

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

March 2, 2015

1:07p.m.

MEMBERS PRESENT

Senator Lesil McGuire, Chair
Senator John Coghill, Vice Chair
Senator Mia Costello
Senator Peter Micciche
Senator Bill Wielechowski

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

CONFIRMATION HEARING

Lieutenant Governor Successor
Craig Fleener

- CONFIRMATION ADVANCED

SENATE BILL NO. 49

"An Act allowing appropriations to the civil legal services fund from court filing fees."

- MOVED SB 49 OUT OF COMMITTEE

SENATE BILL NO. 5

"An Act relating to loss of income and valuing property for orders of restitution."

- HEARD & HELD

SENATE BILL NO. 41

"An Act relating to criminal history record checks for psychologists and psychological associates; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 5

SHORT TITLE: RESTITUTION: PROPERTY AND INCOME LOSS

SPONSOR(s): SENATOR(s) MICCICHE

01/21/15 (S) PREFILE RELEASED 1/9/15
01/21/15 (S) READ THE FIRST TIME - REFERRALS
01/21/15 (S) L&C, JUD
02/19/15 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)
02/19/15 (S) Moved SB 5 Out of Committee
02/19/15 (S) MINUTE(L&C)
02/20/15 (S) L&C RPT CS 5DP
02/20/15 (S) DP: COSTELLO, STEVENS, GIESSEL, MEYER,
ELLIS
02/20/15 (S) FIN REFERRAL ADDED AFTER JUD
03/02/15 (S) JUD AT 1:00 PM BUTROVICH 205

BILL: SB 41

SHORT TITLE: PSYCHOLOGIST & ASSOC CRIM HISTORY CHECKS

SPONSOR(s): SENATOR(s) GIESSEL

02/04/15 (S) READ THE FIRST TIME - REFERRALS
02/04/15 (S) L&C, JUD
02/17/15 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)
02/17/15 (S) Moved SB 41 Out of Committee
02/17/15 (S) MINUTE(L&C)
02/18/15 (S) L&C RPT 3DP 1NR
02/18/15 (S) DP: COSTELLO, GIESSEL, STEVENS
02/18/15 (S) NR: ELLIS
03/02/15 (S) JUD AT 1:00 PM BUTROVICH 205

BILL: SB 49

SHORT TITLE: CIVIL LEGAL SERVICES FUND

SPONSOR(s): SENATOR(s) MCGUIRE

02/11/15 (S) READ THE FIRST TIME - REFERRALS
02/11/15 (S) JUD, FIN
02/27/15 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
02/27/15 (S) Heard & Held
02/27/15 (S) MINUTE(JUD)
03/02/15 (S) JUD AT 1:00 PM BUTROVICH 205

WITNESS REGISTER

CRAIG FLEENER, Nominee
Special Staff Assistant
Office of the Governor

Juneau, Alaska

POSITION STATEMENT: Testified as nominee to the position of lieutenant governor successor.

GENEVIEVE WOJTUSIK, Staff

Senator Lesil McGuire
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Provided information related to SB 49.

CHUCK KOPP, Staff

Senator Peter Micciche
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented information on SB 5 on behalf of the sponsor.

QUINLAN STEINER, Director

Public Defender Agency
Anchorage, Alaska

POSITION STATEMENT: Answered questions related to SB 5.

CHRIS NETTLES, National Federation Independent Businesses (NFIB) and President, Geo Tek Alaska, Inc.

Anchorage, Alaska

POSITION STATEMENT: Testified in support of SB 5.

SENATOR CATHY GIESSEL

Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Sponsor of SB 41.

QUINLAN STEINER, Director

Public Defender Agency

POSITION STATEMENT: Offered to answer questions.

ROBERT LANE Ph.D., Federal Advocacy Coordinator

Alaska Psychological Association (AK-PA)
Anchorage, Alaska

POSITION STATEMENT: Testified that AK-PA plans to be a part of the process of drafting regulations related to SB 41.

