

**ALASKA STATE LEGISLATURE  
SENATE RULES STANDING COMMITTEE**

March 25, 2020

1:34 p.m.

**MEMBERS PRESENT**

Senator John Coghill, Chair  
Senator Cathy Giessel, Vice Chair  
Senator Natasha von Imhof  
Senator Tom Begich  
Senator Lyman Hoffman

**MEMBERS ABSENT**

All members present

**OTHER LEGISLATORS PRESENT**

Senate Lora Reinbold

**COMMITTEE CALENDAR**

HOUSE BILL NO. 309 AM

"An Act relating to the procedure for confirmation of the governor's appointments; relating to the board of the Mental Health Trust Authority; and providing for an effective date."

- MOVED SCS HB 309(RLS) OUT OF COMMITTEE

**PREVIOUS COMMITTEE ACTION**

BILL: HB 309

SHORT TITLE: CONFIRMATION OF APPOINTMENTS

SPONSOR(S): RULES

03/20/20	(H)	READ THE FIRST TIME - REFERRALS
03/20/20	(H)	RLS
03/20/20	(H)	RLS WAIVED PUBLIC HEARING NOTICE, RULE 23 UC
03/20/20	(H)	RLS AT 5:00 PM BELTZ 105 (TSBldg)
03/20/20	(H)	Moved HB 309 Out of Committee
03/20/20	(H)	MINUTE(RLS)
03/21/20	(H)	RLS RPT 4DP 2NR
03/21/20	(H)	DP: THOMPSON, JOHNSTON, STUTES, KOPP

03/21/20 (H) NR: JOHNSON, PRUITT  
03/24/20 (H) TRANSMITTED TO (S)  
03/24/20 (H) VERSION: HB 309 AM  
03/25/20 (S) RLS AT 1:00 PM BUTROVICH 205

**WITNESS REGISTER**

RENA MILLER, Staff  
Senator Cathy Giessel  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Presented HB 309 AM to the Senate Rules Committee.

MIKE ABBOTT, Chief Executive Officer  
Alaska Mental Health Trust Authority  
Anchorage, Alaska

**POSITION STATEMENT:** Answered questions during the hearing on HB 309 AM.

MEGAN WALLACE, Director  
Legislative Legal Services  
Legislative Affairs Agency  
Juneau, Alaska

**POSITION STATEMENT:** Answered questions and provided information related to HB 309 AM.

**ACTION NARRATIVE**

[1:34:52 PM](#)

**CHAIR JOHN COGHILL** called the Senate Rules Standing Committee meeting to order at 1:34 p.m. Present at the call to order were Senators Begich, Hoffman, von Imhof, Giessel, and Chair Coghill. Senator Reinbold was also in attendance.

**HB 309-CONFIRMATION OF APPOINTMENTS**

[1:35:28 PM](#)

**CHAIR COGHILL** announced the consideration of HOUSE BILL NO. 309 am, "An Act relating to the procedure for confirmation of the governor's appointments; relating to the board of the Mental Health Trust Authority; and providing for an effective date."

He asked Ms. Miller to present the bill.

[1:35:58 PM](#)

RENA MILLER, Staff, Senator Cathy Giessel, Alaska State Legislature, Juneau, Alaska, stated that HB 309 relates to the confirmation of the governor's appointees. It temporarily extends the time when the legislature must meet in joint session to confirm the governor's appointments to cabinet positions and state boards and commissions. Under current law, AS 39.05.080, failure to take up these confirmations in joint session before adjournment of the regular session is equivalent to a declination of the appointments. If that were to happen, the appointees would not be eligible for reappointment. She pointed out that a joint session of the legislature would mean that 60 members plus support staff would convene in an enclosed space for up to several hours. Such close quarters meetings are discouraged by the current health mandates related to Covid-19, she said.

MS. MILLER advised that HB 309 would allow the legislature to defer meeting in joint session to confirm the appointees, while ensuring that those Alaskans who are volunteering to serve on these boards and commissions are not automatically disqualified if the legislative session adjourns without having met in joint session.

[1:37:14 PM](#)

MS. MILLER reviewed the sections of HB 309 AM:

Section 1 adds a new section to uncodified law that applies only to the 31st legislature. For the appointments presented by the governor during the second regular session, the legislature shall meet in joint session at any time to confirm or deny those appointments. If the legislature does not meet in joint session by the day that the regular session adjourns, those appointees will not be considered denied. After the legislature does meet later this year to consider the appointments, failure to act on any of the appointments at that point would be considered a denial of the appointment.

