

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

January 26, 2018

1:00 p.m.

MEMBERS PRESENT

Representative Matt Claman, Chair
Representative Jonathan Kreiss-Tomkins
Representative Gabrielle LeDoux
Representative David Eastman
Representative Chuck Kopp
Representative Charisse Millett (alternate)
Representative Louise Stutes (alternate)

MEMBERS ABSENT

Representative Zach Fansler, Vice Chair
Representative Lora Reinbold

COMMITTEE CALENDAR

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 216

"An Act relating to restitution; relating to the office of victims' rights; relating to transfers from the dividend fund; creating the restorative justice account; relating to appropriations from the restorative justice account for services for and payments to crime victims, operating costs of the Violent Crimes Compensation Board, operation of domestic violence and sexual assault programs, mental health services and substance abuse treatment for offenders, and incarceration costs; relating to delinquent minors; and providing for an effective date."

- MOVED CSSSHB 216(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 13

"An Act prohibiting the expenditure of state or municipal assets to create a registry based on race or religion."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 216

SHORT TITLE: TRANSFERS FROM DIVIDEND FUND; CRIMES

SPONSOR(S): REPRESENTATIVE(S) KOPP

04/07/17 (H) READ THE FIRST TIME - REFERRALS
 04/07/17 (H) JUD, FIN
 01/16/18 (H) SPONSOR SUBSTITUTE INTRODUCED
 01/16/18 (H) READ THE FIRST TIME - REFERRALS
 01/16/18 (H) JUD, FIN
 01/17/18 (H) JUD AT 1:00 PM GRUENBERG 120
 01/17/18 (H) -- MEETING CANCELED --
 01/19/18 (H) JUD AT 1:00 PM GRUENBERG 120
 01/19/18 (H) Heard & Held
 01/19/18 (H) MINUTE(JUD)
 01/24/18 (H) JUD AT 1:00 PM GRUENBERG 120
 01/24/18 (H) Heard & Held
 01/24/18 (H) MINUTE(JUD)
 01/26/18 (H) JUD AT 1:00 PM GRUENBERG 120

BILL: HB 13

SHORT TITLE: NO ST. FUNDS FOR FEDERAL REGISTRY

SPONSOR(S): REPRESENTATIVE(S) JOSEPHSON

01/18/17 (H) PREFILE RELEASED 1/9/17
 01/18/17 (H) READ THE FIRST TIME - REFERRALS
 01/18/17 (H) STA, JUD
 02/18/17 (H) STA AT 11:00 AM GRUENBERG 120
 02/18/17 (H) Heard & Held
 02/18/17 (H) MINUTE(STA)
 03/23/17 (H) STA AT 3:00 PM GRUENBERG 120
 03/23/17 (H) Scheduled but Not Heard
 03/28/17 (H) STA AT 5:30 PM GRUENBERG 120
 03/28/17 (H) Moved CSHB 13(STA) Out of Committee
 03/28/17 (H) MINUTE(STA)
 04/03/17 (H) STA RPT CS(STA) NT 4DP 1NR
 04/03/17 (H) DP: WOOL, KNOPP, TUCK, KREISS-TOMKINS
 04/03/17 (H) NR: BIRCH
 04/14/17 (H) JUD AT 1:00 PM GRUENBERG 120
 04/14/17 (H) Scheduled but Not Heard
 04/15/17 (H) JUD AT 10:00 AM GRUENBERG 120
 04/15/17 (H) Heard & Held
 04/15/17 (H) MINUTE(JUD)
 01/26/18 (H) JUD AT 1:00 PM GRUENBERG 120

WITNESS REGISTER

MEGAN HOLLAND, Staff
 Representative Andy Josephson
 Alaska State Legislature
 Juneau, Alaska

POSITION STATEMENT: Presented HB 13 and offered a PowerPoint titled, "HB 13: Prohibiting the Expenditure of State or Municipal Assets to Create a Registry Based on Race, Religion, Ethnicity, or National Origin," on behalf of the bill sponsor, Representative Josephson

HILARY MARTIN, Legislative Legal Counsel
Legislative Legal and Research Services
Legislative Affairs Agency
Juneau, Alaska

POSITION STATEMENT: Answered questions during discussion of HB 13.

