

HB

54

HOUSE COMMITTEE REPORT

(7)
Date Referred to Committee: February 9, 2004

FURTHER REFERRALS: Finance

Date of Committee Action: May 6, 2004

The JUDICIARY Committee considered:

SSHB 54

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 54

ASSAULT ON SCHOOL EMPLOYEES/CLERGY

"An Act relating to the crime of assault."

Recommends it be replaced with HCS or CS for SSHB 54 (JUD)
For Senate Bills with new title: Technical Title New Title: HCR _____ Same Title New Title

- attach amendments
- add new referral to _____ Committee
- Letter of Intent _____ Committee

List of Abbrev for Depts.:
ADM
CED
COR
CRT
EED
DEC
DFG
GOV
IHS
LEG
LAW
LWF
MVA
DNR
DPS
REV
DOT
UA

<u>NEW FISCAL NOTES</u>				
*Assigned by Chief Clerk's Office				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero
LAW ADM			✓	✓

<u>PREVIOUS FISCAL NOTES</u>				
List by Dept(s):	FN#	Fiscal	Indet.	Zero

<u>Signing with recommendations</u>	Printed Last Name	DP	DNP	NR	AM
	SAMUELS			X	
	Gara			X	
	ANDERSON	X			
	Gruenberg	✓			
	O'Connell				✓
Chair:		X			
Chair:					

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MEMORANDUM

May 6, 2004

SUBJECT: Mental States and CSSSHB 54(JUD)
(Work Order No. 23-LS0263\H)

TO: Representative Lesil McGuire
Attn: Vanessa Tondini

FROM: Gerald P. Luckhaupt *GPL*
Legislative Counsel

Enclosed is the CS(JUD) you requested. I have one comment. This bill now utilizes, in the same subsection, all four culpable mental states that the legislature has defined for use in our criminal code. Proposed AS 12.55.135(d)(2) requires that a person first be convicted of assault in the fourth degree in violation of AS 11.41.230. AS 11.41.230(a)(1) requires that persons have the culpable mental state of "reckless" when they are causing physical injury. AS 11.41.230(a)(2) requires a culpable mental state of criminal negligence² when causing physical injury by means of a dangerous instrument. Proof must be beyond a reasonable doubt. At sentencing the prosecution must show by clear and convincing evidence that the defendant knowingly³ directed the offense at a school employee engaged in the performance of school duties in order for the defendant to be subject to the minimum periods of imprisonment.⁴ And now due to the committee's amendment the prosecution must also show that the defendant intentionally⁵ engaged in the assault at sentencing. Presumably, the proof required is merely clear and convincing, but I am not sure since we are apparently changing the mental state required for the underlying crime from reckless or criminally negligent to intentional. Maybe we have to show the intentional mental state beyond a reasonable doubt to the jury. Frankly, I do not know what is happening in the statute or how it will be interpreted by the courts.

GPL:mdr
04-224.mdr

Enclosure

¹ Defined in AS 11.81.900(a)(3).

² Defined in AS 11.81.900(a)(4).

³ Defined in AS 11.81.900(a)(2).

⁴ This is not appreciably different than what we provide for similar crimes committed against peace officers, fire fighters, and other emergency workers.

⁵ Defined in AS 11.81.900(a)(1).

ALASKA STATE LEGISLATURE

Rep. Lesil McGuire, Chair
Rep. Tom Anderson, Vice-Chair
Rep. Jim Holm
Rep. Dan Ogg
Rep. Ralph Samuels
Rep. Les Gara
Rep. Max Gruenberg



State Capitol, Room 120
Juneau, AK 99801-1182
(907) 465-4990
Fax (907) 465-6592

House Judiciary Committee

Memorandum

To: Leg. Legal
From: Vanessa Tondini, Committee Aide
House Judiciary Committee
Date: May 6, 2004
Re: CS Request

Please create a final draft House Judiciary Committee Substitute for work order # 23-LS0263AD, SSHB 54, incorporating the following two amendments:

Conceptual Amendment #1 by Rep. Gara is written into the attached text of page 2 of the bill.

