

ALASKA STATE LEGISLATURE
SENATE STATE AFFAIRS STANDING COMMITTEE

February 20, 2018

3:31 p.m.

MEMBERS PRESENT

Senator Kevin Meyer, Chair
Senator David Wilson
Senator Cathy Giessel
Senator John Coghill
Senator Dennis Egan

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE CONCURRENT RESOLUTION NO. 1

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

- HEARD & HELD

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 87(FSH)

"An Act relating to participation in matters before the Board of Fisheries and the Board of Game by the members of the respective boards."

- HEARD & HELD

CS FOR SS FOR HOUSE BILL NO. 44(STA)

"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; and requiring a legislator to request to be excused from voting in an instance where the legislator may have a financial conflict of interest."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: SCR 1

SHORT TITLE: UNIFORM RULES: ABSTAIN FROM VOTING

SPONSOR(s): SENATOR(s) GARDNER

02/01/17 (S) READ THE FIRST TIME - REFERRALS
02/01/17 (S) STA, JUD
03/07/17 (S) STA AT 3:30 PM BUTROVICH 205
03/07/17 (S) Heard & Held
03/07/17 (S) MINUTE(STA)
02/20/18 (S) STA AT 3:30 PM BUTROVICH 205

BILL: HB 87

SHORT TITLE: CONFLICT OF INTEREST: BD FISHERIES/GAME

SPONSOR(s): REPRESENTATIVE(s) STUTES

01/30/17 (H) READ THE FIRST TIME - REFERRALS
01/30/17 (H) FSH, RES
02/09/17 (H) FSH AT 10:00 AM GRUENBERG 120
02/09/17 (H) Heard & Held
02/09/17 (H) MINUTE(FSH)
02/14/17 (H) FSH AT 10:00 AM GRUENBERG 120
02/14/17 (H) Moved CSHB 87(FSH) Out of Committee
02/14/17 (H) MINUTE(FSH)
02/15/17 (H) FSH RPT CS(FSH) NT 2DP 1NR 3AM
02/15/17 (H) DP: TARR, STUTES
02/15/17 (H) NR: FANSLER
02/15/17 (H) AM: EASTMAN, KREISS-TOMKINS, CHENAULT
03/13/17 (H) RES AT 1:00 PM BARNES 124
03/13/17 (H) Scheduled but Not Heard
03/14/17 (H) RES AT 3:00 PM BARNES 124
03/14/17 (H) -- Continued from 3/13/17 Meeting at
1:00 PM --
03/15/17 (H) RES AT 1:00 PM BARNES 124
03/15/17 (H) <Bill Hearing Canceled>
03/20/17 (H) RES AT 7:00 PM BARNES 124
03/20/17 (H) Moved CSHB 87(FSH) Out of Committee
03/20/17 (H) MINUTE(RES)
03/22/17 (H) RES RPT CS(FSH) NT 3DP 5NR 1AM
03/22/17 (H) DP: WESTLAKE, TARR, JOSEPHSON
03/22/17 (H) NR: DRUMMOND, JOHNSON, RAUSCHER,
TALERICO, BIRCH
03/22/17 (H) AM: PARISH
03/22/17 (H) RES AT 6:00 PM BARNES 124
03/22/17 (H) <Bill Hearing Canceled>
03/27/17 (H) TRANSMITTED TO (S)
03/27/17 (H) VERSION: CSHB 87(FSH)
03/29/17 (S) READ THE FIRST TIME - REFERRALS

03/29/17 (S) STA, RES
 04/13/17 (S) STA AT 3:30 PM BUTROVICH 205
 04/13/17 (S) <Bill Hearing Canceled>
 02/20/18 (S) STA AT 3:30 PM BUTROVICH 205

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
 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(A) 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 CSSHB 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) Heard & Held
 02/21/17 (H) MINUTE(STA)
 02/21/17 (H) STA AT 5:30 PM GRUENBERG 120
 02/21/17 (H) Heard & Held
 02/21/17 (H) MINUTE(STA)
 03/02/17 (H) STA AT 3:00 PM GRUENBERG 120
 03/02/17 (H) Heard & Held
 03/02/17 (H) MINUTE(STA)
 03/07/17 (H) STA AT 5:30 PM GRUENBERG 120
 03/07/17 (H) Heard & Held

03/07/17	(H)	MINUTE (STA)
03/28/17	(H)	STA AT 3:00 PM GRUENBERG 120
03/28/17	(H)	Moved CS SSHB 44 (STA) Out of Committee
03/28/17	(H)	MINUTE (STA)
04/03/17	(H)	STA RPT CS (STA) NT 3DP 1DNP 3NR
04/03/17	(H)	DP: LEDOUX, TUCK, KREISS-TOMKINS
04/03/17	(H)	DNP: BIRCH
04/03/17	(H)	NR: JOHNSON, WOOL, KNOPP
04/08/17	(H)	SUSTAINED RULING OF CHAIR Y23 N16 E1
04/08/17	(H)	BEFORE HOUSE IN SECOND READING
04/08/17	(H)	TRANSMITTED TO (S)
04/08/17	(H)	VERSION: CSSSHB 44 (STA)
04/10/17	(S)	READ THE FIRST TIME - REFERRALS
04/10/17	(S)	STA, JUD
02/20/18	(S)	STA AT 3:30 PM BUTROVICH 205

WITNESS REGISTER

SENATOR BERTA GARDNER
 Alaska State Legislature
 Juneau, Alaska
POSITION STATEMENT: Sponsor of SCR 1.

