

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

January 27, 2017

1:00 p.m.

MEMBERS PRESENT

Representative Matt Claman, Chair
Representative Zach Fansler, Vice Chair
Representative Jonathan Kreiss-Tomkins
Representative Gabrielle LeDoux
Representative David Eastman
Representative Chuck Kopp
Representative Lora Reinbold (telephonic)

MEMBERS ABSENT

Representative Louise Stutes (alternate)

COMMITTEE CALENDAR

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 44

"An Act requiring a legislator to abstain from taking or withholding official action or exerting official influence that could benefit or harm an immediate family member or certain employers; requiring a legislator to request to be excused from voting in an instance where the legislator may have a financial conflict of interest; and providing for an effective date."

- HEARD & HELD

HOUSE CONCURRENT RESOLUTION NO. 1

Proposing an amendment to the Uniform Rules of the Alaska State Legislature relating to voting and abstention from voting.

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 44

SHORT TITLE: LEGISLATIVE ETHICS: VOTING & CONFLICTS

SPONSOR(S): REPRESENTATIVE(S) GRENN

01/18/17	(H)	PREFILE RELEASED 1/13/17
01/18/17	(H)	READ THE FIRST TIME - REFERRALS
01/18/17	(H)	JUD, FIN
01/23/17	(H)	SPONSOR SUBSTITUTE INTRODUCED-REFERRALS

01/23/17 (H) READ THE FIRST TIME - REFERRALS
 01/23/17 (H) JUD, FIN
 01/25/17 (H) STA REPLACES FIN REFERRAL
 01/25/17 (H) BILL REPRINTED 1/25/17
 01/25/17 (H) JUD WAIVED PUBLIC HEARING NOTICE, RULE
 23 FOR SSHB 44
 01/25/17 (H) JUD AT 1:00 PM GRUENBERG 120
 01/25/17 (H) -- Meeting Postponed to 1/27/17 --
 01/27/17 (H) JUD AT 1:00 PM GRUENBERG 120

BILL: HCR 1

SHORT TITLE: AMEND UNIFORM RULES: ABSTAIN FROM VOTING

SPONSOR(s): REPRESENTATIVE(s) GRENN

01/20/17 (H) READ THE FIRST TIME - REFERRALS
 01/20/17 (H) STA, JUD
 01/20/17 (H) JUD REFERRAL REMOVED
 01/20/17 (H) JUD REFERRAL ADDED BEFORE STA
 01/25/17 (H) JUD AT 1:00 PM GRUENBERG 120
 01/25/17 (H) -- Meeting Postponed to 1/27/17 --
 01/27/17 (H) JUD AT 1:00 PM GRUENBERG 120

WITNESS REGISTER

REPRESENTATIVE JASON GRENN
 Alaska State Legislature
 Juneau, Alaska

POSITION STATEMENT: Presented HB 44 and HCR 1 as prime sponsor.

RYAN JOHNSTON, Staff
 Representative Jason Grenn
 Alaska State Legislature
 Juneau, Alaska

POSITION STATEMENT: During the hearing of HB 44 and HCR 1, presented a sectional analysis of the bill and the resolution.

DOUGLAS GARDNER, Director
 Legal Services
 Legislative Legal and Research Services
 Legislative Affairs Agency (LAA)
 Juneau, Alaska

POSITION STATEMENT: During the hearing of HB 44 and HCR 1, answered questions.

MARGO WARING
 League of Women Voters
 Juneau, Alaska

POSITION STATEMENT: During the hearing of HB 44 and HCR 1, read a letter into the record of HB 44, on behalf of Pat Redmond, President of the Board of the League of Women Voters.

FRED TRIEM, Attorney
Petersburg, Alaska

POSITION STATEMENT: During the hearing of HB 44 and HCR 1, offered opposition to HB 44, and support for HCR 1.

DOUGLAS MERTZ
Juneau, Alaska

POSITION STATEMENT: During the hearing of HB 44 and HCR 1, testified as a former assistant attorney general.

RAY METCALFE
Juneau, Alaska

POSITION STATEMENT: During the hearing of HB 44 and HCR 1, discussed the history of ethics in Alaska.

JOHN PUGH
Juneau, Alaska

POSITION STATEMENT: During the hearing of HB 44 and HCR 1, testified regarding transparency.

ACTION NARRATIVE

[1:00:35 PM](#)

CHAIR MATT CLAMAN called the House Judiciary Standing Committee meeting to order at 1:00 p.m. Representatives Fansler, LeDoux, Eastman, Kopp, Reinbold (telephonic) and Claman were present at the call to order. Representative Kreiss-Tomkins arrived as the meeting was in progress.

HB 44-LEGISLATIVE ETHICS: VOTING & CONFLICTS **HCR 1-AMEND UNIFORM RULES: ABSTAIN FROM VOTING**

[1:01:47 PM](#)

CHAIR CLAMAN announced that the only order of business would be HOUSE BILL NO. 44, "An Act requiring a legislator to abstain from taking or withholding official action or exerting official influence that could benefit or harm an employer or to request to be excused from voting in an instance where the legislator may have a financial conflict of interest; and providing for an effective date," and, HOUSE CONCURRENT RESOLUTION NO. 1,

Proposing an amendment to the Uniform Rules of the Alaska State Legislature relating to voting and abstention from voting.

[HB 44 and HCR 1 were before the committee jointly.]

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REPRESENTATIVE JASON GRENN, Alaska State Legislature, explained that the intent of the legislation is to increase transparency within the state legislature, and allow the public to see that conflicts of interest are taken seriously. In asking the public to trust the legislature with their votes, these pieces of legislation are important steps in increasing the transparency constituents expect. Currently, he explained, the legislature uses a system of abstention allowing for no record of why a person was not allowed to abstain. A single objection can be raised, and the legislator requesting to abstain is required to vote. Alaska is the only state in the country to require unanimous consent in allowing an abstention from voting. These two pieces of legislation do not allow for a legislator to be excused from voting on an appropriation bill, they do not take away a legislator's ability to vote on the budget. As legislators guide Alaska through these troubled times, increasing the public's trust is more important than ever and creating transparency is critical. House Bill 44 establishes a clear and concise standard for legislators to use when they are determining whether they have a conflict of interest in line with existing statutes. House Concurrent Resolution 1 does that with a vote on the public record.

