

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

April 27, 2007

1:05 p.m.

MEMBERS PRESENT

Representative Jay Ramras, Chair
Representative Nancy Dahlstrom, Vice Chair
Representative John Coghill
Representative Bob Lynn
Representative Ralph Samuels
Representative Max Gruenberg
Representative Lindsey Holmes

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 22

"An Act extending the termination date for the Board of Governors of the Alaska Bar Association; and providing for an effective date."

- MOVED HB 22 OUT OF COMMITTEE

HOUSE BILL NO. 163

"An Act relating to real property foreclosures, executions, and deeds of trust."

- HEARD AND HELD

HOUSE BILL NO. 194

"An Act relating to fines for certain offenses involving aeronautics, alcoholic beverages, boats, fish and game, health care records and public health, medical review organizations, public restroom facilities, smoking, shelter cabins, refrigerators and similar equipment, radiation sources, high voltage lines, child labor, employment in underground mines, marriage licenses, motor vehicles and driver's licenses, ignition interlock devices, pipelines, use of the state seal, and emissions requirements; relating to the maximum fine provided for violations and infractions and to the definition of 'minor offenses'; redesignating certain fish and game misdemeanor offenses as class A misdemeanors; relating to

violations and offenses that are committed on state land, water, and land and water or that are related to water management or dam and reservoir safety; amending Rule 8(b), Alaska District Court Rules of Criminal Procedure; and providing for an effective date."

- HEARD AND HELD

HOUSE BILL NO. 225

"An Act relating to misconduct involving weapons and bail."

- BILL HEARING CANCELED

HOUSE BILL NO. 195

"An Act relating to limited liability companies."

- BILL HEARING CANCELED

PREVIOUS COMMITTEE ACTION

BILL: HB 22

SHORT TITLE: EXTEND BOARD OF GOVERNORS ABA

SPONSOR(S): REPRESENTATIVE(S) STOLTZE, RAMRAS

01/16/07	(H)	PREFILE RELEASED 1/5/07
01/16/07	(H)	READ THE FIRST TIME - REFERRALS
01/16/07	(H)	JUD, FIN
04/27/07	(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 163

SHORT TITLE: PROPERTY FORECLOSURES AND EXECUTIONS

SPONSOR(S): REPRESENTATIVE(S) RAMRAS

02/28/07	(H)	READ THE FIRST TIME - REFERRALS
02/28/07	(H)	L&C, JUD
03/30/07	(H)	L&C AT 3:00 PM CAPITOL 17
03/30/07	(H)	-- MEETING CANCELED --
04/20/07	(H)	L&C AT 3:00 PM CAPITOL 17
04/20/07	(H)	Moved CSHB 163(L&C) Out of Committee
04/20/07	(H)	MINUTE(L&C)
04/23/07	(H)	L&C RPT 1DP 4NR
04/23/07	(H)	DP: RAMRAS
04/23/07	(H)	NR: BUCH, LEDOUX, NEUMAN, OLSON
04/27/07	(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 194

SHORT TITLE: FINES AND OFFENSES

SPONSOR(s): RESOURCES

03/14/07 (H) READ THE FIRST TIME - REFERRALS
03/14/07 (H) RES, JUD, FIN
03/28/07 (H) RES AT 1:00 PM BARNES 124
03/28/07 (H) Scheduled But Not Heard
04/04/07 (H) RES AT 1:00 PM BARNES 124
04/04/07 (H) Moved CSHB 194(RES) Out of Committee
04/04/07 (H) MINUTE(RES)
04/10/07 (H) RES RPT CS(RES) 4DP 2NR
04/10/07 (H) DP: ROSES, SEATON, GATTO, JOHNSON
04/10/07 (H) NR: KOHRING, GUTTENBERG
04/23/07 (H) JUD AT 1:00 PM CAPITOL 120
04/23/07 (H) <Bill Hearing Rescheduled to 04/27/07>
04/27/07 (H) JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

JAMES ARMSTRONG, Staff
to Representative Bill Stoltze
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 22 on behalf of one of the joint prime sponsors, Representative Stoltze.

JOHN TIEMESSEN, President
Alaska Bar Association (ABA)
Anchorage, Alaska

POSITION STATEMENT: During discussion of HB 22, spoke on the mission and history of the ABA.

STEVE VAN GOOR, Bar Counsel
Alaska Bar Association (ABA)
Anchorage, Alaska

POSITION STATEMENT: During discussion of HB 22, spoke on the role of the ABA.

PAT DAVIDSON, Legislative Auditor
Division of Legislative Audit
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: During discussion of HB 22, presented the legislative audit of the bar association.

JANE W. PIERSON, Staff
to Representative Jay Ramras
Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Presented HB 163 on behalf of the sponsor, Representative Ramras.

STEPHEN ROUTH, Attorney at Law
Routh & Crabtree, APC
Anchorage, Alaska

POSITION STATEMENT: Provided supporting testimony for HB 163.

HEATH HILYARD, Staff
to Representative Carl Gatto
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 194 on behalf of the sponsor, the House Resource Standing Committee, which is co-chaired by Representative Gatto.

DICK MYLIUS, Acting Director
Central Office
Division of Mining, Land and Water
Department of Natural Resources (DNR)
Anchorage, Alaska

POSITION STATEMENT: Provided comments during discussion of HB 194.

JOHN BAKER, Assistant Attorney General
Natural Resources Section
Civil Division (Anchorage)
Department of Law (DOL)
Anchorage, Alaska

POSITION STATEMENT: Provided comments to HB 194.

WYN MENEFEE, Chief of Operations
Central Office
Division of Mining, Land and Water
Department of Natural Resources (DNR)
Anchorage, Alaska

POSITION STATEMENT: Provided comments to HB 194.

