

**ALASKA STATE LEGISLATURE**  
**SENATE JUDICIARY STANDING COMMITTEE**

March 31, 2010

1:33 p.m.

**MEMBERS PRESENT**

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

**MEMBERS ABSENT**

Senator Lesil McGuire

**COMMITTEE CALENDAR**

CONFIRMATION HEARINGS

Legislative Ethics Committee  
ANTIONETTE MALLOTT

- CONFIRMATION ADVANCED

SENATE JOINT RESOLUTION NO. 28  
Relating to the Ecumenical Patriarchate and religious rights.

- MOVED SJR 28 OUT OF COMMITTEE

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 101(JUD)  
"An Act exempting the full value of life insurance and annuity contracts from levy to satisfy a debt, and amending the description of earnings, income, cash, and other assets relating to garnishment of life insurance proceeds payable upon the death of an insured."

- HEARD AND HELD

SENATE BILL NO. 190  
"An Act relating to biometric information."

- HEARD AND HELD

SENATE BILL NO. 249  
"An Act relating to official action by electronic transmission, to records, and to public records."

- HEARD AND HELD

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 108(JUD) AM  
"An Act relating to real property foreclosures, to the sale of  
property on execution, and to deeds of trust."

- HEARD AND HELD

**PREVIOUS COMMITTEE ACTION**

BILL: SJR 28

SHORT TITLE: ECUMENICAL PATRIARCHATE OF TURKEY

SPONSOR(s): SENATOR(s) MEYER

02/18/10	(S)	READ THE FIRST TIME - REFERRALS
02/18/10	(S)	JUD
03/26/10	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/26/10	(S)	-- MEETING CANCELED --
03/29/10	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/29/10	(S)	Heard & Held
03/29/10	(S)	MINUTE(JUD)

BILL: HB 101

SHORT TITLE: EXEMPTIONS: LIFE INSURANCE; ANNUITIES

SPONSOR(s): REPRESENTATIVE(s) COGHILL

01/30/09	(H)	READ THE FIRST TIME - REFERRALS
01/30/09	(H)	L&C, JUD
02/18/09	(H)	L&C AT 3:15 PM BARNES 124
02/18/09	(H)	Moved Out of Committee
02/18/09	(H)	MINUTE(L&C)
02/20/09	(H)	L&C RPT 3DP 3NR
02/20/09	(H)	DP: LYNN, CHENAULT, COGHILL
02/20/09	(H)	NR: BUCH, HOLMES, OLSON
03/02/09	(H)	JUD AT 1:00 PM CAPITOL 120
03/02/09	(H)	Heard & Held
03/02/09	(H)	MINUTE(JUD)
03/16/09	(H)	JUD AT 8:00 AM CAPITOL 120
03/16/09	(H)	Heard & Held
03/16/09	(H)	MINUTE(JUD)
03/19/09	(H)	JUD AT 1:00 PM CAPITOL 120
03/19/09	(H)	Moved CSHB 101(JUD) Out of Committee
03/19/09	(H)	MINUTE(JUD)
03/23/09	(H)	JUD RPT CS(JUD) NT 6DP
03/23/09	(H)	DP: LYNN, GRUENBERG, COGHILL, DAHLSTROM, GATTO, RAMRAS

04/03/09 (H) TRANSMITTED TO (S)  
 04/03/09 (H) VERSION: CSHB 101(JUD)  
 04/06/09 (S) READ THE FIRST TIME - REFERRALS  
 04/06/09 (S) L&C, JUD  
 04/14/09 (S) L&C AT 1:00 PM BELTZ 211  
 04/14/09 (S) Moved CSHB 101(JUD) Out of Committee  
 04/14/09 (S) MINUTE(L&C)  
 04/15/09 (S) L&C RPT 4DP 1NR  
 04/15/09 (S) DP: PASKVAN, MEYER, THOMAS, DAVIS  
 04/15/09 (S) NR: BUNDE  
 04/17/09 (S) JUD AT 1:30 PM BELTZ 211  
 04/17/09 (S) Heard & Held  
 04/17/09 (S) MINUTE(JUD)  
 03/29/10 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)  
 03/29/10 (S) Scheduled But Not Heard

