SB 249

ALASKA STATE LEGISLATURE

Rules Committee
•
Finance Committee
•
Health & Social Services Committee
•
Legislative Council
•
Committee on Committees

While in Session
State Capitol, Rm. 103
Juneau, AK 99801
(907) 465-3704
Fax: (907) 465-2529
•
While in Anchorage
716 W. 4th Ave
Anchorage, AK 99501
(907) 269-0169
Fax: (907) 269-0172

SENATE MAJORITY LEADER
JOHNNY ELLIS

SPONSOR STATEMENT – SENATE BILL 249

SB 249 – An Act relating to official action by electronic transmission, to records, and to public records.

SB 249 clarifies and strengthens current law regarding the preservation of and access to public records. Our public records statutes are made up of three chapters, relating to the preservation and maintenance of records, and a criminal statute to set out potential punishments. Inconsistencies and variations between the three have led to confusion and controversy on the part of the public in its attempts to access records they are entitled to, and the agencies in their efforts to preserve and maintain records while balancing open government with personal privacy and legal limits.

As technology advances and government and society are forced to adapt, it becomes essential for our Public Records statutes to keep up with current practices in order to fulfill their original purpose. Alaska's original public records law was adopted as a part of the Organic Act of 1913. Over the years, it has been revised and expanded to keep up with changes in government practice and technological advances. However, the original statute provides a powerful statement of intent: "*Every person has a right to inspect any public writing or record . . . and every public officer having the custody thereof is bound to permit such inspection. . .*"

The bill makes the following changes:

- Applies a consistent definition to the term 'public record' throughout the Alaska statutes.
- Clarifies that electronic transmissions, including text messages, instant messages, email, or other forms of electronic communication are included within that definition.
- Clarifies the duty of state agencies to preserve records, and the ability of the public to access records which are required by law to be preserved.
- Amends the Executive Branch Ethics Act to codify in statute Commissioner Kreitzer's policy which requires state employees to use state electronic systems in order to take official actions so that emails about state business can be included in the public records systems.
- Limits the fees that may be charged to members of the public who wish to access public records to the actual costs of materials and supplies needed to provide the records.
- Explains that impeding either the preservation of or access to public records is a violation of existing criminal law.

SB 249 preserves the ability of Alaskans to keep their government open and accountable. I urge you to join me in support of ethical and transparent government.

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SENATE MAJORITY LEADER
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SECTIONAL ANALYSIS – SENATE BILL 249

SB 249 – An Act relating to official action by electronic transmission, to records, and to public records.

Section 1 – Provides a standard definition of public records in the criminal statutes.

Section 2 – Requires the use of state electronic delivery systems for official state actions.

Section 3 – Provides a standard definition of public records in the preservation statutes.

Section 4 – Limits the fees that can be charged for access to public records to the actual cost of duplication, not including labor or overhead.

Section 5 – Makes conforming changes to the fee statutes.

Section 6 – Clarifies the existing relationship between the criminal statutes and the duty to preserve public records.

Section 7 – Provides a standard definition of public records in the statutes regarding access to public records.

Section 8 – Makes conforming changes to the fee statutes.

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: **SB 249**
() Publish Date:

Identifier (file name): SB249-DOA-ETS-03-22-10
Dept. Affected: DOA
Title "An Act relating to official action by electronic transmission, to records, and to public records."
RDU Enterprise Technology Services
Component Enterprise Technology Services
Sponsor Senator Ellis
Requester (S) STA
Component Number 2082

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2011**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**FY 2016**
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**	**0.0**
CAPITAL EXPENDITURES							
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 Interagency Receipts							
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2010) cost:

POSITIONS

Full-time							
Part-time							
Temporary							

ANALYSIS: *(Attach a separate page if necessary)*

This bill refines the definition of "electronic record" as defined in AS 40.21.150(4) and (6) to specifically include text messages, instant messages, electronic mail, or any other form of communication not directly involving the physical transmission of paper that creates a record that can be retained, retrieved, and reviewed by a recipient of the communication and that can be reproduced in paper form through an automated process. Currently the department has processes in place to meet the requirements of this bill with the exception of instant messages and text messages. Analysis continued on next page.

Prepared by: Jim Kohler, Deputy Director — Phone (907) 723-9686
Division Enterprise Technology Services — Date/Time 3/22/10 12:00 PM
Approved by: Rachael Petro, Deputy Commissioner — Date 3/22/2010
Department of Administration

ANALYSIS CONTINUATION

Text and instant messaging are services provided by third party vendors. To date, there is no method in place for automatic archiving of data transmitted using instant messaging. Instant messaging software currently operates on a vendor policy of "no storage, no retrieval". Manual storage by the user is the only known method of saving instant messages. It is believed that text message data can be retrieved via either the phone's internal storage or a vendor's server/backup storage. However, any retrieval of text messages are dependent on the vendor's retention of data. Costs associated with retrieving text messages through vendors and producing such data are unknown at this time.

