

**ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE**

March 10, 2010

1:31 p.m.

MEMBERS PRESENT

Senator Hollis French, Chair
Senator Bill Wielechowski, Vice Chair
Senator Dennis Egan
Senator Lesil McGuire
Senator John Coghill

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

CONFIRMATION HEARING(S)

Attorney General: Daniel B. Sullivan

CONFIRMATION ADVANCED

PREVIOUS COMMITTEE ACTION

No previous action to record.

WITNESS REGISTER

Daniel B. Sullivan, Appointee
Attorney General of the State of Alaska
Anchorage, AK

POSITION STATEMENT: Testified as appointee to the position of
Attorney General

ACTION NARRATIVE

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CHAIR HOLLIS FRENCH called the Senate Judiciary Standing Committee meeting to order at 1:31 p.m. Senators Egan, Coghill, Wielechowski and French were present at the call to order. Senator McGuire arrived soon thereafter.

CONFIRMATION HEARING: Attorney General

CHAIR FRENCH announced the only order of business would be the consideration of the appointment of Daniel B. Sullivan to the position of Attorney General of the State of Alaska. He commented that several years ago he was impressed when he heard Mr. Sullivan speak on matters of international trade at the University of Alaska and so it was a pleasure to see him reemerge as the attorney general years later.

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SENATOR MCGUIRE joined the committee.

DANIEL S. SULLIVAN, Appointee, Attorney General, said he would focus on three areas: his background and experience; his areas of emphasis at the Department of Law since he was appointed last June; and his management philosophy and goals.

ATTORNEY GENERAL SULLIVAN provided a brief personal history and recounted his professional experience including time as a law clerk; a staff attorney on the Alaska Court of Appeals; private practice with Perkins Coie in Anchorage focusing on corporate law; a White House fellowship where he served as director on the National Security Council staff; and U.S. Assistant Secretary of State in charge of global energy and economic issues. His full resume was provided in members' packets and may be found in the committee file. He committed to continue to use his experience to advance Alaska's interests.

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ATTORNEY GENERAL SULLIVAN said he has focused on four areas since becoming attorney general in June. The first relates to protecting Alaskans. This ranges from the focused strategy to reduce the epidemic of sexual assault and domestic violence to consumer protection. The second area is promoting economic opportunity including intervening in lawsuits that affect the potential economic interests of the state. The third area is protecting the state's fiscal integrity, both offensively and defensively. He highlighted that the DOL civil division collected about \$560 million, a return of \$10 for every \$1 spent on the department. The fourth priority is promoting good governance and that's done by defending the laws and constitution, working with the Legislature on regulations and legislation, and working to ensure that the government operates within the parameters of the law and state and federal constitutions.

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Another priority is to address the challenges of life in rural Alaska. As chair of the governor's rural sub-cabinet and co-chair of the federal Rural Justice Commission with the U.S. attorney, he said he's traveled to rural Alaska, met with leadership, and held public hearings to better understand some of the problems and how to address them both from a public safety/law enforcement standpoint and an economic standpoint.

ATTORNEY GENERAL SULLIVAN said his management philosophy and objectives focus on four areas: 1) integrity as the touchstone of all DOL decisions and a high level of professional standards; 2) respect and collaboration with colleagues; 3) increasing moral and recruiting top notch attorneys; and 4) working closely with the Legislature and being responsive to requests. When he was appointed he sent a letter to each legislator saying that this is an important part of the job. At this point he's met privately with all but two legislators and he plans to continue to focus on this.

He said he believes he has a clear understanding of his role in state government, but his highest responsibility and duty are to the laws and Constitution of the State of Alaska.

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CHAIR FRENCH thanked him for reaching out and keeping legislators abreast of the important advances that take place in DOL. He then asked which Supreme Court Justice and which U.S. President he admires most and why.