BILL: SB 190

SHORT TITLE: BIOMETRIC INFORMATION FOR ID  
 SPONSOR(s): SENATOR(s) WIELECHOWSKI

04/10/09 (S) READ THE FIRST TIME - REFERRALS  
 04/10/09 (S) STA, JUD  
 03/02/10 (S) STA AT 9:00 AM BELTZ 105 (TSBldg)  
 03/02/10 (S) Heard & Held  
 03/02/10 (S) MINUTE(STA)  
 03/11/10 (S) STA AT 9:00 AM BELTZ 105 (TSBldg)  
 03/11/10 (S) Moved CSSB 190(STA) Out of Committee  
 03/11/10 (S) MINUTE(STA)  
 03/12/10 (S) STA RPT CS 1DP 3AM SAME TITLE  
 03/12/10 (S) DP: KOOKESH  
 03/12/10 (S) AM: MENARD, PASKVAN, FRENCH  
 03/26/10 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)  
 03/26/10 (S) -- MEETING CANCELED --

BILL: SB 249

SHORT TITLE: PUBLIC RECORDS/ELECTRONIC TRANSMISSIONS  
 SPONSOR(s): SENATOR(s) ELLIS

02/01/10 (S) READ THE FIRST TIME - REFERRALS  
 02/01/10 (S) STA, JUD  
 03/23/10 (S) STA RPT 5DP  
 03/23/10 (S) DP: MENARD, FRENCH, MEYER, PASKVAN,  
 KOOKESH  
 03/23/10 (S) STA AT 9:00 AM BELTZ 105 (TSBldg)  
 03/23/10 (S) Moved SB 249 Out of Committee  
 03/23/10 (S) MINUTE(STA)  
 03/31/10 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

BILL: HB 108

SHORT TITLE: PROP. FORECLOSURE/EXECUTION/TRUST DEEDS

SPONSOR(S): REPRESENTATIVE(S) RAMRAS

02/02/09 (H) READ THE FIRST TIME - REFERRALS  
02/02/09 (H) L&C, JUD  
02/23/09 (H) L&C AT 3:15 PM BARNES 124  
02/23/09 (H) Heard & Held  
02/23/09 (H) MINUTE(L&C)  
03/13/09 (H) L&C AT 3:15 PM BARNES 124  
03/13/09 (H) -- MEETING CANCELED --  
03/16/09 (H) L&C AT 3:15 PM BARNES 124  
03/16/09 (H) Moved CSHB 108(L&C) Out of Committee  
03/16/09 (H) MINUTE(L&C)  
03/18/09 (H) L&C RPT CS(L&C) 1DP 5NR  
03/18/09 (H) DP: CHENAULT  
03/18/09 (H) NR: BUCH, COGHILL, NEUMAN, HOLMES,  
OLSON  
03/25/09 (H) JUD AT 1:00 PM CAPITOL 120  
03/25/09 (H) Scheduled But Not Heard  
03/30/09 (H) JUD AT 1:00 PM CAPITOL 120  
03/30/09 (H) Heard & Held  
03/30/09 (H) MINUTE(JUD)  
04/03/09 (H) JUD AT 1:00 PM CAPITOL 120  
04/03/09 (H) Moved CSHB 108(JUD) Out of Committee  
04/03/09 (H) MINUTE(JUD)  
04/07/09 (H) JUD RPT CS(JUD) 2DP 4NR 1AM  
04/07/09 (H) DP: COGHILL, RAMRAS  
04/07/09 (H) NR: LYNN, GRUENBERG, DAHLSTROM, GATTO  
04/07/09 (H) AM: HOLMES  
04/11/09 (H) TRANSMITTED TO (S)  
04/11/09 (H) VERSION: CSHB 108(JUD) AM  
04/13/09 (S) READ THE FIRST TIME - REFERRALS  
04/13/09 (S) L&C, JUD  
04/16/09 (S) L&C AT 3:45 PM BELTZ 211  
04/16/09 (S) Moved SCS CSHB 108(L&C) Out of  
Committee  
04/16/09 (S) MINUTE(L&C)  
04/17/09 (S) L&C RPT SCS 1NR 4AM SAME TITLE  
04/17/09 (S) NR: DAVIS  
04/17/09 (S) AM: PASKVAN, MEYER, THOMAS, BUNDE  
03/31/10 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

**WITNESS REGISTER**

ANTOINETTE MALLOTT, Nominee  
Legislative Ethics Committee

Juneau, AK

**POSITION STATEMENT:** Testified as nominee to the Legislative Ethics Committee.

RYNNEVIA MOSS, staff  
to Senator Coghill  
Alaska State Legislature  
Juneau, AK

**POSITION STATEMENT:** Provided information related to HB 101 on behalf of the sponsor.

LINDA HULBERT, Broker  
New York Life Insurance Company  
Fairbanks, AK

**POSITION STATEMENT:** Provided supporting testimony for HB 101.

GEORGE ASCOTT, Staff  
to Senator Wielechowski  
Alaska State Legislature  
Juneau, AK

