

ALASKA STATE LEGISLATURE
SENATE STATE AFFAIRS STANDING COMMITTEE

March 17, 2015

9:01 a.m.

MEMBERS PRESENT

Senator Bill Stoltze, Chair
Senator John Coghill, Vice Chair
Senator Charlie Huggins
Senator Bill Wielechowski

MEMBERS ABSENT

Senator Lesil McGuire

COMMITTEE CALENDAR

SENATE JOINT RESOLUTION NO. 15

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 AND HELD

SENATE 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 AND HELD

SENATE BILL NO. 42

"An Act providing priority to personal use fisheries when fishing restrictions are implemented to achieve a management goal."

- MOVED SB 42 OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: SJR 15

SHORT TITLE: CALL FOR US COUNTERMAND CONVENTION

SPONSOR(S): SENATOR(S) STOLTZE

02/13/15 (S) READ THE FIRST TIME - REFERRALS
02/13/15 (S) STA, JUD
03/17/15 (S) STA AT 9:00 AM BUTROVICH 205

BILL: SCR 4

SHORT TITLE: US COUNTERMAND CONVENTION DELEGATES

SPONSOR(S): SENATOR(S) STOLTZE

02/13/15 (S) READ THE FIRST TIME - REFERRALS
02/13/15 (S) STA, JUD, FIN
03/17/15 (S) STA AT 9:00 AM BUTROVICH 205

BILL: SB 42

SHORT TITLE: PERSONAL USE FISHING PRIORITY

SPONSOR(S): SENATOR(S) STOLTZE

02/04/15 (S) READ THE FIRST TIME - REFERRALS
02/04/15 (S) STA, RES
03/10/15 (S) STA AT 8:30 AM BUTROVICH 205
03/10/15 (S) Heard & Held
03/10/15 (S) MINUTE(STA)
03/17/15 (S) STA AT 9:00 AM BUTROVICH 205

WITNESS REGISTER

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

POSITION STATEMENT: Presented SJR 15 and SCR 4, on behalf of Representative Hughes, sponsor of HJR 14 and HCR 4, House companion legislation.

MIKE COONS, National and State Director
Citizen Initiatives

Palmer, Alaska

POSITION STATEMENT: Provided comments during discussion of SJR 15 and SCR 4.

GEORGE PIERCE, representing himself

Kasilof, Alaska

POSITION STATEMENT: Testified in opposition to SB 42.

RICHARD BISHOP, representing himself

Fairbanks, Alaska

POSITION STATEMENT: Testified in favor of SB 42.

GARY STEVENS, Member

Board of Directors

Alaska Outdoor Council (AOC)

Chugiak, Alaska

POSITION STATEMENT: Testified in support of SB 42.

AL BARRETTE, representing himself

Fairbanks, Alaska

POSITION STATEMENT: Testified in support of SB 42.

TOM BROOKOVER, Acting Director

Division of Sport Fish

Department of Fish and Game (ADF&G)

Anchorage, Alaska

POSITION STATEMENT: Responded to questions during discussion of SB 42.

ACTION NARRATIVE

[9:01:13 AM](#)

CHAIR BILL STOLTZE called the Senate State Affairs Standing Committee meeting to order at 9:01 a.m. Present at the call to order were Senators Huggins, Coghill, and Chair Stoltze.

SJR 15-CALL FOR US COUNTERMAND CONVENTION **SCR 4-US COUNTERMAND CONVENTION DELEGATES**

[9:01:34 AM](#)

CHAIR STOLTZE [announced that the first order of business would be a hearing on both SENATE JOINT RESOLUTION NO. 15, 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 SENATE

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].

At ease from 9:02 a.m. to 9:04 a.m.

9:04:31 AM

STUART KRUEGER, Staff, Representative Shelly Hughes, Alaska State Legislature, on behalf of Representative Hughes, sponsor of HJR 14 and HCR 4, House companion legislation, relayed that SJR 15 and SCR 4 would together address an application by the State of Alaska to pursue a constitutional convention under powers granted by Article V of the Constitution of the United States. Under the proposed resolutions, however, the proposed constitutional convention is supposed to be limited to just one subject, that being what he referred to as a "countermand amendment" as outlined in SCR 4. He offered his understanding that such an amendment to the U.S. Constitution would provide the states with "veto power" over federal law.

SENATOR WIELECHOWSKI joined the committee meeting.