Amendment #2 by Rep. Gruenberg was to tighten the title.

The bill was passed out of committee today. If you have any questions, please call me at 4990.
Thank you!

The information attached to this memo is **CONFIDENTIAL** an/or privileged. It is intended to be reviewed initially by only the individual named above. If the reader of this Memorandum is not the intended recipient or a representative of the intended recipient, you are hereby notified that any review, dissemination, or copying of the information contained herein is prohibited. If you have received this in error, please immediately notify the sender by telephone and return this to the sender at the above address.

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 54
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY REPRESENTATIVE LYNN

Introduced:
Referred:

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the crime of assault."

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

3 * Section 1. AS 12.55.135(d) is amended to read:

4 (d) A defendant convicted of assault in the fourth degree who knowingly
5 directed the conduct constituting the offense at

6 (1) a uniformed or otherwise clearly identified peace officer, fire
7 fighter, correctional employee, emergency medical technician, paramedic, ambulance
8 attendant, or other emergency responder who was engaged in the performance of
9 official duties at the time of the assault shall be sentenced to a minimum term of
10 imprisonment of

11 (A) [(1)] 60 days if the defendant violated AS 11.41.230(a)(1)
12 or (2);

13 (B) [(2)] 30 days if the defendant violated AS 11.41.230(a)(3);

14 (2) an employee of an elementary, junior high, or secondary school
15 who was engaged in the performance of school duties at the time of the assault

conceptual
A#1
by
Gara
PASSET

if the assault was intentional

shall be sentenced to a minimum term of imprisonment of

1
2
3
4

(A) 60 days if the defendant violated AS 11.41.230(a)(1) or

(2)

~~(B) 30 days if the defendant violated AS 11.41.230(a)(3)~~

Legislative Research Services

Alaska State Legislature
Legislative Affairs Agency
Division of Legal and Research Services

State Capitol
Juneau, AK 99801
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May 4, 2004

Memorandum

TO: Representative Bob Lynn

FROM: Roger Withington
Legislative Analyst



RE: Penalties for Committing an Assault on a School Employee

You asked for information regarding assaults committed against school employees. Specifically you wanted to know if there are any states that have laws that specify a mandatory sentence for those individuals convicted of assault against a school employee.

In the limited amount of time we had to conduct our search, we were unable to locate a comprehensive source for the specified information.¹ We were able to locate one document, published in 1998 by the Education Commission of the States, which we attach, that summarizes state measures designed to promote the protection of teachers.

In addition, we were able to locate a couple of examples of state laws that specifically make an assault against a school employee (as well as other groups of people) a more serious offense than if the offense were perpetrated against a non-school employee. However, none of the examples we were able to locate included sentencing criteria.

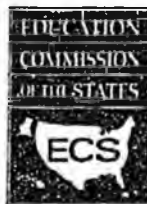
We hope you find this information to be useful. Please do not hesitate to contact us if you have questions or need additional information.

¹ In addition to other likely sources for this information, we contacted the National Education Association, National Conference of State Legislatures, and the American Federation of Teachers. As yet we have not heard from these organizations.

This is Google's cache of <http://www.ecs.org/clearinghouse/14/42/1442.htm>.
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These search terms have been highlighted: **prevent assaults teachers**



ECS StateNotes

Safety/Crime/Violence

Education Commission of the States • 700 Broadway, Suite 1200 • Denver, CO 80203-3460 • 303-299-3600 • fax 303-296-8332 • www.ecs.org

