

**ALASKA STATE LEGISLATURE**  
**SENATE STATE AFFAIRS STANDING COMMITTEE**

April 5, 2012

9:04 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**

CONFIRMATION HEARING

ALASKA PUBLIC OFFICES COMMISSION

Vance Sanders

- CONFIRMATION ADVANCED

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 180(FIN)

"An Act authorizing the Department of Administration to note a person's status as a retired veteran or a veteran discharged under honorable conditions on the person's driver's license or identification card, to provide certain information to the Department of Military and Veterans' Affairs, and to charge a fee for replacing a valid driver's license or identification card with a new license or card that includes the veteran designation; and providing for an effective date."

- MOVED SCS CSHB 180(STA) OUT OF COMMITTEE

HOUSE BILL NO. 304

"An Act relating to the membership of the Alaska Fire Standards Council."

- HEARD & HELD

HOUSE BILL NO. 234

"An Act relating to picketing or protests at a funeral."

- HEARD & HELD

HOUSE BILL NO. 169

"An Act relating to the review of proposed regulations by the Legislative Affairs Agency; and providing for an effective date."

- HEARD & HELD

**PREVIOUS COMMITTEE ACTION**

BILL: HB 180

SHORT TITLE: VETERAN DESIGNATION ON DRIVER'S LICENSE

SPONSOR(S): REPRESENTATIVE(S) SADDLER

03/09/11	(H)	READ THE FIRST TIME - REFERRALS
03/09/11	(H)	MLV, STA
03/17/11	(H)	MLV AT 1:00 PM CAPITOL 120
03/17/11	(H)	Moved CSHB 180(MLV) Out of Committee
03/17/11	(H)	MINUTE(MLV)
03/18/11	(H)	MLV RPT CS(MLV) NT 5DP 1DNP
03/18/11	(H)	DP: LYNN, GATTO, MILLER, SADDLER, THOMPSON
03/18/11	(H)	DNP: AUSTERMAN
03/18/11	(H)	FIN REFERRAL ADDED AFTER STA
03/31/11	(H)	STA AT 8:00 AM CAPITOL 106
03/31/11	(H)	Moved CSHB 180(STA) Out of Committee
03/31/11	(H)	MINUTE(STA)
04/01/11	(H)	STA RPT CS(STA) NT 4DP 2AM
04/01/11	(H)	DP: GRUENBERG, SEATON, PETERSEN, LYNN
04/01/11	(H)	AM: JOHANSEN, P.WILSON
02/06/12	(H)	FIN AT 1:30 PM HOUSE FINANCE 519
02/06/12	(H)	Moved CSHB 180(FIN) Out of Committee
02/06/12	(H)	MINUTE(FIN)
02/08/12	(H)	FIN RPT CS(FIN) NT 10DP
02/08/12	(H)	DP: FAIRCLOUGH, T.WILSON, NEUMAN, COSTELLO, EDGMON, GUTTENBERG, GARA, JOULE,
02/08/12	(H)	STOLTZE, THOMAS
02/10/12	(H)	TRANSMITTED TO (S)
02/10/12	(H)	VERSION: CSHB 180(FIN)
02/13/12	(S)	READ THE FIRST TIME - REFERRALS
02/13/12	(S)	STA, FIN
03/22/12	(S)	STA AT 9:00 AM BUTROVICH 205
03/22/12	(S)	Heard & Held
03/22/12	(S)	MINUTE(STA)
04/05/12	(S)	STA AT 9:00 AM BUTROVICH 205