ACTION NARRATIVE

CHAIR JAY RAMRAS called the House Judiciary Standing Committee meeting to order at [1:05:34 PM](#). Representatives Ramras, Dahlstrom, Coghill, Lynn, Samuels, and Holmes were present. Representative Gruenberg arrived as the meeting was in progress.

HB 22 - EXTEND BOARD OF GOVERNORS ABA

1:06:01 PM

CHAIR RAMRAS announced that the first order of business would be HOUSE BILL 22, "An Act extending the termination date for the Board of Governors of the Alaska Bar Association; and providing for an effective date."

1:06:34 PM

JAMES ARMSTRONG, Staff to Representative Bill Stoltze, Alaska State Legislature, relayed on behalf of Representative Stoltze, joint prime sponsor, that HB 22 extends the appointment of the Alaska Bar Association (ABA) board of governors from July 1, 2007, to July 1, 2010.

REPRESENTATIVE HOLMES noted that the audit report recommends the extension to 2014. She asked why the bill only extends the board to 2010.

MR. ARMSTRONG replied that the sponsors felt that three years would be fine for right now. If this initial extension went well, then they would probably recommend this for an eight-year extension.

CHAIR RAMRAS, speaking as one of the joint prime sponsors of HB 22, surmised that the bill has some complicated components, and that there would be considerable discussion as to who would be the stewards of the bar funds, when the bill is heard in the House Judiciary Standing Committee.

1:08:31 PM

JOHN TIEMESSEN, President, Alaska Bar Association (ABA), offered that the one thing the ABA enjoyed about the sunset clause is the ability to communicate with the legislature, even though, unfortunately, it is often the only communication between the ABA and the legislature. He suggested annual meetings between the ABA and the House and Senate Judiciary Standing Committees.

MR. TIEMESSEN noted that many policies proposed during the last year started with members from this committee: mandatory continuing legal education (CLE); a diversity initiative to increase Native Alaskan membership in the ABA; and a program to initiate discussions of careers in the legal and judicial profession with the youth and others from the villages. He observed that lawyers have been licensed in Alaska since 1895,

and that the ABA has existed since 1955. He commented that the ABA was an old institution and an old instrumentality of the state.

MR. TIEMESSEN outlined the audit report recommendations from the past two audits: CLE, which the board passed, and online access for [ABA] disciplinary history, though an old software system had slowed this progress. Disciplinary history would be part of the new database in 2007 or 2008.

MR. TIEMESSEN commented that the ABA core mission of admission and discipline is taken very seriously. With the 130-140 applicants to the bar each year, the ABA conducts a full background check, administers and grades the three-day bar examination, and makes recommendations to the Alaska Supreme Court for admissions to the bar. He observed that discipline is the board's most important role, as it involves their core mission of protection of the public interest. The ABA recognizes its unique professional position, as directly supervised by the supreme court, to ensure only qualified, ethical, honorable individuals appear before the Alaskan courts. He said the audit report demonstrates that the board and the ABA have done a "wonderful job" with their core missions.

1:14:00 PM

MR. TIEMESSEN, in response to Chair Ramras, relayed that disciplinary matters are confidential until they reach a certain level.

REPRESENTATIVE COGHILL, referring to the issue of ethics, questioned how the ABA avoids the perceived conflict of interest of having attorneys on the board.

MR. TIEMESSEN explained that the board has twelve voting members, nine of which are attorneys, and three of which are lay members. One of the board's responsibilities is fact finding to support their disciplinary recommendations to the Alaska Supreme Court. All attorney discipline is done by the Alaska Supreme Court. The Alaska Supreme Court is hardly "a rubber stamp" he remarked, as often matters are sent back to the board for further findings. As attorneys, he pointed out, they know what is and is not right. The board maintains very strict accounting and accountability of members. There is a good balance on the board between the attorney members and the lay members. The lay members bring a lay perspective and other expertise. As

attorney members, they do not want any "whiff" of impropriety among their [board] members.

[1:17:43 PM](#)

REPRESENTATIVE COGHILL concurred.

CHAIR RAMRAS asked a question regarding the aggregate money in trust accounts and the interest that money accrued.

MR. TIEMESSEN explained that the Alaska Interest on Legal Trust Accounts (IOLTA) system is available for attorneys to participate in. This is an "opt out" system. In 2006, the IOLTA earned \$146,822 in interest, and awarded grants totaling \$104,000. These grants went to Alaska Immigration Justice Project, Alaska Pro Bono Program, United Youth Courts of Alaska, and Alaska Legal Services Corporation. Much of the money went to provide legal representation for the indigent, and for access to justice programs.

CHAIR RAMRAS suggested to Mr. Tiemessen that he speak with Senator McGuire regarding possible use of the IOLTA funds to help fund the Alaska Legal Services Fund. Chair Ramras also asked how much money is in the broader trust account.

MR. TIEMESSEN in response to the question on trust accounts replied it would be difficult to know how much money is in all the legal trust accounts, but he could extrapolate that gross amount using a calculation for a three percent interest return. He further explained that "opt out" means the interest return is not required to be used for legal justice programs. For large amounts of money placed in trust account deposits, some clients would prefer to have the accrued interest returned to them.

CHAIR RAMRAS asked for clarification that the interest money does not go to the attorney.

MR. TIEMESSEN responded that the money never goes to the attorney.

REPRESENTATIVE LYNN asked how many complaints were investigated that continued through disciplinary action, and what were the typical areas of complaint or misbehavior.

