

SENATE JOURNAL
ALASKA STATE LEGISLATURE
TWENTY-FOURTH LEGISLATURE
FIRST SESSION

Juneau, Alaska

Friday

March 4, 2005

Fifty-fourth Day

Pursuant to adjournment the Senate was called to order by President Stevens at 10:05 a.m.

The roll showed seventeen members present. Senator Davis was excused from a call of the Senate. Senators Therriault, Wilken were absent.

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

Please join me in prayer, with recognition to Pastor Dan Bollenrud:

Dear Lord, We come before You as we begin today's session with the awesome wonder of Your gracious gifts and the awesome responsibility to share them. Give us the strength to give to those who are hungry, bread; and the wisdom to incite in those who have bread, a hunger for justice. Help us to deal fairly and honestly with one another for this world is too dangerous for anything but truth and too small for anything but love. Unite us in Your love and help us to live in loving relationship with You, the Creator, one another as brothers and sisters created in Your image, and the creation from which You formed us. Bless us we pray and send us into Your world to serve. Amen!

Senator Ellis led the Senate in the Pledge of Allegiance.

Certification

Senator Gary Stevens moved and asked unanimous consent that the journal for the fifty-third legislative day be approved as certified by the Secretary. Without objection, it was so ordered.

The presence of Senator Wilken was noted.

Messages from the House**Concur Messages****SB 14**

Message dated March 3 was read, stating the House passed and returned for consideration SENATE BILL NO. 14 "An Act relating to municipal initiative and referendum elections" with the following amendment:

HOUSE CS FOR SENATE BILL NO. 14(STA)

Senator Gary Stevens moved that the Senate concur in the House amendment.

The question being: "Shall the Senate concur in the House amendment?" The roll was taken with the following result:

HCS SB 14(STA)

Shall the Senate Concur in the House
amendment to SB 14?

YEAS: 18 NAYS: 0 EXCUSED: 1 ABSENT: 1

Yeas: Bunde, Cowdery, Dyson, Ellis, Elton, French, Green, Guess, Hoffman, Huggins, Kookesh, Olson, Seekins, Stedman, Stevens B, Stevens G, Wagoner, Wilken

Excused: Davis

Absent: Therriault

and so, the Senate concurred in the House amendment, thus adopting HOUSE CS FOR SENATE BILL NO. 14(STA) "An Act relating to municipal initiative and referendum elections."

The Secretary was requested to notify the House.

The bill was referred to the Secretary for enrollment.

Standing Committee Reports

Report dated March 3 was read, stating:

In accordance with AS 39.05.080, the Senate Labor and Commerce Committee reviewed the following and recommends these appointments be forwarded to a joint session for consideration:

Alaska State Board of Public Accountancy

Max E. Mertz
Catherine L. Wilson

Regulatory Commission of Alaska

Anthony A. Price

This does not reflect an intent by any of the members to vote for or against the individuals during any future sessions.

Signing the report: Senator Bunde, Chair; Senator Seekins, Vice Chair, Senators Ben Stevens, Ellis.

SB 84

The Judiciary Committee considered SENATE BILL NO. 84 "An Act relating to the confidentiality of investigations, court hearings, and public agency records and information in child-in-need-of-aid matters and certain child protection matters; relating to immunity regarding disclosure of information in child-in-need-of-aid matters and certain child protection matters; amending Rules 3 and 22, Alaska Child in Need of Aid Rules of Procedure; and providing for an effective date" and recommended it be replaced with

CS FOR SENATE BILL NO. 84(JUD) "An Act relating to the confidentiality of investigations, court hearings, and public agency records and information in child-in-need-of-aid matters and certain child protection matters; relating to immunity regarding child-in-need-of-aid matters and child protection matters; amending Rules 3 and 22, Alaska Child in Need of Aid Rules of Procedure; and providing for an effective date."

Signing do pass: Senator Seekins, Chair. Signing no recommendation: Senators French, Guess, Therriault, Huggins.

The following fiscal information was published today:
Fiscal Note No. 5, Department of Administration

The following previously published fiscal information applies:
Fiscal Note No. 1, Department of Law
Fiscal Note No. 2, Department of Health and Social Services
Fiscal Note No. 4, Department of Administration

The bill was referred to the Finance Committee.

HB 42

The Transportation Committee considered HOUSE BILL NO. 42 "An Act naming the Joe Williams, Sr., Coastal Trail." Signing do pass: Senator Huggins, Chair; Senators French, Kookesh, Cowdery.

The following previously published fiscal information applies:
Fiscal Note No. 2, zero, House Transportation Committee

The bill was referred to the Community and Regional Affairs Committee.

