

**ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE**

May 5, 2021

1:33 p.m.

MEMBERS PRESENT

Senator Roger Holland, Chair
Senator Mike Shower, Vice Chair
Senator Shelley Hughes
Senator Robert Myers
Senator Jesse Kiehl

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 129

"An Act relating to information on judicial officers provided in election pamphlets."

- HEARD & HELD

HOUSE BILL NO. 109

"An Act extending the termination date of the Board of Governors of the Alaska Bar Association; and providing for an effective date."

- HEARD & HELD

SENATE BILL NO. 11

"An Act relating to community property and to community property trusts; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 129

SHORT TITLE: ELECTION PAMPHLET INFORMATION RE JUDGES

SPONSOR(S): SENATOR(S) MYERS

04/21/21 (S) READ THE FIRST TIME - REFERRALS

04/21/21 (S) JUD, STA
05/05/21 (S) JUD AT 1:30 PM BUTROVICH 205

BILL: HB 109

SHORT TITLE: EXTEND BAR ASS'N BOARD OF GOVERNORS

SPONSOR(s): REPRESENTATIVE(s) CLAMAN

02/22/21 (H) READ THE FIRST TIME - REFERRALS
02/22/21 (H) JUD, FIN
03/22/21 (H) JUD AT 1:30 PM GRUENBERG 120
03/22/21 (H) Heard & Held
03/22/21 (H) MINUTE(JUD)
03/24/21 (H) JUD AT 1:30 PM GRUENBERG 120
03/24/21 (H) Moved HB 109 Out of Committee
03/24/21 (H) MINUTE(JUD)
03/25/21 (H) JUD RPT 4DP 2NR 1AM
03/25/21 (H) DP: DRUMMOND, SNYDER, KREISS-TOMKINS,
CLAMAN
03/25/21 (H) NR: EASTMAN, VANCE
03/25/21 (H) AM: KURKA
04/09/21 (H) FIN REFERRAL REMOVED
04/12/21 (H) FIN AT 9:00 AM ADAMS 519
04/12/21 (H) <Bill Hearing Canceled>
04/19/21 (H) TRANSMITTED TO (S)
04/19/21 (H) VERSION: HB 109
04/21/21 (S) READ THE FIRST TIME - REFERRALS
04/21/21 (S) JUD
05/05/21 (S) JUD AT 1:30 PM BUTROVICH 205

BILL: SB 11

SHORT TITLE: COMMUNITY PROPERTY TRUSTS

SPONSOR(s): SENATOR(s) BEGICH

01/22/21 (S) PREFILE RELEASED 1/8/21
01/22/21 (S) READ THE FIRST TIME - REFERRALS
01/22/21 (S) L&C, JUD
03/10/21 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)
03/10/21 (S) -- MEETING CANCELED --
03/12/21 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)
03/12/21 (S) Heard & Held
03/12/21 (S) MINUTE(L&C)
03/19/21 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)
03/19/21 (S) Moved SB 11 Out of Committee
03/19/21 (S) MINUTE(L&C)
03/22/21 (S) L&C RPT 4DP
03/22/21 (S) DP: COSTELLO, GRAY-JACKSON, STEVENS,
HOLLAND

WITNESS REGISTER

THERESA WOLDSTAD, Staff
Senator Robert Myers
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Provided a PowerPoint on SB 129 on behalf of the sponsor.

NANCY MEADE, General Counsel
Administrative Offices
Alaska Court System
Anchorage, Alaska

POSITION STATEMENT: Testified during the discussion of SB 129.

SUSANNE DIPIETRO, Executive Director
Alaska Judicial Council
Alaska Court System
Anchorage, Alaska

POSITION STATEMENT: Testified during the discussion of SB 129.

MATT CLAMAN
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Testified as the sponsor of HB 109.

KRIS CURTIS, Legislative Auditor
Legislative Agencies and Offices
Juneau, Alaska

POSITION STATEMENT: Presented audit findings on HB 109.

BEN HOFMEISTER, President
Board of Governors of the Alaska Bar
Office of the Governor
Anchorage, Alaska

POSITION STATEMENT: Spoke as invited testifier on HB 109.

PHIL SHANAHAN, Bar Counsel
Alaska Bar Association
Anchorage, Alaska

POSITION STATEMENT: Spoke as invited testifier on HB 109.

DANIELLE BAILEY, Executive Director
Alaska Bar Association
Anchorage, Alaska

POSITION STATEMENT: Testified during the hearing on HB 109.

SENATOR TOM BEGICH
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Sponsor of SB 11.

