

ALASKA STATE LEGISLATURE
SENATE STATE AFFAIRS STANDING COMMITTEE

March 10, 2020

3:31 p.m.

MEMBERS PRESENT

Senator Joshua Revak, Chair
Senator John Coghill, Vice Chair
Senator David Wilson
Senator Scott Kawasaki

MEMBERS ABSENT

Senator Mia Costello

COMMITTEE CALENDAR

SENATE BILL NO. 133

"An Act relating to testing of sexual assault examination kits; and providing for an effective date."

- MOVED CSSB 133 (STA) OUT OF COMMITTEE

SENATE BILL NO. 88

"An Act relating to the office of administrative hearings; relating to the types of proceedings handled by the office of administrative hearings; relating to the entities that may use the services of the office of administrative hearings; relating to the duties of the chief administrative law judge, including the power to hire professional staff; relating to the qualifications and powers of administrative law judges, including subpoena power; relating to the compensation of the chief administrative law judge; relating to complaints against administrative law judges and hearing officers; relating to reimbursement for costs incurred by the office of administrative hearings; relating to procedures for requesting and conducting proceedings of the office of administrative hearings; and providing for an effective date."

- HEARD & HELD

SENATE BILL NO. 231

"An Act requiring background investigations of village public safety officer applicants by the Department of Public Safety;

relating to the village public safety officer program; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 133

SHORT TITLE: SEXUAL ASSAULT EXAMINATION KITS: TESTING

SPONSOR(s): SENATOR(s) GRAY-JACKSON

01/21/20	(S)	PREFILE RELEASED 1/10/20
01/21/20	(S)	READ THE FIRST TIME - REFERRALS
01/21/20	(S)	STA, FIN
03/05/20	(S)	STA AT 3:30 PM BUTROVICH 205
03/05/20	(S)	Heard & Held
03/05/20	(S)	MINUTE(STA)
03/10/20	(S)	STA AT 3:30 PM BUTROVICH 205

BILL: SB 88

SHORT TITLE: OFFICE OF ADMINISTRATIVE HEARINGS

SPONSOR(s): SENATOR(s) MICCICHE

03/13/19	(S)	READ THE FIRST TIME - REFERRALS
03/13/19	(S)	STA, FIN
03/10/20	(S)	STA AT 3:30 PM BUTROVICH 205

BILL: SB 231

SHORT TITLE: VILLAGE PUBLIC SAFETY OFFICER GRANTS

SPONSOR(s): SENATOR(s) OLSON

02/24/20	(S)	READ THE FIRST TIME - REFERRALS
02/24/20	(S)	STA, FIN
03/10/20	(S)	STA AT 3:30 PM BUTROVICH 205

WITNESS REGISTER

MICHAEL WILLIS, Intern
Senator Peter Micciche
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented SB 88 on behalf of the sponsor.

ANDREW HEMENWAY, representing self
Juneau, Alaska

POSITION STATEMENT: Speaking as a retired Administrative Law Judge, provided background information on the Office of Administrative Hearings during the hearing on SB 88.

CHRIS KENNEDY, Administrative Law Judge (Tax)
Office of Administrative Hearings (OAH)
Department of Administration
State of Alaska
Anchorage, Alaska

POSITION STATEMENT: Presented a sectional analysis of SB 88 on behalf of OAH.

SENATOR DONNY OLSON
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Testified as sponsor of SB 231.

DENISE LICCIOLI, Staff
Senator Donny Olson
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Delivered the sectional analysis for SB 231.

LEONARD WALLNER, VPSO Coordinator
Chugachmiut
Anchorage, Alaska

POSITION STATEMENT: Testified in support of SB 231.

AMANDA PRICE, Commissioner
Department of Public Safety
Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to SB 231.

MAYOR LUCY NELSON, Mayor
Northwest Arctic Borough (NWAB)
Kotzebue, Alaska

POSITION STATEMENT: Testified in support of SB 231.

ACTION NARRATIVE

[3:31:05 PM](#)

CHAIR JOSHUA REVAK called the Senate State Affairs Standing Committee meeting to order at 3:31 p.m. Present at the call to order were Senators Coghill, Wilson, Kawasaki, and Chair Revak.

SB 133-SEXUAL ASSAULT EXAMINATION KITS: TESTING

[3:32:02 PM](#)

CHAIR REVAK announced the consideration of SENATE BILL NO. 133, "An Act relating to testing of sexual assault examination kits; and providing for an effective date." [The committee adopted the committee substitute (CS), version U, during the 3/5/20 hearing.]

CHAIR REVAK said this is the second hearing, public testimony was heard, and the Department of Public Safety (DPS) has submitted a fiscal note for \$540,000. He solicited a motion.

[3:32:55 PM](#)

SENATOR COGHILL moved to report the committee substitute for SB 133, work order 31-LS1248\U, from committee with individual recommendations and attached fiscal note.

[3:33:06 PM](#)

CHAIR REVAK found no objection and CSSB 133(STA) was reported from the Senate State Affairs Standing Committee.

[3:33:12 PM](#)

At ease

SB 88-OFFICE OF ADMINISTRATIVE HEARINGS

[3:34:17 PM](#)

CHAIR REVAK reconvened the meeting and announced the consideration of SENATE BILL NO. 88, "An Act relating to the office of administrative hearings; relating to the types of proceedings handled by the office of administrative hearings; relating to the entities that may use the services of the office of administrative hearings; relating to the duties of the chief administrative law judge, including the power to hire professional staff; relating to the qualifications and powers of administrative law judges, including subpoena power; relating to the compensation of the chief administrative law judge; relating to complaints against administrative law judges and hearing officers; relating to reimbursement for costs incurred by the office of administrative hearings; relating to procedures for requesting and conducting proceedings of the office of administrative hearings; and providing for an effective date."

[3:34:52 PM](#)

MICHAEL WILLIS, Intern, Senator Peter Micciche, Alaska State Legislature, Juneau, Alaska, on behalf of the sponsor, introduced SB 88, speaking to the following sponsor statement:

Senate Bill 88 is a "good government" bill to improve the process for hearing administrative appeals in Alaska. This bill updates the Office of Administrative Hearings (OAH) statutes to address due process concerns, procedural confusion, and inefficiencies, all with an eye towards improving OAH's ability to provide timely, cost-effective, and high-quality administrative adjudication services.