BILL: HB 304

SHORT TITLE: ALASKA FIRE STANDARDS COUNCIL

SPONSOR(S): REPRESENTATIVE(S) JOHNSON

01/30/12 (H) READ THE FIRST TIME - REFERRALS  
01/30/12 (H) STA, FIN  
02/21/12 (H) STA AT 8:00 AM CAPITOL 106  
02/21/12 (H) Moved Out of Committee  
02/21/12 (H) MINUTE(STA)  
02/22/12 (H) STA RPT 5DP 1NR  
02/22/12 (H) DP: P.WILSON, GRUENBERG, SEATON,  
PETERSEN, LYNN  
02/22/12 (H) NR: KELLER  
02/28/12 (H) FIN AT 1:30 PM HOUSE FINANCE 519  
02/28/12 (H) Moved Out of Committee  
02/28/12 (H) MINUTE(FIN)  
02/29/12 (H) FIN RPT 11DP  
02/29/12 (H) DP: T.WILSON, GARA, FAIRCLOUGH,  
GUTTENBERG, JOULE, NEUMAN, COSTELLO,  
EDGMON,  
02/29/12 (H) DOOGAN, STOLTZE, THOMAS  
03/06/12 (H) TRANSMITTED TO (S)  
03/06/12 (H) VERSION: HB 304  
03/12/12 (S) READ THE FIRST TIME - REFERRALS  
03/12/12 (S) STA, FIN  
04/05/12 (S) STA AT 9:00 AM BUTROVICH 205

BILL: HB 234

SHORT TITLE: PICKETING AND PROTESTS AT FUNERALS

SPONSOR(S): REPRESENTATIVE(S) THOMAS

04/09/11 (H) READ THE FIRST TIME - REFERRALS  
04/09/11 (H) MLV, JUD  
02/09/12 (H) MLV AT 1:00 PM CAPITOL 120  
02/09/12 (H) Moved Out of Committee  
02/09/12 (H) MINUTE(MLV)  
02/10/12 (H) MLV RPT 4DP 1NR 2AM  
02/10/12 (H) DP: GATTO, LYNN, THOMPSON, SADDLER  
02/10/12 (H) NR: AUSTERMAN  
02/10/12 (H) AM: MILLER, CISSNA  
02/20/12 (H) JUD AT 1:00 PM CAPITOL 120  
02/20/12 (H) Moved Out of Committee  
02/20/12 (H) MINUTE(JUD)  
02/22/12 (H) JUD RPT 5DP 2NR  
02/22/12 (H) DP: LYNN, KELLER, THOMPSON, PRUITT,  
GATTO  
02/22/12 (H) NR: GRUENBERG, HOLMES

03/06/12 (H) TRANSMITTED TO (S)  
 03/06/12 (H) VERSION: HB 234  
 03/12/12 (S) READ THE FIRST TIME - REFERRALS  
 03/12/12 (S) STA, JUD  
 04/05/12 (S) STA AT 9:00 AM BUTROVICH 205

BILL: HB 169

SHORT TITLE: LAA REVIEW OF PROPOSED REGULATIONS

SPONSOR(s): JUDICIARY

02/23/11 (H) READ THE FIRST TIME - REFERRALS  
 02/23/11 (H) JUD  
 02/23/11 (H) STA REFERRAL ADDED BEFORE JUD  
 03/15/11 (H) STA AT 8:00 AM CAPITOL 106  
 03/15/11 (H) Heard & Held  
 03/15/11 (H) MINUTE(STA)  
 03/17/11 (H) STA AT 8:00 AM CAPITOL 106  
 03/17/11 (H) Scheduled But Not Heard  
 03/22/11 (H) STA AT 8:00 AM CAPITOL 106  
 03/22/11 (H) Moved Out of Committee  
 03/22/11 (H) MINUTE(STA)  
 03/23/11 (H) STA RPT 5DP 1NR 1AM  
 03/23/11 (H) DP: JOHANSEN, P.WILSON, KELLER,  
 PETERSEN, LYNN  
 03/23/11 (H) NR: SEATON  
 03/23/11 (H) AM: GRUENBERG  
 03/28/11 (H) JUD AT 1:00 PM CAPITOL 120  
 03/28/11 (H) Moved Out of Committee  
 03/28/11 (H) MINUTE(JUD)  
 03/29/11 (H) JUD RPT 3DP 2NR  
 03/29/11 (H) DP: LYNN, KELLER, GATTO  
 03/29/11 (H) NR: HOLMES, PRUITT  
 04/07/11 (H) TRANSMITTED TO (S)  
 04/07/11 (H) VERSION: HB 169  
 04/08/11 (S) READ THE FIRST TIME - REFERRALS  
 04/08/11 (S) STA, JUD  
 04/03/12 (S) STA AT 9:00 AM BUTROVICH 205  
 04/03/12 (S) Scheduled But Not Heard  
 04/05/12 (S) STA AT 9:00 AM BUTROVICH 205

**WITNESS REGISTER**

REPRESENTATIVE DAN SADDLER  
 Alaska State Legislature  
 Juneau, Alaska

**POSITION STATEMENT:** Sponsor of HB 180.

WHITNEY BREWSTER, Director  
Division of Motor Vehicles  
Department of Administration  
Anchorage, Alaska

**POSITION STATEMENT:** Testified in support of HB 180.

VANCE SANDERS, Appointee  
Alaska Public Offices Commission (APOC)  
Juneau, Alaska

**POSITION STATEMENT:** Testified as appointee to the Alaska Public Offices Commission.

MICHELLE SYDEMAN, Staff  
Senator Bill Wielechowski  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Testified during the APOC confirmation hearing.

