

ALASKA STATE LEGISLATURE
SENATE STATE AFFAIRS STANDING COMMITTEE

February 10, 2022

3:38 p.m.

MEMBERS PRESENT

Senator Mike Shower, Chair
Senator Lora Reinbold, Vice Chair
Senator Roger Holland
Senator Scott Kawasaki (online)

MEMBERS ABSENT

Senator Mia Costello

OTHER LEGISLATORS PRESENT

Representative Mike Crank

COMMITTEE CALENDAR

SENATE BILL NO. 156

"An Act relating to COVID-19 immunization rights; and relating to objection to the administration of a COVID-19 vaccine."

- MOVED SB 156 OUT OF COMMITTEE

HOUSE BILL NO. 123

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

- HEARD & HELD

SENATE BILL NO. 92

"An Act relating to missing persons under 21 years of age."

- SCHEDULED BUT NOT HEARD

SENATE BILL NO. 66

"An Act relating to the membership of the legislative council; and relating to the membership of the Legislative Budget and Audit Committee."

- SCHEDULED BUT NOT HEARD

SENATE BILL NO. 167

"An Act relating to elections, voter registration, ballots, and a system of tracking and accounting for ballots; establishing an election offense hotline; relating to election fraud, election interference, and election official misconduct; requiring signature verification, notice, and the opportunity to cure; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: SB 156

SHORT TITLE: PROHIBIT COVID-19 VACCINE DISCRIMINATION

SPONSOR(S): SENATOR(S) REINBOLD

01/18/22	(S)	PREFILE RELEASED 1/7/22
01/18/22	(S)	READ THE FIRST TIME - REFERRALS
01/18/22	(S)	STA, HSS
02/03/22	(S)	STA AT 3:30 PM BUTROVICH 205
02/03/22	(S)	Heard & Held
02/03/22	(S)	MINUTE(STA)
02/08/22	(S)	STA AT 3:30 PM BUTROVICH 205
02/08/22	(S)	Heard & Held
02/08/22	(S)	MINUTE(STA)
02/10/22	(S)	STA AT 3:30 PM BUTROVICH 205

BILL: HB 123

SHORT TITLE: STATE RECOGNITION OF TRIBES

SPONSOR(S): REPRESENTATIVE(S) ZULKOSKY

03/03/21	(H)	READ THE FIRST TIME - REFERRALS
03/03/21	(H)	TRB, STA
03/30/21	(H)	TRB AT 8:00 AM DAVIS 106
03/30/21	(H)	Heard & Held
03/30/21	(H)	MINUTE(TRB)
04/01/21	(H)	TRB AT 8:00 AM DAVIS 106
04/01/21	(H)	Moved HB 123 Out of Committee
04/01/21	(H)	MINUTE(TRB)
04/05/21	(H)	TRB RPT 3DP 1NR
04/05/21	(H)	DP: FIELDS, TARR, ZULKOSKY
04/05/21	(H)	NR: CRONK
04/17/21	(H)	STA AT 3:00 PM GRUENBERG 120
04/17/21	(H)	Heard & Held
04/17/21	(H)	MINUTE(STA)
04/22/21	(H)	STA AT 3:00 PM GRUENBERG 120
04/22/21	(H)	Moved HB 123 Out of Committee

04/22/21 (H) MINUTE (STA)
 04/26/21 (H) STA RPT 5DP 1NR
 04/26/21 (H) DP: VANCE, CLAMAN, STORY, TARR, KREISS-
 TOMKINS
 04/26/21 (H) NR: KAUFMAN
 05/19/21 (H) LIMIT ALL DEBATE TO 2 MIN EACH Y23 N16
 E1
 05/19/21 (H) MOTION TO TABLE UC
 05/19/21 (H) TAKEN FROM TABLE UC
 05/19/21 (H) TRANSMITTED TO (S)
 05/19/21 (H) VERSION: HB 123
 01/18/22 (S) READ THE FIRST TIME - REFERRALS
 01/18/22 (S) STA, CRA
 02/10/22 (S) STA AT 3:30 PM BUTROVICH 205

WITNESS REGISTER

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

POSITION STATEMENT: Answered legal questions during the hearing on SB 156.

REPRESENTATIVE TIFFANY ZULKOSKY
 Alaska State Legislature
 Juneau, Alaska

POSITION STATEMENT: Sponsor of HB 123

LOGAN BASNER, Staff
 Representative Tiffany Zulkosky
 Alaska State Legislature
 Juneau, Alaska

POSITION STATEMENT: Presented the sectional analysis for HB 123.

NATASHA SINGH, Vice President
 Legal Affairs
 Alaska Native Tribal Health Consortium (ANTHC)
 Anchorage, Alaska; and
 Dinyee Hu'tanna of Stevens Village

POSITION STATEMENT: Co-presented a PowerPoint during the hearing on HB 123.

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

POSITION STATEMENT: Co-presented a PowerPoint during the hearing on HB 123.

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

POSITION STATEMENT: Responded to legal questions during the hearing on HB 123.

JULIE KITKA, President
Alaska Federation of Natives (AFN)
Anchorage, Alaska

POSITION STATEMENT: On behalf of the Alaska Federation of Natives, testified in full support of HB 123.

