

**SB**

**99**

SFIN

FILE

# SENATE FINANCE COMMITTEE REPORT

DATE: 3/18/99

FURTHER: REPORTED  
3/22/99

DATE TURNED  
IN TO OFFICE: 3/22/99

Finance Committee considered

SENATE BILL NO. 99

"An Act to clarify the meaning of 'decennial census of the United States' in Article VI, Constitution of the State of Alaska, and to prevent discrimination in the redistricting of the house of representatives and the senate."

and recommends:

be replaced with \_\_\_\_\_ CS SB 99 ( FIN )

adopt previous \_\_\_\_\_ CS \_\_\_\_\_ ( \_\_\_\_\_ )

attached amendment(s)

adopt Letter of Intent by \_\_\_\_\_ Committee

further referral to the \_\_\_\_\_ Committee

Senate Bill:

- same title
  - new title
- House Bill:
- same title
  - technical title
  - new: SCR# \_\_\_\_\_

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>Roll E. Allen</i>	✓	<i>Al Cook</i>	X		
<i>Richard L. Green</i>	✓				
<i>David Anderson</i>	✓				
<i>George White</i>	✓				
Co-Chair: <i>John Jensen</i>	✓	Co-Chair:			
Co-Chair: <i>Alan Parrish</i>	✓	Co-Chair: _____			

**NEW FISCAL NOTE(S):**

Department                      Date      Zero      Fiscal

Law	3/11/99	φ	

**PREVIOUS FISCAL NOTE(S):\***

Department                      Date      Zero      Fiscal


APPROPRIATION -- no fiscal note

\*include fiscal notes accompanying Governor's bill

1-LS0380K

Kurtz

3/19/99

moved by Sen. Phillips  
w/o obj. ADOPTED

**CS FOR SENATE BILL NO. 99(FIN)**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**TWENTY-FIRST LEGISLATURE - FIRST SESSION**

**BY**

**Offered:**

**Referred:**

**Sponsor(s): SENATE RULES COMMITTEE**

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act to clarify the meaning of 'decennial census of the United States' in  
 2 art. VI, Constitution of the State of Alaska, to prevent discrimination in the  
 3 redistricting of the house of representatives and the senate, and to prohibit  
 4 expenditures of public funds for population surveys or sampling for certain  
 5 purposes relating to legislative redistricting without an appropriation."

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

7 \* Section 1. FINDINGS. The legislature finds that

8 (1) the United States Bureau of the Census has traditionally conducted an  
 9 actual enumeration of the American people and reported the results of that actual enumeration,  
 10 without statistical adjustment, to the states for purposes of redistricting;

11 (2) the United States Bureau of the Census has announced plans to use  
 12 sampling and estimates to adjust the actual population counts in the 2000 census;

13 (3) the United States Supreme Court, in Department of Commerce v. United

1 States House, 119 S.Ct. 765 (1999), has interpreted existing federal law to prohibit the use of  
2 adjusted or estimated figures in reapportioning the seats in the United States House of  
3 Representatives among the states;

4 (4) the United States Supreme Court, in *Department of Commerce v. United*  
5 *States House*, 119 S.Ct. 765 (1999), declined to address the constitutionality of the use of  
6 sampling and estimates by the census bureau in developing decennial census counts;

7 (5) the United States Supreme Court's decision in *Department of Commerce*  
8 *v. United States House*, 119 S.Ct. 765 (1999), did not resolve the issue of whether the census  
9 bureau may supply states with adjusted or estimated census figures for use in redistricting;

10 (6) each decade since statehood, Alaska's redistricting plan has been the  
11 subject of expensive litigation;

12 (7) Alaska's redistricting plans are subject to ongoing review by the United  
13 States Department of Justice under the Voting Rights Act;

14 (8) in the past, Alaska's redistricting boards have sometimes relied on surveys  
15 and population estimates in order to remove Alaska's military population from the decennial  
16 census figures in order to comply with the former wording of art. VI, secs. 3 and 5,  
17 Constitution of the State of Alaska, which referred to the "civilian population";

18 (9) although recent amendments to the Constitution of the State of Alaska have  
19 removed the reference to "civilian" population, court precedent regarding the exclusion of non-  
20 resident military personnel and civilian "transients" remains (see *Egan v. Hammond*, 502 P.2d  
21 856, 869 (Alaska 1972); *Groh v. Egan*, 526 P.2d 863, 869-874 (Alaska 1974); *Carpenter v.*  
22 *Hammond*, 667 P.2d 1204, 1210-1213 (Alaska 1983); *Hickel v. Southeast Conference*, 346  
23 P.2d 38, 54-56 (Alaska 1992)).