ERIN SHINE, Staff  
Representative Craig Johnson  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Presented HB 304 on behalf of the sponsor.

JEFF TUCKER, Past-President  
Alaska Fire Chiefs Association  
North Pole, Alaska

**POSITION STATEMENT:** Testified in support of HB 304.

AARON SCHROEDER, Staff  
Representative Bill Thomas  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Explained HB 234 on behalf of the sponsor.

DOUG GARDNER, Director  
Legislative Legal Services  
Legislative Affairs Agency  
Juneau, Alaska

**POSITION STATEMENT:** Answered questions related to HB 234.

JEFFERY MITTMAN, Director  
American Civil Liberties Union, (ACLU) of Alaska  
Anchorage, Alaska

**POSITION STATEMENT:** Testified during the discussion of HB 234.

MELANIE LESH, Staff  
Representative Carl Gatto  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Provided an overview of HB 169 on behalf of the House Judiciary Committee, sponsor of the bill.

LISA KIRSCH, Attorney  
Legislative Legal Services  
Legislative Affairs Agency  
Juneau, Alaska

**POSITION STATEMENT:** Answered questions related to HB 169.

#### **ACTION NARRATIVE**

[9:04:50 AM](#)

**CHAIR BILL WIELECHOWSKI** called the Senate State Affairs Standing Committee meeting to order at 9:04 a.m. Present at the call to order were Senators Meyer, Paskvan, and Chair Wielechowski. Senators Giessel and Kookesh arrived shortly thereafter.

#### **HB 180-VETERAN DESIGNATION ON DRIVER'S LICENSE**

[9:05:41 AM](#)

**CHAIR WIELECHOWSKI** announced that HB 180 was before the committee. He related that HB 180 authorizes a veteran's designation on driver's licenses and would enable veterans to receive benefits they've earned. It would also provide veterans with a convenient and easy proof of their status as veterans. The committee heard the bill on March 22, 2012, and there is currently a new CS, version 0.

**SENATOR MEYER** moved to adopt the proposed SCS for CS for HB 180, labeled 27-LS0589\0, as the version before the committee.

**CHAIR WIELECHOWSKI** objected for discussion purposes.

**REPRESENTATIVE DAN SADDLER**, sponsor of HB 180, reviewed the changes in version 0 of the bill. Version 0 adds a short provision to address the concerns expressed by the Division of Motor Vehicles that while a U.S. flag might be well-known in Alaska as a designation of a veteran's status, other states may not recognize it as such. Version 0 authorizes the addition of the word "veteran" along with the U.S. flag.

**CHAIR WIELECHOWSKI** noted the arrival of Senator Giessel.

[9:07:08 AM](#)

WHITNEY BREWSTER, Director, Division of Motor Vehicles (DMV), Department of Administration, testified in support of HB 180. She spoke in favor of the additions in version 0 because they will give DMV direction as to what is to be placed on the license. It also gets to the intent of benefitting Alaska veterans, particularly when they travel outside of Alaska.

CHAIR WIELECHOWSKI asked if the Administration supports the bill.

MS. BREWSTER replied that the DMV has no concerns about the bill and supports efforts to honor Alaska veterans.

[9:08:26 AM](#)

SENATOR MEYER moved to report the SCS for CS for HB 180, version 0, from committee with individual recommendations and the accompanying fiscal note. There being no objections SCS CSHB 180(STA) was reported from the Senate State Affairs Standing Committee.

CHAIR WIELECHOWSKI stated it was a good bill.

**CONFIRMATION HEARING(S)**  
**Alaska Public Offices Commission**

[9:09:27 AM](#)

CHAIR WIELECHOWSKI announced that the second order of business would be the confirmation hearings on the Alaska Public Offices Commission (APOC). He asked Mr. Sanders to share his background information and why he wants to serve on APOC.