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RYAN JOHNSTON, Staff, Representative Jason Grenn, Alaska State Legislature, turned to the sectional analysis for HB 44 and paraphrased as follows: [original punctuation provided]

Section 1: Defines the conflict of interest standards under which a Legislator may vote on a particular issue. Conflict is defined as substantial benefit or harm to the financial interest of the legislator's immediate family member, the legislator's employer, and immediate family member's employer, a person with whom the legislator is negotiating employment, or from whom the legislator or immediate family member has received more than \$10,000 in income within the last 12 months.

Exceptions to this include those outlined in Section 2, or while participating in public discussion or debate.

Section 2: A legislator may not vote on a question in a committee and must request to abstain from voting on the floor if the legislator or an immediate family member has a substantial financial interest. A legislator may vote on an appropriations bill that meets the requirements of AS 37.07.020(a) or 37.07.100 (Executive Budget Act).

Section 3: Defines "substantially benefit or harm" as the effect on the person's financial interest being greater than the effect on the financial interest of a substantial class of persons to which the person belongs as a member of a profession, occupation, industry, or region.

Section 4: Defines "financial interest" as ownership of an interest or involvement in a business, property ownership, or relationship that is a source of income or financial benefit.

Section 5: Provides that this Act only takes effect upon passage of a resolution amending Uniform Rule 34(b).

Section 6: Provides for an effective date later than that of the resolution to Uniform Rule 34(b) referred to in Section 5.

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MR. JOHNSTON paraphrased the sectional analysis for HCR 1, as follows: [original punctuation provided]

Section 1: Amends the rule to state that a legislator may abstain from a vote with a majority consent. Currently, Uniform Rule 34(b) states that a legislator may abstain from a vote by a unanimous consent. It also amends the Uniform Rule to include two instances when a member may not vote: a legislator may not vote on their own abstention from a vote; and, a legislator may not vote on an issue if the body casts a majority vote for the legislator to abstain.

MR. JOHNSTON stated that the flowchart "Current Procedure" is included within the committee packet, and explained that it reflects the current procedure for a legislator to abstain, and what the procedure would look like under HB 44 and HCR 1. He then explained the two procedures depicted on the chart.

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REPRESENTATIVE LEDOUX asked why the person who objected isn't recorded in the journal.

MR. JOHNSTON opined that it is an unwritten rule that someone always stands up and, currently, the statute reads that there is no record of it.

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REPRESENTATIVE LEDOUX questioned whether the statute itself reads that there is no record of it.

MR. JOHNSTON advised there is no language in that regard in the statute.

REPRESENTATIVE LEDOUX surmised there is no language one way or the other in the statute.

MR. JOHNSTON answered in the affirmative.

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REPRESENTATIVE KOPP suggested that Representative Grenn is referring to the uniform rule rather than the statute Representative LeDoux was discussing. He agreed there should be good transparency and public process, and asked that the committee consider the unintended consequences. He asked the committee to imagine a situation where the majority decides a bill is important to them and that someone in the minority has a conflict, and "we're all going to vote that that person does, and kind of vote on party lines versus how they really feel if that person has an interest that is greater than someone else in their class of people that are similarly situated." He offered that he had been attempting to imagine situations where it was a majority/minority split based upon how the bill was written.

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REPRESENTATIVE GRENN answered that his office researched how the other 49 states dealt with conflicts of interest, and found that the vast majority of states that allow for an abstention to be voted on use a majority vote of the body. He said that after reviewing Alaska's statutes he was advised the Anchorage Assembly has a majority vote allowing a member to abstain on a conflict of interest issue. He stated that the state legislature should meet what the state is asking municipalities to do, as well. He extended that Representative Kopp is correct, this does not take politics out of what can happen. The hope is that legislators recognize that someone's vote is the most important action they can take as a legislator, and to take that vote away from someone for political reasons or vindictive reasons, cannot be dealt with through legislation, he said. The intent of this bill is to create a public record of the vote, and in the event a legislator rises to their conflict of interest and one side or the other wants to play politics and vote party lines, that vote now is public record. Therefore, the public can see that one side or the other is engaging in politics as opposed to good policy, which is the transparency layer where the public knows what is happening on the floor of the House of Representatives.

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REPRESENTATIVE KOPP noted that Alaska has a citizen legislature, legislators have other jobs of which APOC discloses, and they are elected because they bring the perspective and view point of their constituents into the public arena of discussions on public policy ideas. Currently, he surmised, when a legislator declares a conflict it is on the record, the only difference is absolutely calling for a vote each time. There could be a fish tax bill with legislators involved in the fishing industry, or perhaps the bill is related to the legal field and it affects an attorney legislator's clientele whose fees exceed \$10,000. Possibly, he offered, it would come back to how the majority and minority feel about the bill, although, who their clients are or who the legislator is in their profession, is important. Legislators are elected by their districts because people believe in them and want their perspective represented. He posited that sometimes an action is taken that is thought to decrease finger pointing and increase the flow of process. Yet, he said, it may be an unintended stumbling block based on the fact this is a citizen legislature and people come out of various backgrounds and interests. He asked for Representative Grenn comments.