NATHANIEL GRABMAN, Staff
 Senator Gardner
 Alaska State Legislature
 Juneau, Alaska
POSITION STATEMENT: Provided an overview of SCR 1.

REPRESENTATIVE LOUISE STUTES
 Alaska State Legislature
 Juneau, Alaska
POSITION STATEMENT: Sponsor of HB 87.

MATT GRUENING, Staff
 Representative Stutes
 Alaska State Legislature
 Juneau, Alaska
POSITION STATEMENT: Provided an overview of HB 87.

GLENN HAIGHT, Executive Director
 Alaska Board of Fisheries
 Juneau, Alaska
POSITION STATEMENT: Addressed questions regarding HB 87.

BRADLEY MEYEN, Assistant Attorney General
 Civil Division

Natural Resources Section
Alaska Department of Law
Anchorage, Alaska

POSITION STATEMENT: Addressed questions regarding HB 87.

JERRY MCCUNE, President
United Fishermen of Alaska
Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 87.

FRANCES LEACH, Executive Director
United Fishermen of Alaska
Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 87.

JULIANNE CURRY, representing self
Petersburg, Alaska

POSITION STATEMENT: Testified in support of HB 87.

MALCOLM MILNE, President
North Pacific Fisheries Association
Homer, Alaska

POSITION STATEMENT: Testified in support of HB 87.

MATT ALWARD, representing self
Homer, Alaska

POSITION STATEMENT: Testified in support of HB 87.

REPRESENTATIVE JASON GRENN
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Sponsor of HB 44.

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

POSITION STATEMENT: Addressed questions regarding HB 44.

JERRY ANDERSON, Committee Administrator
Select Committee on Legislative Ethics
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Addressed questions regarding HB 44.

ACTION NARRATIVE

[3:31:19 PM](#)

CHAIR KEVIN MEYER called the Senate State Affairs Standing Committee meeting to order at 3:31 p.m. Present at the call to order were Senators Giessel, Wilson, Coghill, Egan, and Chair Meyer.

SCR 1-UNIFORM RULES: ABSTAIN FROM VOTING

[3:32:23 PM](#)

CHAIR MEYER announced the consideration of Senate Concurrent Resolution 1 (SCR 1).

[3:32:47 PM](#)

SENATOR BERTA GARDNER, Alaska State Legislature, Juneau, Alaska, sponsor of SCR 1, noted that the committee heard the resolution last year.

[3:33:19 PM](#)

At ease.

[3:33:37 PM](#)

CHAIR MEYER called the committee back to order. He confirmed that SCR 1 was heard in committee on March 7, 2017.

[3:34:20 PM](#)

NATHANIEL GRABMAN, Staff, Senator Gardner, Alaska State Legislature, Juneau, Alaska, provided an overview of SCR 1 as follows:

SCR 1 is about transparency. As you know, when a legislator declares a conflict of interest, Uniform Rule 34(b) requires unanimous consent in order for the requestor to be excused from voting, a single objection is sufficient to overrule the conflict of interest statement.

According to the National Conference of State Legislatures, Alaska is the only state which requires unanimous consent in order to abstain from voting in those instances. Under Uniform Rule 34(b) a legislator may not abstain from voting unless they declare a conflict of interest and the entire body agrees; while this may theoretically occur, Legislative Research could not find a single instance of unanimous consent being given with respect to a conflict of interest recusal.

This resolution does not change the current process, rather it increases transparency by recording information often hidden from the public; while this information may be recorded on occasion, this is not always the case. This resolution aims to standardize the process by insuring that this information be recorded.

If adopted, SCR 1 would require the following three things to be recorded in the journal: the legislator declaring a conflict, the nature of that conflict, and the name of any legislators who would object to the conflict.

By increasing transparency this proposal aims to accomplish two ends: first, to better inform the public; and second, to protect legislators by avoiding the appearance of impropriety when there is none.

[3:36:17 PM](#)

SENATOR GIESSEL remarked that legislators must answer why they introduced legislation and what brought the legislation forward. She asked why SCR 1 was introduced.

SENATOR GARDNER explained that people have said legislators vote when they have a conflict of interest or they do not declare a conflict of interest. She said she is not aware of a legislator ever voting when they had a conflict of interest. She emphasized that she is not accusing anybody but asserted that legislators worry about being perceived as failing to disclose that results in people declaring a "perceived" conflict of interest to avoid someone saying, "You didn't ever declare a conflict of interest." SCR 1 puts on the record a person that declares a conflict of interest as well as a person that objects.

SENATOR GIESSEL asked if she was implying that legislators with a conflict are still voting and specified as follows:

I'm just not quite sure what we are fixing here, whether the person stands up or not in our laws in this state, which is a very small population and a very large piece of geography, all votes count. The statement was made in the introduction that information was being concealed. I am still not quite sure what the problem is.

