

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

April 1, 2019

1:01 p.m.

MEMBERS PRESENT

Representative Matt Claman, Chair
Representative Gabrielle LeDoux, Vice Chair
Representative Chuck Kopp
Representative Louise Stutes
Representative Adam Wool
Representative Laddie Shaw
Representative David Eastman

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

CS FOR SENATE BILL NO. 89(JUD)

"An Act relating to the Legislative Ethics Act; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 89

SHORT TITLE: LEGISLATURE: ETHICS, CONFLICTS

SPONSOR(s): RULES

03/13/19	(S)	READ THE FIRST TIME - REFERRALS
03/13/19	(S)	JUD
03/18/19	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/18/19	(S)	Heard & Held
03/18/19	(S)	MINUTE(JUD)
03/20/19	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/20/19	(S)	Moved CSSB 89(JUD) Out of Committee
03/20/19	(S)	MINUTE(JUD)
03/22/19	(S)	JUD RPT CS 1DP 3NR 1AM SAME TITLE
03/22/19	(S)	DP: HUGHES
03/22/19	(S)	NR: REINBOLD, MICCICHE, SHOWER
03/22/19	(S)	AM: KIEHL
03/27/19	(S)	TRANSMITTED TO (H)
03/27/19	(S)	VERSION: CSSB 89(JUD)

03/29/19 (H) READ THE FIRST TIME - REFERRALS
03/29/19 (H) JUD
04/01/19 (H) JUD AT 1:00 PM GRUENBERG 120

WITNESS REGISTER

SENATOR JOHN COGHILL
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Introduced SB 89 on behalf of the Senate Rules Standing Committee, the prime sponsor.

CHAD HUTCHISON, Senate Majority Counsel
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Gave a presentation and answered questions during the hearing on SB 89.

DAN WAYNE, Legislative Counsel
Legislative Legal Services
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Answered questions during the hearing on SB 89.

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

POSITION STATEMENT: Answered questions during the hearing on SB 89.

ACTION NARRATIVE

[1:01:55 PM](#)

CHAIR MATT CLAMAN called the House Judiciary Standing Committee meeting to order at 1:01 p.m. Representatives Wool, LeDoux, Eastman, Stutes, Kopp, Shaw, and Claman were present at the call to order.

SB 89-LEGISLATURE: ETHICS, CONFLICTS

[1:02:46 PM](#)

CHAIR CLAMAN announced that the only order of business would be SENATE BILL NO. 89 "An Act relating to the Legislative Ethics

Act; and providing for an effective date." [Before the committee was CSSB 89(JUD), version 31-LS0209\K.]

1:03:24 PM

SENATOR JOHN COGHILL, Alaska State Legislature, said SB 89 addresses House Bill 44 [passed during the Thirtieth Alaska State Legislature], which enacted various legislative ethics requirements and restrictions. He summarized changes made by House Bill 44. He said SB 89 would not affect most provisions of House Bill 44 but instead would make changes to its conflict reporting requirements. He explained that the legislature had not realized how broadly the ethics rules in House Bill 44 were written. He said SB 89 would repair those broad definitions.

SENATOR COGHILL explained that he was tasked with drafting SB 89 because he has sat on the Select Committee on Legislative Ethics for a number of years and is familiar with how it operates. He stressed the importance of keeping SB 89 clear, clean, and unambiguous. He noted that House Bill 44 included new language, new definitions, and new requirements that created a "cloud of question." He said the resultant confusion has caused ethical legislators, acting out of an abundance of caution, to avoid legislative duties that they otherwise would do ethically. He added that the "cloud of doubt" has protected those who may be "less than ethical" because there is an understanding that no one would be charged with ethical misbehavior amid this confusion. He said SB 89 would clarify these issues. He pointed to Article 2 of the Standards of Conduct for legislators found in AS 24.60.030. He said SB 89 primarily addresses subsections (e) and (g).

SENATOR COGHILL discussed how the Select Committee on Legislative Ethics approached the question of legislators holding private meetings on conflicted topics and whether that can be done legitimately. He said the committee determined the answer to be "no" because, under the broad definition of what a conflict would be, any impact that was greater than that of the general public would create a conflict. He explained that this means legislators are unable to have private meetings about those topics, as those meetings would have to be public for the purpose of declaring the conflict.