ATTORNEY GENERAL SULLIVAN said he will mention two Supreme Court justices. The first is Chief Justice John Marshall. He was a visionary jurist without peer who served as Chief Justice from 1801 to 1835. He brought clarity and understanding to the constitutional structure and in many ways was critical to the successful founding of the country. On the personal side, he served in the Continental Army, the U.S. House, and as Secretary of State for two years. Certainly, he said, he was a man who served his country well.

ATTORNEY GENERAL SULLIVAN said he also admires Oliver Wendell Holmes. He enlisted in the Massachusetts Militia when he was a senior at Harvard and fought in a number of Civil War battles. After that he became a noted jurist and served on the Massachusetts Supreme Court. At age 70 he was appointed to the U.S. Supreme Court by Teddy Roosevelt and served until age 90. His judicial philosophy was focused on separation of powers and a respectful role of the Legislature. He was an enthusiastic

First Amendment proponent even during World War I when there was great interest in suppressing dissent.

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ATTORNEY GENERAL SULLIVAN said President Reagan is his favorite president. He embodied true principled leadership believing in the country from both economic and foreign policy standpoints when a lot of Americans lacked that belief. He had a lot to do with moving the country from a doubting perspective to confidence.

SENATOR WIELECHOWSKI noted that he wasn't living in Alaska when he was appointed as attorney general and asked how he initially approached the governor or if she approached him.

ATTORNEY GENERAL SULLIVAN explained that when he left Alaska in 2002 he intended to return after one year, but those plans were put on hold because of job extensions and being recalled to active duty by the Marine Corps. When his active duty was complete he was offered and accepted the job of Assistant Secretary of State. In the fall of 2008 he began interviewing for positions in Alaska and when the position of attorney general became open he indicated his interest. A friend contacted the governor. He interviewed with her staff and then with then Governor Palin directly. He described it as a fortunate confluence of interests and events.

SENATOR WIELECHOWSKI asked when he became a member of the Alaska Bar.

ATTORNEY GENERAL SULLIVAN replied he clerked in 1997 and 1998 and became a member of the bar in 2000.

SENATOR WIELECHOWSKI asked if he had practiced law in Alaska.

ATTORNEY GENERAL SULLIVAN replied he clerked for 2.5 years and worked at Perkins Coie in Anchorage for 2 years.

SENATOR WIELECHOWSKI asked who his major clients were at Perkins Coie.

ATTORNEY GENERAL SULLIVAN answered his work was mostly commercial transactions, but it included a cross section of small to large Alaska business interests.

SENATOR WIELECHOWSKI asked if he worked in a particular division at Perkins Coie.

ATTORNEY GENERAL SULLIVAN replied most of his work focused on corporate transactions with some work on commercial litigation issues.

SENATOR WIELECHOWSKI asked if he represented any oil companies that do business in Alaska.

ATTORNEY GENERAL SULLIVAN replied he did some work with regard to BP, but principally he focused on smaller business, investors, and Native corporations.

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SENATOR MCGUIRE said she feels a sense of hope with his appointment. He responded immediately when she shared her number one concern, which is that the epidemic of domestic violence and assault on women and children is eclipsing the economics and all other things in the state. She then articulated concern in two areas related to children's services - a lack of resources and infringement of parental rights. She cited a case in Bethel and asked what DOL might be able to do to partner with the Alaska Supreme Court and the Legislature to look at putting additional resources into the Office of Child's Services. She also cited a case from the other end of the spectrum where parental rights were all but ignored and asked what he thinks about potential liability.

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ATTORNEY GENERAL SULLIVAN thanked Senator McGuire for her leadership in the area of children's services and noted that OCS issues oftentimes involve domestic violence and sex assault problems. He credited her with being first to suggest that the state pattern its response to these issues on the Mothers Against Drunk Driving (MADD) model and said that on this issue DOL is very closely aligned with the Legislature. He assured her that DOL has a large section that works with OCS and that he has spent a lot of time with the excellent attorneys there.