[3:38:36 PM](#)

SENATOR GARDNER replied that she has no intention of implying that people are voting when they shouldn't vote and specified as follows:

What I'm saying is that all of us should understand that there may very well be a time when somebody should not vote on an issue and we can conceive how that could easily happen; every other state has a variety of ways of dealing with that and we do not.

She said her office explored ways to address a conflict of interest but conceded that there is not a perfect way to address the issue. She asserted that if she ever had a conflict of interest, nobody could ever make her vote because voting with a conflict of interest is unethical. She explained that she would "sit there" and try not to be confrontational or defiant; however, she said she would not vote if she had a conflict of interest and suspected that many people would feel the same way.

She reiterated that she is not aware of anybody voting with a conflict of interest; however, she noted that there is a perception that legislators vote anyway when they have conflicts of interest. She emphasized that there should be a way for legislators to gracefully put on the record when they should not vote and when somebody does have a conflict of interest, they should not be able to not vote. She set forth that putting a conflict of interest on the record and the ability not to vote is important for the state.

She summarized that SCR 1 simply places someone's conflict of interest on the record as well as places the next person that objects on the record too. She reiterated that there is no perfect way to address the conflict of interest procedure. She suggested that a unanimous agreement between the Senate president, minority leader and majority leader could be considered for a person not having to vote; however, she reiterated that she would not vote if she believed that she had a conflict.

[3:41:08 PM](#)

CHAIR MEYER asked if her intent with SCR 1 is to get somebody on record who objected.

SENATOR GARDNER answered correct.

CHAIR MEYER asked if she envisioned identifying who should object.

SENATOR GARDNER replied that her intention is not to say who should object but to place whoever does object on the record. She opined that caucuses could independently determine that the majority leader or the caucus leader will object. She specified that what she wants is for somebody who does have a conflict of interest to announce versus an announcement like an Alaska Public Offices Commission (APOC) disclosure where an unnecessary disclosure is better than failing to disclose, a process in the Legislature that leads to unnecessary disclosures.

[3:43:00 PM](#)

SENATOR COGHILL noted his previous experience with objecting on the Senate floor when a legislator gets up to make a declaration but will not ask to be excused from voting. He agreed with Senator Gardner that he does not recall hearing a legislator's conflict reach a level to be excused from voting. He opined that putting the person who objects on the record might make the procedure a political tool rather than a beneficial tool. He remarked that he does not mind having a conflict on the record but opined that placing an objection on the record could become more of a political "lightening rod" rather than an actual declaration.

[3:45:47 PM](#)

SENATOR GARDNER agreed and noted a situation where she saw an individual make a conflict of interest declaration and then walk out of the room where no one called the individual back.

SENATOR COGHILL concurred with Senator Gardner's recollection.

SENATOR GARDNER detailed that the person was determined not to vote and not a single person said, "I object." She opined that leaving the room was a graceful way not to vote. She pointed out that someone from a district is elected because of their expertise in an area. When the legislator's expertise is deemed a conflict related to an issue and the person is not allowed to vote, it could be a thorny problem. She opined that sooner or later somebody will have a genuine conflict and should not vote on an issue and there should be a way that not voting can happen.

[3:47:30 PM](#)

CHAIR MEYER remarked that Senator Gardner brought up a good point where he could see an instance occurring. He continued as follows:

But, whenever somebody who works for a union votes on an issue that affects that union, or somebody works for an industry that impacts that industry, they as individuals are not benefitting anymore than anyone else in that union or industry, that's where it gets a little thorny. So, it seems like you've come up with the answer that if someone truly feels like they have a conflict that they could just walk off the floor.

SENATOR GARDNER concurred, but pointed out that the legislator with the declared conflict of interest would have to trust that one of their colleagues does not disagree and object. She said the legislator still could leave but somebody could put a "call of the house." She asked how a legislator can be forced to vote, a situation that she does not think anybody wants to happen. She believes that the public wants to know that if a person has a conflict, that they have a way not to vote.

CHAIR MEYER commented that in his history in the Legislature he did not recall an issue where someone truly had a conflict of interest and should not have voted. He concurred that legislators have walked off the floor.

[3:49:26 PM](#)

SENATOR COGHILL stated that the issue Senator Gardner is addressing is a subject that the Legislature has talked about for a long time. He said he was glad Senator Gardner brought the issue up and contended that the Senate floor has "gotten sloppy" through the years on protocol. He pointed out that the rules say a legislator should standup and give a reason and ask to be given the permission to abstain from a vote, a procedure that rarely happens because the conflict is perceived and not a real conflict. He said SCR 1 will make the Legislature have to stand up and take notice. He reiterated that he struggles with the person objecting only because just one person can object and there might be more than one person that objects. He opined that having one person that objects on the record can result in the individual being targeted rather than the issue for the objection being addressed on the record. He summarized that he has been around the process long enough to know that there are the real issues and there are the political issues.

SENATOR WILSON agreed with Senator Coghill about putting the reason for the objection on the record. He added that he feared constantly having the name of either the majority leader or minority leader on the record.