[1:21:56 PM](#)

STEVE VAN GOOR, Bar Counsel, Alaska Bar Association (ABA), relayed that his principal responsibilities are to supervise the discipline section of the ABA. The discipline section consists of 7 of the 17 employees of the bar. The discipline section's task is to field grievances filed against attorneys, and to give the public information about the grievance process. He and his colleagues at the ABA office also provide informal ethics advice to help lawyers stay out of trouble. Historically, the ABA annually receives 200-300 complaints concerning members of the ABA. This is about a 10 percent complaint rate, similar to the rate of complaints throughout the nation.

MR. VAN GOOR commented that about half the complaints fell into the "intake stage." This "intake stage" is a stage in which the lawyer is immediately served with the complaint. At this point, the ABA asks for a voluntary response, and most lawyers do respond at this time. The ABA is then able to identify and determine which complaints should be formally investigated, and which misconducts should be prosecuted. Of all the complaints received, 5-10 percent of the complaints may result in some form of discipline. An even smaller percentage of the complaints results in public discipline. This is reserved for those offenses that everyone would recognize as problems, for example, lying, cheating, and stealing.

MR. VAN GOOR went on to explain that trust accounts, and mismanagement, misappropriation, or stealing from these accounts are the "third rail" of attorney discipline. Lawyers are entrusted with billions of transaction dollars being held in escrow and this money is not bonded. There is not a bond for the money because the consequence for misappropriating this money is significant suspension or disbarment from the practice of law. He also explained that the discipline section is identifying those lawyers that have no business being lawyers because of misconduct, and performing an educational role in fielding almost 900 calls each year from lawyers requesting legal ethics advice.

REPRESENTATIVE LYNN remarked this is similar to the ethics procedure for the Board of Realtors.

[1:25:37 PM](#)

REPRESENTATIVE SAMUELS asked for a description of the ABA internal review process for an ethics violation.

MR. TIEMESSEN conveyed that once a written complaint is received, it is screened by Bar Counsel, who makes a determination whether the allegations, if proven true, would have a basis for discipline. The attorney is then provided with an opportunity to respond to the allegations, and the complainant is allowed to reply. There could then be a second response from the attorney. After this, Bar Counsel would conduct an investigation and make a decision. At this point, the matter is either resolved, or it may go on to an area-wide hearing committee. This committee, consisting of two attorneys and one lay person, will then issue a decision. If the issue is still not resolved, it can go to the ABA Board of Governors sitting as a disciplinary board. The ABA Board of Governors can make a recommendation for discipline to the Alaska Supreme Court.

REPRESENTATIVE SAMUELS asked what happens if the complaint is against a justice on the supreme court.

MR. TIEMESSEN responded that a special counsel is appointed if there is a complaint by or against the Board of Governors.

[1:28:45 PM](#)

[Chair Ramras turned the gavel over to Vice Chair Dahlstrom.]

MR. VAN GOOR further informed that if there is a complaint against any judge in the state of Alaska, including a supreme court justice, the complaint would go to the Alaska Commission on Judicial Conduct (CJC), which has a process similar to the ABA Bar Counsel. Most commonly, the complaint would be with regard to a decision made by a judge, and these do not usually result in a formal investigation. If the commission determines that an investigation is necessary, it would move to a higher special counsel to handle the prosecution. The commission itself, consisting of three judges, three lawyers, and three public members appointed by the governor, would consider the case, and, in a case of serious misconduct, make a recommendation to the Alaska Supreme Court. If this concerned a justice of the supreme court, that justice would not participate. In this instance, Mr. Van Goor surmised that the supreme court would appoint a superior court judge as a supreme court judge pro tem to sit in on the disciplinary matter.

MR. VAN GOOR recalled that there have been two instances in the past wherein the supreme court did appoint a superior court judge pro tem.

REPRESENTATIVE SAMUELS pointed out, though, that it is a very small group of people that are judging themselves and who also have to do business with each other. He pointed out that if the legislature attempted something similar with regard to ethics complaints, the electorate would not approve. This would allow a small group of people to have an inordinate amount of control over an entire branch of government. The public has very little say in this, as only three members of the Board of Governors of the ABA are confirmed. He asked Mr. Van Goor to comment on the idea of an amendment which would state that all 12 members of the Board of Governors would need to be confirmed.

[Vice Chair Dahlstrom returned the gavel to Chair Ramras.]

REPRESENTATIVE SAMUELS said that he didn't know how to fix the perceived problem but opined that he'd once attempted to hire an attorney to file a complaint against a supreme court justice, but he was told "I have to do business in front of those people." Representative Samuels commented that he realized the practicality of the entire situation, and that he would need to find a different method to even file the complaint.

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MR. TIEMESSEN acknowledged that point, but offered that there are public members throughout the system. He offered his personal feeling that when an attorney that he knows comes before him, his first inclination is "not to cut them slack," rather "to flog them" because he knows them. If anything, he knows that he must instead pull that inclination back. It can be much easier to be objective with an attorney he does not know. He went on to further describe that one change in recent years is public censure as a discipline by the court. This used to be an order from the court, but now it is an order to appear before the full court. The person stands in front of the full court and gets "chewed out" by the entire supreme court.

MR. TIEMESSEN reiterated that he understood the concern, but could only give his personal assurance of a harsher discipline for those attorneys appearing before the board who are known by a committee member.

REPRESENTATIVE SAMUELS reiterated his comments regarding the makeup of the legal counsels and boards being over weighted with attorneys who are internally picked and not elected. The pool

of people picking the attorneys is even smaller. He asked Mr. Tiemessen how many attorneys are in Alaska.

MR. TIEMESSEN responded there are 2,800 active members of the ABA.

REPRESENTATIVE SAMUELS surmised that not all those are active in selecting the board and counsel members.

