

HCR

18

ALASKA STATE LEGISLATURE

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Representative Berta Gardner

House District 24

Memorandum

From: Representative Berta Gardner

To: House State Affairs Committee

Date:

Re: HCR 18 Hearing Request

I respectfully request a hearing for HCR 18 at your earliest possible convenience. HCR 18 changes Uniform Rule 34(b) such that in the event that a member declares a conflict of interest, the minority and majority leaders can agree that conflict is not to a degree that the member should not vote, and they can, together, not separately, determine that the member is required to vote.

HCR 18 also establishes a chain of command for making the determination in the event that one of the leaders is unavailable or is declaring his/her own conflict of interest.

Attached please find the following materials:

- HCR 18
- Sponsor Statement
- Backup information on other state regulations

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Representative Berta Gardner

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Memorandum

From: Representative Berta Gardner

To: House State Affairs Committee

Date: February 14, 2008

Re: HCR 18 Hearing Request

BG

Even with the subcommittee established to develop a hybrid resolution based off all resolutions on the topic of conflict of interest, I still respectfully request a hearing from House State Affairs committee at your earliest possible convenience. HCR 18 changes Uniform Rule 34(b) such that in the event that a member declares a conflict of interest, the minority and majority leaders can agree that conflict is not to a degree that the member should not vote, and they can, together, not separately, determine that the member is required to vote.

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Representative Berta Gardner

House District 24

SPONSOR STATEMENT

HCR 18

Following a series of corruption scandals, Alaskans and their Legislature have focused a great deal of attention on ethics legislation. One issue still unresolved is that of conflicts of interest and voting. Uniform Rule 34(b) requires every member of the legislature to vote unless the body votes unanimously to allow a member to abstain. When a member asks to be allowed to abstain from the vote, in practice there is always at least one objection and the member is required to vote.

The sponsor(s) of HCR 18 understand there are times when members disclose a conflict and genuinely believe they should abstain from voting. Other times members will disclose a "conflict" even when they believe they can vote without personal conflict of interest because they want to avoid possible charges of failure to disclose.

In a citizen legislature, members come from a variety of different backgrounds. It can be assumed that sometimes people are elected because they have experience and expertise in particular areas of interest to their constituents. Any effort to deny across the board participation in votes relating to that expertise may effectively deny citizens representation in precisely the areas of greatest interest to them.

Alaska is the only state with this unanimous consent regulation. Other states take a variety of approaches to conflicts of interest. In some states a majority vote allows the member to participate, another has the house speaker or senate president make the determination, while others use hybrid methods of majority votes, or leadership decisions.

HCR 18 strives to overcome the weakness and ineffectiveness of our current use of Uniform Rule 34(b). Under this resolution, a member who asks to abstain because of a conflict of interest will be allowed to abstain unless both the Minority and the Majority leaders agree that the member should vote.

This method relies on the judgment of elected leaders, representing and responsible to their caucuses, and side-steps the majority vote, which potentially gives one party full power on the issue, and the unanimous vote, which gives a single individual full power, in the decision-making process. It is the intent of the sponsor(s) that once disclosure is given the issue is not debatable.

In the event that the legislator with the conflict of interest is the leader of a caucus, or that the leader is absent from the floor, the responsibility would fall to the Whip.

Please join me in support of this conflict of interest resolution.

California

Joint Rule 44: Members can't participate, by voting or other action on the floor or in committee, on matters in which they have a personal interest, except they may participate in the final vote if they first file a statement that declares the interest and states that the legislator is able to cast a fair and objective vote regardless.

If a member wishes to abstain from voting on a matter in which he has a personal interest, he must tell the presiding officer before the vote starts. He will be excused from voting without any entry in the Journal. If either House invokes the rule that everyone present must vote, there will be a mark in the Journal stating that the person was excused from voting pursuant to law.

A person has an interest that is in substantial conflict if he would derive a direct monetary gain or loss because of his action. He is not considered to have an interest in substantial conflict if any benefit or detriment accrues to him as a member of a business, profession, occupation or group to no greater extent than the rest of that group.

California Government Code 87102.5: If a member of the Legislature has a financial interest in a matter, he cannot:

- Introduce nongeneral legislation related to that matter as a lead author
- Vote in a legislative committee or subcommittee on related nongeneral legislation.
- Participate in a rollcall vote on the Senate or Assembly floor on related nongeneral legislation.

If the member has received any earned income within the preceding 12 months from a lobbyist employer, the member cannot take action on a matter if the action will have a direct and significant financial impact on the lobbyist employer. The impact must be greater on this lobbyist employer than it would be on a significant segment of the public.

If the member has appeared before a local board or agency on behalf of someone for compensation, the member cannot vote on any legislation that would affect the person who paid him if the affect would be greater to that person than it would be to a significant segment of the public.

Connecticut

Senate Rule 15: No member who is interested in the decision of any question in such a manner that he cannot vote thereon may stay in the Senate when the question is discussed or decided.

