

ALASKA STATE LEGISLATURE
FREE CONFERENCE COMMITTEE ON SB 89

April 22, 2019

1:16 p.m.

MEMBERS PRESENT

Senator John Coghill, Co-Chair
Representative Matt Claman, Co-Chair
Senator Tom Begich
Representative Lance Pruitt
Representative Chris Tuck

MEMBERS ABSENT

Senator Gary Stevens

COMMITTEE CALENDAR

CS FOR SENATE BILL NO. 89(JUD)

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

HOUSE CS FOR CS FOR SENATE BILL NO. 89(JUD)

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

FREE CONFERENCE CS FOR SENATE BILL NO. 89

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

- MOVED FCCS SB 89 OUT OF COMMITTEE

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
 04/01/19 (H) Heard & Held
 04/01/19 (H) MINUTE(JUD)
 04/05/19 (H) JUD AT 1:00 PM GRUENBERG 120
 04/05/19 (H) Moved HCS CSSB 89(JUD) Out of Committee
 04/05/19 (H) MINUTE(JUD)
 04/08/19 (H) JUD RPT HCS(JUD) 3DP 1DNP 1AM
 04/08/19 (H) DP: STUTES, KOPP, CLAMAN
 04/08/19 (H) DNP: EASTMAN
 04/08/19 (H) AM: WOOL
 04/08/19 (H) VERSION: HCS CSSB 89(JUD)
 04/10/19 (S) CONCUR VOTE HELD TO 4/12/19 UNANIMOUS
 CONSENT
 04/12/19 (S) NOT TAKEN UP 4/12
 04/17/19 (S) CONCUR TAKEN UP UC
 04/17/19 (S) WAIVE UNIFORM RULE 42 (A)
 04/17/19 (S) FREE CONFERENCE COMMITTEE APPOINTED
 04/17/19 (S) COGHILL (CHAIR), STEVENS, BEGICH
 04/22/19 (H) SB89 AT 12:00 AM BUTROVICH 205

WITNESS REGISTER

CHAD HUTCHINSON, Staff
 Senate Majority Office
 Alaska State Legislature
 Juneau, Alaska

POSITION STATEMENT: Discussed the differences between the Senate and House versions of SB 89, the resolution of the differences, and the added language that necessitated free conference powers.

ACTION NARRATIVE

1:16:34 PM

CO-CHAIR JOHN COGHILL called the Free Conference Committee on SB 89 meeting to order at 1:16 p.m. Present at the call to order

were Senators Begich and Coghill; and Representatives Tuck, Pruitt, and Claman.

SB 89-LEGISLATURE: ETHICS, CONFLICTS

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CO-CHAIR COGHILL announced the business before the committee is consideration of the FREE CONFERENCE CS FOR SENATE BILL NO. 89, "An Act relating to the Legislative Ethics Act; and providing for an effective date."

CO-CHAIR COGHILL stated that the Free Conference Committee on SB 89 will operate under Uniform Rule 42(a). The Uniform Rules were waived and the conference committee was granted the powers of free conference thus giving it the ability to consider all issues germane to the title.

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CO-CHAIR CLAMAN stated that Senator Coghill will chair the meeting since the bill originated as a Senate bill.

CO-CHAIR COGHILL asked Mr. Hutchinson to provide a section-by-section comparison between the House and Senate versions of the bill [and to discuss the resolutions that appear in the conference committee substitute].

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CHAD HUTCHINSON, Staff, Senate Majority Office, Alaska State Legislature, Juneau, directed attention to the document titled "Senate Bill 89 Comparison Sheet - Legislative Ethics Act Revision - FCC" and explained he would talk about the bill that passed the Senate, referred to as Version K, the bill that passed the House, referred to as Version E, and the proposed resolution referred to as Version G.

[Note: Version G and Version O have identical text in the body of the bills. The difference is that Version G is identified as the CS FOR SENATE BILL NO. 89() and Version O is identified as the FREE CONFERENCE CS FOR SENATE BILL NO. 89. The conference committee ultimately adopted Version O and reported that version from committee.]