REPRESENTATIVE GRUENBERG pointed out that although those numbers sound small, Alaska is small state in terms of population and thus has a smaller pool of attorneys. He recalled that when he took the bar exam in California, 2,000 members were admitted to the California bar; but when he took the bar exam in Alaska, only 32 new members were admitted.

REPRESENTATIVE COGHILL remarked on the need for the public to be assured [of the integrity of all branches of the government]. One of the reasons for the one-year extension [of the ABA board] is to try to figure out the best way to ensure integrity. One of the recommendations is that [an ABA board appointment] fall to the Alaska Supreme Court as an appointed position. He asked Mr. Tiemessen how the board felt about this.

MR. TIEMESSEN reiterated that the Alaska Supreme Court does do discipline. All the supreme court says to the Board of Governors is that it is busy being the supreme court on a day-to-day basis and so asks the board to find the facts, do conclusions of law, and make recommendations on disciplinary matters to the supreme court.

REPRESENTATIVE COGHILL proposed that an analogous commentary in the legislature would be that the House majority leader screens all the legislative issues that go before the ethics committee, and then make recommendations to the ethics committee.

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MR. TIEMESSEN explained that the current board system is a tremendously powerful and effective method of screening out "nut" complaints, many of which are by prisoners against the district attorney, for obvious reasons.

CHAIR RAMRAS asked Ms. Davidson to give a cursory review of the [legislative audit] recommendations. He offered that it appears there were two issues to address: an issue with funding that should be addressed by the finance committees, and an issue to

address the ethical aspect of self-policing. He asked Ms. Davidson to limit her remarks to the ethical aspect.

REPRESENTATIVE SAMUELS clarified his concern is for lack of oversight of the judiciary branch by the people.

MR. TIEMESSEN relayed that the board would be willing to look into that point. He mentioned that in this context, the board does serve two masters. The board is a creation of and serves delegated duties from the Alaska Supreme Court, as well as serves under sunset authority from the legislature. This highlights the conflict as he perceived.

1:45:04 PM

PAT DAVIDSON, Legislative Auditor, Division of Legislative Audit, Alaska State Legislature, responded that the concern of the Division of Legislative Audit was addressed at the disciplinary level, as the disciplinary function was occurring within the ABA. For example, the Department of Commerce, Community, and Economic Development (DCCED) investigative staff does not report directly to the boards under its purview, in terms of what they investigate. The investigative staff are employees of the division, and once they conclude their investigation, they make recommendations to the board in question. Therefore, members of the profession are not doing the investigations, though an investigator may require expertise, and so may go to the board to ask for recommendations or discuss some of the issues. There is a separation, though, between the occupational licensing boards and the investigative function of the division. The legislative audit's suggestion to the ABA was to remove the investigation function from the ABA itself.

MS. DAVIDSON commented that the responses by the court system and the ABA were that the audit suggestion did not feel either "particularly workable" or "totally necessary."

REPRESENTATIVE GRUENBERG noted that the third recommendation from the legislative audit was that the board [of the ABA] should adopt a due date for its annual report. This would ensure that it is made available to the supreme court, the legislature, and the public on a timely basis.

MR. TIEMESSEN responded that the recommendation has been implemented both in practice and rule. There was an internal error in tardiness from the ABA, and this would not be repeated.

REPRESENTATIVE COGHILL opined that the transparency issue ought to be addressed as it pertains to the court system.

REPRESENTATIVE GRUENBERG said he'd planned to introduce a mandatory continuing legal education bill or amendment, but did not do so because the board of governors agreed to discuss this with the Alaska Supreme Court, and has since submitted a proposed rule for mandatory CLE. The supreme court had reviewed this rule, and sent it back for further work. He said the public demands CLE. He continued, stating that this is not just mandatory reporting, but really good programs so that lawyers keep up with the law and don't commit malpractice.

REPRESENTATIVE SAMUELS offered to assist Representative Coghill with the concerns being raised regarding ethics. He expressed some of the problems with the structure of review boards, and the background of the members who comprise the boards.

CHAIR RAMRAS added that a reallocation for the distribution of the trust funds might resolve some of the issues.

MR. TIEMESSEN remarked that of the \$14.5 million in trust, assuming a 3 percent return, about 53 percent of the distributed funds went directly to pro bono work. The current problem that the Alaska Legal Services Corporation faces in funding was not caused by a drop in the IOLTA percentage; it was caused by a drop in the interest rates.

[1:53:50 PM](#)

REPRESENTATIVE GRUENBERG moved to report HB 22 out of committee with individual recommendations and the accompanying zero fiscal notes. There being no objection, HB 22 was reported from the House Judiciary Standing Committee.

HB 163 - PROPERTY FORECLOSURES AND EXECUTIONS

[1:54:29 PM](#)

CHAIR RAMRAS announced that the next order of business would be HOUSE BILL NO. 163, "An Act relating to real property foreclosures, executions, and deeds of trust." [Before the committee was CSHB 163(L&C); included in members' packets was a proposed committee substitute (CS) for HB 163, Version 25-LS0630\K, Bannister, 4/24/07.]

CHAIR RAMRAS, speaking as the sponsor, relayed that the genesis of HB 163 was the result of the failure of subprime borrowers. The bill is meant to clarify things for borrowers, lenders, and title companies. He mentioned that in the prior committee hearing it was evident that the lenders and title companies do an able job of looking out for themselves but no one is looking out for the interest of the borrowers once it becomes clear that they are in trouble. No one seems to be the trustee of that [home] equity when a borrower is going to lose their property. Once a borrower is in trouble and it is clear the property was going to be lost, there is often equity in the property with which neither the lender nor the title company is concerned, beyond that which the bank was reimbursed.

