

**ALASKA STATE LEGISLATURE
SENATE EDUCATION STANDING COMMITTEE**

February 6, 2020

9:00 a.m.

MEMBERS PRESENT

Senator Gary Stevens, Chair
Senator Shelley Hughes, Vice Chair
Senator John Coghill
Senator Mia Costello
Senator Tom Begich

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 169

"An Act relating to special request registration plates celebrating the arts; and relating to the Alaska State Council on the Arts."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 169

SHORT TITLE: LICENSE PLATES: COUNCIL ON ARTS

SPONSOR(S): SENATOR(S) STEVENS

| | | |
|----------|-----|---------------------------------|
| 01/29/20 | (S) | READ THE FIRST TIME - REFERRALS |
| 01/29/20 | (S) | EDC, STA, FIN |
| 02/06/20 | (S) | EDC AT 9:00 AM BUTROVICH 205 |

WITNESS REGISTER

TIM LAMKIN, Staff
Senator Gary Stevens
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Introduced SB 169 on behalf of the sponsor.

BEN BROWN, Chair

Alaska State Council on the Arts
Juneau, Alaska

POSITION STATEMENT: Testified in support of SB 169.

ANDREA NOBLE, Executive Director
Alaska State Council on the Arts
Anchorage, Alaska

POSITION STATEMENT: Testified in support of SB 169.

ACTION NARRATIVE

[9:00:12 AM](#)

CHAIR GARY STEVENS called the Senate Education Standing Committee meeting to order at 9:00 a.m. Present at the call to order were Senators Begich, Coghill, Hughes, Costello, and Chair Stevens.

SB 169-LICENSE PLATES: COUNCIL ON ARTS

[9:00:31 AM](#)

CHAIR STEVENS announced the consideration of SENATE BILL NO. 169, "An Act relating to special request registration plates celebrating the arts; and relating to the Alaska State Council on the Arts."

He stated his intention to hear from the Alaska State Council on the Arts and hold the bill in committee.

[9:00:58 AM](#)

TIM LAMKIN, Staff, Senator Gary Stevens, Alaska State Legislature, Juneau, Alaska, noted that SB 169 was introduced at the request of the Alaska State Council on the Arts (ASCA) and described SB 169 as a housekeeping bill. It is not just about license plates because it also allows the council to have legal representation from the Department of Law and the flexibility to retain temporary counsel, as necessary. Perhaps most substantively, the bill, as a result of last year's budget cycle, would exempt a portion of the council's budget from the Alaska Executive Budget Act. The private funds raised for the foundation from nonprofit entities would be exempt from the budget act. It would hold those funds harmless from a veto process.

MR. LAMKIN presented the sectional.

Section 1:

AS 28.10.421(a), relating to fees paid to the Division of Motor Vehicles (DMV) for vehicle license plates, allows for an additional fee, set by Alaska State Council on the Arts (ASCA) regulation, and not to exceed \$50, when a person chooses a new or replacement ASCA artistic plate.

The subsection also provides that these additional fees will be accounted for separately and that the total amount that exceeds the costs of the Artistic License Plate Program may be appropriated to fund the ASCA.

MR. LAMKIN explained that the bill would not establish new plates. It addresses existing plates for the Arts Council. Currently those plates are \$30. This bill would provide the means for the council to set in regulation an additional surcharge that would go to the council. The text says not to exceed \$50, but his understanding is that a \$3 surcharge is being considered. He noted members of the council could clarify that later.

Section 2:

AS 44.27, relating to the ASCA generally, adds a new section (AS 44.27.053) providing that the Attorney General is legal counsel for ASCA, similar to other state agencies, and also allows the ASCA to retain additional legal counsel as needed.

Section 3:

AS 44.27.055(d), relating to the ASCA managing its affairs, exempts from the purview of the Executive Budget Act those funds received by ASCA from private non-profit foundation partners.

Section 4:

AS 44.27.080(a), relating to an ASCA-sponsored competition for artistic plates design, from being mandatory to being optional, every four years, at the discretion of ASCA.