STATE OF ALASKA

DEPARTMENT OF ADMINISTRATION

ANNETTE KREITZER
CHIEF INFORMATION OFFICER

SEAN PARNELL, GOVERNOR

P.O. BOX 110200
JUNEAU, ALASKA 99811-0200

PHONE: (907) 465-2200
FAX: (907) 465-2135

Focus: State of Alaska Executive Branch Employees	State of Alaska Department of Administration Office of the Commissioner Chief Information Officer
Topic: Email Retention Policy	**Effective Date:** August 7, 2009
Authority: AS 44.21	

POLICY

Emails, including attachments, are subject to the same records retention requirements that apply to any other electronic or non-electronic records. Like paper records, if an email is subject to multiple records retention requirements, it must be archived for the longest applicable period. The applicable records retention requirements are the State of Alaska executive branch records retention schedules imposed pursuant to AS 40.21 and any implementing regulations, and the requirements imposed pursuant to a notification of a legal hold in connection with judicial or administrative litigation, or imposed because of a request under the Alaska Public Records Act, AS 40.25.100 - 40.25.220.

Accordingly, all executive branch employees are responsible for archiving into the designated executive branch email archiving system their sent and received emails (including any attachments) in accordance with the policy identified here.[1])

ALL EXECUTIVE BRANCH EMPLOYEES

When executive branch employees conduct state business through email they must, whenever feasible, use the state's electronic mail system. In some circumstances, employees may need to use, or may inadvertently use, private email accounts to conduct state business. In those

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[1]) **Guidelines for determining what types of emails must be archived** can be found in the document entitled "Email: FAQ and Rules,» linked on the Division of Archives home page and found at
http://www.archives.state.ak.us/pdfs/records management/e mail.pdf

instances, employees must send copies of those messages to their state email accounts.

Under no circumstance may State of Alaska personally identifiable information (PII) be sent to or from an executive branch employee's private email account. PII is defined in AS 45.48.590(4).[2]

Employees are required to follow the executive branch email policy. Failure to do so may result in discipline up to and including dismissal.

EXECUTIVE EMPLOYEES

Any email sent or received by an executive employee[3]) may be deleted within 90 days unless the email is subject to a records retention requirement, public records request or legal hold. If within that 90-day period a sent or received email becomes subject to a records retention requirement, public records request or legal hold then it cannot be deleted unless the requirement, request, or hold is lifted before the end of the period. All email not deleted within 90 days will be automatically archived.

NON-EXECUTIVE EMPLOYEES

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[2] Definition of Personally Identifiable Information:
AS 45.48.590(4): "personal information' means (A) an individnal's passport number, driver's license **number, state identification number, bank account number, credit card number, debit card number, other** payment card number, financial account information, or information from a financial application; or (B) a combination of an individual's (i) name; and (ii) medical information, insurance policy number, employment information, or employment history ....."

[3] Definition of Execntive Employee:
The following persons are executive employees: (I) the Executive Branch employees defined as "public officials" in AS 39.50.200(a)(9); and (2) the persons employed in the following job classifications:

Assistant Commissioner
Executive Director
Assistant Director
Labor Relations Manager
State Accountant
State Leasing and Facilities Manager
Department of Public Safety Liaison
Chief, Worker's Compensation Adjudication
Veterans Affairs Administrator
Administrator, Violent Crimes Compensation Board
Administrator, Highway Safety Planning Agency
Marine Highway Transportation Services Manager

Positions placed in the partially exempt service under AS 39.25.130(a)(I) or (2) will be added to this list.

If a records retention requirement applies to a sent or received email of a non-executive employee, then within 90 days after the email was sent or received, it must be archived into the state's designated email archiving system in accordance with the records retention requirement. If an email is subject to multiple records retention requirements, it must be archived for the longest applicable period. Any email not archived within 90 days after it was sent or received will be automatically deleted.

EDUCATION

All employees with an email account must be educated on the executive branch email policy. Any new employee with an assigned email account must be educated on the policy before the account is activated. The education portion of this policy does not take effect until the state implements the email archiving system.

Annette Kreitzer, Commissioner
Department of Administration
Chief Information Officer

8-7-09
Date

adn.com
Anchorage Daily News

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Our view: Private e-mails

Court says loophole is OK; legislators, governor should act

(08/14/09 21:17:14)

Judge Jack Smith says there is no state law requiring state employees to do their state business on the state e-mail system. With the ruling, employees may still potentially hide messages from public scrutiny by using private e-mail accounts, as Gov. Sarah Palin and her staff did. OK, then, it's time to pass a state law.

State Rep. Mike Doogan offered one such bill last year, HB195. It went nowhere, though. Doogan is stuck in the House minority, with relatively little power.

