

SENATE BILL NO. 249

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SIXTH LEGISLATURE - SECOND SESSION

BY SENATOR ELLIS

Introduced: 2/1/10

Referred: State Affairs, Judiciary

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to official action by electronic transmission, to records, and to public**
2 **records."**

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

4 *** Section 1.** AS 11.81.900(b)(53) is amended to read:

5 (53) "public record" means

6 **(A) each of the following that is** [A DOCUMENT, PAPER,
7 BOOK, LETTER, DRAWING, MAP, PLAT, PHOTO, PHOTOGRAPHIC
8 FILE, MOTION PICTURE, FILM, MICROFILM, MICROPHOTOGRAPH,
9 EXHIBIT, MAGNETIC OR PAPER TAPE, PUNCHED CARD OR OTHER
10 DOCUMENT OF ANY OTHER MATERIAL, REGARDLESS OF
11 PHYSICAL FORM OR CHARACTERISTIC,] developed or received under
12 law or in connection with the transaction of official business and preserved,
13 **required by law to be preserved,** or appropriate for preservation by **an**
14 [ANY] agency, **a** municipality, or **a** [ANY] body subject to the open meeting

1 provision of AS 44.62.310 [,] as evidence of the organization, function,
 2 policies, decisions, procedures, operations, or other activities of **that agency,**
 3 **municipality, or body** [THE STATE OR MUNICIPALITY] or because of the
 4 informational value in it:

5 **(i) a document, paper, book, letter, drawing, map,**
 6 **plat, photo, photographic file, motion picture, film, microfilm,**
 7 **microphotograph, exhibit, magnetic or paper tape, punched card**
 8 **or other document of any other material, regardless of physical**
 9 **form or characteristic; and**

10 **(ii) an electronic transmission, including a text**
 11 **message, an instant message, electronic mail, or any other form of**
 12 **communication not directly involving the physical transmission of**
 13 **paper that creates a record that can be retained, retrieved, and**
 14 **reviewed by a recipient of the communication and that can be**
 15 **reproduced in paper form through an automated process; and**

16 **(B)** [; IT ALSO INCLUDES] staff manuals and instructions to
 17 staff that affect the public;

18 * **Sec. 2.** AS 39.52 is amended by adding a new section to read:

19 **Sec. 39.52.135. Use of state electronic delivery systems required for official**
 20 **action by electronic transmission.** (a) When taking or withholding official action, a
 21 public officer may not send or cause another to send information by electronic
 22 transmission within a system for electronic delivery unless the system is operated and
 23 maintained by the state.

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

26 (c) In this section, "electronic transmission" means a text message, an instant
 27 message, electronic mail, or any other form of communication not directly involving
 28 the physical transmission of paper that creates a record that can be retained, retrieved,
 29 and reviewed by a recipient of the communication, whether the recipient is the state or
 30 any other person the sender intended to receive the electronic transmission, and that
 31 can be reproduced in paper form through an automated process.

1 * **Sec. 3.** AS 40.21.150(6) is amended to read:

2 (6) "record"

3 **(A)** means **each of the following that is** [ANY DOCUMENT,
4 PAPER, BOOK, LETTER, DRAWING, MAP, PLAT, PHOTO,
5 PHOTOGRAPHIC FILE, MOTION PICTURE FILM, MICROFILM,
6 MICROPHOTOGRAPH, EXHIBIT, MAGNETIC OR PAPER TAPE,
7 PUNCHED CARD, ELECTRONIC RECORD, OR OTHER DOCUMENT OF
8 ANY OTHER MATERIAL, REGARDLESS OF PHYSICAL FORM OR
9 CHARACTERISTIC,] developed or received under law or in connection with
10 the transaction of official business and preserved, **required by law to be**
11 **preserved**, or appropriate for preservation by an agency or a political
12 subdivision **of the state** [,] as evidence of the organization, function, policies,
13 decisions, procedures, operations, or other activities of the state or political
14 subdivision or because of the informational value in **it**:

15 **(i) a document, paper, book, letter, drawing, map,**
16 **plat, photo, photographic file, motion picture, film, microfilm,**
17 **microphotograph, exhibit, magnetic or paper tape, punched card,**
18 **electronic record, or other document of any other material,**
19 **regardless of physical form or characteristic; and**

20 **(ii) an electronic transmission, including a text**
21 **message, an instant message, electronic mail, or any other form of**
22 **communication not directly involving the physical transmission of**
23 **paper that creates a record that can be retained, retrieved, and**
24 **reviewed by a recipient of the communication and that can be**
25 **reproduced in paper form through an automated process;**

26 **(B)** [THEM; THE TERM] does not include library and
27 museum material developed or acquired and preserved solely for reference,
28 historical, or exhibition purposes, extra copies of documents preserved solely
29 for convenience of reference, or stocks of publications and processed
30 documents;

31 * **Sec. 4.** AS 40.25.110(b) is amended to read:

(b) Except as otherwise provided in this section, the fee for copying public records may not exceed the cost of materials and supplies used to duplicate the records [STANDARD UNIT COST OF DUPLICATION] established by the public agency and may not include the labor costs or overhead costs associated with the duplication.

* **Sec. 5.** AS 40.25.115(a) is amended to read:

(a) Notwithstanding AS 40.25.110(b) and (d) [AS 40.25.110(b) - (d)] to the contrary, upon request and payment of a fee established under (b) of this section, a public agency may provide electronic services and products involving public records to members of the public. A public agency is encouraged to make information available in usable electronic formats to the greatest extent feasible. The activities authorized under this section may not take priority over the primary responsibilities of a public agency.

* **Sec. 6.** AS 40.25.125 is repealed and reenacted to read:

Sec. 40.25.125. Enforcement; crimes. (a) Whether acting independently or in concert with another, a person who unlawfully impairs or attempts to impair the verity, legibility, or availability of a public record is subject to

(1) prosecution for a criminal offense, including an offense under AS 11.56.815 and 11.56.820;

(2) injunction by order of the superior court.

(b) A person may seek injunctive relief under (a) of this section without exhausting that person's remedies under AS 40.25.123 and 40.25.124.

* **Sec. 7.** AS 40.25.220(3) is amended to read:

(3) "public record" or "public records"

(A) means each of the following [BOOKS, PAPERS, FILES, ACCOUNTS, WRITINGS, INCLUDING DRAFTS AND MEMORIALIZATIONS OF CONVERSATIONS, AND OTHER ITEMS, REGARDLESS OF FORMAT OR PHYSICAL CHARACTERISTICS,] that is [ARE] developed or received under law or in connection with the transaction of official business by a public agency, or by a private contractor for a public agency, and [THAT ARE] preserved, required by law to be

1 preserved, or appropriate for preservation by the public agency [FOR
2 THEIR INFORMATIONAL VALUE OR] as evidence of the organization,
3 function, policies, decisions, procedures, operations, or other activities
4 [OR OPERATION] of the public agency or because of the informational
5 value in it:

6 (i) a document, paper, book, letter, drawing, map,
7 plat, photo, photographic file, motion picture, film, microfilm,
8 microphotograph, exhibit, magnetic or paper tape, punched card,
9 electronic record, or other document of any other material,
10 regardless of physical form or characteristic; and

11 (ii) an electronic transmission, including a text
12 message, an instant message, electronic mail, or any other form of
13 communication not directly involving the physical transmission of
14 paper that creates a record that can be retained, retrieved, and
15 reviewed by a recipient of the communication and that can be
16 reproduced in paper form through an automated process;

17 (B) [; "PUBLIC RECORDS"] does not include proprietary
18 software programs;

19 * **Sec. 8.** AS 40.25.110(c) is repealed.