ACTION NARRATIVE

[3:38:55 PM](#)

CHAIR MIKE SHOWER called the Senate State Affairs Standing Committee meeting to order at 3:38 p.m. Present at the call to order were Senators Reinbold, Holland, and Chair Shower. Senator Kawasaki joined the committee via teleconference during the course of the meeting.

SB 156-PROHIBIT COVID-19 VACCINE DISCRIMINATION

[3:40:27 PM](#)

CHAIR SHOWER announced the consideration of SENATE BILL NO. 156 "An Act relating to COVID-19 immunization rights; and relating to objection to the administration of a COVID-19 vaccine."

He noted that the bill was heard on 2/8/22 and public testimony was heard and held open. His office had received no amendments and the deadline had passed.

[3:40:53 PM](#)

CHAIR SHOWER ascertained that no one wished to testify and closed public testimony on SB 156.

He asked the sponsor if she had any closing comments.

[3:41:30 PM](#)

SENATOR REINBOLD said she would like to hear from Megan Wallace before she made a final statement.

CHAIR SHOWER stated that during the first hearing he asked the sponsor about the constitutional implication of telling private citizens what they can or cannot do when running their business. He asked Ms. Wallace to comment.

3:43:44 PM

MEGAN WALLACE, Director, Legislative Legal Services, Legislative Affairs Agency, Alaska State Legislature, Juneau, Alaska, stated that the language in SB 156 is similar to a bill that the Montana State Legislature passed in 2021. That legislation has been challenged in both federal and state court. The claims include that the law violates certain parts of the Americans with Disabilities Act (ADA), the Occupational Safety and Health Act (OSHA), and certain constitutional provisions in Montana relating to the right to a clean and healthy environment as well as equal protection claims. Those cases are in the early stages so the law is in effect at this point.

In federal court the judge recently ruled on a motion to dismiss the plaintiffs' claim. The state constitutional environmental claim was dismissed but the remainder of the plaintiffs' claims survived and the case will go to trial. The plaintiffs' request for an injunction in state court to prevent the law from going into effect was denied. The judge held that the plaintiffs did not meet the burden for a preliminary injunction and the bill went into effect.

MS. WALLACE stated that this is an emerging issue in law and there is some risk of litigation if the bill were to become law.

CHAIR SHOWER said he wanted this discussion on the record to make the legislative intent clear. He offered his opinion that the only potential issue is paragraph (2) on page 2, [lines 8-12]. It is specifically about an employer who has no tie to the government.

CHAIR SHOWER asked Ms. Wallace if his question and her answer was clear that this is "only and specifically addressed to a private individual, not any of the other circumstances."

MS. WALLACE responded that, regarding his specific question, her answer does not change. Her research of claims indicates that even if it is a private business, there is a possibility that employees in that private business will bring a challenge. She said she could not predict how a court might rule; she was advising that there is a risk of litigation.

[3:48:54 PM](#)

CHAIR SHOWER asked if private businesses face a significant risk of liability if they were to require employees to be vaccinated.

MS. WALLACE responded that she did not want to speculate on claims that may be brought should an employee be injured as a result of an employer's vaccine mandate. She acknowledged that there are private companies that have required vaccination and said she is anecdotally aware of litigation stemming from those mandates. She opined that there is potential for litigation whether an employer is prohibited from requiring employees to have vaccines or an employer requires employees to have vaccines.

CHAIR SHOWER offered his belief that private companies are far out on a limb in this case.

[3:51:53 PM](#)

SENATOR REINBOLD thanked Ms. Wallace for discussing all sides of the issue. She called SB 156 a very important bill on a matter that has struck a nerve. Medical decisions should be between the individual and their physician and employers should not intervene in that relationship.

CHAIR SHOWER said he appreciated the debate on the constitutional question but he sees the privacy aspect as well.

[3:56:13 PM](#)

CHAIR SHOWER found no further questions or comments and solicited a motion.

[3:56:23 PM](#)

SENATOR REINBOLD moved to report SB 156, work order 32-LS1352\I, from committee with individual recommendations and attached fiscal note(s).

CHAIR SHOWER found no objection and SB 156 was reported from the Senate State Affairs Standing Committee.

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[3:56:50 PM](#)

At ease

HB 123-STATE RECOGNITION OF TRIBES

[3:58:03 PM](#)

CHAIR SHOWER reconvened the meeting and announced the consideration of HOUSE BILL NO. 123 "An Act providing for state recognition of federally recognized tribes; and providing for an effective date."

He noted that this was the first hearing.

[3:58:49 PM](#)

REPRESENTATIVE TIFFANY ZULKOSKY, Alaska State Legislature, Juneau, Alaska, sponsor of HB 123 introduced the legislation reading the following prepared statement:

HB 123 is a bill that would codify federal recognition of Alaska's Tribes in State law for the first time. To be clear, the recognition of and inherent responsibilities granted to Tribes exists solely between those Tribes and the federal government. HB 123 carries a zero fiscal note and does not compel the State to take any particular action. Per the memo from Legislative Legal provided to the committee, passing this bill *would not* change Alaska's relationship with Tribes. In other words, HB 123 does not create any additional rights or privileges that Tribes do not already have.