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REPRESENTATIVE GRENN agreed with Representative Kopp's comments, and noted that they reviewed other citizen legislatures and how they dealt with conflict of interest issues. He explained that a New Mexico state legislator receives no salary but does receive per diem, and they have other incomes and jobs for their livelihood. He described it as the epitome of a citizen legislature. New Mexico's conflict of interest statute is similar to this bill and in some ways it is stricter as to stocks, the percentage of a business ownership, and so forth. He said, "And I think if we go back to the bill where it says, you know, we're talking lawyers or other cases, these are bills that would substantially benefit you as a legislator more so than the rest of the class maybe you are representing or more so than the rest of the class that -- that this legislation goes towards." He deferred to Doug Gardner, Director of Legislative Legal and Research Services to respond to the hypothetical examples.

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REPRESENTATIVE KOPP said he would like to hear from Legislative Legal and Research Services regarding a situation where he was representing a class of clients and received more than \$10,000 in income

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CHAIR CLAMAN interjected that he would present the following three hypotheticals. Chair Claman said, within the first hypothetical he worked for ARCO Petroleum which is no longer involved in the North Slope, his salary was more than \$10,000, and there was an oil and gas tax credit bill in front of the legislature affecting any oil company doing business in Alaska. He asked whether he would have a basis to rise and declare that he has a conflict.

REPRESENTATIVE GRENN responded that under this bill, Chair Claman would not have a conflict of interest. He explained that the main pivot on this is found ...

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MR. JOHNSTON interjected there would not be a conflict because ARCO was not substantially benefited or harmed more than the rest of the industry, and the oil taxes were equal across the

board, with no caveat in the legislation that ARCO would receive "X" amount more than any other company.

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CHAIR CLAMAN said the second hypothetical involves him working for Laborer's Union "X" and he earned more than \$10,000 a year. A bill was in front of the legislature that read that Laborer's Union "X" would be treated a certain way in this legislation, he asked how he would be impacted under this bill.

REPRESENTATIVE GRENN opined that if the bill was discussing Laborer's Union "X" and excluding all other unions, Chair Claman would need to rise and disclose to the body his conflict of interest.

CHAIR CLAMAN surmised that the legislature would then vote yea or nay whether to accept that conflict.

REPRESENTATIVE GRENN answered the vote would be based on Chair Claman's explanation of the conflict of interest.

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CHAIR CLAMAN noted that he is an attorney, and in the third hypothetical ARCO is a client and pays his firm, and him, more than \$10,000 in a given year. ARCO has a bill that is tax credit specific to ARCO and not the oil and gas industry, ARCO doesn't employ him but ARCO pays his firm. He asked what happens in that hypothetical.

REPRESENTATIVE GRENN deferred to Doug Gardner, Legislative Legal and Research Services.

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DOUGLAS GARDNER, Director, Legal Services, Legislative Legal and Research Services, Legislative Affairs Agency (LAA), related that he is an attorney, a member of the Alaska Bar Association (ABA), and if he had to answer that question as a legislator he would rise and declare that conflict because the vote he places may directly benefit a client who ultimately pays Mr. Gardner. Although, he explained, it would not be necessary to disclose any confidentiality in that he could rise and declare a conflict because his employment, as an attorney, involved representation in the oil and gas tax area and this bill may create a conflict. He explained that it can be done topically in such a way as to

avoid the disclosure of different individual clients, and under that hypothetical he does not have to declare ARCO as his named client. There is a way to address that without getting into the attorney client privilege in representation confidentiality. He said that while listening to this hearing he had been trying to construct a hypothetical where he would have to disclose a client, and he hasn't come up with one just yet but believes one is out there.

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REPRESENTATIVE EASTMAN referred HB 44, and noted that "effect on a substantial class of persons" is not defined. He asked Representative Grenn his intent, what he was trying to get at under "substantial class of persons," and how specific the phrase is currently defined in statute.

MR. JOHNSTON pointed to [Sec. 2. AS 24.60.030(g), page 2, lines 25-27, which read:

(g) ... interest of the action to be voted on is greater than the effect on a substantial class of persons to which the legislator or

Belongs as a member of a profession, occupation, industry, or region.

MR. JOHNSTON explained that [line 27 represents the "substantial class of persons"]. The language was derived from existing statute and it is the substantial number within an industry or "X" amount of businesses, he said.

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REPRESENTATIVE EASTMAN asked his understanding of how much is "substantial."

MR. JOHNSTON replied that the bill leaves it as the discretionary choice of the legislator because each business, industry, and region is different. For example, he explained, "substantial" would have to be a good portion of an industry such that if the legislator was part of three businesses being affected and 80 businesses were left out, that would be substantial."

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REPRESENTATIVE EASTMAN related that, currently, it is difficult to abstain from a vote in that there is not a lot of precedence for abstentions, and [the bill] would make it somewhat easier to abstain from a vote. On the other hand, he said, he is unaware of an instance where a legislator has been forbidden from casting a vote. The bill language puts forth two situations where a legislator would actually, by law, be forbidden from casting a vote, and he asked whether that is cross-purposes from the idea of permitting a legislator to abstain. He further asked how many other examples inspired the requirement that, by law, a legislator would be prohibited from voting.

REPRESENTATIVE GRENN responded that the bill does not forbid anyone from voting, rather it constructs a standard for the legislator to discuss their conflict and ask to abstain themselves, then putting that vote to the body of the membership. He clarified that the bill is not saying a legislator is forbidden based on this, but rather that a legislator may have a conflict of interest that needs to be discussed.

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REPRESENTATIVE EASTMAN asked whether previous testimony indicated there would be two different types of situations, for example, where a legislator voting on their own abstention would be legally prohibited from casting a vote for their district.

MR. JOHNSTON explained that the two situations have to do with the legislator in question voting on their own abstention. In reviewing other state statutes, it makes no practical sense to allow the legislator to vote on their own abstention, and in that situation they shouldn't be allowed to vote. He explained this is a uniform rules change to allow for this abstention to take effect. In the second situation the legislator is granted an abstention from voting, not forbidden to vote, but after they are granted an abstention they must abide by that abstention and not vote, he said.