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REPRESENTATIVE DAHLSTROM moved to adopt the proposed CS for HB 163, Version 25-LS0630\K, Bannister, 4/24/07, as the working document.

REPRESENTATIVE GRUENBERG objected for the purpose of discussion.

REPRESENTATIVE LYNN declared he may have a possible conflict of interest as he is a licensed real estate broker.

REPRESENTATIVE HOLMES also declared a possible conflict of interest, as she is a real estate attorney.

REPRESENTATIVE GRUENBERG objected, thus requiring Representatives Lynn and Holmes to participate in any necessary voting.

[1:58:11 PM](#)

JANE W. PIERSON, Staff to Representative Jay Ramras, Alaska State Legislature, sponsor, remarked on behalf of Representative Ramras that current Alaska statutes on foreclosures are antiquated, ambiguous, unclear, and prone to litigation. House Bill 163 would clarify, simplify, and modernize, as well as reduce litigation. Currently, the process of foreclosure is one that allows auction on the courthouse steps. At this point, there is a group, which she characterized as "bottom feeders," who regularly attend these auctions, purchase the properties with the intention of making a quick sale, and don't really care about the neighborhoods surrounding the foreclosed properties. House Bill 163 would make property foreclosure auctions more open and accessible. It would benefit borrowers, lenders, title

insurers, individuals, and neighborhoods. The bill was drafted using examples from the best practices of 11 other states. Currently banks are averaging a loss of \$20,000 per foreclosure. This bill would clarify how dispersal of excess income from the sale would go back to the borrower, and would require properties to be listed on the internet and in the newspaper. This increased exposure would attract more bidders to bring up the price, purchase homes, and repay more money to the borrowers.

MS. PIERSON, referring to Version K, relayed that the versions of the bill on both sides of the legislature are moving simultaneously and similarly. The title was changed to remove "post office" as a place of notification, because some post offices no longer want to post public notices.

CHAIR RAMRAS added that another change was such that the bill used to say "three months" and now says 90 days.

[2:03:50 PM](#)

REPRESENTATIVE GRUENBERG removed his objection.

CHAIR RAMRAS indicated that Version K was now before the committee.

CHAIR RAMRAS went on to explain that the Internet offered a wider base to bring in more potential buyers, and that Version K addresses the issue of more competition for distressed real estate; the issue was "who is looking out for the borrower, who's already in trouble." It is fair to anticipate, as these issues sweep across the country, that these problems will emerge in Alaska.

CHAIR RAMRAS stated that when a loan rate goes up significantly, the borrower cannot afford the higher rate, and so is then forced to try to find a new loan. However, because the market could then be much tighter, the borrower may have difficulty finding a new loan, and yet the borrower cannot afford his/her current loan at the higher rates, but may have equity in their home. By creating more clarification for timelines and broadcasting the notice of de-fault, this will better protect the consumer.

REPRESENTATIVE GRUENBERG asked for a sectional analysis of the bill.

[2:08:51 PM](#)

STEPHEN ROUTH, Attorney at Law, Routh & Crabtree, APC, mentioned that his field of expertise is real estate finance and the foreclosure process, and that he has written and spoken nationwide on matters relating to non-judicial foreclosures. His office has identified several areas of foreclosure law that could be made more efficient, fairer, and less prone to litigation. This bill addresses many of these areas. Section 1 deletes the requirement of public posting at post offices. It has become impossible to post at some post offices due to the interpretation of federal regulations by postmasters that one cannot post these kinds of notices inside post offices. His office suggested, instead of requiring three public places including a post office, just requiring three public places, none mandated to be a post office.

REPRESENTATIVE GRUENBERG referred to a bill regarding election notices from a few years ago, and acknowledged that the concept of posting in public places, especially in larger places, may be anachronistic. He asked whether such posting is helpful in the foreclosure field, or whether something besides posting on the Internet, in addition, should be done.

MR. ROUTH offered that his experience showed the most effective method was through the Internet.

REPRESENTATIVE LYNN asked what would constitute a "public place."

MR. ROUTH responded that this is not specifically defined in statute. However, in practice, in most judicial districts, this would include any public building, a state court house, and the post office. However, as it is not defined specifically in statute, it "could be a tree on the corner, as long as it's public."

MR. ROUTH continued discussing Sections 2 and 3. He summarized that both are designed to attract more interest in public foreclosure auctions. The wider publicity would attract more bidders. Section 3 provides a mechanism for "proving up the web site."

REPRESENTATIVE GRUENBERG asked how people would find out where the web sites are, both to look at and to advertise on.

MR. ROUTH replied that it should be the same way as with legal newspapers. The final arbiters would be the title companies who

would provide a list of web sites that qualify. People would most likely learn about these web sites by using a search engine, and typing in the request, for example, Alaska foreclosure notices, or something similar. This would result in a list of sites.

MR. ROUTH continued, explaining that Section 3 simply allows for a mechanism to approve a web site, similar to the current system to approve newspapers. Section 4 refers to time limits for reinstatement. It changes some language from three months to 90 days, and also puts a limit of 5 days before the foreclosure auction to reinstate or pay off. The reason for this limit is that one of the most litigation-prone areas of this practice is at the sale.

[2:16:41 PM](#)

REPRESENTATIVE HOLMES offered that [Section 4] appears to limit the rights of property owners to hold on to their property if they could come up with the money, for example, in the last five days before the sale.

REPRESENTATIVE GRUENBERG expressed similar concerns. He pointed out there are some people who might have a temporary problem. He asked whether deleting the phrase "up to five days" and allowing the bill to state "up to the date of the sale", would be alright.