So you may wonder, if this bill does not change the legal relationship between the State and its Tribes, why is it worth pursuing in the first place? Tribes have been recognized by the federal government, and by the Executive and Judicial branches of Alaska's government. But we, the Legislature, have not held up our end of the bargain and officially acknowledged Tribes in law.

Regardless of this, the State looks to our Tribal partners to leverage significant federal resources and provide a litany of essential services to Alaskans living in remote parts of the State. Tribes provide services from public safety and transportation to healthcare and economic development. This keeps the footprint of state government small.

For example, for decades the Alaska Tribal Health system brings in significant federal funding annually, expanding the reach of Alaska's Medicaid spending. In 2017, Northern Economics found that Alaska's Tribal Health System

generated over \$1.1 billion in annual income, resulting in total economic output in Alaska of nearly \$2.4 billion. In 2017, the State of Alaska entered into its first ever compact with Tribes when it signed the Tribal Child Welfare Compact. A compact continued today under Governor Dunleavy's Administration. There have also been recent and on-going conversations in this building, by the Governor and members in both bodies, on both sides of the political aisle, to continue pursuing program innovation through Tribal compacting in the area of education – and other ways the State can expand its relationship with Tribes.

It is difficult for us in the Legislature to speak about expanding our relationship with Tribes, leveraging these federal dollars, when we don't statutorily acknowledge their existence to begin with. Particularly on the heels of a pandemic where Tribal health organizations, absent sufficient Alaska Public Health resources, played an integral role in keeping the people in our State healthy and safe, now feels like a timely, albeit long overdue, moment to recognize tribes. HB 123 opens the door for us to simply affirm in Alaska's legal code, the special and unique relationship that exists between Tribes and the federal government.

Mr. Chair, members of the committee, the time has come for Alaska to acknowledge our Tribes and to officially open the door for healing and reconciliation by recognizing our first people in statute.

[4:02:32 PM](#)

REPRESENTATIVE ZULKOSKY clarified that when the United States settled the aboriginal land claims for Alaska Natives in the early 1970s, Congress used a unique system rather than the treaty and reservation model used for American Indian tribes in the Lower 48. The promise was that Alaska Natives would not be disadvantaged compared to American Indians in federal and tribal matters. The more than 200 Alaska Native regional and village corporations established under the Alaska Native Claims Settlement Act (ANCSA) are state chartered corporations that enjoy no special loopholes to avoid taxation under federal law. As a consequence, the land that Congress transferred to the 12 regional Alaska Native corporations and their respective regional village corporations are taxed by the State of Alaska.

She assured the committee that HB 123 has no bearing on the taxation of these corporation lands.

CHAIR SHOWER asked Mr. Basner to walk through the sectional analysis.

[4:03:50 PM](#)

LOGAN BASNER, Staff, Representative Tiffany Zulkosky, Alaska State Legislature, Juneau, Alaska, presented the sectional analysis for HB 123. He described HB 123 as an affirmation of status that has been recognized by the three branches of the federal government as well as the judicial and executive branches of the State of Alaska.

He presented a summary of the sectional analysis for HB 123:

Section 1 is intent language.

MR. BASNER explained that the House Tribal Affairs Committee added intent language to provide a contextual basis for what is important legislation in the history of the State of Alaska's relationship with its tribes.

Sections 2, 3, and 4 make technical changes.

Section 5 is the operative part of the bill that consists of four sentences.

- The first sentence recognizes that tribes' unique status is really a federal question. It uses the words "special and unique," words that appeared in Richard Nixon's 1970 special address on Indian affairs.
- The second sentence recognizes the list of federally recognized tribes. It acknowledges and defers to the federal government for recognition of tribal status. (References the Recognized Tribal List Act in U.S. code)
- The third sentence states explicitly that this bill does not interfere with the federal government's trust relationship with Tribes or create a State trust of its own.
- [The fourth sentence defines "federally recognized tribe" as it is in AS 23.20.070(c).]

MR. BASNER stressed that this legislation is not seeking to intrude into, replace, or diminish the federal relationship with tribes.

[4:05:41 PM](#)

MR. BASNER clarified what HB 123 does not create any additional rights or privileges that tribes do not already have and it does not interfere with access to natural resources. At the sponsor's request, the Alaska Oil and Gas Association (AOGA) provided a legal review of the bill and determined that it did not elicit any concern.

MR. BASNER thanked the committee for its time and noted that Natasha Singh and Joy Anderson were available to provide testimony and respond to questions.

[4:06:12 PM](#)

SENATOR HOLLAND asked if Lower 48 states such as Kansas and Oklahoma have agreements that specifically recognize the American Indian tribes within their borders that the federal government recognizes.

REPRESENTATIVE ZULKOSKY deferred the question to Julie Kitka or the general counsel Indian law experts.

CHAIR SHOWER suggested he hold the question until those individuals testify.

SENATOR REINBOLD expressed amazement that there were 565 federally recognized tribes, 229 of which are in Alaska.

CHAIR SHOWER said he was writing that number down because he had heard dozens of different figures mentioned.

He asked if it would be preferable to codify specific sections of federal law as opposed to citing the Federally Recognized Indian Tribe List Act [of 1994].