SENATOR COGHILL said SB 89 builds upon language "that we knew worked." He said one new thing proposed by SB 89 is the declaration of conflicts in committee as well as on the floor.

SENATOR COGHILL said he approached SB 89 with an eye toward practicality in determining how legislators should declare conflicts when it is clear to them and to the public that a conflict may exist. He noted that the next speaker, Chad Hutchison, will argue that SB 89 is undergirded by constitutional arguments. He urged the importance of informing the public of legislator conflicts and said SB 89 strives to clarify that process.

[1:09:30 PM](#)

REPRESENTATIVE EASTMAN asked whether the Select Committee on Legislative Ethics has any thoughts or recommendations.

SENATOR COGHILL said the committee's approach is "you deliver the law, we'll interpret it." He relayed the committee's perspective that the legislature faces "some real conundrums." He referenced Advisory Opinion (AO) 18-05 and AO 19-01 in which the Select Committee on Legislative Ethics interpreted the law to address questions pertaining to conflicts. He said the committee determined that if a legislator has family members or some interest in an enterprise, it would qualify as a conflict. He opined that this flies in the face of a citizen legislature and a representative democracy.

[1:10:34 PM](#)

REPRESENTATIVE WOOL asked how much of the tension around these laws is attributable to the committee's interpretation of House Bill 44. He recalled a conversation he had with one of the sponsors in which the sponsor claimed the law was being misinterpreted and that disallowing legislators to discuss certain topics was not the intent.

SENATOR COGHILL confirmed that this was not the intention, but the problem is in how the words were interpreted. He opined that the legislature must "strike a cleaner line than what has been delivered to us."

[1:11:27 PM](#)

REPRESENTATIVE LEDOUX said the problem seems to be with the committee's interpretation of the law. She asked, instead of going back and revising, why the legislature cannot just pass clarifying language reasserting the intention to not disallow private meetings with constituents, regardless of what the Select Committee on Legislative Ethics has said.

SENATOR COGHILL said that is what SB 89 seeks to do. He argued that language from House Bill 44 must be changed in order to accomplish that goal. He said this includes the inclusion of family members in the conflicts provision. He called that language "too broad" and said SB 89 would revert back to more easily-understood language.

REPRESENTATIVE LEDOUX said she still does not understand why her proposed statement would be insufficient. She suggested leaving the ethics laws extremely broad. She restated that the problem seems to be not that the law includes family members, but that legislators "cannot have any meetings about anything."

SENATOR COGHILL opined that the definitions and the breadth have become a problem.

[1:13:45 PM](#)

CHAD HUTCHISON, Senate Majority Counsel, Alaska State Legislature, recognized and thanked Dan Wayne from Legislative Legal Services for his work raising constitutional issues related to House Bill 44. He also thanked Jerry Anderson, Administrator of the Select Committee for Legislative Ethics, for his fairness in implementing the law and his patience as the legislature fields him with questions. He referred to several AOs issued by the Select Committee for Legislative Ethics and pointed out that they were unanimous opinions. He argued that the problems that resulted from House Bill 44 are not due to its interpretation as there have been no dissenting opinions. He said SB 89 attempts to resolve the issues with the written word of the law.

[1:15:09 PM](#)

MR. HUTCHISON began his PowerPoint presentation [hard copy included in the committee packet] and addressed slide 2. He clarified that SB 89 would not repeal House Bill 44. He addressed slide 3, which featured a list of House Bill 44 provisions and other standards of conduct which would remain intact.

MR. HUTCHISON addressed slide 4. He said SB 89 would eliminate unconstitutional language added to statute in 2018. He addressed slide 5, which featured a list of constitutional issues that have emerged because of the conflict provisions of House Bill 44, which he said have affected "fundamental rights."

He explained that fundamental rights may be restricted by the government, but only when it is necessary to compelling state interests and those restrictions are narrowly tailored to be the least restrictive alternative. He argued that the conflict provisions of House Bill 44 clash with Article II of the Constitution of the State of Alaska because they diminish core legislative functions and representation. He offered the example of a current senator who is also a miner and how this senator has been unable to discuss, meet privately about, or carry legislation relating to mining.