House Rule 40: The speaker has authority to excuse someone from voting who is present in the chamber.

Connecticut General Statutes Sec. 1-85: A public official, (legislators are public officials) who has a substantial conflict may not take official action on the matter. A substantial conflict occurs when a public official has reason to believe or expect that he, his spouse, a dependent child, or a business with which he is associated will derive a direct monetary gain or suffer a direct monetary loss, as the case may be, by reason of his official activity. It is not considered a substantial conflict if the benefit or detriment accrues to him, his spouse, a dependent child, or a business with which he, his spouse or such dependent child is associated as a member of a profession, occupation or group to no greater extent than any other member of such profession, occupation or group.

Idaho

Senate Rule 39: Senators must disclose any conflicts of interest, he must disclose this conflict to the presiding officer in writing, or to the body. The senator may vote on the issue, or may ask to abstain. A 2/3 vote is necessary to be excused from voting.

House Rule 38: If a member's personal interests in the issue under consideration conflicts with the public's interests, the member's legislative activities can be subject to limitations, unless the member discloses the conflict to the presiding officer or to the body. Upon disclosure, the member may vote on the matter or ask to be excused from voting. A majority vote is necessary to be excused.

Idaho Code 59-704: A public official shall not take any official action or make a formal decision or formal recommendation concerning any matter where he has a conflict of interest and has failed to disclose such conflict as provided in this section. Disclosure of a conflict does not affect an elected public official's authority to be counted for purposes of determining a quorum and to debate and to vote on the matter, unless the public official

requests to be excused from debate and voting at his or her discretion.

Legislative public officials who have real or potential conflicts shall disclose the nature of the conflict of interest and/or be subject to the rules of the body of which he/she is a member and shall take all action required under such rules prior to acting on the matter. If a member requests to be excused from voting on an issue which involves a conflict or a potential conflict, and the body of which he is a member does not excuse him, such failure to excuse shall exempt that member from any civil or criminal liability related to that particular issue.

Washington State: Permanent Rules of the Senate
Rule 19 - Voting

(A) PUTTING OF QUESTION. The speaker shall put the question in the following form: "The question before the house is (state the question). As many as are in favor say 'Aye'; and after the affirmative vote is expressed, "as many as are opposed say 'No'."

(B) ALL MEMBERS TO VOTE. Every member who was in the house when the question was put shall vote unless, for special reasons, excused by the house.

All motions to excuse a member shall be made before the house divides or before the call for yeas and nays is commenced; and any member requesting to be excused from voting may make a brief and verbal statement of the reasons for making such request, and the question shall then be taken without further debate.

Upon a division and count of the house on the question, only members at their desks within the bar of the house shall be counted.

(C) CHANGE OF VOTE. When the electric roll call machine is used, no member shall be allowed to vote or change a vote after the speaker has locked the roll call machine. When an oral roll call is taken, no member shall be allowed to vote or change a vote after the result has been announced.

(D) PRIVATE INTEREST. No member shall vote on any question which affects that member privately and particularly. A member who has a private interest in any bill or measure proposed or pending before the legislature shall disclose the fact to the house of which he is a member, and shall not vote thereon. (Art. II § 30)

(E) INTERRUPTION OF ROLL CALL. Once begun, the roll call may not be interrupted. No member or other person shall visit or remain at the clerk's desk while the yeas and nays are being called.

(F) YEAS AND NAYS - RECORDED VOTES. Upon the final passage of any bill, the vote shall be taken by yeas and nays and shall be recorded by the electric voting system: PROVIDED, HOWEVER, That an oral roll call shall be ordered when demanded by one-sixth (1/6) of the members present. (Art. II § 21)

The speaker may vote last when the yeas and nays are called

When the vote is by electric voting machine or by oral roll call on any question, it shall be entered upon the journal of the house. A recorded vote may be compelled by one-sixth (1/6) of the members present. A request for a recorded vote must be made before the vote is commenced.

(G) TIE VOTE, QUESTION LOSES. In case of an equal division, the question shall be lost.

(H) DIVISION. If the speaker is in doubt, or if division is called for by any member, the house shall divide.

Washington State: Permanent Rules of the House of Representatives

Rule 22.

1. In all cases of election by the senate, the votes shall be taken by yeas and nays, and no senator or other person shall remain by the secretary's desk while the roll is being called or the votes are being counted. No senator shall be allowed to vote except when within the bar of the senate, or upon any question upon which he or she is in any way personally or directly interested, nor be allowed to explain a vote or discuss the question while the yeas and nays are being called, nor change a vote after the result has been announced. (See also Art. 2, Secs. 27 and 30, State Constitution.)

2. A member not voting by reason of personal or direct interest, or by reason of an excused absence, may explain the reason for not voting by a brief statement not to exceed fifty words in the journal.

3. The yeas and nays shall be taken when called for by one-sixth of all the senators present, and every senator within the bar of the senate shall vote unless excused by the unanimous vote of the members present, and the votes shall be entered upon the journal. (See also Art. 2, Sec. 21, State Constitution.)

