

ALASKA STATE LEGISLATURE
SENATE STATE AFFAIRS STANDING COMMITTEE

March 15, 2011

9:01 a.m.

MEMBERS PRESENT

Senator Bill Wielechowski, Chair
Senator Joe Paskvan, Vice Chair
Senator Albert Kookesh
Senator Kevin Meyer
Senator Cathy Giessel

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 98

"An Act relating to biometric information."

- HEARD AND HELD

SENATE BILL NO. 89

"An Act clarifying that a legislator or legislative employee is allowed to accept certain compassionate gifts; allowing legislators and legislative employees to use legislative mailing lists for campaign purposes and nonlegislative purposes; allowing legislators and legislative employees who are representing persons in an administrative hearing to contact hearing officers and attempt to influence the outcome of the hearing if they are professionals licensed in the state, and allowing legislators and legislative employees who are not professionals licensed in the state to contact hearing officers for the purpose of influencing the outcome of the hearing in certain instances; allowing legislators and legislative employees, in certain circumstances, to participate in partisan political activity while on state travel; prohibiting a public member of the Select Committee on Legislative Ethics from disclosing confidential information without authorization; clarifying the ethics disclosure requirements for tickets to or gifts in connection with charity events; amending disclosure deadlines under the Legislative Ethics Act; relating to requests to refrain from disclosure under the Legislative Ethics Act; and establishing a seat for an alternate public member on the Select Committee on Legislative Ethics and clarifying the requirements

related to participation by alternate members in the proceedings of the committee."

- HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 98

SHORT TITLE: BIOMETRIC INFORMATION FOR ID

SPONSOR(s): SENATOR(s) WIELECHOWSKI

03/11/11 (S) READ THE FIRST TIME - REFERRALS
03/11/11 (S) STA, JUD
03/15/11 (S) STA AT 9:00 AM BUTROVICH 205

BILL: SB 89

SHORT TITLE: LEGISLATIVE ETHICS ACT

SPONSOR(s): SENATOR(s) COGHILL

02/16/11 (S) READ THE FIRST TIME - REFERRALS
02/16/11 (S) STA, JUD
03/15/11 (S) STA AT 9:00 AM BUTROVICH 205

WITNESS REGISTER

MICHAEL CAULFIELD, Staff to Senator Wielechowski
Alaska State Legislature
Juneau, AK

POSITION STATEMENT: Presented SB 98 for the sponsor.

JASON GIAIMO, Co-chair
Citizens for Privacy in Alaska and
President
Net Gain Business Consultants of Alaska
Anchorage, AK

POSITION STATEMENT: Testified in support of SB 98.

HORST POEPPERL, Chief Executive Officer
Borealis Broadband
Anchorage, AK

POSITION STATEMENT: Testified in support of SB 98.

SENATOR JOHN COGHILL
Alaska State Legislature
Juneau, AK

POSITION STATEMENT: Sponsor of SB 89.

RYNNIEVA MOSS, Staff to Senator Coghill
Alaska State Legislature
Juneau, AK

POSITION STATEMENT: Presented sectional analysis of SB 89 for the sponsor.

SKIP COOK, Chair
Select Committee on Legislative Ethics
Fairbanks, AK

POSITION STATEMENT: Provided ethics committee positions on provisions of SB 89.

JOYCE ANDERSON, Administrator
Select Committee on Legislative Ethics
Anchorage, AK

POSITION STATEMENT: Provided ethics committee positions on provisions of SB 89.

ACTION NARRATIVE

[9:01:48 AM](#)

CHAIR BILL WIELECHOWSKI called the Senate State Affairs Standing Committee meeting to order at 9:01 a.m. Present at the call to order were Senators Paskvan, Giessel, Meyer, Kookesh, and Chair Wielechowski.

SB 98-BIOMETRIC INFORMATION FOR ID

[9:02:13 AM](#)

CHAIR WIELECHOWSKI announced the first order of business would be SB 98. It is similar to a bill introduced last session, which the legislature did not have time to fully consider. It would protect Alaskans from inappropriate use of their fingerprints, retinal patterns, voice patterns, facial characteristics, and other biometric information.

SENATOR PASKVAN moved to adopt the committee substitute for SB 98, labeled 27-LS0661\M, as the working document of the committee.

CHAIR WIELECHOWSKI objected for discussion purposes.