MS. MILLER said the House added an amendment on the floor to provide special treatment for an appointee to the Mental Health Trust Advisory Board of Trustees, such that a member whose term expires on March 1, 2020 may not continue to serve until a new member is appointed. She said the Mental Health Trust Authority has special statutory treatment regarding appointments and they believe this provision is warranted.

1:38:22 PM

Section 2 sets an immediate effective date.

CHAIR COGHILL offered his understanding that the floor amendment relates to a statute that requires the appointee to be confirmed by the legislature or the incumbent must remain on the board. He said he did not believe that that was the intention of the governor or the House.

He asked Mr. Abbott to confirm that a seat on this board cannot be vacant; if an appointee is not confirmed the incumbent will continue to serve.

1:39:38 PM

MIKE ABBOTT, Chief Executive Officer, Alaska Mental Health Trust Authority, Anchorage, Alaska, agreed. He said the statute related to the appointment of a Mental Health trustee indicates that until an appointee is confirmed by the legislature, the incumbent trustee must continue to serve. In fact, trustees sometimes have served for several additional years because an appointee was withdrawn or failed to be confirmed by the legislature. Under current law, if the legislature fails to confirm appointee Rhonda Boyles, incumbent Mary Jane Michael would continue to serve until Ms. Boyles is confirmed or Ms. Michael resigns.

1:40:47 PM

SENATOR BEGICH related his understanding of the amendment and wondered if he was interpreting the language incorrectly.

MR. ABBOTT agreed that he was not interpreting it appropriately.

SENATOR BEGICH recalled the complex Mental Health Trust issue that was resolved in the late 1980s and asked for assurance that this provision would not violate that settlement.

1:42:06 PM

MR. ABBOTT advised that he consulted with the Department of Law when the House was contemplating the floor amendment and received assurance that it would not affect the Weiss v. State settlement.

CHAIR COGHILL read the following from page 15 of the Weiss settlement: "If the Legislature materially alters or repeals any of those provisions, the plaintiffs' sole remedy is a new action alleging that the mental health trust has not been adequately reconstituted..."

[1:42:53 PM](#)

SENATOR BEGICH commented that if the specific notwithstanding language was not in the bill, it would be a violation of the trust.

CHAIR COGHILL agreed it was a possibility.

[1:43:14 PM](#)

MR. ABBOTT added that the Department of Law advised that the House floor amendment was written to affect a statute written in 1991 that contemplated the formation of the trust and created the structure of the trustees. That was three years before the 1994 Weiss settlement so the floor amendment in HB 309 would not be considered an adjustment of the Weiss settlement from 1994.

CHAIR COGHILL said the explanation was helpful.

SENATOR BEGICH agreed.

CHAIR COGHILL asked Ms. Miller to formulate for Ms. Wallace the question that came up about the wording on page 2, lines 3-4, regarding the governor's appointments during and after adjournment of the regular legislative session.

[1:44:58 PM](#)

MS. MILLER directed attention to page 1, [lines 6-8], which read, "(a) Notwithstanding AS 39.05.080, for appointments presented by the governor during the Second Regular Session of the Thirty-First Alaska State Legislature." She then directed attention to page 2, lines 3-4, which read, "... during, and after adjournment of, the Second Regular Session of the Thirty-First Alaska State Legislature..." She said the language on page 2, "during, and after adjournment of" could be interpreted to relate to the appointments presented by the governor and not to the wording on line 3 that reads: "meeting in joint session during, and after adjournment of..."

[1:45:41 PM](#)

MEGAN WALLACE, Director, Legislative Legal Services, Legislative Affairs Agency, Juneau, Alaska, related her understanding that the language in subsection (b) on page 2, lines 3-7 indicates that the names not taken up once the legislature meets in joint session to consider the names presented by the governor during the Second Regular Session of the Thirty-First Alaska State Legislature, as well as any names presented between adjournment of the Second Regular Session of the Thirty-First Alaska State

Legislature and when it meets in joint session, will be tantamount to declining the confirmation.