BRIX HAHN, Staff
Senator Tom Begich
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented a sponsor statement and sectional analysis on SB 11 on behalf of the sponsor.

MATTHEW BLATTMACHR, Attorney; Principal
Peak Trust Company
Anchorage, Alaska

POSITION STATEMENT: Spoke as invited testifier on SB 11.

WILLIAM PEARSON, Attorney
Foley and Pearson
Anchorage, Alaska

POSITION STATEMENT: Testified in support of SB 11.

ABIGAIL O'CONNOR, Attorney
O'Connor Law Office, LLC
Anchorage, Alaska

POSITION STATEMENT: Spoke as invited testifier on SB 11.

DAVE SHAFTEL, Attorney
Shaftel Delman & Associates
Anchorage, Alaska

POSITION STATEMENT: Spoke as invited testifier on SB 11

ACTION NARRATIVE

[1:33:05 PM](#)

CHAIR ROGER HOLLAND called the Senate Judiciary Standing Committee meeting to order at 1:33 p.m. Present at the call to order were Senators Myers, Hughes, Shower, and Chair Holland. Senator Kiehl arrived shortly thereafter.

SB 129-ELECTION PAMPHLET INFORMATION RE JUDGES

[1:33:45 PM](#)

CHAIR HOLLAND announced the consideration of SENATE BILL NO. 129, "An Act relating to information on judicial officers provided in election pamphlets."

[1:34:02 PM](#)

SENATOR MYERS, speaking as the sponsor, said SB 129 would provide voters with additional information on judges standing for judicial retention. Judges cannot campaign, so voters often lack information on judges' backgrounds. Since the Alaska Judicial Council collects information on judges, SB 129 will require additional background information be included in the Division of Election voter pamphlet.

[1:35:22 PM](#)

THERESA WOLDSTAD, Staff, Senator Robert Myers, Alaska State Legislature, Juneau, Alaska, began a PowerPoint on SB 129 on behalf of the sponsor. She paraphrased slide 2 related to the judicial merit selection retention system:

Alaska established a three-part judicial merit selection and retention system.

1. Alaska Judicial Council screens and nominates judicial applicants based on the candidate's moral character, professional competence, and legal experience.
2. Alaska governor appoints from the list provided by the Alaska Judicial Council.
3. Alaska state voters determine whether a judicial officer will remain on the bench during retention elections.

MS. WOLDSTAD reviewed the Alaska Judicial Council recommendations on slide 3:

- The Alaska Judicial Council conducts extensive performance evaluations, interviews, and public hearings.
 - Surveys assess judicial integrity, temperament, diligence, impartiality, legal ability, and administrative skills
- Based upon their research the council will decide if they will recommend a judicial officer's retention to the public.

- The Judicial Council's recommendation is published in the Alaska Official Election Pamphlet.

[1:37:01 PM](#)

MS. WOLDSTAD reviewed slide 4, Judicial Retention and Election Pamphlets, which depicted information on judicial retention that is typically included in the election pamphlet.

MS. WOLDSTAD directed attention to the table on slide 5, that summarizes information the Alaska Judicial Council compiled from the Judicial Performance Evaluation it conducted.

She pointed out that the Alaska Judicial Council recommendation indicates whether the judge should be retained.

MS. WOLDSTAD reviewed the table on slide 6, Alaska Judicial Council Recommendations and Retention Votes. She reported that voters retained judges about 33 percent of the time when the Alaska Judicial Council recommended a "No" vote. However, it sometimes takes two election cycles before the judges are voted out. The sponsor surmised that voters might need additional information on judicial performance to make informed decisions at the polls.

[1:38:06 PM](#)

MS. WOLDSTAD read the goal of the bill shown on slide 7.

- The success of the system is based upon providing the electorate critical information to make informed decisions regarding judicial retention.
- This legislation will add additional information already collected by the Alaska Judicial Council to the Alaska Official Election Pamphlet.
 - Information shall be provided except when required by law to be kept confidential.
- We are currently working [with] the Alaska Court System, Division of Elections, and the Alaska Judicial Council to assess word limitations and potential information to be provided.

CHAIR HOLLAND asked if the sponsor would like to present the sectional analysis of the bill.