[1:18:43 PM](#)

REPRESENTATIVE LEDOUX asked why there is so much focus on restoring previous language rather than adding clarifying language that supersedes the findings of the Select Committee on Legislative Ethics.

MR. HUTCHISON said that is essentially what SB 89 attempts to do. He argued that the changes are necessary because some provisions in House Bill 44 restrict fundamental rights and are not the least restrictive alternative. He pointed to additional rights laid out in Article I, Sections 1, 5, and 6 of the state constitution. He argued that these rights are also restricted by language in House Bill 44. He stressed the importance of the "least restrictive alternative" requirement when restricting fundamental rights.

[1:20:29 PM](#)

REPRESENTATIVE EASTMAN asked why the approach to addressing House Bill 44 was not to clarify the definition of "official action" and ensure it does not include things like private meetings.

MR. HUTCHISON said "official action" has not technically been defined. He said the Select Committee on Legislative Ethics has interpreted it as "legislative action," which has a broad definition. He said he would address the topic during his presentation.

[1:21:36 PM](#)

MR. HUTCHISON explained that Article II of the Constitution of the State of Alaska has been violated from two perspectives: that of the legislators who must be able to fulfill their duties and that of constituents who must have representation in

government. He said the violations of Article I of the state constitution are a result of the restrictions not fulfilling the requirement that they be "narrowly tailored to be the least restrictive alternative" He said the current ethics law violates equal rights and equal protections provisions encompassed in Article I, Section 1 because different groups of constituents are disallowed equal access to their representatives. He said the law violates freedom of speech protections encompassed in Article I, Section 5 because of restrictions placed on legislators and constituents as relates to conversations about the legislative process. He said the law violates the right to free assembly and petition encompassed in Article I, Section 6 because legislators are not permitted to discuss the legislative process with constituents.

MR. HUTCHISON noted that House Bill 44 defines a conflict as a situation in which "substantial benefit or harm" could result. He referenced a senator who had to withdraw a bill because of its potential negative impacts to her husband, who works in the medical field. Theoretically, he said, a senator could not push legislation that would benefit the entire state of Alaska if it would also harm him/her financially.

[1:25:01 PM](#)

MR. HUTCHISON addressed slide 6, which listed federal constitutional rights that he said have been violated by the ethics law. He spoke to violations of the First Amendment of the Constitution of the United States of America. He remarked that the Fourteenth Amendment, which ensures citizens liberty, is also violated when restrictions are placed on constituents' ability to petition their government.

[1:25:59 PM](#)

REPRESENTATIVE WOOL asked for an elaboration of the Fourteenth Amendment protection relating to property.

MR. HUTCHISON said the government cannot deprive people of life, liberty, or property without due process of law. He said this requires some sort of notice, process, or adjudication.

REPRESENTATIVE WOOL inquired about the constitutionality of a withholding the legislator per diem should "certain bills" not pass. He clarified that the legislator per diem is compensation for room and board in a town other than one's own. He asked if

withholding expected compensation for living expenses would be covered.

MR. HUTCHISON said, "I think your instincts are correct on the per diem," though stressed that the per diem was not a focus of his presentation. He recommended the committee members read Dan Wayne's memorandums on various constitutional issues related to House Bill 44.

[1:28:01 PM](#)

MR. HUTCHISON addressed slide 7. He said section 1 of SB 89 would amend AS 24.60.030(e) and address issues related to the "scope of conflict." He highlighted various issues related to the practical result of House Bill 44 including "a vast net of conflict" because conflicts extend to the immediate family. He stressed that these are not the least restrictive alternatives.

MR. HUTCHISON addressed slide 8, which detailed proposed changes to AS 24.60.030(e). He explained that SB 89 would return the language used before 2018. For perspective on the ramifications, he recommended the committee consult Uniform Rule 34(b); Mason's Manual Sections 241, 522, and 560; and Advisory Opinions 04-02, 08-01, 11-05, and 13-01. He said those sources provide insight on how ethics issues related to conflicts were handled prior to House Bill 44. He noted that SB 89 would eliminate the language "immediate family" within the scope of conflict, as well as passages that restrict legislator advocacy. He said the bill would also eliminate the \$10,000 income threshold and the language "preceding 12-month period."