When once begun the roll call may not be interrupted for any purpose other than to move a call of the senate. (See also Rule 24.)

4. A senator having been absent during roll call may ask to have his or her name called. Such a request must be made before the result of the roll call has been announced by the president.

5. The passage of a bill or action on a question is lost by a tie vote, but when a vote of the senate is equally divided, the lieutenant governor, when presiding, shall have the deciding vote on questions other than the final passage of a bill. (See also Art. 2, Secs. 10 and 22, State Constitution.)

6. The order of the names on the roll call shall be alphabetical by last name.

7. All votes in a committee shall be recorded, and the record shall be preserved as prescribed by the secretary of the senate. One-sixth of the committee may demand an oral roll call.

8. If a member of the majority is going to be absent due to a health matter or other emergency, then a member of the minority may publicly announce on the floor of the senate that he or she will cast votes as he or she believes the absent member would have voted in order to avoid results that would only occur because of the unanticipated absence.

Nancy Manly

From: Michelle Sydeman
Sent: Tuesday, January 29, 2008 12:21 PM
To: Noah Hanson
Cc: Nancy Manly; Sen. Bill Wielechowski; Suzanne Hancock
Subject: Changes to the Uniform Rules re: voting when a legislator has a substantial conflict of interest

Hi Noah,

Rule 35(b) of the Uniform Rules has changed several times with regard to what a legislator with a substantial conflict of interest should do when it comes to voting. For example, the rules for 1965-66 allow for a majority vote to determine whether a conflicted member may abstain. It appears this changed in 1967, when a 2/3 vote was required. This appears to have changed again in 1969, when unanimous consent provision went into effect.

Michelle

Michelle Sydeman
Legislative Aide
Sen. Bill Wielechowski
State Capitol, Room 115
Juneau, Alaska 99801
Phone: 907-465-6881
Fax: 907-465-6615

Nancy Manly

From: Noah Hanson
Sent: Tuesday, January 29, 2008 12:35 PM
To: Michelle Sydeman
Cc: Nancy Manly; Sen. Bill Wielechowski; Suzanne Hancock
Subject: RE: Changes to the Uniform Rules re: voting when a legislator has a substantial conflict of interest

Do we have any record as to why? What were the legislators reasons?

Thanks,

Noah Hanson
Office of Rep. Berta Gardner
Legislative Staff
Ph: 907-465-1068
Fax: 907-465-3831

From: Michelle Sydeman
Sent: Tuesday, January 29, 2008 12:21 PM
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Sen. Bill Wielechowski
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Juneau, Alaska 99801
Phone: 907-465-6881
Fax: 907-465-6615

Nancy Manly

From: Will Vandergriff
Sent: Monday, January 28, 2008 12:27 PM
Subject: FW: PRESS RELEASE -- DEMOCRATIC RESOLUTION WOULD TIGHTEN CONFLICT RULES

FYI - WV

From: Frank Ameduri
Sent: Monday, January 28, 2008 12:17 PM
To: Frank Ameduri
Subject: PRESS RELEASE -- DEMOCRATIC RESOLUTION WOULD TIGHTEN CONFLICT RULES

PRESS RELEASE • January 28, 2008

Alaska State Legislature

Representative Berta Gardner (D-Anchorage)

Web: <http://gardner.akdemocrats.org> • Contact: Noah Hanson • Phone: 465-4930 • Fax: 465-3834
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DEMOCRATIC RESOLUTION WOULD TIGHTEN CONFLICT RULES

Gardner, Kawasaki: 'Time to put teeth in conflict rules'

JUNEAU – Two Democratic legislators have introduced a resolution to buckle down on the conflict of interest problems that have generated debate in the Legislature and garnered so much press in recent months.

The current Uniform Rule 34(b) requires a legislator to declare a conflict. A single objection from a member of the body is enough to require the conflicted legislator to participate in the vote. Rep. Berta Gardner (D-Anchorage) and Rep. Scott Kawasaki (D-Fairbanks) have introduced HCR 18 to end that practice, and to finally address the issue of significant conflicts adequately.

The resolution would revise the uniform rule by placing the final decision in the hands of the majority and minority leaders. Once a legislator declares a conflict before a floor vote, the two caucus leaders must decide whether or not the conflicted legislator may abstain from the vote. The only way for the legislator to vote is if both leaders declare there is no substantial conflict.

"The legislature needs reform on this issue," Gardner said. "The way the current rules are set up, it is virtually impossible to have a legislator abstain from voting, even when there is a substantial conflict of interest."

Gardner is the prime sponsor of the bill, and Kawasaki is a co-sponsor.

"Legislators with a conflict of interest on a specific bill should not be forced to vote," Kawasaki said.
"Our current system does not work. This is the fix."

HCR 18 has been referred to the State Affairs and Rules committees.

NOTE: TO CONTACT REP. SCOTT KAWASAKI, CALL (907) 465-3466. TO CONTACT REP. BETTA GARDNER, CALL (907) 465-4930.

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