[1:38:59 PM](#)

SENATOR MYERS answered no. He stated that he would like to provide the bill concept today, that he anticipates some amendments to the bill, including ones the division and court system suggested. He stated his intention to fine-tune the bill by adding specificities, such as the judges' affirmation rates on appeals, the types of clients, or the cases they handled in their attorney practices. He explained typical affirmation rates for judges often range in the 80 percent range, so voters may wish to review judges whose rates are 60 percent or lower. This downward trend may indicate a lack of voter trust. One goal of SB 129 is to restore trust and to better inform voters on judicial performance. He suggested that some information, such as the law school they attended and the types of clients they served, may be relevant when initially assessing judges. However, that information may not be needed for subsequent retention elections.

[1:44:26 PM](#)

SENATOR HUGHES asked what type of information might be relevant for the first retention but not subsequent ones. She wondered if it would raise any constitutional issues to differentiate between them.

SENATOR MYERS responded that it might be helpful to know the judges' primary practice areas and their primary clients for the first retention election. Once someone has years of judicial experience, what they did 20 years ago seemed superfluous and the court system agreed that information might not be as relevant.

[1:46:28 PM](#)

SENATOR SHOWER suggested that the trend indicates people want to be more informed about government. People tend not to know as much about the judiciary, so providing more information on judges could be beneficial. He offered his view that providing more transparency in the system could help restore public faith.

[1:48:17 PM](#)

SENATOR KIEHL recalled some items that he considered adding to the voter pamphlet. He asked what value voters would get from knowing which law school judges attended. He wondered if this means someone who goes to a prestigious law school will receive additional consideration.

SENATOR MYERS recalled that there are about 3,000 universities in the US, but only about [200] law schools, so it's a more limited pool. He acknowledged that the location could create bias, but it could also provide a perspective on the judges that voters may find helpful.

[1:51:21 PM](#)

SENATOR KIEHL asked what level of granular information on their clients is needed. He stated that he does not judge or select his doctors based on the patients they may have treated.

SENATOR MYERS said the point is not to single out specific clients. Still, it may be relevant to know the general area of law an attorney practices to highlight the attorney's experience brought to the bench. For example, it would be pertinent to know if the judges spent most of their legal practice representing oil companies or plaintiffs.

[1:53:14 PM](#)

SENATOR HUGHES pointed out that the election pamphlet already lists education and political involvement in the biographical information. She asked if the candidate or the Alaska Judicial Council provided that information. She surmised that the current information was at the discretion of the judicial candidates.

SENATOR MYERS acknowledged the information on the left side of slide 4 was discretionary information the judicial candidates provided to the Division of Elections. The Alaska Judicial Council provides judicial evaluation information per specific requirements. He suggested perhaps melding the two pages by developing discretionary and mandatory requirements. The surveys from the Alaska Judicial Council are available to the public on the council's website, but it does take time to find them.

[1:56:59 PM](#)

NANCY MEADE, General Counsel, Administrative Offices, Alaska Court System, Anchorage, Alaska, stated that the court system has been working with the sponsor to address privacy and security concerns. Still, it is not opposed to the bill as currently written. She stated her intent to continue to work with the sponsor on SB 129.

[1:57:40 PM](#)

SENATOR HUGHES asked if those concerns could be remedied. She asked her to elaborate on the privacy and security concerns.

MS. MEADE referred to page 2, lines 15 to 16, subparagraph (H), which would require the justices or judges to disclose clients and employers of members of the justice's or judge's household. She surmised that some spouses might not wish to disclose their clients. Further, disclosing information could create security concerns, including reporting that a judge's child works at a coffee shop. Additionally, some spouses and adult children have different levels of privacy needs and security concerns and will not want their information published.

[1:58:58 PM](#)

SENATOR SHOWER acknowledged privacy concerns but wanted to ensure that a balance was struck. He suggested that the bill be as transparent as possible within specific parameters. He said public officials should be required to submit to a certain level of disclosure.

[2:01:09 PM](#)

SUSANNE DIPIETRO, Executive Director, Alaska Judicial Council, Alaska Court System, Anchorage, Alaska, echoed Ms. Meade's comment that she has been working with the sponsor to address issues. She explained that in 1978, the Alaska Judicial Council first received the authority to put information about judges standing for retention in the Division of Elections' voter pamphlets. At that time, the council's submission was limited to approximately 300 words. The council's evaluation process was less comprehensive. The council conducted a survey to determine what information voters wanted before voting. Voters responded that the voter pamphlet information was helpful, but they wanted more details. Since then, the council has built up the information in the voter pamphlet to 600 words. The council carefully considers what information best reflects the actual performance of judges. The council has increased the evaluation process, conducting outreach by posting information on social platforms and conducting five user surveys instead of only two to three that it undertook initially. These surveys are sent to jurors, court employees and the public.