PAMELA VAN HOUTEN, representing herself

Petersburg, Alaska

POSITION STATEMENT: Testified that SB 41 as an important public safety tool.

SARAH CHAMBERS, Operations Manager
Division of Corporations, Business and Professional Licensing
Department of Commerce, Community and Economic Development
Juneau, Alaska

POSITION STATEMENT: Explained the DCCED annual \$20,000 plus fiscal note for SB 41.

ACTION NARRATIVE

[1:07:56 PM](#)

CHAIR LESIL MCGUIRE called the Senate Judiciary Standing Committee meeting to order at 1:07 p.m. Present at the call to order were Senators Coghill, Micciche, Costello, Wielechowski, and Chair McGuire.

Confirmation Hearing Lieutenant Governor Successor

[1:08:14 PM](#)

CHAIR MCGUIRE announced the first order of business would be a confirmation hearing for Craig Fleener. She asked Mr. Fleener to tell the committee why he would like to be the lieutenant governor successor.

[1:08:22 PM](#)

CRAIG FLEENER, Nominee, Lieutenant Governor Successor, said it's a privilege to be offered the position. He talked about trying to be of service to the state and country and described this as another step in the progression.

CHAIR MCGUIRE asked him to tell the committee about himself.

MR. FLEENER said he was born in Anchorage and grew up in Fort Yukon. He served in the military and is still in the Alaska National Guard, currently serving as the senior intelligence officer of the 176th Wing in Anchorage. He worked in tribal management for about 16 years, became a wildlife biologist, served as executive director of the Council of Athabascan Tribal Governments, worked for the Alaska Department of Fish and Game for five years, and is now the Arctic Policy Advisor. He noted that this is a job he unknowingly has been building toward for decades.

[1:13:29 PM](#)

SENATOR COGHILL asked if he sees any improvements that might be made in the Office of the Lieutenant Governor.

MR. FLEENER replied he believes there are ways to improve the voting system to ensure better access for all voters. His goal would be to have it be one of the best systems in the country.

SENATOR COSTELLO asked if he would keep the current lieutenant governor's staff and if he would move his family to Juneau in the event he became lieutenant governor. She stated support for the appointment.

MR. FLEENER replied he would look at each of the staff before making any changes and he believes that both the governor and lieutenant governor need to be in Juneau.

[1:18:00 PM](#)

SENATOR COGHILL expressed gratitude for the work Mr. Fleener did on the emergency response system and for being willing to serve.

CHAIR MCGUIRE echoed the previous comments.

[1:18:50 PM](#)

DOUG VINCENT-LANG, representing himself, Anchorage, Alaska, suggested the committee look more deeply into Mr. Fleener's background and select a better role model for all Alaskans. He mentioned a questionable Facebook posting and questionable travel expenses.

CHAIR MCGUIRE found no further public comment and motioned to forward the name Craig Fleener to the full body for further consideration.

[1:20:48 PM](#)

At ease

[1:23:07 PM](#)

CHAIR MCGUIRE reconvened the meeting and asked Mr. Fleener to respond to the Facebook post question.

MR. FLEENER explained that it was someone else's Facebook posting but he did comment on it on his Facebook page.

CHAIR MCGUIRE said copies of the page are being distributed.

SENATOR MICCICHE said his understanding is that this was not outside of what folks would think is typical for a Facebook posting, but it's a good cautionary note about the far-reaching effect of posting on social media sites.

SENATOR COGHILL asked for an explanation of the supposed inappropriate travel.

[1:25:21 PM](#)

MR. FLEENER explained that he took a trip to Portland for an Association of Fish and Wildlife meeting and he took his wife along. This is not uncommon. What typically happens is that he pays the entire cost of the trip and is reimbursed for what was a state expense. He said he believes what is at issue is the cost of fuel for the rental car. He received a copy of the travel authorization (TA) about the time he resigned to run for lieutenant governor and there was no communication after that about whether he did or did not have an outstanding bill. He spoke with the ethics spokesman today and emailed the administration office at fish and game asking if he owed on that trip. He is waiting for a reply.