Introduction and Reference of Senate Bills

SB 131

SENATE BILL NO. 131 BY THE SENATE LABOR AND COMMERCE COMMITTEE, entitled:

"An Act amending the Alaska Wage and Hour Act as it relates to the employment of a person acting in a supervisory capacity; providing definitions for persons employed in administrative, executive, and professional capacities, for persons working in the capacity of an outside salesman, and for persons working in the capacity of a salesman employed on a straight commission basis."

was read the first time and referred to the Labor and Commerce and Finance Committees.

SB 132

SENATE BILL NO. 132 BY THE SENATE RULES COMMITTEE
BY REQUEST OF THE GOVERNOR, entitled:

"An Act relating to complaints filed with, investigations, hearings, and orders of, and the interest rate on awards of the State Commission for Human Rights; making conforming amendments; and providing for an effective date."

was read the first time and referred to the State Affairs and Judiciary Committees.

The following fiscal information was published today:

Fiscal Note No. 1, zero, Office of the Governor

Fiscal Note No. 2, Department of Law

Governor's transmittal letter dated March 3:

Dear President Stevens:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that would amend the investigation and procedure laws of the State Commission for Human Rights (commission). The bill would amend the investigation and hearing procedures to enhance fairness and efficiency and to give the commission more enforcement discretion to increase its effectiveness in combating unlawful discrimination.

The bill would add a new statutory provision, AS 18.80.112, to provide the staff of the commission with greater authority to evaluate complaints of discrimination and to choose the complaints that it pursues to hearing before the commission. The purpose of the amendment is to reverse the Alaska Supreme Court's decision in *Department of Fish and Game v. Meyer*, 906 P.2d 1365 (Alaska 1995), that a hearing is mandatory if a complaint is supported by substantial evidence. The court concluded that the state human rights laws did not give the commission staff discretion to discontinue action on a complaint after an investigator found substantial evidence of unlawful discrimination. *Id.*, at 1373. The effect of this decision was to require the commission to commit its resources to any complaint supported by substantial evidence without regard to such factors as the weakness of the evidence, the strength of an employer's affirmative defenses, or the significance of the alleged violation. Providing the commission with genuine prosecutorial discretion would allow the commission to commit its resources to complaints it determines merit pursuit, based on such factors as, for example, the strength of the evidence, the severity of the alleged violation, an employer's history before the commission, or the complaint's value in establishing precedent guiding future conduct.

The discretion of the staff of the commission would also be expanded to allow it to compromise a claim for damages in the conciliation (or prehearing) phase of the procedures. The bill would avoid conflicts between staff's exercise of its expanded discretion to compromise, dismiss, or pursue a complaint and the concerns of the victims of unlawful discrimination by allowing a complainant to opt out of commission procedures. A complainant may withdraw the complaint at any time before the executive director of the commission makes the decision to go to hearing and, after withdrawal, pursue the claim independently of the commission in another forum.

The bill would expand on a procedural change made in 2004 when the power to appoint the individuals who conduct commission hearings was moved from the commission to the chief administrative law judge in the Department of Administration. The bill would apply all of the statutes regarding hearings of the office of administrative hearings to the commission (including statutes addressing the qualifications of the persons who would conduct the commission's hearings) except for the

statutes establishing hearing procedures. The commission's hearing procedures would be any specific procedures set out in AS 18.80 and the uniform procedures in the Administrative Procedure Act, AS 44.62.330 - 44.62.630. The bill would eliminate from AS 18.80 some duplicative procedural requirements that are addressed in the Administrative Procedure Act, such as the admissibility of evidence and the requirement that testimony be under oath. Another change would be the addition of a provision similar to a motion for summary judgment in the civil rules of court to allow a summary decision on the law if the facts are not disputed. The reason for allowing a summary decision is that it is a faster procedure than a hearing, and it would provide a sufficient opportunity to be heard on the legal issues when the facts are not in dispute. The bill would add a provision tying the rate of interest on commission economic awards to the rate of interest on judgments in AS 09.30.070, to conform the commission's rate to the rate awarded by other administrative agencies and the courts. It would continue to allow the commission to amend an accusation after a case is referred for hearing, but it would require that each new claim be supported by substantial evidence and that the commission provide a respondent with the opportunity to address new claims informally before being required to defend them in a formal hearing. The bill would move the statute of limitations for bringing a claim from regulation (6 AAC 30.230) to statute.

