

ALASKA STATE LEGISLATURE
HOUSE COMMUNITY AND REGIONAL AFFAIRS STANDING COMMITTEE

February 27, 2020

8:02 a.m.

MEMBERS PRESENT

Representative Harriet Drummond, Co-Chair
Representative Sara Hannan, Co-Chair
Representative Matt Claman
Representative Jonathan Kreiss-Tomkins
Representative Steve Thompson
Representative DeLena Johnson

MEMBERS ABSENT

Representative Sharon Jackson

COMMITTEE CALENDAR

HOUSE BILL NO. 221

"An Act providing for state recognition of federally recognized tribes; and providing for an effective date."

- HEARD & HELD

HOUSE BILL NO. 193

"An Act adding a second verse to the official state song."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 221

SHORT TITLE: STATE RECOGNITION OF TRIBES

SPONSOR(s): REPRESENTATIVE(s) KOPP

01/27/20	(H)	READ THE FIRST TIME - REFERRALS
01/27/20	(H)	TRB, CRA
02/13/20	(H)	TRB AT 8:00 AM CAPITOL 106
02/13/20	(H)	Heard & Held
02/13/20	(H)	MINUTE (TRB)
02/18/20	(H)	TRB AT 8:00 AM DAVIS 106
02/18/20	(H)	Moved CSHB 221 (TRB) Out of Committee
02/18/20	(H)	MINUTE (TRB)
02/19/20	(H)	TRB RPT CS (TRB) 4DP 1NR 1AM
02/19/20	(H)	DP: KOPP, LINCOLN, EDGMON, ZULKOSKY

02/19/20 (H) NR: VANCE
02/19/20 (H) AM: TALERICO
02/27/20 (H) CRA AT 8:00 AM BARNES 124

BILL: HB 193

SHORT TITLE: SECOND VERSE OF ALASKA'S STATE SONG
SPONSOR(S): REPRESENTATIVE(S) STORY

01/21/20 (H) PREFILE RELEASED 1/10/20
01/21/20 (H) READ THE FIRST TIME - REFERRALS
01/21/20 (H) CRA, STA
02/27/20 (H) CRA AT 8:00 AM BARNES 124

WITNESS REGISTER

REPRESENTATIVE CHUCK KOPP
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: As prime sponsor, introduced HB 221.

KEN TRUITT, Staff
Representative Chuck Kopp
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: On behalf of Representative Kopp, prime sponsor, presented CSHB 221(TRB).

NATASHA SINGH, General Counsel
Tanana Chiefs Conference
Fairbanks, Alaska

POSITION STATEMENT: Co-presented a PowerPoint presentation, entitled "Recognition of Alaska Tribes" during the hearing on HB 221.

JOY ANDERSON, General Counsel
Association of Village Council Presidents
Bethel, Alaska

POSITION STATEMENT: Co-presented a PowerPoint presentation during the hearing on HB 221.

HOLLY HANDLER, Child Welfare Attorney
Central Council Tlingit & Haida Indian Tribes of Alaska
("Tlingit & Haida")
Alaska Legal Services Corporation
Juneau, Alaska

POSITION STATEMENT: Gave a presentation during the hearing on HB 221.

REPRESENTATIVE ANDI STORY
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: As prime sponsor, presented HB 193.

CAITLYN ELLIS, Staff
Representative Andi Story
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 193 on behalf of Representative Story, prime sponsor.

HUNTER CARTE, Fifth-Grade Student
Glacier Valley Elementary School
Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 193.

FAITH CONTRERAS, Elementary Student
Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 193.

SAHARA SHOEMAKE, Student
Glacier Valley Elementary School
Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 193.

JUDAH MARR, Fourth-Grade Student
Glacier Valley Elementary School
Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 193.

CONNIE MUNROE
Juneau, Alaska

POSITION STATEMENT: Testified during the hearing on HB 193.

ANNE C. FULLER
Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 193.

LAURIE HEGGIE, PhD, Music Teacher
Glacier Valley Elementary School
Juneau, Alaska

POSITION STATEMENT: Testified during the hearing on HB 193.

ACTION NARRATIVE

[8:02:49 AM](#)

CO-CHAIR SARA HANNAN called the House Community and Regional Affairs Standing Committee meeting to order at 8:02 a.m. Representatives Johnson, Claman, Kreiss-Tomkins, Thompson, and Hannan were present at the call to order. Representative Drummond arrived as the meeting was in progress.

HB 221-STATE RECOGNITION OF TRIBES

[8:03:36 AM](#)

CO-CHAIR HANNAN announced that the first order of business would be HOUSE BILL NO. 221, "An Act providing for state recognition of federally recognized tribes; and providing for an effective date." [Before the committee was CSHB 221(TRB).]

[8:04:07 AM](#)

REPRESENTATIVE CHUCK KOPP, Alaska State Legislature, as prime sponsor of HB 221, first introduced his staff, Ken Truitt, before addressing the proposed legislation. He then said Alaska's Native people have been here for many thousands of years, and CSHB 221(TRB) would give the honor and respect and self-determination that any people "cry out for." He said Alaska Natives make up 20 percent of the state's population, and the proposed legislation would ensure that "Alaska's indigenous people are no longer invisible in the narrative of our state history."