CHAIR MEYER remarked that Senator Wilson might be saying that nobody would want to be the majority or minority leaders. He asked Senator Gardner to address what would happen after a conflict of interest is stated and somebody objects. He inquired if the legislative body votes.

[3:51:41 PM](#)

SENATOR GARDNER replied that her office considered having the body vote, but she would not want to vote even if 19 or 21 people voted that she should vote. She asserted that people say legislators vote all the time with a conflict of interest and countered as follows:

No, people declare a conflict of interest that may or may not be a real conflict of interest, but there should be a way out, there just should be a way out and I don't know what the answer is, let's see if somebody else has a great answer.

CHAIR MEYER stated that he was puzzled with SCR 1 because the resolution does not give somebody a way out and states that the act will be the Legislature's process.

SENATOR GARDNER specified that SCR 1 does the following:

What it does do is put on the record that somebody who might be accused of having a conflict of interest in voting can say, "I declared a conflict of interest, I described what it was and under the uniform rules because so-and-so objected, I had to vote, I was required to vote under our rules." So, it doesn't change that, you are correct, but it does give the person a defense and the person who objected can defend their own objection.

CHAIR MEYER replied that he may be coming around to agreeing with Senator Giessel on the necessity of SCR 1. He pointed out that legislators currently stand up and declare a conflict of interest and when someone objects that results in the individual having to vote. He asked Senator Gardner to verify that SCR 1 is trying to pinpoint the one person who objects.

SENATOR GARDNER answered no. She explained that her intent is not to change the statute but to say that when a person states that they voted with a conflict, the person can say they tried not to vote by asking to be excused. She continued as follows:

In reality if this passed and there's a record, I think people won't be doing the perceived conflict of interest, they may stand up as Senator Coghill said and describe their position but not ask not to vote and sit down; but, each individual has to draw their own line in knowing their own lives and their own investments and decide for themselves how they want to proceed, that's what we do all of the time.

[3:54:40 PM](#)

SENATOR COGHILL opined that the real value of SCR 1 would force the conflict of interest declaration to be put in a motion because the act would be recorded with a result that encourages better protocol and behavior.

SENATOR GIESSEL stated that she was not sure what Senator Coghill meant by "sloppy in protocol." She asked if it is true that standing up and wishing to be excused from voting is recorded in the minutes of the floor session.

SENATOR COGHILL answered that as far as he knew that was true.

CHAIR MEYER concurred that if somebody really feels awkward about voting and does not want to vote they should have that option; however, people are elected with known backgrounds where everything is disclosed and in some cases constituents like a legislator's experience and knowledge.

[3:56:37 PM](#)

CHAIR MEYER [held SCR 1 in committee.]

HB 87-CONFLICT OF INTEREST: BD FISHERIES/GAME

[3:56:47 PM](#)

CHAIR MEYER announced the consideration of House Bill 87 (HB 87). [CSHB 87(FSH) was before the committee.]

[3:57:22 PM](#)

REPRESENTATIVE LOUISE STUTES, Alaska State Legislature, Juneau, Alaska, sponsor of HB 87, summarized that the bill strictly pertains to conflict of interest for the Alaska Board of

Fisheries (Board of Fish) and the Alaska Board of Game (Board of Game). She detailed as follows:

The reason for this bill is currently when you are sitting on, particularly on the Board of Fish, the Board of Game doesn't seem to be quite as stringent although they live under the same statute as the Board of Fish does. When you are sitting on the Board of Fish if you have a conflict you certainly are conflicted-out from voting on it, but you are conflicted-out from the discussion as well; in having experts on this board it seems a little odd to exclude them from the conversation when that's what they are there for. Consequently, this bill's intent is to allow the individuals to participate if they have a conflict and to allow them to participate in the discussion even though they may not have the opportunity to vote on the bill.

3:59:05 PM

MATT GRUENING, Staff, Representative Stutes, Alaska State Legislature, Juneau, Alaska, provided an overview of HB 87 as follows:

The intent of HB 87 is to change the manner on which the Board of Fisheries and the Board of Game function, to allow members to deliberate on subjects of which they have declared a personal or financial interest according the Executive Branch Ethics Act. The Ethics Act forbids a public officer from taking or withholding official action in order to affect a matter in which the member has a personal or financial interest. Official action is then defined to mean advise, participation, assistance; including for example, a recommendation, decision, approval, disapproval, vote or similar action.

Currently the board members are required to divulge a conflict of interest if they or their immediate families are involved in a subject being deliberated on. The conflicted member could then no longer offer their input in the process and cannot vote on the matter at hand; in fact, they are asked to step down and join the audience. This bill allows conflicted members to offer remarks and input, but the members still cannot vote on the issue. The member is also precluded from voting on whether they have a conflict

of interest or not, that is determined by the ethics officer who is the chairman and then if there is an objection it goes to a vote of the board.

