

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

March 9, 2018

1:05 p.m.

MEMBERS PRESENT

Representative Matt Claman, Chair
Representative Jonathan Kreiss-Tomkins, Vice Chair
Representative Louise Stutes
Representative Gabrielle LeDoux
Representative David Eastman
Representative Chuck Kopp (via teleconference)
Representative Lora Reinbold (via teleconference)

MEMBERS ABSENT

Representative Charisse Millett (alternate)
Representative Tiffany Zulkosky (alternate)

COMMITTEE CALENDAR

HOUSE JOINT RESOLUTION NO. 29

Urging the United States Congress to reauthorize the Secure Rural Schools and Communities Self-Determination Act of 2000.

- MOVED CSHJR 29(STA) OUT OF COMMITTEE

HOUSE BILL NO. 219

"An Act relating to background investigation requirements for state employees whose job duties require access to certain federal tax information; relating to persons under contract with the state with access to certain federal tax information; establishing state personnel procedures required for employee access to certain federal tax information; and providing for an effective date."

- MOVED CSHB 219(JUD) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HJR 29

SHORT TITLE: REAUTHORIZE SECURE RURAL SCHOOLS ACT

SPONSOR(S): REPRESENTATIVE(S) RAUSCHER

01/19/18	(H)	READ THE FIRST TIME - REFERRALS
01/19/18	(H)	STA, JUD, FIN

01/30/18 (H) STA AT 3:00 PM GRUENBERG 120
 01/30/18 (H) Heard & Held
 01/30/18 (H) MINUTE(STA)
 02/01/18 (H) STA AT 3:00 PM GRUENBERG 120
 02/01/18 (H) Moved CSHJR 29(STA) Out of Committee
 02/01/18 (H) MINUTE(STA)
 02/02/18 (H) STA RPT CS(STA) 7DP
 02/02/18 (H) DP: TUCK, BIRCH, JOHNSON, WOOL, LEDOUX,
 KNOPP, KREISS-TOMKINS
 03/09/18 (H) JUD AT 1:00 PM GRUENBERG 120

BILL: HB 219

SHORT TITLE: CRIM HIST CHECK: ST EMPLOYEES/CONTRACTORS

SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

04/07/17 (H) READ THE FIRST TIME - REFERRALS
 04/07/17 (H) JUD, FIN
 03/07/18 (H) JUD AT 1:00 PM GRUENBERG 120
 03/07/18 (H) Heard & Held
 03/07/18 (H) MINUTE(JUD)
 03/09/18 (H) JUD AT 1:00 PM GRUENBERG 120

WITNESS REGISTER

REPRESENTATIVE GEORGE RAUSCHER
 Alaska State Legislature
 Juneau, Alaska

POSITION STATEMENT: During the hearing of CSHJR 29, presented the legislation as prime sponsor.

DERRELL BREESE, Staff
 Representative George Rauscher
 Alaska State Legislature
 Juneau, Alaska

POSITION STATEMENT: During the hearing of CSHJR 29, offered information on behalf of Representative Rauscher.

PETER HOEPFNER, Member
 Cordova School Board
 Cordova, Alaska

POSITION STATEMENT: During the hearing of CSHJR 29, offered support for the legislation.

ALLEN SORUM, Member
 Valdez City School Board
 Valdez, Alaska

POSITION STATEMENT: During the hearing of CSHJR 29, offered support for the legislation.

DON HABEGER, Community Coordinator
Juneau Reentry Coalition
Juneau, Alaska

POSITION STATEMENT: During the hearing of HB 219, testified.

DAVID SPANOS, Deputy Director
Tax Division
Department of Revenue
Juneau, Alaska

POSITION STATEMENT: During the hearing of HB 219, answered questions.

ACTION NARRATIVE

[1:05:05 PM](#)

CHAIR MATT CLAMAN called the House Judiciary Standing Committee meeting to order at 1:05 p.m. Representatives Kreiss-Tomkins, Stutes, LeDoux, Eastman, Kopp (via teleconference), and Reinbold (via teleconference) were present at the call to order.

HJR 29-REAUTHORIZE SECURE RURAL SCHOOLS ACT

[1:06:19 PM](#)

CHAIR CLAMAN announced that the first order of business would be HOUSE JOINT RESOLUTION NO. 29, Urging the United States Congress to reauthorize the Secure Rural Schools and Communities Self-Determination Act of 2000. [Before the committee was CSHJR 29(STA).]