MS. WALLACE recalled a unique circumstance in 2008 and 2009 when the legislature had to come back in joint session during the interim to confirm appointments that were presented by the governor during the interim. She clarified that this language is to accommodate that rare circumstance where the governor might actually present a name to the legislature during the interim. Other than that, this provision would not modify the general practice in which the governor could wait until the beginning of the next legislative session to present names of interim appointments.

[1:47:40 PM](#)

CHAIR COGHILL noted that members were satisfied with the explanation. He solicited amendments.

[1:47:58 PM](#)

SENATOR BEGICH moved to adopt Amendment 1, work order 31-LS1719\M.A.1.

31-LS1719\M.A.1  
Wallace  
3/25/20

#### **AMENDMENT 1**

OFFERED IN THE SENATE BY SENATOR BEGICH  
TO: HB 309 am

Page 2, lines 3 - 7:

Delete all material and insert:

"(b) On November 30, 2020, or upon expiration of the declaration of a public health disaster emergency issued by the governor on March 11, 2020, whichever is earlier, the failure of the legislature to act to confirm or decline to confirm an appointment presented by the governor during the Second Regular Session of the Thirty-First Alaska State Legislature will be tantamount to a declination of confirmation."

CHAIR COGHILL objected for an explanation.

SENATOR BEGICH directed attention to page 2, line 3 that states, "After the legislature meets in joint session assembled to act on the appointments ...". He pointed out that the legislature may not meet or may even be prohibited from meeting.

He explained that the language in Amendment 1 would prevent the possibility of appointees not being subject to confirmation by this legislature, but left to the next legislature to act on, thereby taking away this legislature's right to do so.

CHAIR COGHILL said he believes that the language in subsection (a) would require the legislature to meet and confirm the appointments. He asked Ms. Wallace to comment.

[1:49:55 PM](#)

MS. WALLACE explained that subsection (a) does require that the 31st Alaska State Legislature meet to confirm the governor's appointees. It modifies the declination language on page 1, line 11 that states that the legislature shall at any time meet to confirm the appointees.

CHAIR COGHILL related his understanding that the requirement is that this body either meets or it is a de facto declination.

MS. WALLACE replied the requirement that the legislature meet in joint session to approve or decline to approve the governor's appointees is a constitutional requirement under Article III, Sections 25 and 26 that provide that the governor's appointees are subject to confirmation by the legislature. It is not a discretionary function so this legislature must fulfill its constitutional obligation to meet to confirm those appointments.

CHAIR COGHILL related his understanding that the confirmation of appointees is limited to this legislature; the time can be deferred but not the event.

MS. WALLACE answered that is correct.

[1:51:56 PM](#)

SENATOR BEGICH expressed confusion and asked what would compel the legislature to do so. He referred to paragraph (2) and read:

(2) if the legislature does not act to confirm or decline to confirm an appointment, the failure of the legislature to act to confirm or decline to confirm an appointment presented is not tantamount to a declination of confirmation on the day the Second

Regular Session of the Thirty-First Alaska State  
Legislature adjourns.

SENATOR BEGICH said this provision would remove the statutory requirement that if a legislative session is adjourned, the appointments do not die with the session. He asked how the legislature is compelled to return to act on its constitutional responsibility if it cannot since to do so the legislature or the governor must call the legislature into special session. That might not happen. For example, last year the House could not get 40 members to agree to call a special session. Further, it might not be in the best interest of the legislature to convene, and finally, the governor might choose not to call the legislature into special session citing health concerns or some other reason. He asked if this would create a situation in which the legislature cannot not exercise its constitutional obligation to address the governor's appointees in this legislature.

[1:53:29 PM](#)

MS. WALLACE answered that HB 309 does not contemplate the legislature not meeting in joint session to approve the confirmation of the governor's appointees. She said she may agree with his comments that it may be possible, but that is not what this bill contemplates.

[1:53:52 PM](#)

SENATOR VON IMHOF asked what would happen if the legislature does not meet until January 2021. She also asked if Amendment 1 should state the date of November 30, 2020 or if the date should be changed to the start of the next legislature in January 2021.

SENATOR BEGICH said he picked what he thought was a reasonable date, but the last day of this legislature would be fine. He expressed concern about the legislature violating its constitutional authority and jeopardizing every one of the governor's appointees.

CHAIR COGHILL related his understanding that the point is that inserting a time specific date would circumvent the requirement for a two-thirds vote by the legislature.