VANCE SANDERS, Appointee, Alaska Public Offices Commission (APOC), testified as appointee to the Alaska Public Offices Commission. He shared his background as an attorney with Alaska Legal Services. He said he was asked to serve on APOC and thought it would be an interesting experience.

CHAIR WIELECHOWSKI inquired what kind of law Mr. Sanders practices.

MR. SANDERS related that he practices Indian Law, Medicaid and Health Insurance work, arbitration, mediation, and civil litigation. He said the last few years he has done appellate work in federal and state court, as well as more work with the Alaska Supreme Court.

CHAIR WIELECHOWSKI noted Senator Paskvan's arrival.

[9:11:59 AM](#)

SENATOR GIESSEL asked how Mr. Sander's practice would change with his appointment to APOC.

MR. SANDERS replied that he thought serving on APOC would require scaling back a little on his practice, which he said he intended to do anyway.

CHAIR WIELECHOWSKI asked if Mr. Sanders had had a chance to work with APOC.

MR. SANDERS explained he had not observed any APOC meetings. He noted his relationship with the chair of APOC, Ms. Hickerson.

SENATOR KOOKESH reported he has heard about Mr. Sanders' contribution to the Native community. He voiced appreciation for Mr. Sanders' work.

[9:14:04 AM](#)

CHAIR WIELECHOWSKI asked if he had filled out his public disclosure form.

MR. SANDERS said he had not.

CHAIR WIELECHOWSKI asked if Mr. Sanders had any ideas for changes or new directions for APOC.

MR. SANDERS suggested that everything APOC does should be accessible on line.

CHAIR WIELECHOWSKI requested a motion to forward Mr. Sanders' name to a joint session of the legislature for confirmation. Such a motion or approval of such a motion would not indicate intent on the part of any individual member to vote for or against Mr. Sanders' confirmation.

SENATOR PASKVAN moved to forward Mr. Sander's name. There being no objection, the motion carried.

CHAIR WIELECHOWSKI requested information about the nomination of Dr. David Eichler.

[9:16:44 AM](#)

MICHELLE SYDEMAN, Staff, Senator Bill Wielechowski, testified during the APOC confirmation hearing. She informed the committee that she received a call from Jason Hooley, the Director of Boards and Commissions, stating that Dr. David Eichler's name had been withdrawn.

### HB 304-ALASKA FIRE STANDARDS COUNCIL

[9:17:26 AM](#)

CHAIR WIELECHOWSKI stated that HB 304 was before the committee. He noted that the bill makes several changes to the composition of the Alaska Fire Standards Council.

ERIN SHINE, staff to Representative Craig Johnson, explained HB 304 on behalf of the sponsor. She related that HB 304 makes three simple changes to the existing membership of the Alaska Fire Standards Council. The first change is designating an existing seat to a member of the Alaska Professional Firefighters Association. The second change is adding a seat for a member of the Alaska Fire Chiefs Association. The third change is reclassifying an existing seat from a firefighter administrator officer to a member of the State Alaska Firefighters Association.

She stated that the mission of the Alaska Fire Standards Council is to establish professional standards through fire service personnel and the curriculum requirements for the certification of training program. Under HB 304, the governor will appoint one member from each of these associations to the Alaska Fire Standards Council from a list of at least three nominees submitted by each association. The intent of HB 304 is to ensure that all three associations are represented on the Alaska Fire Standards Council and to guarantee that each of the designees from the three statewide firefighting associations will speak with the full confidence of their associations and councils.

[9:18:47 AM](#)

SENATOR GIESSEL asked if there would be 12 members on the board.

MS. SHINE said that was correct. She explained the chair would abstain from voting in the event of a full council.

SENATOR GIESSEL asked why these changes are needed.

MS. SHINE explained that the addition of the new members, who were previously not full members, will allow them to speak with

the full confidence of their associations regarding training information.

[9:20:38 AM](#)

CHAIR WIELECHOWSKI opened public testimony.

JEFF TUCKER, Past-President, Alaska Fire Chiefs Association, testified in support of HB 304. He explained that currently the Alaska Firefighters Association has a seat on the council, but the other two organizations do not. Designated council members can report back to their organizations, which can then have a direct influence on the Alaska Fire Standards Council.