**POSITION STATEMENT:** Explained the changes in the CS for SB 190.

RICK SVOBODNY, Deputy Attorney General  
Department of Law (DOL)  
Juneau, AK

**POSITION STATEMENT:** Raised concerns about SB 190 on behalf of the department.

JEFFREY MITTMAN, Executive Director  
ACLU of Alaska  
Anchorage, AK

**POSITION STATEMENT:** Testified in support of SB 190

BILL SCANNELL, representing himself  
Anchorage, AK

**POSITION STATEMENT:** Testified in strong support of SB 190.

JANE PIERSON, Staff  
to Representative Jay Ramras  
Alaska State Legislature  
Juneau, AK

**POSITION STATEMENT:** Provided an explanation of the changes to HB 108 on behalf of the sponsor.

STEPHEN ROUTH, Attorney  
Routh Crabtree, APC  
Anchorage, AK

**POSITION STATEMENT:** Provided supporting information related to HB 108.

DENNIS FENERTY, Attorney  
Groh Eggers LLC

**POSITION STATEMENT:** Testified in support of HB 108.

MAX HENSLEY, Staff  
to Senator Johnny Ellis  
Alaska State Legislature  
Juneau, AK

**POSITION STATEMENT:** Introduced SB 249 on behalf of the sponsor.

#### **ACTION NARRATIVE**

[1:33:57 PM](#)

**CHAIR HOLLIS FRENCH** called the Senate Judiciary Standing Committee meeting to order at 1:33 p.m. Present at the call to order were Senators Coghill, Wielechowski and French.

#### **Confirmation Hearing Legislative Ethics Committee**

[1:34:08 PM](#)

CHAIR FRENCH announced the first order of business to come before the committee would be the confirmation hearing of Antoinette Mallott to the Legislative Ethics Committee.

ANTOINETTE MALLOTT, Nominee, Legislative Ethics Committee, said she has lived in Juneau for over 30 years and is a retired school teacher who still volunteers. She spends time in Juneau and in Yakutat and is involved in both communities. In Yakutat she works part time for Catholic Community Services as a care-coordinator for elders and in Juneau she volunteers in the school.

CHAIR FRENCH asked what piqued her interest in serving on the Legislative Ethics Committee.

MS. MALLOTT explained that Chief Justice Carpeneti called and asked if she would be interested in serving. They were looking for a woman from Southeast who could add diversity to the committee. She thought about it for a week and agreed to be considered.

SENATOR FRENCH asked if she had watched or listened to the committee.

MS. MALLOTT answered no, but she's been reading the information booklet and feels comfortable assuming the position.

SENATOR WIELECHOWSKI commented that teaching 2nd and 3rd grade makes her eminently qualified.

MS. MALLOTT agreed that her teaching experience is relevant. She also served as the facilitator on the school site council where she had dealings with parents, teachers, and staff.

SENATOR COGHILL said fairness will be the key, but there are also some interesting rules to live by that will require considerable study.

MS. MALLOTT agreed that the list is extensive.

[1:39:06 PM](#)

SENATOR WIELECHOWSKI moved to forward the name Antoinette Mallott to the full body for consideration. He read the following:

In accordance with AS 24.60.130, the Judiciary Committee reviewed the following and recommends the appointment be forwarded to the Senate for consideration to the Select Committee on Legislative Ethics - Antoinette Mallott. This does not reflect an intent by any member to vote for or against the confirmation of the individual.

There being no objection, the name Antoinette Mallott was forwarded to the full body for consideration.

**SJR 28-ECUMENICAL PATRIARCHATE OF TURKEY**

[1:40:05 PM](#)

SENATOR FRENCH announced the consideration of SJR 28. It was heard previously and public testimony was taken. He noted the letter from the national coordinator of the State Religious Freedom Resolution Project that points out that this same effort is being made with the Office of the President, the U.S. Senate, the U.S. House of Representatives, and others, In the fall, all the resolutions will be given to Secretary of State Hillary Clinton to forward to the Government of Turkey.

SENATOR WIELECHOWSKI moved to report SJR 28 from committee with individual recommendations and attached fiscal note(s). There being no objection, SJR 28 moved from the Senate Judiciary Standing Committee.

**HB 101-EXEMPTIONS: LIFE INSURANCE; ANNUITIES**

[1:41:33 PM](#)

CHAIR FRENCH announced the consideration of HB 101 and asked for a motion to adopt the proposed Senate committee substitute (CS).