[2:03:59 PM](#)

MS. DIPIETRO stated that feedback the council receives indicates that many voters overlook judges in the voter pamphlet, so the council provides three layers of information on its website to provide more detailed information. Besides the council's social media page, it uses limited paid advertising and conducts numerous presentations to community groups and via television. The council's efforts to reach voters are ongoing but can always be improved. At the sponsor's request, she reviewed voter

participation rates over the past 20 years. The number of voters casting votes for or against appellate judges has increased by 8 to 10 percent. In 2000, about 78 or 80 percent of voters cast ballots for judges. By 2020, it grew to 80 to 86 percent. The council would like it to be 100 percent, she said. In 2020, the voters also cast the highest percentage of yes votes for judges in the past 20 years. She surmised that social media outreach has primarily helped inform voters on judicial retention votes. She said she shares the concerns that Ms. Meade raised on page 2, lines 15 to 16 of SB 129.

[2:08:11 PM](#)

[SB 129 was held in committee.]

HB 109-EXTEND BAR ASS'N BOARD OF GOVERNORS

[2:08:19 PM](#)

CHAIR HOLLAND announced the consideration of HOUSE BILL NO. 109, "An Act extending the termination date of the Board of Governors of the Alaska Bar Association; and providing for an effective date."

[2:08:50 PM](#)

MATT CLAMAN, Alaska State Legislature, Juneau, Alaska, sponsor of HB 109, paraphrased the sponsor statement:

HB 109 extends the termination date of the Board of Governors of the Alaska Bar Association until June 30, 2029, in accordance with the recommendation of the Legislative Auditor.

The Board is currently scheduled to terminate on June 30, 2021. The Division of Legislative Audit, having concluded an audit of the Board of Governors, determined that the board is operating in the public's interest and has complied with its duties and responsibilities to the public. It recommends that the termination date be extended to June 30, 2029.

The Division of Legislative Audit has also determined that the Board of Governors should again recommend to the Alaska Supreme Court that it amend the Alaska Bar Rules so as to increase the number of mandatory Continuing Legal Education credit hours, commonly known as "CLE hours." Currently, bar members "shall" complete 3 hours of ethics CLE, and "may" complete 9 hours of general CLE.

The Board of Governors serves an important public service by regulating the practice of law, promoting reform in the law and in judicial procedure, facilitating the administration of justice, investigating complaints, requiring continuing legal education for membership, and increasing the public service and efficiency of the Bar.

REPRESENTATIVE CLAMAN disclosed that he is a member of the Alaska Bar Association.

[2:11:06 PM](#)

KRIS CURTIS, Legislative Auditor, Legislative Agencies and Offices, Juneau, Alaska, presented audit findings on HB 109. She stated that the audit concluded that the board served the public interest by effectively admitting qualified members to the Alaska Bar Association (Bar) and investigating complaints made against Bar members. She noted that members have a copy of the audit [Audit control number 41-20119-20] in their packets.

MS. CURTIS turned to the admission and exam statistic table on page 8 of the audit. The table provides 2017 to 2019 exam statistics. On average, 120 Bar members were approved each year and the average Bar exam pass rate was 54 percent. The audit reviewed a random sample of 15 new member application files and found all 15 members had completed applications and met admittance requirements. She referred to page 6 to the Board of Governors of the Alaska Bar Association Disciplinary Statistics. Between January 1, 2017, and December 31, 2019, 689 complaints were filed with the Bar. Of those, 82 percent were not accepted for further investigation because the complaints were incomplete, did not identify ethical misconduct, or were not within the Bar's jurisdiction. Five complaints resulted in discipline, and 89 complaints were open at the time of the audit.

[2:12:53 PM](#)

MS. CURTIS reviewed the continuing legal education (CLE). In 2011, to promote competency, the board created a committee. She reported that 91 percent were not in favor of increasing the hours to promote competency and professionalism. She reported that active Bar members must obtain three CLE credits per year and be encouraged to obtain nine additional credits voluntarily. The number of mandatory CLE requirements for practicing attorneys is significantly below that of other states. As of March 2020, 37 states require 12 or more CLE hours. The low

number of mandatory CLE hours was identified as a finding in the three prior board sunset audits. In 2011, the board formed a committee to review the mandatory CLE program. The review included electronically surveying Bar members. Ninety-one percent of over 900 Bar member respondents did not favor increasing the number of mandatory CLE credits.

[2:13:37 PM](#)

MS. CURTIS reviewed the audit [control number 41-20119-20] recommendations beginning on page 11.