In 2004, under the leadership of Governor Murkowski and Senator Therriault, the legislature created the Office of Administrative Hearings (OAH) to centralize the state administrative adjudication process. The new system has worked well to reduce cost, improve public confidence, and provide a speedier process to resolve disputes. However, the statutory framework needs an update to correct drafting anomalies and take advantage of the lessons learned from 14 years of "test driving" the original innovative legislation. Some of the corrections and improvements included in SB 88:

- Reduce procedural confusion over OAH's subpoena authority by replacing a patchwork system with a uniform provision. It eliminates gaps that made it impossible, for example, for a parent accused of child abuse to subpoena a key witness to the alleged event.
- Rationalize the system of deadlines that was created to speed the process. For example, one final decision deadline applicable to agency heads, though wise in concept, has been counted from the wrong event, sometimes leaving commissioners with virtually no time to consider far-reaching decisions. At the same time, these final decisionmakers have had no deadline at all to act on revised proposed decisions after a remand, which can lead to long delays that frustrate the parties.
- Make it possible for parties to respond to one another's objections to a proposed decision, in appropriate cases. The lack of a way to allow for responses has led to due process concerns and delays. The bill also permits the administrative

law judge (ALJ) to revise a proposed decision based on errors pointed out by the parties, again cutting down on inefficiency and delay.

- Permit the Chief Administrative Law Judge to employ low-cost junior professionals for some work, correcting an inadvertent omission in the original legislation. This will create opportunities for savings.
- Allow OAH to count experience gained in other jurisdictions toward the minimums needed to serve as a tax qualified ALJ. This is critical in the tax docket, where OAH has had serious recruitment problems and needs to broaden the pool of skilled practitioners it can recruit from.
- Give OAH a means of reopening decisions that were entered in error, such as when a party failed to appear but the failure later turns out to be because the party was incapacitated, or because the agency sent the notice to the wrong person. SB 88 corrects this omission in the original legislation. The public will be better served by the corrections and streamlining in the process for administrative adjudication as provided by SB 88. I respectfully request support for this bill.

[3:36:38 PM](#)

ANDREW HEMENWAY, representing himself, Juneau, Alaska, read the following prepared remarks:

Good afternoon. My name is Andy Hemenway. I was employed by the Office of Administrative Hearings as an administrative law judge from the time it was created in 2004 until 2015. I retired from state service in 2016, and I am appearing before you in a personal capacity. With your permission, Mr. Chairman, I'd like to provide the members of the committee with some background information regarding the Office of Administrative Hearings, in order to put into perspective what the agency does and why this legislation is needed.

The Office of Administrative Hearings is, in effect, the executive branch's judicial branch. The agency (OAH) conducts adjudicative hearings for executive

branch agencies. These hearings provide due process of law for a member of the public who has the right to appeal from an agency decision regarding that person's state benefit, obligation, program or license.

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Before OAH was established, each individual agency conducted these kinds of adjudicative hearings, using a hearing officer employed by the agency whose decision was being appealed. Understandably, this system resulted in a perception among many people who appealed that the proceeding was stacked against them, because the agency controlled the adjudicative process and employed the hearing officer.

In 2004, the Alaska Legislature created the Office of Administrative Hearings as an independent agency. The purpose of the legislation was to eliminate the perception of unfairness in the adjudicative process and to separate the adjudicatory functions of executive branch agencies from those agencies' investigative, prosecutorial, and policy-making functions.

OAH's jurisdiction is set out in AS 44.64.030. Since OAH was established, the legislature has added additional case categories to the list of agencies, boards and commissions whose cases must be heard by OAH. In addition, a number of executive branch agencies and other public entities, such as municipalities and school districts, whose cases are not listed in AS 44.64.030, have decided to refer their cases to OAH in order to take advantage of what has come to be seen as a professional, experienced, fair and cost-effective method of resolving contested cases.

Today, OAH handles cases from approximately 80 different areas of law. Administrative law judges at OAH have dealt with matters involving as little as \$40 to as much as \$800 million, as well as cases where money is not the issue, such as professional licensing, ethics, and procurement. Some cases involve teams of attorneys on both sides, while others involve a non-attorney agency representative and a self-represented litigant.

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In order to provide some context for the specifics of SB 88, I'll briefly describe the adjudicative process as it occurs in the Office of Administrative Hearings. Let's say a person disagrees with an agency decision regarding a matter such as child support, PFD eligibility, revocation or denial of a professional license, or entitlement to a welfare benefit. Under our constitution, that person is entitled to an adjudicative hearing to contest the agency's decision. The person files an appeal with the agency, which is required to forward the appeal to OAH within ten days. From then on, OAH has control of the hearing process. The chief administrative law judge assigns the case to an administrative law judge, who is charged with issuing a proposed decision within 120 days. The assigned judge will review the case file, and either schedule a hearing or, in more complex cases, schedule a prehearing conference. There may be some preliminary issues to deal with, in which case the parties will be given an opportunity to file prehearing motions.

In many cases, the administrative law judge will conclude that the issues that have been raised may be capable of resolution without a hearing, through alternative dispute resolution. In those cases, the chief administrative law judge will assign a different judge to contact the parties and to conduct mediation, which is an informal, voluntary process in which the judge attempts to find a workable solution to the issues raised that satisfies both the individual and the agency. This has been a particularly beneficial part of the OAH docket, which has saved agencies money by reducing the cost of administrative litigation, while at the same time providing a fair outcome for all concerned.

