

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

February 18, 2017

11:02 a.m.

MEMBERS PRESENT

Representative Jonathan Kreiss-Tomkins, Chair
Representative Chris Tuck
Representative Chris Birch
Representative DeLena Johnson
Representative Gary Knopp
Representative Andy Josephson (alternate)

MEMBERS ABSENT

Representative Gabrielle LeDoux, Vice Chair
Representative Adam Wool
Representative Chuck Kopp (alternate)

OTHER LEGISLATORS PRESENT

Representative Lance Pruitt
Representative Charisse Millett
Representative Scott Kawasaki

COMMITTEE CALENDAR

HOUSE BILL NO. 20

"An Act relating to marriage solemnization; and authorizing elected public officials in the state to solemnize marriages."

- MOVED CSHB 20(STA) OUT OF COMMITTEE

HOUSE CONCURRENT RESOLUTION NO. 5

Proposing an amendment to the Uniform Rules of the Alaska State Legislature relating to the membership of the Committee on Committees.

- MOVED CSHCR 5(STA) OUT OF COMMITTEE

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 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 20

SHORT TITLE: SOLEMNIZE MARRIAGE: ELECTED OFFICIALS

SPONSOR(S): REPRESENTATIVE(S) CLAMAN

01/18/17	(H)	PREFILE RELEASED 1/9/17
01/18/17	(H)	READ THE FIRST TIME - REFERRALS
01/18/17	(H)	STA, JUD
02/16/17	(H)	STA AT 3:00 PM GRUENBERG 120
02/16/17	(H)	Heard & Held
02/16/17	(H)	MINUTE(STA)
02/18/17	(H)	STA AT 11:00 AM GRUENBERG 120

BILL: HCR 5

SHORT TITLE: UNIFORM RULES: COMMITTEE ON COMMITTEES

SPONSOR(S): REPRESENTATIVE(S) EASTMAN

02/06/17	(H)	READ THE FIRST TIME - REFERRALS
02/06/17	(H)	STA, JUD
02/16/17	(H)	STA AT 3:00 PM GRUENBERG 120
02/16/17	(H)	Heard & Held
02/16/17	(H)	MINUTE(STA)
02/18/17	(H)	STA AT 11:00 AM GRUENBERG 120

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
01/27/17 (H) -- Meeting Rescheduled from 1/25/17 --
01/30/17 (H) JUD AT 1:30 PM GRUENBERG 120
01/30/17 (H) Heard & Held
01/30/17 (H) MINUTE(JUD)
02/03/17 (H) JUD AT 1:30 PM GRUENBERG 120
02/03/17 (H) Moved CSSSHB 44(JUD) Out of Committee
02/03/17 (H) MINUTE(JUD)
02/08/17 (H) JUD RPT CS(JUD) 1DP 3DNP 3AM
02/08/17 (H) DP: LEDOUX
02/08/17 (H) DNP: KOPP, EASTMAN, REINBOLD
02/08/17 (H) AM: KREISS-TOMKINS, FANSLER, CLAMAN
02/18/17 (H) STA AT 11:00 AM 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

WITNESS REGISTER

SARA PERMAN, Staff
Representative Matt Claman
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented an amendment to HB 20 on behalf
of Representative Claman, prime sponsor.

DOUG GARDNER, Director
Legislative Legal Services
Legislative Affairs Agency
Juneau, Alaska

POSITION STATEMENT: Answered questions on Conceptual Amendment
1 to HCR 5.

REPRESENTATIVE JASON GRENN
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented SSHB 44, as prime sponsor.

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

POSITION STATEMENT: Reviewed the sectional analysis for HB 44 and testified during the hearing on SSHB 44 on behalf of Representative Grenn, prime sponsor.

PAUL KELLY, Staff
Representative Andy Josephson
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Answered questions during the hearing on HB 13, on behalf of Representative Josephson, prime sponsor.

VALERIE BROOKS
Ketchikan, Alaska

POSITION STATEMENT: Testified in support of HB 13.

ACTION NARRATIVE

[11:02:22 AM](#)

CHAIR JONATHAN KREISS-TOMKINS called the House State Affairs Standing Committee meeting to order at 11:02 a.m. Representatives Tuck, Birch, Johnson, Knopp, Josephson (alternate), and Kreiss-Tomkins were present at the call to order.

HB 20-SOLEMNIZE MARRIAGE: ELECTED OFFICIALS

[11:03:47 AM](#)

CHAIR KREISS-TOMKINS announced that the first order of business would be HOUSE BILL NO. 20, "An Act relating to marriage solemnization; and authorizing elected public officials in the state to solemnize marriages."

[11:04:31 AM](#)

CHAIR KREISS-TOMKINS opened public testimony on HB 20. After ascertaining that there was no one who wished to testify, he closed public testimony.

