

ALASKA STATE LEGISLATURE
SENATE STATE AFFAIRS STANDING COMMITTEE

April 13, 2016

8:13 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

CS FOR HOUSE JOINT RESOLUTION NO. 14(STA)
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 SCS CSHJR 14(STA) OUT OF COMMITTEE

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 126(JUD) AM
"An Act relating to the administration of military justice; relating to the adoption of regulations by the adjutant general; relating to the authority of the adjutant general; relating to appeals of convictions and sentences of court-martials; establishing the Military Appeals Commission; relating to the detention and incarceration of members of the militia; relating to the jurisdiction of the supreme court over petitions from the Military Appeals Commission; relating to involuntary commitment for evaluation or treatment of a mental disease or defect before court-martial proceedings; relating to offenses subject to court-martial proceedings; amending Rule 6, Alaska Rules of Criminal Procedure; and providing for an effective date."

- HEARD AND HELD

PREVIOUS COMMITTEE ACTION

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
04/08/15 (H) Moved CSHJR 14(STA) Out of Committee
04/08/15 (H) MINUTE(JUD)
04/09/15 (H) JUD RPT CS(STA) 4DP 1DNP 1AM
04/09/15 (H) DP: MILLETT, LYNN, KELLER, LEDOUX
04/09/15 (H) DNP: GRUENBERG
04/09/15 (H) AM: CLAMAN
04/10/16 (H) TRANSMITTED TO (S)
04/10/16 (H) VERSION: CSHJR 14(STA)
04/11/16 (S) READ THE FIRST TIME - REFERRALS
04/11/16 (S) STA
04/13/16 (S) STA AT 8:00 AM BUTROVICH 205

BILL: HB 126

SHORT TITLE: CODE OF MILITARY JUSTICE; APPEALS

SPONSOR(s): JUDICIARY

02/25/15 (H) READ THE FIRST TIME - REFERRALS
02/25/15 (H) MLV, JUD
03/24/15 (H) MLV AT 1:00 PM CAPITOL 120
03/24/15 (H) -- MEETING CANCELED --
03/26/15 (H) MLV AT 1:00 PM CAPITOL 120
03/26/15 (H) Heard & Held
03/26/15 (H) MINUTE(MLV)
03/31/15 (H) MLV AT 1:00 PM CAPITOL 120
03/31/15 (H) Moved CSHB 126(MLV) Out of Committee
03/31/15 (H) MINUTE(MLV)
04/01/15 (H) MLV RPT CS(MLV) NT 3DP 4AM
04/01/15 (H) DP: LYNN, LEDOUX, HERRON
04/01/15 (H) AM: TUCK, GRUENBERG, COLVER, HUGHES
04/14/15 (H) JUD AT 1:00 PM CAPITOL 120

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| 04/14/15 | (H) | Heard & Held |
| 04/14/15 | (H) | MINUTE(JUD) |
| 09/22/15 | (H) | JUD AT 1:30 PM ANCHORAGE LIO AUDITORIUM |
| 09/22/15 | (H) | Heard & Held |
| 09/22/15 | (H) | MINUTE(JUD) |
| 11/17/15 | (H) | JUD AT 1:30 PM ANCHORAGE LIO AUDITORIUM |
| 11/17/15 | (H) | Heard & Held - Assigned to Subcommittee |
| 11/17/15 | (H) | MINUTE(JUD) |
| 01/22/16 | (H) | JUD AT 1:00 PM CAPITOL 120 |
| 01/22/16 | (H) | Moved CSHB 126(JUD) Out of Committee |
| 01/22/16 | (H) | MINUTE(JUD) |
| 01/25/16 | (H) | JUD RPT CS(JUD) NT 7DP |
| 01/25/16 | (H) | DP: CLAMAN, KELLER, MILLETT, FOSTER, GRUENBERG, LYNN, LEDOUX |
| 02/03/16 | (H) | TRANSMITTED TO (S) |
| 02/03/16 | (H) | VERSION: CSHB 126(JUD) AM |
| 02/05/16 | (S) | READ THE FIRST TIME - REFERRALS |
| 02/05/16 | (S) | STA, JUD |
| 04/12/16 | (S) | STA AT 8:00 AM BUTROVICH 205 |
| 04/12/16 | (S) | Heard & Held |
| 04/12/16 | (S) | MINUTE(STA) |
| 04/13/16 | (S) | STA AT 8:00 AM BUTROVICH 205 |

WITNESS REGISTER

REPRESENTATIVE SHELLEY HUGHES

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Sponsor of HJR 14.

MIKE COONS, National Legislative Director

Citizens Initiatives

Palmer, Alaska

POSITION STATEMENT: Testified in support of HJR 14.

CHRISTOPHER WEAVER, Lieutenant Colonel

Staff Judge Advocate

Alaska National Guard

Office of the Commissioner/Adjutant General

Department of Military and Veterans' Affairs

Joint Base Elmendorf-Richardson, Alaska

POSITION STATEMENT: Discussed the need for HB 126.