[9:22:18 AM](#)

CHAIR WIELECHOWSKI closed public testimony and set HB 304 aside.

### HB 234-PICKETING AND PROTESTS AT FUNERALS

[9:22:49 AM](#)

CHAIR WIELECHOWSKI announced that the next bill before the committee was HB 234, which would prohibit picketing one hour before or after a funeral. Picketing would be prohibited within 150 feet of where a service was taking place. Forty-six other states have passed laws similar to HB 234.

AARON SCHROEDER, staff to Representative Bill Thomas, explained HB 234 on behalf of the sponsor. He stated that HB 234 would regulate protests that would occur in Alaska. In order to fall under the requirements of the bill, an individual would have to meet the definition of "picketing" within time constraints and within the distance, disrupt the funeral, and show reckless disregard for doing so. The penalty would be disorderly conduct, a Class B misdemeanor, and would carry a penalty of no more than ten days in jail and a \$2,000 fine.

He pointed out that the Alaska Peace Officers Association has submitted a letter of support.

SENATOR MEYER asked if there has been a problem in Alaska.

MR. SCHROEDER replied that the bill was preemptive. He said he was not aware of any protests in Alaska.

SENATOR MEYER asked about concerns regarding the First Amendment - freedom of speech.

MR. SCHROEDER requested a more specific question.

SENATOR MEYER inquired if there is any opposition to the bill. He suggested that someone might argue the bill limits freedom of speech.

MR. SCHROEDER drew attention to the five confines of the bill. He noted that it was not the first time free speech has been regulated by federal or by state law. He opined that the bill was appropriate and middle ground, showing respect for the mourners, as well as for those who wish to express freedom of speech.

[9:25:52 AM](#)

SENATOR MEYER agreed. He pointed out that this type of legislation has been challenged and upheld in 46 other states.

SENATOR PASKVAN asked if any less restrictive application other than criminalization has been considered.

MR. SCHROEDER reported that HB 234 is less restrictive than legislation in other states.

SENATOR PASKVAN asked about having a permitting process in place to address the appropriateness of the protest. He reiterated the question about considering a less restrictive consequence, rather than criminalizing the speech.

MR. SCHROEDER said the sponsor did not consider that.

SENATOR PASKVAN asked if the laws in other states have been challenged.

MR. SCHROEDER replied that there have been a number of challenges. Each case is unique. The language in the bill was drafted from language that has been upheld. He said they modeled the bill after Ohio's law and the federal statute. He opined that if the bill was challenged, it would hold up.

CHAIR WIELECHOWSKI requested a legal opinion on whether the bill violates the First Amendment.

[9:28:40 AM](#)

DOUG GARDNER, Director, Legislative Legal Services, Legislative Affairs Agency, answered questions related to HB 234. He noted that he worked with the sponsor to draft the bill. He addressed Senator Paskvan's question about less restrictive alternatives. He said in the context of criminal statutes that were reviewed

when drafting the bill, the effort was made to make the bill content neutral and to tailor it in the time, place, manner, and scope, as narrowly as possible, recognizing that communities in Alaska are smaller than those in some areas. He recalled that the distances in the statute are less than they are in other states.

He observed that when speech is regulated, litigation is likely. He related that if a person was protesting at a funeral, as long as the protester's communication isn't directed at the burial service and was not disruptive, the statute wouldn't necessarily bar that activity. The statute is directed at communications that are intended to disrupt.

CHAIR WIELECHOWSKI asked about a situation where a protest is taking place which is unrelated to the funeral, but disturbs the funeral.

MR. GARDNER gave an example of a protest on an unrelated matter in the vicinity of a funeral. As long as the protests are not directed at disrupting the funeral, they would not be actionable or be cited or charged.

CHAIR WIELECHOWSKI addressed the definition of "picketing" on page 3, lines 18 and 19: "protest activities engaged in by a person that disrupt or are undertaken to disturb the funeral." He said in the case that Mr. Gardner mentioned, the protest does not have to be undertaken to disturb a funeral, but if it is disruptive, then it meets the definition of picketing. He asked if that was correct.