He acknowledged that DOL has heard clearly that there are resource issues with regard to OCS and that it has also heard of cases on the other extreme where people believe that OCS has acted inappropriately with regard to parental rights. That being said, his perspective is that DOL has a very strong team that does great work in difficult circumstances. DOL works with the Department of Health and Social Services (DHSS) with regard to

training and how to have the OCS workers make sure that they're complying with the law. He highlighted that of the 19 cases of OCS interventions that went to the Alaska Supreme Court last year, the court affirmed in all 19 cases that the agency took the proper, within-the-law action. DOL will work with this committee and others on improvements with regard to OCS, but this is something that DOL is focused on already, he said.

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SENATOR MCGUIRE said she appreciates that the work is difficult; she's just inviting more participants into the dialog and is encouraging outreach to Morgan Christen and the Alaska Supreme Court task force that's been assembled. It's a very broad issue.

CHAIR FRENCH questioned why the state is, at great expense, pursuing the Kaltag case, seeking to overturn the decision about placement of a tribal child by a tribal court. Everyone seems to agree with the decision whereas the state appears to be taking a position that is contrary to John v. Baker. In that case the state argued in support of the jurisdiction of Alaska state courts concurrent with Alaska tribal courts to hear child custody disputes involving tribal children. He said his view is that the tribes are helping the state by performing an essential service that the state is unwilling to provide because it isn't going to put OCS agents in every village in the state to oversee these issues.

ATTORNEY GENERAL SULLIVAN said a touchstone of the Parnell Administration is respect and partnership with Native organizations and tribes. He agrees completely that the state should be partnering and cooperating on a number of issues and from the perspective of DOL that is happening. It has been and will continue to be a big focus. However, the state is pursuing the Kaltag case because it believes that it is an instance of a tribal court exerting membership over one parent who is a non-member. In a state that has 229 federally recognized tribes, it's a fundamental and critical issue on which the state needs clarity.

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SENATOR WIELECHOWSKI pointed out that three courts and five judges looked at and rejected his position. He asked what the state is paying outside counsel to draft the brief in the Kaltag case.

ATTORNEY GENERAL SULLIVAN said the 9th U.S. Circuit Court of Appeals relied on a case from 1991 and DOL believes that

decision is unclear because the law has developed significantly since then. He said he didn't know what the state is paying the outside counsel, but he would provide the information.

SENATOR WIELECHOWSKI said he understands that the legal charges range from \$700 to \$1,200 per hour. He asked who made the decision to go forward on the case.

ATTORNEY GENERAL SULLIVAN reiterated that DOL has respectfully sought clarity on this important issue because it's not clear. With regard to who made the decision, he said he raised the question with the governor. He agrees with Senator French that the tribal court was trying to do the right thing and that's why he believes that working on a broader approach between the state and tribal courts is the way to resolve the issue, not through continued litigation.

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CHAIR FRENCH said you may have trouble with the memorandum of understanding (MOU) and may not be aware of the degree to which this has ruffled feathers in the Native legal community. They see it as an attack on John v. Baker and the right of tribal courts to exercise concurrent jurisdiction in the state. This case has not only provoked intense resistance it also appears to have bad facts to take to the U.S. Supreme Court.

ATTORNEY GENERAL SULLIVAN reiterated that he is very focused on engaging and working with the Alaska Native and tribal communities and his record reflects that it's more than just talk. He has great respect for these communities, but he continues to believe that there is no clarity in the law on the extent to which a tribal court can have jurisdiction and take action on the right to be a parent to a child. Given the number of tribes in this state and the frequency with which family relations cross tribal boundaries, the state made the careful and considered decision to ask for a U.S. Supreme Court review.

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SENATOR MCGUIRE said she understands that it's more than the issue of Native and non-Native parents, it's the ability to assert authority and jurisdiction over a child's placement when the parents are from different tribes. She agrees with Senator French that this has ruffled feathers in the Native community at a time when there are so many looming issues related to tribal lands, Indian country, and sovereignty.

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SENATOR WIELECHOWSKI cited the facts in the Kaltag case and expressed astonishment that the state had taken the action it did. Financially this is a bad policy decision and a slap in the face to the Native community, he said.