SENATOR WIELECHOWSKI moved to adopt the Senate CS for CS for HB 101, labeled 26-LS0176\T, as the working document.

CHAIR FRENCH objected for discussion purposes and asked Senator Coghill for an explanation.

SENATOR JOHN COGHILL, sponsor of HB 101 as Representative Coghill, said the proposed Senate CS would exempt the value of unmatured life insurance and annuity contracts from creditors while still letting people be accountable for their credit obligations. He deferred questions or clarification to his staff, Ms. Moss.

CHAIR FRENCH asked Ms. Moss to give a summary of the bill since the committee hadn't heard it since last session when a few issues cropped up.

RYNNEVIA MOSS, staff to Senator Coghill, said the issue was that the \$10,000 exemption for matured life insurance and annuity contracts was removed from [AS 09.38.025(a)] and inserted in AS 09.38.015, which is property exempt without limitation. This caused legitimate concern about exempting the entire amount of an unmatured life insurance policy or annuity.

The sponsor asked an insurance broker to calculate the income from \$250,000 and \$500,000 annuities to see if a \$500,000 exemption would allow a reasonable retirement. He feels that this is important because a lot of blue collar workers, small businesses, and people who rely on Social Security don't have sufficient income at retirement for a decent living, she said.

[1:44:33 PM](#)

MS. MOSS explained that the proposed CS would exempt up to \$500,000 from attachment by creditors. According to some estimates this would provide income of \$2,600 per month, which is reasonable. She noted that the packets contain charts and calculations supporting this claim.

SENATOR FRENCH asked if the estimated \$2,600 per month income relies in part on the return of principal.

MS. MOSS deferred to Ms. Hulbert.

LINDA HULBERT, Broker, New York Life Insurance Company, Fairbanks, AK, informed the committee that she is the broker who calculated the potential income for someone who wanted to take income from an annuity or the death benefits of a life insurance policy of \$500,000. That amount of money would provide a lifetime income for a couple or the surviving spouse, but each individual has a lot of options with respect to how those funds would be distributed. For example, they could opt to maximize the income throughout their life or get a guaranteed income for a period of years or get some income and leave some money for their heirs. "But \$500,000 would provide about \$2,500 per month to supplement someone's retirement," she said. Ms. Hulbert said this is a reasonable amount and she supports the proposed Senate CS.

SENATOR EGAN joined the committee.

SENATOR FRENCH asked Ms. Moss if organized labor supports the bill.

MS. MOSS related that her conversations with labor representatives have been positive. In fact, trade unions are very large clients of annuities and life insurance to enhance retirement, she said.

SENATOR COGHILL reminded the committee that if the Senate CS is adopted, a concurrent resolution will have to travel with the bill.

CHAIR FRENCH removed his objection to the CS. Finding no further objection, he announced that version T is before the committee and that the concurrent resolution would travel with the bill.

CHAIR FRENCH announced he would hold SCS for CS for HB 101 until Friday.

#### **SB 190-BIOMETRIC INFORMATION FOR ID**

CHAIR FRENCH announced the consideration of SB 190. [CSSB 190(STA) was before the committee.]

[1:49:58 PM](#)

SENATOR WIELECHOWSKI said the purpose of SB 190 is to update a law that protects the privacy rights of citizens from emerging new technologies. In 2004 the Legislature unanimously passed a

bill by Senator Donny Olson that outlaws the collection, analysis or storage of a law-abiding citizen's DNA without their written consent. SB 190 extends that protection to other forms of biometric information because emerging technology for individual recognition threatens privacy rights. The Alaska Constitution has the strongest provision in the nation regarding individual privacy rights and this bill meshes very well with that constitutional provision, he said.

The Legislature recently rejected adopting the federal Real ID Act because it would give the federal government the ability to track people through radio frequency ID chips in their driver's license. But now people can be tracked through facial recognition or retinal scan technologies, which greatly impacts individual privacy rights, he said.

SENATOR WIELECHOWSKI reported that his office was approached by a citizen in 2008 who was refused admittance to a state CPA exam after he offered his driver's license, passport, and Social Security card as identification, but he refused to submit to fingerprinting. He inspired the bill.

[1:52:42 PM](#)

CHAIR FRENCH related that he heard the bill in a previous committee and has no questions.

GEORGE ASCOTT, Staff to Senator Wielechowski, said the packet contains an explanation of the changes that occurred in version T.

SENATOR COGHILL observed that the definitions for "biometric information" on page 3, lines 6-8, are quite broad and seem to be terms of art. He asked if the terms had been litigated and if facial recognition is different than a photograph.