[1:06:51 PM](#)

REPRESENTATIVE GEORGE RAUSCHER, Alaska State Legislature, advised that CSHJR 29 encourages the United States Congress to reauthorize the Secure Rural Schools and Communities Self-Determination Act of 2000 because that Act expired [January 1, 2017], which created budgetary shortfalls for the school districts around Alaska. This situation will continue if Congress fails to reauthorize this long-standing federal obligation to local governments. The Secure Rural Schools Program compensates more than 700 of the poorest communities nationwide, and 33 communities in Alaska for the timber harvesting revenue loss during the changes in the federal forest

management policies. Historically, he explained, the school districts in Alaska have relied on a share of the receipts from the federal program to supplement local funding for education services and roads.

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DERRELL BREESE, Staff, Representative George Rauscher, Alaska State Legislature, referred to the document titled "FFY16 SRS/NFR Payments Final (SFY17) - FFY17 SRS/NFR Payments (SFY18)" [contained within the committee packet] and noted references to the impacted Alaska communities and the amounts of money they received over the last two years. In particular, he said, the document depicts the FY16, "which is Alaska FY17" numbers, and he used the Municipality of Anchorage as an example. The Municipality of Anchorage received \$62,762.77, and in FY17 "state FY18" it received \$3,581.13 because the program had expired and it paid out the last bit of money "they had in there." He stressed that this money is important to the school districts around the state, and he then read the list of school districts impacted by the expired funding from the above-mentioned document. This legislation calls for the United States Congress to reenact this authorization so the money from the Federal Forestry Program can go to the school districts adjacent to the United States National Forests.

[1:11:19 PM](#)

CHAIR CLAMAN opened public testimony on CSHJR 29.

[1:11:52 PM](#)

PETER HOEPFNER, Member, Cordova School Board, stressed that the federal funds originating from the Secure Rural Schools and Communities Self-Determination Act of 2000 are crucial to many school districts in Alaska. For example, he offered, the Cordova School District was to receive \$500,860 in funding, but it did not receive the funding, and combined with the fiscal shortfalls, the city contribution to Cordova schools was reduced from the cap where it had been funded for decades. He remarked that combining this with the use of education flat funding, less dollars are going to the classrooms in Cordova. He offered appreciation for sending this message to the United States House of Representatives and Senate so the Secure Rural Schools and Communities Self-Determination Act of 2000 funding obligation continues as planned.

[1:12:54 PM](#)

ALLEN SORUM, Member, Valdez City School Board, advised that he is also on the Board of the National Forest Counties and Schools Coalition. Nationally, he explained, there are two companion bills in Congress to reauthorize the Secure Rural Schools Program (SRS), the "old Tenant Receipts Program." He offered that he had a chance to visit with the Alaska Congressional Delegation and they are all co-sponsors and supporters of the federal legislation. While, he remarked, he had been advised as to the importance of keeping this issue at the forefront of the United States Congress, unfortunately, it has been dragging on for several years. He pointed out that CSHJR 29 is similar to the legislation the legislature passed approximately six years ago, which was fairly non-partisan and the legislation enjoyed wide support. He encouraged the committee to pass CSHJR 29 and move it on to the next step because giving Congress a message about the need for this program is important for Alaska's schools.

[1:14:25 PM](#)

CHAIR CLAMAN, after ascertaining no one wished to testify, closed public testimony on HJR 29.

CHAIR CLAMAN asked whether any member is contemplating amendments to this legislation, or whether the committee would be comfortable moving CSHJR 29 out of committee.

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REPRESENTATIVE KREISS-TOMKINS said he has a high comfort level in moving this legislation out of committee.

[1:15:13 PM](#)

REPRESENTATIVE STUTES expressed appreciation for CSHJR 29 as it is critically important. There are three schools in her district that are affected, and it includes the Ouzinkie School, which was not listed. She expressed that the Ouzinkie School is exceedingly concerned about the loss of these dollars, as is Cordova and Yakutat, as well. The loss of this funding has a huge impact on rural schools and she expressed that she wants to move the legislation out of committee.

[1:16:02 PM](#)

REPRESENTATIVE REINBOLD, testifying via teleconference, expressed support for CSHJR 29, but noted a desire for a minimum of two hearings per bill.