ATTORNEY GENERAL SULLIVAN reiterated his respect for the entire Alaska Native community and said he respectfully disagrees with his assessment. Coordinating and cooperating to enable all parties to work together to the benefit and welfare of Alaska's children is something he's personally worked on through the MOU and some progress has been made. "Nothing I'm trying to do with this department should be viewed as a slap in the face of Alaska Natives," he concluded.

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CHAIR FRENCH said to illustrate the complexity of your job, we'll move from the difficult issue of tribal sovereignty to the issue of Price Waterhouse Coopers losing current and former state employees' personal information. He asked for an overview of what happened, his involvement in the case, the settlement, and when the state learned about the data loss.

ATTORNEY GENERAL SULLIVAN explained that this was broad information that the state provided to Mercer, the state's actuary that was doing modeling of retirement benefits. Subsequently, the state became dissatisfied with the work and cut off the relationship and sued. In the course of discovery the actuarial model was given to Price Waterhouse Coopers for analysis. In early December that premier accounting firm realized that it had misplaced this data.

While the Department of Administration analyzed exactly what information was lost, the Department of Law focused on its legal options, which were to sue or agree on a settlement. The overriding concern was to protect and notify the affected Alaskans. The state wasn't sure that suing would provide any protection to the Alaskans involved and instead negotiated a settlement and announced on January 27 that "There's a problem, but you're covered." The current focus is to implement the terms of the settlement. To date 16,500 Alaskans have signed up for the protection.

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SENATOR COGHILL asked if he means that the Alaskans have signed up is for personal credit protection.

ATTORNEY GENERAL SULLIVAN answered yes and added that he would encourage anyone who received a letter to take advantage of the protection. The sign-up provides the option of a minimum of 2 years of personal credit protection or a freeze. Under the terms of the agreement, there might be a third year or an extension beyond that time. Price Waterhouse Coopers will also indemnify any Alaska citizen who says their identity has been stolen and they've been damaged. The state has gone to great lengths to get citizens protection and indemnification at no cost. He opined that this path was preferable to litigation with regard to immediately protecting citizens. Also, there's a presumption in the agreement that anything that happens to a citizen who signs up was caused by the loss. It will be very easy to collect from Price Waterhouse Coopers in the event that something happens to someone who has signed up, he said.

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SENATOR WIELECHOWSKI asked how many people are affected.

ATTORNEY GENERAL SULLIVAN said 77,000 were affected and 16,500 have signed up as of today.

SENATOR WIELECHOWSKI asked how long the protection lasts.

ATTORNEY GENERAL SULLIVAN replied it's a minimum of two years, but there are two extension provisions that are somewhat vague so a "bad guy" won't simply wait out the term and then use the personal information.

SENATOR WIELECHOWSKI asked if the affected Alaskans have to pay for the additional years of protection and questioned what would happen five years from now if their identities were misused.

ATTORNEY GENERAL SULLIVAN replied they'll be protected as long as they're covered, but there's no time limit on the indemnity.

SENATOR WIELECHOWSKI asked if a person whose identity is used 10 to 15 years from now would be made whole; that's what he believes should happen.

ATTORNEY GENERAL SULLIVAN said he believes that's what the indemnity agreement does, but he'll check and get back to him. He added that he's looked at other AG agreements and doesn't believe that any are this comprehensive.

SENATOR WIELECHOWSKI questioned why everyone wasn't automatically signed up.

ATTORNEY GENERAL SULLIVAN said that was considered, but DOL didn't believe it had the legal authority to unilaterally give personal information to Equifax.

SENATOR WIELECHOWSKI asked what specific data was stolen.

ATTORNEY GENERAL SULLIVAN clarified that the data may have been misplaced and not stolen, but the relevant data included names, dates of birth, and social security numbers.

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SENATOR MCGUIRE asked what his office is doing with respect to the Endangered Species Act (ESA) and if he has a team that deals with sovereignty and development of Alaska land as it pertains to the federal government. She understands there is a renewed effort to look at the Outer Continental Shelf (OCS), the National Petroleum Reserve-Alaska (NPRA) and the Antiquities Act.

