

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

April 26, 2023

1:08 p.m.

MEMBERS PRESENT

Representative Sarah Vance, Chair
Representative Jamie Allard, Vice Chair
Representative Ben Carpenter
Representative Craig Johnson
Representative David Eastman
Representative Andrew Gray
Representative Cliff Groh

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 181

"An Act renaming the State Commission for Human Rights the Alaska State Commission for Civil Rights; relating to removal of commissioners of the Alaska State Commission for Civil Rights; relating to reports from the Alaska State Commission for Civil Rights; relating to the definition of 'employer' for the purposes of the Alaska State Commission for Civil Rights; and relating to local civil rights commissions."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 181

SHORT TITLE: STATE COMMISSION FOR CIVIL RIGHTS

SPONSOR(s): JUDICIARY

04/26/23	(H)	READ THE FIRST TIME - REFERRALS
04/26/23	(H)	JUD, STA
04/26/23	(H)	JUD AT 1:00 PM GRUENBERG 120

WITNESS REGISTER

JAKE ALMEIDA, Staff
Representative Sarah Vance
Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Presented HB 181 on behalf of the House Judiciary Standing Committee, sponsor by request, Chaired by Representative Vance.

ROB CORBISIER, Executive Director
Alaska State Commission for Human Rights
Anchorage, Alaska, Alaska

POSITION STATEMENT: Gave invited testimony in support of HB 181.

ACTION NARRATIVE

[1:08:55 PM](#)

CHAIR SARAH VANCE called the House Judiciary Standing Committee meeting to order at 1:08 p.m. Representatives Allard, Gray, Eastman, and Vance were present at the call to order. Representative C. Johnson, Carpenter, and Groh arrived as the meeting was in progress.

HB 181-STATE COMMISSION FOR CIVIL RIGHTS

[1:09:24 PM](#)

CHAIR VANCE announced that the only order of business would be HOUSE BILL NO. 181, "An Act renaming the State Commission for Human Rights the Alaska State Commission for Civil Rights; relating to removal of commissioners of the Alaska State Commission for Civil Rights; relating to reports from the Alaska State Commission for Civil Rights; relating to the definition of 'employer' for the purposes of the Alaska State Commission for Civil Rights; and relating to local civil rights commissions."

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JAKE ALMEIDA, Staff, Representative Sarah Vance, Alaska State Legislature, presented HB 181 on behalf the House Judiciary Standing Committee, sponsor by request, chaired by Representative Vance. He noted that the bill was introduced at the request of the Alaska State Commission for Human Rights (ASCHR). He gave an overview of the sectional analysis [included in the committee packet], which read as follows [original punctuation provided]:

Section 1: Amends AS 18.80.010 to rename the "State Commission for Human Rights" to the "Alaska State Commission for Civil Rights".

Section 2: Amends AS 18.80.020 by adding a new subsection to allow the Governor to remove any commissioner serving on the commission from office for cause such as incompetence, neglect of duty, and misconduct in office, and public statements and public or private actions that undermine the commission's work.

Section 3: Amends AS 18.80.060(a) by ensuring that the commission's assessments regarding progress toward equal employment opportunities, that are done once every three years, is summarized in a report within 90 days of the Legislature convening and is available electronically to the public as well.

Section 4: Amends AS 18.80.150 to direct the commission to complete its annual report of the preceding year's data on civil rights problems by November 15th of each year, and make the report electronically available to the public, and notify the Legislature and the Governor of the report.

Section 5: Amends AS 18.80.290(a) to make a conforming change regarding the name change of the commission for municipalities.

Section 6: Amends AS 18.80.300(2) to make a conforming change regarding the name change of the commission.

Section 7: Amends AS 18.80.300(5) to clarify that the definition of "employer" does not include non-profits, associations, social or fraternal entities under AS 10.20.005, religious associations and religious corporations under AS 10.40.010, and for-profit religious organizations AS 10.50.010.

Section 8 - 11: Makes conforming changes regarding the name change of the commission.

CHAIR VANCE invited Mr. Corbisier to speak to the bill.