[11:05:24 AM](#)

SARA PERMAN, Staff, Representative Matt Claman, Alaska State Legislature, on behalf of Representative Claman, prime sponsor of HB 20, noted an amendment had been prepared to address a concern, expressed during the House State Affairs Standing Committee's previous hearing of HB 20 on 2/16/17, that the proposed legislation would require elected officials to solemnize marriages. She asserted that the amendment [subsequently moved as Amendment 1], would alleviate that concern.

[11:06:19 AM](#)

REPRESENTATIVE TUCK moved to report HB 20, as amended, out of committee with individual recommendations and the accompanying fiscal notes. [The motion was subsequently treated as withdrawn to address an amendment.]

[11:06:50 AM](#)

The committee took a brief at-ease at 11:07 a.m.

[11:07:03 AM](#)

REPRESENTATIVE TUCK moved to adopt Amendment 1, [labeled 30-LS0242\A.1, Bruce, 2/17/17], which read:

Page 2, line 1, following "state":

Insert "; nothing in this paragraph requires or obligates an individual holding an elective public office in the state to solemnize a marriage"

There being no objection, it was so ordered.

[11:07:31 AM](#)

REPRESENTATIVE BIRCH stated that he would be voting against HB 20, [as amended]. He offered his belief that HB 20 was unnecessary legislation, because anyone in the state can buy a license for \$25.

[11:08:07 AM](#)

REPRESENTATIVE TUCK moved to report HB 20, as amended, out of committee with individual recommendations and the accompanying fiscal notes.

REPRESENTATIVE BIRCH objected.

A roll call vote was taken. Representatives Knopp, Tuck, Josephson, and Kreiss-Tomkins voted in favor of reporting HB 20, as amended, out of committee. Representatives Birch and Johnson voted against it. Therefore, CSHB 20(STA) was reported from the the House State Affairs Standing Committee by a vote of 4-2.

HCR 5-UNIFORM RULES: COMMITTEE ON COMMITTEES

[11:09:52 AM](#)

CHAIR KREISS-TOMKINS announced that the next order of business would be HOUSE CONCURRENT RESOLUTION NO. 5, Proposing an amendment to the Uniform Rules of the Alaska State Legislature relating to the membership of the Committee on Committees.

CHAIR KREISS-TOMKINS opened public testimony on HCR 5. After ascertaining that there was no one who wished to testify, he closed public testimony.

[11:11:22 AM](#)

REPRESENTATIVE KNOPP moved to adopt Conceptual Amendment 1, labeled 30-LS0359\A.1, which read as follows [with hand written changes]:

Page 1, line 12, following "committee":

Insert "**and the Committee on Committees**"

CHAIR KREISS-TOMKINS objected for the purpose of discussion.

REPRESENTATIVE KNOPP relayed that Conceptual Amendment 1 inserts "the Committee on Committees" to make that committee subject to the proportional rule, like the standing committees.

CHAIR KREISS-TOMKINS asked for testimony from Legislative Legal and Research Services regarding the merit of Conceptual Amendment 1.

[11:13:11 AM](#)

DOUG GARDNER, Director, Legislative Legal Services, Legislative Affairs Agency, conveyed his understanding that of the intent of HCR 5 is to make Uniform Rule 1(e) conform to recent practices by the House. He said that although Uniform Rule 1 provides for the Speaker of the House to select five members to serve on the

Committee on Committees, membership on the committee has generally been five majority members and two minority members. He said that if the intent is to change the committee selection practice so that seven members are put on the committee, then the amendment he prepared does that with certainty.

[11:15:20 AM](#)

REPRESENTATIVE KNOPP explained that he modified the amendment drafted by Mr. Gardner by deleting lines 2 and 3, thus leaving the phrase "at least five members" in Section 1 of HCR 5, subsection (e), beginning on line 6. He added that the only change proposed by Conceptual Amendment 1 is the insertion of "and the Committee on Committees" after the word "committee" on line 12 of Section 1, subsection (e), of HCR 5.

MR. GARDNER stated that if the proposal before the committee leaves the membership of the Committee on Committees at five and makes it subject to proportional representation, then the number of minority members on the Committee on Committees simply depends on the size of the minority.

MR. GARDNER offered that under HCR 5, the proportional representation of the minority could be determined with certainty; however, there would be no certainty provided as to the number of members on the Committee on Committees. He offered that the Speaker of the House could choose to populate the committee with five, seven, or even nine members. He added that if flexibility is what the House State Affairs Standing Committee wants, then HCR 5 and Conceptual Amendment 1 together would provide that.

[11:17:27 AM](#)

REPRESENTATIVE TUCK asked for confirmation that if there was less than 25 percent minority status [in the House], then the majority would not have to recognize anyone from the minority to be on the Committee on Committees.