SENATOR BEGICH said putting in a time specific date would be as though the legislature had officially adjourned and those applicants would expire because the legislature never reconvened. The law says that the legislature must exercise its constitutional authority either by meeting in joint session and

taking up the confirmation hearings or not addressing the appointments at all.

[1:55:43 PM](#)

SENATOR GIESSEL noted that the day before the Alaska legislature is scheduled to convene is January 18, 2021. She asked if the convening date should read on that date or 30 days after the declaration of a public health disaster emergency.

SENATOR BEGICH said that works fine for him.

CHAIR COGHILL asked why it is necessary to insert the January date since this provision would give the legislature 30 days to figure it out.

SENATOR BEGICH answered that it's to protect the legislature and the legitimacy of the three branches. He said this was an oversight in the bill. As Ms. Wallace said, the bill contemplates that the legislature will reconvene but that may be an error.

[1:57:40 PM](#)

CHAIR COGHILL offered his view that the closer to the end of the extension of the disaster declaration of September 1, the better. Amendment 1 would still provide a 30-day window, all of September, to contemplate the pandemic and the capability of the legislature. He asked if the legislature would still need a two-thirds polling to do so.

[1:58:10 PM](#)

MS. WALLACE answered that if the legislature wanted to come back into special session to address the extension of the disaster declaration, it would either need to comply with the polling requirements or the governor would have to call the legislature into special session.

[1:58:38 PM](#)

SENATOR BEGICH restated the motion to adopt Amendment 1, as follows:

On January 18, 2021, or 30 days after expiration of the declaration of a public health disaster emergency issued by the governor on March 11, 2020, whichever is earlier, the failure of the legislature to act to confirm or decline to confirm an appointment presented by the governor during the Second Regular Session of

the Thirty-First Alaska State Legislature would be tantamount to a declination of confirmation.

1:59:23 PM

CHAIR COGHILL found no objection.

MS. MILLER suggested asking Legislative Legal Services if the date should be after the expiration of a disaster declared by the governor or if the intent is to make it within 30 days of a declaration of a proclamation that the disaster is over. She recalled that the disaster extension bill used a similar benchmark.

1:59:57 PM

CHAIR COGHILL suggested that Ms. Wallace, Legislative Legal Services director, draft the amendment with that comment in mind while the committee takes an at-ease. He then asked if the next amendment would still be pertinent.

SENATOR BEGICH answered yes.

2:00:25 PM

SENATOR VON IMHOF asked if the language, "would be tantamount to a declination of confirmation" means all the confirmations become invalid.

SENATOR GIESSEL said tantamount means "the same as."

SENATOR VON IMHOF asked if that means the legislature would decline all the confirmations.

SENATOR GIESSEL answered yes.

SENATOR BEGICH commented that it is consistent with the legislature's current power under the Constitution of the State of Alaska.

CHAIR COGHILL remarked that it is the same as the current statute. He asked Ms. Wallace to work with Senator Begich on draft language for Amendment 1, as discussed.

2:01:15 PM

MS. WALLACE asked if it is the will of the committee for the amendment to contemplate the date the disaster is over.

SENATOR BEGICH said he believes Ms. Miller was looking for the wording of the date of when an official proclamation is given

but that the content would be the same. Senator Giessel indicated 30 days after expiration of the declaration but Ms. Miller was saying 30 days after the proclamation that the disaster is over.

CHAIR COGHILL pointed out that the legislature has a hard date in statute, but the governor has the authority to issue disaster declarations. He asked if that works well with the proposed language.

MS. WALLACE answered that the current version of the disaster extension bill provides that the disaster will expire on September 1, 2020, or earlier if the governor issues a proclamation declaring that the disaster is over. If that language is included, it would mean it will be 30 days after either the expiration of the declaration or 30 days after the governor issues a proclamation that there is no longer a disaster.

CHAIR COGHILL agreed that was the goal.

[2:03:24 PM](#)

CHAIR COGHILL recessed the meeting.

[2:37:44 PM](#)

CHAIR COGHILL reconvened the meeting. Present at the call to order were Senators Begich, Giessel and Chair Coghill. He said that other two members were attending a conference committee. He advised members that the committee was awaiting an amendment. He solicited a motion.

[2:38:09 PM](#)

SENATOR BEGICH withdrew Amendment 1.