MR. ASCOTT said a photograph is a picture whereas a facial recognition system has a camera, software to capture information beyond the image, and a computer system to classify the elements and differentiate between faces.

[1:55:31 PM](#)

SENATOR COGHILL asked about the circumstance of a private investigator who is trying to prove that somebody was at a crime scene and in the process collects some of this biometric information.

MR. ASCOTT said the Department of Law has similar concerns, specifically with regard to fingerprints because they sometimes rely on fingerprints that a private investigator may have collected. He clarified that thwarting common practices is not the intent.

SENATOR COGHILL said he shares the sponsor's concern about protecting personal identity, but he doesn't want to inadvertently open the door for civil action for doing things that are common practice.

[1:58:10 PM](#)

RICK SVOBODNY, Deputy Attorney General, Department of Law (DOL), explained that in 2004 when Title 18 was amended to deal with DNA, there was concern that much more information could be obtained from a DNA sample than simple identification. Science was and is moving very fast and that's why that legislation was limited to DNA. Since then biometric information like voice recognition has become ubiquitous. Phone companies retain voices to help "teach" their software to read different accents, Google does the same thing with spell checking on search requests, and Las Vegas casinos use visual recognition software to stop card-counters from coming into the casinos.

[2:01:26 PM](#)

MR. SVOBODNY said the foregoing examples don't relate to the department too much, but collecting or retaining fingerprints does because DOL often relies on private investigators from insurance companies to do arson examinations. AS 18.70.090 is a specific statute that says that the police can and should cooperate with private investigators from insurance companies in arson investigations. For that reason, fingerprints may well be collected and retained.

Although the changes in the CS exclude government agencies, it doesn't include the agents of those government agencies. For example, village public safety officers (VPSO) don't fit the definition of a government agency and they wouldn't be able to collect or transmit fingerprint or DNA samples from a crime scene under this. Tribal public safety officers (TPSO) would be similarly limited.

[2:04:07 PM](#)

SENATOR WIELECHOWSKI highlighted that page 2, lines 1-12, specifically say that the prohibitions in subsection (a) do not apply to DNA samples or other biometric information collected

for law enforcement purposes. He asked if that exclusionary provision wouldn't apply to those situations.

MR. SVOBODNY said an ambiguity in a criminal statute always goes to the defense. "Because you define out from governmental entities VPSOs [and] TPSOs - there's that ambiguity that means the state in a criminal case loses."

SENATOR FRENCH asked if he's saying that the exclusionary provision conflicts with Section 3.

MR. SVOBODNY said yes on page 2, line 31.

SENATOR FRENCH asked if it would alleviate his concern to say, "a person who is not a governmental entity or who is not engaged in a law enforcement purpose commits the crime..."

MR. SVOBODNY answered yes.

[2:06:20 PM](#)

MR. SVOBODNY said his two final points are civil as opposed to criminal. First, this creates a private right of action and people can and will sue. Although this won't affect the state very much, he said he wanted to mention it as a point of ethics. Second, he said he doesn't know what the "willing" requirement for informed consent on page 1, line 10, really means.

MR. SVOBODNY summarized that DOL's concern centered on the agency issue and dealing with insurance companies that are providing services to law enforcement or others who are acting at the request of law enforcement.

[2:08:47 PM](#)

SENATOR COGHILL asked his perspective on calling the definitions for biometric information terms of art and questioned whether the meaning of "collect" will be problematic with this much broader category.

MR. SVOBODNY acknowledged that he was concerned about the word "collect" in light of the expanded area of things you cannot collect. He related that for crime to occur there will have to be a culpable mental state, but unless it's defined differently, the person will have to knowingly collect. A larger concern with the current language relates to retention although he can't imagine people being prosecuted for inadvertently collecting and retaining fingerprints. In fact, an Alaska court has said that a person does not have a privacy interest in their fingerprints

just as they don't have a privacy interest in their address or face. This would change that court decision by statute, he said.

SENATOR COGHILL asked if the right to action with respect to collection would be because the intention was to cause the person damage or because another person or entity would gain.

[2:11:45 PM](#)

MR. SVOBODNY said the bill does have a \$5,000 penalty provision and a higher penalty provision if the person is seeking financial gain from someone who obtained or retained their voice for economic benefit.

SENATOR COGHILL asked if there's any reason to be concerned with the definitional terms of art under biometric information.