Teachers: Protections/Limits on Liability

March 1998

ECS Information Clearinghouse

State	Legislation	Limits on teacher action	Assaults against teachers	Other rights of teachers and school employees
AL	HB 470/SB 367; enacted 7-95 S 79 (Acts 94-794); enacted 5-94	Teachers granted immunity, as long as their actions are within the boundaries of local board policy	Warrant of arrest issued against anyone assaulting teacher; offender prosecuted Felony offense	Legal support provided by board; exempt from child-abuse charges when acting within parameters of written board policies; immunity when reporting suspected drug abuse
AR	HB 1422; enacted 4-95		Must be reported by principals to the appropriate local law enforcement agency	
FL	96-293; became law 5-96 without governor's signature		Reclassification of offenses for person committing assault on an elected official or employee of a school district, private school, state-supported school or state university. Any student found to have committed assault on a school employee (as above) – a violation of 784.081, Florida Statutes – shall be expelled and placed in an	Child who attacks school employee to be expelled and placed in an alternative school setting for at least one year

			alternative setting for a minimum of 1 year.	
GA	20-2-1000; enacted 4-95	Teacher free from threat of civil damages when disciplining student, "except for acts or omissions of willful or wanton misconduct"		Legal fees (if teacher/defendant found innocent) paid by plaintiff; county or local board to provide legal support for educator, except in cases when educator violated board policy
IA	Safe Schools Bill; enacted 5-94 HF 2383; enacted 6-94	Teachers may use "reasonable force" to maintain order	Students who commit a violent act against a school employee are to be automatically suspended School board may choose to expel student	Those prosecuting teachers for use of excessive force must present "clear and convincing" evidence of abuse, rather than a "preponderance" of evidence Schools authorized to share information regarding students who wish to transfer school; employees are given leave for injuries incurred during a violent episode at school
IN	enacted 5-95			Legislation allows suspensions once limited to five days to be increased to ten days; Teachers can keep students from their areas of supervision for up to five days; Monies collected from fines to be used to purchase metal detectors and other safety equipment; Schools may enact dress codes
IN	SB 73; enacted 3-96		Punished by school principal by means of up to 120 days of community service or by assigning juvenile court counseling conducted in the presence of a representative of the school corporation; fines assessed for crimes committed with weapons	
MD	HB 298; enacted 1-96		School staff may "take reasonable action necessary to prevent violence"	County board will compensate staff member for medical expenses incurred while breaking up violence; County board will provide legal counsel for staff member who has taken "reasonable action necessary to prevent violence"
MI	PA 158; enacted 6-94		Any person who assaults another person with less than the intent to commit murder or to inflict great bodily harm, with a gun,	A parent of a minor is guilty of a misdemeanor if he or she has custody of the minor, the minor is found in possession of a weapon in a weapon-free school zone, and

			<p>revolver, pistol, knife, iron bar, club, brass knuckles or other dangerous weapon in a weapon-free school zone is guilty of a felony punishable by one or more of the following: 1. imprisonment for not more than four years 2. community service for not more than 150 hours 3. fine of not more than \$6,000</p>	<p>the parent is aware that the minor would violate the firearms act or acts to further the violation;</p> <p>The misdemeanor is punishable by one or more of the following: 1. a fine of not more than \$2,000 2. community service for not more than 100 hours 3. probation;</p> <p>Anyone in possession of a weapon in a weapon-free school zone is guilty of a misdemeanor punishable by one or more of the following: 1. imprisonment for not more than 93 days 2. community service of not more than 100 hours 3. fine of not more than \$2,000</p>
NC	HB 496; enacted 6-95			Offense for assaulting a school bus driver
NC				<p>Amends GS 115c-391 to:</p> <ol style="list-style-type: none"> 1. permit expulsion of student 14 years or older who had been adjudicated delinquent for committing offense that would be felony if committed by adult 2. require suspension of 365 days for any student who brings firearm onto school property
NH	HB 1286; enacted 6-96		Automatic expulsion for student who assaults teacher	
NV	<p>392.465; enacted 6-94</p> <p>AB 370; enacted 6-94</p> <p>AB 385; enacted 6-95</p>	<p>Corporal punishment prohibited in public schools, when defined as the intentional infliction of physical pain or physical restraint as a disciplinary technique for pupils</p>	<p>Unlawful to threaten or attack teachers within a school building or on school property, in school transportation vehicles and places where pupils or school employees are involved in school-sponsored activities</p> <p>Requires the expulsion or suspension from school of certain pupils committing an</p>	<p>Teachers may use reasonable force to maintain order;</p> <p>School employee may defend himself if attacked by pupil</p> <p>Provides an additional penalty for felonies committed on school property; prohibits probation for any person convicted of using a firearm to commit a crime; makes various changes relating to criminal gangs to provisions governing education, parole and proceedings in juvenile court; removes the limitation on the civil liability of parents from the delinquent acts of a minor</p>