MR. KRUEGER, referring to SCR 4, paraphrased the language on page 11, line 14, through page 12, line 16, which read:

"Section 1. The Article restores State sovereignty in our Constitutional Republic by providing State Legislatures Countermand authority.

"Section 2. State Legislatures in the several States shall have the authority to Countermand and rescind any Congressional Statute, Judicial decision, Executive Order, Treaty, government agency's regulatory ruling, or any other government or non-government mandate (including excessive spending and credit) imposed on them when in the opinion of 60 percent of State Legislatures the law or ruling

adversely affects their States' interest. When the Countermand threshold has been reached, the law or ruling shall be immediately and automatically nullified and repealed. This Countermand authority shall also apply to existing laws and rulings.

"Section 3. From the time the initial Countermand is issued by a State Legislature, the other Legislatures shall have 18 months to complete the Countermand process. If the Countermand process is not completed in 18 months, then the law or ruling that is being challenged shall remain enforceable.

"Section 4. Each State Legislature shall complete their Countermand affidavit and deliver a certified copy to the Chief Justice of the United States Supreme Court, the Leader of the United States Senate, the Speaker of the House of Representatives, the President of the United States, and when applicable the Government Agency or Body that is being challenged.

"Section 5. Congress shall have the power to enforce this Article by appropriate legislation.

"Section 6. Individual States shall have authority to prosecute violators of this Article under State laws in the absence of Federal prosecution after 90 days from the date of the alleged violation. Multiple prosecutions, by multiple States, for the same alleged crime are prohibited.

"Section 7. The Article shall be immediately part of the United States Constitution upon ratification by three quarters of the State Legislatures in the several States.

"Section 8. The provisions of this Article are enforceable within the United States, which shall include the Several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands and the territories and possessions of the United States.";

MR. KRUEGER indicated that the concepts embodied in the proposed resolutions were brought forth by Mike Coons and an organization called Citizen Initiatives, and offered his belief that the resolutions' proposed countermand amendment to the Constitution of the United States could be viewed as a nonpartisan issue. In response to a question, he indicated that [if the resolutions are passed, and a constitutional convention addressing the proposed countermand amendment is convened, and ratification of the proposed change to the Constitution of the United States occurs, then] any state in disagreement with a federal law could

seek repeal/nullification of that law through a specific process.

[9:13:06 AM](#)

MIKE COONS, National and State Director, Citizen Initiatives, opined that a countermand amendment to the Constitution of the United States is sorely needed, indicated that an application to Congress to call a constitutional convention must still be made, and mentioned that the resolutions' proposed constitutional convention is defined in one of the resolutions. He, too, noted that the resolutions' proposed constitutional convention is supposed to be limited to just the subject of a countermand amendment to the Constitution of the United States. Referring to what he termed a "credentials committee," he offered his understanding that it would be appointed by the State of Alaska, and would control the delegates, including picking them, overseeing them, and responding to their questions.

MR. COONS, in response to a request, offered a hypothetical example involving state and federal lands, and predicted that with ratification of a countermand amendment to the Constitution of the United States, resolutions passed by the states would then have the force of law. In response to questions involving other hypothetical examples, he, too, offered his understanding that [if the resolutions are passed, and a constitutional convention addressing the proposed countermand amendment is convened, and ratification of the proposed change to the Constitution of the United States occurs, then] states in disagreement with a federal law could seek repeal/nullification of that law.

SENATOR COGHILL, mentioning "federal overreach," characterized the resolutions' proposed countermand amendment to the Constitution of the United States as a tool to be used by states that disapprove of federal law, and expressed support.

SENATOR HUGGINS predicted that should the resolutions' proposed countermand amendment to the Constitution of the United States be ratified, it would not be used in his lifetime.

SENATOR WIELECHOWSKI cautioned against allowing a majority of the states to overturn U.S. Supreme Court decisions, venturing that had the resolutions' proposed countermand amendment to the Constitution of the United States been ratified in the past, a majority of the states could have gotten together to overturn the significant civil-rights decisions that have been made - decisions such as ending segregation, for example.

[SCR 4 and SJR 15 were held in committee.]

At ease from 9:43 a.m. to 9:35 a.m.

SB 42-PERSONAL USE FISHING PRIORITY

[9:35:23 AM](#)

CHAIR STOLTZE announced that the final order of business would be SENATE BILL NO. 42, "An Act providing priority to personal use fisheries when fishing restrictions are implemented to achieve a management goal."