SENATOR MICCICHE asked if the image on Facebook has been removed.

MR. FLEENER clarified that he can't remove it because it's not his posting, but it's no longer on his Facebook page.

[1:29:27 PM](#)

CHAIR MCGUIRE thanked Mr. Fleener for answering the questions. Finding no further questions or testimony, she issued the reminder that forwarding the name does not reflect any intent by the members to vote for or against the confirmation during any further sessions.

^#sb49

SB 49-CIVIL LEGAL SERVICES FUND

[1:31:28 PM](#)

CHAIR MCGUIRE announced the consideration of SB 49. "An Act allowing appropriations to the civil legal services fund from court filing fees." She asked Ms. Wojtusik to discuss the outstanding questions from the previous hearing on the legislation.

[1:32:18 PM](#)

GENEVIEVE WOJTUSIK, Staff, Senator McGuire, advised that the packets contain a zero fiscal note from the Alaska Court System and a letter from Nikole Nelson that clarifies the types of cases that the Alaska Legal Services Corporation (ALSC) is specifically prohibited by federal law from engaging in. Those

include: criminal cases; abortion related litigation; representation of undocumented immigrants (except where human trafficking is involved); class actions; representation of prisoners; representation of those evicted from public housing due to illegal drug use; redistricting activities; and cases where a private attorney would take the case on a contingency fee basis.

SENATOR COGHILL thanked the sponsor for the additional information and acknowledged that the testimony and further research convinced him of the nobility of the exercise.

[1:33:44 PM](#)

CHAIR MCGUIRE closed public testimony and asked the will of the committee.

[1:33:58 PM](#)

SENATOR MICCICHE motioned to report SB 49 from committee with individual recommendations and attached fiscal note(s).

CHAIR MCGUIRE announced that without objection, SB 49 is reported from the Senate Judiciary Standing Committee.

^#sb5

SB 5-RESTITUTION: PROPERTY AND INCOME LOSS

[1:34:35 PM](#)

CHAIR MCGUIRE announced the consideration of SB 5. "An Act relating to loss of income and valuing property for orders of restitution."

[1:35:15 PM](#)

SENATOR PETER MICCICHE, Sponsor of SB 5, explained that the legislation is about rising property theft crime and restoring crime victims to a pre-offense condition. The bill clarifies for the courts that the public policy favors requiring criminals to compensate their victims for their loss, including loss of income. He related a story from his district. During the busiest time of year someone attacked the truck of a small family-owned business to get the copper wire. Although the value of the crime was relatively low, the family was out of business for weeks and lost many jobs. He noted that the bill also addresses the appellate court decision in Welsh vs. State of Alaska that overruled a lower court decision awarding market value of restitution to a victim of property theft, because it represented unjust enrichment of the crime victim. He said he believes that perpetrators have basic rights but he has a

tendency to put the rights of the victim above the rights of the perpetrator.

1:38:03 PM

CHUCK KOPP, Staff, Senator Peter Micciche, stated that SB 5 essentially does four things: 1) it amends Alaska's restitution statutes and directs the courts to take into account the public policy consideration that favors requiring offenders to compensate victims for damages and injury, including the loss of income; 2) it provides a definition from the criminal statutes for loss of income as the total loss of income a business or person suffers up to the time that a replacement is obtained; 3) it gives direction to the courts in making determinations of loss or damage for restitution to value the property as the market value of the property; and 4) it amends AS 12.55.100 to reconcile the standard of probation with the standard of sentencing in AS 12.55.045.

1:41:42 PM

SENATOR WIELECHOWSKI asked if this affects the amount of payments that would have to be made by the Violent Crimes Compensation Board.

MR. KOPP replied he didn't believe so because the board's statutory direction to make people whole is entirely different than the restitution statutes. The guidelines are different for establishing awards.