MR. GARDNER replied that is correct. He added that once the size of the minority in the House drops below ten in any given year, it would not be a legally cognizable minority; therefore, it would not have membership on the Committee on Committees.

REPRESENTATIVE TUCK asserted that the Committee on Committees is such an important committee, because it establishes all other committees and the membership to those other committees. He

said that traditionally there has been a minimum [minority representation] of two. He added that he likes Conceptual Amendment 1, because it follows a structure for five or more and stays consistent with [standing] committee composition. He offered that if at some point there is a very small minority in the House, such as eight or less, he would like a "minimum" provision so that the Committee on Committees does not just consist of majority members with the minority having no voice. He suggested that in this situation, a minimum provision would be the only opportunity for the minority to have a voice. He stated support of Conceptual Amendment 1, but said he would like to see a minimum of two [minority members] on the Committee on Committees.

CHAIR KREISS-TOMKINS removed his objection to the motion to adopt Conceptual Amendment 1. There being no further objection, it was so ordered.

REPRESENTATIVE TUCK asked for an at ease to draft an additional amendment, if the sponsor of HCR 5 is agreeable to having minimum minority representation [on the Committee on Committees] regardless of its membership in the House.

REPRESENTATIVE EASTMAN opined that Representative Tuck raised a valid point. He said that in his research on minority representation in the House and the Senate going back to 1975, he found that there were times in which the minority caucus constituted less than 25 percent of the Senate membership; therefore, the minority caucus was not an officially recognized caucus. He said that in a number of those situations, the presiding officer determined that minority representation would be included on the Committee on Committees, even though the Uniform Rules did not require it. He stated his concern that requiring the Committee on Committees to follow the same prescription as the standing committees would remove that flexibility for the presiding officer. He added that if there was no minority caucus, the presiding officer would not have the opportunity to recognize minority members but be required to only recognize members of the majority caucus. He expressed his concern that the minority inadvertently might be excluded from the Committee on Committees. He stated that he does not have an objection to the intent of the amendment suggested by Representative Tuck.

[11:21:51 AM](#)

The committee took a brief at ease at 11:21 p.m.

[11:22:34 AM](#)

REPRESENTATIVE TUCK said that to insert a minority member requirement for the Committee on Committees into Rule 1, subsection (e), of the Uniform Rules, the minority would have to be recognized, and a minority would not be recognized if it constitutes less than 25 percent of the House membership. He expressed that he didn't know how to craft language to allow the appointment of a minority member. He suggested that perhaps language stating the appointment of "a member other than the majority" would achieve his desired results. He added that he would coordinate with the bill sponsor on this issue in the next committee to which HCR 5 is assigned.

[11:23:28 AM](#)

REPRESENTATIVE TUCK moved to report HCR 5, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHCR 5(STA) was reported from the House State Affairs Standing Committee.

HB 44-LEGISLATIVE ETHICS: VOTING & CONFLICTS

[11:23:58 AM](#)

CHAIR KREISS-TOMKINS announced that the next order of business would be 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." [Before the committee was CSSHB 44(JUD).]

[11:24:48 AM](#)

REPRESENTATIVE JASON GRENN, Alaska State Legislature, presented SSHB 44, as prime sponsor. He stated that the intent of SSHB 44 is to increase transparency within the legislature and allow the public to see with utmost certainty that conflicts of interest are taken seriously in Alaska. He asserted that the intent of SSHB 44 is not to prevent a legislator from voting on an issue, as legislators are elected to represent their constituents. He attested that SSHB 44 would neither directly stop a legislator from voting nor outright disqualify him/her from voting. He

said that SSHB 44 lays out a standard procedure for a legislator to decide for himself/herself if he/she has a substantial conflict of interest. He opined that there is always room for improvement, and legislators can exemplify a higher standard.

REPRESENTATIVE GRENN paraphrased from the sponsor statement, which read as follows [original punctuation provided]:

SSHB 44 contains provisions to ensure conflicts are "substantial" before a legislator would be required to abstain from voting. Any benefit a legislator or a member of the legislator's immediate family might receive from supporting a particular piece of legislation would have to be greater than the benefit a large group of Alaskans would receive in order to require abstention. The bill and resolution recognize the responsibility of legislators to vote, except in clear cases where the outcome of the vote would result in substantial personal financial gain. This includes cases where an immediate family member or a legislator's employer would receive a large and direct financial benefit.

[11:26:28 AM](#)

RYAN JOHNSTON, Staff, Representative Jason Grenn, Alaska State Legislature, on behalf of Representative Grenn, prime sponsor of SSHB 44, paraphrased from the sectional analysis, which read 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, an 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.

MR. JOHNSTON pointed out the change made by the House Judiciary Standing Committee, shown on page 2, line [20, of CSSSHB 40(JUD)]: a legislator is required simply to declare a conflict in committee before voting on a bill, rather than not being able to vote in committee.

