

**SENATE JOURNAL**  
**ALASKA STATE LEGISLATURE**  
**TWENTY-FOURTH LEGISLATURE**  
**THIRD SPECIAL SESSION**

**Juneau, Alaska**

**Thursday**

**July 27, 2006**

**Sixteenth Day**

Pursuant to adjournment the Senate was called to order by President Stevens at 12:15 p.m.

The roll showed nineteen members present. Senator Dyson was absent.

The prayer was offered by the Chaplain, Lindy Stoops. Senator Hoffman moved and asked unanimous consent that the prayer be spread. Without objection, it was so ordered.

Dear Heavenly Father:

We are very grateful for this day to be gathered together as a legislative body. We are also very grateful for all of the wonderful people who have put forth their time and effort into deciphering these important issues.

We ask Thee to please watch over and guide the Senators as they make their way through this extended process. We ask Thee to bless them with patience and to unify them to make thought out and righteous decisions. We also ask Thee to watch over the families of these twenty Senators and ask Thee to bless them with safety while they are apart.

In the name of Jesus Christ.

Amen.

Senator Huggins led the Senate in the Pledge of Allegiance.

**Certification**

Senator Gary Stevens moved and asked unanimous consent that the journals for the thirteenth through fifteenth legislative days be approved as certified by the Secretary. Without objection, it was so ordered.

The presence of Senator Dyson was noted.

**Introduction and Reference of Senate Bills****SB 3003**

SENATE BILL NO. 3003 was not introduced.

**SB 3004**

SENATE BILL NO. 3004 BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR, entitled:

"An Act making an appropriation to study the feasibility of a spur line from a gas pipeline in this state; and providing for an effective date."

was read the first time and referred to the Special Committee on Natural Gas Development and the Finance Committee.

Governor's transmittal letter dated July 25:

Dear President Stevens:

Under the authority of article III, section 18, of the Alaska Constitution, I am transmitting a bill making an appropriation of \$4,000,000 from the general fund to study the feasibility of a spur line from a gas pipeline in this state.

Alaskans are saying that more readily available gas, at more reasonable prices, is essential for economic development in this state. This appropriation will facilitate research regarding a spur line from a gas pipeline, and will provide options for policy makers in this state to increase in-state delivery of gas.

I urge your prompt and favorable consideration of this bill.

Sincerely yours,

/s/

Frank H. Murkowski  
Governor

**SB 3005**

SENATE BILL NO. 3005 BY THE SENATE RULES COMMITTEE  
BY REQUEST OF THE GOVERNOR, entitled:

"An Act relating to contempt of court and to  
temporary detention and identification of persons."

was read the first time and referred to the Judiciary Committee.

The following fiscal information was published today:

Fiscal Note No. 1, zero, Department of Law  
Fiscal Note No. 2, zero, Department of Administration  
Fiscal Note No. 3, zero, Department of Administration  
Fiscal Note No. 4, zero, Department of Corrections

Governor's transmittal letter dated July 27, 2006:

Dear President Stevens:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to contempt of court and to temporary detention and identification of persons. The bill addresses the increase in serious gang-related incidents in Alaska.

The recent spate of gang-related shootings in Anchorage has shown that the police need clearer guidance as to their authority to investigate those crimes. Often, witnesses to the crimes will not identify themselves, not say what happened, and quickly leave the scene without assisting the police in any way. There are any number of reasons why some witnesses do not want to talk to the police. But once they leave the scene it is often difficult or impossible for the police to identify them and locate them.

The purpose of the bill is to give the police statutory authority to temporarily detain a witness of a serious crime in order to find out what the person knows, or at least to identify the witness so that the police can talk to the witness at a later time when the witness feels safe or is better able to talk to the police.

The authority of the police to temporarily detain witnesses to crimes is recognized by Alaska case law from both the Alaska Supreme Court and the Alaska Court of Appeals. See *City of Kodiak v. Samaniego*, 83 P.3d 1077 (Alaska 2004) and cases cited in that opinion. However, the full scope of that police authority is not entirely clear from the court opinions; therefore, this bill would provide helpful statutory standards for the police.

Proposed AS 12.50.201(a) closely follows the *Samaniego* opinion in allowing the police to temporarily detain a person who witnessed or was near the commission of a serious crime, if the detention is necessary to identify or protect the person, to find out what happened, or in other "exigent circumstances" that a court finds to be appropriate under the facts of a particular case. The *Samaniego* opinion does not specify what is a serious crime, however, and this bill limits police authority to detain witnesses to cases involving violent crimes and felony property crimes.

The Alaska court opinions also do not specify precisely what the police officers can do to identify the person. A recent United States Supreme Court opinion upheld a state statute that made it a criminal offense for a person suspected of a non-serious crime to refuse to give the person's name to the police, and reaffirmed the state interest in allowing the police to identify suspects of crimes. But other opinions make it clear that a person suspected of a crime is not otherwise required to answer questions. See *Hiibel v. Sixth Judicial District Court of Nevada*, 542 U.S. 177 (2004) and cases cited in that opinion.