SENATOR COGHILL asked if the bill takes into consideration situations like a frozen building that results from vandalism and it's down for a month and a half.

MR. KOPP confirmed that the restitution statute AS 12.55.100 does look at the value of goods and services.

SENATOR WIELECHOWSKI posed a hypothetical of kids lighting a fire and destroying a fishing boat. He asked if the owner would be compensated for the loss of income and the replacement of the boat.

MR. KOPP replied the current law covers actual damage or injury which would cover the loss of the boat. The bill asks the court to take the loss of fishing income into account as well.

SENATOR WIELECHOWSKI asked to whom and how much the perpetrator would pay back if much of the loss was covered by the fisherman's insurance.

MR. KOPP said he is a fisherman and his policy would cover the loss of the boat, but not the loss of income.

[1:45:26 PM](#)

CHAIR MCGUIRE offered her belief that income would be covered for a business that carried professional insurance.

SENATOR MICCICHE reminded the committee that the goal of the bill is to make the person whole and make the perpetrator responsible for his/her actions. The goal is the same whether or not the insurance pays first and the perpetrator is on a payment plan afterward.

[1:46:06 PM](#)

QUINLAN STEINER, Director, Public Defender Agency, offered to answer questions.

SENATOR WIELECHOWSKI asked what the courts are doing now regarding restitution and how it might change with this law.

MR. STEINER explained that when restitution is ordered it typically becomes part of the judgement for the criminal case. If the person doesn't pay or doesn't attempt to pay it could impact their supervision if the crime is a felony. When the restitution order is large repayment becomes difficult to impossible, and if the person doesn't pay after probation lapses it's something that businesses or individuals could pursue civilly.

SENATOR WIELECHOWSKI asked how judges look at this when people can't make payments.

MR. STEINER said if somebody has no work and no money they're unlikely to be imprisoned for that alone, but it can happen if they're not making payments. Also, it could impact somebody's ability to get a suspended imposition of sentence (SIS) if they're ordered to pay restitution and they're unable to do that.

SENATOR WIELECHOWSKI asked his perspective on whether or not this legislation will result in a lot of people being returned to jail.

MR. STEINER opined that the bill doesn't materially alter the present structure with the exception of the discussion of the difference between the retail value and the market value of the

property. Typically, stolen items are dealt with at the market value, but under the bill the loss of income arguably could be used to make up the difference. The downside, he said, is the potential for more litigation. He added that he believes there is a misconception about the basis for the Welsh case, because it didn't stand for the proposition that stolen property is valued at wholesale.

[1:51:47 PM](#)

SENATOR WIELECHOWSKI asked if these cases would require additional court resources.

MR. STEINER said it depends on the complexity of the case, what is damaged and the litigation associated with the loss of income.

SENATOR WIELECHOWSKI asked if loss of income expands to the crew on a fishing boat that was destroyed.

MR. STEINER replied that is a possibility. The crew could argue they're victims of the crime if they're unable to participate in an opening and could potentially receive a restitution order.

SENATOR COGHILL asked if a court might put off judgment until it made a determination about the income loss or if the court already deals with that sort of timeframe issue.

MR. STEINER asked for clarification of the question.

SENATOR COGHILL replied he's referring to the cost of replacement within a reasonable time in the new subsection (o) in Section 3 and the total loss of income referenced in paragraph (2) of Section 2.

SENATOR MICCICHE reiterated that the bill asks the courts to consider loss of income, realizing that the decision will not be the same in every case. As sponsor, he feels that perpetrators should be responsible for the item as well as the damage inflicted on the victim. The bill allows that to be considered in court.

SENATOR COGHILL restated his question.

SENATOR MICCICHE responded that the bill isn't designed to create indentured servitude. The idea is that the perpetrator should be responsible for restitution to the extent possible and in a reasonable period of time.

CHAIR MCGUIRE observed that the plain language of the bill allows for judicial discretion.

