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SENATE COMMITTEE REPORT

First Committee of Referral

DATE: 3/11/99

FURTHER:

Date of 5-Day Notice: 3/11/99
(in accordance with Uniform Rule 23)

DATE TURNED
IN TO OFFICE: _____

Judiciary 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 _____ (_____)

adopt previous ~~CS~~ SB 99 (jud)

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 DP PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>John Loryan</i>	✓	<i>J. Ellis</i>	X		
<i>Debra Donley</i>	✓				
CHAIR: <i>John Loryan</i>	✓	CHAIR:			

NEW FISCAL NOTE(S):

Department Date Zero Fiscal

<i>Law</i>	<i>3/12</i>		✓

PREVIOUS FISCAL NOTE(S):*

Department Date Zero Fiscal

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

FISCAL NOTE

**STATE OF ALASKA
1999 LEGISLATIVE SESSION**

BILL NO. SB 99

Revision Date/Time (Note if correction)	Dept. Affected <u>Law</u>
Title <u>"...to clarify the meaning of 'decennial census of the United States' in Article VI, Constitution of the State of Alaska ..."</u>	BRU <u>Civil Division</u>
Sponsor <u>Senate Rules Committee</u>	Component <u>Governmental Affairs</u>
Requester <u>Senate Judiciary Committee</u>	Component Serial No. <u>2207</u>

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services						
Travel						
Contractual	100.0					
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	100.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
1002 Federal Receipts						
1003 GF Match						
1004 GF	100.0					
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	100.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY99) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

SB 99 prohibits the use of census numbers in Alaska's legislative redistricting plan that are estimates or have been adjusted based on sampling. This bill also intends to clarify that a redistricting plan adopted under the 1998 constitutional amendment relating to reapportionment (HJR 44) may not exclude or discriminate among persons based on military or civilian status, or length of residency.

Alaska's redistricting plans are reviewed by the U.S. Department of Justice under the Voting Rights Act. The USDOJ will most likely require the state to perform a military survey to prove that including the military population in the census for the purposes of redistricting will not discriminate against minority voters. If this requirement is imposed by USDOJ, the state would have no choice but to complete the survey before the census enumeration begins in April 2000, in order to achieve preclearance of the state's plan. The Department of Law would need to hire an expert to perform the survey, which based on previous experience, is anticipated to cost in excess of \$100,000.

Prepared by Joan M. Kasson *Joan M. Kasson*
Division Attorney General's Office

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Date/Time 3/12/99, 12:06 PM

Approved by Commissioner Rodney M. Botelho, Attorney General
Agency Department of Law

Date 3/12/99

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SPONSOR STATEMENT

SB 99

ANTI DISCRIMINATION LAW

“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 is to make clear that discrimination in any form will not be tolerated or condoned in redistricting the legislature.

In past redistricting, reapportionment boards have used surveys, estimates, and samplings of population for the sole purpose of discrimination by discounting or even ignoring our Alaskan military personnel and their dependents. These discriminatory efforts were due to a provision of the 1959 Alaska Constitution, removed in 1998, which directed that only “civilian” population be considered. Twice in the 1960s the military were treated as total non-persons, once in 1970 as 11% of a human being and lastly in 1980 as 35% of an individual. That’s even worse than before the Civil War and Emancipation, when slaves were only counted as 60% for purposes of Congressional apportionment. Unfortunately, outdated Alaska Supreme Court precedents might be relied upon, without this legislation, to continue discrimination against the military. This bill makes it clear that the official US decennial census, unadulterated by questionable estimates or possibly erroneous calculations, is the sole basis used in developing any legislative redistricting plan. Alaskans have a right to expect that their representation be based on an actual head count census as used in America for the past 210 years.

Legislative Research Report 99.076

March 2, 1999

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

Legislative Research Services

Division of Legal and Research Services

Legislative Affairs Agency

Alaska State Legislature

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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.¹

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 unconstitutional. 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 14th 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.²

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

¹ 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.

² *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.³

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.⁴

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 citizen ship or state residency base.⁵

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

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

⁴ *Groh*, at 874.

⁵ *Groh*, at 868, citing *Egan v. Hammond*, at 870-871.

to be reasonable and constitutional in *Carpenter v. Hammond*.⁶ 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.⁷

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 . . .⁸

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.⁹ 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

⁶ *Carpenter v. Hammond*, 667 P.2d 1104 (Alaska 1983).

⁷ *Carpenter*, at 1206.

⁸ *Carpenter*, at 1207.

⁹ 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.¹⁰

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.¹¹

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.¹² 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.¹³

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

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

¹⁰ *Carpenter*, at 1212-13.

¹¹ 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).

¹² 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.

¹³ "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.

¹⁴ 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.