			assault on an employee of the school	
NY	<p>S 1410; proposed 3-96, pending as of 7-22-96</p> <p>SB 5157; proposed 3-96, pending as of 7-22-96</p> <p>SB 5160; proposed 3-96, pending as of 7-22-96</p>		<p>Would make assaults on teachers and other school employees felonies</p>	<p>Would give educational workers the same protections currently afforded police officers and firefighters</p> <p>Would allow teachers to suspend students for up to five days; would improve instructional mandates for the education of at-risk students; teachers would be authorized to unilaterally identify offensive student behavior, determine guilt, and dispense punishment;</p> <p>Would mandate districts to establish separate schools or set aside norms for instruction of disruptive students, and dictate when students must be assigned to these segregated settings</p> <p>School employees granted criminal and civil immunity when reporting suspected incidents of violence;</p> <p>District may not take retaliatory action against the employee for reporting such incidents;</p> <p>The employee may sue the director for taking retaliatory action</p>
OR	<p>HB 2487A; enacted 7-95</p>		<p>A school superintendent may ask that a student's driving privileges be revoked for bringing a weapon to school, assault, harassment, menacing, use of threat or intimidation</p>	<p>Public schools allowed more latitude in student suspension and discipline;</p> <p>Teachers may include considerations of attendance when deciding upon grades;</p> <p>Students who bring weapons to school may be expelled for one calendar year</p>
TX	<p>Compact for Safe Schools; active 6-94</p> <p>380.1312, effective 7-96</p>	<p>Teachers allowed reasonable physical force to maintain control</p>	<p>Students who perpetrate violent acts removed from the regular school program</p>	
UT	<p>SB 230; enacted 6-94</p>			<p>Schools notified when pupil is adjudicated for a violent offense;</p>

				<p>school districts must notify principals who must pass on information to teachers on a need-to-know basis;</p> <p>Board of education must decide upon process of dissemination of information;</p> <p>Leaders must be notified when a student is discovered on school property or at a school-sponsored event with a dangerous weapon</p>
VA	<p>22.1-279.1.1; enacted 3-95</p> <p>Notice of Juvenile Arrest; enacted 5-95</p> <p>HB 1041; proposed 1-96, pending as of 7-22-96</p> <p>SB 472</p>	<p>Teachers forbidden to exercise corporal punishment, except when needed to maintain order</p>		<p>Requires the intake officer to notify the division superintendent whenever a juvenile is arrested and charged with a delinquent act involving death, weapons, drugs, assaults, woundings, arson, or burglary</p> <p>Codifies a Virginia Supreme Court decision by granting immunity from civil damages to public school teachers when acting in good faith within their scope of employment while supervising, caring for or disciplining students, unless the acts or omission were the result of gross negligence or willful misconduct</p> <p>Same wording as above, ends at "employment"</p>

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Alaska State Legislature

Member

Resources Committee
Labor and Commerce Committee
State Affairs Committee
Joint Armed Services Committee
Military and Veterans Affairs Committee



Finance Subcommittees

House Environmental Conservation
House Military & Veterans' Affairs
House Court System

A Communication From
REPRESENTATIVE BOB LYNN
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representative_Bob_Lynn@legis.state.ak.us

February 4, 2004

To: Representative Lesil McGuire, Chairman
Judiciary Committee

Fr: Representative Bob Lynn 

Re: Scheduling of HB 54 - "An Act relating to the crime of assault"

Please schedule HB 54 to be heard in the Judiciary Committee at your earliest convenience. Attached is a copy of the Bill and supporting documents including a sponsor amendment taking out the clergy part of the bill. Thank you.