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ROB CORBISIER, Executive Director, Alaska State Commission for Human Rights (ASCHR), gave invited testimony in support of HB 181. He opined that ASCHR's name was dated, explaining that the name was most likely reflective of the 1940s, 1950s, and 1960s era. He indicated that the name was a cause for confusion as to the commission's jurisdiction. He shared several examples. He shared his belief that changing the name to align with modern linguistics would accomplish the mission of eliminating perpetual discrimination. To that extent, the commission formally endorsed the new name "Alaska State Commission for Civil Rights."

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REPRESENTATIVE ALLARD asked whether Mr. Corbisier was familiar with the legal definition of "human rights."

MR. CORBISIER stated that "human rights" was not defined in Alaska Statutes.

REPRESENTATIVE ALLARD asked whether Mr. Corbisier had looked up the common definition of "human rights."

MR. CORBISIER said he had reviewed the Universal Declaration of Human Rights.

REPRESENTATIVE ALLARD shared her understanding that "human rights" and "civil rights" meant the same thing. She recalled that Mr. Corbisier had been advised against changing the commission's name in the past, adding "I've never heard of anybody misconstruing the title." She inquired about the cost associated with the proposed name change.

MR. CORBISIER responded that the cost would be "nothing." He reported that the website and two signs in the building would need to be updated, as well as future publications. He added that the commission was at the end of its current lease and was looking to take over an existing lease space, which would ultimately result in a net savings to the state. He expected that new signage could be amortized as part of the buildout.

REPRESENTATIVE ALLARD provided examples of civil rights versus human rights. She asked whether it was the commission's belief that every person should be treated equally "based on the fact that they're human."

MR. CORBISIER responded, "Absolutely."

REPRESENTATIVE ALLARD stated her opposition to the proposed name change.

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REPRESENTATIVE EASTMAN asked whether "civil rights" would capture voting and election rights.

CHAIR VANCE asked Mr. Corbisier to outline the statutory duties of the commission in addition to answering Representative Eastman's question.

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The committee took an at-ease from 1:21 p.m. to 1:25 p.m.

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CHAIR VANCE invited Mr. Corbisier to proceed with sharing the commission's mission.

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MR. CORBISIER read the statutory purpose of the commission, per AS 18.80.200, which read as follows:

Sec. 18.80.200. Purpose.

(a) It is determined and declared as a matter of legislative finding that discrimination against an inhabitant of the state because of race, religion, color, national origin, age, sex, physical or mental disability, marital status, changes in marital status, pregnancy, or parenthood is a matter of public concern and that this discrimination not only threatens the rights and privileges of the inhabitants of the state but also menaces the institutions of the state and threatens peace, order, health, safety, and general welfare of the state and its inhabitants.

(b) Therefore, it is the policy of the state and the purpose of this chapter to eliminate and prevent discrimination in employment, in credit and financing practices, in places of public accommodation, in the sale, lease, or rental of real property because of race, religion, color, national origin, sex, age, physical or mental disability, marital status, changes

in marital status, pregnancy or parenthood. It is also the policy of the state to encourage and enable physically and mentally disabled persons to participate fully in the social and economic life of the state and to engage in remunerative employment. It is not the purpose of this chapter to supersede laws pertaining to child labor, the age of majority, or other age restrictions or requirements.

MR. CORBISIER continued to define the commission's mission per AS 18.80.210, which read as follows:

Sec. 18.80.210. Civil rights.

The opportunity to obtain employment, credit and financing, public accommodations, housing accommodations, and other property without discrimination because of sex, physical or mental disability, marital status, changes in marital status, pregnancy, parenthood, race, religion, color, or national origin is a civil right.

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REPRESENTATIVE EASTMAN asked whether the right to vote was considered a civil right.

MR. CORBISIER answered, arguably, yes; however, voting rights would not be covered by the commission. He explained that voting was a fundamental right; consequently, the government could not discriminate against a person based upon his/her membership in a protected class as it relates to voting. He shared an example.

REPRESENTATIVE EASTMAN supposed that the name change would be a step towards expanding the commission's scope to include additional civil rights, such as voting rights. He asked whether that was the commission's long-term goal.