REPRESENTATIVE KOPP, regarding sovereignty, said, "We can't, on one hand, pretend that tribes don't exist but on the other hand insist that they waive their sovereign immunity before the state will partner with them" He remarked upon the great size of Alaska and opined that Alaska needs to collaborate with its tribes to overcome significant challenges related to education, public safety, and healthcare, and said the proposed legislation is a move in that direction. He acknowledged that change is difficult in that it encompasses emotional and spiritual dimensions. He added, "But it's time that we acknowledged that tribes are in the best position to deliver many of the services the state has not been able to successfully deliver over many decades and that these are Alaskans that are closest to the people to deliver the services in their region."

[8:07:48 AM](#)

REPRESENTATIVE KOPP said he would address "issues that may cause some to stumble." The first is the issue of granting special privileges to tribal people that non-tribal people do not get. He said the issue of state sovereignty sometimes gets in the way of consideration of tribal recognition. In terms of what is special, he proffered that from a tribal perspective that notion evokes questions about having one's land taken away without consent, being told one cannot remain in a certain place and must relocate when there has been no declaration of war or hostilities, and having a tax imposed on villages in Southeast Alaska. He said he views "special" as the U.S. Government making good on its solemn promises to the indigenous people for the taking of land and imposed relocations, as well as on the promise of providing for the health, education, and welfare of the indigenous people in return for them having to abandon their claims to the land. He said there were many social, political, and property relational changes, which took Europe "over 300 centuries to absorb." He compared that to the rapid change brought to indigenous people in the U.S. and said it is incredible that those changes have not destroyed them. He cited [the third paragraph] uttered by President Richard Nixon during his 1970 Special Address on Indian Affairs, which read as follows:

But the story of the Indian in America is something more than the record of the white man's frequent aggression, broken agreements, intermittent remorse, and prolonged failure. It is a record also of endurance, of survival, of adaptation and creativity in the face of overwhelming obstacles. It is a record of enormous contributions to this country - to its art and culture, to its strength and spirit, to its sense of history and its sense of purpose.

[8:11:05 AM](#)

REPRESENTATIVE KOPP reviewed that before the Revolutionary War the British government had left colonies to regulate Indian trade and land concessions, which resulted in disparate policies and approaches. Under the Articles of Confederation an attempt was made to consolidate these policies; however, this proved unsuccessful. He explained that these failures led directly to Article I Section 8 of the Constitution of the United States, which states that Congress shall have the power to regulate commerce with foreign nations and among the several states and with the Indian Tribes. He said it is significant that Congress was given that power, because a single state, acting improperly

on its own, "might lead to needless wars and compromise the interest of other states." He said 11 of the 13 states voted to ratify the Constitution, agreeing that abdicating their sovereignty over Indian affairs was good and necessary for the success of the nation. He stated that the erosion of state sovereignty was settled at the time the Constitution was ratified, and [Alaska] "has harmed itself as a state by fighting against this idea for many years since statehood."

[8:14:06 AM](#)

REPRESENTATIVE KOPP pointed out the supporting materials in the committee packet, including the aforementioned address by President Nixon, a supreme court case, Baker v. John, and a memorandum from former Attorney General Jahna Lindermuth to former Governor Bill Walker on the legal status of tribes in Alaska. Alaska obtained statehood during the termination era of Indian policy "when the nation was struggling with that trust relationship with tribes and walking away from the treaties that had long [been] established." Under President Nixon, the nation moved into the era of self-determination and "honoring that trust relationship with federal tribes." He said the court case is when Alaska "began turning from the idea of terminating that trust relationship to embracing it" and recognizing tribes' existence. The memorandum to Governor Walker is when the executive branch recognized the existence of tribes in Alaska.

REPRESENTATIVE KOPP explained that even with the existence of these background materials, the proposed legislation is still necessary because while it is the [Alaska] Supreme Court's role "to declare what the law is in the state," it is the legislature's role to declare state policy. The purpose of CSHB 221(TRB), he said, is to declare that Alaska will no longer, as a matter of policy, ignore the existence of tribes in Alaska; that it is the end of the termination era; and that that thinking is part of the state's policy. Although not explicitly stated in the proposed legislation, this means the state is taking a step toward self-determination. What that will look like on the state level will take a more in-depth conversation than what CSHB 221(TRB) seeks to address, he said. He concluded, "But the conversation cannot begin until the state stops and is at least willing to acknowledge that tribes are in the room with us and that they have a proper place in this room."

[8:17:02 AM](#)

KEN TRUITT, Staff, Representative Chuck Kopp, Alaska State Legislature, on behalf of Representative Kopp, prime sponsor, offered a sectional analysis of CSHB 221(TRB). He said Section 1 was added regarding legislative findings and intent about indigenous people's history of being in Alaska since time immemorial and "the legislature exercising its policy power." The operative provision of the bill is now in Section 5, he noted. The provisions between Sections 1 and 5 are conforming and technical changes. He drew attention to a sentence on page 2, beginning on line 27, which read, "The state recognizes the special and unique relationship that the United States government has with federally recognized tribes and specifically recognizes the relationship between the United States government and federally recognized tribes in the state." He noted that "special" and "unique" are words used in the previously cited address by President Nixon and describe the nature of the relationship that tribes have in the country - "recognition being primarily a federal function." The following sentence, he noted, refers to the Recognized Tribal List Act. He said it is clear that CSHB 221(TRB) is not seeking to create a separate state recognition but to recognize federal function and recognition. Mr. Truitt referred to the next sentence, which read, "Nothing in this section diminishes the United States government's trust responsibility or other obligations to federally recognized tribes in the state or creates a concurrent trust relationship between the state and federally recognized tribes." He said this language is important, because the proposed legislation should not be read as "giving the federal government an excuse to end that relationship or in any way diminish it." Further, the bill is not pointing to any intent of the State of Alaska in "intending to create a separate state trust relationship with tribes." He clarified that this is a federal issue that the state is recognizing. Mr. Truitt stated that CSHB 221(TRB) would not create any additional rights that tribes do not already possess.