[1:58:54 PM](#)

MR. KOPP told Senator Coghill that the language regarding cost of replacement in a reasonable period of time was lifted from the determinations of value in criminal law in AS 11.46.980.

SENATOR WIELECHOWSKI asked what sort of discretion the court will have when page 1, lines 14-15, page 2, line 16, and page 2, line 28, all talk about what the court shall do.

MR. STEINER explained that the courts don't deviate from using market value when assessing theft and damaged items, although there is discussion about how to determine it for items that are not sold on a readily available market. He reiterated that the Welsh case was somewhat confused in the idea that they were assessing the marked up retail value, which didn't necessarily relate to its market value. That was discussed in another case recently when the appellate court reversed a case that valued the property at more than \$500 retail value which made it a felony. The appellate court held that market value prevailed and that the value was under \$500.

SENATOR WIELECHOWSKI asked if the bill potentially will advance property crime cases from misdemeanors to felonies.

MR. STEINER said he didn't believe so because the bill deals with restitution which is different than assessing value in terms of property damage.

[2:02:46 PM](#)

CHRIS NETTLES, representing National Federation Independent Businesses (NFIB) and President, Geo Tek Alaska, Inc., testified in support of SB 5. He related a personal experience when a snow machine was stolen from a job site at the end of the job. If it had occurred at the beginning of the job, his company would have suffered the consequences of being down until the machine could be replaced. He stressed the importance of the courts being able to consider the total loss a victim suffers in a theft.

[2:05:06 PM](#)

CHAIR MCGUIRE announced she would hold SB 5 in committee for further consideration.

^#sb41

SB 41-PSYCHOLOGIST & ASSOC CRIM HISTORY CHECKS

[2:05:50 PM](#)

CHAIR MCGUIRE announced the consideration of SB 41. "An Act relating to criminal history record checks for psychologists and psychological associates; and providing for an effective date."

[2:05:53 PM](#)

SENATOR CATHY GIESSEL, Sponsor SB 41, stated that this legislation is about public safety. The Board of Psychologist and Psychological Associate Examiners ("Board") that regulates this profession does not have the statutory authority to conduct criminal background checks as a condition of licensure. This is important because this group of professions provides mental health care services to a vulnerable population. The bill also allows the Board discretion to require a background check on renewals; that will be defined in regulation.

[2:08:58 PM](#)

SENATOR MICCICHE asked why this wasn't allowed in statute in the past.

SENATOR GIESSEL replied this has been discussed for a number of years, but it was never brought before the legislature.

[2:09:33 PM](#)

ALAN LEVY, L.P.A., Chair, Board of Psychologist and Psychological Associate Examiners ("Board"), addressed the question about why the Board doesn't already have this authority. He explained that psychology as a profession was originally licensed in 1963 and background checks were typically reserved for certain military and high government positions. This created a status quo even though times changed and greater scrutiny over the people who are providing services to vulnerable populations is now standard best practice.

He explained that for the past eight years the Board has been trying to get the authority to do background checks, but the Department of Law (DOL) opined that it doesn't have the authority to enact regulations to give itself this power. SB 41 would amend the statutes and grant the authority.

[2:12:11 PM](#)

CHAIR MCGUIRE asked if there have been incidents that gave rise to the idea.

MR. LEVY replied not to his knowledge, but there have been problems in some of the other 16 states that do not require background checks for psychologists or psychological practitioners. Unethical practitioners moved from jurisdiction to jurisdiction and did significant harm due to the absence of scrutiny. He opined that Alaska has been fortunate to have a competent and healthy population of psychologists and psychological associates, but it would be irresponsible to say that nothing will ever happen.

CHAIR MCGUIRE noted the letter from Robert Lane, PhD., asking the committee to explore the idea of barrier crimes. She asked the board's intention in that regard.

MR. LEVY replied, assuming the bill passes, the intention is to craft appropriate regulations and policies based on the best science available. He is aware of reliable research that points to risk factors in various crimes at various ages, but those questions are for the regulatory phase. SB 41 applies to the statutory phase.