MR. CORBISIER answered no. He argued that by changing "human rights" to "civil rights", the scope of practice would be restricted, as civil rights did not include the right to travel, asylum, or freedom of speech, for example, all of which were contained in the Universal Declaration of Human Rights.

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MR. CORBISIER resumed his discussion of provisions in the bill, starting with the annual report date. He explaining that the current reporting requirements may have worked in 1963 when the commission was created. Now, however, the commission had five business days to interpret and analyze all of the data for the prior year, write the vignettes, send the report to a layout editor, print the report, and deliver it to the legislative library. Additionally, he pointed out that current statute required 40 copies of the report to be provided to the Legislative Affairs Agency (LAA) despite there being 60 legislators. He said the commission viewed the deadline as unrealistic and made little or no effort to abide by it in the last 40 years. In his time as executive director, Mr. Corbisier said meeting the deadline was "simply impossible." He discussed the annual assessment of the executive branch's progress on equal employment opportunity, as required by statute, highlighting its effectiveness. Nonetheless, scheduling a sit down with the administration's cabinet members one week before legislative session to analyze data was unrealistic, he said. He explained that aligning the annual reports with the fiscal year and changing the date to November 15 would allot four months for production, even in an assessment year. Additionally, it would fall after the election, allowing the commission to notify both existing and newly elected legislators of the report.

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REPRESENTATIVE EASTMAN contended that election results were often announced after November 15.

MR. CORBISIER assured Representative Eastman that new legislators would be properly informed [of the report].

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MR. CORBISIER discussed the printing requirements, conveying that the legislative library did not want to be included in the distribution chain any longer. Should HB 181 pass, an electronic copy would be made available on the commission's website and both the governor and the legislature would be notified. He proceeded by highlighting a "hole" in nonprofit jurisdiction, explaining that small nonprofits operating outside the municipality of Anchorage could effectively discriminate against an employee with impunity. He shared the example of an administrator facing sexual harassment at a small nonprofit, adding that the only recourse would be a private lawsuit

resulting in three weeks of backpay at most, which would not cover the attorney fees. Those were the types of cases taken by ASCHR, he said, noting that it wouldn't cost the victim of discrimination anything, as the commission was a government agency. He explained that the U.S. Equal Employment Opportunity Commission (EEOC) had jurisdiction over nonprofits with at least 15 employees, whereas the Anchorage Equal Rights Commission had jurisdiction over nonprofits within the municipality. He noted that the statutory exclusion for nonprofits removed many employers from ASCHR's jurisdiction. He said the commission routinely received referrals from the EEOC on co-jurisdictional cases. For each case, the commission received \$800 from EEOC. For that reason, expanding the nonprofit jurisdiction would allow the commission to capture additional federal revenue, he emphasized.

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REPRESENTATIVE EASTMAN recalled the example shared by Mr. Corbisier of the sexual assault victim who only stood to gain three weeks of backpay. He asked whether the commission could effectively provide pro-bono legal services on that type of case.

MR. CORBISIER clarified that the commission was not required to have an attorney-client relationship with its complainants. To the extent that the complainant's interest was aligned with state policy, ASCHR could take the lead on the case. He noted that complainants had the right to obtain their own attorney while ASCHR was taking the case. He added that the commission had the authority to obtain "make-whole relief," which was effectively compensatory damages.

REPRESENTATIVE EASTMAN requested the commission's definition of "employee".

MR. CORBISIER cited AS 18.80.300(4), which defined "employee" as an individual employed by an employer, not including an individual employed in the domestic service of any person. He defined "employer" per subsection (5).

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REPRESENTATIVE EASTMAN asked for the definition of "employed".

MR. CORBISIER said the commission would refer to the common definition of "employed".

REPRESENTATIVE EASTMAN asked whether a volunteer would be considered an employee.

MR. CORBISIER answered no.

REPRESENTATIVE EASTMAN asked whether a volunteer who was reimbursed for travel expenses would be considered an employee.

MR. CORBISIER said that person would still be considered a volunteer.

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REPRESENTATIVE GRAY referenced the definition of "employer" on page 2 of Resolution 2022-4 [included in the committee packet] and asked whether Section 7 of the bill was fulfilling the intent of the resolution.