MR. GARDNER said he did not think Senator Wielechowski was incorrect; however, he referred to case law to say that the focus has to be on disrupting the funeral. He referred to a Sixth Circuit case where the court found that the funeral protest provision restricts only the time and place of speech directed at a funeral or burial service. If a protestor's communication is not directed at a funeral or burial service, the mere fact that one holds a picket sign within 300 feet of a funeral or burial service during the relevant time period, without more, will not support a conviction. He opined that the sponsor's intent was to capture conduct that's directed at the funeral.

CHAIR WIELECHOWSKI suggested changing language to say, "picketing means protest activities engaged in by a person,

undertaken to disrupt or disturb a funeral." He questioned if that language would clarify the bill's intent.

MR. GARDNER hesitated to agree due to what he called unintended consequences. He thought that language that had been addressed in other cases would be preferred. He suggested that changing the language opens it to litigation. The language in the bill has been given a fairly narrow construction.

CHAIR WIELECHOWSKI asked if there were 9th Circuit decisions related to this issue.

MR. GARDNER did not think so. He related that most of the litigation took place in the Mid-west. He said he was not aware of any 9th Circuit cases.

[9:37:59 AM](#)

SENATOR PASKVAN spoke of constitutional challenges related to free speech and suggested considering the least restrictive methods of limiting speech. He focused on Section 2, which makes an infraction a crime of disorderly conduct. He said he was looking for a less restrictive penalty, such as a monetary penalty.

MR. GARDNER said it was a policy call. The current bill identifies the infraction as a B misdemeanor. The infraction could be reduced to a violation making it punishable by fine.

SENATOR PASKVAN suggested having a discussion of least restrictive solutions.

MR. GARDNER noted that in the most recent U.S. Supreme Court expression on this issue, in Snyder vs. Phelps, a tort lawsuit, the Court did recognize that there has been litigation in the context of state criminal statutes regulating picketing at a funeral. The Court did say that these laws are content neutral, and raise different questions than tort cases. The court seemed to be sending a message that a different analysis might be applied by the U.S. Supreme Court in looking at speech and the government's interest in placing content neutral, narrowly drawn restrictions on speech as it related to balancing the rights of free speech against the rights or interests of privacy of funeral mourners. He said the Court sounded like it was receptive to considering protection of individuals in times of grief.

[9:42:37 AM](#)

SENATOR PASKVAN said, from a policy-making standpoint, he wanted to discuss and further consider the issue of free speech.

CHAIR WIELECHOWSKI agreed that was true. He provided a hypothetical example if two groups were protesting a military funeral, one for and one against the military, and questioned if they were violating the law.

MR. GARDNER replied if they both were disrupting the funeral, they could both be cited. The statute is designed to be non-judgmental.

CHAIR WIELECHOWSKI stated that the definition of "protest activities" was key. He referred to page 3, line 18, and asked if there was a definition of protest activities.

MR. GARDNER didn't have that information. He suggested noise and volume of sound and disruptive activities would be involved in the definition. He offered to provide that information.

9:45:25 AM

JEFFERY MITTMAN, Director, American Civil Liberties Union, (ACLU) of Alaska, testified during the discussion of HB 234. He noted he has provided written testimony to the committee. He said that ACLU neither condones nor endorses the views of persons protesting at funerals. Their views are universally thought to be abhorrent and their conduct inappropriate. The first amendment is the right to free speech. He said, "We do best to protect the rights of all to engage in appropriate political dialogue by ensuring that those unpopular opinions expressed in unpopular manners are also protected." He gave an example from the 70's when the ACLU defended the rights of Nazi's to march.

He addressed the constitutional problems he saw in HB 234. He contended that, in the previous example of two groups protesting at a funeral, the group that was not in support of the military would be in violation under HB 234. He maintained the bill is not content neutral. He offered to work with the drafters of the bill to clarify which conduct is permitted and which is not permitted, such as disturbing the peace at a funeral. He supported the right to picket near a funeral. He offered to work with the drafter of the bill in order to protect free speech.

SENATOR PASKVAN asked whether criminalization in the bill was a concern.

MR. MITTMAN opined it was a concern. He said he believed that where criminal penalties apply, courts are likely to give higher scrutiny. In the previous example of a civil case heard by the Supreme Court, the Court clearly stated that, although the expressive conduct was disgusting and the manner abhorrent, it was still protected. Where there are criminal penalties that apply to First Amendment activity, the court would look at the chilling effect of the regulation. Having criminal penalties apply, makes HB 234 more likely to be subject to scrutiny.