ACTION NARRATIVE

1:00:31 PM

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

HB 216-TRANSFERS FROM DIVIDEND FUND; CRIMES

1:01:09 PM

CHAIR CLAMAN announced that the first order of business would be HOUSE BILL NO. 216, "An Act relating to restitution; relating to the office of victims' rights; relating to transfers from the dividend fund; creating the restorative justice account; relating to appropriations from the restorative justice account for services for and payments to crime victims, operating costs of the Violent Crimes Compensation Board, operation of domestic violence and sexual assault programs, mental health services and substance abuse treatment for offenders, and incarceration costs; relating to delinquent minors; and providing for an effective date."

CHAIR CLAMAN advised that the committee would continue its discussion on Amendment 5, and that his office had distributed the 1/23/18, Legislative Legal and Research Services memorandum directed to Representative Eastman that discussed some of the issues raised by Amendment 5.

[1:02:08 PM](#)

CHAIR CLAMAN asked Representative Eastman if he still desired to proceed with Amendment 5.

REPRESENTATIVE EASTMAN answered in the affirmative.

[1:02:22 PM](#)

CHAIR CLAMAN commented that after reviewing the 1/23/18, Legislative Legal and Research Services' memorandum directed to Representative Eastman, he read the last paragraph to essentially say that if the committee adopted Amendment 5, the committee would go down a path that was unpredictable and uncertain as to where it would take the legislature. He advised that he would not be supporting Amendment 5.

[1:02:48 PM](#)

REPRESENTATIVE EASTMAN related that he wished that the members had offered more discussion, but that the language, "if they had been eligible" does not appear to mean what "we're asking the department to do, because we're not asking the department to determine whether or not they were, in fact, eligible." There is a process "they use, and they assume a degree of eligibility." Therefore, he opined, perhaps what "we really want" the department to do is to assume that "they had been eligible. So, they are rendered ineligible by virtue of incarceration or conviction and then there is an assumption, which there already is, that they had been eligible." In the event these people had been eligible, "would have changed to something like assuming they had been eligible." He opined that that would be more in line with what "we're seeing as far as actual practice, which is what I think the committee and the legislature is a practice that we want them to continue." He withdrew Amendment 5.

[1:04:45 PM](#)

REPRESENTATIVE KOPP thanked the committee for hearing this bill and for its support in advancing what he believes is one of the most important victims' rights pieces of legislation this session.

[1:05:04 PM](#)

REPRESENTATIVE KREISS-TOMKINS moved to report SSHB 216, Version 30-LS0572\T, Martin, 11/16/17, as amended, out of committee with individual recommendations and the accompanying fiscal notes.

REPRESENTATIVE EASTMAN objected.

[1:05:37 PM](#)

A roll call vote was taken. Representatives Millett, Kopp, Kreiss-Tomkins, LeDoux, Eastman, and Claman voted in favor of SSHB 216, as amended. Therefore, CSSSHB 216(JUD) was reported out of the House Judiciary Standing Committee by a vote of 6-0.

[1:06:25 PM](#)

The committee took an at-ease from 1:06 p.m. to 1:14 p.m.

HB 13-NO ST. FUNDS FOR FEDERAL REGISTRY

[1:14:31 PM](#)

CHAIR CLAMAN announced that the final order of business would be HOUSE BILL NO. 13, "An Act prohibiting the expenditure of state or municipal assets to create a registry based on race or religion."

[1:16:15 PM](#)

REPRESENTATIVE KREISS-TOMKINS moved to adopt the proposed committee substitute (CS) for HB 13, labeled 30-LS0147\R, Martin, 1/23/18, as the working document. There being no objection, it was so ordered.