MS. CURTIS reviewed Recommendation No. 1: The executive director should ensure meetings are properly posted on the state's Online Public Notice System and provide time for public comment. Of the nine reviewed, seven meetings were not published on the state's Online Public Notice System, and six did not include public comment as part of the meeting agenda. According to the executive director, the notices were published in the Bar Rag publication and posted on the Alaska Bar Association (Bar) website. However, that notice does not technically comply with the state's Online Public Notice System.

[2:14:11 PM](#)

MS. CURTIS reviewed Recommendation No. 2 on page 12: The board should improve internal controls over the Bar's online admissions system and case management database.

She reported that the audit identified two deficiencies that could affect the security and availability of data contained in the Bar's online admissions system and case management database. The audit report does not provide details to ensure the weaknesses are not exploited. Pertinent details were communicated to agency management in a separate confidential document. The agency provided corrective actions it would take to remedy the two deficiencies.

[2:14:37 PM](#)

MS. CURTIS reviewed Recommendation No. 3 on page 12: The board should recommend an increase in the non-ethics mandatory CLE for attorneys.

MS. CURTIS stated that although over 99 percent of Bar members did complete the three hours of mandatory continuing legal education (CLE), only 55 percent voluntarily completed the additional 9 hours of continuing legal education. CLE benefits the public and the profession by ensuring attorneys remain

competent regarding the law and the profession's obligations and standards.

[2:15:12 PM](#)

MS. CURTIS reviewed management's response to the audit. On page 29, the court system's general counsel, Nancy Meade, agreed that the board should recommend the number of mandatory continuing legal education hours for its consideration. The board's response on page 31 agreed with Recommendations 1 and 2. Regarding Recommendation 3 related to mandatory continuing legal education (CLE), the board agreed to discuss appointing a committee to review mandatory CLE at its upcoming board meeting.

[2:15:51 PM](#)

SENATOR SHOWER referred to page 6 to the increase in open disciplinary cases. He asked if she had any explanation for the rise in cases. Second, he noted the audit recommended extending the board's termination date for eight years to June 30, 2029. He asked if five years would be better. He recalled interest in reducing the sunset review time for improved legislative oversight.

MS. CURTIS responded that her recommendation of the maximum number of years between reviews is reserved for those entities that she believes are well run and have no significant issues in serving the public interest. She said she has little concern about this board except for the continuing education issue under the Alaska Supreme Court's purview. She highlighted that this issue was raised for the court's consideration. She also noted that there is a cost to oversight. Thus, she weighed the cost of conducting an audit with the risk of the public interest. She maintained that she does not have any problem recommending an eight-year extension.

SENATOR SHOWER maintained that the committee should consider shortening the extension time to keep the legislature involved in the process.

[2:18:20 PM](#)

SENATOR HUGHES disclosed that she has two siblings who are Alaska Bar Association members. She asked for estimated audit costs.

MS. CURTIS responded that single audit costs are billed out to agencies. She offered her belief that the audit costs are \$79 per hour. The overall cost would depend on the length of time for an audit. However, she offered her belief that the agency

cannot perform an audit in accordance with standards for less than 300 hours. Most audits of well-run agencies take 450 hours, but it could take up to 1,000 hours. She estimated the audit for the Bar would cost \$65,000.

[2:19:36 PM](#)

SENATOR HUGHES recalled that medical professionals must perform 100 continuing education hours biennially. Although the Alaska Supreme Court makes decisions on CLE, members polled themselves and chose not to opt for additional hours. She asked if continuing education should be considered statutorily.

MS. CURTIS responded that the Alaska Bar Association is empowered to make recommendations to the Alaska Supreme Court. She said she had heard previous testimony on CLE and the Bar makes good points. For example, the law does not change as dramatically as the medical or accounting professions. She said auditors reviewed other states' best practices to determine their recommendations. She pointed out that the auditors recommended the Bar reconsider the number of CLE hours.

[2:21:13 PM](#)

SENATOR HUGHES remarked on her surprise that the extension is for eight years because of Bar members' resistance to an increase in CLE hours. She said she would like to hear from the Alaska Bar Association on members' resistance.

[2:21:47 PM](#)

SENATOR KIEHL asked if the continuing education hours for medical professionals and attorneys are calculated similarly.

MS. CURTIS answered that an hour is an hour in time. She explained that an accountant must be in training for 15 minutes to count for one continuing professional education (CPE) unit for accounting. She said the accounting profession CPE could cover technical, management or supervisory training. She acknowledged that every occupation was different.