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REPRESENTATIVE LEDOUX related that she is pleased this issue is being addressed because she has believed for a long time there was a problem here. She asked whether other states and municipalities have far broader rationales for letting people abstain. She noted that within some of the hypotheticals Chair Claman posited, she would have expected a person to be viewed as

having a conflict of interest. For example, she recalled there was someone in the municipality that was involved in the cannabis industry and there were ordinances relating to that industry. She opined that he was not allowed to vote on that issue even though the ordinance in question did not relate specifically to his business. She said she was trying to remember votes in the House of Representatives that may have been viewed as a conflict of interest that someone may have wanted to abstain from, and she said she could think of virtually zero instances in which a [bill] was specifically related to just one business or one union, for example. Although, she said she was sure there would be some. She offered a scenario of a person working for a union, with right-to-work legislation before the legislature, she said it would seem to her that there would be a conflict in voting on that legislation. Yet, she continued, it appears from Representative Grenn's answers that it would be perfectly appropriate for that person to vote on that legislation under this bill

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REPRESENTATIVE GRENN agreed, and he said there are states that have municipalities with stricter parameters of what a conflict of interest entails. He offered that the intent was to make this a starting place, add some transparency, have votes take place, and what constitutes a conflict of interest. He pointed out that contained within the committee packets is a list of the threshold of a number of other states, such that if a person owns 5 percent of a company and that company is involved with a bill, the person would have to declare their conflict of interest. He explained that this bill takes small steps in adding to the transparency of how Alaskan legislators declare conflict of interest and the public record.

MR. JOHNSTON opined that the issue Representative LeDoux was pointing to is the rank and file type of issue. For instance, a legislator was an everyday electrician in a union and as part of that union he did not believe in right-to-work and wanted to vote against it. That scenario poses the question of whether it is a substantial benefit or harm to that legislator, he related. In the event the legislator believes right-to-work will substantially harm him as an everyday electrician, the legislator would have the option to rise and declare that conflict of interest.

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REPRESENTATIVE LEDOUX posited a scenario wherein the legislator is the president of a union and the legislation impacts all unions, possibly the legislator would rise and declare a conflict. Although, she pointed out, in the event Mr. Johnston's analysis of this bill is correct, there would be no reason for anyone to [rise and declare] a conflict because the legislator was not impacted more substantially than any of the other unions in the state.

REPRESENTATIVE GRENN answered that Representative LeDoux is correct.

REPRESENTATIVE LEDOUX queried that if someone were to offer an amendment tightening that threshold, would it be considered a friendly or unfriendly amendment.

REPRESENTATIVE GRENN answered that question would be up to the body to decide, or at least this committee.

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REPRESENTATIVE KREISS-TOMKINS asked Mr. Gardner whether the legislature had interpreted the conflict of interest rule to be more stringent than the actual letter of the conflict of interest rules. Legislators often rise to disclose a conflict of interest even if they do not have a conflict rising to the level greater than the effect on a substantial class of persons. He asked whether it was Mr. Gardner's impression, having observing members rising and disclosing conflicts, whether there have been a majority of instances where the legislator was not actually obligated to disclose by the letter of the uniform rules.

MR. GARDNER related that he will make a general comment and not focus on any particular time period or legislator. He opined that in the recent past the Select Committee on Legislative Ethics issued a couple of opinions where it found violations for failure to disclose. Particularly, he noted, in the area where legislators have a contract for a state service and ultimately they are voting on a budget or an appropriation vehicle. He offered, those ethics opinions may have driven a concern of political stigma in not declaring a conflict and being found in violation of the ethics laws. More than the political stigma, a legislator can be fined and theoretically expelled from the legislature which, he commented, is extreme and probably unlikely in those cases. He noted there has been a trend toward considerable disclosure, such as the circumstances in the last

several years wherein leadership stood up on the floor of the House of Representatives and made comments about the scope of disclosure and, subsequently, there have been a large number disclosures in the last two years. Having said that, he related, a legislator is probably wise to disclose because the net result, as has been observed, is that there is usually an objection to an abstention from voting, and in the end the legislator votes "because the ethics statute is ultimately made subordinate to the uniform rules -- uniform rule decision and an abstention objection exonerates the legislator from any conflict." Perhaps that process, in the end, does what it is intended to do such that it allows constituents, the public, and other legislators to know where that legislator is coming from. They declare that they provide this service, or they are an attorney for a particular group of clients. In the end, it is out there but the person is required to vote and represent their constituents. He described it as the ongoing balance, and that balance has shifted a bit more in terms of disclosure in the last several years.

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REPRESENTATIVE KREISS-TOMKINS described the current letter of the uniform rule as minimalistic, independent of the bill. He commented that the possible amendment Representative LeDoux discussed may have merit independent of the bill, and that the substantial class clause throws a curve ball and waters down the conflict of interest disclosure rules.

REPRESENTATIVE FANSLER referred to unintended consequences and asked whether there is a worry this may actually result in a suppression of people declaring a conflict of interest due to the substantial class clause.

REPRESENTATIVE GRENN responded that the clause puts a bar requiring someone to rise for a conflict of interest, it doesn't take away from someone rising and declaring a conflict just to be safe. He said, the clause sets a standard he believes can be followed better, and the public would know the level of the bar.

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REPRESENTATIVE FANSLER related that he is personally experiencing a difficult time envisioning bills that will selectively single out one or two entities in a class. He referred to Representative Grenn's comment that Alaska is the only state without these laws on its books, which played a part

in his idea for this bill and he applauds Representative Grenn because he like uniformity. He asked whether Representative Grenn had statistics on the number of times conflicts of interest have been declared [in other states], whether [a state] has the substantial group clause, and also statistics on the number of times, after that conflict has been declared, that the majority has then voted to allow the legislator to abstain.

MR. JOHNSTON advised that the sponsor's office reached out to states and are awaiting their responses, he will then provide their responses.