MR. ROUTH said he has no objection to such a change. He commented that his experience is that no bank would refuse a payment if it had time to process the payment. This [provision] gives the bank this right, if there is a mix up at the sale, to say it is too late. A last minute flurry can be expensive for the borrower, because the deed of trust says any money spent to protect the security of the deed of trust goes to the borrower's account. He characterized this section as system friendly and efficient adding that he did not feel this section is "borrower hostile."

REPRESENTATIVE GRUENBERG commented that the law tries to ensure borrowers are given a fair shake.

MR. ROUTH reported that Section 5 clarifies mailing requirements; it proposes to change the language of "grantor" to "trustor" to make it consistent with the rest of the bill. It also clarifies actual possession, an area of some litigation.

REPRESENTATIVE GRUENBERG asked whether the term, "actual physical possession," may cause additional litigation, particularly since raw land or similar property is not necessarily subject to actual possession.

MR. ROUTH answered that the law has always said "physical possession" or "possession". This proposed change would simply clarify this. There was prior litigation regarding what possession really meant, whether that was inferred possession. Section 5 states, in combination with the change in Section 6, how to deal with determining possession. He went on to detail Section 6, which as a follow on of Section 5, clarified what kind of notice is inferred from possession. The mailing requirement is just one of five types of notices mandated by the statute. Internet notification would be an added type of notice with this bill. Section 6 also speaks about non-possession liens, and cleans up some of the language.

REPRESENTATIVE GRUENBERG commented that the [Version] is not a statute of limitations but a conclusive presumption, which is fairly unusual in the law. He surmised that the reason for using conclusive presumption rather than statute of limitations is that the sponsors did not want two parties to waive a statute of limitation that might impact others who might not be privy to that information and are, instead, relying just on the records as to the ownership of the property.

MR. ROUTH concurred with that summation. In response to a question, he explained that this is an area of litigation that can unsettle title to real estate. This provision sets a time limit regarding complaints pertaining to affidavits of posting. He recognized the conclusive presumptive is not often used, but if one had complied with the requirements of the statute, then one could not go back and complain about the affidavit. The affidavit is considered to be correct after one year. This allows real property settlements; record title to real property could be relied upon.

[2:25:22 PM](#)

REPRESENTATIVE GRUENBERG voiced that a statute of limitations can be waived in civil cases by the parties involved, but a conclusive presumption cannot be waived. He said he assumes this is a good policy.

MR. ROUTH agreed with Representative Gruenberg, stating the issue is to get to the same place of settling the title of real estate.

MR. ROUTH continued the overview of Section 6: the procedure on delivering notice if the property is raw land or inaccessible; the procedure if the borrower is deceased and the necessity of extra notices; and clarification of who could bring an action to restrain a trustee sale.

MR. ROUTH went on to discuss Section 7: what happens with the proceeds from a sale and that it is mandated that the proceeds go into escrow until dispersal. He explained that Section 7 allows the trustee to accept bids in places which are in addition to the court house steps, such as by telephone, internet, and e-mail, as long as the trustee has taken steps to ensure that those methods are workable and would result in fair access for people. It is designed to allow money for dispersal to be available immediately after the sale.

MR. ROUTH continued with Section 8: confirmation of the present practice that agents for the trustee may conduct the foreclosure auction. Section 9 clarifies the procedure on postponing a sale.

REPRESENTATIVE GRUENBERG referred to Section 8, and asked whether the rules and conditions for the conduct of a sale must be made available in advance.

MR. ROUTH responded that yes, in practice the published notice of sale that is mandated by statute would contain some information. Currently, the practice is to have the rules read prior to the opening of the auction. This bill would clarify that the current system, which works well, would continue.

REPRESENTATIVE GRUENBERG questioned who will qualify an Internet bidder.

MR. ROUTH responded that this qualification process would be left to the discretion of the trustee. He continued by explaining an already tested solution: the bidder would go to a bank and put money on deposit and that deposit would be made instantly available and transferable to the trustee.

MR. ROUTH continued on to Section 9, which dealt with the procedure of postponement of a sale.

REPRESENTATIVE DAHLSTROM asked who would be responsible for the maintenance and security of the property during a postponement, and who would be responsible for that expense.

MR. ROUTH explained the reason for the postponement would be that the borrower is still in the house and is simply trying to work out a payment plan. This situation would not involve a vacant property. He said he could think of no reason for a vacant property sale to be postponed. In general, the lender doesn't have a right to access the property.

REPRESENTATIVE DAHLSTROM asked who would make that determination for the postponement of a sale, referred to in Section 9.

MR. ROUTH relayed that this decision would come from the lender. Current law determines that the lender can postpone for any period of time, for any reason. The change in law would also protect the borrower with the requirement to give new notice.

[2:35:52 PM](#)

MR. ROUTH went on to explain Section 10, which clarifies the division of the proceeds of a sale, and addresses the unwinding of a foreclosure auction should a mistake occur in the process. Sections 11 and 12 clarify the substitution of trustees. Section 13 requires a bond on foreclosure trustees, since currently foreclosure trustees have no fiscal responsibility requirements.

MR. ROUTH, in response to a question from Representative Coghill, said that one bond exemption is for title underwriters and one exemption is for the agents of the underwriters, because both are already licensed through the state.

REPRESENTATIVE COGHILL asked if these are the only exceptions to the bonding.

REPRESENTATIVE GRUENBERG asked whether the bond amount of \$250,000 would be adequate in all cases. He suggested, instead, a bond amount tied to the value of the property.

MR. ROUTH explained the bond was not per transaction but for each trustee. He agreed that the bond might not be enough but since currently there is no bond requirement, it might be good to have an incremental approach. He continued to explain that bonding companies feel this is a reasonable bond which the companies are comfortable bonding.

