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MEMORANDUM

March 5, 2026

SUBJECT: Applicability and constitutional issues
(CSHB 250(STA); Work Order No. 34-LS1284\I)

TO: Representative Sarah Vance
Attn: Naresh Shrestha

FROM: Claire Radford
Legislative Counsel 

You requested a memorandum as to the applicability of the term "peace officer" in HB 250 and whether using that term broadly raises any constitutional issues. Under AS 11.81.900(b)(47), "'peace officer' means a public servant vested by law with a duty to maintain public order or to make arrests, whether the duty extends to all offenses or is limited to a specific class of offenses or offenders[.]" This definition would apply to the term "peace officer" as used in the new offense under sec. 11.56.880 in HB 250 and would capture local, state, and federal officers.¹ This bill may therefore raise supremacy clause and separation of powers issues.

1. **Supremacy clause.** The Supremacy Clause of the United States Constitution prohibits a state legislature from enacting legislation that preempts federal law.² Federal law preempts state law where the two conflict. The Supremacy Clause, art. VI, sec. 2, Constitution of the United States, provides:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land;

¹ You also asked if this would apply to tribal law enforcement. Tribal law enforcement is a complex area of law and I am unable to fully research this question in the short turn-around time of this request. The authority of tribal officers does not extend beyond tribal lands or public rights of way within reservations without cross-deputization agreements between the tribal police and the federal government or between the tribal police and the state, or unless the tribe is participating in the Violence Against Women Act (VAWA) pilot program. In most circumstances, other than a tribal law enforcement officer under a VAWA pilot program or cross-deputization agreement, it is unlikely that HB 250 would apply to a tribal law enforcement officer.

² Art. VI, sec. 2, Constitution of the United States.

and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The United States Supreme Court has previously held that under the Supremacy Clause, state laws that conflict with federal law are "without effect."³ Federal laws that preempt state law include not only legislation from Congress, but also administrative rules and regulations made pursuant to authority delegated by Congress.⁴ Executive Orders, if otherwise valid, are also considered federal law for purposes of preemptive effect.⁵ The Alaska Supreme Court has noted that "[u]nder the Supremacy Clause of the federal constitution, state laws that interfere with federal laws are invalid."⁶ The Court has said:

There is a presumption against federal preemption of state law, and preemption doctrine "enjoin[s] seeking out conflicts between state and federal regulation where none clearly exists." Additionally, "[w]here co-ordinate state and federal efforts exist within a complementary administrative framework, and in the pursuit of common purposes," . . . "the case for federal pre-emption becomes a less persuasive one." But where state law comes into conflict with federal law, the Supremacy Clause of the United States Constitution dictates that state law must always yield.⁷

I do not know whether HB 250 explicitly invalidates executive or administrative orders. If challenged and a court found that HB 250 conflicted with executive or administrative orders, or directly regulated the conduct of federal officials, it would violate the Supremacy Clause of the United States Constitution.⁸

³ *Maryland v. Louisiana*, 451 U.S. 725, 746 (1981).

⁴ *Fidelity Fed. Savings and Loan Ass'n v. de la Cuesta*, 458 US 141, 153 (1982). ("Federal regulations have no less pre-emptive effect than Federal Statutes").

⁵ *See Old Dominion Branch No. 496 v. Austin*, 418 U.S. 264, 273 n.5 (1974).

⁶ *Allen v. State*, 203 P.3d 1155, 1161, n.12 (Alaska 2009) (quoting *State v. Dupier*, 118 P.3d 1039, 1049 (Alaska 2005)).

⁷ *Allen*, 203 P.3d at 1160 - 1162 (citations and footnotes omitted).

⁸ Note that a similar state law mask ban was enacted in California (SB 627) in September of 2025. The ban, which applies to local and federal officials but not state officials, was to take effect January 1, 2026, but the federal Department of Justice brought suit for injunctive relief in November of 2025, arguing the California law violated the Supremacy Clause and was therefore invalid as applied to federal agencies and officers. Complaint, *United States v. State of California*, Case No. 2:25-cv-10999 (C.D. Cal.), available at <https://www.justice.gov/opa/media/1418431/dl?inline>. On February 9, 2026, the U.S.

2. Separation of powers. In addition to raising potential supremacy clause issues with application to federal officers, this offense may also violate the separation of powers doctrine. Although the legislature has the ability to create offenses, it is generally limited by the separation of powers doctrine in its ability to direct the executive branch to require specific police officer action, create law enforcement policy, or how to exercise prosecutorial discretion with respect to that law. I do not know how successful a separation of powers challenge might be. The legislature sets policy relating to peace officer training requirements in AS 18.65, and has enacted other criminal provisions relating to peace officers under the general principles of justification.⁹ However, the legislature has not specifically enacted a criminal offense relating to the conduct of peace officers alone. If this offense were challenged as a separation of powers violation, with the executive branch arguing this offense was enacted as a method by which the legislature is attempting to control peace officer policy and require specific peace officer action, a court may find this violates separation of powers provision under the Alaska Constitution.

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District Court for the Central District of California ruled in favor of the federal motion for preliminary injunction, preventing enforcement of the mask ban against federal law enforcement officers. *United States v. California*, No. 2:25-CV-10999-CAS-AJRX, 2026 WL 363346 (C.D. Cal. Feb. 9, 2026).

⁹ AS 11.81.