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REPRESENTATIVE REINBOLD thanked the sponsor for the bill and offered that the intent is one worth vetting. She asked him to explain any subjectivity concerns he may have related to legislators who have a more or less sensitive conscience when deciding to rise.

REPRESENTATIVE GRENN explained there is a current process in place through the Select Committee on Legislative Ethics for a person who wishes to lodge a complaint due to an undisclosed conflict. He offered that it has happened, and the Select Committee on Legislative Ethics has provided statistics. He reminded the committee there are well known stories regarding some of those complaints in Alaska's history.

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REPRESENTATIVE REINBOLD noted that financial disclosures are transparent and a matter of public record. She offered her concern that some legislators are far more sensitive in rising to declare a conflict of interest, and noted that the ethic process is a quiet and time consuming process. She advised Representative Grenn there is an elephant in the room because "some know that your caucus is very interested in changing oil and gas tax policy." Historically, she said, the oil and gas industry has contributed approximately 90 percent to the state budget. She asked whether there was any motivation in any manner to alienate or target anyone associated with the oil and gas industry by any legislators, including the 11 co-sponsors and himself, or any caucus members,

REPRESENTATIVE GRENN responded that in watching government from the outside, he had always hoped the elected legislators would act in a manner that was mindful of being integrity filled,

honest, and open with everything they do. His emphasized that his motivation in putting this legislation forward is from a personal and policy perspective to add transparency and build the public's trust. Personally, he advised, the day he filed to run for office was the day he had to resign from his employment due to a perceived conflict of interest. He offered that legislators can always put themselves to a higher standard when it comes to building trust with the public. When he filed HB 44, he had not discussed its purpose with anyone in his caucus or anyone other than his staff members. He said that in direct response to Representative Reinbold's question, this legislation is not directed toward anyone in the building, any industry, or region in Alaska, it is about setting guidelines for future legislators. Thereby, giving them a path and knowledge of what a conflict of interest might be, to vote on the possible abstention on the public record, and add another layer of transparency to what the legislature is doing while in session.

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REPRESENTATIVE REINBOLD reiterated her question and posited that he has had no discussion amongst his caucus, no discussion amongst any of the 11 co-sponsors, this legislation is not targeted toward any member associated with the oil and gas industry, and the bill has no intention of moving Representative Grenn's caucus agenda forward.

REPRESENTATIVE GRENN again emphasized and restated that he did not discuss the pre-filing of this bill with anyone in his caucus, and there was no target within this legislation outside of the desire to build public trust and add transparency to the actions of the legislature.

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REPRESENTATIVE KOPP referred to [Section 1, AS 24.60.030(e)(3)(d)], page 2, lines 15-17, which read as follows:

(D) from whom the legislator or a member of the legislator's immediate family has, in the immediately preceding 12-month period, received more than \$10,000 of income.

REPRESENTATIVE KOPP offered concern regarding the two standards as to voting in committee and on the floor of the House of Representatives.

[Sec. 2, AS 24.60.030(g)], page 2, lines 19-23, which read as follows:

(g) ... a legislator may not vote on a question before a committee of the legislature, and shall request to be excused from voting on a question before a house of the legislature, ...

REPRESENTATIVE KOPP explained that the provision related to a legislator having a conflict. He surmised that if the legislator, while on the floor of the House of Representatives, can rise and at least have their colleagues vote, although, if the legislator is in a committee they lose their vote. Along the friendly amendment lines, he said, one vote in a committee can be significant, particularly in the other body with less members.

MR. JOHNSTON noted that the sponsor has been discussing that issue and is open to a friendly amendment.

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REPRESENTATIVE LEDOUX asked Mr. Gardner whether the substantial interest test in this bill mirrors what is required by the ethics rules. She further asked whether the ethics rules require a legislator to report "just about everything?" She then turned to the example of someone working for a union and right-to-work legislation before the legislature, and asked whether the ethics rules requires a legislator to reveal that information.

MR. GARDNER answered, probably not. He opined that in expanding the hypothetical a bit, say a member was part of a larger state union, or even a smaller boutique union, according to the ethics opinions he read and the thinking of the Select Committee on Legislative Ethics, if a legislator is in a substantial class of persons similarly situated and the legislator's interest is neither here nor there with respect to the issue, a legislator would not have to disclose in that circumstance. He returned to an earlier question and commented that he suspects many legislators would chose to do so out of an abundance of caution, but technically they would probably not need to disclose in that circumstance.

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REPRESENTATIVE LEDOUX followed up and noted that when the legislature was voting on a tax bill, approximately ten year earlier, someone ended up with ethics problems for not declaring a conflict before they voted when they had allegedly discussed employment with a company involved in oil field services.

MR. GARDNER offered that in preparing for his testimony, he reviewed a couple of advisory opinions, and then referred to Advisory Opinion, Number 2013/01. He explained that the issue was whether a legislator, who also worked for a natural resource company that made money extracting natural resources, had a conflict in terms of voting on bills affecting that industry. He explained the process was a fact intensive inquiry. The committee reviewed the duties of the individual in relation to the company, weighed whether or not the legislator had a key financial interest or just strategic decision making responsibilities and their annual salary was compensated the same as other members, and whether or not the person was on unpaid leave from the employer during the session. The committee concluded there was no conflict in that situation. He explained that the Select Committee on Legislative Ethics will conduct a factual inquiry, more of a drill down to exactly what interest a person may have in an organization, and in the case of the 2013 Advisory Opinion, the answer was no, no conflict.

[2:00:31 PM](#)

REPRESENTATIVE LEDOUX asked whether there is currently anything in the uniform rules precluding the clerk from identifying the person who made the objection when a legislator has asked for abstention.

MR. GARDNER responded that Uniform Rules 9 and 34 instructs the clerk on what to include in the Journal, and opined that those rules are basically silent on this issue. The question may be past practice and precedent with respect to the Chief Clerk and the Senate Secretary including abstention requests or other aspects of that process in the Journal. The answer is no, but he said he will follow up if he learns something else later.