REPRESENTATIVE KOPP offered full support of CSHJR 29.

[1:16:49 PM](#)

REPRESENTATIVE KREISS-TOMKINS moved to report CSHJR 29(STA) out of committee with individual recommendations and the accompanying zero fiscal note. There being no objection, CSHJR 29(STA) was reported out of the House Judiciary Standing Committee.

[1:17:27 PM](#)

The committee took an at-ease from 1:17 p.m. to 1:22 p.m.

HB 219-CRIM HIST CHECK: ST EMPLOYEES/CONTRACTORS

[1:22:02 PM](#)

CHAIR CLAMAN announced that the final order of business would be HOUSE BILL NO. 219, "An Act relating to background investigation requirements for state employees whose job duties require access to certain federal tax information; relating to persons under contract with the state with access to certain federal tax information; establishing state personnel procedures required for employee access to certain federal tax information; and providing for an effective date."

[1:23:02 PM](#)

CHAIR CLAMAN moved to adopt Amendment 1, labeled 30-GH1938\A.2, Martin, 3/7/18, which read as follows:

Page 4, line 24:
Delete "2017"
Insert "2018"

REPRESENTATIVE STUTES objected for discussion.

[1:23:09 PM](#)

CHAIR CLAMAN explained that Amendment 1 changes the effective date from 2017 to 2018.

REPRESENTATIVE STUTES withdrew her objection. There being no objection, Amendment 1 was adopted.

[1:23:40 PM](#)

CHAIR CLAMAN noted that Representative Eastman was no longer present and therefore he would not be offering an amendment.

REPRESENTATIVE EASTMAN related that he was now speaking via teleconference.

CHAIR CLAMAN informed Representative Eastman that he was not excused from the Call of the House of Representatives today, and he was present in the room at the start of this committee meeting, and he did not have an excused absence; therefore, Representative Eastman would not be allowed to offer an amendment.

[1:25:00 PM](#)

REPRESENTATIVE REINBOLD moved to adopt Amendment 2, labeled 30-GH1938\A.7, Martin, 3/8/18, which read as follows:

Page 1, line 2, following "**information;**":

Insert "**relating to polygraph examinations of persons with access to certain federal tax information;**"

Page 2, following line 8:

Insert a new bill section to read:

"* **Sec. 2.** AS 23.10.037(b) is amended to read:

(b) The provisions of (a) of this section do not apply to the state or a political subdivision of the state when dealing with police officers in its employ or with persons applying to be employed as police officers or with contractors or employees who require access to federal tax information under AS 36.30.960 or AS 39.55.015. In this subsection,

(1) "contractor" has the meaning given in AS 36.30.960;

(2) "employee" has the meaning given in AS 39.55.015;

(3) "police officers" includes officers and employees of the Department of Transportation and Public Facilities who are stationed at an international airport and have been designated to have

the general police powers authorized under AS 02.15.230(a)."

Renumber the following bill sections accordingly.

Page 2, following line 27:

Insert a new subsection to read:

"(d) A current or prospective contractor whose contract with the state requires access to federal tax information for purposes of the contract shall submit to and pass a polygraph examination before accessing any federal tax information."

Reletter the following subsection accordingly.

Page 4, following line 7:

Insert a new subsection to read:

"(e) A current or prospective employee whose job duties require access to federal tax information shall submit to and pass a polygraph examination before accessing any federal tax information."

Reletter the following subsection accordingly.

REPRESENTATIVE STUTES objected.

[1:25:20 PM](#)

REPRESENTATIVE REINBOLD explained that Amendment 2 requires a person to pass a polygraph test before the [subject] employees are allowed to access confidential data.

CHAIR CLAMAN noted that his office had made an inquiry to Legislative Legal and Research Services, and it appears Amendment 2 would run in conflict to AS 23.10.037, which prohibits requiring lie detector tests as a condition of employment, with the only exception being for police officers. He asked how she makes Amendment 2 square up with AS 23.10.037.

REPRESENTATIVE REINBOLD responded that Alaska wants the people with access to this data to be honest, and it should be a minimum requirement if they are accessing personal highly confidential information. In this instance, those people should be required to take a lie detector test.