Assuming that the case is not resolved through alternative dispute resolution, or otherwise, the administrative law judge presides over the hearing, at which, just as in a court case, witnesses testify under oath and are cross-examined, and documents are submitted into evidence. After the hearing, the administrative law judge issues a written proposed decision, and the parties are given an opportunity to request changes by filing a proposal for action. The

administrative law judge's decision is generally not the final decision, although in some instances, such as in tax appeals, it is. Assuming the administrative law judge's decision is not given effect as the final decision, the administrative law judge's decision and any proposals for action are sent to the final decision maker, which in most cases is the commissioner of whatever department the agency is in, or, in cases involving professional licensing or other boards or commissions, the board or commission involved. The final decision maker can either adopt the administrative law judge's decision, modify it, or send it back to the administrative law judge for additional proceedings. In most cases, the final decision maker adopts the administrative law judge's decision in the form it was issued. In any event, once the final decision is issued, the parties to the case may appeal that decision to the superior court.

That, in a nutshell, is how cases generally proceed in OAH. Over the course of years since the agency was created, however, it has identified a few provisions of its enabling statute that could be improved in order to streamline the adjudicative process and to clarify the agency's powers. SB 88 was drafted with the direct and close involvement of OAH and the Department of Law.

Mr. Chairman, thank you for providing me with an opportunity to testify in support of SB 88. Administrative Law Judge Chris Kennedy, who was the primary OAH contact in the bill drafting process, will take the committee through the bill's provisions in detail, but in the meantime if there are any questions for me, I am happy to address them.

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SENATOR KAWASAKI asked if a person who appears before OAH typically will have counsel.

MR. HEMENWAY answered that defendants typically do not have counsel for cases involving child support, the permanent fund dividend, and welfare benefits. However, if enough is at stake in dollars or in principle, the person typically will have counsel. Counsel may also appear if the principle will apply to a lot of Alaskans, even if the dollar amount is not very significant, so it varies based on the type of case.

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SENATOR KAWASAKI asked how many OAH cases are settled and how many are appealed to superior court.

MR. HEMENWAY said he did not have the information on hand, but it is in the annual report. He deferred to Administrative Law Judge Kennedy to respond further.

[3:45:19 PM](#)

CHRIS KENNEDY, Administrative Law Judge (Tax), Office of Administrative Hearings, Department of Administration, State of Alaska, Anchorage, Alaska, in response to Senator Kawasaki, stated that less than one percent of cases are appealed to superior court. He offered to follow up with the specific number.

CHAIR REVAK said the committee would appreciate the figure.

MR. KENNEDY said he has worked for the agency since 2005. He served as the deputy chief until 2016. He presented the sectional analysis for SB 88:

Sec. 1: Amends AS 18.80.120(b) and is a conforming change to remove the statutory reference that is being repealed in section 20 (AS 44.64.055). (Page 1, line 12 - Page 2, line 6)

Sec. 2: Amends AS 39.25.120(c)(20) and is a conforming change to align with the proposed change in section 4. It adds "professional staff" to the partially exempt service in the Office of Administrative Hearings. (Page 2, lines 7-9)

He explained that Section 2 is one of a pair of sections that address an inadvertent problem created by the original statute. The statute did not authorize hiring a professional staff, such as a staff attorney. Other panels in other states have been able to increase productivity by having junior attorneys do some of the more repetitive tasks. If done right this can be a means to reduce overall cost.

Sec. 3: Amends AS 44.64.010(d) to correct two anomalies in the chief administrative law judge's salary. The chief administrative law judge would be paid at step 27 according to the personnel rules and

the duty station where he or she works. (Page 2, lines 10-14)

He said because of the applicability clause, this provision would not apply to the current chief. The chief currently is paid on the Juneau salary schedule, but she is located in Anchorage. This provision would correct that anomaly. Also, the position is capped at step F, which has effectively prevented governors from recruiting from senior attorneys at the Department of Law when selecting a Chief Administrative Law Judge because those individuals would lose too many steps by transferring to OAH.

Sec. 4: Amends AS 44.64.020 to provide more flexibility in staffing structure of the Office of Administrative Hearings and includes language clean-up. (Page 2, line 15 - Page 4, line 12)

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MR. KENNEDY said Section 4 is the other part of the change he mentioned in Section 2 to use professional staff. It also adds language regarding alternative dispute resolution, which as Mr. Hemenway mentioned has become one of the core duties of OAH. It was not fully foreseen in 2004, but the agency has found that greatly expanding its mediation capabilities has been a tremendous cost-saving tool for OAH. It has twice permitted OAH to downsize. This section updates the core duties and has some technical cleanup language that Legislative Legal Services recommended.

Sec. 5: Amends AS 44.64.030(b) to correct an anomaly in statute, whereby municipalities and school districts are expressly permitted to contract with the Office of Administrative Hearings for services under AS 44.64.055, but are omitted from the provision for referral of cases. This section streamlines the statute and permits the repeal of AS 44.64.055 in section 20. (Page 4, lines 13-23)

Amends AS 44.64.030(b) to clarify that agencies, municipalities, and school districts referring cases to the Office of Administrative Hearings may agree with the office that certain procedures will apply. (Page 4, lines 20-21)

He explained that the original statute did not include municipalities and school districts in the authorization to

accept case referrals. The OAH has accepted those referrals which has been a significant win-win for cost savings, but OAH would like to put it on a solid statutory footing.

Sec. 6: Amends AS 44.64.030(c) to add the word "entity," which makes it explicit that a municipality or school district may choose to delegate final decision authority to OAH. (Page 4, lines 24-29)

Sec. 7: Amends AS 44.64.040(a) to require the minimum experience for all classes of administrative law judges be four years, but in the case of tax qualified ALJs it would remove the requirement that the experience be in Alaska. (Page 4, line 29 - Page 5, line 11)

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MR. KENNEDY said Section 7 is surprisingly important because some of the most important work OAH does is to act as the state's tax court. The way the statute is currently worded, OAH cannot hire tax judges unless they have been practicing law in Alaska for two years even though Alaska experience is not necessary for tax work. He offered his view that it is almost impossible to find a good tax attorney in Alaska who is not making a lot more money than the state can pay. Advertised positions have gone unfilled for over a year at a time. He said he is the last employed tax judge at OAH, and he is transitioning into retirement so the organization would like the option to recruit outside Alaska, if necessary.