The qualifications for the appointment to the Board of Fisheries and the Board of Game are quite different and more general from most boards. Instead of being chosen because they are professionals in their fields, members are selected on the basis of interest in the public affairs, good judgement, knowledge, and the ability of field of action of the board and with the view to providing a diversity of interest and points of view on membership. One of the things we are looking at is that somebody might have a different point of view because of their knowledge, because it is essentially a layman's board, and you might only have a couple of people that own a certain particular type of permit or work in lodge, they might have some perspective on the nuances of fishing that other members of the board might not have and thus their knowledge and expertise is actually of great use.

In addition, many of the other boards are tied to licenses, they are exempt, many of the boards from certain requirements in the ethics act. So, this is a board that deals with licenses as well and it's one of the boards that you are not allowed to deliberate and in some cases the boards are actually allowed to vote; so, this makes a lot of sense from our perspective from the fact that you possibly have very few amounts of expert viewpoints on what is being discussed.

Often in fishing a financial interest is tied to knowledge of the field. Fishing issues tend to be very complicated and knowledge based. A person who may have an uncle, aunt, brother who has a certain type of fishing permit or has a fishing permit themselves might be the only person on the board who understands exactly what is being discussed in detail, particularly in rural Alaska where entire families might be permit holders or lodge owners. The current conflict policy is discouraging in some instances qualified members from applying to the board on the basis of them knowing they would be conflicted-out of the discussion in a lot of cases.

Another issue is one of public process and public trust. Board members who are conflicted-out are still actually offering their input, but they are doing it outside of the meeting and they are doing it discussing on the side with other board members; in order to maintain the public's trust, we really believe these discussions should be happening in the meeting and on the public record so there's that aspect to it as well is it really improves the public process, it seems prudent to allow members with expertise and knowledge to offer their input, but not vote. It is the sponsor's opinion that this change will help the boards make more informed decisions, enhance the public process and lead to a generally stronger resource management statewide.

I will say that in a full disclosure I would like to point out that due to recent staff turnover, we discovered last week that there may be some unintended consequences with the bill the way it is currently drafted. Unfortunately due to the personal bill deadline we were unable to fix the draft fixes in time but also aside from that we thought it was the prudent action to present our intent to the committee, point out the issues that might need to be addressed, and let the will of the chair and the committee decide what changes if any need to be made to the bill.

[4:03:26 PM](#)

MR. GRUENING directed attention to a legal memo from Linda M. Bruce, Legislative Counsel, Legal Services, dated February 9, 2017. He explained that the memo was debated at length and to the satisfaction of the House Resources Committee that there was not an issue. He said after discussions with Legal Services and the Board of Fish, Representative Stutes' office concluded that clarification is needed in the bill's intent language. He detailed as follows:

What the memo says essentially is that the use of the words "notwithstanding any other provision" of this chapter at the beginning of the bill could have the effect and it is not clear whether it does or doesn't, but it seems like an easy fix of superseding AS 39.52.120(c), which in turn would supersede AS 39.52.220. That essentially is "the nuts and bolts and the meat" of the process by which you'd declare a conflict, how a conflict is determined, who the ethics

officer is, and how the voting can be determined, and whether you can still vote or deliberate or not; that certainly was not our intent, our intent was simply to allow the use of the current process when declaring and determining a conflict of interest and the only thing that the sponsor would like to change is essentially what was voted on throughout the process too is that if there is a conflict that the conflicted member can deliberate but not vote. We were not looking at in any way to inadvertently affect the current process by which the conflict is determined, that seems to be working well and it's well established in statute.

[4:05:49 PM](#)

MR. GRUENING called attention to a memo from Glenn Haight regarding "Background Information on the Alaska Boards of Game and Fisheries Ethics Act Process." He summarized that Mr. Haight also said clarification is needed to get to the intent, specifically what the bill addressed. He added that the bill also narrows the definition of "immediate family member" for the purposes of debate, not voting. He conceded that an unintended interpretation may imply that the bill will supersede AS 39.52.220 for the ability to vote; he said the sponsor will look to the will of the chair and the committee to decide if that change is appropriate.

He summarized that the bill's intent is to allow conflicted members under the current system to deliberate but not allow the ability to vote. He noted that he spoke with Legislative Legal and was told that a simple fix could be made.

REPRESENTATIVE STUTES asserted that the intent is to make the language clear cut and easily understood. She reiterated that the intent is to allow conflicted-out board members to participate in the discussion and impart their knowledge but not be allowed to vote. She said not allowing somebody to share their expertise seemed odd.

CHAIR MEYER asked why Representative Stutes does not want board members to vote. He opined that the governor probably selected the board members because of their expertise.

REPRESENTATIVE STUTES replied that the issue the boards are trying to avoid, particularly in fisheries, is that an individual can be affected monetarily. She reiterated that the

intent is to allow a board member to put forth their expertise but let others vote.

[4:09:56 PM](#)

CHAIR MEYER asked what the financial hurdle is for a conflict of interest.

MR. GRUENING replied the financial hurdle is \$5,000 according to AS 39.52.110(d). He disclosed that the statute was proposed by Hollis French, former state senator.

SENATOR GIESSEL asked if the memo from Glenn Haight stated that the current procedure followed by the boards complies with the Executive Branch Ethics Act.

MR. GRUENING answered correct.