[1:27:51 PM](#)

REPRESENTATIVE LEDOUX commented that people, in this instance, should be held to high standards. Except, she pointed out, there is no consensus that polygraph evidence is good evidence, which is the reason polygraph tests are not allowed as conditions of employment. She further commented that people who are psychopaths can easily pass polygraph tests.

REPRESENTATIVE REINBOLD responded that these people are just passing a test to have access to this confidential data, the polygraph tests are a measure of honesty, and hopefully, the state will not hire psychopaths to get into this data. She noted that 300 state employees have access to this information and it is her belief the state needs to ensure a high standard to reduce the risk and liability to the state.

[1:29:18 PM](#)

A roll call vote was taken. Representative Reinbold voted in favor of the adoption of Amendment 2. Representatives Kreiss-Tomkins, Kopp, Stutes, LeDoux, and Claman voted against it. Therefore, Amendment 2 failed by a vote of 1-5.

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[CHAIR CLAMAN and Representative Reinbold discussed the amendment process.]

[1:31:33 PM](#)

REPRESENTATIVE LEDOUX referred to the 3/8/18 letter from Don Habeger, Juneau Reentry Coalition, directed to the Alaska House Judiciary Committee, and related that she would like the opportunity to hear from Mr. Habeger.

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DON HABEGER, Community Coordinator, Juneau Reentry Coalition, offered that finding reasonable ways to improve (audio difficulties) that are successfully reentering their community and putting a history of criminality behind them is something the Juneau Reentry Coalition is interested in as it looks to overcome their barriers. He said the title of HB 219 caught his attention and as he read the legislation and read the Department of Revenue's (DOR) protocols for the hiring process, there appears to be a possible way for someone who is overcoming a history of crime to enter into the field. However, he noted, when he read the background investigation for contractors, there

is a clear door that a person must "submit and pass" a background check. Except, he pointed out, there is no definition as to what "pass a background check" means, as he could not find it in AS 12.62, or the public accountancy statutes. He said that it raised enough of a flag that he thought he would bring the issue before this committee to see whether the members agree, and if there is a solid door that someone who is successful cannot get past. He asked the committee to at least consider that and somehow open the door.

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REPRESENTATIVE LEDOUX surmised that when working for the state, there are specific criteria for a person to fail this test, but if they are working as a contractor it is just pass or fail, and no one has defined "pass."

MR. HABEGER answered that that is the way he reads it. He reiterated that "you posted on the website their policy" which stated that if there are recent crimes at various levels, for instance, "one-to-five years you have a misdemeanor, then you are not eligible to have employment in these particular fields." In the event it is a felony, it might have been 10-15 years "whatever that was." At least there is a pathway, there is also an element of protection due to the sensitivity of the job class. However, he said, the way he reads this, "it's submit and pass." For example, if he received a significant contract with DOR or Department of Labor & Workforce Development (DLWD) and he had an employee who had worked for him four years but did not pass, he would have to let the employee go because he did not have any other work for his employee. That is his concern, he related.

1:37:10 PM

CHAIR CLAMAN queried David Spanos, DOR, in addressing this issue about the language "submit to and pass," there was a previous discussion regarding a conviction of dishonesty, and this is specifically the people who would have access to federal tax information. He said that he understood "submit to and pass" to mean the person did not have the types of convictions involving dishonesty which would be a reason they could not have access to the information. The word "pass," although it is not defined, in its practical application "is in that way." He asked Mr. Spanos to describe what it means to pass a background investigation.

[1:37:59 PM](#)

DAVID SPANOS, Deputy Director, Tax Division, Department of Revenue, said he agreed that (audio difficulties) interpretation that "pass "our criminal background investigation." The Tax Division currently has contractors who submit the same forms the division's employees submit to the Criminal Investigation Unit. That unit runs the background check and "we are the ones" that determine whether the person passed. He noted, "We don't have the employer" run a background check or pay someone else to run the background check, "we run it ourselves and we follow the same policy."

[1:38:46 PM](#)

REPRESENTATIVE LEDOUX surmised that the process makes a certain degree of sense. Although, she noted, she was unsure there was anything in the statutes that mandates it be performed in that manner. She asked whether the process and the definition of "pass" should be specified in a bit more detail.