CHAIR COGHILL said the committee would revisit the issue with a forthcoming amendment.

[2:38:40 PM](#)

SENATOR BEGICH moved to adopt Amendment 2, work order 31-LS1719\M.A.3:

31-LS1719\M.A.3  
Wallace  
3/25/20

**AMENDMENT 2**

OFFERED IN THE SENATE  
TO: HB 309 am

BY SENATOR BEGICH

Page 2, following line 15:  
Insert a new subsection to read:

"(d) If, after the Second Regular Session of the Thirty-First Alaska State Legislature adjourns, a person whose appointment is still awaiting confirmation or declination of confirmation resigns that person's appointment, or the position or membership of that person becomes vacant for any reason other than the expiration of the person's term of office, the governor may not appoint that person to the same position or membership until the First Regular Session of the Thirty-Second Alaska State Legislature convenes."

CHAIR COGHILL objected for an explanation.

[2:38:45 PM](#)

SENATOR BEGICH said Amendment 2 will protect the legislature's constitutional duty to confirm appointees by closing a loophole created by HB 309 that would allow nominees to serve through the next year's legislative session. The amendment would make nominees that resign after the end of the regular session ineligible to be reappointed, as if they had been rejected. Currently, nominees who are appointed can resign if it looks like they might not be confirmed. However, after the legislature adjourns these nominees could get appointed again by the governor. The legislature has always tried to avoid that in its processes and Amendment 2 will ensure that the current law is respected, he said.

[2:40:03 PM](#)

CHAIR COGHILL removed his objection and Amendment 2 was adopted.

He related that Legislative Legal Services has provided the new draft amendment to replace Amendment 1 that was withdrawn. He solicited a motion.

[2:40:26 PM](#)

SENATOR BEGICH moved to adopt Amendment 3, work order 31-LS1719\M.A.4:

31-LS1719\M.A.4  
Wallace  
3/25/20

AMENDMENT 3

OFFERED IN THE SENATE  
TO: HB 309 am

Page 2, lines 3 - 7:

Delete all material and insert:

"(b) The failure of the legislature to act to confirm or decline to confirm an appointment presented by the governor during the Second Regular Session of the Thirty-First Alaska State Legislature will be tantamount to a declination of confirmation, on the earlier of

(1) January 18, 2021; or

(2) 30 days after

(A) expiration of the declaration of a public health disaster emergency issued by the governor on March 11, 2020; or

(B) issuance of a proclamation that the public health disaster emergency identified in the declaration issued by the governor on March 11, 2020, no longer exists."

CHAIR COGHILL objected for an explanation.

[2:40:48 PM](#)

At ease.

[2:42:13 PM](#)

CHAIR COGHILL reconvened the meeting. He asked Ms. Wallace if Amendment 3 would essentially provide ways a declination of confirmation could happen: the earlier of January 18, or 30 days after the expiration of the declaration, or the issuance of a proclamation that the public disaster no longer exists.

[2:42:53 PM](#)

MS. WALLACE said she didn't hear the question.

CHAIR COGHILL asked her to discuss Amendment 3.

[2:43:13 PM](#)

MS. WALLACE explained that Amendment 3 would delete subsection (b) of HB 309, on page 2 lines 3-7. This means that there would be an automatic declination of confirmation upon the earlier of January 18, 2021, or 30 days after expiration of the disaster

declaration, or 30 days after issuance of a proclamation that the emergency no longer existed. Amendment 3 is intended to replace the conceptual amendment discussed prior to the recess.

CHAIR COGHILL opined that Amendment 3 does what the committee intended to do.

[2:44:38 PM](#)

SENATOR BEGICH agreed.

[2:44:47 PM](#)

CHAIR COGHILL removed his objection. Finding no further objection, Amendment 3 was adopted.

[2:44:58 PM](#)

SENATOR GIESSEL moved to report SCS HB 309(RLS), work order 31-LS1719\M.A as amended, from committee with individual recommendations and forthcoming fiscal note(s).

[2:45:47 PM](#)

CHAIR COGHILL found no objection. Therefore, the SCS HB 309(RLS) was reported from the Senate Rules Standing Committee.

[2:46:06 PM](#)

There being no further business to come before the committee, Chair Coghill adjourned the Senate Rules Standing Committee meeting at 2:46 p.m.