

ALASKA STATE LEGISLATURE
HOUSE STATE AFFAIRS STANDING COMMITTEE

February 21, 2017

5:35 p.m.

MEMBERS PRESENT

Representative Jonathan Kreiss-Tomkins, Chair
Representative Gabrielle LeDoux, Vice Chair
Representative Adam Wool
Representative Chris Birch
Representative DeLena Johnson
Representative Gary Knopp

MEMBERS ABSENT

Representative Chris Tuck
Representative Andy Josephson (alternate)
Representative Chuck Kopp (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
 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
 02/18/17 (H) Heard & Held
 02/18/17 (H) MINUTE(STA)
 02/21/17 (H) STA AT 3:00 PM GRUENBERG 120
 02/21/17 (H) STA AT 5:30 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
 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 HCR 1 Out of Committee
 02/03/17 (H) MINUTE(JUD)
 02/08/17 (H) JUD AT 1:30 PM GRUENBERG 120
 02/08/17 (H) Moved HCR 1 Out of Committee

02/08/17 (H) MINUTE(JUD)
02/10/17 (H) JUD RPT 1DP 3DNP 2AM
02/10/17 (H) DP: CLAMAN
02/10/17 (H) DNP: EASTMAN, KOPP, REINBOLD
02/10/17 (H) AM: KREISS-TOMKINS, FANSLER
02/21/17 (H) STA AT 3:00 PM GRUENBERG 120
02/21/17 (H) STA AT 5:30 PM GRUENBERG 120

WITNESS REGISTER

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

POSITION STATEMENT: Explained CSSSHB 44(JUD) and HCR 1 with the use of a PowerPoint presentation on behalf of Representative Grenn, prime sponsor.

REPRESENTATIVE JASON GRENN
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Answered questions on CSSSHB 44(JUD) and HCR 1, as prime sponsor.

ACTION NARRATIVE

[5:35:14 PM](#)

CHAIR JONATHAN KREISS-TOMKINS called the House State Affairs Standing Committee meeting to order at 5:35 p.m. Representatives Wool, Birch, Johnson, Knopp, and Kreiss-Tomkins were present at the call to order. Representative LeDoux arrived as the meeting was in progress.

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

[5:35:47 PM](#)

CHAIR KREISS-TOMKINS announced that the only order of business would be CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 44(JUD) "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." 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.

[5:36:39 PM](#)

RYAN JOHNSTON, Staff, Representative Jason Grenn, Alaska State Legislature, continued the PowerPoint presentation, titled "HB44 and HCR1" from where he left off at the 3:00 p.m. House State Affairs Standing Committee meeting of 2/21/17. He referred to the citizen legislatures of New Mexico and Wyoming on slide 18, titled "Citizens Legislatures," and reviewed their statutory language as it relates to conflicts of interest. He relayed that the New Mexico legislature uses "majority consent of the body" in requiring an abstention from voting and the "general public" language for determining a conflict. The Wyoming legislature uses "majority consent of the Rules [& Procedures] Committee" in requiring an abstention from voting and the "substantial class" language in determining a conflict.

MR. JOHNSTON moved on to slide 19 showing two more examples of states with citizen legislatures - South Dakota and Idaho. South Dakota uses the "majority consent of the body" language but language other than "substantial class" or "general public." He said that Idaho is an example of a state with separate rules for the Senate and House: the Senate uses two-thirds consent [for abstention from voting], and abstentions in the House are allowed after the declaration of conflict of interest is made on the floor.

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MR. JOHNSTON referred to slide 20, titled "Current Procedure," which shows a flowchart of the current procedures under Alaska statute. He relayed that under current procedure, if a legislator believes he/she has a conflict of interest under AS 24.60.030, the legislator stands on the floor, declares the conflict of interest, and requests to abstain from voting. He explained that a unanimous consent [of the body] is needed to allow the legislator to abstain from voting. He said that if there is no objection, then the legislator abstains from voting; however, this has never happened in the history of the Alaska legislature, since the statute was enacted. He added that if an objection is raised, the legislator is required to vote, and the objection is not recorded in the journal. He maintained that in that case, there is no record made of the actual conflict of interest, only that "X representative" declared a conflict of

interest, there was an objection, and he/she was required to vote.