REPRESENTATIVE ZULKOSKY answered that this was bipartisan legislation that started in the House before she picked it up. The intention was to codify the tribes in the Federally Recognized Indian Tribe List Act of 1994. She offered her perspective that it includes all the tribes that exist in Alaska although the federal law was crafted to be efficient so it does not recognize each of those tribes by name. She suggested Joy Anderson and Natasha Singh could supplement her answer as they participated in the original drafting of the bill.

[4:09:43 PM](#)

CHAIR SHOWER suggested they respond to the question when they testify.

He referenced the language in Section 2, subparagraph (13)(B) on page 3, that says "federally recognized tribe"

(B) includes any subdivision, subsidiary, or business enterprise wholly owned by a federally recognized tribe;

CHAIR SHOWER asked whether HB 123 would enhance a tribe's ability in state jurisdiction to use sovereign immunity to indemnify its business enterprises against tort claims.

REPRESENTATIVE ZULKOSKY suggested the invited testifiers respond to the question.

CHAIR SHOWER directed attention to Section 5 and the new section:

**Article 2. Intergovernmental Relations with Tribes.
Sec. 44.03.100. Recognition of tribes.**

He asked how intergovernmental relations with tribes would change if the bill were to pass.

REPRESENTATIVE ZULKOSKY offered her perspective that the bill simply codifies the federal recognition of tribes in state law, so the mechanisms of the relationship between the state and its tribes would not change.

CHAIR SHOWER asked if the intergovernmental relationship would change if in Section 5 the state were to acknowledge as opposed to recognize tribes.

[4:11:48 PM](#)

REPRESENTATIVE ZULKOSKY offered her perspective that in this context, the terms recognize and acknowledge are interchangeable.

CHAIR SHOWER offered his reading that Sections 3 and 4 have technical changes, but no policy changes.

REPRESENTATIVE ZULKOSKY replied that was her understanding.

CHAIR SHOWER offered his belief that Alaska Natives were not well represented at the Constitutional Convention in 1955. He continued to say:

I think it is long overdue that the State of Alaska and tribes acknowledge each other - as they exist and as it exists in the U.S. Constitution when you look at the deeper side of the law. This bill does acknowledge that. That tribes do, in fact, exist with rights and authorities granted by the federal government. I think that we need to acknowledge that it doesn't add authority or rights to that. That's an important distinction here, which is why we're so key on the language. I think this bill simply reaffirms what already exists for clarity. To remove any ambiguity, the State does retain its sovereignty and the tribes retain theirs.

This bill is a small step toward a more respectful relationship between the sovereign State of Alaska and sovereign tribes.

CHAIR SHOWER said, "We can do better than where we are today."

[4:16:13 PM](#)

REPRESENTATIVE ZULKOSKY stated that the language on page 2, line 30 through page 3, line 3 underscores that point and addresses the concern. She read:

The state recognizes all tribes in the state that are federally recognized under 25 U.S.C. 5130 and 5131. Nothing in this section diminishes the United States government's trust responsibility or other obligations to federally recognized tribes in the state or creates a concurrent trust relationship between the state and federally recognized tribes.

CHAIR SHOWER stated that the debate about the intent is very important for the record.

[4:17:39 PM](#)

CHAIR SHOWER recognized that Senator Kawasaki had joined the committee online and Senator Begich was in the audience [awaiting the hearing on SB 92].

SENATOR REINBOLD referenced Resolution #22-35 from the Koniag, Inc. Board of Directors regarding HB 123 and the Alaskans for

Better Government Ballot Initiative. She asked whether the language in the bill and the ballot initiative were identical.

REPRESENTATIVE ZULKOSKY said she was aware of the ballot initiative but her focus is and has been to get HB 123 across the finish line. It sends a powerful message to Alaskans and across the nation that it is possible to come together on issues that matter.

SENATOR REINBOLD asked what the third WHEREAS in the resolution means. It reads:

WHEREAS, the inherent sovereignty of Alaska Native peoples and communities to govern themselves is a birthright, not something granted by the state of federal government, and

REPRESENTATIVE ZULKOSKY deferred the question to the individuals invited to testify.

[4:19:36 PM](#)

SENATOR REINBOLD read the seventh WHEREAS in the resolution and asked for the definition of tribal sovereignty. It read:

WHEREAS, the Alaska legislature has failed multiple attempts to advance resolutions and bills that would have the State acknowledge Tribal sovereignty; and

REPRESENTATIVE ZULKOSKY answered it would be hard to speculate about Koniag's intention, but she thought the invited testimony would be able to offer a good perspective on tribal sovereignty, in the historical context. Speaking as the Chair of the House Special Committee on Tribal Affairs and as a tribal member, she added that Alaska Native people have lived in the state since long before statehood and at its heart, the bill is about the long history of obligations that this country has to the Alaska Native people.

[4:21:35 PM](#)

SENATOR REINBOLD said she looked forward to the additional context because she wanted to figure out what that means to avoid unintended consequences. She also noted that the second page of the Koniag resolution talks about intergovernmental relationships, and reiterated her desire to figure things out now instead of waiting for a judicial decision when there is an issue about tribal sovereignty versus state sovereignty in the future.

CHAIR SHOWER turned to invited testimony.