[1:32:25 PM](#)

MR. HUTCHISON addressed slide 9. He said section 2 of SB 89 would amend AS 24.60.030(g). He spoke to the connectedness of subsections (e) and (g) of the statute. He said the changes proposed by SB 89 further address the expansion of conflicts enacted by House Bill 44. He noted that House Bill 44 made omnibus bills impractical because their multiple provisions increase the likelihood of legislator conflicts. He referenced a situation involving Senator Shelley Hughes, who chairs the Senate Judiciary Standing Committee. He said Senator Hughes could not hold a hearing on an omnibus criminal justice reform bill because the bill dealt with the Alaska Therapeutic Courts and her husband works in the medical field. He spoke to other impractical approaches the Senate Majority has had to take in order to abide by the provisions of House Bill 44.

MR. HUTCHISON addressed slide 10, which listed the changes to AS 24.60.030(g) proposed by SB 89. He said conflicts would still have to be declared before voting on a question in committee, but all other restrictions and prohibitions would be removed. He said SB 89 would revert the language "financial interest" to the less-restrictive "equity or ownership interest." He added that the language "general public" would be returned to "substantial class of persons to which the legislator belongs as a member of a profession, occupation, industry, or region." He explained that "general public" is too broad and therefore does not abide by the "least restrictive" requirement.

[1:36:56 PM](#)

MR. HUTCHISON addressed slides 11 and 12, which covered section 3 of SB 89. He explained that section 3 would repeal AS 24.60.030(j)(2), which defines "substantially benefit or harm," and AS 24.60.990(a)(6), which defines "financial interest." He argued that these paragraphs should be removed for purposes of clarity, as the current definitions are too broad and therefore too restrictive. He noted that the current language creates myriad problems for legislators who might or might not be conflicted. He reiterated that these restrictions of fundamental rights do not abide by the necessary requirements.

[1:38:21 PM](#)

MR. HUTCHISON addressed slide 13, which explained that section 4 of SB 89 would make the act effective immediately upon signing.

MR. HUTCHISON addressed slide 14, titled "This clarification attempts to find the right balance." He referenced AO 19-01, authored by Dan Wayne, and stressed the indubitable importance of high moral and ethical standards among public servants in the legislative branch. He said such standards are vital to government trust, respect, and the confidence of constituents.

MR. HUTCHISON paraphrased Mason's Manual section 522 and said, "The right of the members to represent their constituencies is of such major importance that members should be barred from their constitutionally required representative duties only in clear cases of personal enrichment." He pointed to previously-utilized tools for addressing these situations such as voter recall, censure, and ethical sanctions. He said the final decision is in the election process, where voters can engage in recourse against a legislator who is perceived to be unethical.

He said there were plenty of options for addressing unethical behavior prior to House Bill 44.

[1:40:23 PM](#)

REPRESENTATIVE STUTES asked for verification that SB 89 would not change the practice of a legislator declaring a conflict on the floor and then being required to vote upon a colleague's objection.

MR. HUTCHISON said things would go back to how they were prior to House Bill 44, so if that was the process back then, the answer is yes.

REPRESENTATIVE STUTES noted that this custom seems to be the topic related to legislative ethics that elicits the most complaints from her constituents. She called the custom "troublesome."

[1:41:26 PM](#)

REPRESENTATIVE EASTMAN recalled that there was a proposed change to the Uniform Rules of the Alaska State Legislature to address the issue raised by Representative Stutes, and that it accompanied House Bill 44 but did not pass. He asked if that is correct.

MR. HUTCHISON said he remembered it being a House Concurrent Resolution. He asked for clarification.

CHAIR CLAMAN noted that House Bill 44 came attached to a concurrent resolution [House Concurrent Resolution 1 (introduced in the Thirtieth Alaska State Legislature)] that would have changed the uniform rule relating to the issue referenced by Representative Stutes. He said changes to the uniform rules require a two-thirds vote; House Concurrent Resolution 1 failed to reach that threshold in the House.