[1:16:45 PM](#)

MEGAN HOLLAND, Staff, Representative Andy Josephson, Alaska State Legislature, advised that CSHB 13, Version R, has one conforming change from the previous version, CSHB 13(STA), Version O. She pointed to slide 1 of the PowerPoint titled, "Changes from Previous CS," and explained that last year, a statute referred to in this bill was repealed, and consequently, the sponsor asked the drafter to remove that repealed statutory reference. Ms. Holland advised that the drafter had advised that that action did not effect a substantial change upon the bill.

[1:17:17 PM](#)

CHAIR CLAMAN requested Ms. Holland to briefly describe this legislation for the visiting exchange students in the audience.

[1:17:37 PM](#)

MS. HOLLAND referred to slide 3, "What HB 13 Does?" and paraphrased as follows:

- Prevents municipal and state governments from using or authorizing use of their assets to implement or help implement a presidential order, a federal regulation or law that "creates a registry based on race, religion, ethnicity, or national origin."
- Proactively prevents federal overreach and protects the privacy of Alaskans
- Potentially saves the state money.

MS. HOLLAND described that this bill proactively prevents federal overreach and protects the privacy of Alaskans and, it could potentially save the state money. She described it as a proactive solution to a problem that does not currently exist because such registries have existed in the past. It is the sponsor's belief that these rights to privacy and equal protections under the law should be protected, she advised.

[1:18:57 PM](#)

MS. HOLLAND turned to slide 4, titled, "What HB 13 Doesn't Do:" and paraphrased as follows:

- Affect state registries
- Affect institutions which collect aggregated data in regard to race, religion, ethnicity, or national origin
- "Based on" are key interpretive words
- Impair the Department of State's capability to track terrorist organizations

MS. HOLLAND explained that the sponsor's office determined through Legislative Legal and Research Services that HB 13 does

not affect state registries. She pointed out that this bill has very few words, but the words included are important. For example, "based on" and "registry" are two key terms in this legislation, such that the United States Census compiles data based on ethnicity of United States citizens every year. Although, she pointed out, it is not a "registry" because it takes that data and compiles it into an aggregated form; therefore, it is not based on ethnicity due to the fact that it compiles this data for the purposes of counting the population, age, children, and so forth. She explained that HB 13 does not affect those institutions which collect aggregated data in this sense, and it does not impair the Department of State and Homeland Security's capability to track terrorist organizations, as it currently tracks the comings and going of people from every country, every national origin. Therefore, creating an additional registry was determined to be redundant by the United States Department of State and Homeland Security.

[1:20:35 PM](#)

MS. HOLLAND turned to slide 5, titled, "Why Introduce This Bill?" and paraphrased as follows:

- Federal administration has not retracted statements communicating intent to revive such a registry
- Our state has proactively protected individual rights before in the same statutory section, specifically with regard to the right to bear firearms
- Makes a statement that Alaska will not participate in any forms of federal overreach, especially as it concerns our liberties

MS. HOLLAND advised that this bill was introduced after hearing statements from the federal administration implying there was significant interest in reviving such a registry based on religion or national origin. Therefore, the sponsor believes it is a pressing issue for the state legislature to respond to those claims. She referred to [CSHB 13, Version R, AS 44.99.040(a)] Section 1, and related that the bill was also introduced because this state enacted a proactive measure, such as this, previously with regard to the individual right to bear firearms, and it also makes a statement that Alaska will not participate in any forms of federal overreach, especially when it concerns Alaskans' liberties.

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REPRESENTATIVE LEDOUX noted that Ms. Holland had testified that the bill could potentially save the state money. Except, she argued, if the federal government decided that Alaska was not cooperating, it could use that as an incentive or a hammer wherein Alaska loses money.