SENATOR GIESSEL asked if the Executive Branch Ethics Act states that a person who is conflicted-out cannot participate in the debate or vote.

MR. GRUENING answered correct.

SENATOR GIESSEL asked if the bill proposes to tweak the Executive Branch Ethics Act only for the Board of Fish and the Board of Game.

MR. GRUENING answered correct. He said the qualifications for the boards is very general and reiterated that an individual with intricate knowledge might not be allowed to provide important input in making decisions.

[4:12:20 PM](#)

SENATOR GIESSEL noted her experience with serving on a professional regulatory board and pointed out the specialization in the Board of Fish and Board of Game. She opined that the requested change seems very logical.

REPRESENTATIVE STUTES referenced a situation that occurred in Kodiak several years ago with the Board of Fish where an individual was conflict-out and the individual's input would have made a difference in the board's vote.

MR. GRUENING disclosed that the current chairman for the Board of Fish, John Jensen from Petersburg, was recently conflicted-out of 50 different proposals where he was not allowed to deliberate.

SENATOR GIESSEL pointed out that the Senate Resources Committee interviews applicants for the Board of Fish and the Board of Game and noted that the committee votes on appointees based on their expertise. She said she appreciated that the bill was brought forward.

CHAIR MEYER asked what occurs if someone does not declare a conflict of interest.

[4:15:11 PM](#)

GLENN HAIGHT, Executive Director, Alaska Board of Fisheries, Juneau, Alaska, speculated that if the board passes something where a conflict was not declared that the board's decision would be voidable based on reconsideration.

[4:16:03 PM](#)

BRADLEY MEYEN, Assistant Attorney General, Civil Division, Natural Resources Section, Alaska Department of Law, Anchorage, Alaska, addressed Chair Meyer's question regarding not declaring a conflict of interest as follows:

To the extent that a matter would take place where there was a situation where someone had failed to properly declare a conflict I would need to check it out further but I would agree that my initial response is that it would be a voidable action; however, I would like to add that the board members take these matters very seriously and they explore their potential conflicts and they do so with further discussions including discussions with the Department of Law to run through the specific items that are in the ethics act to avoid those types of problems from even occurring.

SENATOR GIESSEL asked if making an exception to the Executive Branch Ethics Act would result in a legal problem.

MR. MEYEN referenced page 5 from Mr. Haight's April 12, 2017 memorandum where the Department of Law's concerns were encapsulated. He noted that DOL's concerns actually called for clarifications so that the change would be consistent with the Executive Branch Ethics Act.

[4:18:21 PM](#)

MR. GRUENING referenced AS 39.52.310 through AS 39.52.330 regarding complaints and the process by which the attorney

general or person may initiate a complaint in addition to the process for a possible hearing.

MR. HAIGHT asserted that the bill's intent is clear and implementation for the Board of Fisheries or the Board of Game would be simple.

[4:20:27 PM](#)

CHAIR MEYER opened public testimony.

[4:21:00 PM](#)

JERRY MCCUNE, President, United Fishermen of Alaska, Juneau, Alaska, testified in support of HB 87. He said not allowing a conflicted-out board member with expertise to answer questions is frustrating.

[4:24:45 PM](#)

CHAIR MEYER asked what happens when a board member is conflicted-out, if the remaining members have access to experts during their meetings to answer questions.

MR. MCCUNE explained that staff members from the Department of Fish and Game attend board meetings, but typically the board does not ask questions during the deliberation stage.

[4:26:08 PM](#)

FRANCES LEACH, Executive Director, United Fishermen of Alaska (UFA), Juneau, Alaska, testified in support of HB 87. She said what good is expertise when a board is not allowed to use it. She confirmed that Board of Fish members are open, honest and extremely transparent when dealing with the conflict of interest process. She affirmed that conflicted-out board members should not be allowed to vote, but UFA believes that conflicted-out board members should be able to deliberate and discuss proposals on the record to help clarify and provide an insight into a fishery. She said she has seen board members struggle to decide when a conflicted-out member would have provided an answer. She summarized that muting a board member's voice undermines one's strength on a board, especially the ability to offer insight on a specific fishery.

[4:30:54 PM](#)

CHAIR MEYER concurred with Ms. Leach that the conflicted-out members were picked because of their expertise and opined that they should be allowed to vote as well.

SENATOR GIESSEL agreed with Chair Meyer on allowing voting as other regulatory boards do.

[4:32:23 PM](#)

JULIANNE CURRY, representing self, Petersburg, Alaska, testified in support of HB 87. She agreed with the common-sense legislation to allow conflicted-out members with valuable expertise to deliberate. She asserted that Alaska's fisheries are much too complex to restrict board members' expertise. She added that she also supported further defining the "immediate family member" definition.

[4:33:34 PM](#)

MALCOLM MILNE, President, North Pacific Fisheries Association, Homer, Alaska, testified in support of HB 87. He said finding qualified members to serve on the state boards can be challenging and limiting participation can hamper information. He set forth that allowing conflicted board members to deliberate adds expertise. He said keeping the conflict to immediate family members is appropriate.

