

HOUSE BILL NO. 195

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE DOOGAN

Introduced: 3/23/09

Referred: State Affairs, Judiciary

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to official action by electronic mail and to public records."**

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

3 * **Section 1.** AS 39.52 is amended by adding a new section to read:

4 **Sec. 39.52.135. State electronic mail delivery systems required for official**
5 **action by electronic mail.** (a) When taking or withholding official action, a public
6 officer may not send or cause another to send information by electronic transmission
7 within a system for electronic mail delivery unless the system is operated and
8 maintained by the state.

9 (b) An electronic transmission under (a) of this section is a public record
10 under AS 40.25.

11 (c) In this section,

12 (1) "electronic transmission" means any form of communication, not
13 directly involving the physical transmission of paper, that creates a record that can be
14 retained, retrieved, and reviewed by a recipient of the communication and that can be
15 reproduced in paper form through an automated process;

1 (2) "recipient" means the state and any other person the sender
2 intended to receive the electronic transmission.

3 * **Sec. 2.** AS 40.25.110 is amended by adding a new subsection to read:

4 (j) Notwithstanding (b) and (c) of this section,

5 (1) the fee for copying public records may not exceed \$100 or the
6 standard unit cost of duplication established by the public agency, whichever is less, if
7 the requester is

8 (A) a natural person requesting the records for personal use; or

9 (B) a representative of a newspaper, magazine, or television or
10 radio broadcasting station or network of stations who provides proper
11 identification;

12 (2) the public agency shall waive collection of the fee when disclosure
13 of the record occurs more than 20 days after the date the request is received.

14 * **Sec. 3.** AS 40.25.115(c) is amended to read:

15 (c) Notwithstanding (b) of this section,

16 (1) the fee for duplicating a public record in the electronic form kept
17 by a public agency

18 (A) may not exceed the actual incremental costs of the public
19 agency; **and**

20 (B) may not exceed \$100 or the actual incremental costs of
21 the public agency, whichever is less, if the person making the request is

22 (i) a natural person requesting the records for
23 personal use; or

24 (ii) a representative of a newspaper, magazine, or
25 television or radio broadcasting station or network of stations who
26 provides proper identification;

27 (2) the public agency shall waive collection of the fee when
28 disclosure of the record occurs more than 20 days after the date the request is
29 received.

30 * **Sec. 4.** AS 40.25.120 is amended by adding a new subsection to read:

31 (d) Notwithstanding other provisions of this section to the contrary, every

1 person has a right to inspect a copy of the portions of an electronic transmission that
2 are not confidential by law, if the transmission is

3 (1) from a public official to a person who is not a public official; or

4 (2) from a person who is not a public official to a person who is a
5 public official.

6 * **Sec. 5.** AS 40.25.123(a) is amended to read:

7 (a) **Every commissioner of a department in the executive branch shall**
8 **supervise and adopt regulations for the operation and implementation of**
9 **AS 40.25.110 - 40.25.140 by that commissioner's department, and, in addition, the**
10 **commissioner of administration** [THE DEPARTMENT OF ADMINISTRATION]
11 shall supervise and adopt regulations for the operation and implementation of
12 AS 40.25.110 - 40.25.140 by **all nondepartmental** public agencies in the executive
13 branch, except the Alaska Railroad Corporation.

14 * **Sec. 6.** AS 40.25.123 is amended by adding a new subsection to read:

15 (g) A public agency's records of its disposition of each request for a public
16 record initiated under AS 40.25.100 - 40.25.295, including records of written initial
17 denials by the agency having custody of the record, administrative appeals of the
18 denials, and judicial review of administrative appeals that sustain the denials, are
19 themselves public records, subject to disclosure and copying under AS 40.25.100 -
20 40.25.295. These records are subject to disclosure and copying 20 days after the
21 appeal from a denial becomes a final decision.

22 * **Sec. 7.** AS 40.25.125 is amended to read:

23 **Sec. 40.25.125. Enforcement; [:] injunctive relief.** A person having custody
24 or control of a public record who denies, obstructs, or attempts to obstruct, or a person
25 not having custody or control who aids or abets another person in denying,
26 obstructing, or attempting to obstruct, the inspection of a public record subject to
27 inspection under AS 40.25.110 or 40.25.120 **is subject to impeachment and** may be
28 enjoined by the superior court from denying, obstructing, or attempting to obstruct, the
29 inspection of public records subject to inspection under AS 40.25.110 or 40.25.120. A
30 person may seek injunctive relief under this section without exhausting the person's
31 remedies under AS 40.25.123 - 40.25.124, **and the relief sought may be granted or**

1 **denied regardless of whether an impeachment proceeding or an impeachment**
2 **occurs.**

3 * **Sec. 8.** AS 40.25.220(3) is amended to read:

4 (3) "public records" means books, papers, files, accounts, **electronic**
5 **transmissions,** writings, including drafts and memorializations of conversations, and
6 other items, regardless of format or physical characteristics, that are developed or
7 received by a public agency, or by a private contractor for a public agency, and that
8 are preserved for their informational value or as evidence of the organization or
9 operation of the public agency; "public records" does not include proprietary software
10 programs;

11 * **Sec. 9.** AS 40.25.220 is amended by adding a new paragraph to read:

12 (5) "electronic transmission" means any form of communication, not
13 directly involving the physical transmission of paper, that creates a record that can be
14 retained, retrieved, and reviewed by a recipient of the communication and that can be
15 reproduced in paper form through an automated process.