gruenberg

COMMITTEE CALENDAR

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.

- HEARD & HELD

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.

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HCR 4

SHORT TITLE: US COUNTERMAND CONVENTION DELEGATES

SPONSOR(s): REPRESENTATIVE(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

BILL: HJR 14

SHORT TITLE: CALL FOR US COUNTERMAND CONVENTION

SPONSOR(s): REPRESENTATIVE(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

WITNESS REGISTER

REPRESENTATIVE SHIRLEY HUGHES
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: As prime sponsor, introduced HJR 14 and HCR 4.

STUART KRUEGER, Staff
Representative Shelley Hughes
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Highlighted the changes that were made in Version E of HJR 14 and explained the purpose of HCR 4, on behalf of Representative Hughes, prime sponsor.

MIKE COONS, National Director/Alaska Director
Citizen Initiatives (CI)
Palmer, Alaska

POSITION STATEMENT: Testified during the hearing on HJR 14 and HCR 4.

MICHAEL SCHECHTER, Assistant Attorney General
Natural Resources Section
Civil Division - Anchorage
Department of Law (DOL)
Anchorage, Alaska

POSITION STATEMENT: Answered questions during the hearing on HJR 14 and HCR 4.

ACTION NARRATIVE

[8:32:30 AM](#)

VICE CHAIR WES KELLER called the House State Affairs Standing Committee meeting to order at 8:32 a.m. Representatives Kreiss-Tomkins, Stutes, Vazquez, and Keller were present at the call to order.

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

[8:32:52 AM](#)

VICE CHAIR KELLER announced that the only order of business was the combined hearing of:

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.

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.

[8:33:28 AM](#)

REPRESENTATIVE VAZQUEZ moved to adopt the proposed committee substitute (CS) for HJR 14, Version 29-LS0249\E, as a work draft. There being no objection, Version E was before the committee.

8:34:12 AM

VICE CHAIR KELLER stated that the committee was working off [the original version] of HCR 4. He said he had provided a compendium entitled, "State Initiation of Constitutional Amendments: A Guide for Lawyers and Legislative Drafters," by Robert G. Natelson, which he opined was helpful in understanding issues related to Article V of the Constitution of the United States.

8:34:57 AM

REPRESENTATIVE SHIRLEY HUGHES, Alaska State Legislature, as prime sponsor, introduce HJR 14 and HCR 4. She stated that the proposed legislation would address federal overreach. She talked about a time in history when the states had more power than the federal government and being a state legislator was held in higher regard than being a member of U.S. Congress. She indicated that the Articles of Confederation had given states too much power, thus the U.S. Constitution had aimed for a balance between the state and federal governments. Representative Hughes questioned "who among us" would disagree that the federal government had grown too powerful and intruded into Alaska's affairs too often, which resulted in Alaska facing barriers to its economic growth. She opined that "we" had come together across the political spectrum, unified over matters such as a road [from King Cove to Cold Bay via a section of the Izembek National Wildlife Refuge], the opening of the Arctic National Wildlife Refuge (ANWR), and off-shore drilling. She said the effort to bring about a convention was grassroots, with no big names or money behind it.

8:38:16 AM

REPRESENTATIVE HUGHES stated that Article 5 in the U.S. Constitution had never been implemented fully. She indicated that past efforts to bring about a convention had failed, but each future effort learned from the past; therefore, she said she thought the current effort might be successful. She said "the countermand piece" was nonpartisan in nature; its intent was to balance the powers between state and federal government. She stated that whenever there had been an effort to call a convention in the past, attorneys were involved, but none of the past efforts got far enough to be tested in court. She indicated that the attorney general looked at the proposed legislation and nothing was found to be problematic. She further indicated that the convention would address a single

issue. She said there had been opposition letters received from people outside of Alaska concerned about "the dismantling of the U.S. Constitution if we were to convene a convention." She said the proposed legislation would not allow that to happen.

8:40:20 AM

REPRESENTATIVE HUGHES stated that if the U.S. Constitution were amended, it would give states veto power over certain federal decisions. She said it would be a "high bar" for that to be allowed to happen: three-fifths of the states would have to agree, within an 18-month window, that one item was not within their best interest. She said that was not likely to happen often. Further, she noted that it would be addressing issues of broad appeal. She said HJR 14 was the call to Congress, while HCR 4 contained instructions to delegates and the precise structure for the convention to occur, including the language for the amendment itself.

8:42:01 AM

VICE CHAIR KELLER noted that Michael Schechter, an assistant attorney general with the Department of Law, was available to testify, and he spoke again of the aforementioned compendium.