NANCY MEADE, General Counsel

Administrative Staff

Office of the Administrative Director

Alaska Court System

Anchorage, Alaska

POSITION STATEMENT: Answered questions related to HB 126.

ACTION NARRATIVE

8:13:36 AM

CHAIR BILL STOLTZE called the Senate State Affairs Standing Committee meeting to order at 8:13 a.m. Present at the call to order were Senators Coghill, Huggins, and Chair Stoltze. Senator Wielechowski arrived soon thereafter.

HJR 14-CALL FOR US COUNTERMAND CONVENTION

8:14:22 AM

CHAIR STOLTZE announced the consideration of HJR 14.

SENATOR COGHILL moved to adopt the Senate CS for CSHJR 14(STA), version P, as the working document.

CHAIR STOLTZE objected for discussion purposes. He explained that on line 6, page 1, the word "utilizing" was replaced with the word "use" and updated changes in Congress since the measure was last before the committee.

He removed his objection. Seeing no further objection he announced the CS was adopted.

8:15:36 AM

REPRESENTATIVE SHELLEY HUGHES, Alaska State Legislature, Juneau, Alaska, sponsor of HJR 14, explained that HJR 14 was a single issue convention call for countermand, which means "veto." She said the countermand intent was to restore the balance between the state and federal government. She remarked that she did not see the federal government as an enemy and noted that the federal government did important things that included the country's military; however, the federal government sometimes has gone too far and just does not know what is best.

She specified that HJR 14 would add a mechanism to the Constitution through the Article 5 process which would allow states to "countermand" or "veto" a federal decision that included a law passed by Congress, a regulation put in place by a federal agency, a judicial decision, or an executive order.

She detailed the Article 5 process as follows:

1. 34 states are needed to call the convention.
2. States would convene at the convention and a simple majority, 26 states, would be needed to approve the amendment.
3. Approved amendment goes out to the states and 38 states would be required to ratify the amendment.
4. 30 states or three-fifths would have to agree within an 18-month period that a certain federal decision was null and void.

[8:17:38 AM](#)

CHAIR STOLTZE asked Representative Hughes to explain the interplay between HJR 14 and HJR 4.

REPRESENTATIVE HUGHES explained that HJR 4 was a delegate resolution that applied should 34 states call for a convention. She detailed that a delegate resolution would set the sidebars and specific instructions for the delegates' parameters to stay on the straight-and-narrow. She pointed out that the U.S. Constitution was held dear and the intent was not for the Constitution to be dismantled.

CHAIR STOLTZE explained that the legislative intent was to keep the two measures traveling together.

[8:19:50 AM](#)

At ease.

[8:20:26 AM](#)

CHAIR STOLTZE called the committee back to order and opened public testimony.

[8:20:36 AM](#)

MIKE COONS, National Legislative Director, Citizens Initiatives, Palmer, Alaska, testified in support of HJR 14. He revealed that Citizens Initiatives worked closely with Representative Hughes and Chair Stoltze in getting HJR 14 passed.

SENATOR COGHILL moved to report the Senate CS for CS for HJR 14(STA) from committee with individual recommendations and attached zero fiscal note.

[8:21:50 AM](#)

CHAIR STOLTZE announced that hearing no objection, SCS CSHJR 14(STA) moved from committee.

[8:23:21 AM](#)

At ease.

HB 126-CODE OF MILITARY JUSTICE; APPEALS

8:26:52 AM

CHAIR STOLTZE announced the consideration of HB 126.

8:27:16 AM

SENATOR WIELECHOWSKI joined the committee meeting.

8:27:28 AM

CHRISTOPHER WEAVER, Lieutenant Colonel (LTC), Staff Judge Advocate, Alaska National Guard, Office of the Commissioner/Adjutant General, Department of Military and Veterans' Affairs, Joint Base Elmendorf-Richardson, Alaska, reviewed his testimony from a previous Senate State Affairs committee meeting regarding HB 126 that addressed the following:

- History and basic need for an Alaska Code of Military Justice (ACMJ) for the State of Alaska.
- Alaska is one of a few states that does not have an ACMJ.
- Commanders including Adjutant General Hummel explained the reason why ACMJ was needed.
- Article 15, non-judicial punishment and the no-turndown provision.
- Concurrent offenses on both the civilian and military side.
- Some offenses were civilian-like, but many of the civilian-like offenses affect a unit's good order and discipline.
- Alaska National Guard's jurisdiction.
- Non-judicial punishment.
- Different levels each commander has, from company, field grade, and general officer going up the chain.
- Maximum sentences listed in HB 126 for different sentences.

8:30:02 AM

CHAIR STOLTZE asked Ms. Meade to address the committee.

8:30:53 AM

NANCY MEADE, General Counsel, Administrative Staff, Office of the Administrative Director, Alaska Court System (ACS), Anchorage, Alaska, revealed that her involvement in the bill was limited to the court-martial process. She noted that a defendant has the right to petition to the Supreme Court for final actions.

CHAIR STOLTZE opined that ACS was jealous of the Alaska Judicial Council's process where the Legislature confirms members. He asked if ACS was softening on the issue.