[4:24:21 PM](#)

NATASHA SINGH, introduced herself as the Vice President of Legal Affairs for the Alaska Native Tribal Health Consortium in Anchorage; and Dinyee Hu'tanna of Stevens Village.

[4:24:32 PM](#)

JOY ANDERSON, General Counsel, Association of Village Council Presidents (AVCP), Bethel, Alaska, introduced herself.

[4:25:34 PM](#)

MS. SINGH began the presentation on the valentine slide and drew a parallel between HB 123 regarding tribal recognition and giving valentines in elementary school classrooms to recognize the other students in the class. HB 123 is simply an acknowledgement and recognition that tribes exist. She pointed out that both the judicial and executive branches of state government have recognized that tribes exist in Alaska. In fact, tribes have existed from time immemorial. She referenced Senator Reinbold's questions about the specifics in the language in the bill and encouraged anyone with similar questions to read the Alaska Supreme Court decision in John v. Baker. It provides the legal basis for why the United States and the Alaska judicial branch recognize tribes. She relayed that in U.S. v. Wheeler, the U.S. Supreme Court found that the powers of Indian tribes are inherent powers. That Court recognized that tribes existed before the United States.

[4:28:05 PM](#)

MS. ANDERSON displayed slide 4, and explained that federally recognized tribes include Alaska Native or American Indian tribal entities that are recognized as having a government-to-government relationship with the United States. Further, they are eligible to receive certain funding and services from the Bureau of Indian Affairs (BIA). Federally recognized tribes have inherent rights of self-government, which is also called tribal sovereignty. She referenced the earlier question about tribal sovereignty and explained that means that the tribe determines how it will govern its own affairs. Examples of tribal sovereignty include but are not exclusive to the type of government the tribe will have; citizenship requirements; the authority to make and enforce laws over areas where tribes have jurisdiction; and regulate matters pertaining to tribal members. She related that federally recognized tribes are also called domestic dependent nations, particularly in older case law. This

means that tribes are sovereign and are able to exercise all rights as a sovereign unless the U.S. Congress has specifically limited certain rights. This is similar to the sovereign U.S. states whose powers have been limited in certain ways by Congress. She continued to explain that federally recognized tribes are eligible to receive certain federal benefits, services, and protections because of their relationship with the United States.

MS. ANDERSON stated that federal recognition of a tribe can happen through an act of Congress; by administrative procedure; or by a decision of a U.S. court. Because it can only happen in those three specific ways, HB 123 will not establish any new tribes or make any new entities. As previously mentioned, there are 574 federally recognized tribes in the U.S. included 229 in Alaska.

[4:30:46 PM](#)

MS. SINGH turned to slide 5 and explained that anyone who studies federal Indian policy will learn about seven policy eras, all of which were to address "the Indian problem."

- Colonial 1492-1820
- Removal/Relocation 1820-1850
- Reservation/Treaty Making 1850-1887
- Allotment & Assimilation 1887-1934, which accounts for the allotments in Alaska.
- Indian Self-Government 1934-1953
- Termination 1953-196? that was an acknowledgement that past efforts to solve "the Indian problem" had failed. The new approach was to simply terminate the tribes altogether. This was extremely costly and ultimately failed, but it was successful in that it intended for neither federal Indian policy nor Alaska Native history to be taught.
- Self Determination 196? to the present was championed by President Nixon. There was a bipartisan movement in Congress that acknowledged tribes' inherent rights to self-governance. It paid off for the U.S. and states because Alaska Natives and American Indians are better off for it.

MS. SINGH encouraged the members to study the federal Indian policy periods to get a better understanding of how Indian tribes in the U.S. have been treated and why the Termination era was so damaging. She opined that HB 134, which is a recognition bill, would get the last foot out of the Termination era.

[4:33:48 PM](#)

MS. ANDERSON turned to the map on slide 6 to talk specifically about tribes in Alaska. She referenced an earlier question about whether HB 134 will affect the state and expand the rights of tribes. She said it has been established that states have no authority over tribal governments unless expressly authorized by Congress. However, states may choose to have a government-to-government relationship with tribes just as they have a government-to-government relationship with the federal government. There are also examples of states collaborating with other states through compacts and other agreements. She mentioned the question about how many recognition bills have been put forward and offered to follow up with the answer if other presenters did not have that information.

[4:34:57 PM](#)

MS. ANDERSON turned to slide 7 to discuss the position that Alaska previously held which was that tribes did not exist. She pointed out that the State has not always recognized tribes or established government-to-government relations, despite the fact that the federal government acknowledged the existence of tribes as early as the 1867 Treaty of Cession when the U.S. purchased Alaska from Russia. She described the two more recent examples listed on the slide. The 1988 case, *Native Village of Stevens v. Alaska Management and Planning*, was about a contract dispute between a tribe and a contractor. The Alaska Supreme Court used the statement, "There are not now and never have been tribes of Indians in Alaska as that term is used in federal law." as the basis for denying that the Native Village of Stevens was entitled to sovereign immunity. Additionally, the State of Alaska in [1991] issued Administrative Order 125 to oppose the expansion of tribal governmental powers in Alaska. She said this was the status of tribes and their relationship to the State of Alaska in the late 1980s and early 1990s.