[11:29:03 AM](#)

MR. JOHNSTON cited an example of what would be considered a substantial conflict of interest for a legislator. He described a situation in which a legislator, voting on major roads in the Interior, is himself part of the substantial class of persons who lives in the Interior. He said that if that legislator votes on proposed legislation that affects a road that accesses only a parcel of land of which he/she is the sole owner, then the legislator has a substantial interest in the proposed legislation. He attested that the legislator's interest is different from or greater than that of anyone else living in the Interior, who also could benefit from a road to his/her house. He said that in this example, under the amendment to AS 24.60.030, subsection (g), proposed under SSBH 44, the legislator would be required to request an abstention. He noted that the example he cited is on page 6 of advisory opinion 2004-

02 in the research brief from Legislative Research Services, titled LRS Report 15.422, included in the committee packet.

[11:30:43 AM](#)

REPRESENTATIVE BIRCH asked for the sponsor's perspective on a voter's role in evaluating the qualifications, merits, and "business" of the respective candidates and House members. He noted that candidates for House run for office every two years and candidates for Senate every four years. He expressed his concern that SSHB 44 would be "setting aside the voters." He asserted that through the election process, every candidate's opponents aptly and capably elucidate the affiliations and financial interests of that candidate.

[11:32:04 AM](#)

REPRESENTATIVE GRENN asked if Representative Birch was asking how voters weigh in during a campaign process.

REPRESENTATIVE BIRCH responded yes. He explained that voters understand a candidate's employment, such as a union business agent, a doctor, an engineer, a retail person, or a worker for a large multinational corporation. He pointed out that all candidates complete a public official financial disclosure (POFD) statement exposing their financial interests to the public. He asserted that there is an election process every two years, and if the public is validly and reasonably concerned, the issues are revealed through that process and by virtue of having an opponent. He expressed his concern that SSHB 44 disenfranchises the 17,000 people that each House member represents in his/her district.

REPRESENTATIVE GRENN maintained that SSHB 44 focuses on unanticipated legislation. He referred to the example given by Mr. Johnston about a candidate owning property. He said that owning that property would not have been made known to the voters, nor would it be something that a candidate's opponent would have talked about. He offered that no one would "bring that to light" during a campaign. He gave an example of the state constructing a road through that property making the candidate a millionaire. He said, "Is that something that might be reflected in a future campaign? Perhaps. Is it something you should declare as a conflict of interest? Perhaps."

[11:33:58 AM](#)

REPRESENTATIVE GRENN stated that SSHB 44 would give guidelines on what a substantial financial interest means regarding voting on proposed legislation and would allow a different process for those occasions. He opined SSHB 44 would create more transparency and a way for voters to be made aware of financial conflicts. He said he is not suggesting that there was anything hidden from the public before this legislation was introduced, but that the public be informed of any potential conflicts of interest as the legislature processes new legislation.

REPRESENTATIVE BIRCH opined that if a legislator were on the receiving end of a \$1 million benefit because of legislation, then he is cautiously optimistic that the media and the public would scrutinize it. He said one of the most substantial issues for the state currently is the \$3 billion budget deficit. He offered that each legislator has a substantial interest in resolving that problem, and it will affect each person differently. He stated that a legislator's duty and obligation is to his/her individual voters and expressed his concern that a law will be passed that is "a little muddled around the edges" with varying ideas for what is "substantial." He opined that a legislator's constituency would be abandoned through challenges to a legislator's eligibility to vote on issues because of real or perceived conflicts. He offered that members do have an opportunity to announce a conflict on the floor [of the House or Senate]. He said he had a concern about disenfranchising the voters that legislators are elected to represent.

REPRESENTATIVE GRENN maintained that SSHB 44 would allow the opportunity for a legislator who declares a conflict to speak to that conflict before the legislative body, as opposed to "what happens now with just a lone objection that is not on the record." He stated that SSHB 44 would allow the legislative body to "hear out" the conflict and vote on whether the legislator who has declared a conflict should abstain from voting. He said that in some states, a legislator with a conflict is not allowed to vote. He asserted that SSHB 44 allows for a public process and for the legislative body to vote on the potential conflicts.

[11:36:50 AM](#)

REPRESENTATIVE BIRCH asked if there had been a situation that prompted introduction of SSHB 44.

REPRESENTATIVE GRENN responded not at all. He stated that before he ran for office he was asked to resign from his job

because of a potential conflict of interest. He said that he did so because he didn't want his campaign to have any sort of conflict of interest attached to it. He mentioned that 49 other states handle conflicts of interest differently and allow their legislators to be seen as transparently as possible. He asserted that the legislature can always build more trust with the voters. He said he believes SSHB 44 would help to do that.

