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Gardner
3/2/13

CS FOR HOUSE BILL NO. 83()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-EIGHTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES KELLER, Stoltze, Saddler

A BILL
FOR AN ACT ENTITLED

1 **"An Act relating to certain federal statutes, regulations, presidential executive orders,**
2 **and secretarial orders; relating to the duties of the attorney general; and providing for**
3 **an effective date."**

4 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 *** Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
6 to read:

7 **LEGISLATIVE FINDINGS.** The legislature finds that

8 (1) under the Supremacy Clause of the Constitution of the United States, laws
9 of the United States are the supreme law of the land; however, there may be federal statutes,
10 regulations, presidential executive orders, and secretarial orders that exceed the constitutional
11 authority of the United States Congress, and that are unlawfully and unfairly preempting state
12 laws, depriving the legislature and Alaskans of the right to address social issues, develop the
13 state's economy, and manage natural resources as Alaskans; and

14 (2) establishing a process, by providing for an annual report from the attorney

1 general, will assist the legislature in reviewing federal statutes, regulations, presidential
2 executive orders, and secretarial orders that may exceed the constitutional authority of the
3 United States Congress, so that the legislature may take appropriate action.

4 * **Sec. 2.** AS 24.05 is amended by adding a new section to article 4 to read:

5 **Sec. 24.05.188. Federal statutes, regulations, presidential executive orders,**
6 **and secretarial orders.** After receiving a report from the attorney general under
7 AS 44.23.020(h) that a state law is in conflict with a federal statute, regulation,
8 presidential executive order, or secretarial order that is unconstitutional or was not
9 properly adopted in accordance with federal statutory authority, the house and senate
10 committees having jurisdiction over judicial matters may each consider whether
11 legislative action is necessary in response to the findings by the attorney general.

12 * **Sec. 3.** AS 44.23.020 is amended by adding a new subsection to read:

13 (h) The attorney general shall continue to review federal statutes, regulations,
14 presidential executive orders, and secretarial orders that may be in conflict with and
15 that may preempt state law. If, after review, the attorney general concludes that a
16 federal statute, regulation, presidential executive order, or secretarial order would
17 preempt a state law if constitutional and properly adopted in accordance with federal
18 statutory authority but also finds that the federal statute, regulation, presidential
19 executive order, or secretarial order is unconstitutional or was not properly adopted in
20 accordance with federal statutory authority, the attorney general shall report the
21 findings to the chairs of the house and senate committees having jurisdiction over
22 judicial matters. The report shall be submitted to the legislature on or before
23 January 15th of each year and must include

24 (1) a copy of the federal statute, regulation, presidential executive
25 order, or secretarial order that the attorney general finds was not properly adopted in
26 accordance with federal statutory authority or is unconstitutional;

27 (2) a citation to the state law that is in conflict with the federal statute,
28 regulation, presidential executive order, or secretarial order identified in (1) of this
29 subsection;

30 (3) a written opinion explaining

31 (A) the basis for finding that the federal statute, regulation,

1 presidential executive order, or secretarial order is unconstitutional or was not
2 properly adopted in accordance with federal statutory authority;

3 (B) the conflict between the federal statute, regulation,
4 presidential executive order, or secretarial order identified in (1) of this
5 subsection and the state law identified in (2) of this subsection and why, if
6 properly adopted, the federal statute, regulation, presidential executive order,
7 or secretarial order would preempt the state law;

8 (C) the effect on the state if the state law identified in (2) of this
9 subsection is found by a court to be preempted by the federal statute,
10 regulation, presidential executive order, or secretarial order identified in (1) of
11 this subsection; and

12 (D) litigation the attorney general is party to or aware of
13 concerning a conflict between a federal statute, regulation, presidential
14 executive order, or secretarial order that would preempt state law if
15 constitutional, but that the attorney general or another party claims is
16 unconstitutional; and

17 (4) other information relevant to the findings by the attorney general.

18 * Sec. 4. This Act takes effect immediately under AS 01.10.070(c).