

**ALASKA STATE LEGISLATURE**  
**SENATE COMMUNITY AND REGIONAL AFFAIRS STANDING COMMITTEE**

March 19, 2015

3:36 p.m.

**MEMBERS PRESENT**

Senator Click Bishop, Chair  
Senator Bert Stedman, Vice Chair  
Senator Anna MacKinnon  
Senator Dennis Egan

**MEMBERS ABSENT**

Senator Lyman Hoffman

**COMMITTEE CALENDAR**

SENATE BILL NO. 13

"An Act prohibiting the state and municipalities from using assets to assist a federal agency in collecting certain telephone records or electronic data without a warrant; prohibiting the state from cooperating with a federal agency in collecting certain telephone records or electronic data without a warrant; and providing for an effective date."

- HEARD & HELD

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 70(RES)

"An Act adding land and water to the Creamer's Field Migratory Waterfowl Refuge."

- MOVED CSHB 70(RES) OUT OF COMMITTEE

SENATE BILL NO. 45

"An Act relating to parks and recreation service area boundary changes."

- SCHEDULED BUT NOT HEARD

**PREVIOUS COMMITTEE ACTION**

BILL: SB 13

SHORT TITLE: WARRANTLESS SEARCH OF ELECTRONIC DATA

SPONSOR(s): SENATOR(s) WIELECHOWSKI

01/21/15 (S) READ THE FIRST TIME - REFERRALS  
01/21/15 (S) CRA, JUD  
03/19/15 (S) CRA AT 3:30 PM BELTZ 105 (TSBldg)

BILL: HB 70

SHORT TITLE: CREAMER'S FIELD REFUGE  
SPONSOR(S): REPRESENTATIVE(S) WOOL

01/21/15 (H) READ THE FIRST TIME - REFERRALS  
01/21/15 (H) RES  
02/11/15 (H) RES AT 1:00 PM BARNES 124  
02/11/15 (H) Moved CSHB 70(RES) Out of Committee  
02/11/15 (H) MINUTE(RES)  
02/13/15 (H) RES RPT CS(RES) 8DP  
02/13/15 (H) DP: JOHNSON, JOSEPHSON, HERRON, HAWKER,  
SEATON, OLSON, TARR, TALERICO  
02/23/15 (H) TRANSMITTED TO (S)  
02/23/15 (H) VERSION: CSHB 70(RES)  
02/25/15 (S) READ THE FIRST TIME - REFERRALS  
02/25/15 (S) CRA, RES  
03/17/15 (S) Heard & Held  
03/19/15 (S) CRA AT 3:30 PM BELTZ 105 (TSBldg)

**WITNESS REGISTER**

SENATOR BILL WIELECHOWSKI  
Alaska State Legislature  
Juneau, Alaska  
**POSITION STATEMENT:** Sponsor of SB 13.

SARAH EVANS, Staff  
Senator Wielechowski  
Alaska State Legislature  
Juneau, Alaska  
**POSITION STATEMENT:** Provided an overview of SB 13.

STUART THOMPSON, representing himself  
Wasilla, Alaska  
**POSITION STATEMENT:** Supports SB 13.

MICHAEL MAHARREY, Director  
National Communications  
10th Amendment Center  
Lexington, Kentucky  
**POSITION STATEMENT:** Supports SB 13.

SHAHIB BUTTAR, Executive Director  
Bill of Rights Defense Committee  
Washington, D.C.  
**POSITION STATEMENT:** Supports SB 13.

DAVID DUNSMORE, Staff  
Representative Wool  
Alaska State Legislature  
Juneau, Alaska  
**POSITION STATEMENT:** Addressed questions regarding HB 70.

#### **ACTION NARRATIVE**

[3:36:50 PM](#)

**CHAIR CLICK BISHOP** called the Senate Community and Regional Affairs Standing Committee meeting to order at 3:36 p.m. Present at the call to order were Senators Egan, MacKinnon, Stedman, and Chair Bishop.