MR. SVOBODNY said he doesn't understand facial recognition to mean taking a photograph. He hasn't done research to know if facial recognition and voice recognition have specific meanings, but he assumes that they do. Certainly there are lots of examples of their use.

[2:14:09 PM](#)

SENATOR COGHILL said these definitions will be very important if someone wants to bring action. The bill specifies certain fines, but he's trying to figure out how you defend yourself.

JEFFREY MITTMAN, Executive Director, ACLU of Alaska, thanked the sponsor for introducing good, proactive legislation that appropriately balances the needs of law enforcement and the constitutional rights of Alaskans. SB 190 expands current law to include biometric information, which has become important in business and law enforcement. The ACLU of Alaska supports the bill, he concluded.

SENATOR COGHILL asked if he had studied any of the terms under the definition of biometric information.

MR. MITTMAN replied he isn't familiar with any specific case law that would apply in this context.

[2:16:50 PM](#)

BILL SCANNELL, representing himself, reported that he is a privacy activist speaking in strong support of SB 190. He suggested that the committee put things in perspective by considering the difference between losing your wallet fifty years ago and losing it today. Then you'd lose the money in your

wallet and now "when you lose your wallet in many ways you can lose your life," he asserted. He cited the Clear program, which was supposed to expedite a person's trip through airport security, as an example. When that company went bankrupt, tens of thousands of people found that their retina scans, fingerprints, hand geometry, and facial patterns were being sold to the highest bidder. People need to understand how important these biometric issues are and the role of the state in protecting all Alaskans from both misuse and poor implementation, he said.

MR. SCANNELL asked the committee to think about two things. 1) SB 190 will create an overall policy of buying technology that is appropriate to the job at hand; and 2) this is a good pre-emptive move to ensure that if a biometric program is found that works, that biometric won't be wasted.

[2:20:29 PM](#)

CHAIR FRENCH asked Mr. Ascott if the bill had received any pushback.

MR. ASCOTT said the National Council of Life Insurers contacted the sponsor and suggested an amendment to significantly narrow the definition of biometrics. That was done, but the definition may have to be narrowed further to remove the term "DNA" because it's already been defined.

SENATOR COGHILL pointed out that the original legislation was quite specific with respect to getting a DNA sample and holding it for a period of time whereas this bill is significantly broader. I'm open to suggestion, he said, but I really haven't got my mind around how this is going to work. He said some of his concerns about voice recordings and pictures have been allayed, but how that information is collected could be significant. Some of these things are very technical and specific, but they aren't specific in the bill, he said.

[2:23:23 PM](#)

SENATOR WIELECHOWSKI said we'll sit down with you and the Department of Law and try to iron out the concerns because we don't want unintended consequences. What the bill is trying to do is to stop the expansion of the surveillance society in the U.S. - particularly in Alaska.

CHAIR FRENCH announced he would hold SB 190 in committee.

**HB 108-PROP. FORECLOSURE/EXECUTION/TRUST DEEDS**

CHAIR FRENCH announced the consideration of HB 108 and asked for a motion to adopt the Senate committee substitute (CS).

[2:24:46 PM](#)

SENATOR WIELECHOWSKI moved to adopt Senate CS for CS for HB 108, labeled 26-LS0318\M, as the working document.

CHAIR FRENCH objected for discussion purposes.

JANE PIERSON, Staff to Representative Jay Ramras, provided an explanation of the changes.

Section 2 - language was deleted that required a newspaper to have circulation and distribution of at least 500 copies or 10 percent of the judicial district, whichever is less. The circulation requirements were deleted because it's covered by the second class mailing permit. The idea is to allow smaller newspapers to compete and drive down the high price of legal notice of publication.

Section 7 - the word "escrow" was replaced with "trust account" to make it easier for trustees to understand.

Section 10 - five days was changed to 10 days to allow more time to find and correct errors from a sale. This is borough friendly since boroughs are impacted when property goes to sale when it shouldn't.

Section 13 - language relating to the bonding exemption for title providers was deleted from page 11, lines 24-27. The reasoning is that small title companies that have no special expertise warranting an exemption shouldn't be granted one.

[2:27:20 PM](#)

A previous change expanded the list of qualified Internet sites to include newspapers of general circulation so any newspaper that qualifies to run legal ads will be qualified as an Internet site.

Section 4 - the language requirement related to curing the default up to two days prior to the sale date was deleted because a default can now be cured up to the time of the sale.

AS 34.20.070(e) adds language and provides an exception to deeds that were entered into before the effective date of the Act and provides for a different time period to cure.