[8:22:32 AM](#)

REPRESENTATIVE CLAMAN indicated that people had asked what effect CSHB 221(TRB) may have regarding gambling. He noted that federally recognized tribes [in the Lower 48] have the power to open casinos on their lands.

REPRESENTATIVE KOPP echoed Mr. Truitt's previous statement that the proposed legislation would not change any standing rights tribes currently have on tribal land or any existing authority.

[8:23:46 AM](#)

REPRESENTATIVE KREISS-TOMKINS referred to "the millennium agreement" and asked to hear about "the policy juxtaposition between what Governor [Tony] Knowles did and what the impact of this bill would be"

[8:24:24 AM](#)

MR. TRUITT noted that there would be presenters who would cover that, but offered in brief that the proposed legislation "would not make an executive order like that unnecessary" but would prevent a succeeding administration from withdrawing such an executive order. He explained, "So, we're not leaving it up to the executive branch to declare what the policy is."

[8:25:18 AM](#)

CO-CHAIR HANNAN initiated invited testimony.

[8:25:39 AM](#)

NATASHA SINGH, General Counsel, Tanana Chiefs Conference, as co-presenter of a PowerPoint presentation, entitled "Recognition of Alaska Tribes," prefaced her presentation by stating that Tanana Chiefs Conference is a tribal consortium representing the 37 federally recognized tribes of Interior Alaska.

MS. SINGH directed attention to a quote, which shows on slide 2, as follows:

"Before the coming of the Europeans, the tribes were self-governing sovereign political communities." -John v. Baker, Alaska Supreme Court

MS. SINGH pointed out that "the existence of a tribe or tribal government does not require federal determination, and federal sovereignty does not originate with the federal government." She continued:

The tribal form of government is something that you or I likely can't comprehend, mainly because we are not Native language speakers. ... The Native languages really, really encompass everything our government was about. Take all your notions of government and economy that you learned in college and throw them out. Tribal governments were based on a rule of law

determined by the creator, the land, and the animals. Our tribal governments are religious and spiritually based, and that continues today.

Tribal leaders created tribal governments in reflection of laws of the creator. The present-day tribes have remnants of these traditional governments despite hundreds of years aimed at extinguishing tribes.

MS. SINGH said she has been told that today tribes are tasked simply with protecting the land and the children.

[8:28:38 AM](#)

JOY ANDERSON, General Counsel, Association of Village Council Presidents, as co-presenter of the PowerPoint presentation, having related that the association is a tribal consortium located in Southwest Alaska representing 56 federally recognized tribes, reported that there are 573 federally recognized tribes in the U.S., almost half of which are in Alaska. She said a federally recognized tribe is an American Indian or Alaska Native tribal entity that has a government-to-government relationship with the U.S. described as "a domestic dependent nation."

MS. ANDERSON discussed the points on slide 3, which read as follows:

What are Tribes?

Domestic Dependent Nations

Inherent powers and authorities with self-governance of internal affairs, e.g. type of government; tribal membership

Tribes exercise all powers, unless those powers have been expressly limited by Congress

Regulate matters pertaining to tribal members, e.g. taxes, property, members' conduct

Immune from lawsuits

Tribes are not state or local governments; political subdivisions or agencies or instrumentalities of the federal or state governments; tax exempt organizations

[8:30:19 AM](#)

MS. SINGH brought attention to slides 4 and 5 and gave a brief history of the Federal Indian Policy Period. As shown on slide 5, that period includes:

Colonial 1492-1820
Removal/Relocation 1820-1850
Reservation/Treaty Making 1850-1887
Allotment & Assimilation 1887-1934
Indian Self-Government 1934-1953
Termination 1953-196?
Self Determination 196?-Present

MS. SINGH said the first four policy periods were so detrimental to tribes that "we entered into" the Indian Self-Government policy; however, despite good intentions, the federal government was dictating to tribes what was best for them, so it did not work. During the Termination Policy, the U.S. government wanted to do away with its relationship with tribes, but this ended up hurting the U.S. and tribes alike. Under President Nixon's leadership, it was recognized that the best thing is to "return authority to local control."

[8:33:25 AM](#)

MS. ANDERSON brought attention to slide 6, "Domestic Dependent Nations." She said that at the beginning of U.S. history, tribes were recognized as powers in authority of individual governments, even though they were subject to the authority of the U.S. government and widespread oppression and laws were inflicted on the tribes. In 1831, a few decades before Alaska became a territory of the U.S. and only 55 years after the U.S. came into existence, the U.S. Supreme Court and Chief Justice John Marshal determined that Indian tribes were "Domestic Dependent Nations." She shared the quote on slide 6, which read:

... a weaker power does not surrender its independence - its right to self-government - by associating with a stronger, and taking its protection. A weak state, in order to provide for its safety, may place itself under the protection of one more powerful, without

stripping itself of the right of government, and ceasing to be a state.