MR. HUTCHISON clarified that if House Concurrent Resolution 1 did not pass, then SB 89 would not address the issue mentioned by Representative Stutes.

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REPRESENTATIVE STUTES asked for verification that to change the current practice of declaring conflicts on the floor would require a change to the uniform rules.

MR. HUTCHISON deferred to Dan Wayne.

[1:43:44 PM](#)

DAN WAYNE, Legislative Counsel, Legislative Legal Services, Alaska State Legislature, said Uniform Rule 34(b) was unchanged during the passage of House Bill 44. He quoted language from AS 24.60.030(g) indicating that the voting requirement spelled out in Uniform Rule 34(b) takes precedent over statute.

REPRESENTATIVE STUTES asked again if the Uniform Rules must be changed to change the practice.

MR. WAYNE answered correct. He noted that [House Concurrent Resolution 1] did not pass the legislature.

[1:44:53 PM](#)

CHAIR CLAMAN said the custom is to not identify the legislator who objects when another legislator requests to be excused from a vote. He asked if there is anything in the Uniform Rules or Mason's Manual that would prevent the House from adopting a new practice of identifying the objector.

MR. WAYNE said there is nothing that he knows of that would prevent that.

CHAIR CLAMAN asked if it has long been customary that the objector is not identified.

MR. WAYNE said it is his understanding that it has evolved as a custom. He said he does not know if that has always been the same custom, "but it is the custom now and has been for some time."

[1:45:47 PM](#)

REPRESENTATIVE WOOL asked a question about the \$10,000 salary/benefit restriction included in House Bill 44.

MR. HUTCHISON said \$10,000 is the standard used to determine if a legislator has a conflict. As an example, he said a person who earned \$100,000 over the past 12 months working in the insurance industry would have to be careful when considering insurance-related bills.

REPRESENTATIVE WOOL noted that SB 89 returns language requiring "ownership or equity" for there to be a conflict. He said this means a person working for a labor union or oil company would not be deemed to be conflicted because he/she does not own or hold shares in the union or oil company.

MR. HUTCHISON said it is true that the class of conflict will be reset to "equity or ownership interest," which is what existed in statute prior to House Bill 44. He noted that it is important to remember that the Select Committee on Legislative Ethics assesses each potential ethical conflict on a case-to-case basis.

[1:49:16 PM](#)

CHAIR CLAMAN presented a hypothetical scenario: "Let's say I own ExxonMobil stock valued at more than \$10,000 ... and they pay dividends of \$1,000. And now there's an oil and gas tax bill that comes in front of the legislature." He asked, under the current law, whether that is something to disclose.

MR. HUTCHISON deferred to Jerry Anderson.

[1:50:05 PM](#)

JERRY ANDERSON, Administrator, Select Committee on Legislative Ethics, asked for clarification that the income in the scenario is \$1,000 in the form of a dividend.

CHAIR CLAMAN repeated that the dividend payment last year was \$1,000 and the stock is worth over \$10,000. He noted that, like all stock owners, he would hope that the stock price would go up and not down. He repeated that the scenario includes an oil and tax bill before the legislature.

MR. ANDERSON said it would be his informal advice that, under that scenario, a conflict would not exist because income was only \$1,000, less than the \$10,000 restriction.

CHAIR CLAMAN asked whether, under the proposed changes of SB 89, the same situation with the ExxonMobil stock would be a declarable conflict.

MR. ANDERSON said the answer to that question can be found in AO 13-01 which addressed a similar scenario. He said the answer was that it was not a conflict, based on those specific facts

"where it was a small number of shares compared to the outstanding number of shares."

[1:52:14 PM](#)

CHAIR CLAMAN asked Mr. Anderson to respond to Representative Wool's previous question.

MR. ANDERSON said questions related to employment were also addressed by the Select Committee on Legislative Ethics in AO 13-01. He said that opinion addressed both self-employment and employment with an oil industry company. He noted that, even though the language of the law at that time was similar to the language proposed by SB 89, the committee was "looking at things like employment, stock ownership, self-employment."