MS. HOLLAND clarified that Representative LeDoux was correct in the event this bill was considered to be a sanctuary policy, and that, according to a recent executive order, Alaska would no longer be qualified to receive certain grants from the Department of State and Homeland Security. However, she advised, a fairly similar bill recently passed in the State of Vermont which was ruled not to be a sanctuary policy. Therefore, whether this bill would save the state funds hinges upon whether it is considered a sanctuary policy, she offered. She advised that she had spoken with the National Conference of State Legislatures, and she reviewed similar legislation to determine a yes or no answer as to whether this bill is a sanctuary policy and, unfortunately, she was unable to receive an answer. She said that the clearest answer she could offer was that it could be argued in court that this is a sanctuary policy, but she had seen similar legislation that was determined to not be a sanctuary policy. Which meant, she related, that Alaska would not be violating that specific statute and the state would not lose out on those federal funds.

[1:23:19 PM](#)

REPRESENTATIVE LEDOUX referred to the fiscal notes noting that when "we're" saying a bill could potentially save money, or possibly lose money, that it is more appropriate to give the bill an indeterminate fiscal note. She asked whether anyone from the administration was available to respond to her comment.

[1:23:56 PM](#)

MS. HOLLAND advised that no one from the administration was currently online to answer her question and commented that the savings from this bill would come from the state not participating in a federally mandated registry.

[1:24:21 PM](#)

REPRESENTATIVE LEDOUX asked whether this legislation would preclude the state from helping the federal government if it

simply listed everyone who came in with non-citizenship status. It would not be based on race, religion, or national origin, but rather based upon citizenship and the federal government's desire to keep track of people coming and going from this country.

MS. HOLLAND noted that Representative LeDoux made a fine observation in that immigration status is not included under this list of registries of which the state will not participate. National origin, she offered, although it is closely tied to immigration status, is actually not the same thing. The federal government currently tracks everyone who comes in and out of this country, it has been improving that process for years, and this bill would not affect the federal government's tracking process.

[1:25:47 PM](#)

REPRESENTATIVE STUTES asked whether Ms. Holland was familiar with any legislation such as this that had been determined a sanctuary policy in any other states.

MS. HOLLAND responded that she has a document from the National Conference of State Legislatures (NCSL) listing sanctuary legislation in other states, and she paraphrased as follows:

At least 36 states and the District of Columbia considered legislation in 2017 regarding sanctuary jurisdictions, or non-compliance with immigration detainers. Of these states, 33 states would prohibit sanctuary policies, 15 states and the District of Columbia would support sanctuary policies, and 12 states have legislation on both sides of the issue.

CHAIR CLAMAN offered that this legislature does not want to predict the desires of the other states.

[1:27:40 PM](#)

REPRESENTATIVE STUTES asked whether Ms. Holland was familiar with legislation in the other states that had been determined to have sanctuary legislation, and whether their legislation was reflective of this proposed legislation.

MS. HOLLAND acknowledged that she had looked at that legislation, but she did not have the list with her currently. She reiterated that the State of Vermont's bill read that the

state government would not give personal individual data to the federal government in the event the federal government requested that data. The states are all different and she would have to get back to the committee, she said.

1:29:10 PM

REPRESENTATIVE STUTES surmised that Ms. Holland was not clear as to whether some of the other legislation that was determined to be sanctuary-type legislation is reflective of HB 13.

MS. HOLLAND agreed, and she said that she spoke directly with the National Conference of State Legislatures in an attempt to receive a yes or no answer to that question. She received "a maybe," and if anything, it was "a very soft no," and was told that it would not be able to offer the answer until it had been determined by the courts, which could not be predicted.

1:30:03 PM

REPRESENTATIVE EASTMAN asked about the specific assets referenced in this legislation, and that the title specifically calls out the expenditure of state or municipal assets. He offered a scenario of a private party providing or donating assets, and quiered as to whether this legislation would preclude those assets being used for any of these reasons. He related that in a previous bill a private party donated money to be used for creating signs, or perhaps in this case, creating registries.

MS. HOLLAND clarified that this legislation quite specifically addresses state and municipal assets, and she assumed that the lack of addressing private institutions meant it would not affect those.