Sec. 8: Amends AS 44.64.040(b) to clarify that delegation of a referring agency's or entities' procedural powers applies to any proceeding the agency or entity has referred. By adding the term "entity," this includes cases accepted from municipalities and school districts. (Page 5, lines 12-27)

He said Section 8 corrects imprecise drafting in the 2004 bill. This makes it clear that OAH would have the agency or entity's power for cases referred to it.

Sec. 9: Amends AS 44.64.040(c) to make a technical change regarding judges that serve part-time in a position that is authorized as full-time. (Page 5, line 28 - Page 6, line 2)

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MR. KENNEDY said the current language seems to require even part-time judges to devote full-time to the office if they are serving in a position that is authorized as a full-time position. As a cost-savings measure, OAH needs to be able to do partial fills of full-time positions when case demand is down. This change will make it clear that OAH can do so.

Sec. 10: Amends AS 44.64.050(c) to put a statute of limitations on complaints for code of conduct violations. The section creates a dual limitations period. First, any person can bring a complaint about conduct that occurred less than three years ago. Second, any person can bring a complaint about conduct that occurred during a proceeding that ended less than two years ago (even if the conduct itself was more than three years ago). (Page 6, lines 3-20)

He explained that Section 10 relates to the Chief Administrative Law Judge's duty to review code of conduct complaints against hearing officers throughout the state system. He said most of the code of conduct complaints that OAH reviews come from other tribunals, not OAH. Currently, there is no statute of limitations on those complaints and disgruntled people can come in and complain about things that happened many years in the past. This provision would limit the look-back period to three years, except for long running proceedings, in which it would allow for complaints two years after the proceeding ends to file a complaint. He said stale complaints have been a problem.

Sec. 11: Amends AS 44.64.060(a) to clarify that if a municipality sends a case to the Office of Administrative Hearings, its ordinances apply. Aligns this section with AS 44.64.030(b) by making it explicit that preemption by OAH regulations does not apply to voluntarily referred cases. (Page 6, line 21 - Page 7, line 2)

MR. KENNEDY said the current preemption provision is a little too strong. It could be read to mean that when a municipality voluntarily refers a case to OAH, the OAH's regulations will preempt the municipality's ordinances. This makes the language more precise and ensures that municipalities can refer cases and not cause an override of their own rules.

Sec. 12: Amends AS 44.64.060(b) to require basic information be submitted when a case is referred to the OAH. In addition, this section changes the appeal

process of a denial of referral from the Superior Court to the OAH. Also, in this section, the timeline for compiling a full agency record is modified. (Page 7, lines 3-19)

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MR. KENNEDY explained that Section 12 gives agencies a few more days to assemble the full agency record. This change is based on practical experience of what is possible and not possible at the beginning of a case. It would also provide that if an agency denies a hearing and refuses to refer a case to OAH, the person requesting the hearing can appeal that issue to OAH rather than going to superior court. This approach is used through regulations in half of the OAH hearing dockets. It has been a quick and efficient way to resolve front-end disputes, such as whether the hearing request was timely.

Sec. 13: Amends AS 44.64.060(d) to adjust the deadline for stayed cases, allowing the 120-day deadline for a proposed decision to be suspended while a parallel case is moving forward. (Page 7, lines 20-29)

He offered his view that the timeline has been a tremendous tool in keeping OAH as a faster, better, cheaper way to resolve many cases, but there are times when it is necessary to stop the clock completely to allow a parallel criminal case or other court litigation to go first. Currently, both parties must concur, and it can be cumbersome to get that agreement, he said.

Sec. 14: Amends AS 44.64.060(e) to make changes to the decision-making process in the majority of OAH cases.

Page 7, line 31: This change brings the language into line with current drafting standards, without changing meaning.

Page 8, lines 5-6: Permits extension of the period for parties to comment on a proposed decision if all parties agree.

Page 8, line 8: Ensures that proposals for action are filed with the Office of Administrative Hearings for forwarding to the final decision-maker.

Page 8, lines 9-14: Permits the administrative law judge to allow parties to reply to one another's proposals for action, establishes a time limit for

transmittal of the proposed decision and the parties' briefs, and permits the administrative law judge to return a proposed decision to make revisions in response to a proposal for action.

Page 8, lines 15-19: Changes the date from which the final decision-maker's action deadline is calculated to the date on which the final-decision-maker receives the proposed decision.

Page 8, lines 26-27: Permits a final decision-maker to set the length of time in which a remanded case must be processed.

MR. KENNEDY said Section 14 is the most complicated section. As Mr. Hemenway stated, OAH has a proposal for action process after the proposed decision is circulated, and the current statute sets a hard 30-day timeline on these objections that OAH cannot extend it even if both sides agree. This provision will allow OAH to manage the deadline like any other litigation deadline. There is also a problem with the proposal for action structure being a little too rigid. Often one of the best features of the process is that when parties read the proposed decision, they finally realize the key issues of the case and tend to make their best arguments in the proposal for action. However, in order to consider those arguments and still give due process, OAH must be able to let the other party respond. This provision allows OAH to do so. It also allows OAH to revise a proposed decision to correct any errors before the decision is sent to the final decision maker.

He said both changes will allow OAH to transmit a case to the final decision maker that is truly ready for final action, rather than to ask that person to remand the case to OAH for more work.

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MR. KENNEDY said Section 14 also addresses a major frustration that commissioners have expressed to the OAH, which is that the deadline for final decision makers to act is tied to the wrong trigger. Currently it is counted 45 days from the day OAH mails the decision to the parties and not when it is sent to the final decision maker. When parties take the full time to execute their proposals for action, the commissioners are often left with only a few days to act. This is problematic in complex cases because when the deadline for action is missed, it can usurp the commissioner's decision. This provision would more appropriately

start the 45 days on the date the commissioner receives the case, consistent with how other deadlines are counted.

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Sec. 15: Amends AS 44.64.060(f) to conform with language in section 14. (Page 9, lines 8-12)

MR. KENNEDY said Section 15 recognizes that what the final decision maker may be receiving is the revised proposed decision.