The bill would identify the specific relief available to remedy discrimination, to make the process more open and predictable and, thus, fairer. The bill would incorporate into statute the Alaska Supreme Court's conclusion that the commission lacks the authority to award punitive or noneconomic damages. The bill would amend AS 18.30.130 to establish restoration of the benefit that was deprived - hiring, promotion, or reinstatement to a position with back pay -- as the customary remedy for unlawful employment discrimination. The bill would define "pay" broadly to mean all compensation for service, including the cost of employee benefits. In the unusual case of an employee who is unable to return to work, the bill would allow an award of up to one year of future compensation. For any pay that the commission awards, the bill would require the commission to offset the amount an employee should have been able to earn after making a reasonable effort to find similar work.

Very importantly, under the bill the commission would retain the authority to order affirmative action to correct unlawful discrimination and to award "any appropriate relief" if it needs to innovate in order to remedy an unusual case of discrimination.

By increasing the commission's discretion in handling complaints, the bill would enable the commission to allocate its diminishing resources to cases in which the commission could be the most effective in addressing and eliminating unlawful discrimination. By streamlining commission procedures, the bill would help contain costs and ensure that the procedures are equitable to both complainants and the persons, businesses, labor organizations, and employment agencies charged before the commission with unlawful discrimination.

I urge your prompt and favorable action on this bill.

Sincerely yours,

/s/

Frank H. Murkowski
Governor

Consideration of the Calendar

Second Reading of Senate Bills

SB 98

SENATE BILL NO. 98 "An Act making supplemental appropriations, capital appropriations, other appropriations, and reappropriations; amending appropriations; making appropriations to capitalize funds; and providing for an effective date" was read the second time.

Senator Wilken, Cochair, moved and asked unanimous consent for the adoption of the Finance Committee Substitute offered on page 461. Without objection, CS FOR SENATE BILL NO. 98(FIN) "An Act making supplemental appropriations, capital appropriations, and other appropriations; amending appropriations; making appropriations to capitalize funds; making appropriations under art. IX, sec. 17(c), Constitution of the State of Alaska, from the constitutional budget reserve fund; and providing for an effective date" was adopted.

President Stevens stated CS FOR SENATE BILL NO. 98(FIN) will be on the March 7 calendar.

Citations

Honoring – Major General John M. Brown III

Representative(s) Dahlstrom

Senator(s) Dyson, Ben Stevens, Bunde, Cowdery, Davis, Ellis, Elton, Green, Guess, Hoffman, Huggins, Kookesh, Olson, Seekins, Stedman, Gary Stevens, Therriault, Wagoner, Wilken

In Memoriam – Grace Alice Johnson

Representative(s) Foster

Senator(s) Olson, Ben Stevens, Bunde, Cowdery, Davis, Dyson, Ellis, Elton, Green, Guess, Hoffman, Huggins, Kookesh, Seekins, Stedman, Gary Stevens, Therriault, Wagoner, Wilken

In Memoriam – Edwin G. Church

Representative(s) Kohring, Gatto, Neuman, Stoltze

Senator(s) Green, Huggins, Ben Stevens, Bunde, Cowdery, Davis, Dyson, Ellis, Elton, Guess, Hoffman, Kookesh, Olson, Seekins, Stedman, Gary Stevens, Therriault, Wagoner, Wilken

Senator Gary Stevens moved and asked unanimous consent that the citations be adopted. Without objection, the citations were adopted and referred to the Secretary for transmittal.

Unfinished Business

Senators Ellis, French moved and asked unanimous consent to be excused from a call of the Senate to morning plane time on March 7. Without objection, Senators Ellis, French were excused.

Senator Hoffman moved and asked unanimous consent to be excused from a call of the Senate on March 14. Without objection, Senator Hoffman was excused.

SB 112

Senator Wagoner moved and asked unanimous consent to be shown as a cosponsor on SENATE BILL NO. 112 "An Act imposing a tax on residents of regional educational attendance areas; and providing for an effective date." Without objection, it was so ordered.

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., March 7, 2005. Without objection, the Senate adjourned at 10:39 a.m.

Kirsten Waid
Secretary of the Senate

March 2005

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.