MR. JOHNSTON referred to slide 21, titled "Procedure Implemented by HB 44 & HCR 1," to review a flowchart of the procedures proposed under CSSSHB 44(JUD) and HCR 1. He related that CSSSHB 44(JUD) would amend AS 24.60.030 to add employer, immediate family member, and immediate family member's employer. He went on to say that the legislator would declare a conflict of interest on the floor, explain the conflict of interest, and ask to abstain from voting. He relayed that at that point, a majority consent is required to allow for an abstention from voting. He said if there is majority consent, then the legislator can abstain from voting and does not vote. The allowance of the abstention is recorded in the journal. If there is not a majority consent, the legislator must vote, and the vote is recorded in the daily journal.

[5:41:11 PM](#)

REPRESENTATIVE LEDOUX asked whether if the majority consents, the legislator must vote.

MR. JOHNSTON replied that if a majority vote was cast to allow for the abstention, the legislator would not vote.

REPRESENTATIVE LEDOUX asked if other legislatures use majority vote to disallow a vote, rather than a majority vote to allow a vote. She asked what the procedures were in municipal assemblies in Alaska.

MR. JOHNSTON responded that other state legislative bodies use a method like what is proposed - a legislator makes a motion to abstain from voting on proposed legislation, and the vote of the body is on that motion. He related that the statute relating to municipalities in Alaska describes a process whereby an assembly member asks the presiding officer if he/she can abstain, and depending on the decision of the presiding officer, the assembly can vote to override the presiding officer's decision.

REPRESENTATIVE LEDOUX offered "if the presiding officer says 'yes, you can abstain,' then it would take a majority to require that person to vote, and vice versa."

MR. JOHNSTON replied that in his understanding that is correct.

REPRESENTATIVE KNOPP confirmed that the procedure in an assembly meeting is exactly as Representative LeDoux stated. He described the procedure in an assembly meeting: an assembly member declares a conflict of interest; the presiding officer decides on the validity of the conflict of interest; and at that point, any member of the assembly can object to the presiding officer's opinion and ask for a vote of the assembly to overrule the determination. He added that if the presiding officer rules that the assembly member has a conflict and a member objects to his/her ruling, it would be decided by a vote of the full assembly, excluding the member with the conflict. He said that if the majority of the assembly votes to override the presiding officer's ruling, then the member who declared the conflict of interest would be required to vote. If the majority of the assembly votes to uphold the presiding officer's ruling, then the assembly member would abstain from voting.

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REPRESENTATIVE LEDOUX referred to Representative Johnson's mention of people taking sides on an issue and suggested the possibility of the system being "gamed." She asked Representative Knopp's opinion on how the system worked in the assembly on which he served.

REPRESENTATIVE KNOPP responded that in the assembly on which he served, there was no partisanship whatsoever, and it was rare for members to disagree with the presiding officer's opinion on a conflict of interest. He added that he is unsure if it would be an issue with the legislature but expressed his belief that legislators would vote on the validity of each issue.

REPRESENTATIVE LEDOUX asked if in Representative Knopp's experience, there was ever an occasion in which the presiding officer was overruled.

REPRESENTATIVE KNOPP replied yes, but it was rare.

[5:46:10 PM](#)

CHAIR KREISS-TOMKINS referred to slide 13, titled "Substantial Class in Other State's Statute," and asked for information on the 21 states not included in the breakdown of states in the slide.

REPRESENTATIVE JASON GRENN, Alaska State Legislature, as prime sponsor of CSSSHB 44(JUD) and HCR 1, answered that for the

states listed on slide 13, the statutory language for "substantial class" and "the effect on the general public" was foundational. He maintained that the remaining states either used language taken from other states or language that was not as clearly defined. He offered that there is a breakdown of all 50 states regarding statutory language included in the committee packet.

CHAIR KREISS-TOMKINS cited Mr. Johnston's earlier testimony stating none of his contacts with other states revealed a "gamesmanship" approach to majority consent votes. He expressed his concern regarding that possibility and asked which states Mr. Johnston was in contact with about this concern.

MR. JOHNSTON responded that his contact in Wyoming claimed to have never seen someone use the conflict of interest majority vote system in a way to prevent a vote. Mr. Johnston pointed out that New Mexico is a prime example of a citizen legislature - the legislators receive no salary and only \$163 a day for the session. He maintained that the New Mexico legislators clearly have outside work and related conflicts. He relayed that he spoke with the chief clerk and the chair of the Rules [& Order of Business] Committee, who both maintained that they had never seen a situation where someone used the conflict of interest procedures as a mechanism against another legislator; people take the process seriously and make decisions objectively based on the facts.