REPRESENTATIVE BIRCH commented that it was unfortunate that Representative Grenn resigned from his job, since Alaska has a citizen legislature. He added that hopefully every legislator has "another life" outside of the purported three months spent in legislative session.

[11:37:59 AM](#)

REPRESENTATIVE KNOPP expressed his concern that the legislators would "muddy everything up in chambers and everybody is going to stand up and declare a conflict erring on the side of caution." He offered the following hypothetical scenario: a proposed legislation to fund a number of Interior roads is before the legislature in the capital budget, and the voting member of the legislature is a construction contractor. He said that although the project is going out for bid in a public process, and the floor sessions are public, the contractor, who may or may not bid on the project, has a conflict of interest. He asked, "Is that the road we're going to go down ... every single time we have something coming up here."

MR. JOHNSTON responded that every legislator is required to vote on the final budget under AS 37.07.020(a). He said that in Representative Knopp's hypothetical situation, the legislator could declare his/her conflict of interest again, but the chair would rule him/her out of order, and the conflict of interest would not go to a legislative body vote. He added that this situation was unlike the earlier example, which did not involve a budgetary vote.

[11:39:44 AM](#)

REPRESENTATIVE KNOPP asked what in the current process avoids declaring conflicts of interest, and what triggered the introduction of SSHB 44.

REPRESENTATIVE GRENN said he does not have any personal anecdote to relay, and that the proposed legislation was drafted without input from anyone within or without the legislature. He

asserted that his staff worked on SSHB 44 independently. He added that they solely focused on creating transparency so that the public can trust what the legislators are doing, when there is a perceived conflict of interest. He added that there is nothing that happened recently in the legislature prompting him to introduce the proposed legislation. He said, however, as he went door to door, his constituents mentioned that they felt legislators were doing their voters a disservice by not being more open and transparent. He said some referred to the lack of transparency as "tarmac disease" - when legislators hit the tarmac, the constituents "didn't know everything that was happening." He contended that people were looking for ways to know exactly "what was happening in Juneau." He said he has responded that there are cameras everywhere, social media, and documentation. He attested that the legislature does a very good job of trying to share everything done in the legislature. He maintained that anything that can be done to put more on the public record should be done. He opined that SSHB 44 does that.

[11:42:21 AM](#)

REPRESENTATIVE JOSEPHSON opined that currently "this building is a remarkably partisan building" and offered his belief that if the public were aware of how partisan it is, they would be shocked. He mentioned that in the State of Hawaii, there are 25 senators. He said that currently all 25 senators are members of the Democratic Party. He went on to say that two years ago, 24 of the senators were Democrats and one was a Republican. He offered the following hypothetical scenario: The one Republican senator in Hawaii is a pineapple grower with a pineapple farm on the north shore of the island of Oahu. A Democrat has a "pineapple bill" and wants a unanimous vote. He is concerned that the Republican has a conflict of interest and would vote against his pineapple bill. Representative Josephson suggested that when the conflict of interest was declared by the Republican, the 24 Democrats would gang up against the Republican and find that the declared conflict was substantial; therefore, the Republican must be recused from voting. He expressed his concern that a member of the minority would not get the same objective hearing on a conflict of interest debate [as a member of the majority]. He asked, "How do you resolve that?"

MR. JOHNSTON replied that there are many steps leading up to a legislator needing to recuse himself/herself during a floor session. He added that SSHB 44 leaves it up to the legislator to "stand on the floor" and make his/her own declaration of a

conflict and request to abstain. No one can stand on the floor [of the House or Senate] and "call someone out." He said that in that scenario, the single minority member could request an advisory opinion from the Select Committee on Legislative Ethics prior to his/her declaration in the floor session. He offered that if the committee issued an advisory opinion that the legislator does not have a conflict, then the legislator can avoid declaring a conflict during the floor session and would have that opinion as backup if the majority members filed an ethics complaint. He concluded that there would be checks and balances and no super-majority control.

[11:46:12 AM](#)

REPRESENTATIVE JOHNSON posed a scenario as follows: There is a district with all pineapple farmers. The people of the district have elected a pineapple farmer because that person is representative of the district. She asked if every time a pineapple bill comes before the legislature, the legislator would have to declare a conflict and would not be able to vote on the bill. She said that the people of the district, in essence, have lost their representation on the issue that most concerns them.

MR. JOHNSTON said that under SSHB 44, simply being a pineapple farmer facing a pineapple bill does not constitute a conflict of interest. He asserted that it is "what's in the bill" that counts. He offered that if there is a tax on all pineapple farmers that is the same across the board, then the legislator would have the right to vote on that bill, because the bill is affecting the entire class of persons, industry, or region the same. He said if that pineapple bill only gives a tax incentive for pineapple farms over 1,000 acres, and that legislator owns the only pineapple farm over 1,000 acres, then that would constitute a substantial conflict, which should be declared. He said that simply being a part of an industry does not constitute an outright conflict of interest. There must be something in the proposed legislation that sets that legislator apart from the rest of the class to constitute a conflict of interest, such as only he/she would benefit or be harmed by the legislation.