[4:36:12 PM](#)

MS. ANDERSON directed attention to slide 8 that outlines the federal government's response to those cases. The Department of Interior (DOI) oversees Indian Affairs, the Bureau of Indian Affairs (BIA), and the Bureau of Indian Education (BIE). The DOI solicitor responded in 1993 in the *Sansonetti* Opinion. It disagreed with the Alaska Supreme Court's historical analysis in the *Stevens Village* case, pointing out that for more than 50 years Congress and the Department of Interior had treated Alaska Natives as members of tribes. The opinion concluded that there were federally recognized tribes in Alaska. In 1994, Congress also responded by directing the BIA to publish lists of

recognized tribes, which included Alaska tribes. This is known as the Federally Recognized Indian Tribe List Act of 1994. She noted that the sponsor referenced this Act earlier and it is the definition in HB 123. The list is published annually and is available online. It includes the names of all 574 federally recognized tribes in the U.S., including the 229 tribes in Alaska.

[4:37:52 PM](#)

MS. SINGH reviewed slide 9, Current State of Alaska Position re Tribes. She said tribes have prevailed repeatedly over the last decade when the State of Alaska has resisted tribal recognition and the inherent authority of tribes. Those cases have been decided. The cases and executive actions listed on the slide reflect the shift in sentiment. It read as follows:

[Original punctuation provided.]

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

State of Alaska's Executive Branch - "[W]e will improve government-to-government relations with Alaska Tribes [...]." Alaska Admin. Order No. 300 (2018).

See also Alaska Department of Law 2017 Opinion - Legal status of tribal governments in Alaska ("[T]here are no unresolved legal questions regarding the legal status of Alaska Tribes as federally recognized tribal governments.")

[4:39:19 PM](#)

MS. SINGH responded to some of the questions from committee members. Regarding the question of sovereign immunity, she explained that tribes have sovereign immunity just as the State of Alaska has sovereign immunity. However, tribes often enter into limited waivers of sovereign immunity with contractors so that any dispute under the contract can be decided in a state court. Limited waivers are also seen in the Alaska Child Welfare Compact. In summary, tribes are able to assert and waive sovereign immunity. To the question about similar laws, she said about a dozen other states have recognition statutes. She pointed out that what makes Alaska different is that it has about half of all the federally recognized tribes in the nation, and the state has been battling this question for the last two decades in the courts. She opined that it would be powerful for the legislature to reach out with that simple elementary school

valentine recognition that tribes exist. She said this would be very meaningful to people who have lived here for time immemorial and are trying to claw back the effects of historical trauma. It is only right for the State of Alaska to recognize tribes after it spent so many generations denying tribes' inherent authority to solve their own problems.

[4:42:51 PM](#)

SENATOR REINBOLD opined that many questions were unanswered. She asked, "When you say tribal sovereignty, is that on tribal lands or is that a member of the tribe where you have tribal sovereignty?"

MS. SINGH encouraged her to read the 1999 Alaska Supreme Court decision in John v. Baker. That court held that tribes have inherent authority over tribal members and it does not matter whether or not a tribe has land.

[4:43:53 PM](#)

CHAIR SHOWER asked who determines which law prevails if a Native government law conflicts with a State of Alaska law.

[4:44:22 PM](#)

MS. ANDERSON explained that in a domestic relations matter that has arisen in tribal court, the tribal court takes precedence and the state court cannot initiate a case on the same matter. Similarly, if parties initiate an action in state court, the tribal court may not initiate a case on the same matter. This is similar to what would play out between states. There is recognition that the court of first impression will handle the specific issue. If the state does not have jurisdiction and it is a tribal matter, the case would remain in tribal court or tribal jurisprudence.

MS. ANDERSON supplemented the earlier response to the question of whether HB 123 may extend tribal sovereignty. She explained that the Indian law of jurisprudence on sovereignty dates to 1831. Since that time tribes have been recognized as having sovereignty. HB 123 will not change that well-established principle, she said.

CHAIR SHOWER asked if she agreed that based on precedence, the Alaska Supreme Court would not be able to override Native law.

MS. ANDERSON replied the court could not override federal Indian law policy.

SENATOR REINBOLD asked if a tribe member who lives in Anchorage, for example, must abide by all municipal ordinances and state statutes and uphold the constitution.

MS. SINGH replied that tribal members must follow city ordinances. She reiterated that a tribe's inherent authority over its members is strongest in domestic relations. This includes determination of who is a tribal member, eligibility, child protection, marriage and divorce. She noted that this was explained in John v. Baker. In that case a parent did not like the outcome and took the matter to the state court. The state court looked at whether the sovereign adjudicatory authority of Native tribes existed outside of Indian country and concluded that Native tribes do possess the inherent sovereign power to adjudicate domestic disputes between tribal members in their own courts. She highlighted that tribes have the inherent authority and right to self determination with or without HB 123.

CHAIR SHOWER asked Megan Wallace to respond to the questions.

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MEGAN WALLACE, Director, Legal Services, Legislative Affairs Agency, Alaska State Legislature, Juneau, Alaska, asked him to repeat the question.