[8:36:09 AM](#)

MS. SINGH, moving to slide 7, "The Marshall Trilogy," cited Article I, Section 8, Clause 3, of the Constitution, which states Congress shall have power:

To regulate commerce with foreign nations, and among the several states, and with the Indian tribes;

MS. SINGH said Congress is the only entity that has the right to terminate the rights of [Indian tribes] - a [state] administration does not. She stated that the Marshall Trilogy formed the framework of federal Indian law; there were three cases circa 1830 dealing with tribes on the East Coast. These cases are reflected on slide 7 as follows [original punctuation provided]:

Aboriginal land claims: Aboriginal people retain the rights of use and occupancy that only the United States government can settle aboriginal land claims, and that the U.S. has a legal duty to protect aboriginal title until land claims are officially settled.

Tribal Authority: Tribes are nations with the authority to govern themselves. The source of their authority to govern is "inherent", meaning that it comes from tribes being self-governing long before explorers and settlers came to the Americas.

Federal Trust Responsibility: The Federal Government has a responsibility to protect Indian lands and resources, and to provide essential services to Indian people. This comes from the fact that the federal government took away the vast majority of Indian lands, and in return promised to provide these things.

MS. SINGH indicated that the Marshall Trilogy is the foundation on which the U.S. Supreme Court implements the Commerce Clause.

[8:39:52 AM](#)

MS. ANDERSON reviewed that in 1867 Russia sold its claim to Alaska to the U.S. through The Treaty of Cession, aka "The

Alaska Purchase," an excerpt of which is shown on slide 8, as follows [original punctuation provided]:

The uncivilized tribes will be **subject to** such laws and regulations as the United States may, from time to time, adopt in regard to aboriginal tribes of that country.

-Treaty of Cession aka The Alaska Purchase

MS. ANDERSON stated that the premise of the treaty was that Native peoples were uncivilized; thus the colonial government had the power to "civilize them with laws." She said Russia considered it was passing its authority over Alaska Native tribes to the U.S. She stated, "What's key for our presentation today is the fact that from the very beginning, there was the awareness that tribes existed in Alaska."

[8:40:59 AM](#)

MS. SINGH turned to slide 9, which shows the previously cited Article I, Section 8, Clause 3. She said the plenary control of Congress over Alaska Natives is evident in the Alaska Native Claims Settlement Act (ANCSA), where Congress used its plenary power to extinguish Alaska Native rights to "hundreds of millions of acres of land" and hunting and fishing rights.

MS. SINGH moved on to slide 10, "Self-Determination," which read as follows [original punctuation provided]:

The only policy that has worked to make significant progress in reversing otherwise distressed social, cultural, and economic conditions in native communities.

The policy of self-determination reflects a political equilibrium which has held for four decades and which has withstood various shifts in the party control of Congress and the White House.

The first major piece of legislation, Public Law 93-638, the Indian Self-Determination Act of 1975.

Tribes identify federal government services that they wish to provide to their own tribal members and contract for the federal funding to provide those services themselves.

MS. SINGH said the Alaska Tribal Health System is based on this Act. She said the relationship between Alaska tribes and the State of Alaska is still in the policy era of termination, because although the courts recognize tribes, the administration sometimes tries to deny the existence and rights of tribes. She shared, "We would like this bill to take us out of that termination era ... and move us into the self-determination era, the only successful policy that has worked with tribes."

[8:44:03 AM](#)

MS. ANDERSON brought attention to slides 11 and 12, "Executive Order 13175 (2000)," and said the executive order was issued by President Bill Clinton on November 6, 2000. Nine years later, on November 5, 2009, President Barack Obama issued a presidential memorandum directing "the agency" to submit a detailed plan of action detailing how the agency would implement the policies and directives of the executive order. She said highlights of the executive order are on slides 11 and 12, as follows [original punctuation provided]:

Established regular and meaningful consultation and collaboration with tribes in the development of federal polices that have tribal implications.

Recognizes that the United States has a unique legal relationship with Indian tribal governments as set forth in the U.S. Constitution, treaties, statutes, Executive Orders, and U.S. Supreme Court decisions.

Confirms that the U.S. recognizes Indian tribes as "domestic dependent nations under its protection."

Recognizes a trust relationship with Indian tribes.

Recognizes the right of Indian tribes to self-government, tribal authority, and self-determination.

All federal agencies are to respect Indian tribal self-government and authority.

[8:46:04 AM](#)

MS. SINGH directed attention to slide 14, "Brief History of the Relationship Between the State of Alaska and Tribes," on which is a map depicting the indigenous peoples and languages of

Alaska. She moved on to slide 14, "Previous Alaska Position: Tribes Did Not Exist." She talked about litigation on this issue that tribes continually win because of the plenary authority of the Constitution and the clarity of federal Indian law. She said when tribes have taken action to protect their children, the state has denied that authority, which has been detrimental. She said the opportunity to educate law makers can provide "an out from this [termination] era" and CSHB 221(TRB) would [assist in the effort].