MR. HUTCHISON directed attention to page 1 of the comparison sheet. He explained that the provision relating to legislative intent language was added to the House bill. It says, "a fair and open government requires that constituents have unencumbered access to legislators about issues important to the state

pursuant to art. I, secs. 5 and 6, Constitution of the State of Alaska,". He noted that Version G retains the language the House added.

MR. HUTCHISON said the next area of difference relates to the prohibition on official/legislative action. The Senate bill returned the law to what it was prior to House Bill 44. The House bill is similar to the Senate bill, but it adds language that says, "or the legislator's spouse is employed or is negotiating for employment." He said the emphasis is on including the legislator's spouse. Version G resolves the differences with a number of changes and clarification.

First, it replaces the term "official action" (which is undefined) with the term "legislative action" which is defined in AS 24.60.990(10). It reads:

(10) "legislative action" means conduct relating to the development, drafting, consideration, sponsorship, enactment or defeat, support or opposition to or of a law, amendment, resolution, report, nomination, or other matter affected by legislative action or inaction;

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At ease for technical difficulties.

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CO-CHAIR COGHILL reconvened the meeting.

MR. HUTCHISON continued to explain that using the term "legislative action" provides clarity for the Select Committee on Legislative Ethics and advisors like Jerry Anderson as to what can and cannot occur.

MR. HUTCHISON said the second change regarding prohibitions on official/legislative action that appears in Version G is that the term "could" is replaced by the phrase "is likely to." For the purposes of the ethics committee, the term likely is intended to mean more likely than not or a greater than 50 percent chance.

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SENATOR BEGICH asked if that is legislatively defined or just in the notes. He added that he values the notes highly.

MR. HUTCHISON replied the preponderance of the evidence threshold is used, just as it is in civil proceedings. He said we took "likely" to mean more likely than not or a greater than 50 percent chance.

CO-CHAIR COGHILL clarified that this relates to the prohibitions in Section 2 of the bill and Section 3 deals with how to declare a conflict. In House Bill 44 the definitions were connected to both sections and the initial draft of SB 89 wasn't drafted that way. "Hence the Free Conference Committee; we had to tie those definitions together."

MR. HUTCHISON said the third change regarding prohibitions on official/legislative action that appears in Version G is that legislative action is only barred if the legislation is likely to "substantially benefit or harm" the financial interest. The definition of "financial interest" is clarified in Version G. He said the intent was to sync everything and give definitive parameters to the meaning of "substantially benefit or harm" and "financial interest."

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MR. HUTCHISON said the fourth change in Section 2 regarding prohibitions on official/legislative action is that the term "another" is clarified to mean "the legislator or the legislator's spouse." He noted that the definition in House Bill 44 included immediate family and that was considered to be too broad.

MR. HUTCHISON said Section 3 relates to declarations of conflict. The Senate bill said conflicts should be declared in the committee process and on the floor if there is an "equity or ownership interest" instead of a "financial interest." Also, conflicts are compared with a "substantial class of persons" rather than the "general public" because the general public was prohibitively broad. The House bill kept those changes and added the "legislator's spouse." Version G resolved the differences with the decision that "conflicts shall be declared in the committee process and on the floor if the effect of the vote is likely to substantially benefit or harm the financial interest of the legislator or the legislator's spouse." He said the intent is to sync all language and definitions. An important addition was that "employment" and "negotiating for employment" were included with negotiating for employment.

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MR. HUTCHISON explained that the Senate bill repealed the definition of "substantially benefit or harm" under AS 24.60.030(j)(2) and the definition of "financial interest" under AS 24.60.990(a)(6) and returned to the law prior to House Bill 44. The House bill also repealed those definitions and returned to the law prior to House Bill 44. He explained that the resolution in Version G is found in Section 4 of the bill that amends AS 24.60.030(j)(2) to read:

(2) "substantially benefit or harm" means the effect on the person's financial interest is greater than the effect on the financial interest of a substantial class of persons to which the person belongs as a member of a profession, occupation, industry, or region.