8:42:47 AM

REPRESENTATIVE HUGHES explained that at least 34 states would need to call for a convention, which was what Alaska would be doing through passage of the proposed HJR 14, in order for a convention to convene; a minimum of 26 states would need to attend the convention, agree on the language, and send it forward for ratification; and a minimum of 38 states would have to ratify the language. Once the language was ratified, the mechanism of veto power for the states would require three-fifths of the states, which was 30 states, to agree within an 18-month window. If the three-fifths quota was met, that would make the decision in question coming from Congress null and void.

8:45:09 AM

STUART KRUEGER, Staff, Representative Shelley Hughes, Alaska State Legislature, on behalf of Representative Hughes, prime sponsor, highlighted the changes that were made in Version E of HJR 14. He cited new language on page 1, lines 9-11, which read as follows:

WHEREAS the state's right and duty to provide for the utilization, development, and conservation of natural resources for the maximum benefit of the people has been continually infringed on by various federal agencies; and

MR. KRUEGER explained that the purpose of the language was to include a wider scope of instances of overreach by federal agencies and a reference to the powers and responsibilities of the state, as provided in Article 8, Section 2, of the Constitution of the State of Alaska.

MR. KRUEGER paraphrased the "**BE IT RESOLVED**" and two subsequent "**FURTHER RESOLVED**" portions of HJR 14, located on page 2, lines 19-29, which read as follows:

BE IT RESOLVED that, under art. V, Constitution of the United States, the Alaska State Legislature directs the United States Congress to call a single-issue convention of the states, called a "countermand amendment convention," for the sole purpose of deciding whether the proposed countermand amendment should be sent back to the state legislatures for ratification; and be it

FURTHER RESOLVED that the Alaska State Legislature directs the United States Congress to convene the countermand amendment convention within 60 days after the date it receives the 34th call for that convention from state legislatures; and be it

FURTHER RESOLVED that this application constitutes a continuing application in accordance with art. V, Constitution of the United States, until at least two-thirds of the legislatures of the several states have applied for a similar convention of the states; and be it

[8:47:15 AM](#)

MR. KRUEGER explained that HCR 4 would serve as a document to bind the legislature and its delegates. He said it would provide "sidebars" establishing what the delegates could do. Further, it would establish a credentialed, joint committee in the legislature that would select the delegates.

8:47:58 AM

REPRESENTATIVE VAZQUEZ stated that [the language of HCR 4, beginning on page 1, line 12, through page 2, line 6] encapsulated that which would be effected under HJR 14 and HCR 4. In particular, she highlighted the list of that which could, under the proposed legislation, be nullified and repealed, [as seen on page 2, lines 2-5, of HCR 4], which read as follows:

a federal statute, executive order, judicial decision, regulatory decision by a federal government agency, or government mandate imposed on the states by law that adversely affects the interests of the states

REPRESENTATIVE VAZQUEZ opined that the power of the federal government had been immense over the last several decades. She said one example of federal power had to do with the example given in HJR 14, on page 1, lines 7-8: "the federal government's recent denial of and refusal to work with state officials on the construction of a lifesaving road from King Cove to Cold Bay". She said when weather conditions were poor, people living in King Cove and in need of emergency care could not get to a hospital. She opined that the denial of the road was unconscionable and a prime example of federal overreach.

8:51:20 AM

VICE CHAIR KELLER ventured that although it seemed like an insurmountable hurdle to bring about a constitutional convention, examples such as that which Representative Vazquez stated, plus "the bludgeoning budget debt that we have in the U.S.," may override partisanship and drive 38 states to "jump on board." He said that was why it was important to have legislation in place and begin the discussion. He emphasized that the issue was not a partisan one.

8:52:33 AM

REPRESENTATIVE HUGHES indicated that [Article V] of the Constitution was put in place for the purpose of checks and balances; however, it had never really been utilized. She said, "This mechanism would allow us to do it." She said the accountability of Congress that would be required by the states was something that had been missing. She gave an example of when the mechanism might have been exercised, which was when the No Child Left Behind Act was put in place. She noted that that was enacted by a Republican President, but there was not one

state happy with it, because the Act did not work. She said she thought 38 states would have agreed that the Act was not in their best interest. She emphasized the nonpartisan nature of the proposed legislation, which she opined was an important means by which to keep the federal government from overreaching.

8:53:55 AM

VICE CHAIR KELLER opened public testimony on HJR 14 and HCR 4.

8:54:48 AM

MIKE COONS, National Director/Alaska Director, Citizen Initiatives (CI), stated that CI was a nonpartisan, grassroots effort. He said the executive director, Charles Kacprowicz, was from North Carolina, and coordinators and other members of the board were from Georgia and Texas. He thanked Representative Hughes for taking on the legislation.