24 \* **Sec. 2. INTENT.** It is the intent of the legislature to eliminate confusion in the event  
25 the census bureau's report of the decennial census includes more than one population figure  
26 for Alaska, to facilitate the work of the redistricting board by identifying the appropriate  
27 census figures to be used in developing a redistricting plan, to avoid litigation over the board's  
28 redistricting plan, and to prevent discrimination against any segment of Alaska's population.

29 \* **Sec. 3.** AS 15.10 is amended by adding new sections to read:

30 **Article 2. Census and Population.**

31 **Sec. 15.10.200. Definition of "decennial census of the United States" and**

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**use of census numbers by redistricting board.** (a) In art. VI, Constitution of the State of Alaska, reference to the official decennial census of the United States is a reference to the census enumeration used to establish apportionment among the several states.

(b) The redistricting plan adopted under art. VI, Constitution of the State of Alaska, may not use census numbers that are estimates or that have been adjusted based on sampling, nor may the redistricting plan exclude or discriminate among persons counted based on race, religion, color, national origin, sex, age, occupation, military or civilian status, or length of residency.

**Sec. 15.10.210. Expenditures for population surveys or sampling prohibited.** An expenditure of public funds may not be made for a population survey or sampling conducted for purposes of redistricting the legislature without an express appropriation by the legislature for that purpose.

## SPONSOR STATEMENT

### SENATE BILL 99

“An Act to clarify the meaning of ‘decennial census of the United States’ in Article VI, Constitution of the State of Alaska, and to prevent discrimination in the redistricting of the house of representatives and the senate.”

This legislation was introduced to end discrimination against members of the Armed Forces in legislative redistricting and insure that future redistricting plans are based on census figures derived from an actual count of every Alaskan.

Senate Bill 99 will eliminate confusion by placing in our statutes clear answers to two major questions as we prepare for the United States census in the year 2000 and the subsequent redrawing of legislative district boundaries. It will end the discriminatory practices of previous redistricting boards and direct that census numbers derived from estimates or adjustments based on statistical sampling will not be used to redraw district lines.

The 1959 Alaska Constitution directed that only the “civilian” population be considered when the boundaries for State House and State Senate districts were drawn. During the 1960s, reapportionment boards ignored the presence of members of the Armed Forces completely, while later boards assigned various percentage values to service members.

In 1970, each soldier, sailor, airman, marine and coast guardsman in Alaska was counted as 11% of a resident, while in the 1980 redistricting they were counted as 35% of other Alaskans. That’s even worse discrimination than used before the Civil War when slaves were counted at only 60% of a person for Congressional apportionment. The redistricting board of 1990 was the only one to count members of the military equally with other residents.

Today, Alaskans recognize that occupational discrimination is just as wrong as discrimination based on race, religion, sex, age, color, or national origin and that is why the voters removed the word “civilian” from the Alaska Constitution at the 1998 election. But, court decisions from old legal challenges to previous redistricting boards might still be used as an excuse to undercount our neighbors in the military. Senate Bill 99 will establish a

statutory bar to future redistricting discrimination and insure the men and women serving here in our Armed Forces will not be treated as second-class Alaskans.

SB 99 will also clarify questions regarding which numbers from the United States Bureau of the Census will be used by future redistricting boards to reapportion Alaska's Legislature.

Some people have been actively arguing that statistical sampling and estimates replace the actual head count of every American in the decennial census. Earlier this year, the U.S. Supreme Court prohibited the use of adjusted or estimated figures in reapportioning the seats in the U.S. House of Representatives among the states. But that decision left the door open for the Census Bureau to develop figures through sampling and estimates and make them available to the states along with the results of the traditional count. This bill will close that door in Alaska for purposes of Legislative reapportionment.

If the Census Bureau's report of the decennial census includes more than one set of figures for Alaska, SB 99 will facilitate the work of the redistricting board and avoid litigation over the plan they produce. SB 99 would prohibit them from using any numbers produced by estimates or sampling adjustments and directs them to use only the results of the actual count of Alaska population, just as the nation has been doing for 210 years.

**Legislative Research Report 99.076**  
**March 2, 1999**

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# **Military Population and Reapportionment in Alaska Following the U.S. Censuses of 1970, 1980, and 1990**

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Legislative Affairs Agency  
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**SUMMARY**

You wished to know how military personnel and their dependents in Alaska were treated for the purposes of reapportionment following the U.S. censuses in 1970, 1980, and 1990. As you may know, Alaska is among the few states that have in the past excluded certain nonresidents from population statistics used to reapportion and redistrict their state legislatures.<sup>1</sup>

Based on state constitutional provisions, Governor Egan and his advisory board excluded the military population from the reapportionment considerations following the 1970 census. The Alaska Supreme Court held that excluding the military as a class was unconstitutional and, thereby, nullified the provision in the state constitution that required reapportionment to be based on the civilian population of the state. Following the 1980 census, Governor Hammond and his advisory board devised a statistical method for determining the nonresident military/dependent population and subsequently excluded that population for the purposes of reapportionment. In the ensuing case, the state Supreme Court held both the method and the outcome to be constitutional. Governor Hickel and his advisory board did not attempt to exclude nonresident military personnel and dependents who were included in the state population data generated by the 1990 census.