MR. CORBISIER explained that Resolution 2022-4 was asking the legislature to change the definition of employer in AS 18.80 to exclude only nonprofit organizations that are not social welfare clubs or social and recreational clubs. Effectually, the resolution was requesting the legislature to define "employer" under AS 18.80.300(5) as "a person, including the state and a political subdivision of the state, who has one or more employees in the state but does not include a club that is exclusively social, or a fraternal, charitable, educational, or religious association or corporation, if the club, association or corporation is not organized for private profit." The definition would encompass all nonprofits, including a "Jewish only" fraternity, for example. He said ASCHR was asking the legislature to add an affirmative defense for unlawful employment practices under AS 18.80.220 that would allow a religious corporation, association, educational institution, or society, with respect to the employment of individuals of a particular religion, to perform work connected with the carrying on by such corporation, association, institution, or society of its activities; additionally, it would cover employees who were hired to engage in activities that were ecclesiastical, spiritual, or religious, and whose job responsibilities include furthering the study or advancement of religion. He noted that the language was taken directly from Title 7 of the Civil Rights Act. He shared an example.

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REPRESENTATIVE GRAY considered a scenario in which a Catholic nonprofit organization terminated the employment of an individual who was Jewish and asked whether that case would be under the commission's jurisdiction.

MR. CORBISIER responded that if a parochial school had a janitorial position with the duties of cleaning the floors and bathrooms only, the position would not receive the affirmative defense because the employee was not hired to engage in activities that were ecclesiastical, spiritual, or religious; nor did the job responsibilities further the advancement of religion. He cited federal case law on the matter. Ultimately, he indicated, the job description and the person's function within the entity, as well as the entity itself, would be significant factors.

REPRESENTATIVE GRAY shared a personal anecdote and asked whether the affirmative defense would apply to a church that terminated the employment of a choir singer who was not of the same faith.

MR. CORBISIER answered yes, the religious association would be entitled to the affirmative defense.

REPRESENTATIVE GRAY directed attention to Section 7 and asked whether the language would apply to a food bank.

MR. CORBISIER stated that as currently written, Section 7 did not accomplish ASCHR's intent.

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REPRESENTATIVE GRAY asked Mr. Corbisier to clarify ASCHR's intent.

MR. CORBISIER said updated language had been provided to Chair Vance. The new language would redefine "employer" per the language provided in Resolution 2022-4; additionally, it would add a new subsection (e) under AS 18.80.220, which would create an affirmative defense for religious entities that hire an employee for ecclesiastical duties.

REPRESENTATIVE GRAY sought to confirm that employees performing non-ecclesiastical duties would have protection under the law.

MR. CORBISIER answered yes, under the commission's proposed language.

REPRESENTATIVE GRAY considered a scenario wherein attending church on Sunday was a job requirement and asked whether the affirmative defense could be applied if that requirement was not fulfilled.

MR. CORBISIER did not know the answer.

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REPRESENTATIVE C. JOHNSON inquired about the cost of managing each case.

MR. CORBISIER said it depends on the case. He reminded the committee that ASCHR received \$800 from the EEOC for performing even a minimal amount of work on a case. He shared several examples.

REPRESENTATIVE C. JOHNSON was unsure whether \$800 was worth the workload brought on by the additional cases of referral.

MR. CORBISIER confirmed that the commission had the capacity to take on additional cases in its existing budget. He admitted that ASCHR's caseload "fell off a cliff" during the COVID-19 pandemic because many people weren't working during that time. He related that the bill could reduce the draw on the general fund (GF), adding that either way, additional federal receipts would be acquired. He noted that some cases did not require much time and that most cases were closed out due to a lack of substantial evidence on the complainant's behalf.

REPRESENTATIVE C. JOHNSON requested that Mr. Corbisier follow up with an average cost per case.

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REPRESENTATIVE GROH asked whether the proposed legislation would protect a religious charity organization that paid lawyer wages to employees of a specific national origin with similar qualifications as other employees.