STANDING COMMITTEES

+ indicates teleconference

= indicates bill previously heard/scheduled

COMMUNITY & REGIONAL AFFAIRS

Mar 04	Friday	Beltz 211	1:30 PM
	No Meeting Scheduled		
Mar 07	Monday	Beltz 211	1:30 PM
	No Meeting Scheduled		
Mar 09	Wednesday	Beltz 211	1:30 PM
+ HB 42	JOE WILLIAMS, SR., COASTAL TRAIL		
+ SB 112	TAX ON REAA RESIDENTS		
+ SB 114	SERVICE AREAS IN SECOND CLASS BOROUGHES		
Mar 11	Friday	Beltz 211	1:30 PM
	No Meeting Scheduled		
Mar 14	Monday	Beltz 211	1:30 PM
+ SB 102	COASTAL MANAGEMENT PROGRAMS		
	Bills Previously Heard/Scheduled		

FINANCE

Mar 04	Friday	Senate Finance 532	9:00 AM
	No Meeting Scheduled		
Mar 07	Monday	Senate Finance 532	9:00 AM
+ SB 63	USE SEAT BELT ROAD SIGNS		
+ HB 158	PUBLIC SCHOOL ACCOUNT/PUBLIC EDUC FUND		
+ HB 115	AIRPORT CUSTOMER FACILITY CHARGES		

FINANCE (continued)

Mar 08	Tuesday	Senate Finance 532	9:00 AM
+ HB 64	EXTEND BOARD OF PUBLIC ACCOUNTANCY		
+ SB 100	ENHANCED 911 SURCHARGES		
+	Bills Previously Heard/Scheduled		
 Mar 09	 Wednesday	 Senate Finance 532	 9:00 AM
+ HB 1	INCREASE AMT OF BASE STUDENT ALLOCATION		
+	Bills Previously Heard/Scheduled		
 Mar 10	 Thursday	 Senate Finance 532	 9:00 AM
+	Senate Bill:		
	RETIREMENT SYSTEM LEGISLATION		
	<Pending Introduction and Referral>		
+	Bills Previously Heard/Scheduled		
 Mar 11	 Friday	 Senate Finance 532	 9:00 AM
+	Bills Previously Heard/Scheduled		

HEALTH, EDUCATION & SOCIAL SERVICES

Mar 04	Friday	Butrovich 205	1:30 PM
	-- Meeting Canceled --		
+	Bills Previously Heard/Scheduled		
 Mar 07	 Monday	 Butrovich 205	 1:30 PM
+ SB 24	REEMPLOYMENT OF RETIREES		
+ SB 31	PERS/TRS REHIRES		
+ SB 4	REQUIRE CPR FOR HIGH SCHOOL GRADUATION		
+	Bills Previously Heard/Scheduled		
 Mar 09	 Wednesday	 Butrovich 205	 1:30 PM
	No Meeting Scheduled		
 Mar 11	 Friday	 Butrovich 205	 1:30 PM
	No Meeting Scheduled		

JUDICIARY

Mar 08 Tuesday Butrovich 205 8:30 AM
 + Select Committee on Legislative Ethics
 Confirmation Hearing: Dennis "Skip" Cook
 + SB 67 CLAIMS AGAINST HEALTH CARE PROVIDERS
 + Bills Previously Heard/Scheduled

Mar 09 Wednesday Butrovich 205 8:30 AM
 + Select Committee on Legislative Ethics
 Confirmation Hearing: Marianne Stillner
 + SB 105 OVERTIME WAGES FOR FLIGHT CREW
 + SJR 10 SUPPORT FEDERAL MARRIAGE AMENDMENT
 + Bills Previously Heard/Scheduled

Mar 10 Thursday Butrovich 205 8:30 AM
 + SB 117 RECORDED STATEMENTS OF CHILD VICTIMS
 + SB 118 ONLINE ENTICEMENT OF MINOR
 + SB 119 BAN ONLINE DIST. OF PORNOGRAPHY TO MINORS
 + Bills Previously Heard/Scheduled

LABOR & COMMERCE

Mar 08 Tuesday Beltz 211 1:30 PM
 + SB 130 WORKERS' COMPENSATION
 + HB 102 MEDICAL LICENSE: APPLICATION/FOREIGN GRAD
 + SB 124 FISHERIES BUSINESS LICENSE; BOND
 Bills Previously Heard/Scheduled

Mar 10 Thursday Beltz 211 1:30 PM
 Bills Previously Heard/Scheduled

RESOURCES

Mar 04 Friday Butrovich 205 3:30 PM
 No Meeting Scheduled

Mar 07 Monday Butrovich 205 3:30 PM
 = SB 103 OIL & GAS: REG. OF UNDERGROUND INJECTION
 = SB 110 POLLUTION DISCHARGE & WASTE TRMT/DISPOSAL
 -- On the Above Bills Testimony --
 <By Invitation Only>
 + HB 76 BIG GAME SERVICES & COMM. SERVICES BD
 + HCR 2 IN-STATE NATURAL GAS NEEDS

RESOURCES (continued)