#### **SB 13-WARRANTLESS SEARCH OF ELECTRONIC DATA**

[3:38:06 PM](#)

**CHAIR BISHOP** announced the consideration of SB 13.

[3:38:19 PM](#)

**SENATOR BILL WIELECHOWSKI**, Alaska State Legislature, Juneau, Alaska, sponsor of SB 13, said in recent years Alaskans and Americans have become very concerned about the federal government spying on American citizens. He explained that there have been reports of the National Security Agency (NSA) collecting mass amounts of data, e-mails, and phone records with literally trillions of conversations and e-mails have collected in recent years. He asserted that SB 13 is an attempt to push back by prohibiting state or local governments from assisting an agency with federal data and surveillance collection. He noted that the term "agency" is a term of art adopted to refer to the NSA. He said there are about 17 other states that are looking at similar legislation.

[3:40:07 PM](#)

**SENATOR WIELECHOWSKI** noted that a committee substitute (CS) has been proposed that mostly defines what a "federal agency" is.

**CHAIR BISHOP** asked that the committee adopt the CS.

SENATOR STEDMAN asked to make a motion to adopt the CS for SB 13, [29-LS0006\W], as the working document.

SENATOR BISHOP objected for discussion purposes.

[3:41:22 PM](#)

SARAH EVANS, Staff, Senator Wielechowski, Alaska State Legislature, Juneau, Alaska, explained that the CS has very small changes that help define and narrow the definition for "federal agency." Federal agency is defined as "federal data collection or surveillance agency." She explained that new paragraphs were added to Section 4 to address the definitions for "electronic data" and "federal data collection and surveillance agency."

MS. EVANS addressed the sectional analysis on SB 13 as follows:

In 2013, Alaska Governor Shawn Parnell signed legislation into law prohibiting the state from assisting the federal government in the enforcement of law that violates the right to keep and bear arms. SB 13 amends the 2013 law to include a prohibition of state assistance to federal data collection and surveillance agencies.

Section 1 provides that the state or municipalities may not adopt an ordinance inconsistent with provisions of section 2 of the bill.

Section 2 prohibits a municipality or an agent of a municipality from cooperating with a federal data collection and surveillance agency in collecting electronic data without a search warrant, or collecting telephone records without a warrant unless the collection is consistent with state law and from using such records in a criminal investigation or prosecution.

Section 3 prohibits a state municipality agent from using state or municipal assets to aid a federal data collection or surveillance agency in the collection of electronic data without a search warrant or the collection of telephone records without a warrant unless the collection is consistent with state law.

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Section 4 defines "electronic data" and "federal data collection and surveillance agency."

Section 5 prohibits the state or an agent of the state from cooperating with the federal data collection and surveillance agency in collecting data without a search warrant or collecting telephone records without a warrant, unless the collection is consistent with state law and from using such records in a criminal investigation or prosecution.

Section 6 provides that the bill has an immediate effective date.

MS. EVANS provided background on the NSA as follows:

NSA is a U.S. intelligence agency responsible for the global monitoring, collecting, decoding, translation and analysis of information and data for foreign intelligence and counterintelligence purposes.

In 1952, President Harry Truman started the NSA to continue U.S. efforts that had led to breaking German and Japanese codes in World War II.

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MS. EVANS addressed why Alaskans should be concerned about the NSA as follows:

The NSA collects every American's phone records. The PRISM Program allows for the NSA to tap directly into the central servers of Microsoft, Yahoo, Google, Facebook, Skype, You Tube and others; extracting audio and video chats, photographs, e-mails, documents, and connection logs that enable analysis to track foreign targets. The NSA tracks phone locations around the world, this includes millions of Americans; they were able to do this through four major ways. First, when a cell phone is connected to a cellular network, the NSA can sweep the network and find a location. Also, when a mobile device connects to a Wi-Fi signal, you can locate a device down to the city block. Thirdly, GPS receivers are built into mini-cellular and satellite telephones which can locate a device within a 100 meter radius or less. Finally, most mobile operators can track phones through triangulation off multiple

towers; for example, to provide location based emergency services.