**REAPPORTIONMENT FOLLOWING THE 1970 CENSUS**

Governor William Egan's 1971 reapportionment plan excluded all military personnel. This exclusion was a result of the state's constitutional requirement that reapportionment be based upon the state's *civilian* population as reported by the census. The Alaska Supreme Court held that the exclusion of the military as a class was a denial of equal protection guaranteed by the 14<sup>th</sup> amendment to the U.S. Constitution and the plan was, therefore, unconstitutional. The court also declared the plan unconstitutional in that the populations of some districts deviated excessively from the norm. The court's decision in *Egan v. Hammond* nullified the requirement in Article VI, Section 3 of the Constitution that reapportionment be based on civilian population.<sup>2</sup>

Late in 1973, Governor Egan adopted a subsequent plan, which excluded the *nonresident* military population. As they had done with the original, Republicans challenged the plan. Although the

<sup>1</sup> According to the Council of State Governments, *State Profiles: Reapportionment Information Service*, 1981, Alaska, Hawaii, Kansas, Massachusetts, New Hampshire, and Washington excluded nonresident students and/or military personnel and their dependents from reapportionment calculations after the 1980 census.

<sup>2</sup> *Egan v. Hammond*, 502 P.2d 856 (Alaska 1972).

court again struck down the plan for excessive variations in population among districts, the justices upheld the exclusion of nonresident military personnel. In *Groh v. Egan*, the court held as follows:

it is not offensive to notions of equal protection to exclude from the population base even military personnel who have lived in Alaska for substantial periods of time, so long as those people have exercised their option to remain residents and domiciliaries of other states. . . . There is every reason to believe that military personnel who desire to be Alaska residents and domiciliaries will register to vote because voter registration is a prime index of intention to become a resident or domiciliary. For like reason, we think that those who do not want to become Alaskans demonstrate that intention by refusing to register to vote.<sup>3</sup>

Although the court noted that the plan made no attempt to similarly exclude nonresident civilians, it considered the selective treatment of the military as justified. In this regard, the court reasoned that significant numbers of civilian transients had not been present in the state during the census; that those who had been present probably were not counted as residents; and that the voluntary nature of their presence made them distinguishable from nonresident military personnel, who were in the state because of duty assignments.

Although the plan excluded only military personnel, the court made the following statement about counting military dependents:

Dependents of military persons may be assumed, for the most part, to have the same residential characteristics as the uniformed personnel upon whom they are dependent.<sup>4</sup>

Following the court's decision in *Groh*, the governor's advisory board revised the plan again. The court upheld that version of the reapportionment plan against further objection.

## REAPPORTIONMENT FOLLOWING THE 1980 CENSUS

In its 1974 decision on the count of the military population in *Groh*, the Alaska Supreme Court referred to comments in *Egan v. Hammond*. The court noted as follows:

We indicated in *Egan v. Hammond*, that in the absence of a constitutional amendment reestablishing specific guidelines, the governor has the power to select alternative bases for reapportionment purposes. We referred to the permissibility of a registered voter, state citizenship or state residency base.<sup>5</sup>

In light of the court's opinion, Governor Jay Hammond and his advisory board relied on a survey of several military bases to estimate the number of resident military personnel and dependents to be counted for the next decennial reapportionment. The Alaska Supreme Court held this method

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<sup>3</sup> *Groh v. Egan*, 526 P.2d 863, 873 (Alaska 1974).

<sup>4</sup> *Groh*, at 874.

<sup>5</sup> *Groh*, at 868, citing *Egan v. Hammond*, at 870-871.

to be reasonable and constitutional in *Carpenter v. Hammond*.<sup>6</sup> That decision includes the following historical perspective on treatment of military personnel:

In preparing its report, the Board initially had to determine an accurate population base for the reapportionment. It was thought that the United States Census count of 1980 would include a significant number of people who were not in fact residents of Alaska. The Board hired an expert in Alaskan demography and survey research to advise the Board in its assessment and treatment of groups thought to contain large numbers of non-residents. The Board's expert studied various groups, including military personnel and dependents, oil camp workers, lumber camp and fish processing employees, college students, felons, and aliens, to determine the numbers of non-residents likely to be included in the federal census count and their potential impact on state reapportionment. The expert's report concluded that the only group of potential non-residents present in significant numbers, for reapportionment purposes, consisted of military personnel and their dependents.<sup>7</sup>

The reapportionment board then conducted a mailed sample survey of military personnel. According to the facts noted in the decision, the board determined the military and dependent population as follows:

All dependents who were listed as either considering Alaska their home and intending to make Alaska their home in the future *or* as having registered to vote in Alaska were counted as residents for apportionment. . . . Based on the responses to the questionnaires, "non-resident population coefficients" were determined for each installation and surrounding off-base area. These coefficients were used to calculate the estimated "resident" and "non-resident" military/dependent populations at each location. The "non-resident" population figures for each area were totaled . . . and deducted from the federal census count for Alaska . . . producing an adjusted state population base . . .<sup>8</sup>

While the court found Governor Hammond's reapportionment plan unconstitutional in other regards, it nevertheless upheld the decision in *Groh* regarding treatment of nonresident military personnel and their dependents.<sup>9</sup> The state Supreme Court held as follows in *Carpenter*:

Based on our decision in *Groh v. Egan*, we hold that the exclusion of non-resident military members and dependents from the apportionment population base did not violate equal protection, and that the Board's alleged failure to identify and exclude other groups of non-residents including fish processors and lumber workers did not result in an inaccurate population base and substantial variations from the actual populations among the election districts. . . . the state, in attempting to exclude non-resident military from the apportionment base, demonstrated a compelling state interest, namely, the prevention of the dilution of its residents' voting strength. We therefore hold that the state (Board) had a

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<sup>6</sup> *Carpenter v. Hammond*, 667 P.2d 1204 (Alaska 1983).

<sup>7</sup> *Carpenter*, at 1206.

<sup>8</sup> *Carpenter*, at 1207.

<sup>9</sup> According to the *Carpenter* decision, the inclusion of Cordova in House District 2—with communities in Southeast Alaska—violated the mandate of Article VI, Section 6 of the Alaska Constitution which requires that legislative districts contain "as nearly as practicable a relatively integrated socio-economic area."

legitimate interest in limiting its apportionment base to bona fide residents, and further, that the means employed by the Board to cull out the non-residents was constitutionally permissible.<sup>10</sup>

The case was remanded to the Superior Court, which ordered the governor and his advisory board to develop an amended plan to address the unconstitutional portion. As Bill Sheffield had by then succeeded Jay Hammond as governor, that job fell to him and an advisory board that he subsequently appointed.<sup>11</sup>

## REAPPORTIONMENT FOLLOWING THE 1990 CENSUS

Following the 1990 U.S. Census, Governor Walter Hickel's reapportionment advisory board determined that they could not devise a suitable method for identifying the nonresident military and dependent population. Furthermore, they cited an Alaska Department of Labor report estimating that nonresident military personnel and their dependents might constitute as little as 1.1 percent of the state's reported population.<sup>12</sup> The board concluded as follows:

Absent (1) a valid alternative to determine the population of Alaska; or (2) a feasible method to exclude nonresident members of the military and their dependents from the population base; and (3) given the apparent nominal effect inclusion of nonresident military and dependents has on the population base, the Board adhered to its guideline and used the total population reported by the Bureau of the Census as the population base for redistricting.<sup>13</sup>

Thus, following the 1990 census, the board made no attempt to exclude nonresident military personnel and their dependents.<sup>14</sup>

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I hope you find this information useful. Please do not hesitate to contact us if you have questions or need additional information.

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<sup>10</sup> *Carpenter*, at 1212-13.

<sup>11</sup> The next plan, adopted in 1984, was held to be unconstitutional; however, the problem (under-representation) was so slight that the court declined to require a redrawing of district boundaries. *Kenai Peninsula Borough v. State*, 743 P.2d 1352 (Alaska 1987).

<sup>12</sup> Kathryn Lizik, "Enumeration and Residence Rules of the 1990 Census: A Report to the Reapportionment Board," (Juneau: Department of Labor, February 28, 1991); cited in *Report and Proposed Plan of the Governor's Advisory Reapportionment Board*, July 15, 1991, p. 29.

<sup>13</sup> "Population Base for Redistricting," *Report and Proposed Plan of the Governor's Advisory Reapportionment Board*, July 15, 1991, p. 34. The entire chapter is attached.

<sup>14</sup> Reapportionment following the 1990 census was replete with court action, although not in regard to treatment of the military/dependent population. The final plan was proclaimed in March of 1994.

SENATE FINANCE COMMITTEE

SIGN-IN

SB 99-REDISTRICTING BOARD/CENSUS FIGURES

NAME: Jim Baldwin Subject/Bill No: \_\_\_\_\_

Co./Dept./Title: LAW Phone: \_\_\_\_\_

Address: \_\_\_\_\_ Zip: \_\_\_\_\_

Do you wish to testify?  Yes  No  Respond To Questions

NAME: \_\_\_\_\_ Subject/Bill No: \_\_\_\_\_

Co./Dept./Title: \_\_\_\_\_ Phone: \_\_\_\_\_

Address: \_\_\_\_\_ Zip: \_\_\_\_\_

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