2:40:19 PM

REPRESENTATIVE GRUENBERG remarked that this bond amount might not be enough to satisfy the cumulative claims.

MR. ROUTH acknowledged that this could be the case, since the bond is per trustee, not per property. The bond requirement is similar to current contractor bond requirements. To have a bond requirement per sale, the sale cost to the borrower would go up so much that it wouldn't be workable. As there is no current requirement, this would be a modest first step.

REPRESENTATIVE GRUENBERG added that this bond would be in force and cover all claims made through the statute of limitations on any action against the trustee. He asked what the statute of limitations would be for the bond coverage.

MR. ROUTH replied he is not sure there is an endpoint for these bonds. His basic understanding, though, is that the bond would be period to period.

REPRESENTATIVE GRUENBERG questioned whether there should be a requirement that a bond be in force until the end of the statute of limitations.

MR. ROUTH agreed that a "tail period" would be a good requirement, but not at this time. He said he would prefer to see how the current proposal works, particularly given that nothing currently exists.

[HB 163 was held over.]

HB 194 - FINES AND OFFENSES

2:46:12 PM

CHAIR RAMRAS announced that the final order of business would be HOUSE BILL NO. 194, "An Act relating to fines for certain offenses involving aeronautics, alcoholic beverages, boats, fish and game, health care records and public health, medical review organizations, public restroom facilities, smoking, shelter cabins, refrigerators and similar equipment, radiation sources, high voltage lines, child labor, employment in underground mines, marriage licenses, motor vehicles and driver's licenses, ignition interlock devices, pipelines, use of the state seal, and emissions requirements; relating to the maximum fine

provided for violations and infractions and to the definition of 'minor offenses'; redesignating certain fish and game misdemeanor offenses as class A misdemeanors; relating to violations and offenses that are committed on state land, water, and land and water or that are related to water management or dam and reservoir safety; amending Rule 8(b), Alaska District Court Rules of Criminal Procedure; and providing for an effective date." [Included in members' packets was CSHB 194(RES).]

2:46:27 PM

HEATH HILYARD, Staff to Representative Carl Gatto, Alaska State Legislature, on behalf of Representative Gatto, co-chair of the House Resources Standing Committee, sponsor of HB 194, commented that the bill was a carry over from the prior legislative session, with one additional proposed change. The Department of Public Safety (DPS) requested an update of the fine level for non-criminal violations. The fine level had not been increased in approximately 30 years, and so the concern was that the fine structure was not currently robust enough to act as a deterrent. There were also some misdemeanor fines associated with fish and game violations, which the Alaska Department of Fish & Game (ADF&G) said had not been increased, although similar violations from other departments had been increased. He continued that this lead to discussions with Department of Law (DOL) which resulted in a request to review and update all sections of statute that had these similar fine structures. He referred to the sectional statute index included in the members' packets, which outlined the basic component of each statute the various sections of the bill propose to change.

MR. HILYARD mentioned that the greatest amount of discussion had been on Section 37 -the aforementioned additional proposed change- which refers to the penalties and enforcement authority of the Department of Natural Resources (DNR). The DNR asked for an extension of its penalty and enforcement authority to now cover all the lands over which the DNR has oversight and management. He also offered to comment on some proposed amendments in members' packets pertaining to the powers of police officers.

CHAIR RAMRAS asked whether it is fair to say the bill deals with updating penalties and enforcement.

MR. HILYARD responded this was correct.

2:51:10 PM

DICK MYLIUS, Acting Director, Central Office, Division of Mining, Land and Water, Department of Natural Resources (DNR), stated that the main reason for Section 37 is that the primary means of enforcement of regulations on state land is a civil procedure. If a violation is detected, the offender is asked to stop and if they do not comply, then the officer has to have the attorney general send the offender a letter because there is no statutory provision for field citation; this bill would give the DNR the authority to issue such citations. The Division of Alaska State Troopers has also commented that it does not have the authority to issue citations on DNR land.

CHAIR RAMRAS relayed that a Knik Arm public recreation bill was passed last year, and mentioned that the commissioner of the DPS recently met with Representative Stoltze to address the lawlessness that is now going on in that public recreation area. Chair Ramras suggested that the biggest weapon that law enforcement now had is, "stop or I'll send you a letter."

MR. MYLIUS stated that this is correct with regard to the enforcement authority for a division employee. The aforementioned legislation for the Knik Public Use area provided for stronger enforcement authority, but this was only 230,000 acres out of 93 million acres that was state owned. The Knik Public Use legislation triggered the discussion with Representative Gatto regarding the lack of enforcement authority in the field and so Representative Gatto proposed to add this change. Mr. Mylius mentioned there was one change made in the House Resources Standing Committee because members did not want division staff to have the authority to arrest people, but instead only wanted police officers to have that authority. The problem, however, was that a previous draft of the bill from House Resources Standing Committee had agreed for both police officers and state park rangers to have that authority on other state lands. When HB 194 returned from legislative drafting, however, the bill limited this authority to police officers.

REPRESENTATIVE GRUENBERG referred to the statutes to be repealed, via Section 43, and said he was concerned about repealing AS 41.23.220(b), which states:

(b) The supreme court shall establish by order or rule a schedule of bail amounts for violations under (a) of this section that allow the disposition of a citation without a court appearance.

REPRESENTATIVE GRUENBERG pondered whether this will repeal the Alaska Supreme Court's authority generally, and why AS 41.23.220(b) is being repealed, given that it now allows the court to set the bail amounts.

