

SB

109

<TARGET><BILL>SB 109</BILL><SUBJECT>SB
109</SUBJECT><COMM>SJUD30</COMM></TARGET>

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Governor Bill Walker
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April 6, 2017

The Honorable Pete Kelly
President of the Senate
Alaska State Legislature
State Capitol, Room 111
Juneau, AK 99801-1182

Dear President Kelly:

Under the authority of Article III, Section 18, of the Alaska Constitution, I am transmitting a bill relating to personnel and procurement procedures, including national criminal history record checks, for State employees and contractors accessing certain federal tax information.

The bill would establish procedures to safeguard the confidentiality of certain federal tax information in the manner required by the Internal Revenue Service (IRS) security and safeguarding requirements in 26 U.S.C. 6103(p)(4)(C) and *Publication 1075* (published by the Department of the Treasury, Internal Revenue Service and updated September 30, 2016). The IRS requirements apply to State and local agencies that obtain certain federal tax information directly from the IRS, an IRS authorized secondary source such as the Social Security Administration, the Federal Office of Child Support Enforcement, the Bureau of Fiscal Service, the Centers for Medicare and Medicaid Services, or another entity acting on behalf of the IRS pursuant to an agreement under 26 U.S.C. 6103(p)(2)(B). The recently updated IRS security guidelines in *Publication 1075* require:

- All State employees and contractors with access to certain federal tax information must undergo fingerprinting and a national criminal history record check conducted by the Federal Bureau of Investigation (FBI).
- Agencies must develop a written policy that requires employees and contractors with access to certain federal tax information to complete a background investigation. The policy must include criteria to define qualifications to access to federal tax information.
- The background investigation for each employee or contractor must be done every ten years.
- The background investigation also must include a check of local law enforcement agency records for the past five years and validation of the employee's eligibility to legally work in the United States.

Legislation is necessary to require fingerprinting and an FBI national criminal history record check. Under Public Law 92-544, the FBI can conduct a national criminal history record check for a

noncriminal justice purpose if required by a federal law or if a state has enacted a statute requiring this record check.

Some State agencies already receive information directly from the IRS, or an IRS-authorized source, and this continued access is vital. The Department of Revenue, Child Support Services Division (CSSD), uses federal tax information to collect child support payments from noncustodial parents. In FY16, CSSD collected over \$8.6 million in past due child support through the federal tax refund offset program. CSSD paid these garnished funds to the custodial parent or to the State for reimbursement of Temporary Aid to Needy Families benefits provided to the custodial parent. Continued access to federal tax information is critical to CSSD's efforts to collect child support for Alaskan families.

The Department of Revenue uses federal tax information to ensure compliance for corporate income tax, motor fuel tax, and mining tax. It provides an auditing tool that can confirm that the correct amount of tax is paid to the State. The loss of federal tax information could impede audits and possibly allow businesses to escape paying the full amount of taxes due.

The Department of Labor and Workforce Development (DOLWD) Unemployment Insurance program is required by federal law to use the treasury offset program to recover certain unemployment compensation or risk loss of federal funding – over \$22 million. AS 23.20.486 authorizes DOLWD to participate in the federal offset program, which includes confidential tax information subject to the safeguard requirements. DOLWD is currently working on programming and testing and expects to begin participation in the program in the spring of 2017. The Alaska unemployment compensation program estimates it will collect an estimated \$300,000 to \$400,000 annually through the offset program.

To ensure continued access to federal tax information, the bill creates a new chapter in AS 39 for establishing State personnel procedures for State employees who access certain federal tax information. The bill also creates a new section in AS 30.36, establishing similar procedures for State contractors who access certain federal tax information. Those procedures include fingerprinting and an FBI national criminal history record check. Last, the bill amends AS 12.62.400 by adding a new subsection authorizing the Department of Public Safety to submit the fingerprints to the FBI and obtain a national criminal history record check.

I urge your prompt and favorable action on this measure.

Sincerely,



Bill Walker
Governor

Enclosure



CRIM HIST CHECK: ST EMPLOYEES/CONTRACTORS

SB 109

SECTIONAL ANALYSIS

FOR THE SENATE JUDICIARY COMMITTEE

Section 1

Amends AS 12.62.400 by adding a new subsection.

This will require an agency to submit the fingerprints of current or prospective employees or contractors whose job duties require access to federal tax information (defined in AS 39.55.015(e)(3) and 36.30.960(d)(3)) to the Department of Public Safety for submission to the Federal Bureau of Investigation to obtain a criminal history record. Defines "agency", "employee" and "contractor".

Section 2

Amends AS 36.30 by adding a new section.

This section establishes state personnel procedures for obtaining and submitting fingerprints for current or prospective contractors if a contract with the state requires access to federal tax information. Defines "agency", "contractor" and "federal tax information".

Section 3

Amends AS 39 by adding a new chapter.

This new chapter addresses state personnel procedures related to federal tax information.

Adds AS 39.55.010

This section explains the purpose of the chapter-- to establish procedures to safeguard federal tax information which will apply to a current or prospective state employee whose job duties require access to federal tax information.

Adds AS 39.55.015

This section requires current and prospective state employees whose job duties require access to federal tax information to provide information to an agency for a state and national criminal history record check. Defines "agency", "employee", "federal tax information", "return", and "return information".

Section 4

Provides the effective date of July 1, 2017.

LEGAL SERVICES

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MEMORANDUM

March 9, 2018

SUBJECT: Changes to SB 109 (CSSB 109(JUD));
Work Order No. 30-GS1938D)

TO: Senator John Coghill
Chair of the Senate Judiciary Committee
Attn: Jordan Shilling

FROM: Hilary V. Martin *HVM*
Legislative Counsel

Attached is a Senate Judiciary CS for SB 109. Our office has made a number of edits to this draft to conform to the *Manual of Legislative Drafting* and for clarity.¹ In addition to numerous editorial changes, the following are the more significant changes to the CS:

- (1) The paragraphs in sec. 12.62.400(c) were reordered to be in alphabetical order, and the definition of agency was revised to refer to the definition in sec. 39.90.290.
- (2) Throughout the bill, "current or prospective" was removed before "contractor," as the definition of contractor includes a current contractor and an applicant for a contract.
- (3) Section 3 of the bill was rewritten to create a new article. The numbering was updated to reflect this change.
- (4) The definitions in sec. 3 of the bill were moved into their own section.
- (5) The effective date was changed to July 1, 2018.

If I may be of further assistance, please advise.

HVM:boo
18-170.boo

Attachment

¹ I've attached a comparison document for your review.