MS. ANDERSON brought attention to slides 15 and 16, "Federal Government Response" and "Current Position of the State of Alaska on Recognition of Tribes." Slide 15 read as follows [original punctuation provided]:

Department of Interior (DOI) - The "Sansonetti Opinion" (1993) disagreed with the Alaska Supreme Court's historical analysis in Stevens Village, observed that for over fifty years Congress and the DOI treated Alaska Natives as members of tribes, and concluded there were federally recognized tribes in Alaska. Nine months later, DOI issued a list of federally recognized tribes in Alaska.

Congress - Federally Recognized Tribe List Act of 1994 (1994 List Act) directed the BIA to publish lists of recognized tribes which included Alaska Tribes. The list is published annually, and all subsequent lists of the List Act have continued to include Alaska Tribes.

MS. ANDERSON spoke to slide 16, which read as follows:

Alaska Supreme Court - "If Congress or the Executive Branch recognizes a group of Native Americans as a sovereign Tribe, we 'must do the same.'" John v. Baker (1999).

State of Alaska's Executive Branch - "[W]e will improve government -to-government relations with Alaska Tribes [...]." Alaska Admin. Order No. 300 (2018). See also Alaska Department of Law 2017 Opinion - Legal status of tribal governments in Alaska ("[T]here are no unresolved legal questions regarding the legal status of Alaska Tribes as federally recognized tribal governments.")

MS. ANDERSON offered her understanding that included in the committee packet was "a copy of the Department of Law opinion in 2017 that has a thorough analysis, as well."

[8:51:04 AM](#)

MS. ANDERSON covered slide 17, "HB 221," which read as follows [original punctuation provided]:

Will bring the Alaska State legislature in-line with the other two branches of State government regarding the status of Alaska tribes.

Will modernize the policy towards Alaska Native tribes by officially moving the State legislature out of the Termination Era and into the Self-Determination Era.

Create the potential for the State of Alaska to lead the country in creation of State-tribal relations.

MS. ANDERSON commented on the strength of the state and tribes, and she said there is so much that can be done by establishing a partnership. In response to Representative Claman's previous question about gaming, she said federal law requires states to pass their own laws allowing tribes to [run] gaming. She predicted that Alaska tribes and the State of Alaska together would "show the rest of the country ... what can be done when the state and the tribes work together." She spoke of elevating tribal communities in poverty, the justice system, and public safety. In conclusion of the PowerPoint presentation, she opined that CSHB 221(TRB) would stimulate conversation to that end.

[8:54:01 AM](#)

REPRESENTATIVE KREISS-TOMKINS asked for more detail regarding how CSHB 221(TRB) would result in Alaska being the leader of other states in state/tribal relations. He further queried which state is currently the leader in this area and what laws are on the books that make it so.

[8:54:59 AM](#)

MS. SINGH responded that she does not have the information regarding which states have passed "recognition" bills. She said she knows there are tribes that have not been federally recognized but whose state legislatures recognize them. She

reiterated that Alaska has a long history of litigation between its administration and its tribes. States that do not have that long history of litigation have partnerships in areas such as fishing and public safety - Washington State being an example of the latter. She said she would have to find out which state is currently in the lead on recognition of tribes.

[8:56:40 AM](#)

MS. ANDERSON added that Alaska has 229 recognized tribes - the most of any state in U.S. - so, "by default," if the state were to build on what is already in place, such as the Tribal Child Welfare Compact, then it could become the leader among states.

[8:57:18 AM](#)

REPRESENTATIVE KREISS-TOMKINS expressed his appreciation for CSHB 221(TRB). He said he would like to know whether the number of tribes in Alaska has changed since the 1994 Act. He further queried as to which tribe had been "omitted by DOA" and established by Congress as a federally recognized tribe under the List Act.

MS. ANDERSON replied that the List Act has been published since 1994, and she would have to research to find out how the Alaska tribe numbers may have changed and which tribe had been omitted.

[8:59:09 AM](#)

MR. TRUITT proffered that Central Council Tlingit & Haida Indian Tribes of Alaska was the entity omitted from the list and by a special act of Congress was restored to the list. He offered his understanding that the list has remained at 229 ever since.

[9:00:28 AM](#)

HOLLY HANDLER, Child Welfare Attorney, Central Council Tlingit & Haida Indian Tribes of Alaska ("Tlingit & Haida"), Alaska Legal Services Corporation (ALSC), relayed that she has been a staff attorney with ALSC for the past 14 years, and in the last year has been doing full-time Indian Child Welfare Act work for Tlingit & Haida. She said she would give a presentation on tribal litigation. She spoke about a timeline spanning about 150 years since the Alaska Purchase. She said during this time the tribal litigation in Alaska has been an anomaly and "recognition of tribes in Alaska has been the norm."

MS. HANDLER said it is remarkable that despite on-going attempts over the last 150 years to assimilate indigenous populations, terminate tribal identity, and resist recognition of Indian people as such, there has been a recognition that tribes do exist. They are recognized under federal law, and were recognized under territorial law and since statehood under state law. She said CSHB 221(TRB) will help people come to terms with the fact that "there are differences in the histories of the people of Alaska." In other states where tribes have been recognized, state governments have been able to build state tribal commissions and working groups so that state and tribal courts can pool resources. In Maine, tribes and the state work together through a Truth and Reconciliation Commission to deal with the state's history of "removing children."