MR. COONS stated that there are 38 energy-producing states in the nation, and those states had been impeded by the federal government for too long. He said the President of the United States vetoed Congress to stop Keystone and had, through The Wilderness Act, tried "to steal another 22 million acres of Alaska." He said some of the most "blue" states, such as Delaware, Maryland, California, and Oregon, have been affected by the Environmental Protection Agency (EPA) in the form of federal overreach, as had areas of Alaska from the Gulf of Alaska to Barrow. He talked about the increasing numbers of states that were introducing similar legislation, including nine states that were filing.

8:57:42 AM

MR. COONS ventured this tool would require a huge learning curve, and indicated that items to address would be the Wilderness Act and the Antiquities Act. He said an average of 50 percent of all the states west of the Mississippi was federally owned land. He said, "We can get west of the Mississippi, ... maybe except for California and maybe not Oregon, but we can also pick up the southern states, as well." He opined that "the anti-Second Amendment" had been going on in the country for far too long. He said a simple amendment could repeal the National Firearms Act of 1934, the Gun Control Act of 1968, and the [Child Gun Safety and Gun Access Prevention Act of 2013], the latter of which he opined "makes adults over 18 into children, because they can't own a handgun until they're 21, and

yet they can join the military." He said the No Child Left Behind Act of 2001 and the Patriot Act would be other Acts to address.

[8:59:35 AM](#)

MR. COONS offered an example of how a resolution read, by reading from [a one-page handout included in the committee packet for HJR 14, which began: "Whereas the Federal Government passage of the 1968 Gun Control Act..."]. He talked about the ease of transmitting information and ideas between states without violating Article I, Section 10, of the U.S. Constitution.

[9:01:38 AM](#)

VICE CHAIR KELLER asked Mr. Coons to review how many states had "considered this."

[9:01:46 AM](#)

MR. COONS answered currently nine states had submitted applications. He added, "New Mexico has just filed the application process only, but the other ones are also filing both."

[9:02:04 AM](#)

REPRESENTATIVE KREISS-TOMKINS asked for clarification as to which state was in the most advanced stage of consideration.

MR. COONS answered North Dakota, which had passed legislation out of its House that was currently being heard in Senate committee(s). He indicated his expectation was that the legislation would pass out of both bodies by the following week. In response to a follow-up question, he said CI began its effort in 2014, and increased that effort in 2015, with radio shows, teleconferences, and traveling representation to many states.

[9:04:14 AM](#)

VICE CHAIR KELLER asked how many Article V initiatives existed.

MR. COONS recommended articlevcaucus.com, a web site run by Senator Lundberg, of Colorado. Further, he listed other groups, including: Balanced Budget Amendment Task Force, Convention of States, Compact for America, and a political action committee

(PAC) in California related to the Citizens United v. Federal Election Commission court decision and the First Amendment. He said, "We are the only one that has a delegate resolution that defines the convention; that defines the delegates as ambassadors to the state legislatures; that defines a preapproved amendment from each state."

[9:05:52 AM](#)

VICE CHAIR KELLER asked Michael Schechter whether he thought the Founding Fathers intended Article V to be "very difficult" or intended it to be used.

[9:06:26 AM](#)

MICHAEL SCHECHTER, Assistant Attorney General, Natural Resources Section, Civil Division - Anchorage, Department of Law (DOL), answered that Article V contained both the regular amendment process, which had been used 27 times, as well as the convention process. He said he thought the Founding Fathers intended the Constitution to be an "overarching document that is amended carefully and rarely," and that most law would be derived from Congress, as the legislative branch of government. He said he did not know that the Founding Fathers intended for the convention process never to be used, but said it seemed to be at least "coequal with the congressional institution of ... an amendment process." Mr. Schechter said the bigger question for the Department of Law was the issue of whether a constitutional convention could be limited to a single subject. He said he was not a constitutional scholar, and the issue was one the country had not had to act upon; therefore, he said the department did not know how that question would be resolved. He indicated that Representative Hughes' and Mr. Coons' belief regarding setting up sideboards for the delegation and naming the specific amendments to be considered in a convention in [concurrent] legislation was "an absolutely valid legal theory"; however, he stated his belief that the theory that once called, a convention may consider whatever amendments it chose, was equally valid. He suggested that one possible perception by some regarding lawyers was that they could always see both sides. He reiterated that without past history of such a convention, the country had not "had reason to make a determination one way or the other"; therefore, this was a realm of the unknown.

[9:10:12 AM](#)

VICE CHAIR KELLER again spoke of the aforementioned compendium.
He thanked Mr. Schechter.

[HCR 4 and HJR 14 were held over.]

[9:10:33 AM](#)

ADJOURNMENT

There being no further business before the committee, the House State Affairs Standing Committee meeting was adjourned at 9:10 a.m.