[4:34:59 PM](#)

MATT ALWARD, representing self, Homer, Alaska, testified in support of HB 87. He asserted that changing the conflict standards to "immediate family members" is reasonable and responsible. He agreed that conflicted board members should not have a vote, but to bar the members from the conversation goes too far, especially for the subject-matter experts.

[4:35:59 PM](#)

CHAIR MEYER closed public testimony.

SENATOR GIESSEL agreed with previous testimony that board members are highly scrutinized and keep their ethics level very high simply because of the public scrutiny. She said what Representative Stutes is proposing is important for the committee to consider. She added that she would like to hear from Representative Stutes on how she would perfect the bill.

CHAIR MEYER concurred that board members are closely scrutinized and watched. He asked Representative Stutes if she had suggested changes for the bill.

[4:37:44 PM](#)

REPRESENTATIVE STUTES said her office is going to clarify the language in the bill so there is no misconception in the intent

which is to allow board members that are conflicted-out to participate in the discussion without obtaining a vote.

CHAIR MEYER asked if there has been a discussion with the Board of Game regarding the proposed changes for the bill.

MR. GRUENING said the director for the Board of Game was unable to testify but in previous testimony said the board has taken a neutral position.

CHAIR MEYER suggested that Representative Stutes provide his office with her proposed changes for presenting a committee substitute.

REPRESENTATIVE STUTES agree to do so.

[4:39:34 PM](#)

CHAIR MEYER held HB 87 in committee.

[4:39:43 PM](#)

At ease.

HB 44-LEGISLATIVE ETHICS: VOTING & CONFLICTS

[4:41:13 PM](#)

CHAIR MEYER called the committee back to order and announced the consideration of House Bill 44 (HB 44).

[4:41:57 PM](#)

REPRESENTATIVE JASON GRENN, Alaska State Legislature, Juneau, Alaska, provided the following sponsor statement for HB 44:

I believe that we all here understand the importance of a citizen legislature. We recognize the importance of having representatives and senators from all walks of life for the betterment of our state; because of that fact, the standards of ethical conduct for state public officials needs to distinguish between those minor conflicts that are unavoidable in a free society and those conflicts which are substantial and material.

The intent of HB 44 is to increase transparency within the Legislature and allow the public to see with the utmost certainty that conflicts of interest in our capitol building are taken seriously. The intent of this bill is not to stop a legislator from voting on

an issue as we all are elected officials sent here to represent our constituents. The language in this bill does not directly stop a legislator from voting or ever outright disqualify them, the bill just simply lays out a standard form for which a legislator can decide for themselves if they have a substantial conflict.

HB 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 or opposing a particular piece of legislation would have to be greater than the benefit of the general public of Alaska that would receive due to legislation in order to require abstention. The bill recognized 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. Twenty-nine other states have language such as what we are proposing that references the potential conflict of interest from an employer.

HB 44 creates transparency by creating a clear and concise standard for legislators to use to determine if they have a conflict of interest. I believe that building trust between the Legislature and public should be one of our primary concerns and HB 44 is an example of the Legislature building that trust for increased transparency.

[4:45:00 PM](#)

SENATOR GIESSEL referenced page 2, line 15, of the bill:

Immediately preceding 12-month period receive more than \$10,000 of income.

She asked if the sentence refers to actual dollars or if it would also include in-kind remuneration.

[4:45:31 PM](#)

RYAN JOHNSTON, Staff, Representative Grenn, Alaska State Legislature, Juneau, Alaska, referenced the definition in AS

24.60.990 that the income is aggregate, it is not in-kind but real dollars.

SENATOR GIESSEL remarked that the income could be from stocks or some kind of "other" income as well.

MR. JOHNSTON replied that AS 24.60.030, section 2, line 22 addresses Senator Giessel's question regarding interest in a business, investment, real property, lease or other enterprises. He added that legislative voting on the Permanent Fund dividend (PFD) would affect all Alaskans the same way and is not a conflict.

[4:47:22 PM](#)

SENATOR GIESSEL asked what problem HB 44 is trying to fix.

REPRESENTATIVE GRENN replied that the bill addresses trust from the general public's standpoint by declaring conflicts in more public arenas. He noted that 29 other states have legislation that affects an employer. He summarized that HB 44 raises the conflict definition to a better standard.

[4:49:56 PM](#)

SENATOR GIESSEL commented as follows:

This is really a foundational question. Periodically each one of us stands before our constituents. We live in what is a form of democracy. The word "democracy" comes from a couple of Greek words that mean, "Rule by the voting district," that's what the word "democracy" means and we stand for our voting district periodically, different periods of time based on the body that we serve in, and those districts know us or the voters certainly do, the people that turn out to vote. So, I can think of particular people that this bill might target so to speak, and those particular legislators are well known by their voting district who rule by selecting that person to represent them because that person has that knowledge that they want of their views carried forward to the Legislature. So, I just put that out there, I think this is a very restrictive criterion for a state like ours which has a very small population, we represent relatively small areas, it's one thing if we were in New Jersey and we had 300,000 people in a Senate district, that's not the case here. We are well known to our voters who rule in our district. So, I just put that out there as

a philosophical question; again, I don't see that there is a "why" for this.