Sec. 16: Amends AS 44.64.060 to add new subsections (g-h). Subsection (g) creates uniform authority for the issuance of subpoenas in some cases. Subsection (h) allows for the final decision maker in a case to reopen the proceeding for a reason provided in Rule 60(b) Alaska Rules of Civil Procedure. (Page 9, lines 13- 21)

He said Section 16 solves several practical problems in case administration. First, OAH currently has subpoena authority in most of its cases. However, this authority comes from dozens of sources with quirky variations. This provision would provide ordinary subpoena authority across the board. The main areas in which it has been lacking have been in PERS [Public Employees' Retirement System] and TRS [Teachers' Retirement System], where hundreds of thousands of dollars can be at issue. He explained that a drafting error in the enabling legislation inadvertently omitted subpoena authority for those types of cases. It also affects substantiation of child abuse where litigants need to have the ability to compel testimony in order to get due process.

MR. KENNEDY outlined a second issue, which has been the inability of commissioners or boards and commissions to reopen a decision that has been issued in error. For example, when a decision has been entered by default because a party failed to appear, and later OAH discovers that the party did not receive notice due to an address error. The current remedy is through superior court, and this provision would create a standard system for reopening cases parallel to the one used in the court system.

Sec. 17: Amends AS 44.64.080(c) to clarify what agency staff can do and what the agency head can do, but does not change how this section has been interpreted historically. (Page 9, lines 22-28)

Sec. 18: Amends AS 44.64.200(1) to correct a drafting oversight in the original legislation. (Page 9, line 29 - Page 10, line 2)

Sec. 19: Amends AS 44.64.200 to add three new paragraphs to the definition section (to define "entity," "other proceeding," and "school district." (Page 9, lines 3-9)

Sec. 20: Repealer due to the function of AS 44.64.055 being moved into AS 44.64.030 in section 6. (Page 9, line 10)

He explained that Section 20 repealed the existing statute on municipal and school district referrals because the provision is folded into other sections of the bill.

Sec. 21: Applicability clause. Makes changes to compensation or prior bar membership requirements applicable to new hires only. Makes the statute of limitations in section 10 applicable only to complaints filed after section 10 is effective. (Page 9, lines 11-25)

Sec. 22: Delays by one year the effective date of the statute of limitations in section 10. (Page 9, line 26)

MR. KENNEDY said the language in Section 22 ensures that the statute of limitations is constitutional, such that people would have notice that a statute of limitations was coming into effect.

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CHAIR REVAK asked for his perspective on the requirement for administrative law judges to be licensed in the state for four years instead of two years.

MR. KENNEDY acknowledged that he did not touch on that issue. The OAH found that it is important for people to have experience before becoming an administrative law judge. In fact, ten years would be good, so two years seemed insufficient. That provision was meant to be a noncontroversial recognition of the basic experience necessary to preside over the types of cases the OAH encounters.

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SENATOR COGHILL asked if OAH has struggled with payments from municipalities or just with the docket

MR. KENNEDY answered that the 2004 enabling legislation did not address that area sufficiently. In the last few years, in practice it has worked very well. He offered his view that smaller municipalities have found tremendous cost savings by sending procurement or tax cases to OAH since the cases are heard quickly and efficiently. He said OAH has not encountered any difficulties in payments.

SENATOR COGHILL asked him to elaborate on potential school district cases and if the cases would focus on retirement issues.

MR. KENNEDY replied OAH has been receiving some retirement and teacher discipline cases in the last year, but they also handle special education cases from school districts. He stated that a variety of cases come from small school districts and using OAH provides them an economy of scale.

SENATOR COGHILL asked about the language change from "alternate" dispute resolution to "alternative" dispute resolution.

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MR. KENNEDY related that the grammarians said "alternate" means switching back and forth and "alternative" provides a different choice. He explained two ways that alternative dispute resolution occurs. In complex cases, parties may ask OAH to appoint a mediator, who is not the administrative law judge hearing the case. This administrative law judge will act as a neutral mediator who meets with the parties and tries to achieve a solution. Since OAH is a central panel, its administrative law judges have a multi-disciplinary knowledge base to achieve complicated solutions acceptable to the parties. This also results in cost savings by avoiding costly litigation for the parties. Second, in the public benefits area, OAH uses a technique that North Carolina uses, which is that a professional mediator conducts a one-hour mediation before a hearing. Parties are put on a mediation track, and mediation is held from 10 days to two weeks after an appeal is filed. The OAH has found the settlement rate is 85 percent, which dramatically reduced the public benefits caseload. In fact, OAH laid off an employee, which saved costs for OAH and Medicaid. He commented that the feedback has been positive, in part, because the mediator helps the parties understand how the process works, so they understand

the outcome, even if it is not the result the parties hoped to achieve.

[4:08:21 PM](#)

SENATOR COGHILL asked if he could review what is new in the subpoena authority in Section 16.

MR. KENNEDY responded that the enabling legislation gave OAH the subpoena powers of the referring agency. He said most state agencies have some subpoena authority. For example, the Department of Commerce, Community and Economic Development's authority in the professional licensing area fall under the Administrative Procedures Act, which provides full subpoena authority. However, some of the authority is phrased in strange ways in the agencies, which could lead to litigation, such that an argument could be made about the transfer of subpoena authority to OAH. He said the most troublesome one is in the PERS/TRS area. The OAH was supposed to inherit the subpoena authority from the PERS/TRS board, but the provision was not transferred when the 2004 enabling legislation was drafted and it has not been fixed. OAH also hears a significant number of Department of Health and Social Services (DHSS) child abuse and neglect hearings. The subpoena authority is necessary since those accused of those types of crimes need to be able to compel witnesses to testify on their behalf. However, the DHSS statutes do not give OAH the authority to do so. This provision would give OAH clear subpoena authority.

SENATOR COGHILL said he thought OAH already had the authority, so he appreciated the explanation.

[4:12:07 PM](#)

SENATOR KAWASAKI referred to pages 4 and 5 of the annual report that provides a list of OAH's mandatory jurisdiction. He asked if every case category would be included in the final decision-making authority.

MR. KENNEDY said this bill does not address that issue. Although Chief Administrative Law Judge Fredrick advocated in the annual report for expanding its authority, this bill does not expand OAH's final decision-making authority. In some cases, it would mean that OAH's decisions would not go to commissioners or boards and commissions to make the final decision.