[2:01:45 PM](#)

REPRESENTATIVE EASTMAN asked, under this bill, after a legislator declares a conflict of interest, whether there is a point a legislator can pause or withdrawn their request to be excused from the vote on the floor of the House of Representatives. He noted that Alaska is different from other

states wherein Alaska may have only five members on a committee and in certain situations possibly not all five members are present and a single vote directly impacts a district, which is unlike New Hampshire with 12 times as many members in its state house. He opined that a reason Alaska's process is the way it is today, is so that it does not come into a situation where a district is being deprived of their vote unless there is a very good reason for doing so. He queried whether there is a [process], under this bill, for a legislator who wants to declare a conflict but doesn't want to disadvantage their district. Currently, he asked, can a legislator rise and declare their conflict and not be under the impression there is a high likelihood their district would be deprived of their vote. Or, he asked, once the legislator starts down the road of declaring a conflict whether there is a point in which they can say they want to take it back. He remarked that a legislator does not have the ability to vote against their own abstention under this legislation.

[2:05:47 PM](#)

REPRESENTATIVE GRENN reiterated that it is the choice of the legislator themselves to rise and declare their conflict of interest and in the event there is a conflict of interest based on this legislation, the hope is that they would rise and declare the conflict. With regard to whether a legislator can take back their declaration mid-objection, he opined that is something he would look into to determine what it might look like, and how the uniform rules may be affected. He reiterated that in making a public declaration of an actual honest conflict of interest based on this legislation, the legislator would have to question themselves whether they should be voting.

[2:06:53 PM](#)

CHAIR CLAMAN opened public testimony on HB 44 and HCR 1.

[2:08:02 PM](#)

MARGO WARING, League of Women Voters, said she is speaking on behalf of Pat Redmond, President of the Board of the League of Women Voters, and read Ms. Redmond's letter as follows:

Dear Representative Claman, Chairman of the House
Judiciary Committee.

The League of Women Voters of Alaska urges you to support House Bill 44 and send it on to its next committee of referral. Transparency in government is important to the League at all levels, local, state, and national. When an elected official has a conflict of interest, that official should not be voting on the legislation under consideration. One of democracy's greatest challenges comes when citizens no longer think government represents, or cares, about them, and in response fail to participate.

We can see this erosion of confidence in the declining numbers of citizens who participate in our elections. Part of what restores confidence is making it clear that legislators do not use their position for personal gain.

We applaud the bill's sponsor for seeing that one way to restore confidence is to change the rule that has allowed legislators with a conflict to be excused from voting -- from not voting. In this way, voters can be sure that the vote cast is not done for personal benefit. We often hear supporters of the current practice say that to not vote is to deprive a district of its voice. The answer to that is that a vote cast under a cloud also deprives voters of knowing that the vote was cast for the benefit of the district, and the state.

Again, thank you for giving the League the opportunity to speak in support of a bill that strengthens our democracy. Sincerely, Pat Redmond, President

[2:10:14 PM](#)

REPRESENTATIVE LEDOUX asked whether she believes this bill goes far enough.

MS. WARING, answering as a private citizen and not representing the League of Women Voters, said her personal opinion is that the bill does not go far enough.

[2:11:07 PM](#)

FRED TRIEM, Attorney, said his opposition to HB 44 is based on the Separation of Powers Doctrine in that it teaches that one branch of government cannot regulate the internal affairs of

another branch, and the court system has its own regulation about recusal of judges for conflict of interest. His objection to HB 44 is based upon the notion that it would transfer authority from the legislature to the judicial branch the authority to regulate internal affairs within the legislature, and the legislature's internal affairs can be properly addressed within the legislature's uniform rules. The legislature should not convey through the judicial branch the authority to make decisions about the legislature's internal process, and the uniform rules should address the issues presented in HB 44. As a footnote, he added that in the event the committee goes further with HCR 1, he suggested that the committee address the two categories of objections or concerns Representative LeDoux raised when considering amending the uniform rules.

[2:14:05 PM](#)

MR. TRIEM noted that the fiscal note is not a complete description of the potential effect of this legislation because it overlooks the litigation that would be generated and the effect on the judicial branch by the duty of having to decide cases sent to the judicial branch as a result of legislation enacted here. For example, he referred to the chart and stated that in the event HB 44 is enacted, it depicts where disputes will arise and what a person would do if they were adversely involved in a dispute created by this legislation. The judiciary branch should not be involved in deciding issues within the province of the legislature, which is the Separation of Powers Doctrine, and that is the ultimate source of his objection, he said.

[2:16:44 PM](#)

REPRESENTATIVE EASTMAN referred to his statement that he shares the two categories of objection Representative LeDoux had referenced earlier, and asked him to summarize those objections.

MR. TRIEM said that Representative LeDoux identified a problem found in the upper right hand corner of the chart. The first issue is that the objection made under the current rules, the objector is not identified in the record which is a form of anonymous legislation, and he opined that it offends the notion of a public legislature with accountability. He deferred to Representative LeDoux regarding the second objection.

[2:17:44 PM](#)

REPRESENTATIVE EASTMAN said he simply wanted it in the record again.

[2:17:55 PM](#)

REPRESENTATIVE LEDOUX said she was discussing the soft threshold and opined that this bill is a good start. In thinking of the number of things someone would have to declare the conflict on and perhaps not vote, she said she could only think of things that might have been in the capitol budget in the old days when there was still a capital budget. Under this bill, a legislator would still vote on a capital budget, so any little grant that might go to an organization a legislator may have interest in, the legislator would still be required to vote because it is a budget item. For example, say motor fuel is before the legislature and a legislator is president of an airlines and the legislation impacts all airline companies, it would not be a conflict. Even though, she commented, it appears to her that it is a conflict, which is why people in an excess of caution would declare them as conflicts. After nine years in the legislature, she said she has never seen an instance where someone declares a conflict and someone does not object, so no matter the conflict the person is voting on it. That is, of course, a policy question and it sounds like virtually every other state and municipality has resolved that conflict question differently.