CHAIR STOLTZE, sponsor, explained that under SB 42, in times of shortages, personal use fisheries would be given a priority after subsistence use fisheries, and that the Board of Fisheries would make allocation determinations.

[9:37:47 AM](#)

GEORGE PIERCE, representing himself, said he opposes SB 42, and used the term, "overreach" to describe the Board of Fisheries. He offered his beliefs that so-called "personal use fisheries" have already been ruled unconstitutional by the Alaska Supreme Court, and that by providing for such fisheries, the Alaska State Legislature and the Board of Fisheries are therefore breaking the law.

[9:42:02 AM](#)

RICHARD BISHOP, representing himself, testified in favor of SB 42. He offered his understanding that Alaska's personal use fishery is the largest Alaska-resident fishery in the state and constitutes an important source of wild foods for various peoples in the state, particularly those with limited income. Noting that Article I, Section 23, of the Alaska State Constitution specifically says that the Alaska State Constitution does not prohibit the State from granting preferences, on the basis of Alaska residence, to residents of the State over non-residents, he offered his understanding that personal use fisheries are an instance where such a preference has been granted. In conclusion, he ventured that SB 42 would ensure that the people who want access to Alaska's personal use fisheries can continue to have access by being given a preference.

[9:45:37 AM](#)

GARY STEVENS, Member, Board of Directors, Alaska Outdoor Council (AOC), said he is in support of SB 42 because he is of the

opinion that Alaska's personal use fisheries are really just subsistence use fisheries for Alaska residents that live in what he termed, "non-subsistence areas"; personal use fisheries should therefore be given the same priority as subsistence use fisheries.

9:46:33 AM

AL BARRETTE, representing himself, said he is in support of SB 42, and considers it to be a long time coming. Noting that he is an "Interior guide" and uses what he called "the Chitna dip netery," and remarking that he would like to be able to catch more fish than he is currently allotted, he ventured that SB 42 would provide statutory guidance to the Board of Fisheries for prioritizing fisheries other than subsistence use fisheries. He opined that personal use fisheries are really just subsistence use fisheries occurring in urban areas of Alaska.

CHAIR STOLTZE, after ascertaining that no one else wished to testify, closed public testimony on SB 42.

9:51:26 AM

TOM BROOKOVER, Acting Director, Division of Sport Fish, Department of Fish and Game (ADF&G), in response to questions, confirmed that the ADF&G has not taken a position on SB 42, and explained that personal use fisheries are regulated by the Board of Fisheries. He then paraphrased portions of 5 AAC 77.001(a), which read:

5 AAC 77.001. Intent and application of this chapter

(a) The Board of Fisheries finds that

(1) before the enactment of the state's subsistence priority law in ch. 151, SLA 1978, an individual could fulfill that individual's personal use needs for fish under subsistence fishing regulations;

(2) the state's subsistence priority law changed the definition of subsistence in a manner that now precludes some individuals from participating in customary and traditional subsistence fisheries and efficiently harvesting fish for their personal use;

(3) there presently are areas of the state with harvestable surpluses of fish in excess of both spawning escapement needs and present levels of subsistence, commercial and sport uses; and

(4) it is necessary to establish a fishery classified as "personal use" because

(A) since the sale of fish is not appropriate or permissible, this fishery cannot be classified as commercial;

(B) since the use is not a customary and traditional use, this fishery cannot be classified as subsistence; and

(C) since the gear for this fishery is often different from that historically associated with sport fishing, this fishery should not be classified as a sport fishery, to prevent confusion among the public.

MR. BROOKOVER, offering his understanding that 5 AAC 77.001 became effective in 1982, noted that the Board of Fisheries considers certain criteria for the allocation of resources between the personal use, sport use, and commercial use fisheries. In response to further questions, he provided some allocation statistics for some personal use fisheries in some locations during some times.

CHAIR STOLTZE mentioned that the ADF&G has submitted a zero fiscal note for SB 42.

SENATOR COGHILL offered his belief that SB 42's proposed change would be allowed under the Alaska State Constitution, and characterized it as a good approach.

[10:06:44 AM](#)

SENATOR HUGGINS moved to report SB 42 out of committee with individual recommendations and attached fiscal notes. There being no objection, SB 42 was moved from the Senate State Affairs Standing Committee.

[10:07:35 AM](#)

There being no further business to come before the committee, Chair Stoltze adjourned the Senate State Affairs Standing Committee at 10:07 a.m.