MS. MEADE asked Chair Stoltze to confirm that he was referring to the governor appointing members of the Military Appeals Commission that was confirmed by the Legislature.

CHAIR STOLTZE replied yes and noted that there was a judicial component.

MS. MEADE asserted that the Military Appeals confirmation process was not something that concerned ACS. She remarked that there were many administrative law judges in the office of hearing appeals within the executive branch that do not go through the Alaska Judicial Council.

CHAIR STOLTZE asked if administrative law judges go through the Alaska Judicial Council.

MS. MEADE answered no.

CHAIR STOLTZE asked Ms. Meade to corroborate that none of the administrative law judges go through the Alaska Judicial Council.

MS. MEADE replied that unless she was mistaken, no.

CHAIR STOLTZE responded that he believes that the administrative appeals judges go through the Alaska Judicial Council.

[8:32:32 AM](#)

MS. MEADE said the Alaska Judicial Council deals with the Supreme Court, Court of Appeals, Superior Court, and the District Court judges.

SENATOR WIELECHOWSKI asked if ACS had a position on HB 126.

MS. MEADE answered no. She specified that she worked with the sponsor and the officers to ensure that the procedures that do involve the court system was workable. She detailed that the only thing that touches ACS were the grand jury requirement and the cases going to the Supreme Court.

CHAIR STOLTZE asked Ms. Meade to verify that a disagreement with an administrative or regulatory decision could be appealed to the Superior Court.

MS. MEADE answered yes. She summarized that an Alaskan National Guard member could go through the following process:

- Court-martial trial;
- Appeal to the Military Appeals Commission;
- Petition for hearing to the Supreme Court for a final decision only if the purposed punishment by the Military Appeals Commission involved incarceration.

She pointed out that the Alaska National Guard's appeal process was similar to a criminal trial where a person has the right to appeal to the Court of Appeals and if dissatisfied, the right to petition for hearing to the Supreme Court.

[8:34:39 AM](#)

CHAIR STOLTZE noted that SB 91, [the crime reform bill co-sponsored by Senator Coghill], would reclassify a lot of offenses and penalties. He asked if Ms. Meade had constitutional concerns from SB 91 regarding penalties, sanctions, or offenses.

MS. MEADE replied that she was not sure what issues will arise. She pointed out that the court never has touched military offenses before. She said the few cases that are a result of SB 91 will be new to the Supreme Court.

CHAIR STOLTZE explained that his intent was to see if SB 91 does interplay with HB 126.

[8:36:16 AM](#)

SENATOR COGHILL suggested that a side-by-side study be done with penalties in SB 91 and HB 126. He noted that the penalties in HB 126 were consistently lower than current and proposed civilian penalties in SB 91. He added that double-jeopardy and deference between military and civilian courts need to be addressed as well.

SENATOR WIELECHOWSKI asked LTC. WEAVER to confirm that the civilian court system would have jurisdiction first.

LTC. WEAVER replied that civilian courts would have jurisdiction over civilian offenses, not military offenses.

[8:38:49 AM](#)

SENATOR WIELECHOWSKI pointed out that HB 126 had lesser penalties for some of the civilian crimes. He asked LTC. WEAVER to verify that a civilian court would first decide whether to

assert their jurisdiction for a crime and then the military would have an opportunity to decide.

LTC. WEAVER answered correct.

MS. MEADE noted that the civilian courts do not exactly assert jurisdiction. She explained that the Department of Law decides whether to file a case with ACS.

SENATOR WIELECHOWSKI reiterated that the civilian court first determines whether or not a case should be filed and the person charged with the crime cannot choose between a civilian or military court.

MS. MEADE concurred with Senator Wielechowski.

SENATOR WIELECHOWSKI opined that double jeopardy should not be an issue. He asked LTC. WEAVER to confirm that a person convicted in a civilian court would take away the right of the military court and vice versa.

LTC. WEAVER concurred with Senator Wielechowski and noted that as long as the elements match for the particular crime.

MS. MEADE pointed out that the bill has a jeopardy clause that says jeopardy attaches through one of the proceedings.

SENATOR WIELECHOWSKI asked LTC. WEAVER to confirm that very rarely would a civilian court not investigate and press charges for a serious crime like assault, rapes, or murders where the case ends up in military court.

[8:41:40 AM](#)

LTC. WEAVER concurred with Senator Wielechowski.

MS. MEADE agreed with Senator Wielechowski. She pointed out that Senator Wielechowski's deduction was the reason for the zero-fiscal note due to the expectation for very few cases.

SENATOR WIELECHOWSKI asked LTC. WEAVER to confirm that military cases like "absent without leave" (AWOL), deserting your post, and being insubordinate to a commanding officer were not covered by Alaska statutes and would go before the military tribunal.

LTC. WEAVER answered correct.

[8:42:50 AM](#)

CHAIR STOLTZE closed public testimony on HB 126.

8:43:36 AM

CHAIR STOLTZE recessed the meeting to a call of the chair.

[The committee did not reconvene so HB 126 was held in committee.]