[9:05:32 AM](#)

MICHAEL CAULFIELD, staff to Senator Bill Wielechowski, said that SB 98 proposed to update a law already on the books, to protect our privacy rights from emerging new technologies. Senate Bill 217, which passed in 2004, outlaws the collection, analysis, or

storage of a law-abiding person's DNA without their written consent. Advances in DNA technology have proven to be of great benefit to society. But DNA science also holds the potential for abuse, including obtaining information that people have a right to keep private.

DNA is only one form of biometric information. Physiologic characteristics can also be used, such as facial recognition technology. Through this technology, an individual can be tracked anywhere they go without their knowledge. Another form is the fingerprint. SB 98 will insure that no organization or person takes biometric information from another without their consent. It allows for the use of other identification, such as a passport or state ID card. There are exceptions for some purposes, and the bill does not ban the consensual contribution of biometric information.

Alaskans cherish their privacy; the right to privacy is even written into the state constitution. On the most basic level, this should include a right not to have their biometric information collected and disseminated to third parties. SB 98 has broad support from Alaskans.

SENATOR COGHILL joined the meeting.

CHAIR WIELECHOWSKI asked Mr. Caulfield to describe the changes from the initial bill to the CS.

MR. CAULFIELD said on page 1, line 13, the "and" after passport has been changed to "or." On page 2, line 21, the phrase "biometric information" has been added for clarification. Page 2, line 22 - 25, added exemptions to clarify that the Department of Administration would not be breaking any laws by taking pictures for ID cards. It also added facial images not used in a biometric system. On page 2, lines 30, more types of biometric information were added. Page 30, line 1, they removed the word "palm" from "palm vein recognition" because of new types of vein recognition.

CHAIR WIELECHOWSKI noted one concern is the idea that there are cameras literally everywhere and they watch you and know exactly where you are. Most Alaskans instinctively don't like that.

[9:09:17 AM](#)

SENATOR PASKVAN asked on page 4, line 22, should the words "palm print" be changed.

MR. CAULFIELD agreed that should be fixed.

9:10:02 AM

JASON GIAIMO, Co-chair, Citizens for Privacy in Alaska, and President, Net Gain Business Consultants of Alaska, Anchorage, said he brought this issue to the attention of several senators two years ago. Data mining and biometrics collection is a big business; it is estimated that industry revenues will exceed \$7.5 billion for 2012 alone. Corporate revenues from fingerprints, iris, vein scanning and facial recognition and surveillance make up about 49 percent of that total. Data broker ChoicePoint sells to 7,000 private and government customers, including the U.S. Department of Homeland Security.

This is about protecting all Alaskans' privacy in an environment that is increasingly hostile toward privacy protection. This was a good bill last session. It is now an urgent bill, because of the remarkably rapid deterioration in the privacy environment in the last 12 months. There is a bill proposed in Washington, DC right now that is a cornerstone of an immigration reform proposal, and includes a mandatory fingerprinting of Americans for a biometric workers' ID card.

9:18:31 AM

This has been proposed by two key senators from the East Coast. This type of proposal makes biometric information an urgent issue in Alaska. All workers would be enrolled in this federal ID card program.

MR. GIAIMO said that two and one-half years ago he went to take the last two parts of the CPA exam in Anchorage. It was January of 2008, the security policy had changed, and they wanted his fingerprints. They would not accept a passport, driver's license, or birth certificate as identification. He had never been fingerprinted before. He refused, which was very hard, but he felt it was important to retain his integrity.

Because he is also a certified internal auditor, he was able to follow the money trail. He learned that a company called Prometric Corporation, which is a global company with offices in Anchorage, was collecting the fingerprints. They receive a fee for collecting the fingerprints, and they sell them to an international data mining company called ChoicePoint. This company received the largest fine in the history of the Federal Trade Commission for bad privacy policies. This company is being trusted with Alaskans' private information. In the end it is about money, not identification. Many other exams are now

requiring fingerprints as ID. A city in Arizona is trying to pass a city ordinance for fingerprinting requirements to receive medicine at a local pharmacy.

[9:23:02 AM](#)

The Superintendent of the Los Angeles Unified School District is considering mandatory fingerprinting of all low-income school children or they will be denied subsidized lunches. These sorts of things are being pushed by biometrics industry lobbyists. It is about money. Passage of SB 98 will hurt their ability to collect and traffic our personal data.

[9:23:59 AM](#)

HORST POEPPERL, CEO, Borealis Broadband, Anchorage, testified in support of SB 98. He said in today's world we face an onslaught of organizations determined to extract every piece of personal information possible. This situation is out of hand, and is becoming more and more dangerous for the average citizen. Companies buy and sell this data, and it can also be lost or stolen. The best defense is not giving up the information in the first place.