REPRESENTATIVE WOOL asked for verification that there is not a simple yes or no answer to questions of conflicts related to employment, and that the answer is located somewhere in Advisory Opinion 13-01.

MR. ANDERSON answered, "I believe that is correct." He said the committee would consider the specific set of facts.

CHAIR CLAMAN noted that, while he appreciates Mr. Anderson's input, the committee would like to hear his opinion on these matters rather than be told to "go home and read the opinion."

[1:54:39 PM](#)

REPRESENTATIVE EASTMAN recalled discussing House Bill 44 with the prime sponsor during the previous session. He said the concerns about floor votes raised by Representative Stutes were part of that discussion. He said it was ironic that it was the one thing he and the prime sponsor agreed upon, yet it is not present in SB 89. He asked Mr. Hutchison why that is and whether there is some type of value in maintaining objector anonymity.

MR. HUTCHISON answered that the specific focus of SB 89 is AS 24.60.030(e) and AS 24.60.030(g), and that this focus was in the interest of time and workload.

[1:56:02 PM](#)

CHAIR CLAMAN said SB 89 makes reference to a legislator who is negotiating for employment. He noted that this reference is

located in line 9 of page 2. He said the bill makes no reference to a person with whom the legislator is employed. He asked: "Why would there be no duty to declare a conflict if a person is employed, but nevertheless they would declare a conflict if they were negotiating for employment?"

MR. HUTCHISON answered that the presumption is to return the language exactly to the way it was prior to House Bill 44, and that is how the law read then.

CHAIR CLAMAN asked if he could think of any reason why someone would need to disclose that he/she is negotiating for employment while another legislator employed by someone who could experience "substantial benefit or harm" would not need to disclose his/her employment.

MR. HUTCHISON said the drafters are open to discussing potential adjustments to the language of the bill.

[1:57:25 PM](#)

REPRESENTATIVE WOOL asked whether, in the interest of simplicity, a full repeal of House Bill 44 was ever discussed.

MR. HUTCHISON answered yes. He noted that Senator David Wilson had wanted a complete repeal. He said a full repeal would raise additional issues. He noted that other parts of House Bill 44 have quite a bit of support. He said the focus has been on the conflict provisions because of how they have hampered legislative duties.

CHAIR CLAMAN asked for confirmation that Senator Wilson offered a floor amendment to fully repeal House Bill 44 and that the amendment failed in the Senate.

MR. HUTCHISON answered yes. He restated that there are others in the Senate Majority Caucus who support other provisions of House Bill 44 and do not support a full repeal.

[1:59:16 PM](#)

REPRESENTATIVE EASTMAN asked when the constitutional problems with House Bill 44 first became known.

MR. HUTCHISON said the issues started to become known within the past few months. He repeated examples of senators who were unable to fulfill legislative duties due to perceived conflicts.

REPRESENTATIVE EASTMAN said he recalled a lengthy memorandum from "our Legislative Counsel" to then-Senator Kevin Meyer relating to the constitutionality of House Bill 44.

MR. HUTCHISON recognized the memorandum authored by Mr. Wayne and added that Mr. Wayne had identified many issues relating to House Bill 44.

[2:01:14 PM](#)

CHAIR CLAMAN said he has always been troubled by the notion of legislators not being allowed to vote because of a conflict, which he feels conflicts with the right to petition the government in Article I, Section 6 of the Constitution of the State of Alaska. He noted that this issue was addressed to some extent in the United States Supreme Court case Bond v. Floyd. He postulated that to prevent a legislator from voting because of a conflict would be a violation of that legislator's constituents' right to petition the government.

MR. HUTCHISON agreed that there are constitutional issues with depriving citizens the ability to petition their government.

[2:02:20 PM](#)

REPRESENTATIVE WOOL noted that \$10,000 in income from ExxonMobil dividends would represent a conflict. He asked whether the same could apply with the permanent fund dividend (PFD) if a family's household income could be augmented by more than \$10,000 via a robust PFD.

MR. ANDERSON said the Select Committee on Legislative Ethics has determined that the PFD would not present a conflict based on the number of children even if it went over \$10,000 as a family unit. He said this is because each family member would be receiving the same amount - not a greater amount - as members of the general public.