[5:49:29 PM](#)

REPRESENTATIVE JOHNSON suggested that a two-thirds majority or a three-quarters majority would constitute a more stringent requirement.

REPRESENTATIVE GRENN responded that a simple majority was chosen to be consistent with what is required of municipalities. He offered that he is open to amending the proposed legislation.

REPRESENTATIVE WOOL pointed out that the assembly on which Representative Knopp served was non-partisan and was smaller than the legislative bodies. He expressed that in the legislature, there are many partisan and party line votes, and Representative Johnson's suggestion has merit. He asked for confirmation that the introduction of the legislation was not due to a specific instance but the desire for transparency and public trust.

REPRESENTATIVE GRENN replied Representative Wool is correct. He said the desire to introduce the legislation was not based on any previous actions.

5:52:50 PM

REPRESENTATIVE WOOL expressed his belief that there are examples of the public losing confidence and trust. He offered the example of an individual working for the oil industry voting on a bill affecting the oil industry. He suggested that the proposed legislation would not address that situation.

MR. JOHNSTON replied that under the current statute, there is no provision for an employer/employee relationship; it is only about negotiating employment. He maintained that the proposed legislation does include employer, but the situation would have to meet the "substantial class" standard. He gave the example of a legislator working for the Atlantic Richfield Company (ARCO), who is considering oil legislation that specifically affects ARCO, either benefiting or harming the company, more than the rest of the oil industry. He asserted that in that example, there would be a conflict of interest that would need to be declared. He asserted that determination of conflict of interest situations is very fact-driven.

REPRESENTATIVE WOOL asked if under CSSSHB 44(JUD), a legislator working for an oil company would have no conflict of interest voting on proposed oil tax legislation, if the legislation would affect the whole class of oil companies.

MR. JOHNSTON answered that there are situations where an executive of any business would have to declare a conflict of interest, and because it would go to a vote of the body, the legislator could make the case for substantial conflict and be excused or make the case for objectivity in voting. He maintained that HCR 1 is focused on putting the proceedings on the record. He stated that the proposed legislation would add "employer" to AS 24.60.030(e).

REPRESENTATIVE WOOL suggested that the intent of the proposed legislation is not for the legislator to justify his vote but to declare a conflict of interest to abstain from voting, and the vote of the body would be on the abstention. He asked if after a legislator declares a conflict of interest on the floor, there is additional disclosure and discussion on the potential conflict.

MR. JOHNSTON responded that the motion for abstention is not debatable. After the legislator speaks to his/her conflict, there would be an immediate vote on the motion.

[5:58:25 PM](#)

REPRESENTATIVE WOOL asked if changing the current practice to make an objection to a motion of abstention more formal would constitute the necessary improvement.

REPRESENTATIVE GRENN expressed his belief that the proposed legislation focuses on beneficial changes to statutes.

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REPRESENTATIVE KNOPP commented that if an individual stood up and objected, he/she would want to give a reason for the objection but avoid a debate on the floor with 40 members of the legislature. He further commented that the proposed legislation has public support because of perceived conflicts of interest. He expressed his belief that the conflicts of interest are [just] perceived, because historically there have been no issues of conflicts of interest, and legislators are good about declaring them. He mentioned that he also dislikes the current process but would prefer that the presiding officer make the decision and the legislative body decide whether to object to that decision. He added that he doesn't support all the proposed statutory changes regarding what constitutes a conflict of interest. He expressed his concern that the proposed procedure would be cumbersome and inefficient on the floor of the legislative bodies.

[6:02:00 PM](#)

REPRESENTATIVE JOHNSON commented that she appreciates that the proposed legislation addresses an issue for which the public wants reassurance.

[6:02:31 PM](#)

REPRESENTATIVE LEDOUX stated that she supports CSSSHB 44(JUD) and HCR 1.

CHAIR KREISS-TOMKINS announced that CSSSHB 44(JUD) and HCR 1 will be held over.

[6:03:23 PM](#)

ADJOURNMENT

There being no further business before the committee, the House State Affairs Standing Committee meeting was adjourned at 6:03 p.m.