[9:04:13 AM](#)

MS. HANDLER directed attention to the aforementioned timeline [included in the committee packet], entitled "Tribal Litigation in Alaska," which lists the following points. [The information below is excerpted from the timeline, with some formatting and punctuation changes.]

- Over the past 153 years, recognition of sovereign Alaska Native Tribes has been the norm
- Recent legal battles fighting recognition have been a painful and expensive aberration
- Federal and Alaskan authorities have recognized the existence of Alaska Native Tribes as independent, self-governing political groups via:
 - o 1867 Treaty
 - o Early 1900s federal reserves, allotments and townsites
 - o 1930s Indian Reorganization Act
 - o Public Law 280 extension of state jurisdiction to Indian Country in Alaska
 - o 1970s inclusion of Alaska Native Tribes in ICWA, Indian Self-Determination and Education Assistance Act, Indian Financing Act
 - o Creation of corporate entities in addition to governmental entities in ANCSA
 - o 1990s Interior and Congressional Lists
 - o Kaltag Adoption Case: sovereign tribal authority to adjudicate adoption of tribal citizen children

- o John v. Baker: sovereign tribal authority to adjudicate custody
- o Tanana/Parks: sovereign tribal authority to adjudicate child protection
- o T&H Child Support: sovereign tribal authority to adjudicate child support

MS. HANDLER said the Treaty of Cession does not distinguish between tribes in Alaska and those in the Lower 48; they are treated as "self-governing political groups with inherent sovereignty to decide their own affairs." Indigenous people are citizens of their tribal government, their state government, and their federal government. She noted that the Acts related to federal reserves, allotments, and townsites treat tribes in Alaska as tribes and would not have been possible without the recognition of Alaska tribes as sovereign governments. In the 1930s there was federal recognition of tribal marriage laws, as well as the Indian Reorganization Act (IRA), which recognized that tribes in Alaska have the same rights as those in the Lower 48 to establish tribal constitutions, work through policies of self-determination and economic development, and be treated as "fathering governments."

MS. HANDLER said Public Law 280 was passed in the 1950s, often cited by anti-tribal advocates as "a reason to think tribes ceased to exist in Alaska." Public Law 280 extended state jurisdiction over Indian country in Alaska. She said, "You can't have Indian country unless you have sovereign tribes, and so what Public Law 280 did is yet reaffirm ... that we do have sovereign tribes in the state of Alaska." Ms. Handler said the Acts specifically refer to Alaska Native tribal government. All the Acts from the early 1900s through the 1970s specifically recognize village and other tribal governments. She stated that despite the overt racism and institutionalized discrimination in this period, where children were removed from their homes and sent to boarding schools and there was state sanctioned discrimination in public institutions, one constant was the recognition of tribal governments.

[9:07:54 AM](#)

MS. HANDLER said that after the passage of the Alaska Native Claims Settlement Act (ANCSA) in 1971, anti-tribal advocates tried to manipulate and misinterpret ANCSA to support an idea that tribes had been extinguished in Alaska. She spoke of "the Nenana case" in 1886 where the village council had asked the state court to transfer a child protection proceedings case from

state to tribal court. She said this case and so many others are about Native villages trying to protect their children from abuse, neglect, and harm. She pointed out that the majority of Alaska communities, including Nenana, do not have state courts. In the Nenana case, she said, anti-tribal advocates litigated against the tribes to say that because they are without land, in large part, they have lost their governing authority over their citizens. She said from the late '80s to the early '90s, the state court system agreed that there was something in ANCSA that implicitly terminated the existence of tribal government in Alaska. She said that "the Stevens Village" case "affirmed that attitude." She talked about the John v. Baker case where a disgruntled father did not like the tribal court's decision and took his case to state court; the Alaska Supreme Court reviewed the history and the List Act, reversed the decisions from the Nenana and Stevens Village cases, and found that "ANCSA's experiment of resolving land claims through economic development did nothing to distinguish tribal government in Alaska"; tribes still exist and are able and have the authority to protect their own children and families. She said in the John v. Baker case, both the State of Alaska and the U.S. Department of Justice issued amicus briefs in support of the tribe. She said there was a millennium agreement that followed up on that, and it tried to "delve into the practicalities of how we have government to government relations in Alaska." On the heels of that agreement was an issuance of new policies and procedures in the state's Office of Children's Services to coordinate protective services in the state with limited resources through cooperation and the pooling of resources. She indicated the hope was that this type of litigation was done; however, the Reinke's opinion in 2004 "tore up" all the work that had been done by the Office of Children's Services with tribes and started a new wave of litigation in Alaska against the state's own people.

[9:12:54 AM](#)

MS. HANDLER named further cases: the Tanana case, a child protection case in which tribal government sought to protect abused and neglected children in their community; another case in which a tribal government sought to approve the adoption of a child in a community where there was not access to a state court; the Tlingit & Haida Child Support case, in which ALSC was involved and the Native American Rights Fund issued an amicus brief about the state recognizing tribal child support orders to ensure that "there's family responsibility for families in Alaska"; and the Simon v. Parks case, which was about protecting

a child from violence in the home. All these litigations were painful and costly, Ms. Handler said. Tribal members were coming to court where their existence was not even recognized. The State of Alaska lost all the cases and it damaged the state's reputation nationally and with its own people, as well as hurting the state's finances. She said the state lost out on opportunities for a variety of federal grants for states and tribes cooperating, to work on matters related to education, child welfare, transportation, education, law enforcement, and healthcare, because it focused all its energy on litigating against tribes.