CHAIR SHOWER asked if HB 123 changes or increases a tribe's ability to use sovereign immunity to indemnify their business enterprises against tort claims.

MS. WALLACE said she largely concurs with the previous statements that the bill does not alter the state's relationship, create new obligations, or change the legal landscape relating to the state and any intergovernmental relationship with tribal entities. HB 123 provides state recognition of tribes described in federal law, but it has no effect on sovereign immunity claims any person might make against a tribal government. Further, it would not increase or decrease the ability of tribal governments to assert sovereign immunity.

CHAIR SHOWER interpreted the answer to be "No."

He asked Senator Reinbold to restate her question.

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SENATOR REINBOLD asked where sovereign immunity ends in one jurisdiction and begins in another.

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MS. WALLACE answered that it is Legal Services' position that HB 123 does not affect the current legal landscape for determining what sovereign would have jurisdiction over specific matters. Additionally, the issue might dictate the answer to the particular question because one general answer does not fit all circumstances.

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CHAIR SHOWER recognized that Representative Cronk was in the audience.

SENATOR HOLLAND wondered why some states recognize tribes that are not on the federal list but do not recognize other tribes that are on the federal list. He noted that Alaska was unique in that all of its tribes are on the federally recognized list of tribes. He said he would work to find the answer to that question before the next meeting.

CHAIR SHOWER offered a law enforcement perspective on authority. If a tribe member stole a car in Los Angeles, they would be charged in that jurisdiction and a tribal authority could not remove the individual from that jurisdiction.

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REPRESENTATIVE ZULKOSKY said the dialog today has been good and the testimony indicates that federal Indian policy goes back to the 1800s. She echoed Ms. Wallace and the Indian law attorneys that provided testimony. "This bill does not change jurisdictional issues. Those matters are settled outside the context of HB 123." To Senator Holland's point, she explained that the bill does not seek to create state recognized tribes. Rather, the intent is to codify the federal recognition of tribes through the 1994 List Act, which includes the tribes in Alaska.

REPRESENTATIVE ZULKOSKY said she appreciates the interest in jurisdictional issues but the legal testimony has been that the bill does not touch on that. In fact, Ms. Singh pointed out the idea is to send a large message that despite past political divisions in Alaska, it would be an incredible valentine for state policy makers to acknowledge the special and unique relationship between the federal government and tribes while maintaining mechanisms that prevent jurisdictional confusion.

REPRESENTATIVE ZULKOSKY expressed hope that the committee would have time to hear from Julie Kitka, who is a commanding voice on the issue of tribes and tribal recognition.

CHAIR SHOWER asked if Ms. Kitka would be available to come to the next meeting.

REPRESENTATIVE ZULKOSKY replied she will be available to meet in person tomorrow.

CHAIR SHOWER stated that his plan was to hear the bill again next Tuesday and move it after the amendment process and public testimony.

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CHAIR SHOWER reconvened the meeting and invited Julie Kitka to the table.

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JULIE KITKA, President, Alaska Federation of Natives (AFN), Anchorage, Alaska, stated that AFN fully supports HB 123. She said she would confine her comments to the high top line. She said a few takeaways are that Alaska Natives are a diverse group that includes Inupiat, Yupik, Eskimos, Athabaskan, Tlingit, Haida, Tsimshian Indians, and Aleut people. They comprise 20 percent of the population of the state and their use and occupancy of this land stretches back more than 10,000 years. The Village of Point Hope, for example, can document at least 10,000 years of continual occupancy. She said we were living here before the pyramids were built.

MS. KITKA stated that Alaska Natives have a special relationship with the federal government. It derives from the U.S. Constitution although it continues to change with actions from the U.S. Congress and federal court decisions. The relationship also changes through demands from Alaska Native people. It is not a one-way relationship. There are 229 federally recognized tribes in Alaska, most of which are small. This is half of all the tribes in the United States. There are also regional tribal consortiums and nonprofit associations, including Native health corporations that run the tribal health system.

MS. KITKA said the fourth takeaway is that Congress passed the Alaska Native Claims Settlement Act (ANCSA) in 1971. This was a

historic land settlement in which Alaska Natives retained 44 million acres of traditional land in fee simple. This land and its resources are held by 12 regional Native corporations and several hundred village corporations. The federal government and state government are the other two large landowners in the state.

MS. KITKA continued to state:

Alaska Natives, despite our differences, have many things in common. We have many shared values and aspirations. We collectively want to have more self-determination over their lives and over our homeland. We greatly value partnerships. We want the right to freely pursue our economic, social, and cultural development - including the right to regain, enjoy, and enrich our cultural heritage; affirm the right of all of our members to education in our culture; prevent our heritage, values and cultural identity and way of life from being destroyed; and involve our relationship with the land.

Six takeaways. We're in a period of rapid change. Cultural renaissance and increased self-determination are major sources of strength for our people. Efforts to deal with rapid change of an unprecedented scale can destabilize traditional communities and we struggle to survive.

Our people are adapting. We're using our various institutions to work together for the benefit of our people, the people of Alaska, and our country. During this time of rapid change, we need to pull together. We need to be accepting of differences [and] think of the challenges we face.