1:31:11 PM

REPRESENTATIVE LEDOUX referenced the State of Vermont's legislation wherein it was determined that a bill similar to this legislation would not be a "sanctuary city bill," and requested a copy of the legislation, statute, decision, and whether that decision had been appealed.

MS. HOLLAND advised that she would be happy to provide the committee with an exact copy of the legislation, she did not believe the State of Vermont's decision had been appealed, and

she would provide a copy of the court opinion. She offered Representative LeDoux a summary ...

CHAIR CLAMAN interjected that the committee would like to see the bill itself because this committee "likes the weeds" and a summary may not provide the same analysis as putting the statute side-by-side.

REPRESENTATIVE LEDOUX asked to review the summary while Ms. Holland was in the process of copying the requested materials.

[1:33:01 PM](#)

The committee took a brief at-ease.

[1:34:56 PM](#)

CHAIR CLAMAN advised that the summary had been distributed to the committee and asked whether Representative LeDoux had follow-up questions after reviewing the summary.

REPRESENTATIVE LEDOUX related that she had no follow-up questions because she needed to see the actual legislation.

[1:35:10 PM](#)

REPRESENTATIVE EASTMAN noted that there is another bill in this legislature that would require outreach to members of "immigrant communities," and those from outside of the United States to educate them on the topic of "female genital mutilation." He asked whether this bill makes it harder for that outreach to take place.

MS. HOLLAND answered that this bill prohibits the use of the state's assets to assist in creating a federal registry. While the federal government could still create [a federal registry], this legislation prohibits the state's participation. Secondly, she commented, she could not see how this bill would affect outreach to any particular community because she did not believe creating an individual registry "based on those things" is necessary. She opined that there are plenty of examples of "people doing such things without such a registry" that this bill addresses.

[1:36:54 PM](#)

REPRESENTATIVE EASTMAN surmised that this legislation read that the state could continue to maintain its registries.

MS. HOLLAND responded that this bill specifically addresses federal mandates and not the state's registries.

REPRESENTATIVE EASTMAN offered a scenario of the state reaching out to communities who may be affected by some of "these criteria." The state would continue to do the things it wanted to do but would that be the case if something the state wanted to do was also something the federal government wanted the state to do. He asked Ms. Holland whether she could see the dilemma, and that his reading of the language would be that the state is prohibited from "doing that, not because we don't want to, but because the federal government has also joined us in wanting us to do it."

MS. HOLLAND deferred to Hilary Martin.

[1:38:38 PM](#)

HILARY MARTIN, Attorney, Legislative Legal Counsel, Legislative Legal Services, Legislative Affairs Agency, advised that she had missed part of the question.

REPRESENTATIVE EASTMAN advised that one of the things "we're saying in this bill is that we're not necessarily taking away from the state's ability" to have its own registries, and in the event the state wanted to identify individuals and reach out to them, or educate them, based on some of these criteria, that that state may be prohibited from doing that if it turned out that the federal government also wanted Alaska to do the same, and expressed that through an order, regulation, and so forth.

MS. MARTIN pointed out that the bill discusses aiding the federal government, whether it is an order of the president or a federal regulation or law, in creating this type of registry. In the event the state is creating a registry based on its own needs or is carrying out the mandates of a state law, and the fact that it might incidentally also be something the federal government collects, it would probably be okay because the state was acting out of state law. The question is whether the state was using state resources to implement a federal mandate for something required by the state, and that, she advised, is a different situation.

[1:40:39 PM](#)

REPRESENTATIVE LEDOUX offered a scenario where the state, for one reason or another, decided to create a registry, and whether this bill would prohibit turning over that registry to the federal government. She opined that the bill would not impair the state's ability to create a registry, but it would prohibit turning that registry over to the federal government.

MS. MARTIN responded that it could prohibit turning the registry over to the federal government.

REPRESENTATIVE LEDOUX surmised that it could prohibit those actions, but that it would not necessarily prohibit turning over the state's registry.