[9:51:14 AM](#)

SENATOR GIESSEL stated that the First Amendment right to free speech is not universally protected. Persons crying "fire" in a crowded theater or making inappropriate comments on an aircraft that's in flight, are arrested. In AS 11.61.110(a)(2) it describes disrupting the peace and privacy of another as a crime of disorderly conduct. It clearly is not being appropriately applied for funerals, though the effect is the same, as is being added in definition 8. She inquired if that was true.

MR. MITTMAN reiterated that time, place, and manner of restriction is a common exception to First Amendment protection. The problem with Section 8 is that it states "the person knowingly engages in picketing with reckless disregard where that picketing occurs." Then, in Section 3, the definition of picketing states "picketing means protest activities engaged in by a person that disrupt or undertake to disturb a funeral." Thus, picketing could be silent sign holding that disturbs a funeral by the content of the message. Silent picketing could be encompassed in Section 8 by the definition. That is not disturbing the peace or unreasonably loud noise, as opposed to the example of shouting "fire" in a crowded theater, which represents a danger to harm to individuals.

[9:53:47 AM](#)

CHAIR WIELECHOWSKI suggested tightening up the bill. He voiced concern on page 3, regarding the definition of picketing.

SENATOR PASKVAN asked if government was involved at a funeral, such as a color guard, would that increase or decrease the level of scrutiny.

MR. MITTMAN offered to research that issue.

SENATOR MEYER asked if the bill has a referral to the Senate Judiciary Committee. He suggested making changes there.

CHAIR WIELECHOWSKI closed public testimony. He agreed it was a good bill, but that there is a need to be careful when dealing with free speech issues. He announced HB 234 would be held in committee.

### **HB 169-LAA REVIEW OF PROPOSED REGULATIONS**

[9:56:42 AM](#)

CHAIR WIELECHOWSKI announced that HB 169 was before the committee. It addresses the Legislative Affairs Agency review of regulations.

MELANIE LESH, staff to Representative Carl Gatto, noted she was representing the House Judiciary Committee, sponsor of HB 169. She pointed out that HB 169 is unopposed and not controversial. She explained that the bill corrects two minor problems in an otherwise functioning regulation review system. She related that statutes covering Legislative Legal Services review of proposed agency regulations, which are under AS 24.20.105, are subject to Administrative Regulations Review and the Administrative Procedures Act under AS 44.62.

She explained that the legislative review of statutes currently lists those who can request a review of regulations from Legal Services. They are a standing committee, Administrative Review Committee, and Legislative Council. The same statutes also limit those who Legal Services is allowed to notify of the results of the review. Those are the Administrative Review Committee, President of the Senate, and Speaker of the House. Those lists do not match.

She stated that Legal Services can only notify those entities if the regulations fail to meet the statutory standards. The bill adds the committee or council that requested the review to the list of those who can receive the notice. Also, the bill allows if the regulation implements newly enacted legislation, Legal Services may consult with, and notify, the prime sponsor of the legislation.

She concluded that the bill also allows Legal Services to notify the requester that the regulations meet the statutory standards.

[9:59:13 AM](#)

LISA KIRSCH, Attorney, Legislative Legal Services, Legislative Affairs Agency, answered questions related to HB 169.

CHAIR WIELECHOWSKI asked if the bill was necessary and solves problems.

MS. KIRSCH recalled her experience with the Administrative Regulation Review Committee. She opined that HB 169 does correct a problem. She explained that there are three factors considered under subsection (d) of the provision being amended. It allows for looking at legality, constitutionality, whether the agency that is preparing the regulations has statutory authority, and whether the regulations are consistent with existing statutes. There is also a fourth factor under subsection (f), whether it is consistent with legislative intent. In the context of that particular concern, it was determined that the sponsor should know about the changes in regulation.

She said HB 169 makes good sense. She further explained the needed change to share regulation changes with the committee or council that requested the review.

CHAIR WIELECHOWSKI noted he was a member of the Administrative Regulations Review Committee which approved of these changes.

CHAIR WIELECHOWSKI closed public testimony. He noted a zero fiscal note and another committee referral for the bill. He set HB 169 aside.

[10:03:21 AM](#)

There being no further business to come before the committee, Chair Wielechowski adjourned the Senate State Affairs Standing Committee at 10:03 a.m.