[2:20:56 PM](#)

MR. TRIEM advised that the judicial system resolves the conflict of interest issue by a common law rule that relies upon the individual judgment and conscience of judicial officers. He opined that the legislature can follow that example and rely upon individual judgments without this formal rule, and suggested pursuing HCR 1, but not enact HB 44.

[2:21:50 PM](#)

REPRESENTATIVE FANSLER surmised that Mr. Triem supports this as an adjustment to the uniform rules, and that is where he believes a change similar to this should be made.

MR. TRIEM agreed emphatically.

[2:22:15 PM](#)

REPRESENTATIVE FANSLER asked whether there was still the potential, even if it is in the uniform rules, that it would

eventually find its way into the judicial system if there was a conflict.

[2:22:28 PM](#)

MR. TRIEM responded that it is less likely because the Separation of Powers Doctrine and courts are extremely reluctant to mess in the internal affairs of other branches of government, particularly in the legislative branch. He related that a person would have an extraordinary burden to try to convince a superior court judge to decide an issue involving the interpretation of the uniform rules of the Alaska State Legislature.

[2:23:18 PM](#)

DOUGLAS MERTZ advised that for many years he was an assistant attorney general and his duties included being the "ethics guru," the person in charge of administering the Alaska Executive Branch Ethics Act (Chapter 39.52). He pointed out that as an attorney of 40 years he is also familiar with the Alaska Rules of Judicial Conduct and how it affects judicial conflicts of interest. Gleaned from his experience, he related, is that two-thirds of the branches of government in Alaska have the rule that if a person has a conflict of interest, the person does not take official action. It is only the legislature that has arrogated to itself an exemption from that rule, one that for many years has resulted in no one being disallowed to vote on particular measures. This is not only the sole exception to the way ethics are administered in Alaska, as has been noted, it is also the exception among the states.

MR. MERTZ pointed out that the common law of ethics is consistent with the rule in the two other branches of government wherein if a person has a conflict they do not take official action. Currently, the sponsor substitute to HB 44 is still defective in that it would allow a majority to say the person has to vote anyway. He stressed that this is a major exception to the common law rule and to the rule in the other two branches of government. This leads him to question whether the way elected officials are held in regard by the public has something to do with the fact that the legislature considers itself exempt from the usual ethics rules. He urged the committee to move forward with HB 44 and HCR 1 and to essentially enact the common law rule that if a legislator has a conflict of interest, that legislator may not take official action. It is fair that legislators can tweak the definition of what is a conflict of

interest but, he reiterated, once a legislator has a conflict of interest they should not take official action.

2:26:10 PM

REPRESENTATIVE LEDOUX offered that a legislator is working for a company which is impacted by legislation, so the legislator declares a conflict, and under this bill the legislator would still vote. She asked how that would work in the other two branches of government.

2:27:02 PM

MR. MERTZ explained that in those cases, the legislator would still have to look at the definition of what a substantial conflict of interest is, what the threshold is, and whether it is minor and something that affects everyone. For example, he opined no judge would recuse herself when a question was before her regarding the permanent fund dividend (PFD) because everyone receives a PFD. On the other hand, if it had something to do with the employer of the judge's spouse, or the executive branch official's spouse, directly affecting them and no one else, that's on the other side of the ledger. He extended that it is difficult to determine where to draw the line, and he was unsure whether it made sense to do it legislatively other than saying "substantial conflict of interest" and defining it in general terms, as the bill does. He warned that it can't be defined too closely because by defining it too closely, situations are left out and later it could be decided they should have been included.

2:28:16 PM

REPRESENTATIVE LEDOUX pointed out that as the bill currently reads, it clearly allows the president of a company to vote on legislation that is not targeted at his specific company, although the industry is impacted by the legislation.

MR. MERTZ stipulated that Representative LeDoux was correct if the legislation impacted a substantial number of companies, and not just the one.

REPRESENTATIVE LEDOUX said that that is what this legislation does.

MR. MERTZ agreed.

[2:29:19 PM](#)

REPRESENTATIVE LEDOUX offered a scenario that a judge's husband is the president of a company that would be impacted by a judicial decision, and asked how that would work in the judicial branch. For example, a couple of years ago there was litigation about the constitutionality of retroactive legislation related to the real estate industry. She explained that many real estate people believed that if a particular piece of legislation was declared unconstitutional that it would have a significant deleterious effect on everyone in the profession. In the event the judge's husband owned a real estate company, would that judge be allowed to rule on that case, she queried.

MR. MERTZ opined that in the judicial branch, the judge would have to recuse herself if for no other reason than out of an abundance of caution and to avoid the appearance of impropriety. On the other hand, if the legal question had to do with an application of a tax to all corporations, it probably wouldn't have that result.

[2:31:41 PM](#)

CHAIR CLAMAN referred to Mr. Triem's analysis suggestion that amending the statutes creates a separation of powers issue and he asked whether Mr. Mertz concurred.

MR. MERTZ replied that he appreciates Mr. Triem's sensitivity to constitutional issues, and opined that he is probably wrong.

CHAIR CLAMAN surmised that his view was that the statute could be amended without creating a conflict in the constitutional area of separation of powers.

MR. MERTZ agreed.

[2:32:37 PM](#)

RAY METCALFE said that he works with Emphasis for Ethical Government, and advised that he was working with the federal government before it "busted VECO and jailed six legislators for taking bribes." He said he was in the legislature in the 1970s and 1980s, and it was obvious to him that bribery was rampant. He watched a chairman in the Senate Finance Committee, buy a pipeline camp for \$300,000, and then try to sell it back to the state for \$3 million for a prison. This chairman was the legislator who put the money into the Senate Finance Committee

bill, he stated. He said he saw another legislator move a Certificate of Need to her family, another legislator took a \$10,000 payment to assist a private organization in receiving appropriations.