[2:23:19 PM](#)

REPRESENTATIVE CLAMAN explained that the Alaska Supreme Court supervises the Bar, so the Alaska Bar Association makes recommendations, and the court makes the decision on whether to change continuing legal education (CLE) hours. In fact, on disciplinary matters, the Bar makes recommendations to the court. However, the Alaska Supreme Court always has the final authority on whether to impose the discipline.

REPRESENTATIVE CLAMAN said in 2008 he was president of the Bar when the decision was made to go from voluntary continuing legal education (CLE) to requiring three hours of mandatory ethics CLE. Although he could not speak to the court's decision, he recalled the Bar's arguments, including that ethics is the core part of protecting the public. He said there is broad support for ethics continuing education.

REPRESENTATIVE CLAMAN said the non-ethics CLE is more about expertise, so it tends to be subject more to market control. He explained that when practitioners hold themselves out as providing a certain level of expertise, CLE can help. There was a sense of letting the market have more control. Second, except for continuing ethics education, as practitioners get more experience, CLE seems less relevant to them. He suggested that tax lawyers would likely sign up for classes that explain the changes to the tax code.

He said in contrast, basic standards for good trial practice tend not to change. The court has been less interested in mandating additional CLE hours other than ethics because the market tends to drive that more effectively than regulation. He recalled that the Washington State Bar Association requires 54 hours every three years. He said he spent time last month online watching CLEs. While some are interesting, others he has heard repeatedly over the years. The most interesting ones were appellate updates on US or Alaska Supreme Court decisions. He said he is also licensed as an Emergency Medical Technician, which requires more CE hours.

[2:26:58 PM](#)

SENATOR KIEHL asked for the audit cost to the entity.

MS. CURTIS said the cost for entities to respond to an audit certainly would vary. The division spends time preparing a planning phase and scope of work, estimating the number of hours to conduct the audit, which is tracked.

[2:28:09 PM](#)

SENATOR SHOWER maintained his interest in reducing the time for the sunset audit review based on legislative oversight and the limited number of continuing legal education (CLE) hours.

[2:29:07 PM](#)

CHAIR HOLLAND turned to invited testimony.

[2:29:36 PM](#)

BEN HOFMEISTER, President, Board of Governors of the Alaska Bar, Office of the Governor, Anchorage, Alaska, turned to the response to the audit. He reported that two of the audit recommendations were addressed. In terms of the continuing legal education credits (CLE), the Alaska Bar Association has a standing committee that has been reviewing CLE for six months. The Board anticipates taking up the committee's recommendation at its meeting on May 6, 2021. Given Ms. Meade's letter indicating that the Alaska Supreme Court was willing to consider expanding CLE, he anticipated that something would likely be proposed. He said the court could make changes even without the Bar making recommendations. He said the decision to reduce the time between sunset audit reviews is a policy decision for the legislature. The Bar is not resistant to increasing the mandatory CLE credits required for renewal. It is currently reviewing the requirements and will forward recommendations to the court.

[2:32:16 PM](#)

PHIL SHANAHAN, Bar Counsel, Alaska Bar Association, Anchorage, Alaska, echoed Mr. Hofmeister's remarks. He agreed the board would consider CLE requirements at its board meeting on May 6, 2021. He said the Bar has put in significant work on this issue since its October 2020 meeting. The Alaska Supreme Court has the authority to determine CLE requirements, but the Bar continues to work on its recommendations for the court.

[2:33:04 PM](#)

DANIELLE BAILEY, Executive Director, Alaska Bar Association, Anchorage, Alaska, emphasized that in 2008 the Alaska Supreme Court imposed a requirement for three ethics hours, which made it the highest of any state. At that time, in the commentary to the rule, the court said the ethics requirement was to focus on protecting the public and make sure lawyers remain mindful of their obligation to their clients and address topics related to the majority of questions and complaints the Bar receives. She stated that most states require one hour of ethics training.

[2:34:25 PM](#)

SENATOR HUGHES asked if the Alaska Bar Association would report back to the committee on its recommended CLE hours. She said CLE is important, that Alaskans can spend a lot of money for an attorney, so the attorneys must be well equipped to serve the public.

MS. BAILEY offered to report back any findings to the committee. She surmised that the Board of Governors could assign a

subcommittee to address CLE. She highlighted that the Bar submits its annual report to the legislature to keep legislators informed. She stated that the association will have continued oversight.

[2:36:29 PM](#)

CHAIR HOLLAND opened public testimony and, after first determining no one wished to testify, closed public testimony on HB 109.