[2:15:56 PM](#)

SENATOR WIELECHOWSKI related a story about a constituent who didn't want to submit a fingerprint to take a CPA exam due to privacy concerns. He asked how the fingerprint information would be protected to ensure it remains secure.

MR. LEVY said his personal inclinations are in line with what the Alaska Constitution values, but he has to balance that with the duty to protect the public. He explained that as a practical matter, criminal background information is covered under state policy and federal law. It can only be used for the purpose for which it was obtained, it cannot be shared or obtained through a public information search. He suggested the Department of Commerce, Community and Economic Development (DCCED) could discuss exactly how the information is secured.

SENATOR WIELECHOWSKI asked if there are look-back limitations.

MR. LEVY said the general intent is to create this as a gatekeeper for future applicants, not for current licensed professionals. However, the Board wants the regulatory authority to investigate current licensed professionals if there is reasonable cause to do so. The Board also intends to require background checks for licenses that have lapsed for a period of time.

CHAIR MCGUIRE asked if there is a national registry for this profession similar to CODIS that provides information sharing.

MR. LEVY advised that a project has been underway for several years to create a centralized credentialing bank on a national and limited international basis. Complaints would be stored and it would create licensure portability.

[2:22:55 PM](#)

CHAIR MCGUIRE asked if the cost of licensing would increase.

MR. LEVY explained that the applicant pays the cost of the background check which is set at about \$50 by the Department of Public Safety (DPS). He added that all licensed boards are self-supporting and this Board is dropping its licensing fees as a result of carrying a significant surplus for many years.

SENATOR WIELECHOWSKI asked if he disagrees that the language in the bill states that a future Board could require a background check on every renewal. He also asked how often these licenses are renewed.

MR. LEVY explained that licenses are renewed every two years. The question about requiring background checks on renewal is a regulatory issue and he doesn't believe the statutory language should tie the hands of a future Board.

[2:26:47 PM](#)

ROBERT LANE Ph.D., Federal Advocacy Coordinator, Alaska Psychological Association (AK-PA), noted that he submitted written comments. He stated that AK-PA plans to be a part of the process of drafting regulations. He highlighted that during the Labor and Commerce Committee hearing he heard Mr. Levy say the bill is a revenue producer. That caused worry that a background check may be part of relicensing despite the fact that there hasn't been a problem. He reported that the association isn't opposed to the bill, but wants assurance that fees aren't added that prevent people from entering the profession.

[2:29:29 PM](#)

PAMELA VAN HOUTEN, representing herself, Petersburg, Alaska, testified in support of SB 41. She described the bill as an important public safety tool. People who seek the services of these professionals tend to be in a vulnerable situation, and this client/professional relationship is particularly ripe for abuse. It's therefore of utmost importance to bring forward any

past violations that would not be appropriate to this type of professional relationship, she stated.

MR. LEVY clarified that he does not view the bill as a revenue enhancer. The idea of it being revenue positive is that it essentially saves money to prevent somebody from preying on the public and causing harm.

SENATOR WIELECHOWSKI reviewed the fiscal note from DCCED that anticipates this will cost more than \$20,000 per year and states that psychologists will have to submit their fingerprints every two years.

MR. LEVY explained that if a future board decides to do biannual background checks, DCCED has to have calculated that possibility.

[2:34:33 PM](#)

SARAH CHAMBERS, Operations Manager, Division of Corporations, Business and Professional Licensing, Department of Commerce, Community and Economic Development (DCCED), confirmed that the intent behind the fiscal note is to ensure that the expenditure authority is available if a future Board decides to do biannual background checks. If the authority isn't needed, it can be reduced in the management plan.

[2:35:54 PM](#)

CHAIR MCGUIRE announced she would hold SB 41 in committee for further consideration.

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[2:36:12 PM](#)

There being no further business to come before the committee, Chair McGuire adjourned the Senate Judiciary Standing Committee meeting at 2:36 p.m. cryptic