MS. EVANS reviewed the NSA timeline as follows:

In October of 2001, President Bush signed orders beginning the NSA's domestic spy program, which allowed the NSA to conduct a range of surveillance activities inside the U.S., which had been barred by law and agency policy for decades. President Bush said the program was aimed at people with suspicious connections to Al-Qaeda and other aspects of the program were aimed not just at targeted individuals, but perhaps millions of innocent Americans never suspected of a crime. In 2006, the NSA maxed-out the Baltimore area power-grid, creating the potential for a virtual shutdown; since then, under President Obama, the NSA aggressively expanded in states like Utah, Texas, Colorado and elsewhere, generally focusing on locations that can provide cheap and plentiful resources like water and power. The Foreign Intelligence Surveillance Act, also known as FISA, was amended and signed into law by President Bush in 2008, the amendment expanded the government's authority to monitor American's electronic communications.

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MS. EVANS reviewed NSA's phone spying tactics as follows:

In 2003, an AT&T technician, Mark Klein, found fiber optic splitters inside a San Francisco based AT&T facility behind a locked door that required both a physical key and a combination code to gain access to the room. In the room, AT&T allowed the NSA to install sophisticated communications surveillance equipment. Basically, the communication equipment that they installed allowed for the government to have their own splitter off of the information that was going through the AT&T center; these splitters made exact copies of the data passing through them, so one stream was directed right to the government while the other stream was directed to the intended recipient.

William Binney, a 30-year NSA veteran, estimated the NSA installed between 10 and 20 intercept-centers within the United States, he also estimates that the NSA collected between 15 and 20 trillion transactions

from the general public over the past 11 years; this includes e-mails, phone calls, and texts.

MS. EVANS explained how NSA's spying tactics are known as follows:

In June of 2013, the Guardian published its first exclusive based on the leaks they received from an NSA employee, revealing a secret court order showing the U.S. government had forced the telecom-giant Verizon to hand over phone records of millions of Americans. Next the Guardian reveals a second story to the previously undisclosed program, PRISM, which entails NSA document claims that gives the agency direct access to data held by Google, Facebook, Apple and other U.S. giants.

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MS. EVANS reviewed what other states are doing to take action as follows:

While the NSA sometimes relies on material support, cooperation, and resources from state and local governments to carry out their mass-surveillance programs, SB 13 is modeled after the Fourth Amendment Protection Act, the act rests on a widely used legal practice known as the anti-commandeering doctrine, which means the federal government cannot force states to carry out their acts or regulatory programs; in other words, if states don't want to participate, they don't have to. 17 states have introduced legislation to protect the U.S. citizen from the NSA warrantless data collection.

SENATOR STEDMAN noted that one of the things happening in Southeast Alaska have been drug busts and dealing with child pornography. He asked if the bill would have any impact on the ability of state law enforcement to monitor drug and child pornography traffic.

MS. EVANS answered that Senator Wielechowski's office has worked with the Department of Law to fix language in the bill so that the bill does not prohibit police departments or state troopers from working with the FBI or other federal agencies as long as they are not involved in surveillance and involuntary bulk collection of telephone records or electronic data. She

summarized that the bill is intended to protect Alaskans' telephone records and electronic data from the NSA.

3:51:40 PM

SENATOR STEDMAN asked to verify that the answer is it "won't effect."

SENATOR WIELECHOWSKI answered that that is absolutely not our intent. He stated that he is aware of the concern and he is trying to craft language as tightly as possible so that the bill specifically limits the NSA. He asserted that he shares Senator Stedman's concerns about child pornography. He noted that law enforcement has expressed some concerns and added that he has been working with the Department of Law to address some of their concerns. He remarked that his office has addressed law enforcement's concerns and he is open to engage them in addressing further changes if needed. He pointed out that the bill's language was based on similar laws which are moving in Utah and Texas and that is why the definition of what agencies the bill applies to. He asserted that ambiguity has been addressed and the bill does not affect the FBI.

SENATOR MACKINNON asked if there has been a change of opinion from the Alaska Association of Chiefs of Police that are expressing their opposition to the bill as well as the Alaska Peace Officers Association who unanimously oppose the bill. She noted that a senator had stated that law enforcement officers want to "have each other's back" and be able to support each other as they try to keep people safe. She revealed that she has met with multiple carriers and found out that unlike the Lower 48 where carriers have centralized hubs, Alaska has multiple hubs without interconnection. She pointed out that carriers had mentioned that they could not stop a federal warrant from coming in and forcing them to provide information.