REPRESENTATIVE JOHNSON expressed two concerns: in an attempt to err on the side of caution, most legislators will over-declare; and in an effort to avoid voting on controversial legislation, legislators will want to be "conflicted out."

REPRESENTATIVE TUCK stated that declaring a conflict of interest allows a legislator to avoid voting on proposed legislation from which he/she may personally benefit. He offered that currently it only takes an objection from one member to override that declaration in the legislature. Consequently, the legislator is required to vote on the proposed legislation. He opined that it is appropriate that the full legislative body decide if a legislator should vote, rather than just one person. He asserted that SSHB 44 offers protection for all members of the legislature, since there are times when a vote may hurt one's political career and times when a vote may hurt one's private career. He suggested the following scenario: A legislator is part owner of a nail salon. A proposed legislation benefits that nail salon, because it is the only salon that can handle the training [mentioned in the proposed legislation]. The legislator may be voting on behalf of the industry, but there is only one nail salon that can provide the services. Representative Tuck asked whether that legislator should be able to vote on that proposed legislation. He opined that SSHB 44 is an innocent bill, which would allow the full [legislative] body to decide if a legislator should vote on proposed legislation, rather than allow one person to decide.

CHAIR KREISS-TOMKINS announced that SSHB 44 would be held over.

HB 13-NO ST. FUNDS FOR FEDERAL REGISTRY

[11:51:37 AM](#)

CHAIR KREISS-TOMKINS 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."

[11:52:16 AM](#)

REPRESENTATIVE TUCK moved to adopt the proposed committee substitute (CS) for HB 13, Version 30-LS0147\J, as a work draft. There being no objection, Version J was before the committee.

[11:52:46 AM](#)

REPRESENTATIVE JOSEPHSON presented HB 13, as prime sponsor. He relayed that he visited the local synagogue eight days ago, partly because of his faith and partly because it was the yahrzeit for the late Representative Max Gruenberg, for whom the committee room is named. He explained that a yahrzeit is an

annual commemoration of a person's death. He said that at that service, a visiting rabbinical student read the well-known poem by Pastor Martin Niemöller, written in response to witnessing the holocaust. Representative Josephson read the poem, as follows:

First they came for the Socialists, and I did not speak out because I was not a Socialist. Then they came for the Trade Unionists, and I did not speak out because I was not a Trade Unionist. Then they came for the Jews, and I did not speak out because I was not a Jew. Then they came for me and there was no one left to speak for me.

REPRESENTATIVE JOSEPHSON went on to say that this poem has been updated by Rabbi Michael Adam, whose poem was also read during the yahrzeit. Representative Josephson read Mr. Adam's poem, as follows:

First they came for the African Americans, and I spoke up because I am my sister's and brother's keeper. And then they came for the women, and I spoke up because women hold a path to sky. And then they came for the Immigrants, and I spoke up because I remember the ideals of our democracy. And then they came for the Muslims, and I spoke up because they are my cousins, and we are one family. And then they came for the Native Americans and Mother Earth, and I spoke up because the blood-soaked land cries and the mountains weep. They keep coming, we keep rising up.

REPRESENTATIVE JOSEPHSON commented that this poem was a remarkably fitting commentary on why he introduced HB 13.

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REPRESENTATIVE JOSEPHSON referred to the 1944 U.S. Supreme Court decision, Toyosaburo Korematsu v. U.S., included in the committee packet. He mentioned that this decision was still the "law of the land," albeit very strongly disfavored. He read from the dissenting opinion by Justice William Francis "Frank" Murphy, which read as follows [original punctuation provided]:

I dissent, therefore, from this legalization of racism. Racial discrimination in any form and in any degree has no justifiable part whatever in our democratic way of life. It is unattractive in any

setting but it is utterly revolting among a free people who have embraced the principles set forth in the Constitution. All residents of this nation are kin in some way by blood or culture to a foreign land. Yet they are primarily and necessarily a part of the new and distinct civilization of the United States. They must accordingly be treated at all times as the heirs of the American experiment and as entitled to all the rights and freedoms guaranteed by the Constitution.

REPRESENTATIVE JOSEPHSON went on to say there were three comparable dissenting opinions in the Toyosaburo Korematsu v. U.S. decision, written by the three former justices, Murphy, Roberts, and Jackson. He stated that in this 1944 decision, the Supreme Court, by what Representative Josephson considered a remarkable vote of 6-3, gave permission for the U.S. government to randomly and arbitrarily gather up every Japanese American and put him/her into concentration camps. Representative Josephson confirmed that the camps were called concentration camps, and they were also known as internment camps.