ATTORNEY GENERAL SULLIVAN replied they've been focused on a broader strategy with respect to the ESA issue to address the potential future problem for the state. He explained that the climate-based listings are based on models of climate change in the future, but they don't account for where the species are now. He cited the polar bear as an example of a currently healthy population that is modeled to decline. DOL sees this in combination with the huge critical habitat determinations as a troubling trend, particularly since the state has no input. DOL has responded by fighting the listings. When the federal government has rejected these theories, like in the case of the ribbon seal, the state is intervening on behalf of the federal government. He noted that in that case the state sought to intervene and the environmental group that brought the lawsuit is opposing the state's intervention in a case that involves only Alaska animals. This is a huge outrage, he said.

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CHAIR FRENCH asked, in general, how often a challenge to a listing prevails.

ATTORNEY GENERAL SULLIVAN replied it's very fluid with these climate-based listings and that's why the state believes that getting involved and getting courts to reject it is very important. The state has also looked at potential ways to limit the critical habitat determination, but it's difficult when the federal government doesn't even confer with the state when it

makes a decision. He cited the 200,000 square mile polar bear determination and the Cook Inlet beluga whale determination.

The state is also seeking allies in the other 49 states. To that end, he sent letters to the other attorneys general outlining what has happened in this state and warning that it could happen anywhere. The letter struck a chord and he has since suggested that the National Association of Attorneys General (NAAG) establish a task force/working group on ESA issues. Recently a group of AGs met with the Secretary of Interior to discuss concerns with the federal approach to critical habitat and to respectfully point out that their legal comments should be taken seriously. The critical habitat determination is supposed to balance risk to the species, economic opportunity, and national security and the states are best able to weigh in on those factors.

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Responding to the Senator McGuire's question, he said DOL doesn't have a sovereignty lands team but it has an environmental group and an ESA attorney and has been actively involved in federal water rights issues, OCS issues, ESA issues, and Tongass timber harvest issues. These all go to the matter of state and federal jurisdictional and sovereignty issues.

SENATOR MCGUIRE asked for assurance that in the event that there are legal challenges to AGIA that DOL has been researching the provisions in the law and is prepared to respond and vigorously defend the state.

ATTORNEY GENERAL SULLIVAN replied DOL has thoroughly examined the treble damages provision in AGIA and, depending on the circumstances, would be prepared to respond. He added that DOL is also looking at several tax-related provisions under AGIA that several legislators have asked about.

SENATOR COGHILL said both the Indian Children Welfare Act (ICWA) and the Child In Need of Aid (CINA) laws landed on Alaska simultaneously in the late '90s and have undergone change as they were being implemented. It's a question as to whether it's been done well, but the question is how to protect the citizens of Alaska through the state law and work with the Native groups who also had a template sent down to them that was more geographically tribal oriented and didn't really fit Alaska's unique circumstances. He said he was pleased to hear the commitment to work those things out because it's necessary. The next generation deserves clarity of the law.

He noted that the CINA law is a civil-based law, but it almost always deals with a criminal element. He said they cross so often that it gets confusing to judges. He asked if there is an awareness of that dynamic within DOL and if there is anything that the Legislature can do to help brighten the line. I don't need the answer today, but we need to look for that answer, he said.

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ATTORNEY GENERAL SULLIVAN replied these are very challenging issues that involve children, which is why DOL is giving it a lot of attention.

SENATOR COGHILL observed that as more work is done on domestic violence and sexual assault it's recognized that the issues go hand-in-hand. He said he wanted to mention another concern, which is that as crimes have been ratcheted up in the last several years, they've been bargained down in application. He questioned whether the changes in law have really caught more bad guys or just given prosecutors and defenders more discretion.