3:54:38 PM

SENATOR WIELECHOWSKI specified that the bill does not address private companies, but does address the behavior and actions of state and local communities and governments. He summarized that state, local, or rural communities cannot actively participate unless the federal government gets a warrant. He noted that law enforcements' letters of opposition were written before the changes were made to the bill. He opined that law enforcement continues to oppose the bill because they like free-reign to communicate as widely and broadly as possible. He said at some point a policy call must be made to protect Alaskans' personal and private information.

SENATOR MACKINNON stated that she applauds Senator Wielechowski's effort and supports what has been said. She said she looks forward to hearing from the Alaska Department of Law in understanding because the first thing that came to mind as Senator Wielechowski expressed is pornography and children who are being lured by online solicitations and whether that will somehow put those kids in harm's way.

CHAIR BISHOP asked for an explanation of the process by which the federal agency would obtain a search warrant that would be valid under the bill's provisions.

[3:56:31 PM](#)

MS. EVANS explained that the bill does not change how a federal agency would obtain a warrant. She specified that before a state or municipal agent can assist in obtaining information, the federal agency would have to go through the same protocol to get a warrant.

CHAIR BISHOP asked to verify that nothing changes.

MS. EVANS answered correct.

CHAIR BISHOP announced that he removed his objection and version W was before the committee. He opened public comment.

[3:58:07 PM](#)

STUART THOMPSON, representing himself, Wasilla, Alaska, stated that he supports SB 13. He summarized that SB 13 provides a check on the federal government's use of power and enforces the privacy provision of the Alaska Constitution.

[4:02:21 PM](#)

MICHAEL MAHARREY, National Communications Director, 10th Amendment Center, Lexington, Kentucky, said he supports SB 13. He pointed out that the Alaska Senate passed a resolution in 2014 that condemned NSA spying and proclaimed that the Alaska Legislature will not assist the federal government by facilitating programs that are tyrannical in nature. The resolution also called on the federal government to end mass warrantless collection of electronic data. He noted that Governor Parnell signed a bill in 2013 that prohibits the state from cooperating with federal implementation or enforcement of certain programs that infringe on a person's right to keep and bear arms, the right to due process, or aid in the implementation of the federal Real ID Act. He said SB 13 expands

on the unchallenged state law to cover the natural right to privacy. He noted that Alaska law enforcement has expressed opposition to SB 13 saying it could reduce cooperation with federal law enforcement agencies. He explained that the bill's amended language should eliminate any concerns voiced by law enforcement. He emphasized that the refusal to cooperate only applies to bulk warrantless surveillance. He summarized that SB 13 will protect the privacy of Alaskans, preserve the Fourth Amendment, and help reign in an unaccountable and out of control federal spy agency.

[4:06:29 PM](#)

SHAHIB BUTTAR, Executive Director, Bill of Rights Defense Committee, Washington, D.C., said he supports SB 13. He explained that mass surveillance that is untethered from individual suspicion prevents the opportunity for the state to arbitrarily target people based on a retrospective record that they need not go out and collect.

CHAIR BISHOP announced that public comment was closed.

[4:09:55 PM](#)

CHAIR BISHOP announced that SB 13 will be held in committee for further consideration.

[4:10:05 PM](#)

At ease

### **HB 70-CREAMER'S FIELD REFUGE**

[4:12:15 PM](#)

CHAIR BISHOP called the committee back to order and announced the consideration of HB 70. He asked Mr. Dunsmore if he could guarantee that the description in the bill is accurate.

[4:12:54 PM](#)

DAVID DUNSMORE, Staff, Representative Wool, Alaska State Legislature, Juneau, Alaska, answered that both the Department of Natural Resources and the Department of Fish and Game reviewed each version of HB 70 and both agencies assured that the current version is accurate.

[4:14:03 PM](#)

SENATOR STEDMAN motioned to report [CSHB 70(RES), 29-LS0372\E] to the next committee of referral with individual recommendations and accompanying fiscal notes.

CHAIR BISHOP announced that seeing no objections, CSHB 70(RES) moves from the Senate Community and Regional Affairs Standing Committee.

4:14:27 PM

There being no further business to come before the committee, Chair Bishop adjourned the Senate Community and Regional Affairs Standing Committee hearing at 4:14 p.m.