[9:15:24 AM](#)

MS. HANDLER concluded by stating that CSHB 221(TRB) would benefit Alaska by committing the state to follow a path of cooperation with tribes instead of litigating against them; and to choose a path to pursue opportunities to work with tribes "to fill in gaps in the state where we need assistance" and "to move forward in creative and exciting ways."

[9:16:33 AM](#)

CO-CHAIR HANNAN announced that HB 221 was held over.

[9:16:44 AM](#)

The committee took an at-ease from 9:17 a.m. to 9:20 a.m.

HB 193-SECOND VERSE OF ALASKA'S STATE SONG

[9:20:10 AM](#)

CO-CHAIR HANNAN announced that the final order of business would be HOUSE BILL NO. 193, "An Act adding a second verse to the official state song."

[9:20:25 AM](#)

Representative Andi Story, Alaska State Legislature, as prime sponsor, presented HB 193. She paraphrased the written sponsor statement [included in the committee packet], which read as follows [original punctuation provided]:

House Bill 193 makes official the second verse of the Alaska State Flag Song, offering long overdue honor and recognition to the First People of Alaska and

Alaska's diverse cultures. The verse recognizes the history of Alaska's flag and its young thirteen-year old designer, Benny Benson, while continuing the first verse's theme celebrating the beauty of the land and hope for the future.

It is fitting that the State of Alaska, which now officially recognizes twenty native languages as well as English as our State languages, to honor Alaska's history that precedes western settlers' arrival.

Carol Beery Davis, an Alaskan pioneer and poet laureate is the author of the second verse. Inspired by her daughter and a friend, Connie Munro, who expressed dissatisfaction that the song did not acknowledge Alaska Natives, the original caretakers of the land, she wrote the verse to recognize that Alaska's history began long before sourdoughs arrived, and all are now a part of the State's history.

Since it was written in 1987, there has been work towards adoption of the second verse, but official recognition has not yet been realized. With a new wave of support from this generation's children, it is time to do so.

Please join me in supporting the Alaska Flag Song in celebrating Alaska's long and rich history.

[9:22:40 AM](#)

CAITLYN ELLIS, Staff, Representative Andi Story, Alaska State Legislature, presented HB 193 on behalf of Representative Story, prime sponsor. She explained that the proposed legislation would add a second verse to the Flag Song but would not require both verses to be sung. She stated that the University of Alaska Foundation holds the copyrights to the music and both verses; the material was donated to the university by Eleanor Dussenbury, the composer. The lyrics of the first verse were written by Marie Drake, and the lyrics of the second verse were penned by Carol Beery Davis. Ms. Ellis said that the university holds these materials in the trust to the benefit of the university and the public and maintains a neutral position on HB 193.

MS. ELLIS related that in the last week, a choir had been asked to sing the Flag Song at a local event. The choir director

asked the event organizer whether the choir could sing the second verse. The event organizer was advised by state officials to answer no, because the second verse was not yet official. Passage of HB 193 would allow groups to sing the second verse at events, such as at the opening of Senate and House floor session, and would allow the second verse to be printed along with the first verse. Ms. Ellis said officially adopting the second verse would tell a more complete story, provide a full picture of Alaska, and honor all the cultures in the state.

[9:24:45 AM](#)

CO-CHAIR HANNAN opened invited testimony on HB 193.

[9:25:31 AM](#)

HUNTER CARTE, Fifth-Grade Student, Glacier Valley Elementary School, testified in support of HB 193. She said the proposed legislation means being respectful to elders and kind and inclusive to all Alaska Native cultures. Further, it would show that if children put their minds to something and work hard, "anything is possible." She encouraged the committee to "vote 'yes' for HB 193."

[9:26:14 AM](#)

FAITH CONTRERAS, Elementary Student, testified in support of HB 193. She introduced herself first in a Native Alaska language, and then in English pointed out that the first verse of the Flag Song mentions "the gold of the early sourdough's dreams" and makes no mention of Alaska Natives, who have lived on the land for thousands of years. She expressed pride in being an Alaska Native but said she would be even prouder "to be included in the second verse." She thanked the committee.

[9:27:02 AM](#)

SAHARA SHOEMAKE, Student, Glacier Valley Elementary School, testified in support of HB 193. She gave three reasons to make the second verse of the Flag Song official. First, she said it is important for "not just children" to know who Benny Benson is [the creator of the Alaska Flag design] and to learn that working on dreams can have results. Second, she drew attention to part of the second verse [on page 1, lines 11-12, of HB 193], which read: **"to share our treasures hand in hand, to keep Alaska our Great Land."** She described those words as "a little

welcome from Alaska for people who come" - a way to extend honor, support, and respect. The third reason, she stated, is that "the Alaska Natives are often forgotten." She pointed out that the first verse says nothing about them. Benny Benson was an Alaska Native. She said the second verse gives Alaska Natives "more of a voice." She concluded, "I persuade you to vote yes to HB 193."