MR. HUTCHISON explained that the intent is to eliminate personal enrichment or benefit to a specific company to the detriment of the rest of the industry. He highlighted that Version G also repeals AS 24.60.990(a)(6) in Section 6 of the bill.

CO-CHAIR COGHILL clarified that the conference committee substitute was prepared by legislators working with Dan Wayne with Legislative Legal Services.

MR. HUTCHISON agreed. He explained that Section 5 of Version G adds the revised definition of "financial interest" in AS 24.60.030(j)(3). It did not exist in either the Senate or House bills. The new paragraph reads:

(3) "financial interest" means a substantial equity or ownership interest in a business, investment, real property, lease, or other enterprise.

He said the intent is to sync the language to clarify the interpretation for the ethics committee.

He reiterated that AS 24.60.990(a)(6) is repealed in Section 6 of Version G.

Section 7 of Version G is the effective date, which is immediate. Both the Senate and House bills also have an immediate effective date.

CO-CHAIR COGHILL stated that free conference powers were granted because of the new language in Version G that was not in either the Senate or House bills. The intent was to clarify that "when

you have a real conflict of interest, there are some prohibitions and some requirements for you to declare them." The definitions are better than before and it provides continuity between the prohibition language and the declaration requirements.

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REPRESENTATIVE TUCK stated that the intent is to fix the unintended consequences that resulted from House Bill 44. Two of the largest problems were not having definitions for "official action" and "official influence." He related his understanding of the bill as it went through the House State Affairs Committee was to require a legislator to declare a conflict and if the conflict does exist, to prevent them from voting in committee and on the floor. However, the resolution that went along for that to happen on the floor did not pass. Because there isn't a definition for "official action," legislators have to lean on "legislative action" which is drafting a bill, talking with constituents, talking with the public, meeting one-on-one with other legislators, caucus meetings, etc. He said that really put some restrictions on everybody's ability to maneuver without fear of having a conflict.

He pointed out that [AS 24.60.10] states the following:

The Legislature finds that

(1) high moral and ethical standards among public servants in the legislative branch of government are essential to assure the trust, respect, and confidence of the people of this state.

(2) a fair and open government requires that legislators and legislative employees conduct the public's business in a manner that preserves the integrity of the legislative process and avoids conflicts of interest or even appearances of conflicts of interest.

REPRESENTATIVE TUCK said the statute goes on to acknowledge that a code of conduct cannot solve every problem. He offered his belief that, "the best that we can do is the best that we can do." With that in mind, he said it helps that in Section 2 of Version G the term "official influence" was removed. He said his next question is whether Version G addresses the issue of a legislator who has a conflict being able to draft or present a bill [that is related to the declared conflict].

MR. HUTCHISON directed attention to question 4 in the "Bullet Points" document in the packets and summarized the following question and answer:

4. When is a legislator prohibited from taking legislative action?

ANSWER: In circumstances where legislative action is likely to substantially benefit or harm the financial interest of the legislator, the legislator's spouse, or a person with whom the legislator [or] the legislator's spouse is employed or is negotiating for employment.

MR. HUTCHISON said there is a three-step analysis looking at 1) likely, 2) substantially benefit or harm, and 3) financial interest and when those line up the legislator is prohibited from taking legislative action.

1) The term "likely" means more likely than not or a greater than 50 percent chance;

2) Substantially benefit or harm means "The effect on a person's financial interest is greater than the effect on the financial interest of a substantial class of persons to which the person belongs as a member of a profession, occupation, industry, or region." He read the following example:

Legislator A works for Company A in a statewide industry. Other companies are also in that industry, including companies B, C, D, E, F, and G. A substantial benefit occurs when Company A greatly benefits, but there is no benefit to companies B, C, D, E, F, and G.

There is no "substantial benefit" if all companies (A, B, C, D, E, F, and G) benefit because of an equal policy that benefits the entire industry (even if, in reality, the benefit from company to company varies)...As long as the policy does not target Company A, for the purpose of benefiting Company A, to the detriment of the rest of the industry, then it is allowable.