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CHAIR REVAK opened public testimony on SB 88. He found none and held public testimony open on SB 88. He asked members to submit any amendments to his office prior to March 16, 2020.

[4:14:30 PM](#)

CHAIR REVAK held SB 88 in committee.

[4:15:11 PM](#)

At ease

SB 231-VILLAGE PUBLIC SAFETY OFFICER GRANTS

[4:15:54 PM](#)

CHAIR REVAK reconvened the meeting and announced the consideration of SENATE BILL NO. 231, "An Act requiring background investigations of village public safety officer applicants by the Department of Public Safety; relating to the village public safety officer program; and providing for an effective date."

[4:16:10 PM](#)

SENATOR DONNY OLSON, Alaska State Legislature, Juneau, Alaska, sponsor of SB 231, said this bill was introduced to implement the nine recommendations of the VPSO Working Group's report which was adopted on January 24, 2020.

He explained that the Village Public Safety Officer (VPSO) program was created in the late 1970s to assist in the protection of life and property and coordinate probation and parole in rural communities.

He said while VPSOs have provided valuable service to participating areas, the past decade has seen shrinking numbers of VPSOs, significant difficulty in recruitment and retention of officers, and community needs that surpass the current duties of VPSOs. There is undoubtedly a need to address the crisis in public safety infrastructure and service in rural Alaska, he said. Last May, Senate President Cathy Giessel and House Speaker Bryce Edgmon appointed members to a joint VPSO Working Group and tasked them to find ways to improve the VPSO program. Representative Chuck Kopp and he served as co-chairs of the group.

SENATOR OLSON said the working group was assigned to coordinate with stakeholders to examine the underlying causes of the recruitment and retention obstacles and provide proposals to turn around the epidemic rate of personnel turnover within the

VPSO program. The VPSO Working Group met several times over the interim with VPSO coordinators throughout the state and the Department of Public Safety (DPS). The results of these meetings are summarized in a report that was finalized in January 2020. This report included recommendations for the first phase of changes identified to improve the program.

He said SB 231 incorporates the Working Group's recommendations into statutes except for the recommendation for an increase in funding, which must be done through an appropriation bill. He reported that one of the biggest changes is to move financial grant management and oversight function to the Department of Commerce, Community, and Economic Development [VPSO Working Group Recommendation 6]. The DCCED is a natural department to handle many other grant programs. He explained that the Alaska Police Standards Council training, and experience requirements, and oversight authority will remain at the Department of Public Safety as per [VPSO Working Group Recommendation 7].

SENATOR OLSON said while all parties recognize more will need to be done in order to have a strong and vibrant VPSO program, this is a first step in laying the groundwork for more to come in this vital program.

[4:18:38 PM](#)

SENATOR COGHILL asked the sponsor to provide the sectional analysis of the bill.

[4:19:23 PM](#)

DENISE LICCIOLI, Staff, Senator Donny Olson, Alaska State Legislature, Juneau, Alaska, on behalf of the sponsor, read the following sectional analysis for SB 231:

Section 1 (pages 1-3) Amends AS 12.62.400 regarding criminal history background checks and adds VPSO program personnel as a program the Department of Public Safety is authorized to secure background checks via the Federal Bureau of Investigation. The substantive change occurs on page 3, lines 19 and 20.

Section 2 (page 3) Related to Section 1, Amends AS 18.65.080, one of the Department of Public Safety's enabling statutes. The amendment requires that the Department secure the background checks for VPSO program personnel.

Sections 1 and 2 implement Recommendation 2 regarding creating more financial flexibility for the program. At one point the Department of Public Safety (DPS) was conducting background checks for the VPSO program then unilaterally stopped with no notice to the grantee organizations. Sections 1 and 2 together make it clear that background checks are a DPS function for the VPSO Program.

Section 3 (pages 3-8) In current statute the VPSO program has only one statute, AS 18.65.670. Section 3 proposes to repeal and reenact the statute and add multiple new subsections.

Subsection (a) has been rewritten to incorporate the duties and functions that VPSO personnel are currently performing but are not codified in the existing statute. This implements Recommendation 1.

Subsection (b) is mostly similar to existing (b), but it has been updated here to include references to the commissioner of Commerce, Community, and Economic Development (DCCED, or "Department of Commerce") and to include federal recognized tribes as organizations that can be awarded a VPSO grant. This implements Recommendation 6.

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Subsection (c) is new and is the statutory codification of current DPS regulation 13 AAC 96.020 with changes to reflect that DCCED will be performing financial management of the grants. This implements Recommendations 6 and 9.

Subsection (d) is new and is the statutory codification of current DPS regulation 13 AAC 96.030 with changes to reflect that DCCED will be performing financial management of the grants. Further changes remove the prohibition of existing 13 AAC 96.030(2) that prevents the payment of bonuses from other non-VPSO grant revenue sources. Also removed are the indemnification and insurance requirements from the grantee organizations. These changes implement Recommendations, 2, 4-6, and 9.

Subsection (e) is new and is the partial statutory codification of current DPS regulations 13 AAC 96.040

and .050 with changes to reflect that DCCED will be performing financial management of the grants. Further changes remove the requirement from existing 13 AAC 96.040(a)(1) that villages receiving a VPSO placement must provide the office space, phone, holding cell. This in conjunction with new (k) of this bill section makes clear that these costs can be paid for with VPSO grant funds.

Subsection (f) is new and is the partial statutory codification of current DPS regulations 13 AAC 96.040, specifically, (a)(2). This subsection sets the overall policy that one VPSO is generally assigned to one village unless the grantee organization requests additional VPSO personnel per village. The changes reflect a more neutral and less harsh tone than the language from the regulation.

Subsection (g) is new and is the partial statutory codification of current DPS regulations 13 AAC 96.040, specifically proposed new (a)(2). This can be found in the Working Group's Report, Appendix 2, page 4. This new provision allows for traveling or "roving" VPSO personnel who are permitted to itinerate between villages within a grantee's region as public safety needs arise. These changes implement Recommendations 1, 2, and 9.