Section 5:

AS 44.27.080(c), relating to the artistic plate design competition, restores authority for the ASCA to award the artist of the winning design a monetary amount set in regulation, from the funds generated by the artistic plates. This provision was repealed in 2018.

[9:04:58 AM](#)

SENATOR HUGHES referred to Section 2 and asked if the arts council had been using private counsel.

MR. LAMKIN deferred the question to the representative from the Alaska State Council on the Arts.

SENATOR STEVENS called Ben Brown to the table.

9:05:38 AM

BEN BROWN, Chair, Alaska State Council on the Arts, Juneau, Alaska, said he was first appointed by Governor Murkowski as vice-chair in 2004 and Governor Palin appointed him chair in 2007 and he has been reappointed several times since then. In response to Senator Hughes, he said the council has been in a grey area. The council on numerous occasions has needed to speak to an assistant attorney general at the Department of Law. In the interest of full disclosure, he shared that he is an attorney and a member of the Alaska Bar Association. Things arise in the course of normal business for a state agency that require legal advice. The council has always relied on the Department of Law for that. Last summer, after the vetoes were issued on June 28, the Department of Education and Early Development (DEED), where the council is housed administratively, had an order from the administration to close things down in an orderly manner. "Obviously, my interest was in keeping things open for as long as possible in hopes that there would be a different outcome. I'm happy to say we're all here today because there was a different outcome," he said.

MR. BROWN said meanwhile, the assistant attorney general representing DEED and the council was in a conflicted position because of the different questions being asked by DEED and himself. The bill language is from the Limited Entry Act. He shared that he served almost eight years as a member of the Commercial Fisheries Entry Commission, and this provision exists in the Limited Entry Act. The commission can use the Department of Law for legal counsel but also has the ability to hire outside counsel. Since this bill was drafted, he consulted with the governor's legislative office, and the administration supports the concept but does not find this to be the most appropriate language. He thinks he and the governor have come to an agreement on compromise language. The basic intent and effect of Section 2 of the bill will remain the same, even if the language is changed.

CHAIR STEVENS asked if there has been occasion in the past where the council has needed to go outside for legal counsel or is that the only example in recent history.

MR. BROWN replied that last summer the Arts and Culture Foundation, a nonprofit that supports the Arts Council, did engage counsel to help ASCA get through this process. He speculated that in the future there could be an intellectual property situation involving the Visual Artists Rights Act, a federal statute. The Department of Law does not have a lot of expertise in that area. Perhaps something specific to an artistic program might require ASCA to hire someone with expertise. ASCA has not had to do it in the past except for the odd situation last summer, which he hopes will not repeat itself. It just seems wise to have that in statute as an option for the board of trustees.

SENATOR HUGHES relayed a story of how a lawsuit was avoided. An Alaskan submitted the design for the license plate with the bear standing up for a contest a long time ago. It turns out that was from a sketch by another artist. The artist, an elderly fellow on the East Coast, was contacted and he was flattered that it was being used. He was sent an honorary license plate with the bear. In that case a lawsuit was avoided but it could have been the basis for one.

[9:10:48 AM](#)

MR. BROWN said that for Section 1, the sponsor statement describes the history of the license plate program, which was proposed in a bill by Representative Kreiss-Tomkins that ultimately did not pass. Former Representative Bill Stoltze incorporated the language in 2016 in a bill that created blood bank license plates. At that time, a fee was envisioned for the artistic license plates to generate revenue, similar to other specialty plates. The ACSA conducted a contest and a panel vetted the finalists. Fifteen thousand Alaskans voted online for the winner. The plates are very popular since people like the design depicting the aurora borealis and the moon over the mountains. Before the plates were issued, Representative Kreiss-Tomkin's staff and the ASCA reviewed the figures and found that not many \$50 plates were issued, so these plates were issued without any additional surcharge. This has been well received and thus far, 30,768 plates have been issued.