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REPRESENTATIVE JOSEPHSON said that according to what U.S. President Donald Trump has indicated to the press, both before his election and after his election, and what Secretary of State Rex Tillerson said just last month, the federal government is considering a registry of certain people based on religion. He asserted that this statement is not a discussion of the immigration order which has been enjoined by at least one appellate court, although the two issues overlap. He asserted that this issue concerns a registry of people who are presently naturalized or born Americans. He went on to say that these people are not travelling Americans, nor are they travelling tourists; they are just Americans, and the administration has indicated a desire to register them. He said that his reason for reading aloud from the Toyosaburo Korematsu v. U.S. decision was to assert his belief that in critical moments, such as now, it is important to document for future and present generations that the Alaska State Legislature "saw this happening" and took a stand.

REPRESENTATIVE JOSEPHSON said that HB 13 is similar to the Senate Committee Substitute for Committee Substitute for House Joint Resolution 22(JUD) ("House Joint Resolution 22"), which passed both houses in the Twenty-Third Alaska State Legislature, 2003-2004. He asserted that House Joint Resolution 22 is a

statement by the legislature about the USA Patriot Act and was co-sponsored by members of the legislature who are widely regarded as among the most conservative in the last 20 years - Senator Dyson, Senator Seekins, Senator Taylor, Senator Therriault, Senator Ogan, Senator Cowdery and (then) Representative John Coghill.

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REPRESENTATIVE JOSEPHSON paraphrased House Joint Resolution 22 to say that the state and its instrumentalities, or local governments, is not going to be involved in using state resources or institutions for the enforcement of federal immigration matters. He asserted that House Joint Resolution 22, just 18 months after [the terrorist attacks of September 11, 2001], is a statement about Alaskans' belief in liberty. He opined that even though the country was traumatized then, more than it is now, the legislature "did the right thing" in stating that it intended to protect individual liberties. He relayed that under HB 13, the state and its local governments would not use personnel and financial assets to support a federal "overreach" effort to create a registry based on race, religion, ethnicity, or national origin. He attested that the drafters of HB 13 properly placed the proposed language into the "family of prohibitions and preclusions" [in AS. 44.99.040], which specifies those activities in which the state government has decided it will not participate. Among them are prohibitions on enforcing federal laws on our Second Amendment privileges or on anything that generally would violate the due process of Alaska citizens.

REPRESENTATIVE JOSEPHSON asserted that the reason he referenced the poems from religious scholars is that if there is a registry, he wants future generations, who are writing dissertations 100 years from now, to have a statement of fact that says the Thirtieth Alaska State Legislature "caught that moment" before Alaskans participated in something they would regret. He cited the treatment of American Indians, Japanese Americans, and African Americans as examples of that in history. He emphasized that this statement of fact would demonstrate that we caught ourselves, not at a moment of great stress as right after [the terrorist attacks of September 11, 2001], but 15-16 years later, when the legislature could calmly say that this is government overreach. He offered that if there is any belief that there is no need for the proposed legislation, he would be happy to cite the media reports of what the President and the

secretary of state have said - that indeed they would consider a registry of minority religion members.

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REPRESENTATIVE BIRCH said that he appreciates the hysteria that has prompted HB 13, but asked if House Joint Resolution 22 doesn't already reasonably and appropriately reflect the legislature's position, and HB 13 would be redundant. He offered that he agreed conceptually with HB 13. He suggested, however, that the federal government collects information from everyone in the country for the census every ten years.

REPRESENTATIVE JOSEPHSON expressed his belief that HB 13 would not be redundant. He said that House Joint Resolution 22 reflects the Twenty-Third Alaska State Legislature, 2003-2004, and not the current legislature. He stated that this is the first time in his lifetime where an executive officer at the highest level of government and his secretary of state have stated that they are considering registering people. He opined that it is worthwhile for the State of Alaska to say, as a matter of law, it won't participate in such a registry. He added that if the federal government chooses to create a registry, then that is up to the federal government, but under HB 13, Alaska would not be committing any "muscle" to that effort.

REPRESENTATIVE BIRCH asked if Representative Josephson has received any indication that Governor Bill Walker, a state agency, or any governing body within the state is contemplating participating in a registry.

REPRESENTATIVE JOSEPHSON replied no, but offered that legislation was passed stipulating that Alaska would not participate in the enforcement of federal gun laws, when there was no evidence that the state was going to enforce federal gun laws and no gun laws were imposed by the federal government for the state to enforce. He opined that there is nothing wrong with acting prophylactically. He stated that he didn't know the capacity of the federal government to compel deputizing.