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Subsection (h) is new and is the partial statutory codification of current DPS regulations 13 AAC 96.040, specifically (b) with changes to reflect that DCCED will be performing financial management of the grants. New (h) contains grant award record keeping requirements and other grant management requirements. These changes implement Recommendations 1, 2, and 9.

Subsection (i) contains new regulation adopting authority for the DPS commissioner, subject to the new consultation requirements of new (l) of this bill section. These changes implement Recommendations 1, 2, and 8.

Subsection (j) allows for funding grantee organizations' indirect rates up to a statewide average of 35%. This language has been used as intent language in multiple prior operating budget bills.

These changes partially implement Recommendations 2, 4-5.

[4:27:29 PM](#)

Subsection (k) is new and provides explicit instruction to the DCCED commissioner on grant fund disbursement. Specifically, that grant funds can be used for items reasonably related to public safety and VPSO duties as codified in this bill. Further, grant fund disbursement is to be timely and funding request are not to be unreasonably withheld. These changes partially implement Recommendation 2.

Subsections (l) and (m) are related to new (i) and provides for a consultation and negotiated rule-making process for when any of the three state agencies involved with the VPSO program exercise their regulation adopting authority. These changes implement Recommendation 8.

[4:28:24 PM](#)

Section 4 (pages 8-14) Creates new statutes:

AS 18.65.672 is the statutory codification of current DPS regulation 13 AAC 96.080 dealing with VPSO qualification requirements. These changes implement Recommendation 9.

AS 18.65.674 is the statutory codification of current DPS regulation 13 AAC 96.090 dealing with VPSO background checks. These changes implement Recommendation 9.

AS 18.65.676 is the statutory codification of current DPS regulation 13 AAC 96.100 dealing with VPSO training requirements. These changes implement Recommendations 1 and 9.

AS 18.65.678 is the statutory codification of current DPS regulations 13 AAC 96.040(b)(8) and 13 AAC 96.100 dealing with VPSO firearm training requirements. These changes implement Recommendation 9.

AS 18 65.682 is the statutory codification of current DPS regulation 13 AAC 96.110 dealing with VPSO certification. These changes implement Recommendation 9.

AS 18.65.684 is the statutory codification of current DPS regulation 13 AAC 96.120 dealing with the denial, revocation, or lapse of a VPSO certificate. These changes implement Recommendations 9.

AS 18.65.686 is a definitional section to deal with various terms used throughout the new statutory sections.

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Section 5 (page 14) Adds a new paragraph to the DCCED duties to accommodate the VPSO grant management functions being transferred from DPS. These changes implement Recommendation 6.

Section 6 (page 14) Creates in the uncodified law a standard grandfather provision for existing VPSO personnel who may have been certified under different training requirements than what is provided for in this bill.

Section 7 (page 14). Creates in the uncodified law a requirement that DPS continue its current level of interaction between itself and the VPSO personnel. That requirement is codified in current VPSO statute AS 18.65.670(c) with the language relating to DPS regulation authority extending to "the interaction between the Department of Public Safety and village public safety officers." This requirement is maintained by bill section 3(i) which uses the exact wording regarding DPS regulation authority.

Section 8 (pages 14 -15) Provides that the grant application requirements, which are transferring to DCCED become effective on July 1, 2020.

Section 9 (page 15). Provides that all other sections of the bill have an immediate effective date.

MS. LICCIOLI advised that VPSOs have 24 months to get certified and complete all training. A VPSO's duties include more than just police services, so the provision in Section 4 will allow them to participate in search and rescue operations and other activities. Until certification is complete, the VPSO can work with a trooper but he or she cannot work solely as an officer.

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She deferred to Mr. Wallner to answer specific questions.

[4:32:59 PM](#)

LEONARD WALLNER, VPSO Coordinator, Chugachmiut, Anchorage, Alaska, spoke in support of SB 231. He explained that Chugachmiut is a tribal consortium representing Prince William Sound and Lower Cook Inlet. It is one of ten grantees working under the VPSO program. He related that in 2016 he retired from a 25 year career with the Alaska State Troopers, the last nine years of which was as the statewide coordinator.

He said the VPSO program has evolved since 1979, so updating the statutes is a necessity. Chugachmiut supports SB 231, particularly the provisions to tailor the program for each grantee and region within the state, the flexibility to reprogram funding, and the elimination of unfunded mandates. He emphasized the importance of clarifying the duties and responsibilities of VPSOs, including the ability to conduct investigations. The training component also plays a significant role, he said.

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AMANDA PRICE, Commissioner, Department of Public Safety, Anchorage, Alaska, spoke in opposition to SB 231. She commented that this is the first time that Department of Public Safety (DPS) has been invited to provide testimony even though the companion bill has been moving through the legislative process. She stated that DPS's mission is to ensure public safety with resources deployed throughout the state. In order to accomplish this mission and protect the life and property of Alaskans, DPS is committed to working across the state with numerous law enforcement professions, many communities, and all lawmakers and stakeholders. The department is always seeking ways to collaborate on solutions to increase public safety. She acknowledged that public safety in rural areas has been challenging for Alaska since statehood. The department has made progress by hiring 44 state troopers last year and 15 more who are currently attending the public safety academy who will be deployed to rural communities. Increasing the number of officers in a larger number of communities is one of the Department of Public Safety's core goals. Still, a great deal of work needs to be done, she said. The DPS would also like to discuss how to improve rural public safety outside of the VPSO program.

She said SB 231 incorporates recommendations by the VPSO Working Group. This group was tasked with reviewing and strengthening the VPSO program. The department provided written comments on the bill, which she outlined for the committee.

COMMISSIONER PRICE said the bill would transfer the administration of the VPSO program to the Department of Commerce, Community and Economic Development (DCCED). In the spirit of meeting the VPSO Working Group's recommendation, the DPS has actively engaged in conversations with the DCCED to immediately move the grant oversight to that department. She said DPS is experiencing an administrative delay in its Reimbursable Service Agreement (RSA) of funding to the DCCED, but she anticipated it would soon be completed.