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CO-CHAIR COGHILL cautioned that 20 minutes answers raise more questions.

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SENATOR BEGICH related a personal example. Under the current ethics law he has a conflict because his wife works for an organization that engages with a number of school districts. He said it's unclear whether or not she would have benefited by his supporting early funding of education in a constitutional amendment. Under the language that's proposed there would not be a conflict because early funding would affect all school districts, not just those few. His wife would not be materially impacted and therefore he would be able co-sponsor that legislation.

MR. HUTCHISON said that's correct.

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CO-CHAIR COGHILL advised that his aide just notified him that Version G is the draft CS and the Free Conference CS is Version O. He said the language in the two versions is identical but he would suggest everyone take a moment to check and become comfortable with Version O.

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CO-CHAIR COGHILL reconvened the meeting and explained that the work draft Version G did not have the free conference title because it was drafted before the House appointed members. The only difference is that Version O identifies the document as the Free Conference CS for SB 89.

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REPRESENTATIVE PRUITT noted that the Speaker stated on the floor that legislators do not need to declare a conflict on appropriation bills. He asked if Version O clarifies that point or if there is a possibility that this issue may come up going forward.

CO-CHAIR COGHILL explained that language in House Bill 44 exempted conflict declarations on the budget.

CO-CHAIR CLAMAN directed attention page 3, lines 3-6, of Version O and explained that the Speaker was referring to that language that the bill deletes. It reads:

[...HOWEVER, NOTWITHSTANDING (e)(3) OF THIS SECTION AND THE LIMITATIONS OF THIS SUBSECTION, A LEGISLATOR MAY VOTE ON AN APPROPRIATION BILL THAT MEETS THE REQUIREMENTS OF AS 37.07.020.(a) OR 37.07.100].

He said for lack of a better description, "we'd be back in kind of the old style on the floor."

REPRESENTATIVE PRUITT responded that he believes that that answers the question.

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REPRESENTATIVE TUCK said he's never seen anyone who had to refrain from voting on the appropriations when they declared a conflict. He said his concern is that it does a disservice to the legislative body as a whole when a blanket statement is made that anyone who declares a conflict will be required to vote. What's happening, he said, is that people aren't declaring their conflicts. He stressed that people who have a conflict should put that on the record or the deleted section should be reinserted.

CO-CHAIR COGHILL responded that he believes that the [three-step analysis Mr. Hutchison described] answers that. He added that he didn't believe that people would stop standing up to declare a conflict and asking to be excused from voting. When they do, the body makes the determination.

CO-CHAIR CLAMAN opined that removing the language completely helps to clarify that legislators need to declare their conflicts. "I think that's a more appropriate way to go forward," he said.

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SENATOR BEGICH said he agrees that it makes more sense and is more beneficial to the public to disclose as opposed to not disclose. Having to disclose on the budget might take a little extra time but the public deserves to know if there's a conflict. If somebody doesn't disclose and it's discovered that the person did have a substantive conflict, the public deserves to know that as well, he said. "So I think it's a good idea that it's left out."

REPRESENTATIVE PRUITT said it can be a little tedious when conflicts are declared but it's an important point that if there are 15 people with conflicts on an appropriation bill then 15

people should stand up and declare their conflict. He said this is a good time to state legislative intent. His belief is that every person that feels they have a conflict can and should declare it. There should not be a blanket statement. "I think that transparency in this particular case would be what we were seeking," he said.

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REPRESENTATIVE TUCK said his main concern is that Rules chairs in the past have made statements that led people to not declare their conflicts. He liked that former Representative Gruenberg noticed this and made sure that conflicts were declared. "I want to make sure that does not happen," he said. He suggested the process might be that when someone declares a conflict, the Speaker or presiding officer can ask for a show of hands for those who have the same conflict. That could keep things moving, he said, because the frustration with numerous declarations is understandable.