MR. BROWN said that for a period last year, more ACSA plates were issued than the bear or yellow standard. There is a great deal of demand for them. The bill allows for an amount to be set

in regulation not to exceed \$50. Keeping in mind price elasticity, a \$50 surcharge will lead to a sharp decrease in the cars registered with this plate. The goal is to find the sweet spot to enable issuing as many artistic licenses as possible while also generating a meaningful amount of earned income and revenue for the ASCA. It would not be a dedicated fund, which is unconstitutional, but the bill says the commissioner of the Department of Administration (DOA) will separately account for the surcharge and the legislature could appropriate that. The end result is that ASCA would have a designated general fund component in its budget that allows ASCA to meet its matching requirement for the National Endowment for the Arts (NEA). ASCA cannot use its private foundation dollars to make that match. It has to be state money. ASCA cannot make its \$700,000 budget with this, but it could perhaps make 5-10 percent of its budget. That is the goal, to continue a program that celebrates Alaskan art, makes beautiful license plates, and also generates funds.

MR. BROWN shared that ASCA foundation partners were disturbed when all the foundation money was vetoed, in addition to state and federal funds, last year. The foundations are investing in the people of Alaska through the State Council on the Arts. He conferred with the administration about this provision and has had no opposition about exempting those private foundation dollars from the Executive Budget Act. The legislature would still need to appropriate state money and the federal receipts authority. Without the state match, after a certain amount of time ASCA would be out of compliance with the provisions of the National Endowment for the Arts and ASCA would not be able to receive the foundation money. This would delay a catastrophic event and not have it happen as quickly as it did in June and July last year.

[9:16:03 AM](#)

CHAIR STEVENS observed that it is unusual for agencies to have outside monies like that. He asked if there are other agencies that do. He asked Mr. Brown to help the committee understand the funds he wants to protect.

MR. BROWN replied that he could not speak to other agencies. The Rasmuson Foundation is the largest ASCA foundation partner in the state. The Rasmuson Foundation's commitment to healthy Alaskan lives and lives that are full of meaningful experiences, including arts and culture, led to that partnership. Most of the Rasmuson funds invested in the council go to arts education programs and enables the council to do the New Visions program. The Kodiak Island Borough School District, in Senator Stevens'

district, has the Munartet Project. The investment of Rasmuson funds in arts and culture through the state council attracted the attention of Margaret Cargill Philanthropies, based in Minneapolis. Margaret Cargill Philanthropies is investing as much, and potentially more in the future, as Rasmuson in educational programs.

MR. BROWN said he believes that now that ASCA is reconstituting itself and recovering from the shutdown last year, more grant opportunities from national foundations are available. People are interested in Alaska since is an alluring, exotic place in the minds of most other Americans. The ASCA has done good work with the money that has been invested in the council. This exemption will help the council forge new relationships by reassuring potential foundation partners that their money is not going to be vetoed in a way that could be considered arbitrary or capricious. Last summer the ASCA asked Rasmuson Foundation and Cargill Philanthropies for more time to allow the ASCA the chance to arrive at a different outcome. He said he is grateful for their patience and forbearance because the ACSA managed to survive and retain these important partners.

MR. BROWN noted that other agencies that might have similar financial structures are social services agencies. The Council on Domestic Violence and Sexual Assault (CDVSA) receives meaningful grant dollars from the federal Department of Justice (DOJ). He acknowledged that he does not have a lot of concrete examples. However, he offered his view that if ACSA is leading by example, other state agencies might also participate because it is a great way to bring money into Alaska and relieve the pressure on scarce undesignated general funds (UGF).

9:19:14 AM

SENATOR BEGICH added that one example might be the UA [University of Alaska] Foundation. Money donated to that fund is private money not subject to the governor's veto. The Alaska Mental Health Trust Authority (AMHTA) has a substantial amount of money based on its settlement, which are funds not subject to the whim of the legislature or governor. While the AMHTA funds are not donated funds, the authority's funds are external funds. Those are two substantive examples of nonstate funds held outside the purview of the governor or legislature, he said.

SENATOR HUGHES noted that a few years ago she carried a bill for the ASCA to try to avoid what happened last summer and to allow more flexibility in bringing private dollars. She asked what the result was of that legislation.