MR. SPANOS replied (audio difficulty) how the division handles the background checks could be changed. He stressed that HB 219 is asking for fingerprinting authority to run a national background check. The division follows its current policy to run local background checks, which includes local background checks for any state employees (audio difficulties) within the past ten years, and that could be changed. He said that he would not be opposed to (audio difficulties) but he can't say why (audio difficulties).

[1:40:43 PM](#)

CHAIR CLAMAN commented that in the event the statute read, "shall submit to a background investigation," simply submitting to the background investigation does not convey the notion that certain individuals, based on their history, that should not be given access to the information. With regard to convictions involving dishonesty, there may be a period wherein people are willing to say that enough time had passed and the person should be cleared. The concept of "passing" is pretty well understood to mean "not only do you submit to it, but you look to see if that criminal history is important for purposes of what you are gaining access to. And, that is what is being done in regulations." Which, he commented, appears to be a pretty sensible way to approach the issue. He noted that people talk about passing background investigations all of the time and what

they are looking for, depending on the circumstances, is what are the background investigations that would preclude a person from employment. In the same sense, background investigations are performed on people working with students in the schools because the state does not want people with a history of child molestation to have access to students, he said. Except, in the statute there is not a long list of every single conviction the person has to clear to be able to go back and teach school. The state basically wants the background investigation in order to be confident the person actually passed, whatever that may mean. He said that he tends to believe that if this were challenged, a court would not have a lot of confusion about what it means to pass a background investigation. Police officers are required to undergo background investigations before being hired, but there is not a long list of which crimes are the basis for not hiring. He described the question raised as a good question, and noted that the contractors, who are not state employees, are treated in the same manner as the state treats state employees in terms of who gains access to the confidential information.

CHAIR CLAMAN asked Representative LeDoux if that answer was satisfactory.

REPRESENTATIVE LEDOUX said "I think so."

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REPRESENTATIVE REINBOLD offered concern about this bill's process, Legislative Legal and Research Services, and her amendments. She related that her four amendments were deemed late and not allowed, which were as follows: the person or corporation suffering any serious violation or breach of authorized access data to be notified within 72-hours; that this legislation could not be a pathway, in any manner, to help establish (audio difficulties) with an income tax; people "who are over" the authorization of data had to have careful measures and good monitoring logs with swift discipline for any breach of authorized data; and in the event of a gross violation of unauthorized data that the violation be forwarded to law enforcement. She opined that this is incredibly sensitive data subject to abuse and the state wants the highest quality of honest people with a rigid monitoring system. She said that she will be "an absolute no on this" due to her belief she had been obstructed in her ability to amend this legislation. In the event HB 219 does not pass, "then all is we are not federally compliant," and it appears that "a lot of you guys" want to be

federally compliant in every area except marijuana and she feels like it is hypocrisy.

[1:46:42 PM](#)

REPRESENTATIVE KOPP offered that he supports the bill, and that Mr. Habeger brought up some good comments and thoughts. For example, he related, possibly a college student had moved his professor's car as a prank and gets tagged with some offense, then 15-years down the road the offense still shows up as a disqualifier. He opined that that is a situation to which Mr. Habeger was referring, but he was unsure whether this was the right time to address the issue, but the principle of background checks is excellent. Mr. Spanos testified that a log is kept as to each time federal tax information is accessed, and that violations of the protocol were misdemeanors subject to a criminal charge and termination of employment. He noted that the committee had previously discussed the issue of requiring any employee to submit to a polygraph test was against the law, with the exception of police officers. He offered surprise that an amendment was introduced requiring that a polygraph test be administered for purposes of employment and remarked that there would be quite a debate just in updating that law all by itself. Anyone accessing federal tax information should have a background check and he opined that every committee member agrees, and he fully supports HB 219.

[1:48:17 PM](#)

REPRESENTATIVE KREISS-TOMKINS moved to report HB 219, Version 30-GH1938\A, as amended, out of committee with individual recommendations and the accompanying fiscal notes.

[1:48:39 PM](#)

REPRESENTATIVE REINBOLD, via teleconference, objected.

[1:48:40 PM](#)

CHAIR CLAMAN explained that according to the rules, an objection stated by Representative Reinbold via teleconference could not be considered on a motion to move a bill out of committee.

[1:48:57 PM](#)

CHAIR CLAMAN announced that there being no objection, CSHB 219(JUD) was reported from the House Judiciary Standing Committee.

[1:49:24 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 1:49 p.m.