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LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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Mail Stop 3101


State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

March 18, 2009

SUBJECT: CSSB 78(STA) relating to the powers and duties of the legislative audit division (Work Order No. 26-LS0194E)

TO: Senator Linda Menard
Chair of the Senate State Affairs Committee
Attn: Debbye Prator

FROM:  Theresa Bannister
Legislative Counsel

This memo accompanies the amendment described above.

Right to privacy. Your amendment does not trigger this issue. However, I wanted you to be aware that the new paragraph at AS 24.20.271(11) may raise a federal or state constitutional right to privacy issue if an audit under that paragraph covers information where there is a legitimate expectation of privacy. Alaska's guarantee of privacy is broader than the federal constitution's.¹ This state applies a three-part test to determine whether a person's privacy rights have been violated:²

(1) whether a party seeking protection has a legitimate expectation that materials or information will not be disclosed; (2) whether disclosure is nonetheless required to serve a compelling state interest; and (3) if so, whether disclosure will occur in the least-intrusive manner with respect to the right of privacy.

The record confidentiality provisions of AS 24.20.301 require the agency to keep the information confidential and may be sufficient to cure the privacy issue. However, this may not be sufficient if the records include medical, school, children's, or other sensitive records.

¹ See Myers v. Alaska Psychiatric Institute, 138 P.3d 238, 245 (Alaska 2006) (quoting Anchorage Police Dep't. Employees Ass'n. v. Anchorage, 537 P.2d 494, 514-15 (Alaska 2001)).

² Lawson v. Lawson, 108 P.3d 883, 887 (Alaska 2005), citing Alaska Wildlife Alliance v. Rue, 948 P.2d 976, 980 (Alaska 1997).

Senator Linda Menard

March 18, 2009

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To avoid the privacy issue when the new language is applied, you could limit the audit to financial records connected with the state money and to information that has had the personal indicators removed.

If I may be of further assistance, please advise.

TLB:plm

09-182.plm

Enclosure

3/17/09

CSSB78 (STA) relating to the powers and duties of the legislative audit division.

Legal Services did CSSB78 on 26-LS0194/E and changed the "may" to shall on page 1 line 4 to "shall"

And Page 1 line 4 we inserted "and duties" as opposed to "[AND DUTIES]"

Senator French said to Sen Dyson that he would work on a committee substitute for page 2 line 24 #11 perform an audit of an organization that receives money from or through the state, including money that the state has received from the fed government, when the performance of the audit is approved by the Legislative Budget and Audit Committee."

3/18/09

Received CS for above changes with a warning from leg legal that privacy issues were not resolved by the above changes and that we would want to consider making changes.

Spoke to Kate Herring in French's office and they are working with leg legal on Item 11 regarding auditing federal funds and also may work on the problem with the privacy issues when dealing with medical or students (hippa).

She will get back with me as soon as she gets a draft from leg legal. Will try and be ready for tomorrow.

They say this is probably not a good bill and that we may want to do one of the following:

Hold – let sit in committee

Send out with either no pass or no recommendation

Or whatever Sen. Menard wishes to do.

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: SB78
 () Publish Date: _____

Identifier (file name): SB78-LBA-DLA-03-13-09 Dept. Affected: Legislature
 Title An Act relating to the powers and duties of the RDU Budget and Audit Committee
Legislative Audit Division Component Legislative Audit
 Sponsor Senator Dyson
 Requester Senate State Affairs Component Number 773

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	Appropriation Required	Information					
	FY 2010	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
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							
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CHANGE IN REVENUES ()							
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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 (FY2009) cost: _____

POSITIONS

Full-time							
Part-time							
Temporary							

ANALYSIS: (Attach a separate page if necessary)

This legislation has zero fiscal impact on the Division of Legislative Audit.

Prepared by: Pat Davidson, Legislative Auditor
 Division Division of Legislative Audit
 Approved by: Pat Davidson, Legislative Auditor
Division of Legislative Audit

Phone 465-3816
 Date/Time 3/13/09 9:34 AM
 Date 3/13/2009

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

BILL NO. SB 69

ANALYSIS CONTINUATION

Fiscal note assumes:

3 Commission staff:
Program Manager Rg. 23
Research Analyst Rg. 18
Admin. Assist. Rg. 15

7 public members with geographic representation: 3 Anchorage/valley, 1 Juneau, 1 Nome, 1 Ketchikan, 1 Fairbanks

4 face-to-face meetings annually. Additional meetings as required via teleconference.

2 Anchorage meetings (one winter, one summer)
transportation: $\$2,015 \times 2 = \$4,030$
lodging: $\$1,448 + \$800 = \$2,248$
M&IE: $\$720 \times 2 = \$1,440$

1 Juneau meeting (during legislative session)
transportation: $\$3,623$
lodging: $\$1,680$
M&IE: $\$1,440$

1 Fairbanks meeting (during summer)
transportation: $\$3,898$
lodging: $\$2,400$
M&IE: $\$1,440$

All meetings assume full commission and 2 staff attendance, and further assumes 2 Executive Branch members travel costs paid by employing agencies.

Contractual includes core services charges, communications, advertising, printing, office space lease, and postage.

Initial equipment costs reflects set-up of office work stations, computers, phones, fax, copier, etc.

SENATE COMMITTEE REPORT

First Committee of Referral

DATE: 1/26/09

FURTHER: Finance

Date of 5-Day Notice: 3/12/09
 (in accordance with Uniform Rule 23)

DATE TURNED
 IN TO OFFICE: 3/19/09

State Affairs Committee considered SENATE BILL NO. 78

SB 78 LEGISLATIVE AUDIT DIVISION POWERS

"An Act relating to the powers and duties of the legislative audit division."

and recommends:

- be replaced with SCS or CS SB 78 (STA)
- adopt previous SCS or CS _____
- attached amendment(s)
- adopt _____ Letter of Intent
- further referral to _____ Committee

SENATE BILL:	
<input checked="" type="checkbox"/>	Same Title
<input type="checkbox"/>	New Title
<hr/>	
HOUSE BILL:	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	Technical Title Change
<input type="checkbox"/>	New Title w/ SCR # _____


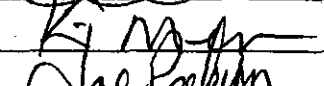
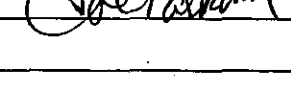
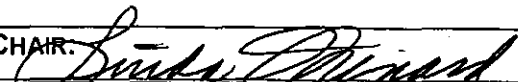
NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#
LEG	3/13/09			✓	

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			X	
	Meyer			X	
	PASKWAN			X	
CHAIR: 	MENARD	X			