

HOUSE FINANCE COMMITTEE
March 4, 2020
9:04 a.m.

[9:04:14 AM](#)

CALL TO ORDER

Co-Chair Johnston called the House Finance Committee meeting to order at 9:04 a.m.

MEMBERS PRESENT

Representative Neal Foster, Co-Chair
Representative Jennifer Johnston, Co-Chair
Representative Dan Ortiz, Vice-Chair
Representative Ben Carpenter
Representative Andy Josephson
Representative Gary Knopp
Representative Bart LeBon
Representative Kelly Merrick
Representative Colleen Sullivan-Leonard
Representative Cathy Tilton
Representative Adam Wool

MEMBERS ABSENT

None

ALSO PRESENT

Josiah Nash, Intern, Representative Johnathan Kreiss-Tomkins; Representative Jonathan Kreiss-Tompkins, Bill Sponsor; Megan Wallace, Director, Legislative Legal Services, Alaska State Legislature.

SUMMARY

HJR 15 CONST. AM: VOTES NEEDED FOR VETO OVERRIDE

HJR was HEARD and HELD in committee for further consideration.

Co-Chair Johnston reviewed the meeting agenda.

#hjr15

HOUSE JOINT RESOLUTION NO. 15

Proposing an amendment to the Constitution of the State of Alaska relating to actions upon veto.

[9:05:16 AM](#)

JOSIAH NASH, INTERN, REPRESENTATIVE JOHNATHAN KREISS-TOMKINS, presented the bill with a prepared statement. He noted that the bill had first been introduced by Representative Johnathan Kreiss-Tomkins the previous April.

This constitutional amendment would lower the veto override threshold for appropriation bills from three-fourths of legislators (45 votes) to two-thirds of legislators (30 votes). Currently vetoes on non-appropriation bills in Alaska require two-thirds of legislators to be overridden. HJR 15 creates a uniform veto override vote threshold for appropriation and non-appropriation bills. Alaska's threshold is disproportionate to every other state in the union, including territories. Alaska is the only state with a three-fourths override veto threshold, every other state has a two-thirds, three-fifths, or simple majority vote threshold.

Mr. Nash pointed to a slide titled "Veto Override Thresholds in the U.S." (copy on file) and highlighted that 38 states had a two-thirds threshold, 6 states had a three-fifths threshold, and 5 had a simple majority threshold. He directed attention to the red dot representing Alaska in the upper left corner of the slide and noted it was the only state with a high three-quarter vote threshold.

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REPRESENTATIVE JONATHAN KREISS-TOMPKINS, BILL SPONSOR, elaborated on the introduction. He clarified that the bill had been introduced prior to any veto actions made by the governor the previous session. He clarified that the bill had not originated as a "call and response kind of thing." He recognized that he had anticipated some of the things that had come down the pike. He believed it was fairly clear when thinking about the balance of powers that Alaska was anomalous from the rest of the nation, which he did not believe made sense. He added that having asymmetric veto override thresholds - a two-thirds threshold for policy

bills and a three-quarter threshold for appropriations and revenue bills - created legal ambiguity because it was necessary to define what constituted a policy bill versus an appropriation or revenue bill.

Representative Kreiss-Tomkins elaborated it had come home to roost in the 1990s under Governor Tony Knowles and a legislature that was by in large at larger heads with the governor. The legislature had sought to override the governor on a veto and could only reach the two-thirds threshold. He elaborated that Governor Knowles had asserted that the legislation being vetoed was an appropriation bill and would have a higher veto threshold, while the legislature asserted it was policy legislation with a lower threshold. The issue had ultimately gone to the Alaska Supreme Court. He explained that a non-uniform threshold was messier and resulted in issues around definitions. He detailed that a uniform threshold resulted in a cleaner constitution and veto override process.

[9:09:34 AM](#)

Co-Chair Foster asked if the bill sponsor had done any research to see what the framers of the state constitution had in mind. He highlighted that by the time Alaska's constitution went into effect all other states except Hawaii had theirs in place. He thought it seemed like Alaska's constitutional framers would have looked to the other states. He wondered why the framers chose three-quarter threshold.

Representative Kreiss-Tompkins replied that he had reviewed the minutes from the constitutional convention and there had been two schools of thought on the issue. He detailed that the school of thought that prevailed resulting in the three-quarters override threshold asserted the desire for the executive to be as strong as possible in Alaska. He believed it was the same guiding principle that had led to having all constitutional officers appointed by the governor including the attorney general and various commissioners, which was different than many, albeit not all, other states.