CHAIR CLAMAN asked for verification that there is no conflict even if one legislator with 10 children looks to take in substantially more income from a \$3,000 PFD than a legislator with only one child.

MR. ANDERSON said it is his understanding that that would not be a conflict.

MR. HUTCHISON noted that a rising tide floats all ships. He clarified that the Select Committee on Legislative Ethics decided that the PFD does not represent a conflict because every individual receives the same amount of money.

REPRESENTATIVE WOOL said he appreciates that interpretation but noted that the parents can pocket the family's PFD checks if their kids are minors. He shared frustrations with these interpretations.

[2:06:28 PM](#)

REPRESENTATIVE EASTMAN asked a clarifying question about the previous example of ExxonMobil shares and dividends. He posited that if he were to vote a certain way that causes next year's dividend income to soar above \$10,000, he would not be conflicted until next year. He asked if that was correct.

MR. HUTCHISON said that is correct. He referenced Advisory Opinion 19-02, which considered the year-to-year variance of income for professions such as commercial fishing.

[2:07:32 PM](#)

CHAIR CLAMAN noted that SB 89 would remove the provisions about family member conflicts. He questioned the removal of spouses.

MR. HUTCHISON said the language that existed before House Bill 44 was less restrictive, so that is the rationale for returning to it.

CHAIR CLAMAN asked why, if the intent of the legislation is for legislators to declare their conflicts, the conflicts of a legislator's spouse would be exempted. He noted that marriage creates legal bonds that do not exist elsewhere.

MR. HUTCHISON said a similar conversation occurred in the Senate Judiciary Standing Committee. He noted that Alaska Public Offices Commission (APOC) reporting includes money coming in to the family unit. He said, "we're open to a conversation" regarding the spousal question but stressed that every change will be viewed through the "least restrictive" lens.

[2:09:57 PM](#)

REPRESENTATIVE EASTMAN asked whether SB 89 would similarly exclude children, including situations where the child's income is being held in trust by the parent.

MR. HUTCHISON said that was considered. He added that a household could include not just dependent children of a legislator, but also a dependent parent. He said the difficulties involved with assessing that financial information were determined to be too burdensome and too restrictive.

[2:11:08 PM](#)

CHAIR CLAMAN opened public testimony on SB 89. After ascertaining that no one wished to testify, he closed public testimony on SB 89.

[2:11:31 PM](#)

REPRESENTATIVE LEDOUX said, "I have very little interest in fiddling around with this legislation as long as we are leaving ... the huge elephant in the room. And that is: No matter how gross your conflict is, how clear your conflict is, you can simply vote. You declare it, and then you vote." She noted that the Alaska State Legislature mandated that the municipalities enact rules to prevent municipal officials from voting in assembly if they have conflicts. She said Alaska is one of only a few states in the entire nation that has no preclusions for voting if there is a conflict. She noted that some states have a strong threshold for precluding a legislator from voting. She said she feels there is no point to SB 89 as long as it does nothing to change [Uniform Rule 34(b)].

[2:13:15 PM](#)

REPRESENTATIVE EASTMAN said he was surprised on his first day as a legislator to find that he had no option to abstain from a vote. He noted that Alaska is one of a few states that does not allow a legislator to abstain. He opined that the inability to abstain is the perfect cover for a legislator who would vote with bad motives. He said he understands that there are unique aspects to being among the smallest state legislatures but restated that it always felt odd to him. He shared concerns with bills such as SB 89 that are built around the assumption that conflicted legislators will vote anyway. He noted that the bill also operates under the assumption that the public will not be engaged, thus necessitating rules, restrictions, and requirements to offset that disengagement. He said the ensuing

"counter-intuitive process" make the legislature more confusing to members of the public who do wish to become engaged. He called the process "very strange" and opined that SB 89 is not a good solution.