Mar 09	Wednesday	Butrovich 205	3:30 PM
+	SB 113	GULF OF ALASKA GROUND FISH FISHERY	

Mar 11	Friday	Butrovich 205	3:30 PM
	No Meeting Scheduled		

STATE AFFAIRS

Mar 08	Tuesday	Beltz 211	3:30 PM
	No Meeting Scheduled		

Mar 10	Thursday	Beltz 211	3:30 PM
	No Meeting Scheduled		

TRANSPORTATION

Mar 08	Tuesday	Butrovich 205	1:30 PM
	No Meeting Scheduled		

Mar 10	Thursday	Butrovich 205	1:30 PM
+	Pavement Rutting Research Grant Program Overview & Automated Bridge Anti-Icing System Presentation by - Jerry DesJarlais/ Jack Hayden Dr. Lutfi Raad, Director of the Transportation Research Center UAF Bills Previously Heard/Scheduled		

Mar 15	Tuesday	Butrovich 205	1:30 PM
+	Presentation: Division of Motor Vehicles Duane Bannock, Director		

Mar 17	Thursday	Butrovich 205	1:30 PM
+	DOT/PF - Briefing on Construction Force Accounts, Leasing & Purchasing of Equipment Compared to Private Sector		

FINANCE SUBCOMMITTEES**ADMINISTRATION**

Mar 08	Tuesday	Location Tba	7:30 AM
	FY 06 Budget Review		

COMMERCE, COMMUNITY & ECONOMIC DEV

Mar 08	Tuesday	Senate Finance 532	8:00 AM
	Budget Closeout		

CORRECTIONS

Mar 10	Thursday	Senate Finance 532	4:00 PM
	-- Meeting Canceled --		
	Budget Closeout		

COURT SYSTEM

Mar 10	Thursday	Senate Finance 532	3:00 PM
	-- Meeting Canceled --		
	Budget Closeout		

EDUCATION & EARLY DEVELOPMENT

Mar 08	Tuesday	Senate Finance 532	2:00 PM
	FY 06 Operating Budget		

ENVIRONMENTAL CONSERVATION

Mar 10	Thursday	Fahrenkamp 203	8:00 AM
	Preliminary Budget Close-Out Discussions		

FINANCE SUBCOMMITTEES (continued)**FISH & GAME**

Mar 07	Monday	Fahrenkamp 203	1:30 PM
	Missions and Measures		

HEALTH & SOCIAL SERVICES

Mar 08	Tuesday	Senate Finance 532	4:00 PM
	Tentative Meeting		

Mar 10	Thursday	Senate Finance 532	5:00 PM
	-- Meeting Canceled -- Budget Closeout		

LABOR & WORKFORCE DEVELOPMENT

Mar 10	Thursday	Fahrenkamp 203	8:15 AM
	FY 06 Budget Changes		

LAW

Mar 10	Thursday	Butrovich 205	4:00 PM
	Budget Closeout		

MILITARY AND VETERANS AFFAIRS

Mar 04	Friday	Beltz 211	7:30 AM
	-- Rescheduled to 03/07/05 -- FY 06 Budget Review		

Mar 07	Monday	Beltz 211	5:30 PM
	-- Meeting Postponed -- FY 06 Budget Review		

FINANCE SUBCOMMITTEES (continued)**NATURAL RESOURCES**

Mar 08	Tuesday Missions and Measures	Beltz 211	8:15 AM
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PUBLIC SAFETY

Mar 07	Monday FY 06 Budget Review	Beltz 211	7:30 AM
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REVENUE

Mar 10	Thursday Budget Closeout	Senate Finance 532	1:30 PM
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TRANSPORTATION & PUBLIC FACILITIES

Mar 10	Thursday -- Meeting Canceled -- Budget Closeout	Senate Finance 532	4:30 PM
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JOINT COMMITTEES**ARMED SERVICES COMMITTEE**

Mar 15	Tuesday Presentations by General Holly and Boeing	Senate Finance 532	1:00 PM
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OTHER MEETINGS**CHILDREN'S CAUCUS**

Mar 07	Monday -- Note Date Change -- Presentation: Family Wellness Warriors with the Southcentral Foundation, an Alaska Native Healthcare Organization	Butrovich 205	12:00 PM
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OTHER MEETINGS (continued)**JOINT LEGISLATIVE HEALTH CAUCUS**

Mar 09	Wednesday	Fahrenkamp 203	12:00 PM
	"Medicaid: True Stories Behind the Math"		

JOINT SESSION

Mar 30	Wednesday	House Chamber	11:00 AM
	Address by U.S. Senator Lisa Murkowski		