In any event, it will be months before the Legislature can close this gap in the state public records law. Lawmakers don't convene again until January.

In the meantime, Gov. Sean Parnell can help immensely by taking a more forceful approach to this question.

His spokeswoman Sharon Leighow said last week that Gov. Parnell stands by a previous directive from Gov. Palin's chief of staff, who said any private e-mails concerning state business must be copied into the state's e-mail system.

However, that directive was issued only to the governor's office staff, rather than to all state government employees. Leighow said in an e-mail Thursday that a new state policy is due out soon and will deal with this issue.

Gov. Parnell needs to issue a clear, unambiguous order to all state employees and ensure that all e-mails about state business appear in the state e-mail system. That way, the e-mails can be properly archived for possible public access until the Legislature has time to write this requirement into state law.

BOTTOM LINE: E-mails about state business need to be in the state e-mail system.

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Copyright © Mon Aug 17 2009 14:02:47 GMT-0800 (Alaskan Daylight Time)1900 The Anchorage Daily News (www.adn.com)

11.81.900 (b)

(53) "Public record" means:

(A) each of the following that is developed or received under law or in connection with the transaction of official business and preserved or appropriate for preservation by any agency, municipality, or any body subject to the open meeting provision of AS 44.62.310, as evidence of the organization, function, policies, decisions, procedures, operations, or other activities of the state or municipality or because of the informational value in it:

(i) a document, paper, book, letter, drawing, map, plat, photo, photographic file, motion picture, film, microfilm, microphotograph, exhibit, magnetic or paper tape, punched card or other document of any other material, regardless of physical form or characteristic; and

(ii) an electronic transmission, including a text message, an instant message, electronic mail, or any other form of communication not directly involving the physical transmission of paper that creates a record that can be retained, retrieved, and reviewed by a recipient of the communication and that can be reproduced in paper form through an automated process;

(B) staff manuals and instructions to staff that affect the public;

40.21.150

(6) "record"

(A) means each of the following that is developed or received under law or in connection with the transaction of official business and preserved, required by law to be preserved, or appropriate for preservation by an agency or a political subdivision as evidence of the organization, function, policies, decisions, procedures, operations, or other activities of the state or municipality or because of the informational value in it:

(i) a document, paper, book, letter, drawing, map, plat, photo, photographic file, motion picture, film, microfilm, microphotograph, exhibit, magnetic or paper tape, punched card or other document of any other material, regardless of physical form or characteristic; and

(ii) an electronic transmission, including a text message, an instant message, electronic mail, or any other form of communication not directly involving the physical transmission of paper that creates a record that can be retained, retrieved, and reviewed by a recipient of the communication and that can be reproduced in paper form through an automated process;

(B) does not include library and museum material developed or acquired and preserved solely for reference, historical, or exhibition purposes, extra copies of documents preserved solely for convenience of reference, or stocks of publications and processed documents;

40.25.220

(3) "public record" or "public records"

(A) means the following that are developed or received by a public agency, or by a private contractor for a public agency, and that are preserved, required by law to be preserved, or appropriate for preservation as information or as evidence of the organization or operation of the public agency:

(i) books, papers, files, accounts, writings, including drafts and memorializations of conversations, and other items, regardless of format or physical characteristics; and

(ii) an electronic transmission, including a text message, an instant message, electronic mail, or any other form of communication not directly involving the physical transmission of paper that creates a record that can be retained, retrieved, and reviewed by a recipient of the communication and that can be reproduced ibn paper form through an automated process;

(B) does not include proprietary software programs;

SENATE COMMITTEE REPORT
First Committee of Referral

DATE: 2/1/10

FURTHER: Judiciary

Date of 5-Day Notice: _____
(in accordance with Uniform Rule 23)

DATE TURNED IN TO OFFICE: 03/23/10

State Affairs Committee considered SENATE BILL NO. 249

SB 249 PUBLIC RECORDS/ELECTRONIC TRANSMISSIONS

"An Act relating to official action by electronic transmission, to records, and to public records."

and recommends:

[ ] be **replaced** with [ ] **SCS** or [ ] **CS** _____ (_____)

[ ] adopt **previous** [ ] **SCS** or [ ] **CS** _____ (_____)

[ ] attached amendment(s)

[ ] adopt _____Letter of Intent

[ ] further referral to _____Committee

SENATE BILL:
[ ] Same Title
[ ] New Title

HOUSE BILL:
[ ] Same Title
[ ] Technical Title Change
[ ] New Title w/ SCR #_____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#
ADM	03/22/10			X	

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

[ ] **APPROPRIATION - no fiscal note**

SIGNATURES AND RECOMMENDATIONS:	PRINTED LAST NAME	DO PASS	DO NOT PASS	NO REC.	AMEND
	French	✓			
	Meyer	✓			
	Parkinson	X			
	Kookesh	-			
CHAIR: Linda Menard	MENARD	✓			