MR. CORBISIER said, that would be discrimination. He reiterated that currently, nonprofits were untouchable in terms of any employment matters.

REPRESENTATIVE GROH considered a hypothetical scenario in which an employee who became disabled on the job while working for a religious corporation was fired because the insurance was too

expensive. He asked whether that act would be protected under the proposed law.

MR. CORBISIER said should the bill pass with new language requested by the commission, the employer would be entitled to the affirmative defense if the employee was hired for ecclesiastical, spiritual, or religious purposes. He confirmed that the employer could terminate that employee because of the disability in that scenario.

REPRESENTATIVE GROH asked whether the change in the definition of "employer" would allow a religious childcare provider to legally refuse an applicant with a speech impediment if the individual was qualified to care for children.

MR. CORBISIER answered yes, under the commission's proposed language.

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MR. CORBISIER continued his overview of the bill. He said the last issue of significance was the for-cause removal provision. He recalled a real-life example in which the governor removed several commissioners through the "black rifles matter" sticker controversy. For that reason, the commission believes that a for-cause removal provision was needed. He emphasized the importance of ASCHR remaining apolitical to avoid its weaponization as a political arm of the administration. He clarified that this was not an attempt to "poke a thumb in the eye" of the governor. The for-cause removal provision was taken directly from Alaska Oil and Gas Conservation Commission (AOGCC) removal statute and would provide due process rights for the removal of a commissioner.

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REPRESENTATIVE EASTMAN referred to page 1, line 13 through page 2, line 14, and asked how one would define the scope of "undermining the commission's work."

MR. CORBISIER said that was open to interpretation. He reiterated that the language would provide an opportunity for a commissioner who was being targeted to publicly defend himself/herself in a tribunal if the attack was for policy differences related to politics.

REPRESENTATIVE EASTMAN asked what a tribunal consisted of.

MR. CORBISIER cited the AOGCC statute, which was most recently tested with the removal of Hollis French. He explained that Mr. French, as a commissioner, had the opportunity to retain counsel and present counter evidence in his tribunal after the Department of Law (DOL) presented its evidence in front of the third-party hearing officer. The hearing officer then considered the charges, wrote up findings, and presented them to the Office of the Governor. He suspected that the Office of the Governor would take a similar tactic to implement [Section 1] of HB 181, should it pass.

REPRESENTATIVE EASTMAN asked whether the tribunal proceedings were available to members of the public.

MR. CORBISIER answered that the provision in question was not confidential, nor would not fall within executive session under the Open Meetings Act. He recalled that the Hollis French tribunal was open to the public; however, he was not certain.

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REPRESENTATIVE GRAY asked where the term "tribunal" was located in the bill.

MR. CORBISIER clarified that the term was not used in the bill.

REPRESENTATIVE GRAY sought to verify that the governor would decide whether a commissioner had committed misconduct and that individual would have the opportunity to publicly defend himself/herself against the accusation. He asked who would decide whether the governor made the right decision.

MR. CORBISIER answered, arguably, the public. He reminded Representative Gray that in Mr. French's tribunal, a private attorney was obtained to be the hearing officer tasked with making a judgment on the findings. The governor was then responsible for making a decision based on those findings. He described the tribunal as another opportunity for a check and balance on the agency and to ensure that the commission's work remained politically independent.

REPRESENTATIVE GRAY asked how the public could express its opinion on the findings of misconduct.

MR. CORBISIER, in response, said through expressing their approval or disapproval to the Office of the Governor, rather than to the commission.

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REPRESENTATIVE GRAY asked whether any adverse actions could be taken if the governor's accusations of misconduct were found to be improper or without merit.

MR. CORBISIER responded that a provision could be added to repeal the decision to the Alaska Superior Court.

CHAIR VANCE asked Mr. Corbisier to describe the current process for removing a commissioner from the commission.

MR. CORBISIER answered that there was no provision in existing statute. He reported that a prior court case supported the argument that a removed commissioner could challenge the governor's decision; however, because ASCHR's commissioners were unpaid volunteers, there was no incentive for them to involve themselves in a court challenge.

CHAIR VANCE announced that HB 181 was held over.

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ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:23 p.m.