MR. BROWN responded that that was the Senate companion to HB 137 in 2017. That bill significantly restructured the council and made it a semindependent corporation. Before ASCA was an agency of the state. The bill made the staff part of the exempt service, not the classified service. It exempted ASCA from the procurement code and gave ASCA the ability to set its own personnel policies. ASCA has an interim personnel policy. Procurement for ASCA requires fewer hoops than the state requires. He can get a graph to the committee that shows the increase in foundation dollars over the years. From the time that HB 137 was enacted, foundation dollars have gone steadily up. Now that ASCA is reconstituting itself, the ability to reclassify positions and change duties of the staff is vastly easier than it would have been if those positions had remained classified.

[9:22:44 AM](#)

SENATOR BEGICH clarified that the NEA match requires public funds, not private funds.

MR. BROWN answered that is absolutely correct. The National Arts and Humanities Act created the National Endowment for the Arts and mandates that whatever amount is set for the state partnership agreement, which is a three-year contract, has to be matched by state funds. It could be earned revenue or from general funds, but it must be state money appropriated by the legislature. Mary Ann Carter, the NEA chairman, was in Juneau last summer and made that point when she spoke to the Juneau Chamber of Commerce before the second round of vetoes was announced on August 19. That was a policy choice made by Congress, that there must be a meaningful investment by the state to get the federal match. Alaska is unique in how that state and federal investment is leveraging a significantly larger private foundation investment. Ms. Carter thinks Alaska is a shining example.

SENATOR BEGICH stated that the public money that the bill would generate would supplement ACSA's ability to make that match. The risk of losing the federal match still remains if the state does not fund the arts council. He clarified that if Alaska became the only state in the union not to fund the arts council, the council would not be able to give out these arts grants.

MR. BROWN replied that the ultimate failure of not funding the state council with state funds would mean that the state is out of compliance and would eventually lose the endowment funds.

Ultimately, those funds would be redistributed to other states, territories, and jurisdictions. Nearly ten years ago, Kansas became the only state without an arts council, and Alaska benefitted by receiving funds previously designated for Kansas. Similarly, if last year's vetoes had not been revised, the \$700,000 Alaska receives would have been redistributed to other states, the District of Columbia, Puerto Rico, American Samoa, and Guam. It would be impossible for the ASCA to continue because the Rasmuson Foundation and Margaret Cargill Philanthropies are not interested in funding an education program and the staff costs to administer it. These foundations are willing to donate funds to offset some of those costs, but these foundations do not wish to pay rent, staff salary, or other similar costs. The state and federal investments make it possible for the agency to exist. The ASCA can then obtain foundation dollars for specific programs that augment the council's ability to enrich Alaska lives with arts and culture. However, the basic infrastructure must be in place, he said.

CHAIR STEVENS asked for an explanation of Section 5. At one point, the council was able to award money for artistic design. That was repealed and the council wants that reinstated.

[9:27:38 AM](#)

MR. BROWN said the original vision was to have a \$50 surcharge on plates. After the plate was designed and before it went into production, the council decided to see how the program would work without a surcharge. That change was made with an amendment to a 2018 bill from Senator Egan about license plates. When the council got rid of the surcharge, it did not want a provision to pay an artist when there was no revenue generated by the license plate program. Now that the council is envisioning revenue being generated by the program, the council thinks it is reasonable to be able to pay an artist. The council believes in paying artists so that people who want to make a living as artists can.

CHAIR STEVENS called Ms. Noble to testify.

[9:29:53 AM](#)

ANDREA NOBLE, Executive Director, Alaska State Council on the Arts, Anchorage, Alaska, in response to Senator Steven's comment about the unusual makeup of the agency as a public corporation, said that ASCA is the only arts agency structured as a public corporation. She thanked Senator Hughes for carrying that bill. ASCA is on the leading edge of arts agencies in terms of organizational structure. It has put ASCA in the unique position

of being able to generate more private funding, which was a direct result of the change to a public corporation.

MS. NOBLE said to expand on Senator Hughes' question about the effect of that legislation, last year there was a dramatic increase of \$1.5 million in private and foundation funding. Unfortunately, the disruption to services last year interrupted ACSA's ability to receive funds and execute programs in arts education. ACSA was on track to show the programmatic and foundation funding increase. The council is still working on that this year. The success of the license plate without a fee has shown the great support of Alaskans. ACSA is excited about the expansion of the license plate program into revenue. It may lead to programs serving Alaskans. ACSA is looking at the disruption of services as an opportunity to connect to other sectors in the state. For example, the Alaska Marijuana Control Board has asked ASCA to partner around education and prevention for addiction. It is an interesting opportunity to think about how the arts can relate to healing and the wellness of the state.