[9:29:11 AM](#)

JUDAH MARR, Fourth-Grade Student, Glacier Valley Elementary School, recognized the Auke Kwan people, "whose land we are standing on today," and introduced himself in a Native Alaska language and English. He said he strongly believes the second verse of the Flag Song should be made official because it recognizes the creator of the flag's design, Benny Benson, as well as the Alaska Native people, "who were the first people of this land." He encouraged the committee to support HB 193. He announced that the students would sing both the first and second verse of the Flag Song.

[9:30:50 AM](#)

[The students sang both verses of the Flag Song.]

[9:33:47 AM](#)

CO-CHAIR HANNAN thanked the students for their performance.

[9:33:53 AM](#)

REPRESENTATIVE THOMPSON related a story of knowing Benny Benson and introducing him and Dave Adler at an Elk's convention in Fairbanks, Alaska, in 1972. He related that Mr. Adler had been on the committee [in 1927] that chose the winning design. Representative Thompson said he got to introduce the two men, who had never previously met.

[9:34:38 AM](#)

CO-CHAIR DRUMMOND expressed gratitude to the students for being present. She noted that it was students who helped name the Alaska State Dog, the malamute. She said Benson Boulevard in Anchorage is named after Benny Benson and a memorial to the flag itself is at the corner of Minnesota Drive and Benson Boulevard. She said, "We should be able to add this ... verse to the Flag

Song, and it's totally appropriate that a bunch of school kids are going to help us do this."

[9:36:13 AM](#)

CONNIE MUNROE remarked that she had never before heard school students testify before the legislature, and she considered the experience a gift. As a point of interest, she remarked that the sourdoughs addressed in the song were outsiders and her daughter, who works for Donlin Gold, LLC, in Anchorage, recently hired 100 Alaska Natives to open a gold mine. She offered her educational background and experience speaking with superintendents around the state, where she found "all of them used the second verse in their graduation and for special activities, too." She talked about those who have attempted to garner support for the second verse, including the late Senator Bettye Davis and the Alaska Native Sisterhood and Brotherhood.

MS. MUNROE said she lost her job in the early '80s and was about to leave the state to take another job, and that is when Carol Beery Davis wrote "this song"; it was a farewell gift. Ms. Munroe ended up getting her job back and remaining in Alaska. She continued:

The song just moved me. I refused to sing it until the indigenous people were recognized, and that's how this all came about.

MS. MUNROE indicated there had been support from the House and Senate in the past; however, "there was one person that thought the second verse was not to his liking." She said she pleaded with this person to find someone "to write another one." She continued:

Our legislators at that time said, "We will not hold a contest because it'll open up a can of worms. Instead we'll wait for someone to ... write it and present it to us." And so, that's how that happened. And that's why Carol wrote it.

MS. MUNROE urged the committee to support HB 193.

[9:41:14 AM](#)

REPRESENTATIVE CLAMAN asked Ms. Munroe what her relationship is to the woman who wrote the second verse of the Flag Song.

MS. MUNROE answered, "Her daughter was my best friend." She talked about what an incredible person Ms. Beery Davis was. She mentioned a book, The Totem Song, which she said is the first book published with Alaska Native songs and is available at the Alaska State Library. Shared that she was nervous. She shared that she is 85 and just learned she is cancer free.

[9:43:20 AM](#)

ANNE C. FULLER testified in support of HB 193. She said as a storyteller, she ponders over words, which matter. She said she thinks the printing and singing of the second verse "will touch our minds." She predicted that people would consider the words, "no bars among our cultures." She recalled the advice of Elizabeth Peratrovich that people speak their intent to help overcome discrimination. She urged the committee to "please move this bill along."

[9:45:09 AM](#)

LAURIE HEGGIE, PhD, Music Teacher, Glacier Valley Elementary School, expressed appreciation to Representative Story for listening to the students and sponsoring HB 193. She indicated that not all the students who wanted to testify today were able to do so. She said the day before [students] had presented at "the Innovation Summit" to show the power of people working together to effect change, and following the presentation, one of the students remarked on the diversity of cultures present. Dr. Heggie tied that into how the second verse of the Flag Song illustrates inclusivity. She thanked the committee for listening to the children describe what the second verse means to them.

[9:47:30 AM](#)

CO-CHAIR HANNAN explained the process of hearing a bill twice in committee to the children present, and said the committee would hear HB 193 a second time at its next meeting.

[9:48:22 AM](#)

REPRESENTATIVE STORY said she remembered hearing the Alaska Native Sisterhood sing the second verse in the past, and she said she knew there was "a deep longing to have the second verse become part of our state song." She said she heard sincerity in the students' descriptions of what the words mean to them. Hearing them and knowing how many people in the past wanted [the

second verse recognized] made it easy for her to sponsor HB 193. She expressed having a connection with Ms. Beery Davis, having been her home health aide at one time. She said the second verse moves her because it recognizes all cultures in Alaska. She urged the committee to pass HB 193 out of committee.

[Due to technical issues, the following is available only on the MP3 audio from House Records on BASIS, not the Media Services audio/video.]

[9:52:41 AM](#)

[Students performed a rap song they created in support of making the second verse of the Flag Song an official version of the song.]

[9:54:01 AM](#)

CO-CHAIR HANNAN thanked the student and teacher presenters for their efforts in coming before the committee today.

[HB 193 was held over.]

[9:54:27 AM](#)

ADJOURNMENT

There being no further business before the committee, the House Community and Regional Affairs Standing Committee meeting was adjourned at 9:54 a.m.