Representative Kreiss-Tomkins continued that in terms of the three-quarter override threshold, the opposing school of thought in the constitutional convention had argued that it was such a high threshold that the governor effectively

had unilateral power to veto and never be overridden. He elaborated that effectively, one-quarter of legislators representing one-quarter of Alaskans would have power over three-quarters of legislators and Alaskans. He referenced the green dots on the slide representing states with a simple majority override threshold and did not believe that threshold level made a lot of sense. He noted the states with a simple majority threshold were all southern states and he did not know the thinking behind the decision. He reasoned that having the threshold too far in the opposite direction did not make a lot of sense either.

Representative Kreiss-Tomkins stated it was pretty clear with over a half century of legislative/executive branch interaction that the school of thought that suggested the governor basically had unilateral veto power and that the three-quarters override threshold was effectively unattainable, had more or less been proven accurate. He highlighted that the number of attempts to override vetoes in Alaska history was scarce and he believed the number of successful overrides could be counted on one hand. He would double check on the actual count over the past century.

Co-Chair Foster looked at a handout showing the vote required to override a veto of selected types of bills ["Table 98-6.22" published by the National Conference of State Legislatures (copy on file)]. As an example, he highlighted that Arizona required a three-quarter vote for an emergency bill and revenue (tax) bills. He thought it appeared that may be the only three-quarter vote required on other things. He was interested in the rationale in the other examples where a three-quarter threshold was required. He wondered if there were other actions that were not included on the handout.

[9:13:11 AM](#)

Representative Kreiss-Tomkins deferred the question to Legislative Legal Services.

MEGAN WALLACE, DIRECTOR, LEGISLATIVE LEGAL SERVICES, ALASKA STATE LEGISLATURE, asked Co-Chair Foster to repeat the question.

Co-Chair Foster explained that he was thinking about where a three-quarter vote was required, whether it was for an override or any other actions by states. He asked if there

was a theme that led states to set a bar at a certain level. He used Arizona as an example where a three-quarter vote was required for an emergency bill or tax bill.

Representative Kreiss-Tompkins noted he had misunderstood and there was no need to call Ms. Wallace forward for the question. He did not know if there was a theme of the other examples of the three quarter threshold, but he would follow up.

Representative Carpenter asked what the outcome had been in the former Governor Knowles case mentioned by Representative Kreiss-Tomkins.

Representative Kreiss-Tompkins recalled that the legislature had prevailed in the litigation in the 1990s. He explained the issue had involved the legislature giving land to the University for its land grant. He detailed that Governor Knowles had asserted that giving land to the University constituted an appropriation and he vetoed the action. The legislature had sought to override - it had the two-thirds threshold but could not reach the three-quarter threshold. The legislature had litigated and had prevailed.

[9:15:46 AM](#)

Representative Carpenter asked if Representative Kreiss-Tompkins had seen any evidence showing that Alaskans wanted to move away from a three-quarter vote threshold or a strong governor.

Representative Kreiss-Tompkins answered that he assumed people had varying views. He elaborated that the legislation almost inevitably had to be colored through recent history. He believed there had been significant consternation upon discovery that the override threshold was high and unattainable in the past year. He explained that even if the threshold was two-thirds, which was the most common in most of the country and what Alaska's constitution provided for with policy bills, the veto override vote in January would have failed because it did not meet the two-thirds threshold. He noted there was active legislation in both bodies [of the legislature] about the election of the attorney general instead of appointment of the attorney general. He believed a strong executive made sense albeit within reason. He thought the

three-quarter threshold was a bit beyond reason in terms of practicality.

Representative Carpenter remarked that he had not heard anything about reducing the power of the governor or adjusting the three-quarter vote prior to the past year. He wondered if there was feedback or data indicating a desire by Alaskans to entertain a move that could impact the state's government for the foreseeable future.

[9:18:08 AM](#)

Representative Kreiss-Tompkins believed most Alaskans and most legislators had probably been unaware of the three-quarter veto override threshold for appropriations. He reasoned that the topic did not come up unless the situation presented itself. He noted that most Alaskans he had spoken to the previous session had not been aware of the three-quarter threshold. He believed the same may be true for people in the legislature. He never had cause to be familiar with the specific part of the constitution in his first seven years with the legislature. He stated it was hard to say whether the public supported a change, but the issue would go to a vote of the people to decide.

Representative LeBon remarked that the discussion was interesting because there was a historical perspective involved. By his reading of the debate in the mid-1950s when the Alaska territory crafted its state constitution, there had been a political influence from Congress for Alaska to have a strong governor and a high veto threshold. The view had been that Alaska did not have the resources to support itself. The fear was the state's spending would get out of control quickly and the state needed an adult in the room to keep spending down. He believed it was the reason Alaska was the only state with the three-quarter vote threshold. He considered whether the three-quarter threshold was still needed. He noted the issue would be decided by a vote of the people if the legislation passed the legislature. He explained that the existing framework had been used to entice Congress to vote in favor of statehood. The framers of the constitution had felt that putting the language in the constitution would help with the vote.