[2:15:25 PM](#)

REPRESENTATIVE WOOL said he echoes Representatives LeDoux and Eastman. He said the initial goal of House Bill 44 was to change the Uniform Rules and that its prime sponsor sought a situation in which the body determines whether a legitimate, clearly-defined conflict should preclude a vote. He noted that a ballot initiative drafted by an outside group had been absorbed into House Bill 44. He spoke to how lobbyists can skirt ethics rules related to taking a legislator out to dinner. He expressed frustration with the provision that would punish legislators by taking away their per diem for not passing the budget "by a certain date." He noted that the business of the House was delayed because organization was not achieved until 35 days into the session. He said it would be "punitive" to have legislators pay for their own hotel room and meals in Juneau in June. He advocated for a full repeal of House Bill 44 if Uniform Rule 34(b) could be changed, which he reiterated was the original intent of the original bill sponsor. He said most other legislative bodies have a process for abstaining from a vote due to a conflict. He said he appreciates the fix proposed in SB 89, but there are constitutional issues with more than just what it addresses.

[2:17:43 PM](#)

REPRESENTATIVE SHAW asked, "If we are affected by this law, or we are conflicted by this law, how are we able to vote on this law?" He noted that this might be "a rabbit hole."

MR. HUTCHISON said the broad scope of conflicts and the restrictions placed upon legislators are what SB 89 is trying to fix.

CHAIR CLAMAN clarified Representative Shaw's question: "If this bill affects what we have to declare and what we don't have to declare, don't we all have a conflict in voting on this bill, in and of itself?" He pondered whether all 40 representatives and all 20 senators are automatically conflicted because the bill relates to their conduct.

MR. HUTCHISON said conflicts exist everywhere and to go in circles raises the question, "where does it end?"

REPRESENTATIVE SHAW said the reason he asked what because he was conflicted.

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REPRESENTATIVE KOPP commented that the committee should focus on the original intent of SB 89's drafters to address only a narrow portion of House Bill 44. He also noted that the Senate passed the bill on "a pretty strong vote." He remarked that Representative LeDoux eloquently shared her frustration with [Uniform Rule 34(b)]. He suggested a separate bill to tackle that issue. He stated that the drafters of SB 89 wish to simply reset the conflict provisions to what they were prior to 2018 in order to make them more manageable and to align them with constitutional rights. He said SB 89 would enable legislators to adequately represent a broader constituency versus removing themselves from the job they were elected to do. He said SB 89 addresses two things on which the Senate was able to get consensus. He noted that committee members have highlighted additional things they would like to see changed. He stated that the drafters of SB 89 did well to achieve their goal of addressing the constitutional and pragmatic issues with House Bill 44. He called the bill in front of the committee "very reasonable."

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CHAIR CLAMAN said he agrees to some extent with previous committee members who have shared concerns about the inability to be excused from voting. He added that he is also really troubled by the notion of being excused from voting. He pointed to Article I, Section 6 of the Constitution of the State of Alaska, which relates to the right to petition the government. He noted that the state constitution can provide greater rights than can the federal constitution. He remarked that each constituent has the right to petition his/her government and that the most direct means to petition the government is through one's legislators. He stated that constituents have the right to call their representative, have their representative vote, and know how their representative has voted, no matter how many "warts or conflicts or issues" that legislator may have. He said to preclude a legislator who is also an ExxonMobil employee from voting on an oil and tax bill would deprive that legislator's constituents from access to one of their essential

representative forms of government. He noted that, while a constituent of a conflicted legislator could conceivably get in touch with a different legislator, there is no guarantee that he/she would be treated with the same favor as one of the other legislator's actual constituents. He reiterated his concerns with anything that says a person cannot petition his/her legislator and anything that would prevent that legislator from voting on behalf of his/her constituents. He noted that he feels the Select Committee on Legislative Ethics's interpretation of House Bill 44 violates the Constitution of the State of Alaska. He said the bill in front of the committee purports to offer a fix to some of those problems. He said he thinks it is a good bill for the committee to consider with great care.

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REPRESENTATIVE LEDOUX said Chair Claman spoke eloquently about the right to petition. She said that, to the extent that his remarks are constitutionally valid, the legislature should go back and redo all the laws mandating that the municipalities preclude conflicted officials from voting.

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CHAIR CLAMAN said he thinks there is some point to that, but it is not the bill in front of the committee. He announced that SB 89 would be held for further review.

[2:28:42 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:28 p.m.