[2:57:26 PM](#)

JOHN BAKER, Assistant Attorney General, Natural Resources Section, Civil Division (Anchorage), Department of Law (DOL), responded that the intent is to "have a more comprehensive bail forfeiture schedule statutory provision that would make AS 41.23.220(b) unnecessary."

REPRESENTATIVE GRUENBERG raised a concern that Section 37 would define as peace officers people who are currently not defined as peace officers under Title 1. He asked, therefore, whether the language in Section 37 would invest people who are currently simply employees of the department with more authority than would be desirable.

MR. BAKER offered his understanding that the generic definition of peace officer is already very broad, much broader than the definition of police officer, as has been noted in prior attorney general opinions. He said he did not believe [Section 37] would be broadening that definition of peace officer. He surmised that the question would be which individual has arrest authority versus citation authority.

REPRESENTATIVE SAMUELS asked for an example of the type of problem that the DNR is attempting to address.

MR. MYLIUS responded this could be someone blocking a trail, or squatting on state land. [Section 37] would give [division staff] the ability to give a citation in the field.

REPRESENTATIVE SAMUELS asked if the department is speaking about park rangers or maintenance employees, and who would be able to issue a citation. He continued, wanting to know if this would be addressed in regulations.

MR. MYLIUS allowed that it would be addressed through regulations, and it would be an employee who is trained to do enforcement. The department would adopt regulations that describe the specific violations that could receive citations, and doesn't envision having armed employees; furthermore, only certain employees would be trained to do enforcement.

REPRESENTATIVE SAMUELS commented that the division already had the ability to call on the troopers. He asked if training is addressed in the bill.

MR. MYLIUS answered that the bill does not expressly address training, but he does envision that there would be training.

REPRESENTATIVE COGHILL said the "qualification" provision, the "authorized by the commissioner" provision, and the definition of police officer all troubled him.

MR. HILYARD provided that the statute which Mr. Baker referred to was for a peace officer, which had a different meaning than police officer. He said he understood that park rangers could be considered peace officers. He further commented that the DNR's concern is that the park rangers' authority not be compromised, and that park rangers qualify as peace officers.

[3:06:17 PM](#)

REPRESENTATIVE GRUENBERG referred to a proposed conceptual amendment he had written and distributed, which read [original punctuation provided]:

Page 9, lines 25-26

Delete

Page 10, line 3

Insert after "AS 46.17,"

and execute a warrant or other process issued by an officer or officer of competent jurisdiction and

MR. MYLIUS responded that this proposed amendment would clarify that issue.

REPRESENTATIVE GRUENBERG continued and noted that he has the same concerns as Representative Coghill with regard to benefits for peace officers, and the corresponding definition of designated DNR employees as peace officers under HB 194. Representative Gruenberg pointed out that Section 37 on page 9, line 27, authorized individuals mentioned on page 9, lines 18-20 to "administer or take an oath, affirmation, or affidavit;" however, AS 09.63.010 only lists certain people who were

authorized to give those oaths. He opined that to have DNR employees authorized to give these oaths, it would be necessary to have a conforming amendment in that other statute. He asked that the bill be held over to allow him time to review this issue.

MR. MYLIUS offered that state park rangers are currently not included in the 20-year benefits programs, which is only available for state troopers and police officers.

REPRESENTATIVE COGHILL mentioning that an advisory committee would be via language on page 10, lines 14-17, noted a legal issue he would like to explore.

MR. MYLIUS responded this language was taken from the current procedures for state parks for doing the exact same thing.

MR. BAKER added that the language was taken verbatim from existing AS 41.21.960, which includes the procedure for establishing the bail forfeiture schedule. This is boilerplate language that exists in other statutes and has been the procedure the legislature has chosen; it has been a workable system.

REPRESENTATIVE COGHILL asked for a history of the workability of such advisory committees, how many times they have convened, and whether there has been any tension within such groups.

MR. BAKER relayed that he would research that issue adding that the bail forfeiture schedules are set on regular committee schedules; he offered his understanding that such meetings have not been difficult or contentious.

[3:12:29 PM](#)

WYN MENEFEY, Chief of Operations, Central Office, Division of Mining, Land and Water, Department of Natural Resources (DNR), explained that park rangers, with the authority of going through the "bail schedule set up," convened every year, made some readjustments [to the bail schedule], and took these readjustments to the Alaska Supreme Court. This system has been very workable for the state park rangers, who have the authority to make arrests and issue citations and warrants, because they are trained and certified to that level.

REPRESENTATIVE COGHILL sought confirmation that these park rangers convened, set bail amounts at the outset, and then have the bail amounts adjusted without convening after that.

MR. MENEFEЕ offered his understanding that they did go before the Alaska Supreme Court every year, but they did not necessarily convene the committee every year when they made an adjustment.

REPRESENTATIVE COGHILL pointed out that the language on page 10, line 15, said "shall appoint and consult" when establishing and amending the schedule of bail.

MR. MENEFEЕ offered that this might be performed via correspondence.

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REPRESENTATIVE GRUENBERG commented it is his own feeling to triple check that the [bill] title covers every provision of the bill.

CHAIR RAMRAS reflected there would obviously be a few questions with this issue. He noted that he also had a few amendments to offer.

MR. HILYARD asked whether the sponsor should prepare a CS for the committee, or whether the committee would prefer to address concerns via amendments.

CHAIR RAMRAS surmised that simply altering CSHB 194 (RES) via amendment should be workable, unless there are title changes. In conclusion, he recapped that the primary concerns expressed thus far were the nature of the training, and the method of selection for these new DNR enforcement employees.

REPRESENTATIVE COGHILL added a request of accountability measures for the enforcement employees.

CHAIR RAMRAS closed public testimony on HB 194.

[HB 194 was held over.]

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:19 p.m.