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CO-CHAIR COGHILL said this can be instructive for this committee and the presiding officers that are watching. He added, "It should be properly stated as a motion and the reason why the conflict exists and ask to be excused from the vote." The bill brings clarity and it's still wise to err on the side of caution and declare a perceived conflict, he said.

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REPRESENTATIVE TUCK asked for clarification that if somebody has a conflict, they can't take any of the legislative actions "that are written by definition."

SENATOR BEGICH responded that the answer is yes. The definition has been clarified, but actions that were prohibited before are no longer prohibited. For example, he could sponsor a piece of legislation as long as it was not likely to materially benefit his spouse or himself or the employer of his spouse or himself. The previous blanket prohibitions under the undefined, loose definition doesn't exist any longer. "So yes you can do it now, but ... the legislative action can't be taken if, specifically, it's more likely to benefit you." He asked Mr. Hutchison if he agrees.

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MR. HUTCHISON agreed as long as the person goes through the three-step analysis. He said it's noteworthy that conflicts

declared in the committee process was added into the latest version of the bill.

REPRESENTATIVE TUCK said he did not see a new definition of "legislative action" but the existing definition [from AS 24.60.990(a)(10)] reads as follows:

(10) "legislative action" means conduct relating to the development, drafting, consideration, sponsorship, enactment or defeat, support or opposition to or of a law, amendment, resolution, report, nomination, or other matter affected by legislative action or inaction;

He said part of the problem with House Bill 44 related to inaction. For example, it can be an ethics violation if the chair of a committee holds a bill because they have a conflict. He said the difficulty with including "legislative action" in the bill as defined is "you're kind of putting people in a sticky situation, again, unintentionally." A chair who has a conflict is in trouble if they act and they're in trouble if they don't act. "I just want to make sure we're fixing this in this version," he said.

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MR. HUTCHISON responded that the Senate resolved that problem this year when a chair had a conflict and the bill was discharged from the committee she chaired.

REPRESENTATIVE TUCK offered his understanding that there are two fixes. First, make it so that it is no longer a conflict. Second, if there is a conflict, things are rearranged just as they have been under House Bill 44.

CO-CHAIR COGHILL added that part of the solution was to replace the term ["official action"] with the term "legislative action."

REPRESENTATIVE TUCK said that wasn't his recollection when the ethics committee repeatedly went over the advisory opinions. The problem associated with the term "official action" was easy to solve because there is a definition for the term "legislative action." "So we relied on the definition of 'legislative action,' which I don't see changing in this." He said he doesn't object to getting rid of the term "official influence" but substituting it with "legislative action" doesn't solve the problem. He said he drafted a version earlier that removed both terms and then defined when a legislator could take action. He

added, "I guess we can always work around whatever we have in statute but if we're going to fix something, I think now's the time to try to fix it."

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CO-CHAIR CLAMAN posed two hypothetical scenarios of legislative action. In scenario one, a legislator's spouse works for one of the 12 for-profit regional Native corporations and the legislature is considering a bill that affects all 12 of those corporations equally. Scenario two is similar to the current situation with SB 54 that involves the transfer of railroad lands to a private enterprise. The assumptions are that this is a single transaction involving the transfer of land to a private enterprise that is held by a small number of people, one of which is a legislator's spouse. He asked how these scenarios differ in terms of what that legislator could or could not do, particularly with regard to drafting and supporting legislation.

MR. HUTCHISON replied the first scenario is not prohibitive because the bill affects all the corporations equally. The second scenario is prohibitive because it qualifies in each step of the three-step analysis. The legislative action is more likely than not to benefit the financial interest of the spouse as a principal of the private company. The assumption is that this is the only company that benefits from the transaction.

CO-CHAIR CLAMAN said he assumes that in the land transaction scenario, the legislator could only vote to move the bill from committee and vote for it on the floor. Any other activity, including lobbying for the bill, would be prohibitive because of that financial interest.

MR. HUTCHISON said correct and the legislator would need to declare the conflict both in committee and on the floor.