MR. METCALFE advised that in 1801, Thomas Jefferson wrote the rules for the U.S. Senate, and Mr. Metcalf paraphrased "and if you were a member of the U.S. Senate, and you had any interest whatsoever in the issue before you, you not only had to not vote, you had to withdraw, you had to leave the room." In recent years, the U.S. Supreme Court gave America Citizens United v. Federal Election Commission, 558 U.S. ____ (2010), and also a way to fix it, yet a lot of people are not paying much attention. He turned to a State of Nevada ethics case that went before the U.S. Supreme Court, and explained that after a campaign manager got his person elected, he brought his best friend in, the campaign manager advised the elected official that his best friend needed a gaming permit, and the elected official helped the best friend obtain a gaming permit. He described the Nevada conflict of interest statute as "totally broad," and said he would loosely paraphrase the Nevada conflict of interest statute, as follows: "If you have a conflict, you may not vote. It's not quite that simple but that's effectively what it says." The jury in this case decided that the elected official did the campaign manager a favor to repay him for the work he did on his campaign. The elected official was convicted, and the Nevada Supreme Court overturned the conviction because it decided the conviction violated his free speech, and his obligation to represent his constituency. The State of Nevada took the case to the U.S. Supreme Court and the U.S. Supreme Court "slammed the Nevada court" in a 9 to 0 decision. The U.S. Supreme Court said that speech did not belong to him - it belonged to his constituents, and that the statute in the State of Nevada said that under these circumstances the elected official cannot vote; therefore, the elected official cannot not vote. He then turned to the VECO Corporation deal.

CHAIR CLAMAN interjected that Mr. Metcalf had about 15 seconds on his five minutes.

MR. METCALF said he has heard "a bunch of reasons for objection", he has been working on this issue for many years, and would answer any questions regarding this type of legislation.

[2:38:23 PM](#)

JOHN PUGH said he was testifying as a citizen living in Juneau, and would like to comment on two important issues regarding transparency, not specifically on the bill. Currently, he opined, legislators are erroring on the side of [caution] as most members will rise and say they are a member of a union, or work for an oil company, and so forth. He said he would hope that that continues and this bill does not suppress the fact that people do error on the side of disclosing a possible perceived conflict, if not in their district, across the state. It is important, he stressed, to not have this bill somehow suppress legislators from rising when they believe there may be a perceived conflict.

MR. PUGH referred to the idea of putting it on the record, and described that as transparency, and why it is not currently put on the record is a mystery to him because that information is important as well. In that regard, citizens can look at the record and ascertain who declared they may have a perceived conflict of interest. In moving forward, he asked that the committee put those two issues into context, and make sure this bill doesn't actually suppress perceived conflicts by legislators because that would be less transparency, he stressed.

[2:40:29 PM](#)

REPRESENTATIVE LEDOUX asked whether it is appropriate that the person objecting also be put on the record.

[2:40:38 PM](#)

MR. PUGH expressed yes, and further expressed that it is very important because it is part of the legislative process and the record should be the record.

[2:41:06 PM](#)

CHAIR CLAMAN, after ascertaining no one further wished to testify, closed public testimony in HB 44 and HCR 1.

CHAIR CLAMAN commented that it appears there may be some interest in amending the bill.

[2:41:16 PM](#)

The committee took an at-ease from 2:41 p.m. to 2:47 p.m.

[2:47:20 PM](#)

MR. GARDNER said he was available for questions.

[2:47:43 PM](#)

REPRESENTATIVE EASTMAN asked whether there are other Alaska constitutional prohibitions against the types of bills a legislature may pass. He explained that many of the circumstances discussed today dealt with issues that may not be necessarily expected to come before the legislature, and asked whether there are any larger prohibitions at the constitutional level limiting these types of conflict of interest situations from ever taking place in the form of a bill.

MR. GARDNER replied that in the event the legislature passes an unconstitutional bill, such as eliminating the right to a jury trials in criminal cases. Clearly, the constitutional limits on what the legislature can do is the function of the court to make the call on whether a statute is unconstitutional. He said he was unsure exactly what Representative Eastman was asking in the context of this bill.

[2:49:27 PM](#)

REPRESENTATIVE EASTMAN responded that he is not thinking in the context of that broad of a situation, but rather more specific types of legislation in ex post facto law. For example, a bill of attainder, corruption of blood, or any of those types of prohibitions imposed upon the state legislature as a branch of government by the state constitution.

MR. GARDNER asked whether Representative Eastman was looking for an example of a situation where there was a constitutional restriction on the legislatures, on legislators.

[2:50:15 PM](#)

REPRESENTATIVE EASTMAN said Mr. Gardner was correct, and he was wondering what those might be, if any.

MR. GARDNER answered it could be the restriction the legislature has under Article II, Section 19, Local or Special Acts, which read:

The legislature shall pass no local or special act if a general act can be made applicable. Whether a general act can be made applicable shall be subject to judicial determination. Local acts necessitating appropriations by a political subdivision may not become effective unless approved by a majority of the qualified voters voting thereon in the subdivision affected.

MR. GARDNER explained that a legislature cannot pass a bill that benefits a particular community because bills must all have statewide application. Therefore, he related, the legislature does have a restriction on what it can do in certain circumstances.

CHAIR CLAMAN advised Representative Eastman that his questions appear to be far afield of the topic of the bill.

[2:51:28 PM](#)

MR. JOHNSTON related that Representative Grenn had to leave to attend another meeting, Representative Grenn extended his thanks for allowing him to present today, and that Representative Grenn looks forward to working with the committee on the bill.

[HB 44 was held over.]

[HCR 1 was held over.]

[2:52:46 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:52 p.m.