23-LS0263A.1
Luckhaupt
1/29/04

AMENDMENT

OFFERED IN THE HOUSE
TO: HB 54

BY REPRESENTATIVE LYNN

- 1 Page 2, line 4:
- 2 Delete "i"
- 3 Insert "."
- 4
- 5 Page 2, lines 5 - 10:
- 6 Delete all material.

Alaska State Legislature

Member

Resources Committee
Labor and Commerce Committee
State Affairs Committee
Joint Armed Services Committee
Military and Veterans Affairs Committee



Finance Subcommittees

House Environmental Conservation
House Military & Veterans' Affairs
House Court System

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SPONSOR STATEMENT HB 54

State statute provides for specific terms of imprisonment for crimes committed against certain public employees, such as peace officers, firefighters, etc., in the performance of their official duties. School employees, who, each day, work with our most precious resource, our children, deserve the same level of respect and protection under the law.

This bill revises sentencing guidelines so that an individual convicted as an adult of assault on a school employee during, or because of, the performance of official duties, will receive a *mandatory* minimum term of imprisonment. This would be similar to that imposed upon an individual who assaults a uniformed or otherwise clearly identified peace officer, fire fighter, correctional employee, emergency medical technician, paramedic, ambulance attendance or other emergency responder engaged in the performance of official duties at the time of the offense.

Schools must be safe for teachers and other school employees, as well as for children, and this bill adds a giant step toward that safety. Your support of HB54 is respectfully requested.

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 54
 () Publish Date: _____

Revision Date/Time (correction): 2/11/03 11:47 AM Dept. Affected: Law
 Title "An Act relating to the crime of assault." BRU Criminal Division
 Component All
 Sponsor Representative Lynn
 Requester House Judiciary Committee Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2003) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

HB 54 requires a judge to impose a mandatory minimum sentence for assault in the 4th degree when the crime included conduct that was directed at a school employee who was performing his or her duties at the time of the assault or a member of the clergy who was performing his or her religious duties at the time of assault.

This bill will have no fiscal impact on the Department of Law.

Prepared by: Joan M. Kasson
 Division: Attorney General's Office
 Approved by: Kathryn Daughhetee for Gregg D. Renkes, Attorney General
 Agency: Department of Law

Phone (907) 465-5370
 Date/Time 2/11/03 11:47 AM
 Date 2/11/2003

Angry parent punches schoolteacher

ATTACK: Mother assaults Fairview Elementary teacher; district will pursue charges.

By KATIE PESZNECKER
Anchorage Daily News

(Published: October 15, 2003)

The mother of a Fairview Elementary School student was cited for misdemeanor assault Monday after she confronted her son's teacher in a school hallway and hit the man several times.

Police said the teacher had broken up a fight between two sixth-graders earlier in the day, placing one, Cassaundra L. West's son, in a "bear hug" to pull him off the other student. Principal Lois Mance called West, 39, and asked her to come to school to discuss the incident, said Superintendent Carol Comeau.

According to police and school officials, West arrived after school hours and attacked the 40-year-old teacher outside his classroom. She punched him three times, police said.

Comeau said she met with the Fairview teacher Tuesday. He was shaken up, she said, and she assured him the district will pursue charges.