[HB 109 was held in committee.]

SB 11-COMMUNITY PROPERTY TRUSTS

[2:37:02 PM](#)

CHAIR HOLLAND announced the consideration of SENATE BILL NO. 11, "An Act relating to community property and to community property trusts; and providing for an effective date."

[2:37:27 PM](#)

SENATOR TOM BEGICH, Alaska State Legislature, Juneau, Alaska, sponsor of SB 11, stated that the bill reintroduces a bill from a prior legislature. SB 11 would clarify the meaning of what income and appreciation was intended by a bill introduced in 1997 by then-Representative Joe Ryan. He advised members that he had reviewed the transcripts from the legislature's deliberations on Mr. Ryan's bill. When one partner in a relationship died, the basis for the value of the asset was the purchase price and any appreciation of the estate to ensure it had no tax liability. He briefly reviewed what then-Representative Ryan wanted to address, which was to carry forward the value of the trust and any appreciation when a couple voluntarily forms a community property trust. Because it was not specifically clear in the language, a recent court hearing raised ambiguity related to estates. Some of today's invited testifiers brought this matter to his attention.

[2:39:26 PM](#)

BRIX HAHN, Staff, Senator Tom Begich, Alaska State Legislature, Juneau, Alaska, presented a sponsor statement and sectional analysis on behalf of the sponsor. She read:

[Original punctuation provided.]

Alaska is a state with favorable trust laws and favorable laws for property ownership between spouses. Alaska allows for "opt in" community property

ownership between married spouses. Community property ownership can provide tremendous tax advantages to spouses. In Alaska, residents can enter into community property agreements, and residents and nonresidents can enter into Alaska community property trusts. This benefits the individuals entering these agreements, the trust industry of Alaska, increases deposits in Alaska banks and through the revenue generated by the formation of a new trust, the state.

Community property is simply a way to own joint property. A common way to enter a community property agreement is in conjunction with one's spouse. Each party must elect into this agreement and the agreement provides, most commonly, equal ownership and management of specific property.

Currently, community property has a significant tax advantage. When a spouse dies, community property is placed into a category that allows tax advantages when that property is sold. To realize these advantages, appreciation and income must be characterized as community property.

[2:40:42 PM](#)

The default rule has generally been that appreciation and income on community property will be characterized as community property, unless otherwise declared in the community property trust. Trust attorneys have attested to this interpretation, however recent court rulings have created an ambiguous understanding of this general criterion. This legislation, consistent with industry understandings of trusts, seeks to clearly define community property as including appreciation and income on community property.

SB 11 establishes a clear definition of appreciation and income as community property, as intended by The Community Property Trust Act. This bill also has a retroactive effective date of May 23, 1998.

[2:41:31 PM](#)

MS. HAHN provided the sectional analysis for SB 11. She read [Original punctuation provided]:

Section 1. Clarifies AS 34.77.030(h), by affirming legal intent to ensure appreciation and income in

community property trusts are in fact community property unless expressly otherwise stated in legal trust documents.

Section 2. Provides that AS 34.77.030(h) is retroactive to community property trust agreements entered into after May 23, 1998 and defines "community property trust" consistent with statute.

Section 3. Adds as a new uncodified law of the State of Alaska, a savings clause and asserts that Sec. 2 of this act does not impact court actions or proceedings that began before the effective date, or a community property rights accrued before the effective date.

Section 4. Adds as a new uncodified law of the State of Alaska retroactivity to AS 34.77.030(h).

Section 5. Establishes retroactivity through May 23, 1998.

[2:42:46 PM](#)

SENATOR HUGHES asked why the bill had a specific retroactive date of May 23, 1998.

SENATOR BEGICH answered that this is the effective date of the Community Trust Act. It will establish continuity but the savings clause ensures that it does not affect any legal action before the state today. Essentially, it will establish that the understanding and intent extended by then-Representative Ryan's comments during committee hearings was the bill's intent and of the Community Trust Act established at the time.

SENATOR HUGHES asked whether any appreciation and income would be considered community property prior to that date.

SENATOR BEGICH deferred to Mr. Blattmachr. He stated that the Community Trust Act passed the legislature and prospectively created that relationship. Before 1998, the law did not provide for it.

[2:44:12 PM](#)

CHAIR HOLLAND asked if any dispute had occurred since 1998, such that the bill would overturn the decision.

SENATOR BEGICH responded that the bill included the savings clause to clarify that the intent is not to overturn any legal

decisions already made. Instead, the intent is to enforce the will retroactively. He introduced the bill to correct the interpretation but not change any specific court outcome.