CO-CHAIR COGHILL said these clarifications may result in changes as to whether or not the body requires the conflicted legislator to vote. He mentioned the guidelines in the Uniform Rules and Mason's Manual of Legislative Procedure.

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REPRESENTATIVE TUCK provided the following commentary:

We really addressed the first part. That is making it so people don't have a conflict. ... We've lightened it up quite a bit from what we have right now. If you make more than \$10,000 in the previous 12 months, you

have a conflict. And that's in what we have written now. And so now we're making it so your conflicts are going to be reduced. But when you do have a conflict, we're basically tying that person's hands all the way for any type of legislative action.

I just want to make sure that everybody understands that. That that's what we're deciding to do. But the way I see this being written.

[2:03:00 PM](#)

SENATOR BEGICH agreed that was what the committee was doing and added that he was quite comfortable tying a legislator's hands at that point. He said that right now his hands are completely tied for most education issues because his wife works for "an entity that may or may not fall under a vague and ambiguous law." He said that under the proposed bill he is appropriately prohibited from taking any action on legislation that would materially benefit her employer. "For me, that's what it does and I favor that steeper restriction," he said.

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CO-CHAIR COGHILL clarified for the listening public that the committee was dealing with two sections of AS 24.60 that relate to how to declare a conflict and when legislative action would be prohibited. He said the proposed bill addresses the testiest points in House Bill 44, but it certainly won't solve all the ethical questions that will come before the legislature.

REPRESENTATIVE TUCK asked for an example or scenario of when somebody may have a conflict.

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SENATOR BEGICH related that prior to his wife being employed by the Coalition for Education Equity, that organization received a substantive amount of money in the State of Alaska v. Moore settlement. If that happened today, he would be prohibited from voting on that legislation because his wife would materially benefit.

He also posed a hypothetical example of a [legislator's spouse] who owns a company that does environmental cleanup. The legislator should not vote on or sponsor any legislation related to environmental cleanup because it's likely to materially benefit the spouse's company.

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REPRESENTATIVE TUCK said the House State Affairs Committee looked at "official action" as not being able to participate in debate, not being able to vote, and not being able to sign the bill report. He said, "That's where we got in that pickle of 'official action' and then we got ourselves in more trouble by relying on 'legislative action'." He continued to say that if everyone is okay that action also includes inaction, he's okay with it, too. However, not addressing the issue places people back in the same spot if they have a conflict. He said that part could also be fixed but he was willing to accept this resolution because legislators can't function under the current statutes. He expressed willingness to continue to work to "clean it up."

CO-CHAIR COGHILL restated that this bill does not resolve all questions. "This just tries to get us out of the situation where private meetings and broad conflict questions have come up that have really stifled good debate and hard work in the legislature to this day," he said.

Finding no further discussion he solicited a motion.

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CO-CHAIR CLAMAN moved that the Free Conference Committee on SB 89 adopt the proposed FCCS SB 89, work order 31-LS0209\0, as the working document.

CO-CHAIR COGHILL found no objection [and FCCS SB 89, 31-LS0209\0, was adopted].

Finding no further discussion, he solicited a motion.

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CO-CHAIR CLAMAN moved that the Free Conference Committee for SB 89 recommend that the House and Senate adopt the Free Conference Committee Substitute (FCCS) for SB 89, work order 31-LS0209\0 with the accompanying zero fiscal note.

CHAIR COGHILL asked for a roll call vote on the motion to send the conference committee report to the respective bodies, recommending its approval.

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A roll call vote was taken. Representatives Tuck, Pruitt, and Claman, and Senators Begich and Coghill voted in favor of the motion. Senator Stevens was absent. Therefore, FCCS SB 89 was adopted by a 3:0 vote by House members and a 2:0 vote by Senate members.

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CO-CHAIR COGHILL stated that the motion passes and FCCS SB 89 will be sent to the respective bodies.

2:09:58 PM

There being no further business to come before the Free Conference Committee on SB 89, Co-Chair Coghill adjourned the meeting at 2:09 pm.