[9:26:11 AM](#)

CHAIR WIELECHOWSKI noted the committee also has a letter from the ACLU. He closed public testimony and announced that SB 98 would be held over.

SB 89-LEGISLATIVE ETHICS ACT

[9:28:22 AM](#)

CHAIR WIELECHOWSKI announced the next order of business would be SB 89, which proposes changes to the statutes governing legislative ethics.

SENATOR PASKVAN moved to adopt the proposed committee substitute (CS) for SB 89, labeled 27-LS0452\D, as the working document.

CHAIR WIELECHOWSKI objected for discussion purposes.

SENATOR JOHN COGHILL, sponsor of SB 89, said his staff would go over the sectional analysis. He said the bill is a product of many years of conversation about things going on in the legislature. Nine bills were introduced to change the ethics law. Some issues have been proposed for three years running. One issue became a politically hot issue, dealing with value of meals. This brought the bill to a dead stop. That provision has been removed.

9:30:06 AM

Mailing list issues have come into question: can legislators use campaign mailing lists in the legislature, and can they take mailing lists from the legislature to their campaigns. The ethics committee gave an opinion on that issue some time ago, and that will be codified in this statute.

The second question is about state travel. When is it proper to do campaign activities while traveling as a legislator? Current statutes have a prohibition against anything partisan in nature while on state travel. The question should be: what is partisan activity?

9:31:58 AM

When you are traveling in your home district, you are still that partisan person. It is always unethical to use state travel to go to fundraising activity. Senator Coghill said, "If I go home for a fundraiser, I should pay. If I go to Fairbanks, my home district, for meetings and I drive to Glenallen, and I am asked to speak at a Republican luncheon on the way back to Fairbanks, that would be strictly prohibited under current law."

The rules create a conundrum. Under current rules, he would have to fly back to Juneau and then back to Fairbanks in order to speak at that luncheon. The ethical question should be, when is it right to be partisan and do it on state travel. Some people would say never, but this ignores the geography problem of Alaska. Other states are always connected by roads. It can literally take a day and a half to travel to some places in Alaska. Distance and logistics can make it difficult to be a good representative.

9:35:20 AM

SENATOR COGHILL said another issue is billing the state for costs when traveling out of state. Sometimes costs don't come back within 30 days. This bill expands the time allowed to 60 days.

When you are helping someone in your office with government institutions, navigating the systems, such as workers compensation or the permanent fund, when can you say "Here is the limit of what we will do on staff time." This needs to be defined in statute. For years, legislators were the ombudsman. Now we have an ombudsman's office. We did not have administrative law judges, and we had to push for answers to questions. Now administrative law judges can decide these

issues. Legislators can help constituents up until they get before a final decision-maker. This gives clear boundaries on how far they can help someone.

[9:38:57 AM](#)

He said one exception is for those in the legislature who are lawyers and who will get paid to do that. It allows that action but it must be clear.

In situations where a legislator is unable to attend a meeting of the Legislative Ethics Committee, the committee will put an alternate in. This bill says the alternate must stay in until the hearing is concluded. SB 89 also codifies that when a legislator cannot attend a meeting, the presiding officer can appoint someone to take their place.

Most of these questions have come up in a series of ethics committee meetings.

[9:41:32 AM](#)

RYNNIEVA MOSS, staff to Senator John Coghill, said she would review the sectional analysis of SB 89. This is included in the bill packet. Section 1 is cleanup from legislation passed in 2008, and accommodates the giving and receiving of a compassionate gift. Section 1 also deals with the mailing list issue, and clarifies the use of public funds and facilities, and using legislative mailing lists for fundraising or campaigning purposes.

Section 2 is about doing constituent work as a legislator. There is an exception for violation of this section; as soon as they become aware, the legislator must notify the ethics committee. If a legislator is called to testify before an administrative hearing, that would also be an exception.

Sections 3 and 4 of the bill deal with travel time and partisan activities. The bill drafters tried to be as specific as possible. This is a policy issue for the legislature to decide. SB 89 says they can't participate in partisan activities during a normal working day, which is from 8-5, excluding a meal break, or on a municipal or state election day, or for 30 days preceding an election. Under no conditions can they fundraise for a political party or campaign while traveling on state business.

[9:44:59 AM](#)

CHAIR WIELECHOWSKI asked what current law is regarding the executive branch on this issue.

MS. MOSS responded she was not sure of the current AG opinion.