Section 6 - clarifies the time for the sale and curing the default. It also states that if the sale is rescinded under subsection (g), the deed of trust foreclosed in the rescinded sale is restored to the validity and priority it had before the sale.

[2:30:38 PM](#)

STEPHEN ROUTH, Attorney representing himself, Routh Crabtree, APC, Anchorage, said he's worked on this bill for several years. He reported that the complex Alaska foreclosure statutes originally came from Oregon and have not been updated as the Internet has grown. Thus, much of the bill focuses on updating and cleaning up the statutes so that the court doesn't have to define the statute. He noted that many of the proposed changes are the result of expensive litigation.

Probably the most far-reaching change that's been discussed relates to the Internet publication because that's where people today get their information as opposed to newspapers. If the bill were to pass, Alaska would be the sixth state to mandate Internet publication of foreclosures. The proposed statute includes information about how to do that so that people could actually find the ads. The current version also opens Internet advertisement to newspapers of general circulation. The only caveat is that the newspaper cannot charge a fee to look at these ads on the Internet.

[2:33:26 PM](#)

MR. ROUTH said the overarching goal of the changes is to enhance fairness, much of which is geared to the auction process. This is important because the foreclosure process does violence to a property right - a person's property is being taken away outside the judicial process. That person would want to know that it would be a fair, open and, well-publicized auction without opportunity for back-door deals. Everybody wins when the auction attracts bidders, he said. The bank doesn't get the property back in its portfolio, which avoids losses; the borrower likely will get more for the property if there are more bidders; and title companies avoid litigation. The Internet is key to attracting bidders and this bill underscores that. Bids can be made on the Internet if the trustee is so equipped. "The idea being that somebody can sit in New York and buy property in Homer," he said. This helps the borrower by increasing the bidding pool.

SENATOR WIELECHOWSKI referenced Section 5, page 5, and recalled that changing the notice requirement to a person who is in actual physical possession was a concern last time the bill was presented. He asked how that would work and why it's necessary.

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MR. ROUTH said he doesn't recall that this was an issue, but it was borne of litigation. The issue is that you wouldn't know that there was a lien on a property by examining the record. The question is how to allow for a clean title in a foreclosure auction process when there's an unrecorded lien.

SENATOR WIELECHOWSKI read the proposed amendment to AS 34.20.070(c), which talks about mailing a copy of the default notice within 10 days after recording the notice, and asked the necessity of adding that provision.

MR. ROUTH replied whoever is in that house is entitled to know that possession is being disturbed. It could be a tenant who would need to make other living arrangements. Responding to a further question, he clarified that the owner gets notice separate from the actual physical possession.

SENATOR WIELECHOWSKI asked the rationale for the proposed AS 34.20.070(f) in Section 6.

MR. ROUTH said this goes to the point he made earlier about an unrecorded lien on a property. Typically these are mechanics liens. He explained that a number of statutes provide that people doing work on a house can record notice on the title so they're given notice if there is a foreclosure and they can act to protect their lien. If they don't do that it becomes a judgment call which leads to litigation.

SENATOR WIELECHOWSKI asked if this is common in other states' statutes.

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MR. ROUTH said he's only aware of litigation on this in Alaska.

SENATOR WIELECHOWSKI asked if the proposed amendment to AS 34.20.080(e) in Section 9, which says a foreclosure may not be postponed for more than 12 months unless a new notice of sale is given under (a)(2) of the section, addresses an existing problem.

MR. ROUTH said that's right. Prior to this the timeframe was left to the discretion of the title insurance companies who insure the sale so there was no certainty about the time.

SENATOR WIELECHOWSKI asked if the proposed change in Section 10 to the way cash proceeds of the sale are distributed is substantially different than current law.

MR. ROUTH replied this is common practice, but this ensures that everyone is compliant.

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DENNIS FENERTY, Attorney, Groh Eggers LLC, Anchorage, said he's been doing foreclosures on behalf of lenders for more than 25 years and he applauds Mr. Routh for the work he's done on the bill to make the process fair and to clarify uncertainties. He agreed with Mr. Routh that the [unrecorded lien issue] is problematic. It leaves lenders uncertain about whether they have to look for someone with an interest in the property and that creates a potential cloud. He observed that the notice provisions are also being clarified and made certain and said he agrees that the distribution of proceeds is common practice rather than following the law. Among other good things, the bill includes provisions for deceased borrowers. The current process burdens the lender with the requirement to go to court and open special probate whereas the bill addresses that fairly by requiring reasonable notice.

MR. FENERTY said he didn't have a copy of the latest version of the bill and he wanted to make certain that it still included the Section 2 provision that Internet publication is available to any newspaper of general circulation that maintains a website.