CHAIR FRENCH noted that he too asked that question in the memo he sent to the attorney general to help him prepare for this hearing. He asked Attorney General Sullivan to answer questions 8, 9, and 10 in writing and send them to his office and he'd distribute the answers to the committee members.

ATTORNEY GENERAL SULLIVAN agreed to do so.

SENATOR WIELECHOWSKI asked Chair French if he could submit additional questions to the attorney general through his office.

CHAIR FRENCH agreed to forward the questions to the attorney general.

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SENATOR MCGUIRE moved and asked unanimous consent to forward the name Daniel Sullivan for the position of Attorney General of the State of Alaska to the full body for consideration, recognizing that members are free to indicate their individual recommendations.

CHAIR FRENCH asked if there was objection to the motion.

SENATOR WILECHOWSKI questioned whether it was appropriate to forward the name when his questions hadn't been answered.

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CHAIR FRENCH called an at ease.

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CHAIR FRENCH reconvened the hearing and stated that the motion would be held in abeyance so that Senator Wielechowski could ask additional questions.

SENATOR WIELECHOWSKI asked the attorney general if he decides which cases go forward or if he takes those orders from the governor.

ATTORNEY GENERAL SULLIVAN replied it depends on the specific case. He has moved forward on certain cases that relate to his responsibilities pursuant to statute as attorney general without consultation or discussion with the governor. When cases have particular significance to the state he mentions them to the governor, but those aren't that common. For example, when he came on board he suggested the state become a party to the OCS litigation because it directly affects the future of Alaskans. If there's some sort of settlement, it would be advantageous for the state to be at the table.

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SENATOR WIELECHOWSKI asked if he feels obliged to institute any legal action that the governor requests.

ATTORNEY GENERAL SULLIVANI replied he is by statute the governor's legal advisor and so far there's been no conflict between his advice and the governor's policy direction.

SENATOR WIELECHOWSKI asked if he believes he has the right to say no if he disagrees with a request from the governor and if he has the authority to move ahead against the governor's wishes.

ATTORNEY GENERAL SULLIVAN said his guiding principle is to do nothing that would contravene the law or the constitution of the state.

SENATOR WIELECHOWSKI asked if he's willing to commit to review the oil and gas leases to ensure that the companies are drilling and exploring to the maximum capacity.

ATTORNEY GENERAL SULLIVAN replied he has been focused on that. He believes that DOL has played a proactive role and he's been encouraged to continue that on the Point Thomson development. When DOL didn't agree with a superior court ruling in the litigation they asked for an interlocutory appeal to the Alaska Supreme Court so they've been very forward leaning on the legal issues.

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SENATOR WIELECHOWSKI said he understands that DOL has or is close to issuing an opinion on whether or not the state has to decouple, if it's deemed necessary, by May 1.

ATTORNEY GENERAL SULLIVAN replied DOL is working on that and members should have a copy of the letter he sent to Senator Paskvan about the appropriate way to proceed. He suggested that it might be better to brief the interested legislators in a closed session because it involves potential litigation strategy.

SENATOR WIELECHOWSKI said he really wants to know more before he has to vote on a bill.

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ATTORNEY GENERAL SULLIVAN assured him that "all systems are churning." He added that although there is a sense of urgency, his first priority is to do very comprehensive research and gain a thorough understanding of this very complicated issue.

SENATOR WIELECHOWSKI asked if he has any concerns about redistricting and if he's analyzed the way it may impact rural Alaska.

ATTORNEY GENERAL SULLIVAN replied the department has been boning up on expertise in anticipation of potential legal and constitutional issues. He doesn't know specifically what those will be, just that they're likely.

SENATOR WIELECHOWSKI thanked the committee for its indulgence.

CHAIR FRENCH asked Senator McGuire to renew her motion.

SENATOR MCGUIRE moved to forward the name Daniel Sullivan for the position of Attorney General of the State of Alaska to the full body for consideration, recognizing that members are free to indicate their individual recommendations. There being no objection, it was so ordered.

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There being no further business to come before the committee,
Chair French adjourned the meeting at 3:20 p.m.