[2:45:16 PM](#)

SENATOR HUGHES disclosed that she had community property with her husband prior to 1998. She asked whether there was any legal way to apply SB 11 to community property acquired before May 1998.

CHAIR HOLLAND turned to invited testifiers.

[2:46:35 PM](#)

MATTHEW BLATTMACHR, Attorney; President & Chief Executive Officer, Peak Trust Company, Anchorage, Alaska, spoke in support for SB 11. He stated that many Alaskan residents had taken advantage of this law since it passed in 1998. He related a scenario in which a couple bought an asset together to fund their grandchildren's education through Alaska's community property and options. The surviving spouse sold the asset and funded their grandkids' college education. He characterized this as a powerful law. In response to the question, if it would overturn any disputes, he referred to a case in Alaska court. He explained that the case in question used semantics but did not consider the law's intent, which was to follow the rules of the federal property law. The savings clause was specifically added to protect those parties and ensure that this bill will not overturn their case.

MR. BLATTMACHR, in response to Senator Hughes' earlier question, clarified that prior to the passage of the 1998 law, Alaska did not have the option of community property. It was solely separate property, and it became optional with the passage of the Community Property Act.

[2:48:52 Pm](#)

SENATOR KIEHL asked what right might have accrued before May 23, 1998, that the bill protects since it only affects community property.

MR. BLATTMACHR answered that he was not sure any right could have accrued prior to the passage of the Community Property Act and any property being converted to community property. The only protection would be any right that has accrued since 1998 that was converted during that time.

[2:49:56 PM](#)

WILLIAM PEARSON, Attorney, Foley and Pearson, Anchorage, Alaska, said he is a shareholder with Foley and Pearson. He stated that the firm believes that SB 11 is a simple but effective statutory fix. It would create the presumption that the income and appreciation of an asset transferred to a community property trust is community property. As Mr. Blattmachr testified, the bill would clarify that the income and appreciation is community property. It will provide the double benefit of the step-up in basis under the federal tax regime, which is the purpose of this legislation.

[2:50:54 PM](#)

ABIGAIL O'CONNOR, Attorney, O'Connor Law Office, LLC, Anchorage, Alaska, stated that she is an estate planning attorney. She stated her support for SB 11. She opined that multiple trusts would be adversely affected without this bill because the income and appreciation would not be treated as community property. She said she was aware of at least one trust that would be affected by this issue. This bill will provide an automatic fix.

[2:52:05 PM](#)

DAVE SHAFTEL, Attorney, Shaftel Delman & Associates, Anchorage, Alaska, stated that he practices in the trust and estate area of law. He said he is one of a group of attorneys that have worked with the legislature since the enactment of the enabling legislation to improve the trust and estate laws. This bill will correct a trap for the unwary, he said. He stated a false rule exists. The person drafting a trust must affirmatively state in the trust that community property includes appreciation and income to receive federal tax benefits. Absent that affirmative statement in the trust, the default rule will apply, such that the appreciation and income will not be considered community property. Then the estate would lose the entire tax benefit of community property. SB 11 would reverse the default rule. It provides that the default rule will be that appreciation in income will automatically become community property unless otherwise stated. He acknowledged that a few people might wish to state otherwise. However, almost all of his clients are Alaskan residents or nonresidents who will want to opt-in and use this tax advantage for community property. He explained that if a married couple owns property in tenants in common or tenants by the entirety, not by community property when the first spouse dies, only that spouse's one-half of the community property will receive an adjustment of basis up to a fair market value. When that deceased spouse's half is sold, there would not be any capital gains tax, but when the surviving spouse's half is sold, there will be a capital gains tax equal to that

appreciation and income. Community property law takes advantage of a tax rule that dates back to the 1940s. Alaska is one of 13 states with community property laws. Under those provisions, when the first spouse dies both halves get an adjustment of basis up to fair market value. The adjustment of basis is the appreciation and income under discussion. In community property states, if one spouse dies, both halves will receive an adjustment of basis up to fair market value. The surviving spouse can sell the property and not be subject to a capital gains tax. Thus, community property has a significant advantage, so Alaska adopted it in 1998. He stated support for the bill.

[2:57:46 PM](#)

CHAIR HOLLAND opened public testimony and, after first determining no one wished to testify, closed public testimony on SB 11.

[SB 11 was held in committee.]

[2:58:28 PM](#)

There being no further business to come before the committee, Chair Holland adjourned the Senate Judiciary Standing Committee meeting at 2:58 p.m.