CHAIR FRENCH confirmed that the proposed new AS 09.35.140(c)(1) hadn't changed.

MR. FENERTY asked if the change in the description requirements in Section 2 for a "newspaper of general circulation" had relaxed the standard.

MS. PIERSON explained that the current version removed language from Section 2 that required a paid distribution of at least 500 copies, or 10 percent of the total population of the judicial district, whichever is less. The paid distribution of at least 500 copies is covered under the second class mailing permit in the proposed AS 09.35.140(c)(2)(F)(3) in Section 2.

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MR. FENERTY expressed satisfaction that the current version provides that newspapers of general circulation can host foreclosure notifications. Previously he testified that for his business he needs an alternative website to conduct foreclosures and a place to post notifications. "This is a very good bill and I do believe it's long overdue," he concluded.

MR. PIERSON summarized that HB 108 will modernize the non-judicial foreclosure process and do a lot of good for the state.

MR. ROUTH added his belief that all the comments and concerns that were expressed over the last several years have been addressed to everyone's satisfaction.

SENATOR WIELECHOWSKI asked how the notification requirements will fit rural Alaska.

MR. ROUTH explained that this adds the Internet publication, but the requirement to advertize in a newspaper of general circulation won't change.

SENATOR WIELECHOWSKI asked how foreclosure notification is currently done in rural Alaska.

MR. ROUTH said it's by judicial district and every judicial district has at least one newspaper of general circulation so that's where foreclosures are advertized. That won't change. This adds the Internet publication, which will level the field in terms of getting the information to more people in the particular judicial district. Right now it's perfectly legal to advertize a foreclosure sale for a property in Anchorage in the Kodiak newspaper because they're in the same judicial district even though the information may be of little interest to people in Kodiak. When it's on the Internet, anyone who is looking will see it, he said.

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MR. FENERTY reported that several Bush newspapers including the Arctic Sounder and Nome Nugget already put foreclosure notices on their website whenever they publish a notice in the newspaper.

CHAIR FRENCH announced he would hold HB 108 in committee.

**SB 249-PUBLIC RECORDS/ELECTRONIC TRANSMISSIONS**

CHAIR FRENCH announced the consideration of SB 249.

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MAX HENSLEY, Staff to Senator Johnny Ellis, sponsor of SB 249, said the bill strengthens and clarifies existing law regarding access to and preservation of public records. The sponsor statement includes a quote from the Organic Act of 1913 that says that every person has a right to inspect any public record and every public officer that has custody thereof, is bound to permit an inspection. SB 249 updates the statute while maintaining that strong intent.

MR. HENSLEY said the bill makes four major changes. First, it provides a consistent definition of a public record in the three places it's specifically mentioned in the statutes - maintenance of records by state agencies; access to records by the public; and the criminal statutes for tampering with public records. Second, the definition is consistently broad and explicitly includes electronic transmissions within the definition and explains that impeding the preservation of or access to public records is a violation of existing criminal law. Third, it amends the Executive Branch Ethics Act to require public officers to use state email when taking official action. The current administration supports this recognizing that items that don't travel through state systems cannot be maintained as public records. The final major change limits the fees that the state can charge for access to public records to the actual cost to duplicate those records. The actual cost does not include labor because state employees are already being paid and as such are part of the state budget. This same definition is used by 14 other states nationwide.

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MR. HENSLEY said the previous committee asked for a definition for "public officer" and for "official action" with respect to the requirement in Section 2 for public officers to use state email for official action. Both those terms are defined within that same section of statute. "Official action" means "advice, participation or assistance, including a recommendation decision, approval/disapproval vote, or other similar action, including inaction, by public officers." "Public officer" includes the governor, lieutenant governor, department heads or deputies, division directors or deputies, special assistants, legislative liaisons, assistants to the governor and lieutenant governor, board and commission members, comptrollers, procurement officers, executive directors, and members of the

Board of Trustees and investment officers of the Permanent Fund Corporation and appointed or elected municipal officers. It includes the people who might have a direct impact on public policy, not every state employee.

CHAIR FRENCH asked what the remedy would be if a public officer under Section 2 does not use a state electronic delivery system for their electronic transmissions.

MR. HENSLEY said it would be an ethics violation under the Executive Branch Ethics Act. Section 6 specifies that it's a criminal violation, but it hasn't been tested.

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CHAIR FRENCH announced he would hold SB 249 in committee.

There being no further business to come before the committee, Chair French adjourned the meeting at 2:58 p.m.