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PAUL KELLY, Staff, Representative Andy Josephson, Alaska State Legislature, on behalf of Representative Josephson, prime sponsor of HB 13, relayed that the Toyosaburo Korematsu v. U.S. decision was included in the bill packet to demonstrate that

Toyosaburo Korematsu had to go to the U.S. Supreme Court; the case lasted 2 1/2 years; and in the end, he lost. He said, "If we cut this off before it starts, then there's no need for judicial remedy and for somebody to have to wait 2 1/2 years for justice."

REPRESENTATIVE KNOPP offered that since federal overreach comes with federal dollars, HB 13 wouldn't prevent a registry, but would just prevent the state from participating in a registry using state assets. He suggested that the federal government could themselves set up an office and create a registry within the state. He asked if federal funds, funneled to the state for such an effort, would be considered state assets. He stated that the intent of HB 13 is to prevent a registry, but HB 13 specifically would prevent the state from participating in a registry.

REPRESENTATIVE JOSEPHSON responded that is correct. He added that HB 13 refers plainly to state or municipal agencies and the use of their power and treasure. He relayed a comment by Chief Justice Antonin Scalia stating that Toyosaburo Korematsu v. U.S. was clearly a wrong decision, but Mr. Scalia was not convinced that the courts would ultimately stop it. Representative Josephson relayed that the President's power is at its greatest in regard to the country's borders. He added that the U.S. Supreme Court usually defers very extensively to the executive branch on defensive security measures. He went on to say that what was offensive about what was proposed by the current administration before the election, after the election, and after the inauguration does not involve just the borders, but people presently living in the United States and carrying passports. He expressed his belief that the legislature would do well by just saying "we caught you, and we Alaskans believe in our liberty, and we're not going to participate in this." He cited AS 44.99.040(b), which states that "asset" means funds, facilities, equipment, services, or other resources of a state or municipal agency. He asserted that under HB 13, neither the state nor the municipalities will be able to access these assets for a registry. He added that if the federal government wants to set up an office and do a "Korematsu," it will not be through [the State of] Alaska's assistance.

REPRESENTATIVE TUCK commented that the proposed legislation is similar to House Continuing Resolution 8, passed in the Twenty-Seventh Alaska State Legislature, 2011-2012. He relayed that the 2011 resolution opposed the procedures and invasive actions of the Transportation Security Administration (TSA), but nothing

could be done to stop TSA from "setting up shop" in Alaska's airports. He reiterated that the legislature can prevent the federal government from using the state's facilities.

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REPRESENTATIVE BIRCH suggested that there may be unintended consequences, and he gave as an example a person using "blood quantum" to determine that he/she is a Native American artist. He asked if there are any registries currently maintained by the state or an instrumentality of the state relating to someone being Native American or qualifying for a benefit based on a status that relates to race, religion, ethnicity, or national origin.

REPRESENTATIVE JOSEPHSON responded that he would research that question. He asserted that HB 13 would establish intent and would be placed in a statute considered to be a "quintessential push-back" on federal overreach. He said that the statute addresses the right to keep and bear arms, the right to due process, and possibly even the [federal REAL ID Act of 2005].

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REPRESENTATIVE BIRCH mentioned the REAL ID deadline of June 6, 2017, as the date that a driver's license would not be enough [to access military bases and federal facilities]. He reiterated that he appreciates the intent of HB 13 and the offer for additional research to ensure there are no unintended consequences.

REPRESENTATIVE TUCK referred to Representative Birch's question as to whether anyone was contemplating doing what HB 13 would prevent and asserted that HB 13 would prevent anyone from contemplating it. He opined that one of Alaska's problems with the federal government is that Alaska is always reacting to it rather than taking a proactive approach. He cited the reactions of the legislature to the federal REAL ID Act of 2005 as a good example of trying to protect the residents of Alaska from the invasiveness of federal overreach provisions.

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CHAIR KREISS-TOMKINS opened public testimony on HB 13.

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VALERIE BROOKS identified herself as a public-school educator and testified that she supports HB 13. She said that she would support even further measures allowing for sanctuary cities and campuses to protect Alaska's most vulnerable families and students, as they come under attack merely due to where they are from or how they worship. She went on to say that she has witnessed very real fear in her students and in her co-workers, who are impacted by the proposed executive order, the current deportations under way, and the proposed registry that has been discussed for months by persons now in positions of authority at the federal level. She asserted that HB 13 would not be redundant, because it deals with current proposals and activities. She added that she appreciates that Representative Josephson has spoken about the duty that Alaskans have to each other. She said that we are all humans and deserving of respect and safety, whether documented or undocumented. She urged the committee to support HB 13 and to resist any attempts to create or support a registry based on race, religion, ethnicity, or nationality.

CHAIR KREISS-TOMKINS closed public testimony on HB 13.

CHAIR KREISS-TOMKINS announced that HB 13 would be held over.

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ADJOURNMENT

There being no further business before the committee, the House State Affairs Standing Committee meeting was adjourned at 12:19 p.m.