Representative Wool noted that there were three options used by other states and Alaska was the only state with a

three-quarter override. He had not been aware that Alaska was the only state with a three-quarter override. He recognized that Alaska was one of the newest states other than Hawaii and Hawaii had a two-thirds threshold across the board. He highlighted the states with a three-fifths threshold and noted that with the exception of two states, all had a three-fifths veto threshold across the board. He highlighted that Rhode Island had a three-fifths threshold with everything except an appropriation bill, which had a two-thirds threshold. Additionally, Ohio had a three-fifths threshold for everything but an emergency bill. He observed that HJR 15 would make Alaska's threshold two-thirds across the board, which would be uniform with other states that selected one threshold. He asked if the sponsor had considered a three-fifths threshold.

[9:22:13 AM](#)

Representative Kreiss-Tompkins replied that he had not considered the idea because the state's policy override threshold was two-thirds and it seemed reasonable to tether to the state's constitutional precedent. He was not overtly opposed to the idea and would defer to the will of the committee and legislature. He returned to a question by Representative Carpenter and relayed that he believed in a strong executive within reason, whether he agreed or disagreed with the executive. He believed three-quarters was a bit too much. He noted that the three-fifths gave him a bit of hesitation for that same reason. The primary reason he had selected two-thirds was because it was already included in the constitution. He thought that if asked, prior to the past year, people broadly would have thought the veto threshold was two-thirds.

Representative Kreiss-Tompkins referenced Representative LeBon's comment and highlighted that one of the pieces that gave him pause about the three-quarter threshold was the ability for a veto pen to make policy through appropriation veto. He elaborated that if there was a governor with strong perspectives on a particular issue it would require a supermajority to override the veto. For example, if there was a governor strongly opposed to mining, the governor could line item veto funding for the Department of Natural Resources, Division of Mining, Land, and Water and effectively put a stop to mining in Alaska. Similarly, if someone thought that the notion of the municipal share of commercial fish tax was a bad idea, it could be ended with

an appropriation veto. He believed that keeping in mind the policy ramifications or the policy making power that existed through appropriation veto was great. He explained that the additional context was the impetus of the legislation.

[9:25:13 AM](#)

Co-Chair Foster returned to his earlier question about what other states may use the three-quarter vote for. He was reminded of a vote the House had taken the previous day related to taking funds from the Constitutional Budget Reserve (CBR). He detailed that any time the legislature wanted to draw from the CBR (including deficit filling language, drawing from the CBR, and doing the reverse sweep), a three-quarter vote was required.

Representative Kreiss-Tompkins remarked that it was a good point. Having been on both sides of CBR votes, he was not averse to the CBR threshold being three-quarters. He shared that the concept he kept in mind when thinking about the veto override threshold versus the supermajority vote required to draw from the CBR was that hopefully the CBR was not fully required to maintain the status quo. Instead of using the CBR to maintain the status quo, a small amount could be taken from the fund to cover any final extra gap in the budget. The hope was, the funds would not need to be taken from the CBR at all; however, recent history had proven otherwise. He viewed the budget that had initially been presented to the governor as the status quo or default. He thought that requiring a three-quarters vote to sustain the default seemed extraordinary. Whereas, if the legislature was looking to use funds from savings, which should not be habitually relied upon, a more extraordinary or exceptional threshold may be warranted.

[9:27:43 AM](#)

Representative Josephson shared that he had looked at the simple majority states and many had been slave holding states. For example, before the Civil War there had been the nullification crisis in the 1830s when John Calhoun told President Jackson that South Carolina would not comply with the federal law, which had almost led to war. He elucidated that those votes were explained by the fear of a strong executive. He pointed out that the southern states

were also more reluctant to join the union in 1789 because of fear of a strong presidency.

Co-Chair Johnston asked Mr. Nash to provide a sectional of the bill.

Mr. Nash reviewed the sectional analysis (copy on file):

Section 1: This section changes the veto override threshold for appropriations bills from three-fourths of the membership of the legislature to two-thirds.

Section 2: The section places the amendment on the ballot in the next general election.

HJR 15 was HEARD and HELD in committee for further consideration.

Co-Chair Johnston reviewed the schedule for the afternoon meeting.

ADJOURNMENT

[9:30:14 AM](#)

The meeting was adjourned at 9:30 a.m.