[9:34:18 AM](#)

MR. BROWN shared that ASCA is very proud of a program called Creative Forces, an arts therapy program started by the NEA in conjunction with the Department of Defense at Walter Reed Army Hospital. It was expanded to 10 military hospitals around the country, including JBER [Joint Base Elmendorf-Richardson]. The council worked carefully with Senator Murkowski's office to make sure JBER was chosen. The music therapist for ASCA has a room at JBER to meet with clients who are returnees from theaters of war around the world. These soldiers have severe injuries, and music therapy is helpful for their road to recovery and reintegration into society. Also, Americans for the Arts and NEA have created a community engagement program for veterans who become musicians through the music therapy to engage in jam sessions. He hoped to work with Senator Revak and Representative Tarr, the cochairs of the Joint Armed Services Committee, to showcase that work during the session. The Creative Force program will make legislators feel that the agency should exist and it is doing good things and making Alaska a better place.

MR. BROWN summarized that the bill is important for the path to sustainability and success.

SENATOR HUGHES said since Mr. Brown mentioned Creative Force, she wanted to say something outside of the box. She attended the Lullaby Project at Hiland Mountain Correctional Center. The

female inmates compose music and perform with musicians. It was incredible and life changing for inmates. She would be curious to know if that kind of therapy can help reduce recidivism. The recidivism rate at three years hovers around 60 percent, but at nine years it is 83 percent. Anything to help reduce the number of crime victims in the state and turn people's lives around. She asked if the arts council has ever delved into something like that and was there any research that showed it help get people's lives back on track. Arts could also become a career for some.

CHAIR STEVENS said he appreciated the wide-ranging discussion. "Everyone loves the arts council here, and we'll give you an opportunity to answer Senator Hughes' question," he said.

[9:38:55 AM](#)

MR. BROWN replied the ACSA has done some work in some correctional facilities, most notably with Sealaska Heritage Institute at Lemon Creek Correctional Center. The former community and Native arts program director helped to comanage a teaching program that was aimed at Alaska Native inmates. He pointed to Senator Coghill as someone who has devoted so much time and effort to help the criminal justice system work right. The arts have a tremendous role to play, he said. With last year's events, ACSA could not expand its work in the Lemon Creek Correctional Center (LCCC). He explained that once prisoners became sober and received substance abuse help, art programs helped them access their creativity. The inmates at LCCC created artwork, which was sold with the proceeds deposited to their prison accounts, giving these inmates some resources to fall back on once the offenders are released from prison. Alaska is just beginning to use arts in corrections. California has a robust, correctional creative program. He expressed an interest in discussing arts programs with Commissioner Dahlstrom, Department of Corrections (DOC) because of the positive potential these programs offer. National foundations are very interested in correction and criminal justice reform. These foundations have resources that could be invested in Alaska as state funding diminishes. If the ACSA could develop a working relationship with the Department of Corrections, it could allow the ACSA to resume its work in correctional facilities. These programs are not offered at maximum security places, but at medium security places where people are not serving time for committing the most heinous crimes. The ACSA has done some work in that area and it would like to do more.

CHAIR STEVENS called Mr. Lamkin to the table to speak about license plate data.

MR. LAMKIN said he wanted to clarify Mr. Brown's comment about the number of license plates issued "to date." He said he was waiting for a response about the artistic license plates, but he did get data that from March 2018 through August 2019 that showed that 30,700 artistic plates were issued.

CHAIR STEVENS opened public testimony and after ascertaining there was none, he kept public testimony open and mentioned that written testimony could be emailed to senate.education@akleg.gov.

[9:43:30 AM](#)

CHAIR STEVENS held SB 169 in committee.

[9:43:59 AM](#)

CHAIR STEVENS There being no further business to come before the committee, Chair Stevens adjourned the Senate Education Standing Committee at 9:43 a.m.