"This is absolutely intolerable," Comeau said. "Our employees should feel safe wherever they are, and nobody has a right to assault an Anchorage employee for any reason. Assaulting school personnel is illegal and she will be prosecuted to the full extent of the law."

In an interview Tuesday, West said she didn't go to the school intending to hit her son's teacher. She said she and her son arrived at the school about 3:45 p.m. While they were there, she said, her son told her he had felt "choked" under the teacher's restraint.

West said she felt overcome with anger and went up to the classroom. When she arrived, she said, she asked the teacher if they could talk. She wanted to be polite, she said.

West said the teacher immediately left the room and suggested they go to the office. He was walking away, with West swearing at him, according to police and West's own account.

"Excuse me," West said she called after him. "I want to know why you put your hands on my kid."

She then jumped on him and hit him, West said. A second teacher intervened and the principal came on the scene.

"To put your hands on somebody's child, it doesn't make sense," West said Tuesday evening. "I was tripped out."

School staff members called police.

West had left in her vehicle when officers arrived, McGee said. Police found her at her home and cited her.

The contract for district teachers says they may "use reasonable and necessary physical force on a student to protect the teacher, a student(s) or others from physical injury" and "in any extraordinary case of breach of discipline, to restrain a physically disruptive student."



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"Had a student been attacking another student and the teacher stood by and just yelled at the kid, somebody would now hold that teacher responsible for not intervening to prevent injury," said Bob Roses, president of the Anchorage Education Association teachers union. "You have to err on the side of caution."

The teacher did not want to be identified or interviewed, Roses said. "He wants this thing to go away." Police and school officials also refused to identify the teacher.

West has lived in Alaska for eight years and said it hasn't been without trouble. She has been cited several times for minor crimes ranging from assault to theft and said she spent three years in prison on a drug conviction.

She said hitting the teacher was wrong.

"But wasn't it wrong when he touched (my son)?" said West, sipping apple juice at her apartment and wearing a red and white T-shirt that read "Beware! Attitude out of control."

West said she plans to look into filing charges against the teacher.

If someone thinks a teacher has behaved inappropriately, there are procedures in place to investigate that, Roses said.

"The real problem here is the parent coming in and deciding to attack a teacher," he said. "It is never appropriate for any (parent) to take matters into their own hand."

Monday's assault is only the second time an Anchorage teacher has been assaulted at school, district officials say. A Taku Elementary mother in December 2001 assaulted her daughter's teacher in front of a classroom of children. That woman, Angel Carter, was sentenced to 90 days in jail.

Daily News reporter Katie Pesznecker can be reached at kpesznecker@adn.com.



NEA-ALASKA

Affiliated with the National Education Association

February 5, 2004

Rep. Bob Lynn
State Capitol, Room 415
Juneau, AK 99801

Dear Representative Lynn:

Parents have always sent their children to school feeling their children are in the safest place they could be away from home. Because of acts of violence in public schools around the country and in our state in recent years, the safety of a child or a school employee in the school environment has increasingly been questioned.

Safe schools and classrooms are absolutely essential for student success. In 2000, the legislature passed HB 253 sponsored by then Representative Fred Dyson requiring school disciplinary and safety programs. We commend that effort. We believe more must be done.

NEA-Alaska concluded its 48th Annual Delegate Assembly in Anchorage this past weekend. Over 350 public school employees from virtually every school district in Alaska gathered as elected representatives for the nearly 13,000 members of NEA-Alaska.

One of the issues addressed at the Delegate Assembly was to continue the NEA-Alaska position that *NEA-Alaska shall seek legislation making the consequences of an assault of an educational employee the same as though the assault were to occur on a police officer.* Your introduction of House Bill (HB 54) accomplishes this task and is appreciated by the members of NEA-Alaska. **We are in support of HB 54.**

NEA-Alaska looks forward to HB 54 being heard soon in the committee process and will be ready to testify in support of this legislation.

Sincerely,

Rich Kronberg, President
NEA-Alaska