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COMMISSIONER PRICE said SB 231 will allow eligible grant applicants to include all federally recognized tribes. The department supports this expansion and believes direct funding for allowing tribes to hire officers locally could be very beneficial to public safety in Alaska. She noted that moving from 10 eligible applicants to more than 200 grant applicants will create some hiccups and challenges in administering the grants. However, she offered her view that with support it could be accomplished.

She expressed concern that the bill also includes eligible applicants of municipalities with less than 10,000 people, which includes larger communities such as Kenai and Soldotna. Not only does that seem to conflict with the spirit of the VPSO program, but it could create jurisdictional concerns as many of those larger municipalities have existing police departments.

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COMMISSIONER PRICE highlighted that liability insurance poses another challenge. She explained that insurance companies have been unwilling to insure non law enforcement agencies conducting law enforcement functions. Currently, only one company has been willing to insure VPSOs, she said. While DPS has not had adequate time to vet the implication of expanding the program to include the federally recognized tribes, it has been engaged in obtaining more information on any impacts. She anticipated an associated fiscal note. Although the bill adds a layer of complexity to an already complex program, it can likely be clarified through discussions, she said.

She said DPS was needs to understand the intent of some provisions in the bill. Specifically, DPS is unclear what it means that DPS would participate in "monitoring public safety performance" of VPSOs. The department has historically found this challenging because VPSOs are not state employees, so the DPS cannot influence performance even when the department has identified performance related issues. The department also needs clarification on what is referenced as background investigation, as opposed to the fingerprint clearance check that DPS and DCCED would complete.

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COMMISSIONER PRICE said the DPS also will need clarification on other technical and logistical issues in the bill, including the requirement to complete annual reviews on grantees' performance.

COMMISSIONER PRICE said DPS does not support the current version of SB 231, primarily because the candidates who would be eligible to become VPSOs could have felony convictions. DPS does not support people with felony convictions serving as peace officers. As written, the bill allows a convicted felon on active parole to investigate a felony crime with little or no training. For example, someone who is on parole for a felony conviction of child pornography could be hired as a VPSO and actively investigate child pornography. Although some felonies are excluded, candidates with felony records for drug dealing or registered sex offenders could become VPSOs. She said numerous issues could arise by allowing convicted felons to serve as police officers, which the DPS views as very damaging to public safety.

She expressed interest in having the Department of Law analyze the impact on the criminal justice court process if convicted sex offenders conduct investigations. The character and integrity of law enforcement professionals is critically important during testimony in criminal cases and affects outcomes of court cases.

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COMMISSIONER PRICE said the Department of Public Safety (DPS) supports more officers serving in rural Alaska but it does not believe that lowering the standards of those serving in positions of significant authority in rural communities will serve the interest of public safety. The department recommends that all felony convictions disqualify VPSO applicants. Aside from the necessity that peace officers possess good moral character, several practical concerns arise when VPSOs have

felony records. For example, VPSOs have access to various criminal justice information systems necessary to perform their jobs. However, federal law denies access to these data systems by anyone with a felony conviction. Federal law also prohibits convicted felons from possessing firearms. Even if the VPSOs are not authorized to carry firearms, during their duties they may be required to seize a firearm, which would be in violation of federal law.

Further, the bill would allow VPSOs to serve for 24 months without any training. Although existing regulations authorize the same timeframe, DPS is concerned since the bill expands VPSO authorities to include investigation of felony crimes, including homicides and sexual assaults. It could be very damaging to communities to have VPSOs serving for two years without adequate training, she said.

COMMISSIONER PRICE said the department looks forward to transferring the grant administration to the DCCED. Several tribes have already reached out to the department, eager to potentially secure funding through the appropriation, she said.

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SENATOR COGHILL referenced her March 4, 2020 letter and asked if she worked with the VPSO Working Group that made recommendations for the program.

COMMISSIONER PRICE replied DPS was invited to the first meeting, but not to subsequent meetings.

SENATOR COGHILL asked the sponsor to respond.

[4:48:34 PM](#)

SENATOR OLSON deferred to his staff but offered to provide a response in writing.

[4:49:53 PM](#)

MS. LICCIOLI answered that she just received the March 4, 2020 letter outlining the department's concerns. She said the sponsor is working on amendments or a committee substitute that will incorporate some of Commissioner Price's recommendations, and with the sponsor of the companion bill to address changes.

CHAIR REVAK said he supports the intent of the bill and wants the committee to do its due diligence and get it right.

He asked for any amendments to be submitted by March 16, 2020.

[4:52:39 PM](#)

MAYOR LUCY NELSON, Mayor, Northwest Arctic Borough (NWAB), Kotzebue, Alaska, stated that the borough serves about 7,700 people throughout 11 communities in the Northwest Arctic. She was just elected mayor but served on the assembly for eight years. She said she is familiar with the VPSO program since the borough has managed the program since 2011. Prior to that, the VPSO program was under the Maniiaq Association, she said.

MAYOR NELSON said the borough administration and assembly supports SB 231 but has several recommendations. The VPSO Working Group came to Kotzebue and met with the public safety commission to address the issues within the VPSO program. The borough does not have the financial resources to manage the monies. In 2018, the borough budget of \$1.3 million for the program provided funding for seven VPSOs and a coordinator. Of the 11 communities in the NWAB, Kotzebue is the only one with a police force. None of the other 10 communities has a skilled VPSO, although the borough has one candidate enrolled in the VPSO training program. She related that residents do not feel safe because these communities lack law enforcement presence. She reminded members that the Alaska State Troopers must fly in to provide service to the villages. The VPSOs serve as first responders. This bill is important to the borough to protect its residents. She asked the legislature to restore the 2018 VPSO budget.

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SENATOR COGHILL commented that the bill will need some work to address the DPS concerns and agreed with the mayor that funding was needed. He commended the work that the borough has done for the community.

CHAIR REVAK echoed Senator Coghill's comments.

MAYOR LUCY NELSON said the Northwest Arctic Borough reestablished the VPSO program and it is currently working on rebuilding it to attract young people to the program, but the borough now needs the funding.

[SB 231 was held in committee.]

[4:57:39 PM](#)

There being no further business to come before the committee, Chair Revak adjourned the Senate State Affairs Standing Committee meeting at 4:57 p.m.