SENATOR COGHILL said the executive branch pro-rated based on de minimis use, but this doesn't work for legislators.

MS. MOSS said section 5 was requested by the Legislative Ethics Committee. It says they must keep on file for public access all disclosures they have filed.

CHAIR WIELECHOWSKI asked if this change would broaden the law.

MS. MOSS answered it would release the committee from the burden of compiling a list of all disclosures. Section 6 adds public members to the prohibition of disclosing confidential information. Section 7 deals with charity events, and clarifies that charity tickets also include charity event gifts. Under current law it is not clear that those must be disclosed. It tries to clarify that anyone can contribute a gift to a legislator in a sanctioned charity event. Lobbyists can contribute up to \$250. It is reportable and they cannot exceed that amount.

[9:48:27 AM](#)

SENATOR MEYER asked about the Thanksgiving in March event. It is sanctioned, and a legislator could win a door prize of a cruise. If he wins, is that okay as long as he discloses?

MS. MOSS answered yes.

Section 8 is housekeeping regarding charity events. Section 10 accommodates people who may be required to make a disclosure but that disclosure would violate a U.S. or state constitution or state or federal law. They can request to refrain from disclosing.

CHAIR WIELECHOWSKI asked about disclosing the names of clients or patients.

MS. MOSS answered they would have to request not to disclose, but they are not required to disclose confidential information.

Section 11 addresses volunteers and educational trainees. They are not currently required to take ethics training. Under this change they would be. Section 12 is housekeeping for section 14,

which adds a new section dealing with alternates. Section 13 refers to AS 24.16.131 and completely re-writes alternate member language.

[9:51:45 AM](#)

This would include the Alaska Supreme Court in adding alternates to the Legislative Ethics Committee. Section 15 is adding legislative ethics training requirements. Section 16 is a request by the committee to say that hourly legislative employees (such as maintenance and print shop) are exempt from ethics training.

CHAIR WIELECHOWSKI asked how a volunteer was defined.

MS. MOSS said volunteers are sometimes approved through the legislative council. Some legislators also have UAF interns, which is statutory.

SENATOR COGHILL added that if a person helps out in a legislator's office, then that has to go through the Rules chairman or legislative council. They would determine whether that volunteer would have to take ethics training. Once a person has access to information, they should be under the same type of rules as other staff.

[9:54:30 AM](#)

CHAIR WIELECHOWSKI asked if a staff member is sick and someone fills in, what happens.

MS. MOSS asked if that person would be on the payroll.

CHAIR WIELECHOWSKI answered yes.

MS. MOSS responded if a person is on the payroll, they must comply with legislative ethics laws.

MS. MOSS explained that section 17 defines the meaning of state travel. Section 18 repeals AS 24.60.130(m); it is replaced by AS 24.60.131. The committee packet also includes a summary of these changes.

SENATOR COGHILL said the committee packet includes links to ethics laws in other states. Alaska is on the forefront in defining legislative ethics. The state travel issue is not as big in other states, because of geography. The packet also includes minutes from ethics committee meetings, showing discussion on state travel issues.

[9:57:34 AM](#)

MS. MOSS noted there are five or six different advisory opinions in the packet. There are also some sets of minutes from 2010 ethics committee hearings regarding state travel.

SKIP COOK, Chair, Select Committee on Legislative Ethics, said he wanted to comment on two areas of the bill. The state travel issue has been the subject of much discussion. The Ethics Committee takes the position that the statute is quite clear; the committee has no position on what the law should be. Understandably, the legislature has been reluctant to change the current law due to possible public reaction. The legislature passed the law, and the legislature must amend it.

He also commented on the structure of the committee and the use of alternates. There are currently five public members and four legislative members on the committee. This is a disadvantage to the public side, because there is no provision for alternates for public members. He suggested that be changed so that a Chief Justice could appoint an alternate public member if the regular member is unable to attend. This would be better than the current law.

He also feels the current law goes too far with provisions for a legislative member's replacement. It doesn't work well with committee procedures. It is difficult enough to get alternates up to speed, and the provision for a second alternate is not fair unless it is also done for public members; it also makes things difficult for administration of the committee.

[10:03:34 AM](#)

JOYCE ANDERSON, Administrator, Select Committee on Legislative Ethics, said she agreed with the comments of Skip Cook.

CHAIR WIELECHOWSKI closed public testimony and announced SB 89 would be set aside for further hearing.

[10:05:00 AM](#)

There being no further business to come before the committee, Chair Wielechowski adjourned the Senate State Affairs Standing Committee meeting at 10:05 a.m.