When we first start out with national security interests, overlap with communications issues, energy infrastructure, and transportation access. We live in a strategic location. We have been told over our heads is the primary route for any missile attack on the United States. That's why we have a missile defense system in our state. Our seafood provides critical protein to our country, an export commodity and potential challenges as the warming of the waters, movement of fish stocks, increased competition, and conflict.

We have big industry issues around land and infrastructure development. Issues of ownership and use of land, access and rights-of-way. Alaska historically has been considered a massive reservoir of energy, timber, fishing, and mining. And we have big challenges with the change in climate, erosion, and the need to mitigate and build resistance.

If this bill passes, nothing magical will happen, but respect will be shown to our tribes. This respect helps build trust. Increased trust allows for positive discussions of mutual areas of cooperation. I can envision new types of coordinating mechanisms we will need in seeking federal infrastructure funding, for example, especially in broadband, where you have designated tribal funding and separate state funding. Coordination and collaboration built on trust and mutual respect will benefit us all. Further collaboration on research agendas on what's happening to our salmon, what is happening with the melting of the permafrost. Collaboration on innovation, whether or not it is in education or whether or not it is on how we manage government and strengthening governments to be more responsible to our citizens.

We're trying to blend change and stability. On change, the ability of Native people to adapt and adjust to the special needs of our time. Stability, the good sense to carry forward our cultural values.

This bill will not magically change anything. There's no fiscal note, no special trust relationship created by the state. It's just basic. It's extending respect to our people, to our tribes and allowing us to build on the trust and build a relationship, open opportunities for dialog and collaboration. And I would say, at this point in time, when I look at all the changes we're dealing with and the massive things, there is no better time to build trust and build collaboration than right now.

Further, HB 123 does not affect the federal/tribal trust responsibility. HB 123 will not affect the federal tribal recognition. HB 123 will not affect the sovereignty of federally recognized tribes. HB 123 will not impact the federal recognition of Alaska's

229 federally recognized tribes. HB 123 will have no bearing on the state's taxation of ANCSA land. Lastly, state recognition is a function of state law. It varies both in terms of the mechanism and the scope.

Sixteen different states recognize tribes in their areas. For the most part, the state recognition has to do with recognizing tribes that have not made it through the federal tribal recognition process. And for those of you who are familiar with that, that is a nightmare of its own making. It goes on for decades and decades. There are still tribes waiting for consideration of tribal recognition on that and states have given up on that federal recognition. Some states recognize tribes through legislation, some states recognize tribes through executive action. And some it is in name only while others create legal obligations. This bill before you creates no legal obligation. It does it through [legislation] which is a regular course of action in the state and hopefully allows an opportunity for the governor to do a signing and truly make it a respectful acknowledgment.

And I agree that recognition and acknowledgement are interchangeable. This is not from our vantage point a trick question. We're just saying let's open the opportunity for respect to be built between what is existing already in federal law and active in our state and a very important part of our communities up here. And they play a vital role. It is very important to our people. Are they the only institutions we have in the Native community? No. The land claims settlement chose a different path. I could have gone into that in the testimony but that would have taken some time too.

But I do want to tell you that we stand united asking for this recognition, as a sign of respect, as a way to build trust.

MS. KITKA offered to put a Lunch and Learn together on any of the subjects that have been raised. There is a lot of history she did not talk about because it is not necessary before moving HB 123. This bill is simply about offering respect.

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SENATOR HOLLAND thanked her testimony and said some of his questions were answered.

MS. KITKA noted that she failed to mention that the federal infrastructure bill contains \$13 billion in direct funding for Native Americans nationwide. For Alaska to get its fair share, the state and its tribes need to coordinate and be aligned to move forward on dual use infrastructure that can benefit other sectors in the state.

She informed the committee about recent collaboration with the state. Governor Dunleavy asked AFN to help capture \$300 million from the previous infusion of federal resources that would bypass the state without targeted attention. AFN just finished the report that informed the administration the federal funding leveraged \$771 million for even greater impact to the state. This could not have happened without cooperation and collaboration. This underscores the urgency of working together now and this legislation will do nothing more than help in this effort. HB 123 has nothing that can be construed to be hurtful, she said.

CHAIR SHOWER said he contends that if there had been more alignment in the past, the state would be a lot farther along in resolving issues such as with the Village Public Safety Program (VPSO) and the rehabilitation program Tlingit/Haida is undertaking. Working together can be a win-win and he does not understand why there is opposition to doing things better.

MS.KITKA restated the offer for one or a series of Lunch and Learns.

CHAIR SHOWER restated his commitment to work together for a solution.

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SENATOR HOLLAND asked where she lives.

MS. KITKA said she lives in Anchorage. Her family is from the Cordova area but she also has family in Sitka and Nondalton.

SENATOR HOLLAND said he would likely see her in the Education committee tomorrow.

MS. KITKA confirmed she would be there and was eager to discuss compacting education. She noted that some of the documents for that meeting may be of interest to this committee. These include

a white paper on the origins of self-determination and compacting.

CHAIR SHOWER said he would like to take her up on the offer for Lunch and Learns because his belief is that history informs the future.

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CHAIR SHOWER held HB 123 in committee.

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There being no further business to come before the committee, Chair Shower adjourned the Senate State Affairs Standing Committee meeting at 5:22 p.m.