MS. MARTIN opined that it would be a fact specific determination as to what exactly is going on ... for instance, if Representative LeDoux was talking about the federal government deciding it would create a registry based on the religion of every citizen, and it told Alaska to give the federal government this information, she believed "this bill would prohibit that."

[1:42:16 PM](#)

REPRESENTATIVE LEDOUX offered a scenario wherein a group of people from a certain area experienced health problems, and [the state] wanted to create a registry and reach out to "some group" to educate the people on their health problems, and the federal government requested that registry. She asked whether this bill would prohibit the state from giving that registry to the federal government.

MS. MARTIN opined that it would depend upon the reason the federal government requested the registry. In the event the federal government was using it to create a registry, then the state would be prohibited from turning over the registry. In the event the federal government wanted that registry for some other purpose, then it may not be prohibited, she explained.

[1:43:24 PM](#)

REPRESENTATIVE KOPP clarified that this bill speaks to registries based on race, religion, ethnicity, or nation origin. In the event there was an outbreak of polio in a specific location and [the state] tried to perform a quarantine to make sure everyone in there at the time was vaccinated, he could see that the above actions deemed justified under healthcare.

Except, this legislation relates to much larger classes of race, religion, ethnicity, or nation origin. He offered that in reading the bill on its plain view, it appears there is nothing that inhibits the state from doing what it wants to do, it just may or may not be able to receive aid or help from the federal government in "doing it" if the federal government is also interested in the same thing in one of these protected categories.

MS. MARTIN advised that she believed Representative Kopp was correct. The question is whether the federal government is using the information to create a registry based on race, religion, ethnicity, or national origin, which would determine whether the state could use its assets to assist the federal government.

[1:45:04 PM](#)

REPRESENTATIVE EASTMAN said he could think of two types of scenarios where the federal government might be involved in health issues relating to items on this list and noted that a lot of money is spent on health research to specific categories of people based on "some of these list items, in fact." Health issues are often traced to genetic issues dealing with race and ethnicity, and that different communities and ethnicities practice different habits that impacts health, which may impact public health. He referred to the manner in which the bill is written, commenting that "we're spending a lot of weight" on what "based on" means. He asked exactly what "based on" means, how it will be interpreted by the courts, and whether there are other examples as to how that has been used.

MS. MARTIN answered that she does not have "any great specific answer" about the court interpreting something like "based on." She explained that a state agency would be asked to provide information to the federal government, and [the agency] would make a determination as to whether that information would provide information to create a registry based on race, religion, ethnicity, and national origin, and a court would then decide whether the agency's interpretation was reasonable. Certainly, she offered, in the event the committee wanted to clarify the bill, it is within the committee's power to make the language clearer.

[1:47:08 PM](#)

REPRESENTATIVE KOPP referred to [CSHB 13, Section 1. AS 44.99.040(a)(3), page 1, line 14, and page 2, line 1] and asked whether the language would be clarified if it reads as follows:

(3) create a registry based solely on race, religion, ethnicity, or national origin.

REPRESENTATIVE KOPP asked whether "solely" would more narrowly define it from a legal definition.

MS. MARTIN responded that it would certainly narrow the reading if the committee so chose, but it is only registries that are solely based on these things and not something that also happens to include this information.

[1:48:20 PM](#)

REPRESENTATIVE EASTMAN noted that if the legislature prohibited the creation of a registry based on race, religion, ethnicity, or national origin, with the operative language being "or," an easy way to get around this limitation would simply be a registry that included other information along side each of the above. Even if, he offered, it was a registry based on race, religion, ethnicity, and national origin, it would obviate the restriction on any one of these items individually. He noted that by simply adding a bit more information into this registry, the committee could get around the intended limitation.

MS. MARTIN responded that if this is a matter of drafting, while "and" would mean both or all of them, "or" does not just mean one, such that "or" could often be "race or religion or both." She reiterated that it is within the committee's power to change the language.

[HB 13 was held over.]

[1:51:28 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 1:51 p.m.