[4:51:51 PM](#)

REPRESENTATIVE GRENN explained his intent as follows:

My belief as a newly elected official, finding ways that we can add trust and transparency to what we do in Juneau is important to me. You mentioned how we rule in Alaska in a small-population state and a small state with a low number of representatives and senators. Other citizen legislatures around the country, New Mexico for example, has a citizen legislature that they receive zero pay for their work as elected officials and they have a standard for conflict of interest much higher than ours in terms of when they rise to conflict, when they rise to abstain from voting. So obviously different states handle it in different ways of what they see fit and do with their citizenry and how they represent.

Again for us, my belief was just elected officials I think always can improve in terms of our interaction with the public in how they know us and setting a higher standard is something I strive to do and I think that this bill helps achieve that; it also, in our language regarding family and employers, the immediate family is a definition by statute so if your spouse owned a marijuana business your voters might not know that, but if this was enacted and a conflict arose and a huge tax increase on that industry was happening, you can declare a conflict and have your conscious free that your voters know that you are enacting on their behalf and not anyone who is directly impacted by your actions.

I greatly take to heart your perspective and I agree with very much of it and I think it is something that we always need to be talking about.

[4:53:59 PM](#)

CHAIR MEYER agreed with Representative Grenn's comments; however, he referenced legislatures in the 1970s where the body voted on declared conflicts where the process ended up being political. He opined that the current process for conflicts has been found to be the best and fairest. He agreed with Senator Giessel that making conflicts so restrictive will result in no

one running for office. He pointed out that all legislators do financial disclosures in a careful manner. He asked how the \$10,000 threshold for a financial conflict was arrived at.

MR. JOHNSTON replied that the \$10,000 threshold was derived from AS 24.60.990 and the intent was to stay consistent with Alaska's existing statute.

[4:56:41 PM](#)

SENATOR GIESSEL addressed a legislative brief written on June 23, 2015 by Jerry Anderson, administrator for the Select Committee on Legislative Ethics. She pointed out that Mr. Anderson related a close economic association with AS 24.60.070 where the committee determined that \$250 or more qualifies as "substantial." She continued as follows:

Here we have \$250 and then someplace else we have \$10,000. It seems like there is a lot of bars being set and which one do we follow? Perhaps Senator Coghill has comments on this because I know he serves on Legislative Ethics.

CHAIR MEYER pointed out that the next committee of referral is the Senate Judiciary Committee, a committee that Senator Coghill chairs and can address at that time.

SENATOR WILSON asked if Mr. Anderson was available to address the committee.

[4:58:15 PM](#)

JERRY ANDERSON, Committee Administrator, Select Committee on Legislative Ethics, Alaska State Legislature, Juneau, Alaska, addressed the question regarding the \$250 threshold for close economic association.

That is not a statutory \$250 amount that was part of legislation, but rather the Select Committee on Legislative Ethics interpreting and administering the act where the \$250 was determined by the committee and that in particular was with regard to a shared-calling plan where it was determined that the benefit was more than \$250 for each of the people that were legislators and legislative employees who shared a calling-plan; that has since been clarified where previously it was not clarified what a substantial interest was by statute.

SENATOR GIESSEL referenced the same legislative brief on page 2 regarding a list of states with numerical or proportional thresholds and noted that Alaska's current statute states the following:

Has or seeks contracts in excess of \$10,000 annually for goods and services with the Legislature or with an agency of the state.

She asked if the intent is to change the statute to \$10,000 worth of income.

5:00:06 PM

MR. JOHNSTON explained as follows:

AS 24.60.990 is the definition for AS 24.60.030, but if you look at AS 24.60.030, which is the section that the bill references, there's actually no monetary value placed in that section for a legislator to determine a conflict of interest, so that's why we found that amount and we are trying to create that more concise list for legislators to look at to see if they did have a conflict of interest and the \$10,000 amount fit with not trying to penalize like contractors, anyone that does that kind of contract work with individual clients; if they make \$4,000 or \$5,000 per contract building a home or doing a remodel, we did not want to penalize them for needing to do a conflict of interest or maybe ethics opinion for all of their clients if they were working for many different individuals, we just didn't want to penalize them in that way. So, the \$10,000 threshold fit with that kind of idea as well.

SENATOR GIESSEL remarked that she was not sure Mr. Johnston clarified her question and commented as follows:

I see completely two different things. What we have in AS 24.60.990(b) talks about seeking contracts, so if you are a legislator and you are serving in the Legislature and you know that one of the agencies is going out for a contract to let's say lay carpeting in one of their buildings and the contract would be for \$10,000 or more annually, that would represent a threshold for a conflict of interest; but, what is happening in this bill is you are actually broadening that out significantly to be \$10,000 worth of income

that is of any kind in a year. So, that's kind of what I am seeing as the contrast here and that is what I was trying to get down to.

[5:02:34 PM](#)

CHAIR MEYER held HB 44 in committee and noted that public testimony remains open for the bill.

[5:03:07 PM](#)

There being no further business to come before the committee, Chair Meyer adjourned the Senate State Affairs Standing Committee at 5:03 p.m.