The court's discussion in *Hiibel* of the state interest in identifying suspects of non-serious crimes seems equally applicable to identifying possible witnesses of serious crimes. The difference, of course, is that in the case of a suspect the police have focused their attention on that person as the possible perpetrator, and their efforts can be said to be designed to gather evidence against that person. But in the case of a witness, the police simply want to find out what the person knows about a serious crime.

Despite not being the focus of police attention, a witness to a crime nonetheless has the right under the Fourth Amendment not to be subject to unreasonable searches and seizures, and the right under the Fifth Amendment not to be forced to incriminate himself or herself. These constitutional rights limit what the police can do with suspects of crimes, and they will also undoubtedly limit what police can do to obtain information from witnesses.

To respect these constitutional rights, the bill does not require that the witness answer any questions or even speak to the officer, and does not allow the person to be removed from the vicinity or to be unreasonably delayed. The bill does not require that the person even show identification. However, if the person elects not to produce valid government-issued photographic identification, the police are authorized to serve a subpoena for the person to testify in the grand jury, and to take the person's fingerprints if the case under investigation involves murder, attempted murder, or a "drive-by" shooting.

It is the obligation of every citizen to testify in court or a grand jury unless the person has a legal privilege not to testify. The provisions in the bill attempt to safeguard the constitutional rights of witnesses at the scene of the crime, and it is left to the court to determine whether a witness to a crime has a privilege not to testify in the grand jury or in a court proceeding. For example, the witness may fear that testimony may show the witness's involvement in the planning or commission of the crime under investigation, and thus the witness would have a privilege not to incriminate himself or herself unless the witness receives immunity from prosecution. See, *e.g.*, the court procedure set out in AS 12.50.101. The grand jury subpoena brings into play a court process that allows the witness to request the court to quash the subpoena, thus allowing a court to decide whether the witness must testify. Thus, the grand jury subpoena helps fully protect the rights of a witness.

Fingerprints are an additional way of identifying a witness who elects not to show a driver's license. Because a witness served with a subpoena may ultimately fail to honor the subpoena, it is necessary to obtain this independent means of identification. It must be recognized, however, that fingerprints are not a guarantee that the witness will be identified. If the person does not have a set of fingerprints on file to match against, the witness might not be positively identified. Because the focus of the

investigation is not on the witness, the bill requires that, unless certain circumstances exist, the fingerprints and any photographs of the witness be destroyed once the person has been positively identified or the case is complete.

The bill also makes it a misdemeanor crime to refuse or resist the taking of photographs or fingerprints. The intent of this provision is to avoid the necessity of using force to photograph or fingerprint witnesses. It is expected that the police officer will advise the person that if the person forcibly resists being photographed or fingerprinted the person will be arrested; this should encourage voluntary compliance and will allow witnesses to go on their way sooner.

In conclusion, this bill recognizes the needs of the police to investigate serious crimes that endanger the safety of innocent citizens, and balances that police authority with the rights of ordinary citizens.

I urge your support of this important legislation.

Sincerely,

/s/

Frank H. Murkowski  
Governor

### **Unfinished Business**

Senator French moved and asked unanimous consent to be excused from a call of the Senate from 1:00 p.m., July 28 to morning plane time, August 1. Without objection, Senator French was excused.

### **Announcements**

Announcements are at the end of the journal.

**Adjournment**

Senator Gary Stevens moved and asked unanimous consent that the Senate stand in adjournment until 11:00 a.m., July 28, 2006. Without objection, the Senate adjourned at 12:19 p.m.

Kirsten Waid  
Secretary of the Senate

**Announcements**

Americans with Disabilities Act Notice - Persons with disabilities who require special accommodation or alternative communication formats to access committee meetings may contact the appropriate committee office or the Legislative Information Office in their community. Reasonable advance notice is needed to accommodate the request. For further information, call the ADA Coordinator at 465-3854 Voice/465-4980 TDD.

**SPECIAL COMMITTEES****SPECIAL COMMITTEE ON NATURAL GAS DEV**

**Jul 27      Thursday      Senate Finance 532      9:00 AM**  
 += SB3001 OIL/GAS PROD. TAX  
 += SB3002 STRANDED GAS AMENDMENTS

**Jul 28      Friday      Senate Finance 532      9:00 AM**  
 += SB3001 OIL/GAS PROD. TAX  
 += SB3002 STRANDED GAS AMENDMENTS

**JOINT COMMITTEES****LEGISLATIVE COUNCIL**

**Aug 01      Tuesday      House Finance 519      5:00 PM**  
 + Kenai Lease Renewal Approval  
 Capitol & Terry Miller Rewire Approval  
 FY07 Print Shop Paper Approval  
 2006 Computer Equipment Refresh Approval  
 Capital Projects Approval  
 Fairbanks Office Space RFP Lawsuit Update  
 Anchorage Security Expenditure Approval  
 Other Business